

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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VIVIETTE APPLEWHITE;	*	
WILOLA SHINHOSTER LEE; GROVER	*	Case No.
FREELAND; GLORIA CUTTINO;	*	330 MD 2012
NADINE MARSH; DOROTHY BARKSDALE;	*	
BEA BOOKLER; JOYCE BLOCK;	*	
HENRIETTA KAY DICKERSON; DEVRA	*	
MIREL (ASHER) SCHOR; THE LEAGUE	*	
OF WOMEN VOTERS OF PENNSYLVANIA,	*	
NATIONAL ASSOCIATION FOR THE	*	
ADVANCEMENT OF COLORED PEOPLE,	*	
PENNSYLVANIA STATE CONFERENCE;	*	
HOMELESS ADVOCACY PROJECT,	*	
Petitioners	*	
vs.	*	
THE COMMONWEALTH OF	*	
PENNSYLVANIA, THOMAS W. CORBETT,	*	
in his capacity as Governor;	*	

July 26, 2012

Volume II

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1 CAROL AICHELE, in her capacity \*

2 as Secretary of the Commonwealth,\*

3 Respondents \*

4 \* \* \* \* \*

5

6 BEFORE: HONORABLE ROBERT SIMPSON

7

8 HEARING: Thursday, July 26, 2012

9 9:02 a.m.

10

11 LOCATION: PA Judicial Center

12 601 Commonwealth Avenue

13 Harrisburg, PA 17110

14

15 WITNESSES: Matt Barreto, Rebecca Oyler

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17 Reporter: Jolynn C. Prunoske

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JUDGE SIMPSON:

Good morning. Please sit down. A much more manageable crowd size today. Is your witness here?

ATTORNEY WALCZAK:

Yes, Your Honor. Just as a preliminary matter, we got our exhibits straight. I don't know if Your Honor wants those now. What we've done is we took all of the exhibits from yesterday in the order that they were presented. They're numbered 1 through 15. The only exhibits we did not put in are the four for Ms. Ludt --- or the five reports, you know, her files. We're just not planning on introducing those into evidence. I've given a copy to Mr. Cawley. If Your Honor would like this now or ---?

JUDGE SIMPSON:

Yes. Would you hand it up to Mr. Mazin, please?

ATTORNEY WALCZAK:

And we'll just start with 16 today.

JUDGE SIMPSON:

I see. Okay. So we have exhibits in the order that they were presented. One, Two, Three,



1 Four, Five, Six, Seven, Eight, Nine, Ten. Eleven  
2 (11) is an --- is the videotape deposition?

3 (Petitioners' Exhibits 1 through 11  
4 marked for identification.)

5 ATTORNEY WALCZAK:

6 Yes, Your Honor. That's Nadine Marsh's  
7 DVD.

8 JUDGE SIMPSON:

9 And 12. And they're moved. Any  
10 objection?

11 (Petitioners' Exhibit 12 marked for  
12 identification.)

13 ATTORNEY CAWLEY:

14 And there's also a 13, Your Honor. Am  
15 I correct that there's a 13, 14 and 15?

16 ATTORNEY WALCZAK:

17 Yes.

18 JUDGE SIMPSON:

19 There's a 13, which is the CV; 14,  
20 which is the Social Security website shot, and 15  
21 which is the stipulation.

22 (Petitioners' Exhibits 13 through 15  
23 marked for identification.)

24 ATTORNEY CAWLEY:

25 And I have no objection, Your Honor.

1                   JUDGE SIMPSON:

2                   They are received. And Mr. Mazin, you  
3 may take charge of these.

4                   ATTORNEY CAWLEY:

5                   And Your Honor, if it's appropriate at  
6 this time, the Respondents would like to move for the  
7 admission of Commonwealth's Exhibit One, which came  
8 up during Cross Examination.

9                   JUDGE SIMPSON:

10                  And One, I believe, was --- just bear  
11 with me a second.

12                  ATTORNEY CAWLEY:

13                  It is --- sure.

14                  JUDGE SIMPSON:

15                  Okay. It was the same as Plaintiffs'  
16 Exhibit 220-D --- was numbered 220-D at the time, but  
17 it's the Applewhite IDs and residency documents,  
18 because you were asking her about her address as it  
19 appeared on these documents.

20                  ATTORNEY CAWLEY:

21                  That's correct.

22                  JUDGE SIMPSON:

23                  As I understand it, it's pretty much a  
24 duplicate as to what I just received, but is there  
25 any objection?

1                   ATTORNEY WALCZAK:

2                   There's no objection, Your Honor.

3                   JUDGE SIMPSON:

4                   Respondents' One is also received.

5                   JUDGE SIMPSON:

6                   Nothing --- let me give you my little  
7 opening statement for today. It's Tuesday, June  
8 26th. In a sign with the times, it is Mick Jagger's  
9 69th birthday today. I never realize that was going  
10 to make me so depressed. When I heard that, I really  
11 felt old, I must say. We covered a lot of ground  
12 yesterday, and I look forward to doing so today. You  
13 may call your next witness.

14                   ATTORNEY WALCZAK:

15                   Plaintiffs call Matt Barreto.

16                   MR. TURNER:

17                   Please raise your right hand.

18 -----

19 MATT BARRETO, HAVING FIRST BEEN DULY SWORN,

20 TESTIFIED AS FOLLOWS:

21 -----

22 EXAMINATION ON QUALIFICATIONS

23 BY ATTORNEY WALCZAK:

24 Q. Good morning.

25 A. Good morning.

1 Q. Please state your name.

2 A. My name is Matt Barreto.

3 Q. Where do you live?

4 A. I currently live in Shoreline, Washington.

5 Q. And is that near Seattle?

6 A. Yes.

7 Q. And what do you do?

8 A. I'm an associate professor at the University of  
9 Washington, Political Science department.

10 Q. I would like to mark and put on the screen  
11 Exhibit 16. I show you what's been marked as Exhibit  
12 16. Do you recognize this document?

13 (Petitioners' Exhibit 16 marked for  
14 identification.)

15 A. Yes, I do.

16 BY ATTORNEY WALCZAK:

17 Q. And what is it?

18 A. This is my current CV.

19 Q. And is this a fair and accurate description of  
20 your qualifications and experience?

21 A. Yes, it is.

22 Q. Let's start at the bottom of the first page  
23 there, if you can scroll up. Can you tell us a  
24 little bit about your educational background?

25 A. Yes. I attended college in New Mexico at

1 Eastern New Mexico University. I then went to the  
2 University of California, Irvine for my Ph.D. work  
3 where I completed a Ph.D. in political science in  
4 2005, and then I joined the faculty of University of  
5 Washington.

6 Q. And what was your Ph.D. in?

7 A. It was in the Department of Political Science  
8 with an emphasis on voting and elections, public  
9 opinion and racial and ethnic politics.

10 Q. And tell us a little bit about your job  
11 experience.

12 A. Sure. I'm currently an associate professor at  
13 the University of Washington in the Department of  
14 Political Science. I am also currently the director  
15 of the Washington Institute for the study of  
16 ethnicity and race, which is a research center in the  
17 College of Arts and Sciences. I have an adjunct  
18 appointment in the University of Washington School of  
19 Law, and I'm currently an executive committee member  
20 for the Center for Statistics and Social Sciences.

21 Q. And what is the Center for Statistics and Social  
22 Sciences?

23 A. That is an interdisciplinary department group at  
24 the University of Washington that draws upon  
25 statisticians and methodologists who are interested

1 in empirical research, but applying that to real  
2 Social Science problems as opposed to doing  
3 statistics for the sake of doing math equations, and  
4 so it's a nice group of folks from across different  
5 departments from statistics, sociology, science,  
6 analogy and looking at how we can apply those to  
7 studying real problems.

8 ATTORNEY WALCZAK:

9 Kelby, if you turn to the last page of  
10 this exhibit --- or the second to last page of this  
11 exhibit? I think it's the last page. There you go.

12 BY ATTORNEY WALCZAK:

13 Q. Can you talk to us a little bit more about what  
14 it is that you teach at the University of Washington?

15 A. Sure. The classes that I have taught are listed  
16 here. Generally, the courses that I teach are in  
17 American politics. I taught courses on public  
18 opinion, survey research, statistics and empirical  
19 analysis, campaigns and elections and minority  
20 politics.

21 Q. Now, at the bottom of that page, it talks about  
22 board and research appointments. Can you tell us a  
23 little bit about that?

24 A. These are various research centers or institutes  
25 that I have appointments at.

1 Q. What does it mean to have an appointment?

2 A. That someone from that research center has  
3 contacted you and asked you to serve in either an  
4 advisory or official capacity. Perhaps you might  
5 write a scholarship for them that goes out under  
6 their letterhead, perhaps you might advise them on  
7 different research matters generally. You might  
8 attend their events and functions, so these are  
9 various centers or groups that I held research  
10 appointments at since my graduate work.

11 Q. And I see near the bottom of that list is  
12 something called the American National Elections  
13 Study at the University of Michigan. Can you tell us  
14 about that?

15 A. Sure. The American National Election Study is  
16 one of the oldest and longest running studies in  
17 political science. It's funded by the National  
18 Science Foundation. It was started in 1948 and runs  
19 consecutively every two years doing a large national  
20 study of voter public opinion, voter knowledge, voter  
21 participation, and it has been the source of a great  
22 number --- a great amount of scholarship that has  
23 been published in American politics. People  
24 regularly use that data set to advance what we know  
25 about voters and why they behave the way they do. In

1 2010 I was appointed to the board of overseers.

2 Q. And I think overseers and think undertakers and  
3 don't know the difference always. What does it mean  
4 to be a member of the board of overseers?

5 A. They have a --- the principal investigators of  
6 the study, which are currently based at the  
7 University of Michigan and Stanford University,  
8 select about 25 to 30 professors from across the  
9 country to join the board, attend quarterly meetings  
10 where they advise the principal investigators on the  
11 different topics, talk about the current  
12 methodologies and ways to possibly improve this  
13 study, but also to protect it so that we have  
14 comparability across the 60 years that it's been in  
15 existence. So I'm one of those members that will use  
16 their research methodology and advises them on new  
17 areas.

18 Q. Now, the testimony we're hoping to offer from  
19 you today involves surveys and involves barriers to  
20 voter participation. I want to focus a little bit  
21 about on your experience and background in both of  
22 those things. Let's start first with surveys. Tell  
23 us a little bit about your experience in designing  
24 and executing surveys.

25 A. Sure. One of the other research appointments



1 that's listed here, in fact, the first one, was one  
2 of my first research appointments as a scholar which  
3 is Tomas Rivera Policy Institute in southern  
4 California. There I started in 1999, and I was part  
5 of a team that designed surveys, both the sample and  
6 the questionnaire for surveys that were being  
7 conducted by the institute. From there I went on to  
8 study and have an emphasis on survey research and  
9 public opinion research in my graduate work, taking  
10 courses closely related to those topics and designing  
11 and implementing some additional surveys as a  
12 doctoral student for my own research.

13 Since that time I've collaborated on more than  
14 75 surveys focusing on states and national and have  
15 --- as I mentioned earlier, have taught classes and  
16 given seminars about survey construction and design.

17 Q. And how many of those surveys that you've done  
18 approximately involve issues related to elections?

19 A. I would say virtually all of them were related  
20 to issues of elections due to the nature of my study  
21 in the political science department. There have been  
22 some surveys that were just general studies of public  
23 opinion and voter awareness and knowledge. But  
24 overwhelmingly the surveys that I study are voter  
25 attitudes, voter opinions in the electoral system.

1 Q. And have your studies focused both on localities  
2 and states and national? Have you looked at  
3 different sort of population codes?

4 A. Yes, absolutely. The studies have taken a wide  
5 range of interests and focus, oftentimes depending on  
6 the research question that we're interested at the  
7 time. But as an example, I designed and implemented  
8 studies that have been specifically just about one  
9 city, many that were in the City of Los Angeles when  
10 I was living in southern California. A number that  
11 were county or metro wide, and a number that have  
12 been statewide, focusing on individual states, and  
13 quite a few surveys that have been national in scope.  
14 The surveys have also tended to focus on the overall  
15 entire American electorate as well as studies that  
16 focus just specifically on individual racial and  
17 ethnic groups.

18 Q. And have any of your surveys involved an  
19 assessment of voter ID laws?

20 A. Yes. I believe there are eight surveys that the  
21 primary focus was looking at voter identification  
22 laws, rights to possession, lack of possession of  
23 obtaining photo identification.

24 Q. And is one of those eight one that you performed  
25 for this case?

1 A. Yes, that's correct.

2 Q. And were any of the others that you've done  
3 national in scope?

4 A. Yes. They have been both focusing on some  
5 individual states. Also, they have been national in  
6 scope, where we have examined the rates of possession  
7 of photo identification nationally for different  
8 groups, but also focusing on individual states.

9 Q. And just let me ask you since it's been in the  
10 news. There was a court challenge in Wisconsin, or I  
11 guess there are multiple court challenges in  
12 Wisconsin right now. Have you done a similar survey  
13 for the litigation in Wisconsin?

14 A. Yes, that's correct. Myself and Professor  
15 Gabriel Sanchez were involved in writing, designing,  
16 implementing a survey for litigation in the State of  
17 Wisconsin.

18 Q. And who are you working for in the State of  
19 Wisconsin?

20 A. It was the ACLU Foundation in Wisconsin.

21 Q. And that case is one that's in federal court?

22 A. Yes, I believe so.

23 Q. So that's not one of the cases that has been  
24 decided thus far?

25 A. That's correct.

1 Q. And is that case also under the Voting Rights  
2 Act?

3 A. Yes, that's correct.

4 Q. And did you look at the entire state there  
5 or ---?

6 A. The study that we did in Wisconsin was just in  
7 Milwaukee County. That was the area where they  
8 decided to bring the lawsuit in terms of rates of  
9 possession and wanted to focus just specifically on  
10 Milwaukee County, so that's what we studied.

11 Q. And was the focus of that study slightly  
12 different than what we asked you to do here in  
13 Pennsylvania?

14 A. Yes, certainly. Because it was being brought  
15 under the Federal Voting Act. They were specifically  
16 asking us to assess the right to possession that  
17 cross over in racial and ethnic groups to determine  
18 whether or not there were any differences in the rate  
19 of possession between whites, Hispanics and blacks.

20 Q. Let me just ask you generally on the surveys  
21 that you've done on voter IDs, is there a range that  
22 you have found in the various studies in terms of the  
23 number of voters who do not have the kind of ID  
24 required under the particular law?

25 A. Yeah. Across the surveys that we implemented

1 asking people what their current rates of possession  
2 valid photo identification are, we seen some fairly  
3 consistent rates where, let's say, between 9 and 15  
4 percent generally --- sometimes maybe one percent  
5 lower, sometimes maybe one percent higher, but we've  
6 seen something in about that range of people who  
7 don't have valid photo ID, depending, of course, on  
8 the intricacy of the state law.

9 Q. Now, let me ask you a little bit about looking  
10 at predictors of voter turnout. Is that a specialty  
11 of yours?

12 A. Yes, absolutely, that's one of my primary areas  
13 of focus.

14 Q. And explain for the Court what that means.

15 A. Well, one of the big questions, I guess, that we  
16 grapple with in political science is what motivates  
17 participation in our democracy. And so one of the  
18 primary areas or subfields is called voting behavior  
19 and political participation. There we're primary  
20 interested in trying to identify what causes people  
21 to register and to vote or to express other forms of  
22 non-electoral participation and what the factors are  
23 that are associated with that, we often call  
24 predictors, the factors are that are associated with  
25 higher or lower rates of participation.

1 Q. And can you give us an example of a study that  
2 you've done that's looked at --- outside the voter ID  
3 context that's looked at predictors of participation?

4 A. Sure. I would say a large number of the studies  
5 that I've conducted are related to voter  
6 participation and what drives voter participation,  
7 whether you're looking at some of the studies that  
8 I've done comparing across racial groups. I've  
9 completed a study recently looking at how people who  
10 use the internet for political reasons to gather  
11 information, that creates an extra added incentive in  
12 the participators, so we identified things like  
13 internet access as both something that mobilizes or  
14 that encourages voting, but also the lack of access  
15 as a barrier, something to causes people to  
16 participate less. I've also authored studies  
17 specifically looking at institutional barriers to  
18 political participation, looking at ---.

19 Q. What do you mean by institutional barriers?

20 A. In this case, generally we divide the predictors  
21 into things that are individual level, such as my own  
22 income, education level, race or ethnicity, et  
23 cetera, and then institutional or contextual factors,  
24 larger things that are existing in the county, the  
25 state or the electoral system. And one such study I

1 did was looking at the actual polling place  
2 precincts, what characteristics they had, how well  
3 marked they were, what their overall level of quality  
4 was, the knowledge level of the poll workers inside  
5 the precincts and whether or not that was associated  
6 with a higher or lower voter participation.

7 Q. Have you also looked at how information affects  
8 voters?

9 A. Absolutely. I mean, this is a very important  
10 strand of research within political participation.  
11 The levels of information are directly related to  
12 voter engagement and voter participation, so that  
13 would be something that we would not only want to  
14 review the latest findings and research on, but also  
15 perhaps include as part of our research design,  
16 asking questions about that sort of thing.

17 ATTORNEY WALCZAK:

18 Your Honor, we would move Professor  
19 Barreto as an expert in the science of --- I'm sorry,  
20 survey science and barriers to political  
21 participation.

22 JUDGE SIMPSON:

23 Do you wish to be heard?

24 ATTORNEY CAWLEY:

25 No, Your Honor. No objection.

1                   JUDGE SIMPSON:

2                   He may express an opinion.

3           DIRECT EXAMINATION

4           BY ATTORNEY WALCZAK:

5           Q.   Professor Barreto, let me ask you --- and just  
6           upfront let's be fully candid, and who are you  
7           retained by in this case?

8           A.   I was retained by the ACLU and the rest of the  
9           team, Arnold & Porter.

10          Q.   And are you being paid for your services?

11          A.   Yes.

12          Q.   And how much are you being paid?

13          A.   I am being paid \$250 an hour for the work that I  
14          completed and testimony.

15          Q.   And what is it that you were asked to evaluate  
16          here?

17          A.   We were asked to examine the rates of possession  
18          of valid identification among different segments of  
19          the Pennsylvania population, specifically looking at  
20          three groups, all eligible voters, that is all  
21          citizen adults in the State of Pennsylvania.

22          Q.   I'm sorry. So that would be anybody who would  
23          be qualified to vote regardless of whether they're  
24          registered?

25          A.   That's correct. Anyone who is a citizen adult



1 who is qualified to vote is an eligible voter.

2 Q. And why would you look at that group and not  
3 just registered voters?

4 A. Well, we also did registered voters. But the  
5 eligible population is particularly an important  
6 starting point because these are all of the residents  
7 who are able to participate and vote. And we know  
8 that in any given election year, particularly  
9 presidential election years, there are very, very  
10 large voter registration drives. We see the voter  
11 registration numbers fluctuate as much as up to a  
12 month before the election.

13 There are a lot of last efforts to register  
14 voters, and so at this point we are not exactly  
15 certain who will be a voter, so we want to start by  
16 looking at all eligible voters. Many of those  
17 people who are currently not registered today will  
18 be registered before the election. So that's our  
19 starting point.

20 Q. So you look at eligible voters?

21 A. Registered is the second segment that we looked  
22 at, people who are currently registered to vote in  
23 Pennsylvania, and the last group is 2008 voters who  
24 resided and actually voted in the 2008 presidential  
25 election and other contests here in Pennsylvania.

1 Q. So all the data that you measure, you measure  
2 for each of those three groups?

3 A. That's correct. We provide estimates for each  
4 of those three segments of the population. And, of  
5 course, they're cascading, which means that  
6 registered voters are also part the eligible voters,  
7 and 2008 voters who are currently registered are also  
8 part of the estimates of registered voters.

9 Q. So the most encompassing, the most embracing  
10 figure is the eligible voters and then it goes down  
11 to registered and actual voters?

12 A. Yes, that's correct.

13 Q. And so you were asked to look at the rates at  
14 which people possess IDs. Were you asked to look at  
15 anything else?

16 A. Yes, that was our starting point. We were also  
17 asked to consider the degree of public knowledge and  
18 awareness of the current statute to see whether or  
19 not people were aware of it and whether they felt  
20 that they were in compliance or not. And we were  
21 also asked to look at the rates of possession of the  
22 underlying documents that would be necessary to  
23 obtain a valid photo ID in the first place. So we  
24 had additional questions related to that. And then  
25 finally we were asked to consider whether or not

1 there were any differences in these rates of  
2 possession for any additional subgroups or segments  
3 within the state population.

4 Q. So you broke it down in various demographic  
5 ways?

6 A. Yeah, that's correct. We look for --- for  
7 example, the most obvious is looking at gender  
8 differences between the rates of possession of men  
9 and women, but then for other demographic  
10 characteristics as well.

11 Q. And based on the research that you've done, have  
12 you formed any opinions to a reasonable degree of  
13 scientific survey certainty about the rates of  
14 possession and the rates of knowledge of Pennsylvania  
15 voters?

16 A. Yes, I have.

17 Q. And what is the basis for that opinion, is it a  
18 survey research that you've done?

19 A. Yes, that's correct. The basis for the opinion  
20 in this specific case is the survey that was  
21 implemented here in Pennsylvania.

22 Q. Okay. We'll get into that in just a minute.  
23 Before we get into the details of the Pennsylvania  
24 survey, I want to ask you a little bit more generally  
25 about survey methodology. This may be my own

1 problem, but you think how can you --- how can you  
2 talk to a few thousand people and be able to then  
3 predict what's going to happen for millions of  
4 people. So tell us a little bit about sort of the  
5 science of survey methodology and how you construct a  
6 survey and just how the process works.

7 A. Sure. Absolutely. So there's been a very long  
8 history of the use and the refinement of surveys in  
9 social science and also in public policy.

10 Q. How far back does this go?

11 A. It goes back throughout almost the history of  
12 the country, people who are trying to take opinions  
13 and gather --- most famously probably during the  
14 early 20th century, there were polls that were  
15 starting to be conducted to try to predict the  
16 presidential election. And one that really sort of  
17 highlighted the need for more science in survey  
18 design was the famous Reader's Digest polls. They  
19 would send mailers out to their subscribers, and just  
20 send it to people who subscribed to their magazine  
21 and asked them how they were going to vote. And this  
22 tended to produce the correct results, but in one  
23 election they mispredicted the results, and as a  
24 result, a number of people who are interested in the  
25 study of social and political behaviors started to

1 invest more heavily in sampling technique, question  
2 design, analysis.

3       And from there, especially the latter half of  
4 the 20th century, there have been many, many  
5 advancements to really inject more science into  
6 survey research so that we could accurately  
7 implement surveys and with a high degree of  
8 certainty make assessments about probability and  
9 people hold certain attitudes or different  
10 characteristics or traits. And so it's something  
11 that there is --- for a survey designers who do it  
12 professionally in social scientific manner, it's a  
13 very serious and rigorous endeavor.

14 Q. Is it considered a science?

15 A. Absolutely. And there's a group of the American  
16 Association of Public Opinion Research which oversees  
17 survey research. They publish ---.

18 Q. Where are they out of?

19 A. This is a national association, and it is a  
20 membership association much like many other  
21 professional associations.

22 Q. And I'm sorry, what's it called?

23 A. It's call the American Association of Public  
24 Opinion Researchers (sic). It's commonly referred to  
25 as AAPOR. They host a national conference where they

1 bring people together to present the latest  
2 methodologies and research and public opinion  
3 research. They publish a journal, which is a  
4 peer-reviewed scientific journal talking about not  
5 only what do people think but the science and the  
6 methods of collecting surveys. And they also serve  
7 in capacity as a watchdog group where they will  
8 intervene if they believe that some surveys are not  
9 up to standard, and they will examine those results  
10 to see if they are.

11 Q. So when you say when they intervene, somebody  
12 publishes a survey that's unrelated to anything  
13 they're doing, they can take a look at that and take  
14 some kind of action?

15 A. Yeah, probably an example that was in the news  
16 was during the 2008 presidential primary after the  
17 Iowa election, there were a number of polls that  
18 indicated that Mr. Obama had about a ten point lead  
19 in New Hampshire and that he would win New Hampshire.  
20 And Mrs. Clinton won New Hampshire. And almost all  
21 the polls had predicted that she would lose. And  
22 after that happened, the American Association of  
23 Public Opinion Research sent out a call for anyone  
24 who had conducted a poll in the State of New  
25 Hampshire, to not only submit their methodology, but

1 to actually send over the full data of the poll so  
2 that they can examine some of the sub things that  
3 were happening in the polls. Perhaps people were  
4 weighing things in different ways, perhaps the  
5 questions that were worded were inaccurate, and any  
6 of the survey researchers who were involved in those  
7 surveys in New Hampshire sent their data over, and,  
8 in fact, the American Association of Public  
9 Researchers then went with their panel of experts and  
10 reviewed all of the data to ensure that it is  
11 accurate, or if there was an irregularity, what was  
12 causing it so they can better understand what was  
13 happening. So it was a regular thing that they would  
14 monitor and be involved, and that helps all of us  
15 have confidence in the survey research field, that  
16 what we're doing is accurate and scientific and is  
17 taken seriously.

18 Q. Now, are you involved at all in AAPOR?

19 A. Yes. I have been a member of AAPOR, been at  
20 their conference, and I've also published research on  
21 the public opinion in the Public Opinion Quarterly,  
22 which is their flagship journal.

23 Q. So are these surveys really reliable?

24 A. Yeah. So the takeaways that if the surveys are  
25 constructed correctly, sample design is given a lot

1 of thought and is implemented accurately.

2 Q. What do you mean by sample design?

3 A. The sample design is as you indicated. Many  
4 times we interview only a thousand or 1,500 people.  
5 The sample design means how do we pick those people  
6 that we're going to interview, who are those 1,500  
7 people. And that's one of the most important things  
8 to get right when implementing the survey. If the  
9 sample design is done correctly and we get an  
10 accurate sample and the questionnaire is worded  
11 correctly and follows the established social science  
12 protocols, then we can say with a high degree of  
13 certainty that the opinions and the attitude of  
14 behaviors that the people express in the survey are  
15 quite reliable. And in lots of attempts survey  
16 researchers have then gone out and validated some  
17 specific questions so that they can identify just how  
18 accurate they are. For example, they might ask  
19 people if they currently own their home or if they're  
20 a renter, and then by looking at public records at  
21 the county assessor's level, they can actually verify  
22 whether or not those things are accurate. So there's  
23 been a lot of efforts made to demonstrate that when  
24 surveys are conducted and they're conducted  
25 correctly, they can be extremely accurate.



1 Q. And you often hear a poll was conducted with  
2 1,200 people or 1,280 people. It seems to be a kind  
3 of magic number, somewhere around 1,200. Is there  
4 some magic to that?

5 A. Well, we want to get a sample size that allows  
6 us to generalize about the larger population. And  
7 depending on how many people we interview, we'll have  
8 either a larger error rate or a smaller error rate.  
9 And somewhere between a thousand and 1,500 is where  
10 you see a lot of surveys get published, because the  
11 margin of error for --- in this case 1,285 is 2.7  
12 percent if there was ---. That's the highest that  
13 the margin of error could be. And it could be  
14 somewhat low depending on the distribution of the  
15 responses. If you only interviewed say a hundred  
16 people, the survey might still be accurate. It might  
17 have been implemented correctly, but your margin of  
18 error for any estimate you have would be closer to  
19 nine percent or ten percent, and so you want to have  
20 an effective sample size that allows you to minimize  
21 the potential margin of error on any of your  
22 estimates. And so that range of 1,200 is quite  
23 common in a lot of surveys, because it allows you to  
24 have a fairly small margin of error.

25 Q. So for 1,285, what would be the margin of error?

1 A. The margin of error is specifically related to  
2 the point estimate. When I say that the survey on a  
3 margin of error ---.

4 Q. Slow down. What do you mean by point estimate?

5 A. The percentage that comes out. So if you see a  
6 poll done on a presidential election in the State of  
7 Pennsylvania, you might see a poll that says that Mr.  
8 Obama is currently favored by 46 percent and Mr.  
9 Romney is currently favored by 42 percent. Those are  
10 the point estimates. The survey is estimating that  
11 Mr. Obama has 46 percent at the poll. So that point  
12 estimate, 46 carries some sort of plus or minus on  
13 it, and so the margin of error is related to two  
14 things. One is the overall sample size, how many  
15 total people did we interview. And secondly, the  
16 distribution. So when you have something close to a  
17 50/50 distribution, like 46/42, you have the most  
18 possible room for error. And in this case, 1,285 is  
19 2.7 points.

20 If you have an estimate where 85 percent of the  
21 population gives one answer the margin of error  
22 actually shrinks, because you're observing in that  
23 data more consistency. And so if you have 85  
24 percent of people all telling you something, then  
25 the margin of error on 1,285 is only 1.9 percent.

1 And so 2.7 is the overall expected rate, but for  
2 given answers such as some of the ones in our  
3 survey, we estimate smaller margins of error.

4 Q. And the margin of error means that it could be  
5 slightly less by that amount or more by that amount?

6 A. That's correct. That we would have ---  
7 technically what we would say is that we have 95  
8 percent confidence that the real or the true point  
9 estimate is in between that plus or the minus, that  
10 it's extremely unlikely that it's anywhere outside  
11 that plus or minus, and that the estimate that we  
12 would have the most confidence in is the exact  
13 estimate that was produced.

14 Q. So what are kind of the general aspects of  
15 conducting a survey? What goes into figuring out how  
16 to do this?

17 A. Well, we sort of referenced this a bit when we  
18 talked about the science of conducting surveys.  
19 There's really three sort of aspects that you want to  
20 take into account to make sure that your survey is  
21 done correctly. The first is sample design, who are  
22 we going to be interviewing and to make sure we get  
23 that exactly right so that it can be reflective of  
24 the full population, and so sample design is very  
25 important. The second is questionnaire design. Even

1 if we have a good sample of the overall population,  
2 if the questions are leading or biased in some way,  
3 it doesn't matter how good the sample is. So that  
4 means a lot of care to make sure that you have the  
5 questions. And the questionnaire is designed in a  
6 scientific manner. And then the third would be  
7 executing the survey to make sure that the survey is  
8 implemented in a social, scientific manner.

9 Q. What would be the vantage of a survey over, say,  
10 a statistical analysis and maybe you could give your  
11 answer in the context of the voter ID situation we  
12 have in this case?

13 A. Well, the advantage of a survey in this  
14 particular case is that it allows us to ask people  
15 what documents they currently possess and it allows  
16 us to know if they actually have those, not have they  
17 ever had one or did they have one in the past, but do  
18 they currently have those so that they can produce  
19 them if necessary. And so in the case of analyzing  
20 other data sets, there could be people who appear to  
21 have documents, but like lots of people, sometimes  
22 those documents are lost, stolen or misplaced. And  
23 so in this case we can actually ask people if they  
24 currently possess those documents and can produce  
25 them. It's also thought and there's a debate within

1 the U.S. Census Bureau that surveys that are  
2 conducted correctly and accurately are more accurate  
3 sometimes than universal estimates examining the  
4 entire population. There's currently a debate most  
5 people leaning on the side of surveys within the  
6 Census Bureau, and you may have seen some discussion  
7 of this perhaps changing or phasing out the  
8 descendant Census where they try to count every  
9 individual person. And probably, if you're telling  
10 someone you're going to count every single person,  
11 you have to then go and count every single person.  
12 And if there are particular groups that are hard to  
13 count for one reason or they --- their records aren't  
14 as accurate for some reason, then you introduce some  
15 systematic bias in there. Whereas if you have a  
16 survey and you're not trying to count every single  
17 person but rather, randomly sample those different  
18 people, you can do a much more effective job of  
19 ensuring that representation. And so that's why the  
20 Census, in fact, has been moving to implement more  
21 and more surveys because they believe there's a high  
22 degree of reliability.

23 Q. So in the voter ID context, what advantage would  
24 a survey have over, say, a scientific statistical  
25 comparison between the PennDOT database and the SURE

1 database?

2 A. Well, in the survey we can ask people what types  
3 of ID they have, so it's not restricted to just those  
4 that are in the PennDOT database. There are other  
5 types of ID such as military ID or passport or  
6 nursing facility IDs that we can ask people whether  
7 or not they have. So we can be exhaustive in that.  
8 We can also ask them if they currently possess those  
9 or if they lost them. That's something that a  
10 database won't tell you, whether or not you actually  
11 have your ID with you or whether or not it's been  
12 misplaced, lost, stolen or destroyed in some way, and  
13 so it allows us to be more exhaustive and more  
14 certain that we have the data that we're looking for  
15 and not just something.

16 Q. All right. Why don't we talk about the survey  
17 that you conducted here in Pennsylvania? Before we  
18 look at the instrument, let's start by, how did ---  
19 talk to us a little bit about the design of the  
20 survey here in Pennsylvania. I mean, what ---?

21 A. Okay. Certainly. What we wanted to do was to  
22 get the most accurate representation of all residents  
23 who are eligible to vote, registered to vote or who  
24 had voted in the Pennsylvania election. And so we  
25 started the discussion on the sample design of who we

1 would actually interview and what method we would go  
2 about to do that interview. And so ---.

3 Q. And who did --- so let's stop there. And what  
4 were the decisions made about who to interview and  
5 who to evaluate?

6 A. So we started with the overall citizen eligible  
7 population, and in an attempt to reach them, we  
8 decided to rely on what's called a random digit dial  
9 survey for the statewide population. It's a random  
10 digit dial.

11 Q. What is random digit dial?

12 A. What that means is that rather than relying on a  
13 list of people to call, whether it's in the phone  
14 book or some other source, the computer will generate  
15 --- based on known area codes and prefixes will  
16 randomly generate phone numbers so that every  
17 possible phone within a given geography is eligible  
18 to be sampled so that there's no exclusion of any  
19 types of phone numbers, and so then the computer  
20 would just randomly call those numbers, and when they  
21 got through to a person, they would screen them and  
22 see if they were over the age of 18, a citizen, had  
23 been a resident of Pennsylvania. And so that was the  
24 approach we took in both --- dial in to land line,  
25 traditional phone numbers and also wireless or cell

1 phone numbers.

2 Q. So this did include people who own cell phones?

3 A. Yes, absolutely. There's also known prefixes,  
4 et cetera that you can do random digit dial up to  
5 assess or to include those persons in your sample.

6 Q. So if I understand you correctly, you have  
7 essentially everybody's number, and then it's  
8 randomly selected?

9 A. That's right. And the phone numbers themselves  
10 are randomly generated, so it could even be the case  
11 that one phone number that the computer dials is a  
12 phone number that doesn't exist. The advantage of  
13 doing that is that no phone number is left out of  
14 possibly being included in the sample. So that was  
15 the starting point for making sure that we were able to  
16 include everyone and not exclude any particular  
17 populations within the State of Pennsylvania.

18 Q. And how many people did you decide to survey?

19 A. We estimated for a target of about 1,250 or so.  
20 We wanted to come to that range, as we discussed  
21 earlier, because we felt it would have the  
22 appropriate margin of error for us to make  
23 conclusions with a high degree of scientific  
24 certainty. And we ended up with 1,285 completed  
25 interviews from the statewide sample.



1 Q. And did you do something known as an oversample?

2 A. Yes. In addition to the main sample from a  
3 statewide study, we conducted two oversamples, one of  
4 Hispanics or Latinos and one of African-Americans.  
5 And we targeted for each of those oversamples about  
6 500 completed interviews. And again, we targeted  
7 that number of 500 so that it would give us a degree  
8 of reliability for those subsamples. We didn't want  
9 those subsamples if we made any statements about  
10 subgroups of voters in this --- as part of the  
11 component of looking at possible demographic  
12 segments, that we may only have a hundred completed  
13 interviews with Hispanics, that wouldn't be enough  
14 for us to draw a reasonable conclusion. We wanted to  
15 increase those numbers just for a separate  
16 oversample, and so we conducted those additional  
17 interviews with African-American persons and Hispanic  
18 households.

19 Q. So in the end, how many total interviews did you  
20 end up doing?

21 A. I believe the total number is 2,321, something  
22 to that nature. As we added these two oversamples of  
23 500 each, that added about a thousand. And again,  
24 sometimes you end up getting a couple more completed  
25 interviews than you start out with, because you need

1 to exhaust the sample. It is what is called reaching  
2 all the maximum attempts. And that's a very  
3 important part. Sort of jumping ahead to the  
4 execution of the survey, that the survey firm made  
5 sure that they followed the correct protocols in  
6 calling people back multiple times making sure  
7 everyone has an opportunity to participate.

8 Q. Why don't we skip to that and then come back to  
9 the survey questionnaire?

10 A. Okay.

11 Q. So then you would design that questionnaire, and  
12 we'll talk about that in a minute. So let's talk  
13 about the execution. So tell us about the execution  
14 of the survey here.

15 A. Sure. So once you have the questionnaire ready  
16 to go, the first thing that will happen is that the  
17 survey research firm will program this questionnaire,  
18 this document that's here as part of the exhibit, and  
19 they will take that and program it in so that the  
20 interviewers who are reading the questions to a  
21 respondent will see it come up on their computer  
22 screen, will have a couple extra notes in there for  
23 them in terms of how to ask a follow-up question or  
24 additional information. That also ensures that  
25 they're able to follow all of the best practices of

1 randomizing and rotating items so that we don't prime  
2 people with one answer or another and so the answer  
3 choices and the questions themselves will be rotated  
4 within the survey. That's all possible when the  
5 survey firm programs that for the interviewers. And  
6 after the survey's programmed, then the survey firm  
7 will take the sample, this list of phone numbers that  
8 has been generated, download it into their system and  
9 then the survey will be implemented.

10 Q. If you'd like some water, you're doing a lot of  
11 talking here?

12 A. So they'll download the phone numbers and  
13 implement and start making calls.

14 Q. Let me ask you this, you hired somebody to do  
15 this?

16 A. I think you guys hired somebody to do this.

17 Q. We hired somebody to do this, and who was hired  
18 to do this?

19 A. This is a survey research firm called Pacific  
20 Market Research. It's a firm that I'm familiar with,  
21 they're based in Renton, Washington, not too far from  
22 the University of Washington, and I worked with them  
23 on other academic studies.

24 Q. And do they do a lot of this kind of work?

25 A. Oh, absolutely. They do a very large amount of

1 survey research work, including survey research work  
2 as we reference in one of the footnotes in the study  
3 for lots of other academic studies, they've also been  
4 involved in numerous legal studies and have been  
5 contracted by the Department of Defense and the IRS.  
6 So they're a very large nationally recognizable  
7 research firm. That's very important, because we can  
8 ensure that because they've been vetted and have  
9 those credentials that they will be implementing the  
10 survey in a social and scientific manner.

11 Q. And do you know how many calls they actually had  
12 to make or how many people they had to talk to in  
13 order to get to the 2,000-and-something that they  
14 eventually got?

15 A. Yeah. We list in the report what the response  
16 rate is of the survey. Again, the response rate is  
17 something that is a calculation generated by this  
18 group, AAPOR, that we talked about before, and one of  
19 their requirements is that when you implement a  
20 survey, that you must indicate what the response rate  
21 of the survey is so that people can have an  
22 assessment of exactly how many calls you had to make  
23 and whether or not this was something that people  
24 didn't want to participate in or not.

25 I believe in this case --- and I don't have the

1 footnote in front of me, but it was somewhere  
2 between 20 and 30 percent, 25 percent or so of a  
3 response rate, so from there you can sort of infer  
4 how many calls were made to people. If it was 2,000  
5 completed interviews, and there was a 25 percent  
6 response rate, it would have been somewhere in the  
7 neighborhood of 8,000 successful calls that were  
8 placed and a quarter of those people responded to  
9 the survey.

10 Q. Would it be helpful for you to have your report?

11 A. Yes. If you're going to ask me some specific  
12 questions about that, I'm going to refer to pages.

13 Q. There's going to be a lot of numbers.

14 JUDGE SIMPSON:

15 I have the report.

16 BY ATTORNEY WALCZAK:

17 Q. Okay. And over what period of time of were  
18 these calls made?

19 A. The calls were completed in June. I can give  
20 you the exact dates here. Let me look at survey  
21 methodology.

22 JUDGE SIMPSON:

23 Page 17.

24 A. Yes, there we go. Thank you. We say here that  
25 we began on --- or Pacific Market Research began on

1 June 21st, 2012 and continued through July 2nd of  
2 2012, so about an area of 10 or 11 days that these  
3 calls were conducted.

4 BY ATTORNEY WALCZAK:

5 Q. Anything else that is important about sort of  
6 the execution of the survey before we get to the  
7 questionnaire?

8 A. One of the things that we wanted to ensure was  
9 not only was the sample randomly generated so that we  
10 could select people, but also that multiple callbacks  
11 were done to each number. In my opinion, this is an  
12 error that oftentimes polls that come out really  
13 quickly, political polls that come out really quickly  
14 after an announcement or a major event, and they  
15 collect the data in two days, don't do a good job,  
16 and that is that a lot of people are busy, and the  
17 first time you call them they may not opt into the  
18 survey, so we want to make sure that we don't only  
19 take people who answer on the first call, but that we  
20 give, for some of those harder to reach numbers,  
21 multiple calls. And that was insisted on in this  
22 instance. And that's what gave us a few extra field  
23 days, having 11 days of being in the field conducting  
24 the survey. And that really ensures that you have a  
25 nice representative sample, not only of selecting the

1 numbers, but then also getting the respondents, and  
2 that you do get some people who don't answer on the  
3 first or even second call, but on the third call they  
4 do take your survey and that makes it much, much more  
5 accurate.

6 Q. Anything else on the execution?

7 A. I don't think so.

8 ATTORNEY WALCZAK:

9 Kelby, if you can put up what we have  
10 as Exhibit Five, which I guess we will mark as  
11 Exhibit 18.

12 JUDGE SIMPSON:

13 You have 16. His CV is 16.

14 ATTORNEY WALCZAK:

15 Sixteen (16) and then 17, I believe,  
16 would be next.

17 JUDGE SIMPSON:

18 I think so.

19 ATTORNEY WALCZAK:

20 We'll mark this as Petitioners' Exhibit  
21 17.

22 (Petitioners' Exhibit 17 marked for  
23 identification.)

24 ATTORNEY WALCZAK:

25 It's appendix B, scroll up one page,

1 please.

2 BY ATTORNEY WALCZAK:

3 Q. I show you what's been marked as Petitioners'  
4 Exhibit 17. Does this look familiar?

5 A. Yes, it does.

6 Q. And is this something that you designed?

7 A. Yes. This is what we would call the survey  
8 instrument. This is the set of questions that were  
9 read to the respondents in Pennsylvania.

10 Q. And this is something that you and a colleague  
11 put together?

12 A. Yes, myself and Professor Gabriel Sanchez at the  
13 University of Mexico put this questionnaire together,  
14 wrote the questions.

15 Q. And you mentioned Professor Sanchez. Why don't  
16 you just very quickly tell us who Professor Sanchez  
17 is?

18 A. He's an associate professor at the Political  
19 Science and tenure at the University of New Mexico.  
20 And he and I have collaborated in an academic  
21 capacity on studies of voter identification that we  
22 published on this topic. And we have shared data and  
23 research on this. He was also a co-investigator on  
24 the Wisconsin study that we mentioned earlier, and as  
25 such he served as a co-investigator because we were



1 using a lot of our shared knowledge, so it's  
2 customary to continue with the collaboration.

3 Q. What I would like to do is go through this,  
4 certainly not word by word, but just explain how this  
5 instrument works and precisely why you asked the  
6 questions that you asked, so let's start on this  
7 first page and maybe we can make that a little  
8 smaller. Tell us a little bit --- just kind of walk  
9 us through how this survey instrument works.

10 A. Sure. I'll just start with the first stage what  
11 we commonly refer to as the screening questions.  
12 Here's where we're assessing the eligibility of the  
13 participants to be included in the study, so here you  
14 can see that we're asking people questions to ensure  
15 that they are eligible and that they are over the age  
16 of 18 --- or rather that is 18 or over, currently a  
17 U.S. citizen and have lived in Pennsylvania. We then  
18 go on to ask them other sorts of questions such as  
19 whether or not they're registered to vote, and that  
20 was our interest in providing estimates about  
21 registered voters, and also assessing --- asking  
22 about their race and ethnicity just to be sure that  
23 we have a representative sample of Pennsylvania. So  
24 these are just the front matter that people would get  
25 when the survey starts.

1 Q. So this is kind of just you're screening for  
2 eligibility?

3 A. Yeah. We want to ensure that the people we're  
4 talking to are actually eligible voters.

5 Q. Now, just curious, on the right-hand side of the  
6 page after each question there seems to be some kind  
7 of codes and numbers. Can you tell us what that is?

8 A. Yeah. What we have here is the full instrument  
9 that we delivered to the Pacific Market Research.  
10 This has not only the questions that would have been  
11 read, but how they would have programmed in the  
12 answer choices as well as any notes in brackets as  
13 you see there on S-4 where it says allow multiple  
14 responses. Those are things, obviously, that aren't  
15 read out aloud, but are programming notes for the  
16 survey for the interviewers.

17 So when they're speaking to someone and they say  
18 yes, they're registered to vote, that has a number  
19 one by it, which would indicate when the survey  
20 taker clicks yes, or it hits yes, then a one would  
21 show up in the data set. So the data set that are  
22 delivered back to the researchers are just a set of  
23 numbers, one, two, three, four, which is the answer  
24 that each respondent gave to every question.

25 Q. And so that allows --- sort of makes it easier

1 to do the statistical analysis?

2 A. Yes, that's correct. So instead of actually  
3 having the word yes in there and then having to  
4 transfer that to a number later, we have that --- a  
5 one in this case would stand for yes.

6 Q. Now, when you look at the top and below S-1 and  
7 below the bold text, it says, hello, my name is  
8 blank. So is this actually what the survey people  
9 are saying?

10 A. Yes. This is what the interviewers would be  
11 reading the script to the respondents that they call.  
12 And they would just go straight off the script. It  
13 would come up right on their computer screen. And as  
14 they enter in a result to an answer, it would take  
15 them to the next question.

16 Q. And is it possible that sometimes you answer a  
17 question a certain way and then you don't have to ask  
18 other questions?

19 A. Yes, that's correct. And so depending on the  
20 answer that someone gives, they might skip over  
21 another question. They may come back to it later  
22 depending on the answers, but all of that --- sort of  
23 the question logic is all part of what is programmed  
24 in there by the programmer.

25 Q. So it's not up to the individual interviewer to

1 know if they answer yes to four, I have to go to six;  
2 if they answer no to four, I have to go to five?

3 A. That's correct. It used to be that way in the  
4 past where sometimes you would just have a hard copy  
5 on your desk and you would be reading it, but as the  
6 programming software for surveys became more  
7 sophisticated, it's made it so much easier for the  
8 interviewers to administer the survey more  
9 accurately, and also allows researchers to come up  
10 with questions that require skips and logic and to  
11 ensure that those would be implemented correctly.

12 Q. Anything else important about the first page?

13 A. No, I don't think so.

14 Q. Let's go to the second page. Now, this says ---  
15 at the top, it says main questionnaire. Tell us  
16 about this page.

17 A. So after we finish the screen questions to  
18 determine the eligibility, we then move on to the  
19 main questions, the general focus of the survey. We,  
20 again, differentiate those from the end of the survey  
21 demographics, where we completed the main, topical  
22 questions and then we ask people about their  
23 characteristics and traits. So here are the main  
24 questionnaires. We start off asking people --- you  
25 can see there's it says if S-3 equals one, that's an

1 example that you gave earlier. So only registered  
2 voters would get this question about when they had  
3 voted, and we wanted to look at whether they were  
4 polling place or absentee voters, so that we can  
5 determine if those who are voting in the polling  
6 place were experiencing higher or lower rates. Those  
7 are the ones ---.

8 Q. When you say, I'm sorry, experiencing higher or  
9 lower rates, that would be a possession of the ID  
10 or ---?

11 A. A possession of valid photo ID, correct. And  
12 then we come into a couple questions here, item  
13 number two and three, related to public knowledge.  
14 As I indicated at the start that was one of the areas  
15 that we want wanted to probe and determine. So we  
16 ask people what their knowledge of the current voter  
17 ID law was and what their self-assessment of their  
18 own compliance with that law given their --- what  
19 they know about what ID they have.

20 Q. What do you mean by their self-assessment, what  
21 are you looking for there?

22 A. We can see there in question three you say if a  
23 poll worker did happen to ask you to show a valid  
24 photo ID in order to vote, as far as you know, do you  
25 currently possess a valid photo ID.

1 Q. So you're asking them that?

2 A. Yeah. We wanted to know if they think that  
3 they're properly complying with the law when they go  
4 and attempt to vote. And so that was an important  
5 question for us to determine whether or not the  
6 public here felt that whatever documents they  
7 currently possesses were the ones that they would  
8 need.

9 Q. So ultimately, you'd be able to look and see if  
10 how many of those folks are mistaken?

11 A. That's correct. And so we then for the rest of  
12 the survey --- in fact, starting on the very next  
13 question, question four, we then go through a series  
14 of questions where we ask people what sorts of  
15 identification they have, the characteristics of that  
16 identification, and then we create an assessment  
17 based on the factual answers they've given us as to  
18 whether or not they do or don't meet the current  
19 standards, and then that allows us to then compare  
20 that to what people told us up on top on this  
21 question three, to see how many people said yes, I  
22 do, but then based on the answers they gave us to the  
23 specific questions, we assess that, no, in fact, they  
24 don't.

25 Q. So how did you construct the next set of

1 questions when you're asking what kinds of ID people  
2 have?

3 A. Well, you see there starting in question four  
4 and I believe it continues through question nine,  
5 this is a section of the survey we're asking people  
6 about different types of identification they have.  
7 We reviewed the current voter ID statute as well as  
8 the frequently asked questions that the Department of  
9 State has put out explaining what exact types of  
10 identification you need, as well as explaining what  
11 exact types of underlying documents you need. So we  
12 attempted to rely exactly on what the voters would be  
13 relying on in getting that information to see if they  
14 comply or not, and then we constructed questions  
15 based on the current law.

16 Q. And this is pretty important. So let's look at  
17 --- so what kinds of IDs were you asking about and  
18 how did you structure those questions here?

19 A. Sure. So the first one, question four, we asked  
20 people whether or not they have a current  
21 Pennsylvania driver's license. If they say yes, you  
22 can see there that that causes them to get a  
23 follow-up question, question five, where we ask them  
24 to take their driver's license out, to look at it and  
25 to verify what the expiration date is on the driver's

1 license and to determine whether or not it would be  
2 considered valid, and that would be whether it was  
3 already current or if it had expired, if the  
4 expiration date was after November 6, 2011. If they  
5 didn't remember, and if they didn't have it in their  
6 possession, we asked them if they knew that it was  
7 within the last four years or not, giving them a date  
8 frame, giving them how long it takes an ID to expire.

9 Q. So why did you ask them if it was expired after  
10 November 6th, 2011?

11 A. Well, under the statute, an ID can still be  
12 considered valid and used as up to date if it has  
13 expired within the last year of the election. So in  
14 this case, it would have been November 6th, 2011.

15 Q. So you're taking into account exactly what the  
16 statute says?

17 A. Yeah, absolutely. Throughout the entire survey  
18 we attempted to take into account as best we can what  
19 the exact statute says and to specifically ask people  
20 whether or not their ID complies.

21 Q. Let's go to the next page, and if you wouldn't  
22 mind continuing there?

23 A. Sure. So if they did not have a Pennsylvania  
24 driver's license that was currently up to date or  
25 that would be valid since November 6th, 2011, they



1 then got this question, as you can see here, where  
2 you say, okay, instead of a driver's license, do you  
3 happen to have any of the following forms of  
4 identification. Just tell me yes or no. And then  
5 you can see there's a note there to the interviewer,  
6 which they programmed into the survey. When they  
7 read the list --- and they read the list, these three  
8 additional types of identification in Pennsylvania,  
9 non-driver photo ID card as issued by PennDOT, U.S.  
10 passport or a U.S. military ID card with some  
11 examples given there. And if they had any of these,  
12 then they got a very similar follow-up question  
13 asking them about the expiration date and whether or  
14 not it was currently up to date?

15 Q. Okay. Now, if people have any of the four IDs  
16 you covered thus far, do you stop on asking about  
17 other IDs?

18 A. No, not necessarily. We wanted to find out not  
19 only did they have --- was it current, so the  
20 follow-up question about whether or not it was  
21 current is very important. And then if they said ---  
22 regardless of what they said, they still got another  
23 question later asking about their name. One of the  
24 people who didn't have any of these four IDs, we then  
25 ask them another series of questions, which I believe

1 is question eight.

2 Q. Go to the next page.

3 A. Where we say, all right, instead of those types  
4 of identification, do you happen to have one of these  
5 other forms of identification with your photo. And  
6 here we have another list of five additional types of  
7 identification that they could have that you can see  
8 there. And if they had any of those five, they,  
9 again, got the follow-up questions asking them in  
10 this case, if there was an expiration date printed on  
11 it, and if there was an expiration date printed on  
12 it, if it was currently up to date.

13 Q. Now, on these did you do the one year sort of  
14 lag that you have on the PennDOT IDs or ---?

15 A. No, our understanding was that that only applied  
16 to the non-driver ID and the Pennsylvania driver's  
17 license, but on these that they had to have an ID ---  
18 an expiration date printed, I know the expiration  
19 date needed to either be current or say indefinite.  
20 So we structure our questions in such a way to ensure  
21 that people have IDs that were non-expired.

22 And then I'll mention two other things you can  
23 see in 8-B and 8-C. If the only form of  
24 identification that the respondent had was an  
25 official photo ID from a Pennsylvania long-term

1 nursing facility, assisted living residence or  
2 personal care home, we ask them for the specific  
3 name of that, that way it can be checked to see if  
4 that specific facility is in compliance, or  
5 otherwise, that the only form of ID they had was an  
6 unexpired photo ID from an accredited college or  
7 university, we asked them for the name so that we  
8 can check and determine whether or not that  
9 university is on the list of ones that were  
10 compliant with the law.

11 Q. So that covers all of the IDs allowed under the  
12 new law?

13 A. That's correct. At the time the survey was  
14 fielded and based on our review of the statute and  
15 the frequently asked questions, listing what types of  
16 identification, these are the specific ones that were  
17 allowed and used for the specific regulations in  
18 terms of the expiration dates.

19 Q. Let's go to the next set of questions, which I  
20 believe deal with name. Tell us about these.

21 A. That's correct. So the final question in this  
22 group of questions about assessing whether or not  
23 someone currently possesses a valid photo ID, there's  
24 a question about whether or not their name matched.  
25 And I believe that the statute uses the language

1 substantially conform. And in this question, for  
2 people who have an ID that was not expired who made  
3 it through all the various questions and they were a  
4 yes, that they had one of these IDs that were was not  
5 expired, then they got this question where we ask  
6 people whether or not the name that was printed on  
7 their ID was their full legal name exactly as it  
8 would appear on the Pennsylvania voter registration  
9 records or if there was a difference. And so this  
10 was an opportunity for respondents whose name had  
11 changed, if they had been married, and all sorts of  
12 other reasons could self report that the ID --- that  
13 the name printed on their official photo ID was or  
14 was not a match to the name that would be listed in  
15 the voter registration records.

16 Q. Let me ask you this, because the statute says  
17 the name has to substantially conform. Why didn't  
18 you ask people if their name substantially conformed  
19 to the voter registration?

20 A. Well, I think in my opinion that's a fairly  
21 fuzzy term. I think that's one that the average  
22 person is not going to know what that means, and it's  
23 one that requires a bit of subjectivity. You and I  
24 ourselves could look at names and disagree whether we  
25 think that a name substantially conforms or not. And

1 I think that is potentially one of the concerns in  
2 this case, is that it's not clear cut. So we  
3 attempted to provide data here on what people are  
4 telling us themselves as to whether or not they feel  
5 that their name matches or not. And this captures  
6 the percentage of people who say no, their name  
7 doesn't match, that it is not the same as on their  
8 official photo ID as it is on the voter registration  
9 records. And if the name doesn't match, then it is  
10 up to the wisdom of the poll worker or whoever is  
11 deciding that that day on whether or not that's a  
12 substantial conform or not, and so because of that,  
13 we wanted to provide the data on the number of people  
14 who are potentially at risk in this case.

15 Q. And so I guess, is it fair to say that  
16 empirically it would be difficult to measure whether  
17 the name substantially conformed just because that's  
18 an insufficiently precise term?

19 A. Oh, certainly. I mean, it would be very, very  
20 difficult, because there's not an exact definition of  
21 what that would be. It appears to be on a  
22 case-by-case basis, which could, in fact, inject more  
23 concern in there if some poll workers are stricter on  
24 what substantially conforms means to them and other  
25 poll workers are more lax. You could see that in

1 different precincts and in different parts of the  
2 state that it's implemented different. And because  
3 of that, we wanted to provide an estimate on the  
4 total number of people who tell us that their name  
5 does not match. Anybody whose name matches should be  
6 at no risk at all for having this substantially  
7 conformed. They're telling us, yes, my name is the  
8 same. Anyone whose name doesn't match through their  
9 volunteering that information to us would be at some  
10 level of risk of them being excluded from being able  
11 to participate.

12 Q. So for instance, if you had Richard on one or  
13 Dick on another, which is a common nickname, what  
14 happens there?

15 A. Well, as you can see in the question, we're  
16 relying on the respondent to tell us whether or not  
17 they believe that it's their full legal name or not.  
18 And in the cases where there's an extremely minor  
19 difference, I would imagine that the respondent would  
20 tell us that it is their name. But in cases where  
21 someone goes by their nickname, which is what we  
22 referenced, or if they changed their name after they  
23 got married, to give a couple of examples of the  
24 types of names that may not match, the respondent is  
25 likely to have said no, my name doesn't match, it's

1 not my full legal name. And then that would be up to  
2 the determination of the individual poll worker who's  
3 checking the names to determine whether or not that  
4 any particular voter substantially conforms or not.

5 Q. Are you aware of any standards to guide poll  
6 workers about what substantially conforms and  
7 doesn't?

8 A. I am not aware of any standards, and at the time  
9 that we constructed this specific question, we  
10 intended to look to see if we could slightly change  
11 the wording of a question in one way or another to  
12 give us some sort of specific objective measure. We  
13 were unable to find any.

14 Q. Let's turn to the next page. Now, this appears  
15 to be a new phase of the questionnaire. Can you tell  
16 us about this?

17 A. Yeah, here in the next set of questions, 10  
18 through 16, I believe, we're now turning to and  
19 examining the rates of possession of the underlying  
20 documents that people may have that they would need  
21 in order to obtain a PennDOT ID in the first place.  
22 And so in addition to examining whether or not they  
23 currently possess a valid photo ID, we also wanted to  
24 assess the degree to which people have these  
25 underlying document that would be necessary to go and

1 obtain. So again, in reviewing the guidelines and  
2 the frequently asked questions that the state  
3 provides and what you need and what types of ID and  
4 documents are valid to get that ID, we've structured  
5 some questions here to try and measure that.

6 Q. And were the documents you were asking about the  
7 ones you found listed on the PennDOT website?

8 A. Yes, that's correct.

9 Q. And so just take us through this. I don't think  
10 we have to focus in quite the detail here, but just  
11 quickly take us through these questions.

12 A. Sure. Essentially we're looking at three  
13 different categories of underlying documents. The  
14 first is documentary proof of citizenship, the second  
15 is proof of identity and the third is proof of  
16 address. And we need to ensure that any eligible  
17 voter has all three of those in order for them to  
18 obtain a valid photo ID. So we start out by asking  
19 about birth certificate or naturalization  
20 certificate, passport, other things that prove your  
21 citizenship, whether or not they have those or not.  
22 If respondents were born in Puerto Rico, which  
23 there's a fairly large Puerto Rican population and  
24 Pennsylvania has one of the highest percentages of  
25 Puerto Ricans in the Hispanic population in the



1 United States, we ask the follow-up question as to  
2 whether or not the birth certificate they have was  
3 issued after July 1, 2010, which is when the  
4 Commonwealth of Puerto Rico changed their laws on  
5 what was accepted and not accepted as a valid birth  
6 certificate. If they were born in any of the other  
7 U.S. states, territories, we ask them if they  
8 currently have an official copy of their birth  
9 certificate, not a photocopy that they would be able  
10 to have to determine whether or not they would be  
11 able to meet that first burden of proof of  
12 citizenship.

13 Q. If you slow down a bit.

14 A. And if they didn't have those, we'd also ask if  
15 they had a passport, which would be --- could be used  
16 to establish citizenship. After that we ask them  
17 specifically if they had their Social Security card,  
18 and if they had their actual Social Security card,  
19 not another photocopy, because that would be needed  
20 to establish proof of identity. That was the only  
21 document that you could have. For that there wasn't  
22 any substitutes. And then finally we concluded with  
23 question 16, where we asked them whether or not they  
24 had proof of address. In order to get proof of  
25 address, they would need to have two documents with

1 their current address, and there was a specific set  
2 of the types of documents that they could have. They  
3 couldn't have a letter from their aunt or something  
4 like that. They had to have some sort of official  
5 mail that had their name and address on it to show  
6 that that is where they lived.

7 Q. Where did you get that list from?

8 A. We got this list from our review of the official  
9 state guidelines and types of documents that would  
10 qualify. And so we asked them about these six  
11 additional types of documents. We recorded yes/no  
12 for each of them. And anyone who did not have two,  
13 so if you had zero or one of these documents, we then  
14 ask you a follow-up question where we ask that if  
15 someone that they live with does have these two  
16 documents and has a valid photo ID who could go with  
17 them and provide their proof of address, which the  
18 law allows. And so from that series of questions  
19 we're able to establish what percentage of the  
20 population does not have proof of address.

21 Q. Okay. All right. And then the next section  
22 down is ---?

23 A. We have one final question we should see before  
24 the demographics, where we ask people who are  
25 currently registered to vote whether or not they

1 actually voted in the 2008 election. And again, that  
2 was there to allow us to establish the actual voters.  
3 And here we're referring to the --- whether or not  
4 they voted in the 2008 election in Pennsylvania so  
5 that we can be sure we're talking about Pennsylvania  
6 voters and not someone who perhaps lived in another  
7 state and moved, so we wanted to be very clear on  
8 that.

9 Q. Okay. Demographics?

10 A. Then to conclude the survey we asked a set of  
11 very standard demographic questions, so that we can  
12 help do two things here. One is to help assess the  
13 reliability and representative nature of the survey.  
14 We want to ask these questions so that we can  
15 determine that we have the correct proportion of  
16 people of different regions of the state, different  
17 educational backgrounds, different income brackets,  
18 and this helps us assess and show that the survey is  
19 very, very reliable. And where there are any  
20 differences, we can compare those to the official  
21 census estimates and put post stratification weights,  
22 which means you're putting them on after the fact, to  
23 correct for any possible difference. And that's a  
24 very important step that you need to do. And if you  
25 didn't ask these demographic questions, you would not

1 be able to assess that reliability and correct for  
2 any issues that we needed to correct for.

3 Q. Okay. Here's what I want to do then. Let's go  
4 through these demographic ---

5 A. Sure.

6 Q. --- questions and then I want to come back to  
7 this concept of post stratification.

8 A. Okay.

9 Q. So just walk us through the demographic  
10 questions.

11 A. So some of the demographic questions we've asked  
12 earlier in the survey because we needed to, questions  
13 about race or ethnicity we ask at the very front.  
14 The question about place and birth we had asked just  
15 before. Had questioned about birth certificates, but  
16 the remainder of them are here. We asked how long  
17 you lived in Pennsylvania and how long you've lived  
18 at your current address. For anyone who was not born  
19 in the United States we asked them what year they  
20 became a citizen. This helps us get some parameters  
21 on the mobility and the newness of the population to  
22 ensure that it's reflected of what the census shows.  
23 We then want to ask them a question about what's  
24 their highest level of education that they completed,  
25 year of birth, whether or not they're a homeowner or

1 renter or living with someone so that we can  
2 establish their residential patterns.

3 We then asked two questions here, on D-6 and  
4 D-6B. We asked them whether or not they have access  
5 --- regular access to a car. This, I would say, is  
6 probably not a demographic question that goes in  
7 every survey that we conduct. Although it is a  
8 question that the U.S. Census also does ask because  
9 it's an important thing for them to keep track of in  
10 terms of transportation, public transportation, and  
11 so we use a version of that question where we ask  
12 whether or not they had access to a car. If they  
13 don't have access to a car in their household, we  
14 ask whether or not they have other form of reliable  
15 transportation, mass transit by et cetera, train,  
16 and then we go back and ask them questions,  
17 questions about their party's affiliation and  
18 questions about their income, I believe are on the  
19 last page. Yes.

20 And then finally the interviewer records the  
21 gender of the person they've been speaking with.  
22 And then finally they conclude, just to make sure  
23 that we're speaking with Pennsylvania residents and  
24 that we don't have somebody who has a cell phone  
25 that is out of state or a number that has been

1 misdialed, to just confirm that they are, in fact, a  
2 resident of Pennsylvania by giving us their ZIP code  
3 or to confirm that again. And again, this just  
4 helps us to be 100 percent certain that we are  
5 talking to eligible residents of Pennsylvania.

6 Q. And do you know whether, in fact, when you did  
7 this validation that you found people who had told  
8 you they were in Pennsylvania who, in fact, were not?

9 A. Yeah. So we have that screening question in the  
10 very beginning where we say are you currently a  
11 resident of Pennsylvania for more than 30 days, et  
12 cetera. And there could be people who think of  
13 themselves as Pennsylvania residents, but then  
14 afterwards when we remind them again, are you  
15 currently a resident, do you live in Pennsylvania,  
16 and they say, no, and I believe that there may have  
17 been two or three or four, a very small number, but  
18 it's important for us to ask that question, because  
19 then we would have excluded them from the analysis.  
20 So it gives two opportunities to really ensure that  
21 we're talking about the correct population.

22 Q. All right. Let's come back to this concept of  
23 stratification, because there's a reason I went into  
24 law. So explain to us --- or after you get these  
25 surveys back and you have --- I guess you have

1 numbers --- you have certain numbers for each of the  
2 answers?

3 A. Correct.

4 Q. There is something that you do with that.

5 Explain for us what it is that you do with those  
6 numbers then.

7 A. Sure. So when we design the survey at the  
8 outset, as we said, we want to make sure that we're  
9 giving everyone in the state an equal opportunity to  
10 participate. That doesn't mean that when you  
11 implement the survey that everyone is capable to  
12 respond at the exact same rate. And in particular,  
13 almost any survey that is conducted in any location  
14 or among any group, we'll tend to get two demographic  
15 subgroups which are not represented at the exact  
16 correct portion. The first is gender, that women are  
17 slightly more likely than men to agree to take a  
18 survey. And the second is age, that older  
19 respondents are more likely to take a survey than  
20 younger respondents. And so instead of just taking  
21 the results of the survey and just saying that these  
22 are the real results, what we do, which is consistent  
23 with all surveys that are conducted scientifically,  
24 is we say let's correct for any skews that might be  
25 there by weighing the results of it.

1           And so if 56 percent of your respondents are  
2 women, and according to the census they make up 51  
3 percent of all citizen adults in the state, we would  
4 weight that 56 so that it became 51. And so that  
5 men instead of being 44 would be 49. So that when  
6 you tabulate the results, it's based on the correct  
7 and true characteristics of the state population.  
8 Same thing with age, if slightly more older people  
9 take the survey than younger people, we would weight  
10 them so that they were at the correct proportions.  
11 And to do that we compared to the U.S. Census  
12 Current Population Survey most recent data we could  
13 get from the State of Pennsylvania.

14 Q. And is this consistent with the science of  
15 survey methodology?

16 A. Yes. Yes, absolutely. This is quite  
17 consistent. There have been a number of published  
18 usage articles on this topic that demonstrate that  
19 this method of post stratification weights greatly  
20 increases the reliability and helps ensure against  
21 any bias in the survey.

22 Q. And is it a goal to keep that adjustment that's  
23 done to a minimum?

24 A. Yes, that's correct. And so in this case while  
25 other adjustments might be made just to tweak things



1 by one or two percentage points, outside of age and  
2 gender, if the survey is implemented correctly at the  
3 outset and design, you're typically doing extremely  
4 small adjustments for other things such as income,  
5 education and other sorts of categories to reflect  
6 the nature of the state, and that was the case here.

7 Q. And so the adjustments that you did make were  
8 consistent with the science of the survey  
9 methodology?

10 A. Yes, absolutely. And they were relatively  
11 minor, which is a good sign. It means that the  
12 original raw data itself is very accurate.

13 Q. Anything else that you think we should know  
14 about the survey that was done before we actually get  
15 into the results?

16 A. I don't think so. We discussed a little bit  
17 about what the survey firm, Pacific Market Research,  
18 does. There's times in here where we want to ensure  
19 that we're rotating answer options and categories  
20 when they're read to the respondent.

21 Q. Yeah, please ---. Why don't you please explain  
22 that?

23 A. So that they're not always led with the same  
24 questions that could influence the way they give an  
25 answer to another question, you want to ensure that

1 the questions are rotated within the survey to make  
2 sure that people don't always hear something first,  
3 which would then, perhaps, convince a small  
4 percentage of people to give a slightly higher or  
5 lower answer somewhere else, and so they done that  
6 throughout. They rotated and randomized the answer  
7 choices and other things like that so that within the  
8 survey itself we're not introducing any what are  
9 called priming effects.

10 ATTORNEY WALCZAK:

11 Your Honor, we're about to get into the  
12 results, and Your Honor, had talked yesterday  
13 about ---.

14 JUDGE SIMPSON:

15 I would rather take a break when he's  
16 finished with Direct, because once he starts --- once  
17 he starts Cross, I don't want to take a break during  
18 Cross Examination.

19 ATTORNEY WALCZAK:

20 I think that the results --- I mean,  
21 we're going to be at least an hour on the results.  
22 There's a lot of data.

23 JUDGE SIMPSON:

24 Well, is there any objection to taking  
25 a break now?

1                   ATTORNEY CAWLEY:

2                   Not at all, Your Honor.

3                   JUDGE SIMPSON:

4                   It's about 10:30. We'll take a break  
5 until 11:00.

6                   MR. TURNER:

7                   Commonwealth Court is now in recess.

8 RECESS TAKEN

9                   JUDGE SIMPSON:

10                  You may be seated.

11 BY ATTORNEY WALCZAK:

12 Q. Professor Barreto, just a couple of things  
13 before we get into the tables I just want to follow  
14 up on the morning --- from earlier this morning.  
15 When the survey was performed, when were the calls  
16 made?

17 A. The calls were made --- I believe that was page  
18 17 that we were referring to earlier. We made the  
19 calls during 4:00 p.m. to 9:00 p.m. Monday through  
20 Friday and 12:00 p.m. to 8:00 p.m. Saturday and  
21 Sunday, so that we could give as wide a range as  
22 possible of time for interviewers to reach  
23 respondents and to avoid calling during the more  
24 general work hours when lots of people wouldn't be  
25 home, so in the evenings and then throughout the days

1 on weekends.

2 Q. And so does that promote getting an accurate  
3 cross sample of the population?

4 A. Yeah, that's very important in order to give  
5 equal opportunity for everyone to participate in the  
6 study. These are the hours that most people are  
7 available. But for some people who might work in the  
8 evenings, then we have the entire day and afternoon  
9 on the weekends from 12:00 to 8:00 in which we can  
10 target people and call them. So we want to make sure  
11 that everyone has an opportunity to participate in  
12 the study.

13 Q. Let me ask you also this, were there  
14 participants in the study whose English was of  
15 limited proficiency?

16 A. Yes, for any respondents whose English was of  
17 limited proficiency, this was particularly in the  
18 Hispanic oversample, the survey was available in  
19 English or Spanish. And for that particular  
20 oversample, the interviewers that were used were  
21 bilingual themselves so that they could take the  
22 survey in either language and not have to put the  
23 person on hold, et cetera. So that was available and  
24 that also again helps increase the accuracy and  
25 representative nature of the sample.

1 Q. And are people of limited English proficiency  
2 allowed to vote in this country?

3 A. Yes, absolutely. In lots of counties they are  
4 required by law to print ballots in other languages,  
5 most notably Spanish as well as voter materials.

6 Q. And do you know whether Pennsylvania has any of  
7 those counties?

8 A. I don't know off the top of my head, but I would  
9 guess Philadelphia County.

10 Q. And one other question before we get into the  
11 survey results. I had asked you about who hired the  
12 survey company and your answer had been that we, the  
13 lawyers, did. And just want to clarify, who selected  
14 the survey company?

15 A. Myself and Professor Sanchez. We selected the  
16 survey company. What I meant by that is I'm not  
17 writing them any check or anything like that.

18 Q. But the selection of the company was entirely up  
19 to you?

20 A. Absolutely, absolutely. And I have for many  
21 years reviewed --- I have worked with multiple,  
22 different survey research firms over the years,  
23 dozens, and as part of that been able to identify  
24 Pacific Market Research as one of the most proficient  
25 in following social science methods. Some survey

1 research firm, because they're for profit businesses,  
2 sometimes take shortcuts and don't always follow  
3 through on the academic side. This is a regular  
4 complaint. Academics have conferences and exchanging  
5 notes with each other like, oh, don't use these  
6 people, they did this. Because for us we don't want  
7 whatever is the cheapest, we want whatever is the  
8 most accurate. And so that's the most important  
9 thing for us, and Pacific has been very, very  
10 accurate and I think that's evident by the other  
11 contracts that they've been selected for.

12 Q. Okay. All right. Let's mark your Exhibit A  
13 from your expert report as Plaintiffs' Exhibit 18.

14 (Petitioners' Exhibit 18 marked for  
15 identification.)

16 ATTORNEY WALCZAK:

17 Your Honor, if it's easier to follow  
18 along, I have a paper copy.

19 JUDGE SIMPSON:

20 Thank you. I have a paper copy.

21 BY ATTORNEY WALCZAK:

22 Q. I asked you at the outset whether you had an  
23 opinion to a reasonable degree of scientific  
24 certainty about the impact of the voter ID ---  
25 Pennsylvania's voter ID law on voters here in

1 Pennsylvania. Are the results of the survey your  
2 professional opinion?

3 A. Yes.

4 ATTORNEY WALCZAK:

5 Rather than preface every question with  
6 that, Your Honor, I'd just like to assume that  
7 applies to everything he's going to testify to in  
8 terms of these results.

9 BY ATTORNEY WALCZAK:

10 Q. All right. We're going to walk through not  
11 exactly sequentially in here, but almost, the results  
12 of the survey. So if we could ---.

13 ATTORNEY WALCZAK:

14 Kelby, if you could put that up. No,  
15 you can't put that up. There we go.

16 BY ATTORNEY WALCZAK:

17 Q. Let's start with table one. So what is table  
18 one?

19 A. Table one is a summary table that indicates the  
20 percentage as well as the raw number estimate for the  
21 number of residents of Pennsylvania that have or  
22 don't have a valid photo ID. We have broken that out  
23 there by three segments of the population. First,  
24 all eligible voters to be discussed or everyone over  
25 the age of 18 and older who are citizens and

1 residents of Pennsylvania. Then we have there in the  
2 middle just people who are registered voters. And  
3 then on the end just people who indicated that they  
4 voted in the 2008 election year in Pennsylvania.

5 Q. So what are the percentages and totals, let's  
6 start with eligible voters, who don't have valid  
7 photo ID under the Pennsylvania law?

8 A. So on the second row there you see we have a  
9 line that says has a valid photo ID. That means  
10 non-expired with name. And overall we found 85.6  
11 percent of eligible voters have a valid ID, meaning  
12 that 14.4 percent do not have a valid ID.

13 Q. And so let's stay with that column, so explain  
14 the numbers below that.

15 A. Sure. So underneath that we have the estimated  
16 actual number of people who would fit in each of  
17 those categories who have and don't have based on the  
18 total population of citizen adults in Pennsylvania  
19 that we have indicated there at the top under the row  
20 total population. So the first line we see is the  
21 estimated number and this is simply taking that total  
22 population and multiplying it by 14.4 percent which  
23 we arrive at 1,364,433.

24 Q. So that's the number of eligible voters who  
25 would not have valid ID?



1 A. That's correct. That is our estimate based on  
2 this survey that 1.3 million, essentially, of  
3 eligible voters do not have a valid ID.

4 Q. Now, below that you've got lower bound estimate  
5 and upper bound estimate. Explain those.

6 A. Sure. We talked about earlier item issues, such  
7 as the margin of error on a survey. In this  
8 particular case when you have a point estimate of  
9 14.4, it's farther away from that 50/50 equal divide  
10 where there's more uncertainty. So here we have a  
11 bit more certainty over this point estimate, and the  
12 margin of error on this is 1.9 percent. So what  
13 we've done is lowered the estimate by 1.9 percent so  
14 that it would be 12.5. And we increased it by 1.9  
15 percent so that it would be 16.3. And those are the  
16 balance which we would say we have 95 percent  
17 confidence that the actual answer to the question,  
18 what percentage don't have a valid ID, is in there.  
19 If we replicated this survey, we used the same  
20 methodology, we would get an answer that's within  
21 that bounds of 12.5 to 16.3. And so we've taken  
22 those bounds and provided a lower bound estimate and  
23 an upper bound estimate. The lower bound estimate  
24 that you see there takes the number of 12.5, I  
25 believe, and the upper bound estimate would use the

1 number of 16.3, again just multiplying it by the  
2 total number of voters.

3 Q. So the lower bound estimate is that there would  
4 be 1.184 million eligible voters without the ID?

5 A. That is correct. That would be the lowest that  
6 we would think that the number would be with  
7 statistical reliability.

8 Q. But the upper level is that it could be as many  
9 as 1.54 million?

10 A. Yes, that's correct.

11 Q. Let's go over to the next column which is  
12 registered voters there. Did you find a significant  
13 difference between the rates of possession by the  
14 eligible voters and the registered voters?

15 A. We found that overall, among people who were  
16 registered to vote that 12.8 percent did not have a  
17 valid photo ID. You can see that it is a bit lower  
18 than the 14.4, but it's not statistically different.  
19 Generally we would say that the rates of possession  
20 are somewhat similar to each other. But overall we  
21 estimate that 12.8 percent of registered voters lack  
22 a valid photo ID.

23 Q. And obviously, the overall total population of  
24 registered voters is smaller than the total  
25 population of eligible voters?

1 A. Yes. We indicated based on data from the State  
2 of Pennsylvania that there's approximately 8.2  
3 million registered voters. We use that as the total  
4 population there, multiply 12.8 times that number,  
5 8.2 million, and we arrive at an overall estimate of  
6 1,055,200 who lack photo ID.

7 Q. Now, that's a figure of the voters who were  
8 registered at the time of the poll?

9 A. Of citizens who were registered at the time of  
10 the survey, correct.

11 Q. And as I believe you testified earlier,  
12 especially, in presidential election years, there's a  
13 lot of new voters being registered?

14 A. Yeah, that's correct. We would expect that the  
15 total number of registered voters will fluctuate and  
16 increase between now and election day.

17 Q. So that would mean some percentage of folks who  
18 are in that eligible voters category, but not already  
19 registered, are going to shift over to registered  
20 voters?

21 A. Yes, that's our expectation.

22 Q. Then the third column --- I'm sorry, the  
23 registered voters, so the range applying ---?

24 A. Yes, again, we've taken the range there, the  
25 lower and upper bound, the total number of registered

1 voters in the survey is smaller than the overall  
2 sample size of 1,285 because some of the people in  
3 the survey were not registered to vote so they have  
4 been excluded. And so the registered voters has a  
5 slightly different margin of error. We would take  
6 the exact margin of error estimate for each of those  
7 columns; eligible, registered and actual voters and  
8 apply that so we can generate the lower and the upper  
9 bound estimate.

10 Q. And what's the range for registered voters?

11 A. The range for registered voters we find that the  
12 lowest reliable estimate that we generate is 890,325  
13 registered voters lack valid ID. And the upper bound  
14 is 1,220,076.

15 Q. Okay. Let's look at the third column there  
16 which is 2008 voters. Remind us what that is?

17 A. Those are people who indicated in the survey,  
18 among those who are currently registered that they  
19 actually voted here in Pennsylvania in the 2008  
20 election in November of 2008. And among this group,  
21 people who actually voted, we found overall that 12.6  
22 percent lack a valid photo ID.

23 Q. So the population here is smaller than the other  
24 two categories; correct?

25 A. Correct. The total population you see here in

1 row one is indicative of just the number of voters  
2 that participated in the 2008 election.

3 Q. What's that number?

4 A. 6,010,519.

5 Q. So are you saying that based on this survey that  
6 of the six million or so people who actually voted in  
7 the presidential election that about 750,000 of them  
8 do not have valid ID?

9 A. That's correct. We arrive at that estimate by  
10 taking the 6 million multiplying it by 12.6 percent  
11 and arriving at 757,325 people who actually voted in  
12 2008 that after answering our survey questions we  
13 deemed they did not have a valid photo ID.

14 Q. And what's the range you found when you applied  
15 the margin of error?

16 A. The lower bound estimate is 625,094 and the  
17 upper bound estimate is 889,557.

18 Q. So those are the numbers applied to the people  
19 who actually voted in 2008?

20 A. That's correct. In all these cases we expect  
21 that the estimate number is the most accurate, but  
22 that the true number is definitely in that range, it  
23 is not outside those bounds.

24 Q. So that's somewhere between 625,000 and 889,000  
25 people who voted in the presidential election in 2008

1 would not have the ID required to show at the polls  
2 in 2012 or right now?

3 A. Yes, that's correct. These are among people who  
4 voted in the 2008 election and then after answering a  
5 series of questions they do not have an ID which is  
6 non-expired and name conforming.

7 Q. We are going to skip table two and we're going  
8 to come back to that at the end. Let's go down to  
9 tables three and four. Now, I believe the rest of  
10 these tables break down the numbers that you just  
11 gave us in different ways; is that right?

12 A. Yes, that's correct. Tables three through six  
13 are looking at those rates of possession of valid ID  
14 and looking at some of the possible reasons why  
15 someone would not.

16 Q. Why don't you take us through --- start and take  
17 us through tables three and four? How do those work?

18 A. Sure. So in tables three and four we're showing  
19 somewhat similar data just presented in a slightly  
20 different way of answering two different questions.  
21 In table tree we're showing each of the categories of  
22 whether or not someone possesses or doesn't possess,  
23 then the follow-up question of whether or not it's  
24 expired or not and then the other follow-up question  
25 of whether or not the name is conforming and we're

1 indicating the percentages that said yes or no at  
2 each step so that we can essential show how we  
3 arrived at those calculations of 14.4 and how did we  
4 get there and showing each step along the way.

5 Q. All right. Let me ask you a question. So when  
6 I look at this --- let's take the eligible voters  
7 column, so I look at that and the question there is  
8 has a driver's license or any other form of photo ID  
9 and says 98.6 percent have that; is that correct?

10 A. Correct. Correct.

11 Q. So does that mean that 98.6 percent of the  
12 people have valid photo ID?

13 A. No, not at all. What that indicates is that to  
14 the very first sets of questions respondents told us  
15 --- that 98.6 percent of respondents told us that  
16 they do have a photo identification. That would then  
17 get them to the follow-up question of whether or not  
18 the identification that they have is currently up to  
19 date, valid and name conforms.

20 Q. So that's kind of self identified, people who  
21 think they have a valid ID?

22 A. Correct. This is the answers that respondents  
23 gave us when we asked them questions such as do you  
24 have a driver's license, do you have a non-driver ID  
25 card, do you have a military ID, et cetera. That

1 98.6 percent of respondents said they had and 1.4  
2 percent of respondents said they did not have any ID  
3 at all in their possession.

4 Q. So out of all the people you surveyed only 1.4  
5 percent told you that they did not have a valid ID to  
6 vote?

7 A. No. 14.4 percent did not have a valid ID to  
8 vote. 1.4 percent had no photo ID card at all,  
9 whether it was expired, their name was wrong, they  
10 have no ID card in their possession at all.

11 Q. And then there's two rows below that top entry.  
12 Explain those.

13 A. So we wanted to provide breakouts here  
14 throughout the process for driver's licenses since  
15 that is a dominant form of identification, that when  
16 people have an identification, a card, that was the  
17 overwhelming answer. And so what we see here on the  
18 very second row is that 88.5 percent of people in  
19 Pennsylvania, eligible voters tell us that they do  
20 have a driver's license. That doesn't mean that it's  
21 not expired, it doesn't mean their name matches. But  
22 that 88.5 percent that respond said they have it,  
23 which indicates that 11.5 percent of the state told  
24 us that they do not have a driver's license.

25 Q. And what's that third row there?



1 A. The third row is the additional percent that  
2 gets you up to that 98.6 and that is that an  
3 additional 10.1 percent of eligible voters do not  
4 have a driver's license, but they indicated in the  
5 survey that they did have some other form of  
6 identification such as a non-driver PennDOT ID or  
7 military ID or some other form of identification when  
8 asked the question.

9 Q. So these are people who have some form of the  
10 valid ID under the law without checking whether it's  
11 expired or there's name conforming?

12 A. Yeah, I would say these people have some form of  
13 accepted ID. I would be hesitant these were valid  
14 because the way we used it in our study is that if  
15 it's --- if we held a valid ID, it that means it is  
16 non-expired and name conforming. But these people,  
17 98.6, are the ones that possess some sort of ID card  
18 that could be valid it if was up to date and had a  
19 name.

20 Q. So it's one of the categories of accepted IDs,  
21 PennDOT, driver, non-driver, military?

22 A. That's correct. That's correct.

23 Q. Let's go to that next set of data there where it  
24 says has any photo ID which is non-expired. Explain  
25 that.

1 A. Sure. So while 98.6 percent of the population  
2 explains to have an ID card, we find that only 89.9  
3 have a photo ID card which is not expired. And that  
4 indicates that 10.1 percent do not have that, that a  
5 considerable number of people are dropping out of  
6 being valid because whatever ID card they do is have  
7 not up to date, is not current.

8 Q. So explain to us the entries below that, which I  
9 think refine that.

10 A. Sure. And so here again we look at three  
11 different categories this time, those that have a  
12 driver's license, which is non-expired, those that  
13 have a driver's license or a non-driver ID card,  
14 PennDOT IDs, and those that have some other form,  
15 such as the military ID or school ID are the other  
16 forms that are accepted. So what you see on the  
17 second row as a non-expired driver's license, you can  
18 compare that to the second row in the top category.  
19 So overall 88.5 percent of people in our survey said  
20 they have a driver's license, but only 80.5 percent  
21 of people in our survey have a non-expired driver's  
22 license and that indicates that eight percent of  
23 people have an expired driver's license.

24 Q. Now, when you say expired, are you looking at  
25 whether it's current right now or are you looking

1 whether it's expired for purposes of being able to  
2 vote?

3 A. In all the cases where we're using that word  
4 non-expired as an abbreviation for current for  
5 purposes of voting, we indicate that not only in the  
6 report but in table one as a footnote, number four  
7 where we say, PennDOT IDs can be expired by up to one  
8 year. And the survey asked respondents if their  
9 PennDOT ID was up to date or had an expiration date  
10 after November 6th, 2011.

11 Q. So whenever you use current PennDOT ID in this,  
12 you actually mean it's expired after November of ---?

13 A. That's correct. That it would be valid for  
14 purposes of voting.

15 Q. So some number of people who have driver's  
16 licenses don't have licenses that are expired after  
17 November of 2011?

18 A. Yes. In fact, we found it is a large number of  
19 people, 8.8 percent who indicated that their driver's  
20 license is not currently up to date. And if you  
21 recall we asked people during the survey to actually  
22 take their driver's license or non-driver ID card out  
23 to look at it and to verify that so that they were  
24 actually looking at the expiration date while we were  
25 talking to them.

1 Q. And what's the next row there?

2 A. The next row underneath we combined the driver's  
3 license and the non-driver PennDOT ID together  
4 because these are both types of ID cards that are  
5 issued by PennDOT. And there you can see that  
6 overall 89.3 percent of respondents have a  
7 non-expired driver's license or a non-driver ID card,  
8 which means that 10.7 percent do not have one or the  
9 other. So this combines both driver's license and  
10 non-driver ID.

11 Q. And then what's that third row?

12 A. And the final row indicates the additional  
13 percentage that they don't have any PennDOT ID,  
14 meaning they don't have a driver's license or an ID  
15 card, but they have some other form of non-expired  
16 photo ID, such as the military ID, nursing facility  
17 ID, county employee ID, the other IDs that are  
18 accepted that we asked about. And you can see there  
19 that it's a small percentage, 0.6 percent, but for  
20 those folks that is their only form of ID and adding  
21 these numbers together, 89.3 and .6, you get up to  
22 the total of 89.9. So these are all subcategories to  
23 demonstrate what percentage of the population has or  
24 is lacking and for what reason.

25 Q. So I want to understand that last row we just

1 looked at. So those are people who don't have one of  
2 the PennDOT IDs, either driver or non-driver;  
3 correct?

4 A. Correct.

5 Q. So those are the people whose only ID is one of  
6 the other categories?

7 A. That's correct, that we asked about.

8 Q. So that would be one of the other categories  
9 listed in the law?

10 A. Yes.

11 Q. So that's people who don't have a driver's  
12 license or PennDOT ID, but may have nursing home or  
13 a ---?

14 A. Military.

15 Q. Military, student, passport?

16 A. Passport and any other forms, yes.

17 Q. So that's only .6 percent?

18 A. Correct. So that's why we pulled out the  
19 PennDOT IDs in that line together because they do  
20 represent the bulk of the types of IDs that people  
21 have.

22 Q. All right. Then let's look at that third set of  
23 rows there. What is that?

24 A. The final reason for someone to have or not have  
25 a valid ID is related to name conforming, whether

1 your name essentially conforms. And we can see there  
2 that when we were originally at --- 89.9 percent had  
3 a non-expired, up-to-date ID, that falls down to 85.6  
4 that have, which means that 14.4 percent did not have  
5 a valid driver's license or non-driver ID or any form  
6 of ID in which their name conforms.

7 Q. And again, as you're using valid here. This  
8 isn't valid for purposes of driving, this is valid  
9 for purposes of voting?

10 A. That's correct. That they have a valid photo ID  
11 there in that final category that's non-expired and  
12 name conforming, which would meet the statute.

13 Q. And so what are the next two rows there?

14 A. Again, here we break it up by driver's licenses,  
15 so you can see how many people sort of fall out each  
16 step of the way, and that is that 76.8 percent of the  
17 population that we surveyed has a driver's license  
18 that is valid for the purposes of voting, meaning it  
19 is not expired and that their name conforms. And  
20 then you can see the remainder, another 8.8 percent,  
21 has some other form of ID such as a PennDOT  
22 non-driver ID or any other form of accepted ID which  
23 is non-expired and name conforms.

24 Q. So when you take all that, that's how you get to  
25 the 14.4 percent of eligible voters do not have a

1 valid ID for voting?

2 A. That's correct. And I think if you look at  
3 table four it provides a nice little summary of that  
4 sort of going backwards from the total population to  
5 the percent that lacks.

6 Q. Why don't you go over that?

7 A. So table four, we start with the total  
8 population which would just be a hundred percent of  
9 the people we interview. And then we show what  
10 percent falls out at each step of the process and  
11 these are all numbers that can be also found within  
12 table three somewhere. But you see that the first is  
13 that has no driver's license or any form of ID, they  
14 just don't have, they don't possess at all an ID  
15 card, is 1.4 percent of the population just as we  
16 also reported at the top of table three. Then  
17 there's an additional 8.7 percent of the population  
18 in the survey which has an ID, but the ID is expired  
19 for purposes of voting. There is then an additional  
20 4.3 percent of eligible voters who has an up-to-date  
21 ID, have a non-expired ID, but they told us that  
22 their name does not match. And so by adding those  
23 three categories together is how we arrive at the  
24 14.4. These are the three reasons why someone could  
25 possibly not have a valid ID.

1 Q. And obviously we've been looking at the first  
2 column of data there which is eligible voters. Is  
3 the methodology the same for the next two columns  
4 there?

5 A. Yes, absolutely. These are just subsets of all  
6 registered voters and 2008 voters and we provide for  
7 each of the groups the percentage who falls out with  
8 having a valid ID for each of those three reasons.  
9 But we can arrive at those total estimates of 14.4  
10 for eligible, 12.8 percent for registered voters who  
11 lack and 12.6 percent for 2008 voters who lack.

12 Q. And so just to clarify, look at table four, the  
13 last column, that's of the people who voted in the  
14 presidential election in 2008, .6 percent do not have  
15 any form of ID?

16 A. That's correct. That of the people who actually  
17 voted .6 percent say they have no driver's license or  
18 any ID card whatsoever, that among those actual  
19 voters in 2008 7.4 percent have an ID card, but it is  
20 expired or not current for purposes of voting. And  
21 then 4.6 percent have a non-expired ID, so it's up to  
22 date, but their name doesn't match and that gives us  
23 the total of 12.6 percent of 2008 voters who we say  
24 do not have a valid photo ID for purposes of voting.

25 Q. Have you now --- have you applied these



1 percentages to the population totals?

2 A. Yes, we have. And that is summarized in the  
3 next set of tables, table five and table six where we  
4 did the same thing starting with the total population  
5 numbers and then multiplying these percentages to  
6 get estimates.

7 Q. So when we're looking at the total numbers of  
8 people, for instance, who have some form of ID other  
9 than PennDOT that's valid, how many people are we  
10 talking about?

11 A. So in the middle section is where we group  
12 together all of those PennDOT folks and the very last  
13 line says, does not have a PennDOT ID, but has some  
14 other form of non-expired photo ID. And there we  
15 estimate that it would be about in the total  
16 population of eligible voters 56,852 as compared to  
17 the number above that, 8.4 million is the number that  
18 have a valid PennDOT ID.

19 Q. Can you tell us from that what the predominant  
20 form of ID is in Pennsylvania?

21 A. Yeah, the dominant form, if you go one line  
22 ahead of that higher, is the non-expired driver's  
23 license which is 7.6 million. The next would be the  
24 non-driver ID card which would be about 840,000 or  
25 so. And so the PennDOT ID does appear to be the one

1 that the overwhelming majority of people who have an  
2 ID that's what they have.

3 Q. Let's go down to table six and look at those  
4 numbers. So how many people have no form of ID at  
5 all?

6 A. Among the eligible population we estimate that  
7 132,652 people have no ID whatsoever. They don't  
8 have an ID card at all and that is 90,681 registered  
9 voters and 36,063 people who actually voted in 2008.

10 Q. So, again, that's of the voters from 2008,  
11 36,000 of them don't have any ---.

12 A. They have no ID card whatsoever.

13 Q. So then going down that, those numbers show how  
14 many people have the different kinds of IDs or don't  
15 have the different kinds of IDs?

16 A. Right. They show the number of people that  
17 would be eliminated as voters for each of these three  
18 reasons. So those numbers we just reviewed are the  
19 people who just have no ID whatsoever. The middle  
20 category there indicates these are the number of  
21 people who have an ID, but that ID is expired for  
22 purposes of voting. There you can see that among  
23 eligible voters we estimate that that is 824,346  
24 people who have an expired ID. And then the third  
25 category under that is ---.

1 Q. Wait, let me stop you for a second. So what  
2 you're looking at there is just whether it's an  
3 approved form of ID and it's non-expired?

4 A. That's correct.

5 Q. That does not take into account whether there's  
6 name conformance or not?

7 A. That's correct. We've broken these out as three  
8 separate areas. So that middle area means the only  
9 thing we checked at that point is if they have an ID  
10 and that the ID is up to date for purposes of voting.

11 Q. So if I'm reading this right, the number of  
12 registered voters who do not have a non-expired  
13 acceptable ID is 626,000?

14 A. And you would also add in the 90,000 above who  
15 have no ID whatsoever. So 90,000 registered voters  
16 have no ID card at all. 626,000 registered voters  
17 have an ID card in their possession which is expired.  
18 So if we stop there, that would be roughly 716,000  
19 registered voters who do not have a valid ID in their  
20 possession that is currently up to date.

21 Q. So that's the number without even considering  
22 name conformance?

23 A. Yes. That's correct. And that's also found  
24 just ahead in table five, in the middle column you  
25 see 717,207, it says don't have, in that middle area

1 has any photo ID which is non-expired, 717,207  
2 registered voters do not have any photo ID which is  
3 non-expired.

4 Q. And then looking at 2008 voters, so it's almost  
5 half a million people who voted in 2008 do not have a  
6 non-expired photo ID?

7 A. That's correct. You would add the 36,000 who  
8 have no ID whatsoever to the 444,000 who have an ID  
9 but their ID is expired and you would get about  
10 480,000 voters in 2008 who do not have an ID which is  
11 current for purposes of voting.

12 Q. Okay. So now let's go back to table six and go  
13 down to the next line which is name nonconforming?

14 A. Yes. So we estimated that in table four that  
15 approximately 4.3 percent of all eligible voters have  
16 an ID, but an ID in which the name doesn't conform.  
17 So that 4.3 percent represents among eligible voters  
18 407,435 people and we would add that to the above  
19 categories to arrive at our total number that we  
20 estimate do not have a valid photo ID for purposes of  
21 voting, which among the eligible population is again  
22 1,364,433.

23 Q. And then in the third column there for 2008  
24 voters it's about a little over three quarters of a  
25 million that do not have ID to vote?

1 A. That's correct. We estimate that 757,325 people  
2 who voted in the 2008 election do not possess an ID  
3 that would be valid under the current statute.

4 Q. I want to come back to the name conforming. We  
5 had a discussion about the way you could measure that  
6 and some of the difficulties that you had?

7 A. Uh-huh (yes).

8 Q. So is it possible that some of the folks who  
9 said they don't match could, in fact, be allowed to  
10 vote?

11 A. The way we constructed the question was to  
12 assess the total number of people who don't match and  
13 the reason we constructed the question in that way  
14 was because as a starting point anyone who matches  
15 their name should have no problem at all showing that  
16 their name substantially conforms. Anyone who finds  
17 themselves in a position in which their name does not  
18 match for whatever the reason is would be subject to  
19 some extra scrutiny to ensure that it would, quote,  
20 substantially conform. So it's possible that some  
21 people in the substantially conformed area that we  
22 identified that the mismatch is minor and that the  
23 poll worker will allow them to vote. We don't know  
24 that. That decision --- my understanding of the law  
25 would be that that decision would be up to the poll

1 worker to decide for themselves whether or not it  
2 substantially conforms. And that a number of people  
3 who indicate their name doesn't match, especially  
4 those for reasons of marriage who change their last  
5 name, would not have a substantially conforming name  
6 and would be prevented from voting.

7 Q. So some percentage of the folks in the non-name  
8 conforming, they may be able to vote and some won't  
9 and you just can't measure that?

10 A. It would be at the discretion of the poll worker  
11 would be my understanding. It could be that all  
12 407,435 would not be allowed to vote or it could be  
13 that some of those could convince the poll worker  
14 that their name does substantially conform.

15 Q. So those are people that are at risk?

16 A. Absolutely. They've indicated to us on the  
17 survey that their name does not match on their  
18 official photo ID and what the voter registration  
19 would indicate.

20 Q. Now, there is some uncertainty in how big that  
21 number is because of the ambiguity in the term  
22 substantially conform?

23 A. Yes, I would agree with that.

24 Q. So even if you take that number out, how many  
25 people do not have an ID that is valid because it's

1 expired?

2 A. Well, in the entire eligible voting population,  
3 we count 956,998 who do not have an ID that is  
4 currently up to date for purposes of voting. That  
5 adds together the second and third rows there in  
6 table six. And again, that arrives you at 956,000.

7 Q. And what's the number for registered voters?

8 A. For registered voters it's 717,207 who do not  
9 have an ID which is currently up to date for purposes  
10 of voting. And for 2008 voters, people who actually  
11 voted in 2008, there are 480,842 who do not have an  
12 ID which is currently up to date.

13 Q. And then the number will be somewhere north of  
14 there or higher than that depending on what  
15 percentage of the non-name match are not allowed to  
16 vote?

17 A. Yeah. Absolutely. There's no question in my  
18 mind that the number will be higher than that because  
19 some of these people who indicated that their name  
20 doesn't match are going to have a problem proving  
21 that their name substantially conforms. So those  
22 people we know their name doesn't match, they're  
23 going to potentially be at the polling place and have  
24 to try to prove that their name matches. If it  
25 doesn't substantially conform in the mind of the poll

1 worker, according to the law they would not be able  
2 to vote.

3 Q. All right. Let's go to the next set of tables,  
4 tables seven and eight. What are you measuring here?

5 A. On tables seven and eight we are measuring the  
6 rates of possession or lack of possession of the  
7 underlying documents that are necessary in order to  
8 obtain a PennDOT ID. As I indicated before, there  
9 are three primary types of documents that someone  
10 would need to provide, the first is documentary proof  
11 of citizenship, the second is a Social Security card  
12 and the third is proof of address.

13 Q. So explain --- so that's the first three rows in  
14 table seven. And then what are the fourth and fifth  
15 rows?

16 A. Sure. So after taking what people told us to  
17 those questions, we then created a category here that  
18 says whether you have all three required documents  
19 needed to obtain a valid ID or whether you lack one  
20 or more. So in the first row, we see that 81.8  
21 percent of eligible voters in Pennsylvania have all  
22 three required documents. That means that 18.2  
23 percent do not have all three, meaning they lack at  
24 least one. They may have two of them, they may only  
25 have one of them or they may have none, but they do



1 not have all three. So we identify 18.2 percent as  
2 not having those underlying documents. And the final  
3 row there takes into account what people told us on  
4 the previous tables of whether or not they had a  
5 valid photo ID and we attempted to isolate the number  
6 of people who lack both a valid photo ID and they  
7 also do not have the three documents necessary to  
8 obtain those. And there we estimate that overall the  
9 entire state that there's four percent of the  
10 eligible population who neither has a valid photo ID  
11 nor do they have the underlying documents that they  
12 would need to obtain a valid photo ID.

13 Q. So if we go over to the subsequent columns under  
14 registered voters, you're saying it was 3.4 percent  
15 of registered voters have neither the ID nor the  
16 documents to get the ID?

17 A. That's correct. The calculations are exactly  
18 the same, so it's 3.4 percent of those currently  
19 registered and 2.9 percent of those who voted in  
20 2008.

21 Q. Now, is table eight applying those percentages  
22 to the number of voters?

23 A. Yes, that's correct. Table eight is similar to  
24 the tables we just reviewed which contains the raw  
25 number estimates to show how many people do or do not

1 have these different types of documents that they  
2 would need to obtain a valid photo ID.

3 Q. So as far as eligible voters the number of  
4 eligible voters who don't have valid photo ID and the  
5 three required documents is what?

6 A. The number of people who lack the documents and  
7 also lack a valid ID is 379,009, which you can see  
8 there at the very bottom column. The number just  
9 above that, 1.7 million, indicates the overall number  
10 of people who do not have all three of those  
11 documents.

12 Q. But that number includes people who may have ID?

13 A. That's correct. That includes people who may  
14 have photo ID. And the number below it are just the  
15 people that have none, they do not have a valid photo  
16 ID and they also do not have the documents required  
17 to obtain a valid photo ID.

18 Q. So going over to the next column that would be  
19 280,000 registered voters have neither ID nor the  
20 documents to obtain it?

21 A. That's correct. 280,000 registered voters and  
22 174,000 people who voted in 2008 do not have a valid  
23 photo ID nor do they have all three of the necessary  
24 documents that they would need to obtain a valid  
25 photo ID.

1 Q. Now, there's a fourth column on these two  
2 charts. Can you explain that fourth column, please?

3 A. Yes, this is how we arrived at those numbers we  
4 were just talking about. But we also looked at most  
5 crucially the rates of having these underlying  
6 documents among those people who previously told us  
7 on the other questions that they do not have a valid  
8 photo ID. In my opinion these are the folks who we  
9 should have the most concern for because they  
10 currently do not have a valid photo ID and so we want  
11 to find out, well, do they have the documents they  
12 need to obtain one.

13 Q. So explain to us and maybe use the don't have  
14 column to explain what the numbers are there in table  
15 seven under that fourth column.

16 A. Sure. So if you look at the category of don't  
17 have, you can see that among people without a valid  
18 ID, 16.4 percent do not have proof of citizenship,  
19 11.9 percent ---.

20 Q. I'm sorry. Proof of citizenship is primarily a  
21 birth certificate?

22 A. That is copy of birth certificate with raised  
23 seal or U.S. passport or official naturalization  
24 certificate for those who are foreign. 16.4 don't  
25 have that. 11.9 percent do not have their official

1 Social Security card, and 6.2 percent of them do not  
2 have a proof of address. When we look at the number  
3 of people who lack one or more of those, because you  
4 need all three to obtain ID, so we look at the number  
5 who lack one or more, we find that this group  
6 particularly is at risk, over a quarter at 27.6  
7 percent of those who don't have an ID do not have an  
8 ability to get one, an official PennDOT ID.

9 Q. So when you go down to table eight in that  
10 fourth column, that's applying those percentages to  
11 the totals?

12 A. That's correct.

13 Q. So there's 366,000 people who don't have valid  
14 ID or the documents to get that ID?

15 A. Among those people. That is correct.

16 Q. And that would be --- am I correct in saying  
17 there's 174,000 people who voted in 2008 who are in  
18 that category?

19 A. That's correct. 174,000 people who indicated  
20 that they voted in the election, but they do not have  
21 a valid photo ID and they do not have the necessary  
22 documents to obtain it.

23 Q. Let's turn to table nine. What is this?

24 A. Table nine indicates the place of birth among  
25 the respondents in the survey. This was one of the

1 questions that was part of the underlying documents  
2 so that we could determine whether we would ask the  
3 respondent whether they had a birth certificate from  
4 the state, whether it was from Puerto Rico or whether  
5 they had a naturalization certificate.

6 Q. And how are these results important?

7 A. Well, what these results indicate is that across  
8 the board 75 percent of the respondents were born in  
9 the State of Pennsylvania, but that means that 24.6  
10 percent were born outside the State of Pennsylvania.  
11 As the birth certificate becomes an important  
12 document that you would need to obtain in order to  
13 get a PennDOT ID or other types of ID, there is a  
14 substantially number of residents of Pennsylvania who  
15 are eligible to vote who were born outside the State  
16 of Pennsylvania, and if they don't have those forms  
17 of citizenship, meaning their official birth  
18 certificate, they would be needing to interact with  
19 other state agencies in order to get those documents.

20 Q. Let me ask you, are you aware that I guess it  
21 was during --- may have been during the course of the  
22 survey, that the Department of State changed the  
23 process for getting an ID if you're born in  
24 Pennsylvania?

25 A. Yes, I've been made aware of that.

1 Q. And what's your understanding of that?

2 A. That persons who were born in the State of  
3 Pennsylvania should be able to have their birth  
4 certificates verified through some sort of state  
5 database.

6 Q. So it makes it easier for people who were born  
7 in Pennsylvania to produce the ID?

8 A. Assuming they can find those electronic records,  
9 then those persons born in the State of Pennsylvania  
10 would certainly have an advantage if they needed to  
11 track down their birth certificate than anyone born  
12 somewhere else.

13 Q. So do people who are born outside Pennsylvania  
14 have a disadvantage?

15 A. I would say they would have a harder time  
16 because they would be having to interact with  
17 additional state agencies across the country and  
18 perhaps provide other proof of their residence or of  
19 their birth. In some cases, in some states you  
20 actually have to show a photo ID in order to go and  
21 get these other sorts of records. So those who were  
22 born outside of Pennsylvania, they have many more  
23 layers of bureaucracy to deal with.

24 Q. And does this process of simplifying the ID  
25 acquisition for getting ID for Pennsylvania voters,

1 does this have a disproportionate affect on different  
2 demographic groups?

3 A. Yeah, one of the things that we looked at here  
4 in the bottom half of the table is the place of birth  
5 by race or ethnicity and the population of the  
6 eligible voting population in Pennsylvania, and  
7 overall we found that 80 percent of white respondents  
8 to our survey were born in the State of Pennsylvania,  
9 but that only 66 percent of the African-American  
10 respondents were born in the State of Pennsylvania  
11 and that a very small percentage, only 13 percent, of  
12 Hispanic respondents were born in the State of  
13 Pennsylvania. What this indicates to me is that  
14 African-Americans and Latinos would have a harder  
15 time being able to produce a birth certificate  
16 because they have much lower rates of being born in  
17 the State of Pennsylvania.

18 Q. So this change in the process where people born  
19 in Pennsylvania don't need to show a birth  
20 certificate has a disproportionate affect on people  
21 of color?

22 A. Yeah, it would disadvantage African-Americans  
23 and Latinos for sure because they would not have  
24 their birth certificate pulled up as quickly and  
25 easily as whites. Whites are much more likely to

1 have been born in the State of Pennsylvania than  
2 either of those two minority groups.

3 Q. Let's go to the next tables and we'll go through  
4 these tables much more quickly now.

5 JUDGE SIMPSON:

6 Thank you.

7 ATTORNEY WALCZAK:

8 I'll take that as a hint, Judge.

9 BY ATTORNEY WALCZAK:

10 Q. Starting with table ten, what have you done here  
11 now starting with this table?

12 A. In the remainder of the tables here we now have  
13 rates of possession among suburbs in the populations,  
14 you can see the header there. And we've then have  
15 gone through and replicated the tables that we  
16 discussed above for different demographic groups.  
17 Table ten here we're starting with gender and you can  
18 see by focusing on the last line there, has the valid  
19 photo ID, non-expired and name conforming.

20 Q. I'm sorry. Which line are we talking about  
21 here?

22 A. The third bold line there, has a valid photo ID.

23 Q. That's ---?

24 A. That's correct.

25 Q. Okay.



1 A. That while overall we reported and just  
2 discussed that 14.4 percent of the entire population  
3 lacks a valid photo ID, this number is significantly  
4 higher for women, 17.2 percent of women lack a  
5 non-expired name conforming ID compared to only 11.5  
6 percent of men. So it certainly affects both  
7 genders, but women are more negatively affected by  
8 this law.

9 Q. And is that a statistically significant  
10 difference?

11 A. Yes, it is. That gap isn't one that wasn't just  
12 observed, but was statistically different.

13 Q. And do you have an opinion as to a cause of  
14 that?

15 A. Yeah. I think for sure we reference it in the  
16 report that part of this disparity would certainly be  
17 due to the name conforming issue. Women would be  
18 much more likely than men to have changed their name  
19 during marriage, and depending on when that name  
20 change took place, the name on the photo ID may not  
21 be the same as the name on the voter registration  
22 records. So that was one particular reason why women  
23 could be more impacted by this.

24 Q. Let's go to table 11. Is there also a  
25 difference in --- this looks at possession of the

1 underlying documents?

2 A. Table 11 is still valid photo ID. It's just  
3 among registered voters. You'll notice a pattern  
4 throughout in which we first look at the eligible and  
5 then we look at the registered population. In the  
6 tables we also look at the voting population, but we  
7 replicate the tables here. But it just demonstrates  
8 that this trend and this difference holds even among  
9 registered voters, people who are currently  
10 registered. Women would be more disadvantaged than  
11 men according to this.

12 Q. So men --- what's the percentage of men who  
13 have ---?

14 A. Overall, we find that 89 percent of men do have  
15 a valid photo ID and 11 percent lack. For women we  
16 find that 85 percent have a valid ID and that  
17 indicates here that 14.8 percent lack a valid photo  
18 ID.

19 Q. And this is for register voters?

20 A. This is among registered voters.

21 Q. Okay. Let's go to the next.

22 A. Fourteen (14) would be the next subsection of  
23 demographics. Here on 14 we're examining the rates  
24 by racial and ethnic groups. And here we find, for  
25 example, again looking at that third bold face line

1 that 14.0 percent of whites lack a photo ID. In  
2 comparison, 18.3 of Latinos and 24 percent of people  
3 of other racial and ethnic groups lack a valid photo  
4 ID. So again, we find some differences here in terms  
5 of access among different racial and ethnic groups.

6 Q. Okay. Let's go to the next set of tables.

7 A. That would be table 18. Here we're looking at  
8 the rates by age. Once again, if you look at the  
9 bottom category there, it has a valid photo ID,  
10 non-expiring, name conforming. We find variation  
11 across the different age groups. In particular we  
12 found that those in the younger cohort, 18 to 34 and  
13 those in the older cohort, over the age of 75 lack ID  
14 at higher rates. 17.9 percent of people between 18  
15 to 34 lack a valid photo ID and 17.8 percent of  
16 people over the age of 75. That compares say against  
17 people who are in one of the middle categories, 35 to  
18 54 in which only ten percent. So in this case if the  
19 law were implemented fully, we would expect many,  
20 many more younger and also older voters would be  
21 prevented from voting as compared to those in the  
22 middle age categories.

23 Q. So it has a disproportionate impact on the young  
24 and the old?

25 A. Yes.

1 Q. Let's go on to the next set of categories.

2 A. Next is education on table 22.

3 Q. What do you find about education?

4 A. Here on education we find a similar strong  
5 relationship between levels of education and access  
6 to rates of valid photo ID. For example, among those  
7 who have not completed their high school degree, 18.5  
8 percent do not have a valid photo ID. In contrast  
9 those who are college graduates, only 8.3 percent  
10 lack a valid photo ID. So this difference of ten  
11 percentage points is quite substantial and would  
12 indicate to us that those residents of Pennsylvania,  
13 those eligible voters who don't have a high school  
14 diploma or in the lower educational bracket would be  
15 much more severely affected by this law than those  
16 with a college degree and would be slightly more  
17 likely to navigate to be able to vote.

18 Q. Okay. Let's go to the next set.

19 A. The next set is table 26 where we have our  
20 results broken out by income categories. Here we  
21 find again a similar trend where people who live in  
22 households with less than \$20,000 of annual income,  
23 22 percent lack an accepted photo identification, and  
24 as you go into the higher income categories, you see  
25 that that possession rate goes down to 8.2 percent of

1 people over \$80,000 in income who lack, so it's over  
2 double the affect here. Twenty-two (22) percent of  
3 the lowest income households lack a valid photo ID  
4 compared only 8.2 percent of the highest income  
5 households.

6 Q. All right. Next?

7 A. Next, we have broken out the results by access  
8 to transportation. We discussed --- and this is  
9 table 30. We had discussed this previously when  
10 talking about the questions that appear in the  
11 demographic section and that we asked people about  
12 whether or not they have regular access to a car,  
13 whether they don't have access to a car, but they  
14 have some other type of transportation that is  
15 reliable, or whether they have no access to  
16 transportation at all. And here we can see very  
17 large differences in the rates of possession, that is  
18 among people who have access to a car, 11.1 percent  
19 lack a valid photo ID. Among people who don't have a  
20 car ---.

21 Q. I'm sorry. Just so I understand, so people who  
22 have access to a car, 11.1 percent don't have photo  
23 ID, don't they have driver's licenses?

24 A. Well, you can see here in the table above that  
25 they're more likely to have driver's licenses than

1 any of the other categories, but even there not  
2 everyone has a driver's license which is currently up  
3 to date and perhaps has been name conforming. It  
4 could be that their parents or sibling in their  
5 household have the car. The question was whether or  
6 not they had access to a car, whether it was them or  
7 someone in their household. By comparison 29.7  
8 percent, almost a third of people who don't have  
9 access to a car, but they do have other  
10 transportation such as they ride the bus, they ride  
11 the bike, et cetera, 29.7 do not have a valid photo  
12 ID and you can see at the top that the primary reason  
13 here is that very small percentage of this population  
14 have a driver's license. Only 37.5 percent of people  
15 who do not have access to a car have a driver's  
16 license. And because that's the main form of  
17 identification identified in our survey, these people  
18 are particularly at risk because they don't have  
19 regular need for ID because ride the bus or take a  
20 train or something else, they do not have in many  
21 cases the prime ID that would be necessary to vote.  
22 And the final column there are people who indicated  
23 no, they don't have access to a car nor do they have  
24 access to reliable transportation. This is a smaller  
25 percentage, but it's an important percentage of the

1 population in Pennsylvania and here we find 41.6, a  
2 very, very large number, in this group is a special  
3 disadvantage and they do not have valid photo ID.

4 Q. Now, are those people in a particular difficult  
5 situation in terms of obtaining ID?

6 A. We would estimate that they look to be. They  
7 don't have the means --- they're telling us they  
8 don't have a means of transportation. If they are  
9 going to need to go to some office in order to get  
10 that, unless it's within walking distance, it would  
11 create some additional burden for them for sure. And  
12 I believe the final demographic breakout would  
13 be ---.

14 Q. I'm sorry. Let me go back to table 26.

15 A. Sure.

16 Q. You talked about how the rates of people not  
17 having ID are substantially higher for people making  
18 less than \$20,000; is that correct?

19 A. Yes.

20 Q. Is the problem of people not having ID limited  
21 to low income people?

22 A. No, I mean, as you can see from this table there  
23 are still notable percentages of people in the middle  
24 income category, 14.6 and 13.8, who lack. And even  
25 among the highest income earners, 7.1 and 8.2 percent

1 continue to lack. The point is that it's especially  
2 felt among lower income households, and as part of  
3 this segmentation portion of our study, we wanted to  
4 determine not only what percent overall statewide  
5 lacked, but whether or not this would impact all  
6 Pennsylvanians equally or certain types of people  
7 because of their characteristics would be more at  
8 risk of being shut down.

9 Q. All right. Let's go after transportation.

10 A. We were going to going to region, I believe,  
11 which is table 34.

12 Q. And what did you find when you looked at it by  
13 region?

14 A. Here on region we grouped the state into five  
15 regions with two urban counties being the highest in  
16 lacking.

17 Q. So you're talking about Philadelphia --- explain  
18 the regions for us here.

19 A. Sure. We have provided five regions. The first  
20 that's listed there is Philadelphia County. It  
21 includes the entire county limits of Philadelphia.  
22 The next is Philadelphia suburbs and that includes  
23 the counties that are just on the perimeter of  
24 Philadelphia which are enumerated here. After  
25 that ---.



1 Q. Could you enumerate those for the record?

2 A. Sure. That includes Delaware, Bucks, Chester,  
3 and Montgomery Counties.

4 Q. And then the next ---?

5 A. The next is Allegheny where Pittsburgh is and we  
6 include here Allegheny County, so we include the  
7 entire county. We then have an item called the  
8 northeast and that includes Berks, Carbon, Lehigh,  
9 Monroe, Northampton and --- I have no idea how to  
10 pronounce the last one.

11 Q. Schuylkill.

12 A. Schuylkill.

13 JUDGE SIMPSON:

14 You're not from around here, are you?

15 A. No. In Washington State that would be  
16 Schuylkill (different pronunciation).

17 OFF RECORD DISCUSSION

18 BY ATTORNEY WALCZAK:

19 Q. Berks I believe is also B-E-R-K-S, but I think  
20 we know what you're referring to there. And so now  
21 let's look at the results, and what did you find in  
22 terms of rates of people not having IDs by region?

23 A. Sure. So what we found are that the two most  
24 urban populations here, Allegheny County and  
25 Philadelphia County, have the highest rates of

1 lacking photo ID. So a person in these counties  
2 would be disproportionately affected by this. In  
3 Allegheny County 18.7 percent of respondents who  
4 reside there do not have a valid photo ID as compared  
5 to say 12.4 percent of people who live in the  
6 Philadelphia suburbs. Again, that would be income  
7 categories. We don't find a particular region of the  
8 state in which very few people would be affected.  
9 Across the state we see double digits of percentages  
10 of people who would be affected by this law. It just  
11 happens to be that there's a larger affect in  
12 Philadelphia and Allegheny County than anywhere else.

13 Q. Okay. Next?

14 A. That concludes the subgroups, the segmentation  
15 of how we divided up the demographics and attempted  
16 to look at how the access to the valid photo ID  
17 differed amongst different segments.

18 Q. Before we go to knowledge, which would be our  
19 last section, do you have an opinion as to who will  
20 be primarily affected by the Pennsylvania voter photo  
21 ID law?

22 A. Yeah, as we review not only in the top half, but  
23 here in the demographic analysis, I think we came  
24 away with two conclusions. First, that there's  
25 really no subsegment that has extremely high access

1 rates. We did not find a subgroup in which 99  
2 percent of people would be okay. It certainly  
3 affects people of all different walks of life,  
4 different parts of the state at fairly high rates.  
5 Where we did find discrepancies we found that it  
6 tended to be resource related, meaning that people  
7 who have lower income, lower education levels, racial  
8 minorities, young or old were more likely to be  
9 affected. And because of the issue that we discussed  
10 earlier about name change, that women were also more  
11 likely to be affected by this than men. So while it  
12 will affect a lot of people throughout the entire  
13 state across all different walks of life, if  
14 implemented fully, our estimation is that it will  
15 have an unequal effect. It means it would affect the  
16 most the people in the lower socioeconomic brackets  
17 in Pennsylvania.

18 JUDGE SIMPSON:

19 Would you pause for a moment, please?

20 Okay, thank you.

21 BY ATTORNEY WALCZAK:

22 Q. All right. There is a little table that we  
23 skipped back --- it's table two. Go back to table  
24 two. Can you tell us what table two is?

25 A. Sure. Table two provides a summary of the

1 results to our questions on the survey as to whether  
2 or not the respondents are aware and know of the  
3 Pennsylvania voter ID law and whether or not they  
4 believe that they are themselves in compliance with  
5 the Pennsylvania voter ID law.

6 Q. Okay. Can you go over with us the numbers here  
7 and the entries? How's this work?

8 A. Sure. Overall among eligible voters starting in  
9 the first column of table two, we found that 62.7  
10 percent were aware and said that, yes, they knew  
11 Pennsylvania does have a voter ID law that would  
12 require voters to show a photo ID before voting in  
13 person, which indicates that 37.3 percent of all  
14 respondents were not aware that this law existed.  
15 The next row under that ---.

16 Q. Let's just play that out to the other two  
17 columns.

18 A. Sure.

19 Q. What are the numbers for registered voters and  
20 2008 voters?

21 A. Sure. We found fairly consistent results, only  
22 slightly higher levers of knowledge of the law among  
23 registered and natural voters. Among people who are  
24 registered to vote 65.7 percent were aware and 34.3  
25 percent were not aware of the law. And among people

1 who actually voted in 2008, a very similar rate, 65.8  
2 percent of those people said they were aware of the  
3 law and 34.2 percent of people were not aware of the  
4 law.

5 Q. So these were people who didn't know that  
6 Pennsylvania had passed a photo ID law?

7 A. That's correct. They said that they did not  
8 know. They could've said two possible choices to get  
9 them to the no category. They could have said no,  
10 Pennsylvania does not have that law, or they could've  
11 said I don't know, I have not heard and I have no  
12 idea. So it was both the people who said I don't  
13 know or people who actually gave the opposite or  
14 incorrect answer and said no. And among voters we  
15 found that was 34.2 percent.

16 Q. And when was this law passed?

17 A. I believe the law was passed in March, in the  
18 spring this year.

19 Q. And this survey was taken when?

20 A. The survey was conducted in late June. June  
21 21st to July 2nd.

22 Q. So it's more than three months after the law had  
23 been in effect?

24 A. Yes. The law had been in effect. There had  
25 presumably been discussion and publicity of the law.

1 It wasn't the case that voters could have not known  
2 that the law was there.

3 Q. What's the next row on table two?

4 A. After that we asked them that if a poll worker  
5 asked for their official photo ID in Pennsylvania do  
6 they believe that they currently have a valid photo  
7 ID that they can show to the poll work or if they  
8 think that they don't and they have to obtain that.

9 Q. So what are the results there?

10 A. Overall we found that 97.8 percent of  
11 respondents believe that they have a valid photo ID,  
12 and only 2.2 percent volunteered that they don't  
13 believe that they have a valid photo ID.

14 Q. So of all the eligible voters, almost 98 percent  
15 believe and thought that they had an ID that they  
16 could use to vote in November?

17 A. That's correct. And you can see here that it's  
18 slightly higher among registered voters and actual  
19 voters. Among registered voters, 98.8 percent  
20 believe that they have a valid photo ID that they can  
21 use to vote. And among 2008 voters, 98.7 percent  
22 believe that they currently have a valid ID.

23 Q. So what is the third row there?

24 A. The third row, we just isolated those people who  
25 said, yes, I have a valid photo ID. And then we

1 looked at their answers to the questions from table  
2 one above as to whether or not they actually did have  
3 a valid photo ID and what we found was that 13.1  
4 percent of the eligible population believe that they  
5 have a valid photo ID. They told us that, yes, I  
6 have a valid photo ID that I can use to vote. But  
7 when we asked them questions about the expiration  
8 date and name conforming and other things, they did  
9 not have a valid photo ID. And you can see that that  
10 is also 12 percent, 12.1 percent of registered voters  
11 who believed they have a valid ID, but they do not.  
12 And 11.8 percent of people who voted in 2008 are in  
13 that category that they believe that they have a  
14 valid photo ID, but in reality they do not.

15 Q. So these people are mistaken?

16 A. Yes, these are people who are mistaken. They  
17 think that they are currently in possession of a  
18 valid photo ID, but when we query them about the  
19 types of ID they had, we were able to determine that  
20 they would not be able to meet the standard.

21 Q. What is the significance of the fact that these  
22 people are mistaken?

23 A. We think this is a quite significant issue  
24 related to voter knowledge and misinformation or  
25 misperception here. And that is that a very large

1 percentage of people believe they have the ID and are  
2 mistaken, and if those folks believe that they have a  
3 valid photo ID, it's quite unlikely or it would be  
4 very difficult to convince them that they don't  
5 because they believe that they have a valid photo ID  
6 and they believe that they can use it for purposes of  
7 voting.

8 Q. When and how are those people likely to find out  
9 that they have an improper ID?

10 A. My guess would be that for the majority of them  
11 that would be when they attempt to vote. These are  
12 the people who think the ID that they have in their  
13 wallet or purse or pocket will work for voting and  
14 they may attempt to vote in a future election and be  
15 told that that ID is not valid by the poll worker  
16 because it either has expired or the name doesn't  
17 conform.

18 Q. So what is the significance of the fact that 37  
19 percent of eligible voters don't know about the law?

20 A. I think that's also quite important. This law  
21 in Pennsylvania would represent a substantial change  
22 in practice of what the voter experiences when they  
23 go into a polling place to vote. And over a third at  
24 37 percent indicated that they were unaware that this  
25 law existed and it means that few people --- well, it



1 means two things. One, for people who don't have the  
2 ID if they're unaware of the law at all, they're  
3 unlikely to get or take any of the steps that might  
4 be necessary to get a valid photo ID because they're  
5 not aware that this law exists. The second is that  
6 there are people who know that the voter ID law  
7 exists, but they mistakenly believe that they have  
8 the right credentials and so on both accounts that  
9 public knowledge of the law is a very, very important  
10 aspect.

11 Q. Let me just --- I want to finish with some  
12 questions about a new ID. Are you aware that the  
13 state has announced that they are going to issue and  
14 allow a new form of photo ID to be used at the polls?

15 A. Yes, I read about that.

16 Q. And what's your understanding of that ID?

17 A. I have to say that I don't fully understand  
18 exactly how it will work yet and who will be  
19 eligible. The understanding that I have is that if  
20 you can demonstrate that you don't have the other  
21 forms of ID and that you're not able to obtain them  
22 that you might be able to obtain this new ID by still  
23 providing some documents, whether it's address or  
24 Social Security card or something, and that they  
25 would then be eligible to go get that ID.

1 Q. I want to ask you for your opinions on the  
2 likelihood that every voter who does not have a valid  
3 form of photo ID will get one of these IDs by the  
4 time of the election. All right. So let me ask you,  
5 do you have --- given the rates that you found of  
6 people who don't have the right kind of ID, do you  
7 have an opinion as to whether or not the State of  
8 Pennsylvania can give assurance that all of the folks  
9 who don't have ID will have that ID on election day?

10 A. I think that it would be almost impossible for  
11 anyone to give that assurance for two reasons. One  
12 is that there still are a large number of people in  
13 the survey who not only lack the ID, but they lack  
14 the necessary documents to obtain an ID and there are  
15 still people who are not going to be able to  
16 demonstrate their proof of address or provide a  
17 Social Security number or proof of citizenship if  
18 they need to obtain a birth certificate from another  
19 state. So those people will regardless of the new ID  
20 have a very hard time even obtaining that.

21 And the second is that, as we indicated, a very  
22 large percentage of people, 97.8, believe that they  
23 are in compliance with the law. They believe they  
24 have an ID. And also, as we discussed in table  
25 three, 98.6 percent of people in Pennsylvania have

1 some sort of ID. It just isn't up to date and have  
2 the name conform. So for the average person, they  
3 do possess some sort of ID card and they do believe  
4 that that ID card is valid. And so they have no  
5 reason to go get one of these new IDs or to change  
6 their ID or anything because as far as they know  
7 they have an ID and they believe that it would work.  
8 It would only work if they were specifically  
9 targeting people who lacked all identification  
10 whatsoever, which was 1.4 percent of the population.  
11 But again, even those people, a large number lack  
12 the underlying document. So I think it would be  
13 quite difficult to convince those people who believe  
14 that they're already in compliance that they need to  
15 change.

16 Q. And do you have an opinion as to whether a  
17 tremendous education campaign talking about the  
18 availability of ID that people have to go to PennDOT  
19 to get, that they can get it very easily can assure  
20 that all voters who don't have proper ID are able to  
21 get it by election day?

22 A. Yes. What the research generally shows in this  
23 area are that the people who pay the most attention  
24 to those sorts of public service announcements  
25 related to voting and elections are people in the

1 highest levels of education and political interest.  
2 These are people that we've suggested already have  
3 the highest rates of having a valid ID and that the  
4 people who are perhaps more in need are less likely  
5 to be aware or fully understand or even fully pay  
6 attention to those sorts of ads. There's been a lot  
7 of research in political science related to messaging  
8 and ads and public service announcements, and it's  
9 quite difficult in a short time span to get someone's  
10 attention especially when they believe they're  
11 already in compliance and convince them that they're  
12 not in compliance and that they need to take some  
13 additional steps in order to change that.

14 Q. Now, in fact, is there research out there on the  
15 ability to educate the public in a short period of  
16 time on an important issue?

17 A. Yeah, absolutely. There are a number of  
18 published research studies that have looked at how  
19 voters respond to campaign advertisements. And  
20 campaign advertisement are certainly even more  
21 apparent and more frequent than public service  
22 announcements. And studies have found quite  
23 convincingly that after a campaign advertisement run  
24 and voters were exposed to them and indicated that  
25 they were exposed to them, that in surveys and exit

1 polls, when they exited the voting booths, they still  
2 incorrectly answered questions about the state  
3 initiatives that they were voting on including what  
4 they learned from some of the advertising campaigns.  
5 Because there will be here in Pennsylvania so many  
6 other political acts, the airways will be saturated  
7 with political information and this will make it very  
8 difficult for voters to see through all the rest of  
9 those ads to focus in on any education campaign that  
10 may be being conducted.

11       And again, we will have to convince them because  
12 97.8 percent of the population believe they're  
13 already in compliance. If I believe I'm already in  
14 compliance and I hear an ad that says don't forget  
15 you need --- I'm just going to tune that out because  
16 I'm thinking I already got it. This ad is not for  
17 me. It's for, you know, somebody who doesn't have  
18 an ID card at all. And so I think it's an  
19 exceptional challenge in an extremely short amount  
20 of time to be able to do that. And then that would  
21 presume that people go out and have the time and the  
22 resources and the ability to actually get the photo  
23 ID, but first you have to convince them that they  
24 actually need it and largely we found those people  
25 don't believe they do.

1                   ATTORNEY WALCZAK:

2                   No further questions, Your Honor.

3                   JUDGE SIMPSON:

4                   What's your pleasure?

5                   ATTORNEY CAWLEY:

6                   I would be fine with taking a break at  
7 this point, Your Honor, if that's what you're  
8 inclined to do.

9                   JUDGE SIMPSON:

10                  Yes. I normally don't like to breakup  
11 the testimony of an expert witness on Cross  
12 Examination, so I would either want to take a break  
13 now or make you run and finish. How long do you  
14 think your Cross Examination will go?

15                  ATTORNEY CAWLEY:

16                  Well, I guess it wouldn't be all that  
17 specific to say considerably shorter than the Direct,  
18 but I would estimate no more than 30 minutes, perhaps  
19 slightly longer than that.

20                  JUDGE SIMPSON:

21                  Any requests from your side? Do you  
22 care what we do? Let's take a break now. It's about  
23 12:30. We'll come back at 1:30. We will be in  
24 recess until 1:30.

25                  MR. TURNER:

1 Commonwealth Court is now in recess.

2 RECESS TAKEN

3 MR. TURNER:

4 Ladies and gentlemen, Commonwealth  
5 Court is now in session.

6 JUDGE SIMPSON:

7 Proceed.

8 CROSS EXAMINATION

9 BY ATTORNEY CAWLEY:

10 Q. Good afternoon, Professor Barreto.

11 A. Good afternoon.

12 Q. My name is Patrick Cawley. I represent the  
13 government Respondents in this case, and I'm going to  
14 ask you some questions. I believe you've been  
15 through this drill before.

16 A. Okay. Thank you.

17 Q. To start out with, on the cover of your report  
18 you were listed as the principal investigator; right?

19 A. Yes.

20 Q. And your co-investigator is Gabriel Sanchez?

21 A. That's correct.

22 Q. And you and Gabriel Sanchez were the co-founders  
23 of a group called Latino Decisions; right?

24 A. No, that's incorrect.

25 Q. That's incorrect. Could you explain how that's

1 incorrect?

2 A. I'm one of the founders and Gary Segura, who is  
3 a professor at Stanford, is a co-founder, not Gabriel  
4 Sanchez.

5 Q. Okay. Is Gabriel Sanchez affiliated with that  
6 group as well?

7 A. Yes, he's the research director.

8 Q. And Latino Decisions actively follows political  
9 issues and elections around the country where they  
10 pertain to Latinos; right?

11 A. Yes.

12 Q. And in your CV at page 72, which is Appendix C,  
13 you list affiliated research centers that you're  
14 affiliated with; correct?

15 A. Yes.

16 Q. But you don't list Latino Decisions. Was there  
17 a reason for that?

18 A. I don't have that in front of me.

19 Q. Okay.

20 WITNESS REVIEWS DOCUMENT

21 A. They're listed on page 80.

22 BY ATTORNEY CAWLEY:

23 Q. Okay. Is there a reason Latino Decisions was  
24 not listed for you and Doctor Sanchez on this report?

25 A. I don't understand the question.



1                   JUDGE SIMPSON:

2                   He just said it's on page 80.

3                   ATTORNEY CAWLEY:

4                   And I'm referring now to the expert  
5 report.

6                   BY ATTORNEY CAWLEY:

7                   Q.   And I'm asking on the cover you list the  
8 universities that you are affiliated with; right?

9                   A.   Correct.

10                  Q.   And I'm just asking if there was a reason why  
11 Latino Decisions was not listed if the two of you do  
12 the same sort of investigations or research for  
13 Latino Decisions?

14                  A.   Sure.  We were approached as --- on behalf of  
15 the university affiliations to work on this as a part  
16 of --- in line with our other academic research.  We  
17 were not approached as a Latino polling firm to do  
18 this research, so ---.

19                  Q.   Okay.  Again, going to your CV, in your book  
20 manuscripts it indicates that you wrote or are  
21 writing a manuscript called Change We Can't Believe  
22 In, Exploring the Sources and Consequences of Tea  
23 Party Support.  Is that something that you are an  
24 author on?

25                  A.   Yes.  Although, I think the title has slightly

1 changed.

2 Q. Okay.

3 A. The editors of the press get to be in charge of  
4 the title. It kind of is based on what they think  
5 will sell.

6 Q. Okay. Well, is it safe to say that this  
7 manuscript is critical regardless of the title of the  
8 Tea Party?

9 A. I wouldn't say critical. It's just a review of  
10 the opinions that people in the participation ranks,  
11 the people who signify the Tea Party poll.

12 Q. Okay. And when you said it's change we can't  
13 believe in, at least in an initial title, does that  
14 indicate that the author's view that --- you don't  
15 believe or share in the views of those who support  
16 the Tea Party?

17 A. No. It's a play on words on the change we can  
18 believe in, which is the part of the President's  
19 slogan that this is the --- the argument is that Tea  
20 Party members debate. In fact, they use that, it's  
21 change we can believe in.

22 Q. Okay. And in another section of your CV you  
23 list academic journal articles. And one of them is  
24 The Tea Party In the Age of Obama Mainstream  
25 Conservative --- Conservatism Or Out-Group Anxiety.

1 Is that an article that you are an author on?

2 A. Yeah. That's number 27?

3 Q. I believe so, yes.

4 A. Uh-huh (yes).

5 Q. And do you include in that article that the Tea  
6 Party is suffering from out-group anxiety?

7 A. I believe we make reference to that. I don't  
8 know if it's --- I don't have it in front of me, so I  
9 don't know exactly what the conclusion states. But  
10 that's one of the items that we look at.

11 Q. Okay. Looking at number 17, there's an article  
12 entitled The Disproportionate Impact of Voter ID  
13 Requirements on the Electorate, New Evidence From  
14 Indiana. That's an article that you are an author  
15 on?

16 A. Yes.

17 Q. And are your conclusions in that article against  
18 voter ID requirements?

19 A. The conclusions in the article, I believe, are  
20 that just reviewing the evidence from a survey that  
21 we conducted in the State of Indiana, that in the  
22 State of Indiana, we found voter ID requirements  
23 would more heavily affect African-Americans.

24 Q. And Gabriel Sanchez is a co-author on that  
25 article?

1 A. Yes, that's correct.

2 Q. Have you ever written on the opposite side of  
3 the voter ID requirement issue, coming out in support  
4 of them?

5 A. We haven't really taken a side. We just  
6 reviewed the evidence. Some of our early work, we  
7 were just doing investigations all around without  
8 taking any sides at all. So I don't really  
9 understand the question.

10 Q. I'll ask a slightly different question. Have  
11 you ever reported findings that show that voter ID  
12 requirements are more beneficial than they are  
13 harmful?

14 A. Again, I don't know how --- I don't think we  
15 describe our data as beneficial or harmful. I think  
16 we describe the rates of possession and then, you  
17 know, allow readers to draw conclusions about, you  
18 know, what would happen. So I don't necessarily  
19 agree with the phrasing of the question.

20 Q. Okay. Well, then I'll change the phrasing of  
21 the question. Referring to the article you just  
22 described and the conclusions you reached as to the  
23 consequences for African-Americans, have you ever  
24 published findings that indicate that  
25 African-Americans are not disenfranchised or harmed

1 by voter ID requirements?

2 A. Well, in the current survey, as we reviewed  
3 earlier, one of the tables where we identified  
4 ethnicity, we identified that Hispanics in the State  
5 of Pennsylvania would be the most affected, but that  
6 African-Americans had similar rates of possession as  
7 whites here in the State of Pennsylvania.

8 Q. Okay. Switching to some of your other research  
9 for the people who employed you here, you were in  
10 January of this year paid \$60,000 by the ACLU for six  
11 months of work in Wisconsin; is that right?

12 A. No, I wasn't paid. Most of that money went to  
13 the survey research center, Pacific Market Research.  
14 I was paid just for my work on the expert report.  
15 That was the overall amount of the cost of the  
16 project.

17 Q. Okay.

18 A. But yes, I did work with them, as we discussed  
19 earlier this morning.

20 Q. And you consulted or testified for the ACLU on  
21 at least three other occasions, Milwaukee and twice  
22 in the State of Washington; is that right?

23 A. Once in the State of Washington and once in the  
24 State of California.

25 Q. Okay. I'd like to talk about the purpose of the

1 survey that you conducted for this case. Am I  
2 correct that the objective of your report is to  
3 determine the rates of possession and lack of  
4 possession of valid photo identification among the  
5 eligible voting population, the registered voting  
6 population and 2008 voters?

7 A. Yeah, I believe you read that directly from the  
8 report.

9 Q. Yes. And so you were retained to create a  
10 research design that would allow for an examination  
11 of the percent of the these three groups, eligible,  
12 registered and 2008 voting populations; correct?

13 A. Yes.

14 Q. And you were asked about this during your Direct  
15 Examination. But at page five of your report in  
16 about the middle, you conclude or opine that the  
17 approach that you took, that being a survey, is the  
18 most accurate way to assess rates of possession of  
19 valid photo ID, because you were able to directly  
20 contact the voters and figure out whether they had  
21 multiple forms of ID or whether they had IDs that  
22 were expired; correct?

23 A. Yeah, I believe that is somewhere on the top of  
24 page five.

25 Q. Okay. And are you aware that the Respondents in

1 this case produced to the Petitioners the entire  
2 database of registered voters as well as the entire  
3 database of persons holding a driver's license or  
4 photo ID card with PennDOT?

5 A. I have heard that someone had done some analysis  
6 of that, yes.

7 Q. Okay.

8 A. I have not received a copy of it.

9 Q. Okay. And so from that answer, I can conclude  
10 correctly that you did not do any examination of that  
11 raw data in the two databases?

12 A. That's correct, not for Pennsylvania.

13 Q. And you did not conduct a comparison here in  
14 Pennsylvania of those two databases to determine  
15 which registered voters do not show up in the PennDOT  
16 database?

17 A. I have not.

18 Q. And you've opined here today that the PennDOT  
19 driver's license, number one, and photo ID, number  
20 two, are the main forms of identification among  
21 Pennsylvania voters; correct?

22 A. The driver's and non-driver photo ID card in our  
23 survey were the two documents that people indicated  
24 they had access to.

25 Q. Okay. So while the approach of comparing two

1 different databases might have the weakness that you  
2 point out that it doesn't get at multiple forms of  
3 ID, don't you at least know when you compare two  
4 large databases like that that you are counting for a  
5 hundred percent or close to a hundred percent of one  
6 type of ID?

7 A. Well, a lot depends on the analysis. I've seen  
8 lots of database analysis before, in which there are  
9 lots of errors and problems in merging and matching.  
10 This is an extremely technical and sophisticated  
11 thing to do, to merge and match the files. And so  
12 that by itself can produce a whole host of errors,  
13 which is one of the reasons that Professor Sanchez  
14 and I have opted to focus on surveys because we don't  
15 have that possible error of merging and matching not  
16 working correctly.

17 Q. So the challenge when you compare two databases  
18 is making sure that you're matching them up and  
19 getting an accurate apple to apple instead of apple  
20 to orange sort of match; right?

21 A. More or less.

22 Q. It's the matching that's the challenge, it's not  
23 lacking a complete set of data, is it?

24 A. Well, you still lack the people who say only  
25 have a passport or a military ID or other sorts of



1 things.

2 Q. Fair point. I was saying you're not lacking  
3 data as to the document form of ID in Pennsylvania.  
4 You have all of the PennDOT driver's license and  
5 photo ID holders. It's just a matter of whether you  
6 can match them up with the other database to make a  
7 comparison; right?

8 A. Presuming that both databases are accurate and  
9 up to date, yes.

10 Q. And so for --- on the other hand, a phone  
11 survey, for that to have any reliability, as you  
12 said, it comes down to the sample design being done  
13 correctly; right?

14 A. Yes.

15 Q. And also the questionnaire being worded in a way  
16 that allows for accurate and unbiased responses?

17 A. Yes.

18 Q. So if --- just focusing now on the survey  
19 because you've identified the challenges of a  
20 database match, focusing on the survey, if there are  
21 mistakes or if it's --- if you don't do correctly the  
22 sample design or the questionnaire, the  
23 representativeness of a survey will suffer?

24 A. Sure. There are a lot of ways that if the  
25 survey is not designed carefully that there could be

1 questions about it.

2 Q. Okay. Let's talk about the target population  
3 and the sample populations. In the language of  
4 statistics, am I right that these three categories,  
5 eligible, registered and voted in 2008, are your  
6 target populations?

7 A. Correct.

8 Q. So in other words, with your survey, you are  
9 trying to give an accurate picture of all  
10 Pennsylvanians that fit into those three populations  
11 and whether or not they possess a valid photo ID?

12 A. Yes. Our starting point, though, was to start  
13 with eligible --- citizens eligible in the  
14 population. And so the overarching design is geared  
15 towards ensuring that first step. Once we have  
16 citizen-eligible respondents on the phone, we can  
17 then attempt to determine if they're registered to  
18 vote and if they voted.

19 Q. Okay. I'll just focus on the one of the three  
20 categories, eligible voters. And the idea, as you  
21 said, with saying eligible in addition to those who  
22 are already registered is the assumption that people  
23 could be registering today, tomorrow, et cetera;  
24 right?

25 A. Correct.

1 Q. So taking just the eligible voter population,  
2 that's --- you are attempting with your survey to  
3 give an accurate picture of that group of people in  
4 Pennsylvania and whether they have a valid photo ID  
5 law --- a valid photo ID under the photo ID law?

6 A. Yes.

7 Q. Okay. And the sample population is the  
8 percentage of that target population that actually  
9 has some chance of getting a phone call during the  
10 survey; right?

11 A. More or less.

12 Q. Okay. So obviously if you want to have a  
13 representative sample of all eligible voters in  
14 Pennsylvania, you have to make sure that there aren't  
15 large groups of people within that target population  
16 that have zero chance of getting a phone call; right?

17 A. You would want to minimize that to the extent  
18 that you could.

19 Q. Okay. So this could be done with any of the  
20 three target populations, but we'll stick with  
21 eligible voters in Pennsylvania. If there are  
22 registered Pennsylvania voters who are serving in the  
23 military away from home between January 21 and July  
24 2nd, 2012, there's little or no chance that they're  
25 going to get a phone call from you; right?

1 A. I'm not certain if --- they would be eligible if  
2 they had a phone number that was a domestic phone  
3 number that was listed on the rates --- or on the  
4 rolls to participate in the study. I would have to  
5 look and confirm if we made any international calls  
6 or not, but they wouldn't be excluded if they had a  
7 domestic phone number that was listed.

8 Q. And when you say you would have to look into the  
9 record to see if international calls were made,  
10 that's not anything that's been in the report before  
11 the Court, is it?

12 A. No.

13 Q. Okay. So if there are registered Pennsylvania  
14 voters who don't have a landline and have a cell  
15 phone that was not on the list used by Pacific Market  
16 Research, there's no chance that they're going to get  
17 a phone call; right?

18 A. The cell phones are also similarly randomly  
19 dialed. So there are known cell phone exchanges, and  
20 the cell phones --- any possible cell phone number  
21 could have been dialed.

22 Q. Okay. I think we need to get to an issue that  
23 you're addressing right now. And that's that Pacific  
24 Market Research, which was your survey firm, had a  
25 list of phone numbers; right?

1 A. The way a random digit dial works is that the  
2 list is generated randomly. So right now if we  
3 generated a random list of numbers, you and I might  
4 generate a different list. So it's separate from  
5 going through a phone book and getting the actual  
6 list of phone numbers.

7 Q. Okay. But you refer to them using a list in  
8 your report, don't you?

9 A. If I refer to a list, it's only the list of  
10 random numbers that have been generated.

11 Q. Okay. But ---.

12 A. It's important to note that it is not a listed  
13 sample for the statewide RDD.

14 Q. Okay. So when you say list in there, you don't  
15 provide any information about the details of that  
16 list, such as what numbers are included in that list,  
17 where the numbers are drawn from, do you?

18 A. Yes.

19 Q. Where in your report do you provide details  
20 about the list?

21 A. I describe the list in the methodology, talking  
22 about how random digit dial works in saying that,  
23 again, it's not a listed sample. I believe I  
24 specifically distinguish it from a listed sample and  
25 that numbers are randomly generated. And then those

1 randomly generated numbers populate a computer which  
2 will randomly pick some of those phone numbers to  
3 call or dial.

4 Q. And cell phone numbers are included in this  
5 source of randomly generated numbers; right?

6 A. Correct. They are separate prefixes for cell  
7 phones. You can create a random digit dial list for  
8 cell phones that you will not go to the cell phone  
9 carriers and get their numbers. So even somebody who  
10 activated a phone today could be, technically,  
11 eligible because we could randomly pick their number.

12 Q. Okay. And what I'm saying is, in your report is  
13 there any way to tell which carriers are included in  
14 the random digit dial?

15 A. All of them.

16 Q. Does that appear in your report?

17 A. That's how random digit dial works, that these  
18 numbers are just made up out of thin air, so every  
19 possible number that exists in Pennsylvania could  
20 have been dialed.

21 Q. And the computer generation, is that something  
22 that you put together?

23 A. No.

24 Q. Is that something that's in the possession of  
25 Pacific Market Research?

1 A. Yes, they have a list of numbers.

2 Q. Okay. And so you're testifying that their  
3 system draws on all phones numbers available?

4 A. Correct.

5 Q. And is that described in the report?

6 A. That's how random digit dial works, and I  
7 believe I described it fairly accurately.

8 Q. Speaking of Pacific Market Research, you  
9 indicated that they were selected by you and your  
10 colleague, but they were separately compensated and  
11 retained; is that correct?

12 A. That's correct.

13 Q. Do you know how much --- have you seen the  
14 agreement between the people who hired you and  
15 Pacific Market Research?

16 A. I don't believe so.

17 Q. Do you know how much they're being paid for  
18 their contribution to this report?

19 A. I don't know exactly.

20 Q. Do you know if they were provided any different  
21 instructions on how to do their portion of this  
22 report?

23 A. We provided the instructions, Professor Sanchez  
24 and myself.

25 Q. And do you know if the attorneys who hired you

1 or whoever hired you provided a separate set of  
2 instructions? Do you have any way of knowing?

3 A. Not to my knowledge.

4 Q. Getting back to the people who might have little  
5 or no chance of being in the sample population, you  
6 indicated that the numbers are drawn from every  
7 possible number in Pennsylvania; is that right?

8 A. Correct.

9 Q. So if there are registered voters who, for  
10 example, live in Philadelphia but they have no  
11 landline and they have a cell phone where they work  
12 in New Jersey, they're not going to be in that group,  
13 are they?

14 A. I believe they would not be.

15 Q. Now, the actual calls were made during the time  
16 period of June 21st of this year and July 2nd of this  
17 year; right?

18 A. That's correct.

19 Q. Would you agree with me that that's a common  
20 time for summer vacations that people might not be at  
21 home?

22 A. Possibly.

23 Q. Well, let me step back a bit. You reside in the  
24 State of Washington; right?

25 A. Yes.



1 Q. Are you familiar with how common or not common  
2 it might be in Pennsylvania to go to the beach during  
3 that time period of the year?

4 A. I am not.

5 Q. Okay. Well, let's --- children are generally  
6 out of school during that time frame; right?

7 A. I guess. Depends on the school calendar.

8 Q. Okay. Was that ever considered as a factor,  
9 that this might be during a vacation season and  
10 people would not be home?

11 A. No. The reason that the survey was in the field  
12 for 11 days is to allow us to maximize the number of  
13 attempts.

14 Q. Sure. But that doesn't explain why it started  
15 on June 21st and ended on July 2nd, does it? Was  
16 there a reason for picking that period of time?

17 A. Well, we needed to get the data collected as  
18 soon as possible so that we could analyze the data  
19 and prepare the report for this trial.

20 Q. So it had more to do with when you were retained  
21 and as soon as you could start? You didn't decide  
22 to ---?

23 A. Correct. Correct.

24 Q. So it was not considered that this might be a  
25 time period when a number of people might not be

1 home?

2 A. I don't think that it would produce any possible  
3 bias at all.

4 Q. Well, if that were true wouldn't that indicate  
5 that people who can afford to take a summer vacation  
6 would be less represented than those who can't afford  
7 to take a summer vacation?

8 A. Possibly only people who only have a landline  
9 and were gone for more than 11 days.

10 Q. Well, even if they had a cell phone, wouldn't  
11 that affect the likelihood of participation if people  
12 were away from home?

13 A. I don't have any data on how many people answer  
14 their cell phone all over the place.

15 Q. Okay. And again, wouldn't this factor  
16 potentially indicate that those who can't afford to  
17 go away during this time frame are more likely to be  
18 home?

19 A. You know, people travel at all times, so I don't  
20 believe there would be any bias at all.

21 Q. Well, if that were the case, again, assuming  
22 that people are away during that time, wouldn't that  
23 have implications for the level of income that a  
24 person might have, the level of education the person  
25 might have, and perhaps even their racial or ethnic

1 background?

2 A. The understanding of survey research is that if  
3 you implement a poll that at any given day that poll  
4 is implemented some occurrences are happening.  
5 Someone is away from their home that day. Someone is  
6 just coming home from a vacation or a business trip  
7 that day. Someone just activated a cell phone that  
8 day. So unless there is evidence to suggest that  
9 this time frame independently biased that, we would  
10 have no reason to suspect otherwise. Secondly, even  
11 if we slightly underpolled people in the highest  
12 income bracket, as I discussed previously, we put  
13 post-application weights on, so that the tabulation  
14 of the data is an exact match to the demographics of  
15 the State of Pennsylvania. So if ten extra people  
16 who were really wealthy were on a two-week long  
17 vacation that should have been polled but they  
18 weren't, they are accounted for in post-application  
19 of this. So if the expected number of wealthy people  
20 in the poll should have been ten percent but it was  
21 only nine, we have adjusted it so that it was  
22 accurately reflecting the full demographics, not just  
23 at the income level, everything.

24 Q. Okay. Now, along those same lines in certain  
25 factors that you would expect in any survey, isn't it

1 true that if you make phones calls in the same time  
2 period every day there will inevitably be people who  
3 are never going to be around because of work  
4 schedules?

5 A. Correct. That's why we call on weekends and try  
6 to leave the large calling window as possible.

7 Q. Right. And so you made three calls ---

8 A. Correct.

9 Q. --- total to a number?

10 A. To each number.

11 Q. To each number. So if somebody works Monday  
12 through Friday, and two calls were made during Monday  
13 through Friday, there's only a one call chance that  
14 you're going to catch them on the Saturday and Sunday  
15 time frame; right?

16 A. We would have to look at how the calls were  
17 spaced out, but each number was called three times.

18 Q. Is that data about the rotation or the spacing  
19 out of phone calls part of your report?

20 A. No. That's available from Pacific.

21 Q. And so there are no appendixes or citations to  
22 Pacific Market Research information like that, is  
23 there?

24 A. No.

25 Q. Okay. And so I guess along the same lines, if

1 you have someone in a call center working for  
2 Pacific, we don't know if they're calling, getting no  
3 answer, hanging up, calling the same number again,  
4 hanging up?

5 A. They're not allowed to do that. The computer  
6 regulates when the call back happens.

7 Q. And that's generated randomly?

8 A. Yes. Well, we can set parameters depending on  
9 the length of the study and try to space them out  
10 over the length of the study for the exact reason  
11 that you identified. If you doing a three-day study,  
12 you would set call backs for the following day. If  
13 you were doing a six-day study, it might be every  
14 other day, et cetera. So that's in the computer, it  
15 tells when the call backs take place. Unless the  
16 respondent answers and specifically requests and says  
17 call me back tomorrow 7:00 p.m., in which case they  
18 will.

19 Q. Okay. And so basically, the random generation  
20 of this random digit dial, I believe it was, is done  
21 entirely by the computer system within the possession  
22 of Pacific Market Research; right?

23 A. That's my understanding, yes.

24 Q. And you've described generally your  
25 understanding of that computer system, but keep in

1 mind that we don't have a witness from Pacific, as  
2 far as I know, who's going to describe that. There's  
3 a right way and a wrong way to do truly random --- to  
4 get a truly random generation of numbers, isn't  
5 there?

6 A. There's really only one way to do it.

7 Q. There's one way to do it. I mean, in other  
8 words, there are ---?

9 A. There's not really a wrong way, there's only one  
10 way.

11 Q. So you're saying it's not possible that their  
12 computer system could generate numbers that a  
13 statistician would say are not truly random?

14 A. No.

15 Q. That's not possible?

16 A. Not for the system that they use, no.

17 Q. Okay. So you're testifying that you're familiar  
18 with their system and it's not possible that it  
19 generated numbers in a non-random fashion?

20 A. No.

21 Q. But we don't have any information in your report  
22 that would back that up --- I mean, that would  
23 provide any data one way or the other on that, do we?

24 A. It's a fairly, noncontroversial issue, so just  
25 the description of random digit dial explains what's

1 happening. Any other survey methodologist would look  
2 at that and, you know, agree that it's happening. If  
3 there was a specific cause for concern, then someone  
4 might ask to look at other sorts of information.

5 Q. And my point is that as an expert witness,  
6 you're speaking to lay people who are not other  
7 survey methodologists and so are we to assume this  
8 was all on the level because PMR is a --- Pacific  
9 Market Research is a reputable firm?

10 A. Well, that, and we give instructions to say we  
11 want a random digit dial that's randomly generated.  
12 They have the capability to do that so they would  
13 have no incentive to not do that.

14 Q. Isn't one method of ensuring that there's an  
15 equal probability of people from all over --- random  
16 people being called is to do cluster samples, for  
17 example, a number of calls only in a rural area, a  
18 number of calls only in an urban area?

19 A. No. In my opinion that technique is not nearly  
20 as accurate as a pure RDD.

21 Q. I have some specific questions about statements  
22 made in your report. On page 17, you make a  
23 reference to known cell numbers. That indicates to  
24 me that there are unknown cell numbers. Can you tell  
25 us anything about the universe of unknown cell phones

1 numbers?

2 A. I was talking about unknown cell exchanges. So  
3 those are the first few digits of the cell phone  
4 numbers. And the cell phone carriers and FCC  
5 maintains a list of exchanges that are eligible for  
6 phone numbers --- cell phones. And there are some  
7 exchanges that are not eligible to be cell phone  
8 numbers. So that's what makes it possible to RDD and  
9 to generate these lists of random cell phone numbers,  
10 is that there are known cell phone exchanges, not the  
11 actual full ten-digit number, but just the exchange.

12 Q. We heard some testimony yesterday about people  
13 of limited means who had a prepaid cell phone with an  
14 allotted number of minutes on it. Would those  
15 numbers be included in the random digital dial?

16 A. Yes, they should be.

17 Q. Do you know for sure that they are?

18 A. There's no reason they wouldn't be.

19 Q. Starting near the top of page 18, you state that  
20 allowing Spanish to be an option, quote, unquote,  
21 ensures that no communication problems will occur.  
22 If there are a large populations in Pennsylvania,  
23 say, of people from Asian countries who struggle with  
24 English and don't know any Spanish, you can't really  
25 say that allowing the Spanish option ensures that



1 there are no communication breakdowns, can you?

2 A. I think that we are referring to no  
3 communications breakdowns for the Hispanic sample,  
4 but your point would be correct.

5 Q. Okay. And I'm not going to belabor the point  
6 then, but I mean, if there are --- you have people  
7 coming from eastern European countries in Pittsburgh  
8 or towns around Scranton, the same issue, they may  
9 not speak Spanish so that doesn't really enhance the  
10 communication there, does it?

11 A. We only offered the survey in English and  
12 Spanish, so I don't have the current rates of other  
13 language isolation, which is what is referred to.  
14 That's the number of people who only speak another  
15 language, but they don't have the ability to speak  
16 English.

17 Q. Just going to a basic assumption here, at the  
18 very outset of your report, you tout the  
19 effectiveness of the survey approach over the  
20 database comparison approach because it allows you to  
21 communicate directly with the voters; right?

22 A. Yes.

23 Q. So obviously communication breakdowns would  
24 diminish the benefit of going the route of surveys  
25 instead of database comparison?

1 A. If there were a large number of people who  
2 didn't speak English or Spanish and they had  
3 systematically different rates of access, then yes.  
4 If their rates of access were exactly the same as the  
5 English and Spanish speaking populations, then there  
6 would be no bias.

7 Q. Okay. Turning to the questions and the possible  
8 answers, we don't have, as part of the report, any of  
9 the actual answers from participants, do we?

10 A. You mean the raw data?

11 Q. Right.

12 A. Correct.

13 Q. So we might have been --- by raw data, just so  
14 we're on the same page, the indications, and you  
15 mentioned earlier the coding, what you would put in  
16 for a yes, what you would put in for a no, we don't  
17 have that from every single person who was called as  
18 to what their answers were; right?

19 A. It's not on this report.

20 Q. Okay. And is there any way in your report for  
21 us to tell that every time somebody said I don't know  
22 or I'm not sure that --- is there any way to know if  
23 that they understood the question?

24 A. All the questions, the interviewers are  
25 instructed to repeat the question, if the respondent

1 has any trouble understanding exactly what the people  
2 are getting asked in the question. Still sometimes  
3 respondents don't know the answer to a question, so  
4 they might indicate I don't know.

5 Q. And they might truly just not know the answer to  
6 the question and they understand the question. But  
7 isn't it possible that they'll simply say I don't  
8 know if they don't understand it?

9 A. No. Usually, they'll say I don't understand the  
10 question and repeat it. And the interviewers then  
11 repeat the question to them.

12 Q. But if it's not that way, there's no way to tell  
13 from the raw data or from your report?

14 A. I mean, in all of the surveys that I've overseen  
15 and at Pacific Market Research, the surveyors do  
16 interviews day in and day out, so they have a very  
17 good rapport with respondents. They understand  
18 typically when a respondent doesn't understand the  
19 question or when you ask him a factual question that  
20 they don't know the answer to. I don't think that's  
21 any concern in this case.

22 Q. You indicated at the bottom of page 17 that  
23 numbers were dialed and redialed up to three times to  
24 avoid, quote, any possible nonresponse bias. Is  
25 there something magical about making three calls that

1 makes you so certain that there is no nonresponse  
2 bias in this survey?

3 A. There's been a number of academic studies that  
4 look at this issue called nonresponse bias. And  
5 generally, the largest finding is that if you call  
6 the number at least twice and you get a healthy  
7 number of people who answer on the second attempt,  
8 that you eliminated almost all of the nonresponse  
9 bias. If you call three times, you virtually  
10 eliminated all of the nonresponse bias. And so it's  
11 a number that most people settle on because in peer  
12 reviews, they've demonstrated that that's the number  
13 that you need to get. At addition call backs, you  
14 don't really yield that many more completes. And the  
15 person who answers on the fourth attempt is not  
16 subsequently different than the person it took three  
17 attempts to answer.

18 Q. I'd like to turn to what is question nine in the  
19 survey instrument, which says is the name that is  
20 printed on your driver's license or photo ID your  
21 full legal name exactly as it would appear on the  
22 Pennsylvania voter registration record or is there a  
23 difference. Do you have any information to verify  
24 these responses?

25 A. Let me get a copy of the instrument to answer

1 that.

2 Q. I'm on page ---.

3 A. I don't have a copy of the instrument.

4 Q. So take your time. Go to question nine.

5 A. Yes.

6 Q. And I'll start the question over again. There  
7 was testimony during the Direct about direct match  
8 versus substantial conformity. Is it your testimony  
9 that it would be empirically difficult to get an  
10 answer that you can rely on if you allowed  
11 substantial conformity to be the standard in that  
12 answer?

13 A. Yes. We thought that that would be difficult  
14 for the respondent to objectively understand what  
15 that meant and so we opted for this version of the  
16 question.

17 Q. Right. But you understood that the voter ID law  
18 says substantial conformity; right?

19 A. Correct. Yes.

20 Q. Okay. And you have expressed a concern that  
21 poll workers will have discretion in deciding whether  
22 there is substantial conformity?

23 A. I think that it is --- I mean, my own personal  
24 opinion is that it is a nonobjective criteria and  
25 that different reasonable people could interpret it

1 differently and that each individual poll worker  
2 could interpret that somewhat differently.

3 Q. Okay. So when we get to the end of the major  
4 conclusions of your report that are expressed in the  
5 tables, again sticking with eligible voters, as we  
6 did at the beginning of this Cross Examination, in  
7 table four, you have a total number of people who do  
8 not have a valid ID in Pennsylvania among the  
9 eligible voters at 14.4 percent?

10 A. That's correct.

11 Q. So if we just move up a couple from there ---  
12 I'm sorry. Right above that total is the number 4.3  
13 percent for has a non-expired ID, but the name is not  
14 conforming. So that's entirely based on the answers  
15 given to you by the participant as to whether their  
16 name was a direct match?

17 A. That's based on the answer to question nine.

18 Q. Okay. But I mean, isn't it possible that ---  
19 and again, this goes back to the discretion that the  
20 poll workers that you have. Isn't it possible that  
21 the person answering your question might see that  
22 their name says Jim on one and James on the other,  
23 and they say, well, that is a match so their answer  
24 is a direct match?

25 A. It's possible that a respondent in that

1 situation of Jim and James might think that that's  
2 close enough match and say it's a match. And so we  
3 would not be excluding that person or it's also  
4 possible that they might say that is not a match.

5 Q. So that person could say actually, no, because  
6 one says Jim and the other says James, but another  
7 participant might say, Jim, James, yeah, it's a  
8 direct match; right?

9 A. It's possible that they might say yeah. The way  
10 we worded the question was whether or not your full  
11 legal name that is printed on your photo  
12 identification card is a match, is an exact match to  
13 what --- the name that would be listed on the  
14 Pennsylvania voter registration record is. So I  
15 would suggest that most people who don't match would  
16 say no.

17 Q. Isn't it possible, though, that part of this 4.3  
18 percent because of the discretion that poll workers  
19 have might be diminished when it comes to a poll  
20 worker saying that Jim and James is a substantial  
21 conforming match?

22 A. Yeah, I think we reviewed that earlier in the  
23 Direct that some of these folks might be close enough  
24 that a poll worker believes that they're eligible to  
25 vote. Many of them may not be. And I think the

1 larger concern that we had was that that may not be  
2 applied equally. There could be certain types of  
3 precincts in parts of town where the substantial  
4 conforming is more strictly applied. There could be  
5 other places where it's more loosely applied.

6 Q. Okay. And I think we can agree that if somebody  
7 has a photo ID and that their first name is Frank and  
8 they have a voter registration and their first name  
9 is Jim, that that's not a match and that doesn't  
10 substantially conform; right?

11 A. That would be my interpretation.

12 Q. Right. So that person would definitely stay in  
13 the 4.3 percent in table four, wouldn't they?

14 A. Yes.

15 Q. But much more commonly there might be somebody  
16 with the Jim and James situation, and that person  
17 could very well be approved to vote by the poll  
18 workers?

19 A. I don't know how much --- how common that would  
20 be, so I don't know.

21 Q. You don't know how common that would be?

22 A. We don't know among these 4.3 how many of them  
23 are considerable mismatches and how many of them are  
24 nickname mismatches that are common nicknames.

25 Q. Right. And because of the discretion that is



1 with the poll workers or in the case of a provisional  
2 vote --- well, I'll back up. Are you aware that if a  
3 poll worker were to say that this is not a  
4 substantial conformist that that person can still  
5 cast a provisional vote and then it would go before  
6 the County Board of Elections?

7 A. That's usually the most cases that there is a  
8 discretion that is in play. Provisional ballots are  
9 available.

10 Q. So there's a couple levels of discretion then,  
11 isn't there, as to allowing a name to be  
12 substantially conforming to the ID?

13 A. It's possible. I mean, the issue is --- and I  
14 think this whole discussion goes to why it's an  
15 important and fuzzy issue, is that these 4.3 percent  
16 of Pennsylvanians are indicating to us that their  
17 name doesn't match. And they are then going to be at  
18 risk of finding themselves in some sort of limbo  
19 where possibly they'll get denied, possibly they'll  
20 have a provisional ballot. They might require  
21 additional follow-up. They have to send a letter  
22 somewhere or appear somewhere. And so it's putting  
23 extra burden, including at the one end, all 4.3  
24 percent of them could be prevented from voting if  
25 that's determined that their names don't

1 substantially conform.

2 Q. And by exactly the same rational, 4.3 is a fuzzy  
3 number in that every one of them could be determined  
4 to be in substantial conformance; couldn't they?

5 A. I think that it would be a very --- I mean, I  
6 would be very surprised if all 4.3, because we know  
7 for sure that there are at least a number of women  
8 whose names have changed through marriage and other  
9 things like that.

10 Q. But you said you don't know the likelihood ---  
11 now, you're getting into likelihoods, though.

12 A. That's correct.

13 Q. So we don't know that 4.3 percent is a hard  
14 number, but we also don't know that it's going to be  
15 zero, but it could be anywhere in between depending  
16 on what the poll workers and the County Boards of  
17 Elections do with names that may or may not  
18 substantially conform?

19 A. Correct.

20 Q. And towards getting a precise answer that you  
21 can empirically rely on in that same question, it was  
22 just the one question, wasn't it, does your name ---  
23 is your name a direct match?

24 A. Yes, just question nine.

25 Q. So it's not a series of questions that allows

1 them to get out a card and confirm that each  
2 character is in the same order and so forth?

3 A. No.

4 Q. And if there are voters who have, say, a married  
5 name on a photo ID and a maiden name on a voter  
6 registration card, those people could conceivably  
7 change their voter registration over the next three  
8 months; right?

9 A. It's possible that they could change their voter  
10 registration records.

11 Q. Well, that's not something that --- the report  
12 doesn't indicate that that's not going to happen,  
13 does it?

14 A. No, it's just quite unlikely. Most --- all of  
15 the research suggests that once people register, they  
16 almost never update their registration records. And  
17 that --- so that's an extremely uncommon practice for  
18 people to change their voter registration records.

19 Q. So you don't think that with news about the  
20 voter ID law that that 4.3 percent is going to go  
21 down even further because people with a married name  
22 are changing their voter registration to keep them  
23 consistent?

24 A. Well, I don't know how many people are going to  
25 change, but new people would also be getting married

1 who are currently a perfect match, and by election  
2 day, they may not. So some people come in to the  
3 system who are now --- some of our people are perfect  
4 matches right now. But if they get married and  
5 change their name and get a new driver's license,  
6 then they would no longer be a perfect match. This  
7 is the most common thing that happens is that after  
8 people get married and change their name, women in  
9 particular, they might get a new driver's license,  
10 but they're already registered to vote and they would  
11 not probably be in the voter registration system. So  
12 while some people could perhaps take steps to update  
13 their voter registration record, other people will be  
14 --- every time people are getting married and  
15 updating their driver's license, if they're not going  
16 and updating their voter records, which is extremely  
17 rare, then they're going to then be a mismatch.

18 Q. And this gets to an important point that these  
19 tables that we went through are a snapshot of  
20 Pennsylvania voters between June 21st, 2012 and July  
21 2nd, 2012; right?

22 A. That's correct.

23 Q. That's the data that you collected, that's what  
24 in these tables?

25 A. Correct. The way that we typically interpret

1 surveys is that we would expect that if we replicated  
2 the study at any time that we would get --- with the  
3 same sample methodology that we would get virtually  
4 identical results within that margin of error, unless  
5 there was some reason to suspect otherwise.

6 Q. Okay. On the same table, if we go up one from  
7 the 4.3 percent, you list that 8.7 percent of  
8 eligible voters has an ID but the ID is expired. Did  
9 I interpret that correctly?

10 A. Yes. And we said earlier that by expired we  
11 mean not current for purposes of voting.

12 Q. So more than a year expired on a driver's  
13 license would be part of that?

14 A. Or non-driver ID, correct.

15 Q. Okay. And so are you aware that someone who had  
16 a driver's license or a photo ID card from PennDOT  
17 any time since 1990 can simply go to a driver's  
18 license center and have their photo taken and get a  
19 free photo ID for voting purposes?

20 A. Correct. That they are able --- eligible to do  
21 that. The question is whether or not these people  
22 will actually do it.

23 Q. Whether they will do it, sure. But in this 8.7  
24 percent, is there any information in your report to  
25 indicate which of those people fall within the 1990

1 to the present population?

2 A. We don't have a table that breaks that down.

3 Q. So if people do take advantage of that option,  
4 they may be in that 8.7 percent and over the next  
5 three months it goes down for that reason, doesn't  
6 it?

7 A. It's possible that people who have an expired ID  
8 could return and go through the process to renew it.  
9 In my opinion, it's extremely unlikely. That's not  
10 something that is common practice that people are  
11 going to be doing. A number of the people perhaps  
12 have expired IDs that are quite expired. Obviously,  
13 if their ID is expired by only a year, which would  
14 already be expired for purposes of driving, we're  
15 counting them as eligible. And so it's been, you  
16 know, a year already and they haven't gone and  
17 updated their ID, so typically we always see about  
18 the same rate within a population which carries an  
19 expired ID card. We don't usually see that suddenly  
20 go down to just one percent. It almost always comes  
21 that at any given time, you know, there's about eight  
22 percent or so of people in the state that have an  
23 expired ID card.

24 Q. But we have a special occasion, though, or a  
25 special set of circumstances with the change in the

1 law in Pennsylvania. So my question is, isn't it  
2 possible that in order to comply with the law, if for  
3 no other reason, part of that 8.7 percent will become  
4 among the population that has an unexpired ID? I  
5 mean, isn't that likely to happen to some extent that  
6 over the next three months people will go in and get  
7 a valid ID?

8 A. I don't use the word likely. But I would agree  
9 that it's possible that people could go and get their  
10 ID. We could talk more about why I don't think that.

11 Q. Right. And that's getting into the outreach and  
12 the public education and your scepticism that that's  
13 going to have any effect; is that right?

14 A. That's part of it. But as you add, there's an  
15 entirely long line of research in political science  
16 specifically on this issue of voter registration and  
17 voting regulations that goes all the way back to the  
18 research on poll taxes that was being conducted in  
19 the '30s and '40s and '50s. That regardless of  
20 whether it's free or not free, whatever the case is,  
21 the more hurdles and steps that you require for  
22 people to go through, each one dramatically decreases  
23 the probability that people will do that. So we  
24 could say it's possible that someone could drive  
25 their car an entire lap around the state. They have

1 the ability to do that. But they're unlikely to do  
2 that. The more hurdles that you put in front of a  
3 person, the research only points in one direction,  
4 that that would decrease the likelihood that they  
5 would take those steps to do that. And then that  
6 gets coupled with what you mentioned before, my  
7 scepticism that in the compressed amount of time that  
8 the outreach could be extremely successful.

9 Q. I'm going to switch to a slightly different  
10 topic that I'm not sure was covered adequately  
11 before. But voter turnout is a phenomenon that  
12 you've studied extensively, isn't it?

13 A. Yes.

14 Q. And we're not making an assumption with these  
15 numbers or these tables that a hundred percent of the  
16 eligible voters are going to show up on November 6th  
17 and not have a photo ID; right?

18 A. I don't anticipate there will be a hundred  
19 percent turnout of the eligible population.

20 Q. Okay. And do you expect that there will be a  
21 hundred percent turnout of registered voters in  
22 November?

23 A. No.

24 Q. And do you expect that there will be a hundred  
25 percent turnout of 2008 voters in November of this



1 year?

2 A. They'll have, by far, the highest rates of  
3 attempted participation in 2012.

4 Q. Out of those three?

5 A. Yes.

6 Q. That doesn't mean they're going to be a hundred  
7 percent?

8 A. No. But it should be close to 95.

9 Q. Are you aware of recent data in Pennsylvania  
10 that even in presidential elections the number was  
11 closer to 65?

12 A. That's among the eligible.

13 Q. Okay. You're saying --- but okay. So since  
14 then ---?

15 A. I'm saying among people who vote in presidential  
16 elections that's the denominator, that they always  
17 tend to vote in presidential elections.

18 Q. So in other words, if we're not looking at a  
19 hundred percent --- we've been talking about the  
20 eligible voter population from the beginning, we're  
21 not looking at 14.4 percent of the population  
22 necessarily showing up in November and not having  
23 --- that's not your testimony? You're just saying  
24 those were not equipped?

25 A. I think that there's a miscommunication here.

1 The idea is that among the people who are eligible  
2 to vote 14.4 percent do not have the ID to vote.  
3 Some of the people who don't have the ID to vote are  
4 not going to vote. Some of the people who do have  
5 the ID to vote may not vote. And so unless there's  
6 evidence to suggest that those 14.4 percent are  
7 absolutely not going to vote, we would expect,  
8 especially because those rates are quite consistent  
9 for the people who actually did vote, it's 12.6  
10 percent, that among active voters that there would  
11 be a large percentage, probably closer to the 12.6  
12 percent, who do not have a valid ID. The 2008  
13 population would be our best approximation for  
14 measuring 2012.

15 Q. Focusing on the middle of the second --- of  
16 registered voters, I'm interested in how you  
17 ascertained that people are, in fact, registered  
18 voters. If you look at question five from the  
19 instrument, the question says if you can, take out  
20 your driver's license real quick and check the  
21 expiration date. And that's pertaining to drivers  
22 who may have an expired ID?

23 A. Correct.

24 Q. Okay. But on page --- in question S3, which in  
25 my copy is page 63, the question simply asks, would

1 the official public voter records indicate that you  
2 are currently registered to vote here in Pennsylvania  
3 or not? So that question doesn't ask the participant  
4 to take out a voter registration card; right?

5 A. Well, first of all, it's not a question.

6 Q. Could you read the question?

7 A. There's two sentences before that.

8 Q. Okay. Go ahead.

9 A. In talking to people about voting, we often find  
10 that many people do not have the time to register to  
11 vote or just aren't interested in registering. How  
12 about you? Would the official public voter records  
13 indicate that you are currently registered to vote  
14 here in Pennsylvania or not?

15 Q. And is there any follow-up question to ascertain  
16 whether the person is registered?

17 A. No. I mean, most people who do have a valid  
18 photo ID tend to have it either with them or near  
19 them, so we're able to ask that follow-up question on  
20 question five. I don't know anybody who carries the  
21 voter registration card around with them, so it's not  
22 the sort of thing that you can ask. The way that we  
23 ask the question here is one that has been tested  
24 through a number of different experimental ways of  
25 testing that included the national election study

1 that we discussed earlier. And by telling the  
2 respondent that we know that lots of people aren't  
3 registered to vote and also telling them that we  
4 would like to ask what the official public records  
5 would show, that cues a high sense of giving the  
6 right answer. And so people have the sense that  
7 they're going to tell us whether or not they're  
8 actually registered to vote because we're in voter  
9 rules and procedures. So this has been determined to  
10 be one of the best ways to try to answer that  
11 question.

12 Q. So based on that, if you ask --- if a person  
13 says that they are registered, you assume that  
14 they're registered?

15 A. That's correct. We don't have their address  
16 here because it's a random digit dial survey. And so  
17 we don't attempt to look at the voter rules in this  
18 sort of capacity.

19 Q. On page 22, you discuss, quote, two possible  
20 scenarios that could negatively impact the voting  
21 eligible population in November of 2012. Did you  
22 study any scenarios that could positively affect vote  
23 eligible population?

24 A. Affect them positively in what way?

25 Q. Well, you suggest scenarios where people are

1 eligible, but may end up showing up without voter ID  
2 --- without a photo ID to enable them to vote. Did  
3 you look at any scenarios that would increase the  
4 likelihood of people showing up with photo ID to  
5 vote?

6 A. That wasn't the objective of the study. The  
7 study objective was just to determine the rates of  
8 possession. It wasn't a study to determine voter  
9 mobilization.

10 Q. At the bottom of 23, you say those who are  
11 unaware of the new voter ID law may not bring the  
12 proper credentials with them to the voting booth on  
13 election day. Is there any data to support that,  
14 they may or they may not? Is there information in  
15 your report to suggest that somebody who has the  
16 proper credentials won't bring it with them?

17 A. If they're not aware that --- the section there  
18 I refer to is that 37 percent of the voting eligible  
19 population is unaware of the law. At least some  
20 percentage of those people who do not know that there  
21 is a photo identification requirement for in-person  
22 voting, since there has not been one in the past, may  
23 not bring their photo identification with them to the  
24 polls.

25 Q. The survey didn't include any questions about

1 whether the participant in the survey regularly  
2 carries their driver's license or their photo ID with  
3 them, does it?

4 A. No.

5 Q. Would asking that question mitigate some of the  
6 speculation about whether someone will or won't bring  
7 their photo IDs to the polls?

8 A. Sure. We're not attempting to say all these  
9 folks are. We're just identifying that as a problem,  
10 that if 37 percent of people are not aware of the law  
11 --- I don't think anybody would agree that a hundred  
12 percent of people who have valid ID carry it with  
13 them a hundred percent of the time. We've all been  
14 somewhere where we didn't have our license with us.  
15 And the idea is that if 37 percent of the population  
16 is not aware of the law, at least some percentage of  
17 people who are actually meeting the requirements,  
18 according to our survey, are going to further be  
19 impacted because they're going to attempt to vote,  
20 and because of their limited knowledge of the law,  
21 they're not going to be able to produce the proper  
22 credentials on election day.

23 Q. I'd like to turn to your testimony about public  
24 outreach and education and your scepticism that an ad  
25 campaign can change public awareness about an issue.

1 Did I correctly state that, first of all, you  
2 conclude that ad campaigns are not necessarily  
3 effective in correcting misperceptions or even  
4 outright ignorance about a given issue; right?

5 A. I would say especially in a suppressed amount of  
6 time.

7 Q. And on page 24 of your report, you cite the  
8 Lupia study; right?

9 A. Yes.

10 Q. And that involves insurance reform elections. I  
11 assume it was California, so I assume there was a  
12 ballot resolution?

13 A. Correct.

14 Q. And what that found was even after an ad  
15 campaign, 14 to 19 percent had low levels of  
16 knowledge on the issue that was on that resolution?

17 A. Correct. That after an extensive millions and  
18 millions of dollars of ads being around talking about  
19 issues, that when asked factual questions about the  
20 initiatives, 14 percent answered --- I think they  
21 asked them a battery of like ten questions. And 14  
22 percent got every single one wrong. And an  
23 additional --- so it's not between, it's additional,  
24 so combined it's 33 percent. And additional 19  
25 percent only got one or two correct.

1 Q. Okay. And even if we assume that insurance  
2 reforms are as important to the average person as  
3 voting, isn't that 14 to 19 percent range better than  
4 what you just stated as the current level of  
5 unawareness about the voter ID law in Pennsylvania?

6 A. No. It's 14 and 19, so that adds up to 33,  
7 which is quite close to 34, which is the percentage  
8 of registered voters who don't know.

9 Q. And as far as this study goes, this had to do  
10 --- this was only studying the effects of an ad  
11 campaign; right?

12 A. This particular study was by Lupia, but as you  
13 can see above that, I reference a couple of other  
14 studies, just about voter knowledge in general,  
15 including things that we oftentimes presume voters  
16 know such as the name of the vice president and what  
17 the Bill of Rights is and things like that.

18 Q. But you're not suggesting that an ad campaign  
19 would have no effect on voter awareness about the  
20 voter ID law in Pennsylvania, are you?

21 A. No. It could have an effect. What the Lupia  
22 article highlights is that it could actually lead to  
23 more misinformation. So you might find two people  
24 that saw the ad campaign and realize they were out of  
25 compliance, but there could be additional people who



1 saw the ad campaign and were assured that they were  
2 already in compliance and cause them to not go out  
3 and get additional pieces of information. That's the  
4 underlying point of his research.

5 Q. Okay. And if the public education campaign  
6 involves more than just ads on TV or radio or  
7 wherever ads are made, but actually involves direct  
8 contact with the voters, that's different, isn't it?

9 A. That's another level of outreach certainly. But  
10 based on my reading of the literature, including the  
11 research that I've done on voter sophistication and  
12 knowledge among voters, I do not believe that there  
13 is enough time to change people's perceptions on two  
14 fronts. One is just the awareness of the law. But  
15 secondly is the fact that most people, 98 percent of  
16 people, currently believe that they have a valid ID.  
17 And so those people are the most at risk of tuning  
18 the ad campaign out.

19 Q. And aren't you assuming the content of the ad  
20 campaign, though? I mean, if the ad campaign  
21 specifically said you must have one of the following  
22 IDs, wouldn't that be addressing --- that's not just  
23 saying make sure you have photo ID, is it? That's  
24 addressing that exact concern, isn't it?

25 A. You know, we would all have to wait and see how

1 good the ad campaign is. But if the ad campaign said  
2 exactly what you said, you must have one of the  
3 following IDs, then that would be a good example of  
4 one that would be bad, because 98.6 percent of people  
5 have one. So if they heard that, they would go, ah,  
6 good, I'm covered. The issue would be that they have  
7 an expired ID or their name doesn't match, so we  
8 would have to look specifically at the content of the  
9 that. Then we would have to measure the saturation,  
10 whether or not people heard that and whether or not  
11 they were able to actually sort of ferret that out,  
12 as I said before, in the giant mix of all the ads  
13 that are just going to saturate the Pennsylvania  
14 market.

15 Q. Sure. And you testified earlier about how many  
16 political ads there may be as we get closer to  
17 November. But on that topic, political campaigns  
18 don't just air TV and radio ads, they also knock on  
19 doors, especially on the local level, they go to the  
20 county fairs and they do what's called grassroots  
21 politics; right?

22 A. Yes.

23 Q. So that's taking the message straight to the  
24 voter; right?

25 A. Sure.

1 Q. So to the extent that an ad campaign is  
2 supplemented with going to straight to the voters  
3 about photo ID that increases its effectiveness,  
4 doesn't it?

5 A. The issue here is two. One is that the state  
6 would have the ability to connect with the voter  
7 specifically, especially in the outreach, actually  
8 connect with the voter to get their attention and  
9 convince them that this is happening. Typically when  
10 ad campaigns happen, television and advertising, as  
11 you seem to allude to, is at least less personal.  
12 And so it's less effective, but it reaches a mass  
13 audience. You put these commercials out and you  
14 think, well, maybe I'll get a couple of people. Lots  
15 of people are fast forwarding through the commercials  
16 or they're leaving the room or all sorts of things  
17 because they think it doesn't apply to them. So I  
18 think there are multiple types of contact. You  
19 increase your opportunity to connect with the voter.  
20 But it still presumes that you can do that in a way  
21 that gets the voter's attention and convinces them  
22 that they need to take these steps. Even if that  
23 were to happen and some amount of voters out of the  
24 14.4 that we estimate did receive the ad campaign  
25 realize that they were out of compliance, it doesn't

1 guarantee that they're going to have the time or the  
2 resources or the ability to go and correct the  
3 problem. And that's what I referenced earlier in  
4 referencing other research that suggests the more  
5 things that you're asking a voter to do in a short  
6 amount of time before the election, the less likely  
7 that they're going to be able to do that.

8 Q. Okay. And toward that end, I'd like to focus on  
9 table eight in terms of having less things to do. I  
10 just want to focus on the number there about people  
11 who have or don't have Social Security cards. In  
12 that table doesn't it indicate that among registered  
13 voters that number is 122,667? I'm sorry. Take your  
14 time and get there, table eight.

15 A. That's correct.

16 Q. And among 2008 voters, that number who do not  
17 have Social Security cards is 33,419?

18 A. That would be 7.5. I think that my guess is  
19 that --- if you notice the line below is exactly the  
20 same.

21 Q. I'm getting to the table myself.

22 JUDGE SIMPSON:

23 I noticed it.

24 A. That's just a copy and paste issue there.

25 33,419 is 2.1 percent of 6 million. So 7.5 percent

1 would be about 70,000 or so, I would guess.

2 BY ATTORNEY CAWLEY:

3 Q. Okay. I'm looking just at the line that has  
4 Social Security card and if we go all the way to the  
5 end of the far right, those who don't have a Social  
6 Security card among those who also do not have a  
7 valid ID is 159,184?

8 A. That looks right.

9 Q. Okay. And your numbers don't isolate --- and  
10 I'm now kind of referring to the table seven  
11 immediately above it. You don't isolate just those  
12 people who lack a birth certificate, do you?

13 A. Well, we do because --- oh, just a birth  
14 certificate, no. We say any proof of documentary  
15 proof of citizenship.

16 Q. Because that number, the number of people who do  
17 not have a birth certificate, is wrapped up with  
18 passports and other proofs of citizenship, identity  
19 and residence; right?

20 A. Not residence. Has documentary proof of  
21 citizenship would be --- to have that you have to  
22 have other official birth certificate or a  
23 naturalization certificate or a U.S. passport would  
24 suffice.

25 Q. So birth certificate by itself is not broken

1 out; right?

2 A. No.

3 Q. And you said near the end of your testimony on  
4 Direct Examination that people will not be able to  
5 provide a Social Security number. Were you basing  
6 that on the table eight figures on who does not have  
7 a Social Security card?

8 A. Yes. The question we asked was whether or not  
9 you actually had an official copy of your Social  
10 Security card.

11 Q. Okay. But that doesn't indicate whether people  
12 know their Social Security number or not; right?

13 A. No, it does not. But my inclination would be  
14 that most people who don't have a card are less  
15 likely to know their Social Security number. But we  
16 did not ask a specific question of whether or not  
17 they know their number.

18 ATTORNEY CAWLEY:

19 Those are all the questions I have.

20 Thank you.

21 ATTORNEY WALCZAK:

22 Your Honor probably thinks with  
23 trepidation every time I stand up now, but we have no  
24 further questions for Professor Barreto.

25 JUDGE SIMPSON:

1                   Bear with me a moment. May I see the  
2 exhibits, please? All right. There was an exhibit  
3 that was marked this morning that I do not have here.  
4 It is the CV, 16. May I see it, please? Okay. If  
5 there are no further questions, then thank you very  
6 much for your time. You may step down. You're free  
7 to leave.

8       A. Thank you.

9       OFF RECORD DISCUSSION

10                   ATTORNEY GERSCH:

11                   Should we call our next witness, Your  
12 Honor?

13                   JUDGE SIMPSON:

14                   Well, how long is your witness going to  
15 take? I've heard an awful lot today and I'm probably  
16 not as sharp as I was yesterday.

17                   ATTORNEY GERSCH:

18                   This will not be a figure witness. It  
19 would be the Commonwealth official. It would be the  
20 Commonwealth ---.

21                   ATTORNEY SMITH:

22                   Half an hour, 45 minutes. I think I  
23 can make it in half an hour.

24                   JUDGE SIMPSON:

25                   Okay. Let's do it.

1                   ATTORNEY SMITH:

2                   Petitioners call Rebecca Oyler.

3                   MR. TURNER:

4                   Please raise your right hand.

5 -----

6 REBECCA OYLER, HAVING FIRST BEEN DULY SWORN,

7 TESTIFIED AS FOLLOWS:

8 -----

9 DIRECT EXAMINATION

10 BY ATTORNEY SMITH:

11 Q. Good afternoon, Ms. Oyler.

12 A. Good afternoon.

13 Q. We met once before. But in case you don't  
14 remember, my name is Rosemary Smith, and I'm one of  
15 the attorneys representing the Petitioners in this  
16 case.

17 A. Hi, Ms. Smith.

18 Q. Could you please state your name for the record?

19 A. Rebecca K. Oyler.

20 Q. And you worked at the Pennsylvania Department of  
21 State since 2000; is that right?

22 A. Yes.

23 Q. You began as the director of policy back in  
24 2000?

25 A. Yes.



1 Q. And then from 2003 to beginning of 2011, you  
2 were over at the SURE office as a project analyst; is  
3 that right?

4 A. Yes.

5 Q. And then since early 2011, you've been back in  
6 the position of director of policy for the Department  
7 of State; is that correct?

8 A. Yes.

9 Q. And as policy director, your role is as a  
10 liaison between the Governor's Policy Office and the  
11 Department of State; right?

12 A. Yes.

13 Q. Are you familiar with Pennsylvania's Act 18 of  
14 2012?

15 A. Yes.

16 Q. And just so we're on the same page, I may refer  
17 to it as Act 18 or as the photo ID law, but you'll  
18 know what I am talking about?

19 A. Yes.

20 Q. And the Department of State supported passage of  
21 Act 18?

22 A. Yes.

23 Q. And in your role as policy director, you did  
24 some of the research that supported the passage of  
25 Act 18?

1 A. That's right. Yes.

2 Q. So you worked in the Department of State for  
3 over a decade?

4 A. Yes. Twelve (12) years.

5 Q. And for seven to eight of those years, you were  
6 actually working in the SURE office and focused  
7 exclusively on election-related issues?

8 A. Yes, exactly.

9 Q. So fair to say, you are knowledgeable about the  
10 requirements for voting both before passage of Act 18  
11 and since its enactment?

12 A. Yes.

13 Q. So let's start with before Act 18. Before Act  
14 18, the first time a person voted in a precinct, they  
15 had to present a form of identification?

16 A. Yes.

17 Q. And that form of identification could be a photo  
18 ID, but it did not have to be a photo ID; right?

19 A. That's correct.

20 Q. Present something like a utility bill?

21 A. Yes.

22 Q. And then before Act 18, after the first time you  
23 voted in a precinct, you did not have to present any  
24 form of ID?

25 A. Right.

1 Q. You would go, you would sign your name in the  
2 poll book; right?

3 A. Yes.

4 Q. And that signature would be compared to the  
5 signature in the registration system?

6 A. Yes.

7 Q. Okay. So just to sum up before Act 18, at no  
8 point were you required to present photo  
9 identification; is that fair?

10 A. Right. Yes.

11 Q. Just give you a moment to pour the water.

12 A. Sorry.

13 Q. All right. Now, I want to turn to the  
14 requirements under Act 18. And to help us do this a  
15 little more quickly, I'm going to ask to put up the  
16 voter ID log FAQ, which we'll mark as Petitioners'  
17 Exhibit 19. Do you recognize this document?

18 (Petitioners' Exhibit 19 marked for  
19 identification.)

20 A. Yes.

21 BY ATTORNEY SMITH:

22 Q. And this version, can you scroll down to the  
23 second page? At the bottom it was updated May 24th.  
24 Does that make it the current version?

25 A. I believe so.

1 Q. And this is available on the Department of  
2 State's website, votespa.com?

3 A. Yes.

4 Q. And it's intended to be an accurate description  
5 of the requirements associated with the photo ID law?

6 A. Yes.

7 Q. All right. So beginning with page two, you move  
8 up a little bit and you can zoom in a little bit,  
9 this describes --- at the very top it says --- let me  
10 pull up my copy so I can see it. Starting with the  
11 November of 2012 general election, and you have a  
12 copy next to you as well, Pennsylvania law now  
13 requires voters to show an acceptable photo ID. And  
14 then it says --- the first description is that all  
15 IDs must contain a name, a photo and an expiration  
16 date that is current, unless noted otherwise. Did I  
17 read that right?

18 A. Yes.

19 Q. So let's begin with that first requirement, the  
20 name requirement. Every ID --- acceptable ID has to  
21 have a name on it; right?

22 A. Yes.

23 Q. There are no exceptions to that?

24 A. No.

25 Q. And under Act 18 the name has to substantially

1 conform to the name in the voter registration system;  
2 right?

3 A. Yes, correct.

4 Q. They don't have to be an exact match, but they  
5 have to substantially conform?

6 A. Right. Yes.

7 Q. And the substantially conform requirement is not  
8 on this FAQ; is it?

9 A. No, it's not.

10 Q. The Department of State does not have authority  
11 to define for the counties what it means to  
12 substantially conform; right?

13 A. Yes, the statute gives no guidance as to what is  
14 meant by substantially conform, no.

15 Q. And in the absence of that guidance, the  
16 Department of State can't define it for the counties,  
17 can it?

18 A. That's right, yes.

19 Q. Cannot?

20 A. Cannot.

21 Q. The Department of State could issue some  
22 guidance, but it wouldn't be binding?

23 A. Yes, that's correct.

24 Q. So at the end of the day each County Board is  
25 going to have discretion to interpret that term?

1 A. Yes.

2 Q. In fact, on election day in the absence of other  
3 guidance, it's going to be the poll workers who are  
4 interpreting the term substantially conformed?

5 A. Yes, on election day. Yes.

6 Q. And those poll workers may not necessarily have  
7 received any training; is that right?

8 A. The poll workers must receive training from the  
9 county before the election.

10 Q. Well, the counties have to provide training; is  
11 that right?

12 A. Yes.

13 Q. The poll workers are not required to attend the  
14 training?

15 A. Yes, that's true.

16 Q. Okay. Moving to the next requirement, which is  
17 the --- well, I'm skipping, but the expiration date.  
18 Most IDs have to have an expiration date under the  
19 law; is that fair?

20 A. Yes.

21 Q. And I see on this page there, they identify two  
22 exceptions to that. One is that a PennDOT ID can be  
23 up to 12 months past its expiration date; is that  
24 right?

25 A. Yes.

1 Q. And the second is that a U.S. active duty and  
2 retired military IDs may designate an expiration date  
3 that is indefinite?

4 A. Right. Yes.

5 Q. Are those the only who exceptions to the  
6 expiration date requirement, that you're aware of?

7 A. Yes.

8 Q. Now, the expiration date can be a sticker; is  
9 that right?

10 A. Yes.

11 Q. The sticker has to be issued by the institution  
12 that issued the ID; is that right?

13 A. Yes. That's the guidance that we've given.  
14 Yes.

15 Q. Okay. So in other words, I can't take my ID  
16 with no expiration date on it and make myself a  
17 sticker, stick it on there and show up?

18 A. No, because the time --- your ID wouldn't have  
19 been issued by a institution then.

20 Q. Okay. But at the end of the day the poll worker  
21 is not going to have any way of knowing whether a  
22 sticker was actually stuck on by the institution that  
23 issued the ID, are they?

24 A. Not authoritatively, no. But in practicalities,  
25 we believe that the counties will work with the

1 institutions in their counties, so that the poll  
2 workers will be able to be aware of what types of  
3 stickers might be provided in universities  
4 surrounding the polling places. So all the stickers  
5 should look the same, they should be uniform, and so  
6 poll workers should know what to expect.

7 Q. So that's Department of State's hope as to how  
8 it's going to work in practice?

9 A. Yes.

10 Q. But to be clear, at the end of the day there  
11 could be a poll worker looking at a sticker and not  
12 able to know who put that sticker on there?

13 A. Yes. But we know that counties have worked with  
14 institutions in their own counties to make sure that  
15 that's --- that that procedure is thought out ahead  
16 of time.

17 Q. To minimize problems?

18 A. To minimize problems, right.

19 Q. So we discussed the name requirement which is  
20 the name has to substantially conform, the expiration  
21 date which can be a sticker. The last requirement is  
22 the photo itself. And at the bottom of this section,  
23 can you scroll down a little, there is an objection  
24 notice --- I'm sorry, an exception noted to that, to  
25 the photo requirement. And that's for individuals



1 who have a religious objection to being photographed;  
2 is that right?

3 A. Yes.

4 Q. Okay. So setting aside the exceptions we just  
5 discussed, we basically covered the three primary  
6 elements for an acceptable photo ID; is that fair?

7 A. Yes.

8 Q. And we also have listed here the groups of  
9 entities that can issue that ID; right?

10 A. Yes.

11 Q. There are four. And the first is photo IDs  
12 issued by the U.S. Government or Commonwealth of  
13 Pennsylvania. The second is employee photo  
14 identification issued by federal Pennsylvania,  
15 Pennsylvania county or Pennsylvania municipal  
16 governments. The third is those issued by an  
17 accredited public --- Pennsylvania public or private  
18 institution of higher learning. And the fourth is an  
19 identification issued by a Pennsylvania care  
20 facility; is that right?

21 A. Yes.

22 Q. So just to get a sense of what's not covered  
23 here, for example, an ID issued by a transit  
24 authority, like SEPTA, that would not be covered;  
25 correct?

1 A. No.

2 Q. And by covered, I mean would not qualify as  
3 acceptable under the ID law?

4 A. Right, that would not.

5 Q. That would not. Okay. An ID issued to an  
6 employee of a school district, that would not qualify  
7 under the law; correct?

8 A. No, a school district is not a municipality.

9 Q. So teachers cannot use their school IDs to vote?

10 A. No.

11 Q. Now, with respect to institutions --- the third  
12 and the fourth categories, the institutions of higher  
13 learning and the care facilities, the law does not  
14 speak to how --- who those institutions can issue  
15 their IDs to; correct?

16 A. That's correct, yes.

17 Q. So if a care facility wants to issue an ID to  
18 its nurses, it can do that?

19 A. Yes.

20 Q. And if a care facility wants to issue an ID to a  
21 person --- a stranger who comes in off the street,  
22 they can do that?

23 A. Theoretically, yes.

24 Q. Okay. Moving to the bottom of this page, it  
25 says when a voter does not have an acceptable form of

1 ID. And the answer there indicates that person can  
2 obtain a free PennDOT ID; right?

3 A. Yes.

4 Q. Okay. So if we move to the next page, it's  
5 going to be the --- this is the beginning of the  
6 requirements for obtaining a PennDOT ID. And at top  
7 the first category of voters addresses people who  
8 have previously had a driver's license or PennDOT ID;  
9 correct?

10 A. Yes.

11 Q. And those individuals who previously had an ID  
12 they can come into a PennDOT office, complete an  
13 application, sign the affirmation they do not have  
14 another ID and they can get a new ID; right?

15 A. Yes.

16 Q. They do not have to provide any documentation?

17 A. Yes, as long as their information is still  
18 contained within the PennDOT database. Yes.

19 Q. And my understanding is that that is true for  
20 people from 1990 forward?

21 A. Yes, for the most part, I believe.

22 Q. People with IDs in the system from 1990 forward?

23 A. Yes.

24 Q. Now, the second category is for people who never  
25 had a PennDOT ID; right? And those people do have to

1 present documentation?

2 A. Yes.

3 Q. They have to present a Social Security card?

4 A. Yes.

5 Q. They have to present either a Certificate of  
6 Citizenship, a Certificate of Naturalization or a  
7 birth certificate with a raised seal?

8 A. Yes.

9 Q. So in practical experience, most people of those  
10 three it's going to be a birth certificate with a  
11 raised seal that they would present?

12 A. Likely, yes.

13 Q. And then they also have to present two proofs of  
14 residency?

15 A. Yes.

16 Q. Now, speaking along the little --- would you  
17 agree with me that the next page, so all of page  
18 three, is more information on the --- how to get a  
19 PennDOT ID?

20 A. Yes.

21 Q. Okay. And turning to the next page, page four,  
22 all the way to the very bottom this is just --- this  
23 is more information on how to get a PennDOT ID?

24 A. Yes.

25 Q. Okay. So at the very bottom we finally get to

1 what if a voter shows up at the polling place without  
2 an acceptable, and if you go click the next page, it  
3 says ID. So now we're dealing with the person who's  
4 on election day at the polls and doesn't have an ID;  
5 right?

6 A. Right.

7 Q. And the answer is that that voter can cast a  
8 provisional ballot; right?

9 A. Yes.

10 Q. That provisional ballot is only going to count  
11 if a voter provides acceptable ID to the County Board  
12 of Elections within six calendar days of the  
13 election; right?

14 A. Right. Yes.

15 Q. So even if a person casts a provisional ballot,  
16 they're still going to have to present an acceptable  
17 ID if they want that vote to count; right?

18 A. Yes.

19 Q. So if a person is just not able to obtain a  
20 photo ID, casting a provisional ballot is not going  
21 to make their vote count?

22 A. No, there's an exception for indigent voters.

23 Q. And we'll get to that in a second. But  
24 generally speaking, a person who's not able to get an  
25 ID is not getting any help from this provisional

1 ballot?

2 A. This will help the person who accidentally left  
3 their ID at their house or at home and is able to  
4 obtain it after the election and provide it.

5 Q. It will not help the person who simply can't get  
6 an ID, didn't have one before, can't get one after?

7 A. It will give them six days to get one, yes.

8 Q. Right. But this is the person who cannot get an  
9 ID?

10 A. Who cannot get one within six days?

11 Q. Right.

12 A. Yes, that will be a problem.

13 Q. And if we go to the next page up to page five,  
14 right there, this is the --- you see the top it says  
15 what if a voter cannot afford to obtain an acceptable  
16 ID. Is this the indigent exception that you were  
17 just referring to?

18 A. Yes.

19 Q. So this says that certain people can cast a  
20 provisional ballot and --- without an acceptable ID  
21 and have that ballot count if they can sign an  
22 affirmation that affirms certain things; right?

23 A. Yes.

24 Q. They have to affirm that they are the same  
25 person who cast the provisional ballot?

1 A. Yes.

2 Q. They have to affirm that they are indigent?

3 A. Yes.

4 Q. And they have to affirm that they are unable to  
5 obtain identification without the payment of a fee?

6 A. Yes.

7 Q. There is no definition of indigent in the  
8 statute?

9 A. No.

10 Q. So again, each County Board of Elections has the  
11 discretion to define that term differently?

12 A. Yes. Though, I think in this case the General  
13 Assembly intended the affirmation that's signed by  
14 the voter to be sufficient evidence that the voter is  
15 indigent.

16 Q. That is your interpretation?

17 A. Yes.

18 Q. That is not binding on the counties?

19 A. No, I suppose not.

20 Q. The Department of State has taken steps to  
21 reduce or mitigate the circumstances where a person  
22 might sign the indigent's affirmation; is that right?

23 A. Yes.

24 Q. They waive certain --- or they worked with other  
25 agencies to waive certain fees?

1 A. Yes. Yes.

2 Q. So for example, a person born in Pennsylvania  
3 whose birth certificate is on file with the  
4 Department of Health can have their --- that  
5 confirmed without paying a fee?

6 A. That's right, yes.

7 Q. And the PennDOT voting ID itself is free for  
8 people who are using it for voting purposes?

9 A. Yes.

10 Q. So there will be people in Pennsylvania who do  
11 not have to pay any fees to obtain a PennDOT ID for  
12 voting purposes?

13 A. Yes, that's the hope.

14 Q. And those people could not sign an indigent's  
15 affirmation?

16 A. Unless there is some other fee that their ---  
17 for instance, if they had to take off work and take  
18 a, you know, pay penalty for going to get the ID, or  
19 there's some other payment that they may have to make  
20 that's unavoidable in the circumstances, I think they  
21 would be legitimately able to sign this affirmation.

22 Q. Are you aware of individuals who would have to  
23 pay a fee to go get an ID from work?

24 A. No. But I'm not ruling out the possibility that  
25 there may be some.



1 Q. I understand. And I should have asked this  
2 earlier, but it also notes that the indigency  
3 affirmation has to be provided to the County Board of  
4 Elections within six calendar days; right?

5 A. Yes.

6 Q. Now, the Department of State is planning to  
7 advise counties on that requirement; right?

8 A. On which requirement?

9 Q. I'm sorry, on the indigency affirmation?

10 A. On issuance and acceptance of indigency?

11 Q. Yes.

12 A. Yeah, sure.

13 Q. And specifically plan to advise counties that  
14 they have the indigent's affirmation at the polling  
15 place?

16 A. Yes.

17 Q. And that is because if a person can sign the  
18 affirmation at the polling place they don't have to  
19 come back within six calendar days to provide it to  
20 the County Board of Elections; right?

21 A. That's right. Although, they do have the option  
22 of mailing it or sending it electronically, too.

23 Q. Okay. But the reason that you're advising that  
24 they have it at the polling place is to avoid that  
25 --- the inconvenience that you recognize might occur?

1 A. Yes.

2 Q. And this again is at the guidance of the  
3 Department of State, which the counties are not bound  
4 by; correct?

5 A. Yes.

6 Q. So the counties could choose not to provide the  
7 indigent's affirmation at their polling places?

8 A. They could.

9 Q. Let's return to the FAQ on --- the second half  
10 of this page addresses the absentee ballot  
11 requirements; right?

12 A. Yes.

13 Q. Now, not all voters in Pennsylvania are entitled  
14 to vote absentee; right?

15 A. That's right, yes.

16 Q. You have to meet certain requirements?

17 A. Yes.

18 Q. But assuming that you meet those requirements  
19 and you can vote absentee under Act 18, you do not  
20 have to present any form of photo ID in order to  
21 vote; right?

22 A. Right.

23 Q. If you do not have a PennDOT ID or a driver's  
24 license number, you can provide the last four digits  
25 of your Social Security number; right?

1 A. Yes.

2 Q. And you're personally involved in your role at  
3 the Department of State in developing the absentee  
4 ballot exception to the photo ID law; right?

5 A. Yes.

6 Q. So under Act 18, providing the last four digits  
7 of your Social Security number is a sufficient proof  
8 of identification for voting purposes?

9 A. Yes, for absentee purposes.

10 Q. Well, is it not sufficient proof of  
11 identification for in-person voting purposes?

12 A. Providing the last four digits of the Social  
13 Security number?

14 Q. Yes.

15 A. No, not for in-person.

16 Q. What makes you believe that?

17 A. The statute doesn't allow the last four digits  
18 of a Social Security number to be provided. It  
19 requires a photo ID in the polling place.

20 Q. I see. I see. But a photo ID obtained on the  
21 basis of the last four digits of Social Security  
22 number would be sufficient for voting purposes?

23 A. Yes, it's the picture, the photo that's at issue  
24 in the polling place.

25 Q. I understand. But setting aside the photo, the

1 actual having your Social Security card, that's not  
2 required?

3 A. No.

4 Q. And having a birth certificate, that's not  
5 required?

6 A. No.

7 Q. So summing up the rules that we just covered,  
8 individuals generally, under Act 18, must present  
9 acceptable photo ID in order to vote; right?

10 A. Yes.

11 Q. And they can avoid that requirement if they have  
12 a religious objection to having their photograph  
13 taken, if they can sign the indigent's affirmation or  
14 if they can vote absentee; right?

15 A. Right. Although we don't consider the absentee  
16 process an exception to the identification  
17 requirement. It's just nearly an alternative  
18 process.

19 Q. Okay. I'm sorry. Just a semantic difference.  
20 But I understand what you mean.

21 A. Okay.

22 Q. But if you're voting absentee, you do not have  
23 to present a photo ID, that's all I was getting at?

24 A. Yes.

25 Q. So there are individuals who are eligible to

1 vote and who will have to show acceptable photo ID to  
2 vote, but who are currently unable to obtain an  
3 acceptable photo ID; correct?

4 A. Yes, I think that's true.

5 Q. And the Department of State became aware of that  
6 fact, that there are people who are eligible to vote  
7 who will have to show acceptable photo ID to vote but  
8 who cannot obtain that ID, the Department of State  
9 was aware of that fact --- became aware of that fact  
10 around the time this lawsuit was filed?

11 A. Yes, in the spring time.

12 Q. So before the spring, you --- the Department of  
13 State did not know that there were individuals out  
14 there who would be unable to obtain ID?

15 A. No, we were not clear on that.

16 Q. I'd like to pull up what we'll mark as  
17 Petitioners' Exhibit 20.

18 (Petitioners' Exhibit 20 marked for  
19 identification.)

20 ATTORNEY SMITH:

21 And this is --- Patrick, that was  
22 provided, too.

23 BY ATTORNEY SMITH:

24 Q. Do you recognize this document?

25 A. Yes.

1 Q. This is an e-mail from Kathleen Kotula dated  
2 June 12th, 2012 to you and a number of other people  
3 at the Department of State?

4 A. Yes.

5 Q. And Ms. Kotula is an attorney working with ---  
6 within the Department of State; right?

7 A. Yes.

8 Q. And in this e-mail she is summarizing thoughts  
9 on potential processes and requirements for a new  
10 form of Department of State ID; right?

11 A. Yes.

12 Q. And in the process of doing that, Ms. Kotula  
13 identifies four categories of people who she says may  
14 need to obtain --- I'm sorry, may not be able to  
15 obtain the free non-driver's license photo ID from  
16 the Department of Transportation; right?

17 A. Yes.

18 Q. Okay. And zooming in on the first category that  
19 she has there, she identified persons who were born  
20 in another state, and then the bullet below she's  
21 described those people as persons who would have to  
22 otherwise pay a fee and/or go through a difficult  
23 process to obtain a certified copy of their birth  
24 record, ---

25 A. Yes.

1 Q. --- generally; is that fair? And you do agree  
2 that there are people who were born in other states  
3 who would have to go through a difficult process or  
4 pay a fee in order to obtain their birth record?

5 A. It seems that way, yes.

6 Q. Moving to the second category, she had advised  
7 persons born in Pennsylvania who are unable to obtain  
8 their Social Security card or replacement because  
9 they do not have a certified copy of their birth  
10 certificate. Do you agree that there are people in  
11 Pennsylvania --- born in Pennsylvania who are not  
12 able to obtain their Social Security card?

13 A. Yes, I guess so.

14 Q. And you're not basing that on ---

15 A. Personal knowledge.

16 Q. --- the e-mail alone, you're basing it on your  
17 experience working within the Department of State;  
18 right?

19 A. I don't have any personal knowledge of  
20 individuals who are caught in these circumstances,  
21 only that --- from news reports and other information  
22 that there are people who fall into these categories.

23 Q. And your experience working with PennDOT; is  
24 that right?

25 A. Yes.

1 Q. Moving to the third category, Ms. Kotula  
2 identifies persons born in Pennsylvania who are  
3 unable to obtain PennDOT IDs because they are unable  
4 to verify their birth record through the Department  
5 of Health?

6 A. Yes.

7 Q. You agree that there, in your words, seem to be  
8 people in this category as well?

9 A. Yes.

10 Q. Okay. And then finally, the fourth category,  
11 she identifies persons who have out-of-state driver's  
12 licenses who are attending school in Pennsylvania and  
13 do not want to surrender their out-of-state ID, so  
14 that --- they cannot obtain a free non-driver's  
15 license photo ID. Do you agree that there are  
16 individuals in that category as well?

17 A. Yes.

18 Q. Every eligible voter in Pennsylvania has a right  
19 to vote; right?

20 A. Yes.

21 Q. And the Department of State wants people to  
22 exercise their right to vote if they wish?

23 A. Absolutely.

24 Q. It is not acceptable to have anyone who wishes  
25 to vote and who is eligible to vote but who cannot



1 obtain the required ID?

2 A. That's correct.

3 Q. If Act 18 prevented eligible qualified voters  
4 from voting, it would reduce the integrity of  
5 elections?

6 A. Yes, if it did, it would. Yes.

7 Q. Before passage of Act 18, you were involved in a  
8 project to estimate the number of Pennsylvanians who  
9 did not have PennDOT issued IDs; correct?

10 A. Yes.

11 Q. And you conducted that estimate in roughly June  
12 of 2011?

13 A. Yes.

14 Q. The House Appropriations Committee asked you to  
15 conduct that estimate?

16 A. Yes, they asked for an estimate of the amount of  
17 money it would cost us to issue free ID cards. So it  
18 was in the context of that estimate.

19 Q. Got it. So the purpose of the estimate was to  
20 determine how much it was going to cost, and the  
21 request came from the House Appropriations Committee?

22 A. Right, yes.

23 Q. You didn't have a lot of time to do that  
24 estimate, did you?

25 A. No.

1 Q. They gave you a 24 hour turnaround?

2 A. Thereabouts, yes.

3 Q. And you did this in about 24 hours?

4 A. Yes.

5 Q. Let's pull up what will be marked as  
6 Petitioners' Exhibit 20 (sic). And this is Exhibit  
7 174. Twenty-one (21), I'm sorry. I'm showing you a  
8 June 27th, 2011 e-mail which is from you. Do you  
9 recognize this e-mail?

10 (Petitioners' Exhibit 21 marked for  
11 identification.)

12 A. Yes.

13 BY ATTORNEY SMITH:

14 Q. And you sent this?

15 A. Yes.

16 Q. Directing your attention to the attachment which  
17 is the third page, does this reflect the calculations  
18 on which your estimate of Pennsylvania voters without  
19 PennDOT ID was based?

20 A. Yes.

21 Q. All right. I'm going to ask you in a little  
22 more detail about certain of the lines. But  
23 generally speaking, is it fair to say that what you  
24 did was you took a number for the population, you  
25 subtracted the number of PennDOT IDs issued, you came

1 up with a percentage of the population without  
2 PennDOT IDs?

3 A. Yes, that's right.

4 Q. And then you applied that percentage to  
5 registered voters to come up with a registered voters  
6 number as well?

7 A. The registered voters number was used to  
8 estimate the amount of --- the number of voters who  
9 would be requested to provide ID.

10 Q. Right. But you relied on the same percentages  
11 you had used with the adult population?

12 A. Yes.

13 Q. Or that you had obtained for the adult  
14 population number?

15 A. Yes.

16 Q. So I want to direct your attention first to the  
17 adult population number, which is line two in this  
18 graph that we'll blow up a little bit. This number  
19 reflects the adult citizen population in  
20 Pennsylvania; correct?

21 A. Yes.

22 Q. And just so we're on the same page, it's the  
23 9,611,626 number?

24 A. Right.

25 Q. And you used the number of the adult citizen

1 population because you're only interested in  
2 individuals who are eligible to vote; right?

3 A. That's right, yes.

4 Q. And now going down to the third line, the adult  
5 population with PennDOT issued IDs, that number was  
6 provided to you by someone at PennDOT; correct?

7 A. Yes.

8 Q. You don't know who generated this number  
9 actually, do you?

10 A. I don't.

11 Q. And setting aside who generated it, is it your  
12 understanding that this number reflects the number of  
13 PennDOT IDs issued to individuals over 18?

14 A. Yes.

15 Q. Is it also your understanding that this number  
16 includes IDs issued to individuals who are not  
17 citizens?

18 A. Yes.

19 Q. You discussed that issue with PennDOT at some  
20 point; correct?

21 A. I did, yes. They could not at the time tell me  
22 what percentage of that number was issued to  
23 non-citizens, but they assured me that it was very  
24 few.

25 Q. But they never showed you any numbers on that?

1 A. Not at the time, no.

2 Q. And other than the possibility of IDs issued to  
3 non-citizens, you did not discuss with anyone at  
4 PennDOT what --- anything else that would or would  
5 not be included in that 9,522,304 number, did you?

6 A. No, my understanding of that number was, it was  
7 the number of driver's licenses and PennDOT photo  
8 identification cards that have been issued to adults  
9 18 and over. That's it.

10 Q. Right. And you didn't discuss that number  
11 further beyond the individual issue about citizens  
12 that we just discussed?

13 A. No.

14 Q. You asked PennDOT at some point for any prior  
15 estimates that they conducted of individuals without  
16 PennDOT IDs; right?

17 A. I did ask the question as to whether they had  
18 information on how many Pennsylvania citizens did not  
19 have IDs.

20 Q. And they never answered that question?

21 A. They didn't answer it, right.

22 Q. So on this page you reached the estimate that  
23 roughly one percent or 89,000 eligible voters do not  
24 have a PennDOT ID; correct?

25 A. Yes.

1 Q. And you applied that same one percent to  
2 registered voters to reach a total of 75,891  
3 estimated registered voters who do not have ID ---  
4 PennDOT ID?

5 A. Yes, that's correct.

6 Q. Beyond this document, neither you or anyone else  
7 at the Department of State conducted any further  
8 analysis to verify the accuracy of this estimate  
9 prior to enactment of the photo ID law; correct?

10 A. No, not prior to enactment.

11 Q. And before enactment of law, you never looked  
12 either manually or at the computer at individual  
13 voters to determine whether they had PennDOT IDs;  
14 right?

15 A. No, we did not. That's a long extensive project  
16 that we did not have a chance to undertake.

17 Q. Right. So you never tried to match individual  
18 voters with PennDOT ID numbers ---

19 A. No, I did not.

20 Q. --- prior to enacting the law?

21 A. Right.

22 Q. Now, this estimate was then included as part of  
23 the fiscal note in the legislative process; right?

24 A. Yes.

25 Q. But you're aware that beginning in approximately

1 June of this year, 2012, the Department of State and  
2 PennDOT did perform the more thorough analysis we  
3 were just discussing of matching up Pennsylvania  
4 voters with PennDOT IDs; correct?

5 A. Yes.

6 Q. And you monitored the progress of that analysis;  
7 right?

8 A. Yes.

9 Q. But you weren't directly involved in the  
10 calculations?

11 A. No.

12 Q. But generally speaking your understanding is  
13 that that process involved matching individuals in  
14 the voter registration system with individuals in the  
15 PennDOT database; right?

16 A. Yes.

17 Q. And that analysis concluded that for  
18 approximately nine percent of registered voters they  
19 were not able to identify a PennDOT ID from the  
20 PennDOT database?

21 A. We are not able to generate a statistical  
22 conclusive match for nine percent.

23 Q. And that's a total of 759,000 registered voters?

24 A. Yes, that is.

25 Q. In light of that information and all the

1 information you have today, if you were asked today  
2 for the Department of State's estimate of the number  
3 of registered voters without PennDOT ID, you would  
4 say that it's a number greater than one percent;  
5 correct?

6 A. Likely greater than one percent, yes.

7 ATTORNEY SMITH:

8 No further questions.

9 JUDGE SIMPSON:

10 You may inquire.

11 CROSS EXAMINATION

12 BY ATTORNEY CAWLEY:

13 Q. Ms. Oyler, you were asked some questions about  
14 the law governing what a voter must do to establish  
15 identity before Act 18, so I'm going to follow-up on  
16 that. Were you working at the Department of State  
17 when the Help America Vote Act was enacted?

18 A. Yes.

19 Q. And is that what you were describing when you  
20 were asked about forms of identification?

21 A. Yes. Both the Help America Vote Act and Act 150  
22 of 2002, which implemented in Pennsylvania.

23 Q. Okay. When the identification requirements  
24 under the Help America Vote Act and when Act 150 were  
25 enacted, did the Department of State become aware of



1 any significant problems in the counties implementing  
2 that Act on election day?

3 A. Significant problems, no.

4 Q. You were asked near the end of your testimony  
5 about the match up of the voter registration database  
6 with the PennDOT database resulting in nine percent  
7 that there could not be a match for. Are there any  
8 reasons, that you know of, why further matches could  
9 not be made between the two databases?

10 A. Well, the reason we initially began the project  
11 was to try to --- to try to have the ability to  
12 populate driver's licenses and Social Security  
13 numbers --- partial Social Security numbers into the  
14 voter registration database for which we would need  
15 an absolute certain, exact match between the voter  
16 and the PennDOT record.

17 Q. And did that have anything to do with the voter  
18 ID law?

19 A. Yes, it did. We were embarking on that project  
20 in part because we wanted to make it easier to ---  
21 for the counties and for the voters to comply with  
22 the absentee component that would require either a  
23 driver's license or a partial Social Security number.  
24 So to the extent that we could populate these numbers  
25 in our own database, it would make it much easier to

1 comply with that section of the voter ID law. So in  
2 order for us to be permitted to populate those  
3 numbers into the voter registration record, we had to  
4 be absolutely certain that it was the same person,  
5 otherwise we would jeopardize the integrity of the  
6 voter registration record. So the 91 percent  
7 represents voters for whom we were absolutely certain  
8 we could match to the Department of Transportation's  
9 database. So we believe that the actual number of  
10 voters who have PennDOT records is much higher than  
11 91 percent. But we couldn't establish a conclusive  
12 exact match.

13 Q. Okay. And getting to the nine percent for whom  
14 you could not establish a match that you felt was  
15 reliable, are there reasons such as typos in names  
16 that would make a difference in that remaining nine  
17 percent?

18 A. Yes, typos is one reason why a match might not  
19 be able to be completed, nicknames or variations in  
20 names might be another reason. Spaces and special  
21 characters in the name would also be a reason. For  
22 instance, our voter registration database allows a  
23 user to enter a special character, like an apostrophe  
24 or a dash, and the PennDOT database does not permit  
25 that. So any names containing a special character

1 would not match between the two databases. And we  
2 mentioned typos, those are some of the major reasons.  
3 For instance, if a voter got married and changed her  
4 name, she also would be identified if she hadn't  
5 changed her voter registration record. And we've  
6 gotten calls from voters who received our letter ---.

7 Q. Explain what the letter is for the Court.

8 A. Sure. We determined out of an abundance of  
9 caution that we were going to provide a letter to all  
10 759,000 of those records we identified as not  
11 conclusively matching. We're going to provide this  
12 letter so that --- just in case the voter does not  
13 have a valid form of ID, it would give them  
14 instructions and an opportunity to get one as soon as  
15 possible so that they could obviously vote in time  
16 for November. We began sending these letters a few  
17 weeks ago, and my understanding is the last of them  
18 is to go out tomorrow.

19 So we sent out in the neighborhood of 400,000 to  
20 500,000 so far. We've received a lot back  
21 undeliverable and we've gotten calls in our Election  
22 Bureau questioning, you know, why did I get this  
23 letter or what does this mean. So as an example,  
24 one person called our Election Bureau and said that  
25 her minor son received a letter, her minor son is

1 not eligible to vote. She didn't understand why he  
2 had received a letter. Typos in voter registration  
3 records, for which we instruct the voter to contact  
4 their county to correct. We've gotten calls  
5 regarding how do I change my name on my voter  
6 registration record because that's my maiden name.  
7 And we've gotten calls and information that voters  
8 who received the mailing are deceased.

9 Q. Okay. So for each of these purposes --- or each  
10 of these reasons you just stated, is that why you  
11 think that the number is --- of people who have a  
12 PennDOT ID is actually higher than 91 percent?

13 A. Yes, absolutely.

14 Q. You were asked during Direct Examination if the  
15 Department of State wants the vote to be available to  
16 everyone who is eligible. Are you and your  
17 colleagues in the Department of State implementing  
18 this law with any sort of partisan favorer?

19 A. Absolutely not.

20 ATTORNEY CAWLEY:

21 Those are all the questions I have.

22 Thank you.

23 ATTORNEY SMITH:

24 No further questions.

25 JUDGE SIMPSON:

1           You may step down. You're free to  
2 leave. Let's call it a day. So it's about 3:25.  
3 What do you have for tomorrow, another Commonwealth  
4 witness?

5           ATTORNEY GERSCH:

6           I think we're going to start with  
7 Shannon Royer, who's going to be called out of turn  
8 to accommodate his vacation. He is the Deputy  
9 Secretary of the Commonwealth. And so Mr. Cawley  
10 will call him and we'll cross examine, if that's all  
11 right with the Court.

12          JUDGE SIMPSON:

13          Thank you. Thank you.

14          ATTORNEY GERSCH:

15          And then following that we'll have Mr.  
16 Wolosik, who's an election official from Allegheny  
17 County. We'll have Michele Levy, who is an expert  
18 witness similar to Ms. Ludt, who you heard from.

19          JUDGE SIMPSON:

20          This is the fraud?

21          ATTORNEY GERSCH:

22          On difficulty getting ID. Then we'll  
23 have a person who's had trouble getting ID and his  
24 mother. This is a disabled person, an autistic  
25 person. And then we'll have two Petitioners, and if

1 this moves quickly, we'll move to another  
2 Commonwealth witness, Mr. Myers, from the Department  
3 of Transportation. I don't know how long Your Honor  
4 was intending on going tomorrow. Some of these  
5 witnesses should move quicker.

6 JUDGE SIMPSON:

7 Should we deal with the exhibits that  
8 were identified today? Are you ready to do that?

9 ATTORNEY GERSCH:

10 Yes.

11 ATTORNEY SMITH:

12 Sure.

13 ATTORNEY WALCZAK:

14 Your Honor, we would --- we would not  
15 move Professor Barreto's report, but we would move  
16 his CV, his survey instrument and his ---

17 JUDGE SIMPSON:

18 Exhibit Eight, the tables of results.

19 ATTORNEY WALCZAK:

20 --- his tables. I think those may be  
21 the only three that we marked.

22 JUDGE SIMPSON:

23 Those are 16, 17 and 18?

24 ATTORNEY WALCZAK:

25 Right. So we would move those ---

1 their admission.

2 JUDGE SIMPSON:

3 In the absence of objection, they are  
4 received. We also have several exhibits that were  
5 identified with this last witness 19, 20 and 21.

6 ATTORNEY SMITH:

7 Yes. We would move for the admission  
8 of all three of those exhibits as well.

9 ATTORNEY SCHMIDT:

10 No objection, Your Honor.

11 JUDGE SIMPSON:

12 They're received. But that means I  
13 need the exhibits then --- or I should say Mr. Mazin  
14 needs the exhibits. Anything else before we depart  
15 company today?

16 ATTORNEY GERSCH:

17 Your Honor, how late were we?

18 JUDGE SIMPSON:

19 There seems to be some --- I'm not sure  
20 we have the exhibits from the professor's testimony.

21 OFF RECORD DISCUSSION

22 JUDGE SIMPSON:

23 Folks, that's all. We're just trying  
24 to track down the exhibits. You're free to stay here  
25 and watch us.

1 OFF RECORD DISCUSSION

2 ATTORNEY GERSCH:

3 Your Honor, we're just wondering what  
4 your inclination was as to how late to go tomorrow.

5 JUDGE SIMPSON:

6 I'd like to break at 3:00 or so. But  
7 depending on finishing a witness, be aware that I  
8 think a TV station was to come in and photograph our  
9 empty courtroom, because we're not allowed to take  
10 photographs while in session or on recess, but when  
11 we're adjourned and nobody's around, then something  
12 --- they're going to be coming in before we start  
13 tomorrow. So if there's something you don't want  
14 hanging around, then you keep that in mind, put it in  
15 your room.

16 OFF RECORD DISCUSSION

17 JUDGE SIMPSON:

18 Is there anything else that you want me  
19 to address before we break?

20 ATTORNEY SMITH:

21 No.

22 ATTORNEY GERSCH:

23 No, Your Honor.

24 JUDGE SIMPSON:

25 All right. Thank you for your time.



1 We are adjourned.

2 \* \* \* \* \*

3 HEARING CONCLUDED AT 3:30 P.M.

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## CERTIFICATE

I hereby certify, as the stenographic reporter,  
that the foregoing proceedings were taken  
stenographically by me, and thereafter reduced to  
typewriting by me or under my direction; and that  
this transcript is a true and accurate record to the  
best of my ability.

Jolynn C. Purnoske