

Transcript of Proceedings

Date: July 19, 2013

Case: APPLEWHITE, et al. vs. COMMONWEALTH OF PA, et al.



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

2 THE BAILIFF: Commonwealth Court is now in
3 session, Honorable Bernard L. McGinley presiding.

4 MR. KEATING: Good morning, Your Honor.

5 THE COURT: Good morning, all.

6 MR. RUBIN: Your Honor, Mr. Walczak will be in
7 a moment; but in the meantime, we call Professor Diana Mutz,
8 and Mr. Walczak will be doing the questioning as soon as he
9 gets here.

10 MR. WALCZAK: Good morning, Your Honor.

11 THE COURT: Good morning.

12 DIANA MUTZ,

13 a witness, having been first duly sworn, was
14 examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. WALCZAK:

17 Q. Good morning, Professor Mutz.

18 A. Good morning.

19 Q. I would like to show you what's been marked as Exhibit
20 2099, which actually has four parts. It's the report, CV, and
21 the list of documents that you reviewed and resources.

22 Professor Mutz, I'd like you to look at what's marked on
23 the bottom right-hand corner of the page as 2099b. Do you see
24 that?

25 A. Yes, I do.

1 Q. Do you recognize this document?

2 A. It is my CV.

3 Q. Is this a fair and accurate description of your
4 qualifications?

5 A. Yes.

6 Q. I'd like to go over this briefly. Would you tell us
7 about your educational background.

8 A. I a received a Bachelor of science from Northwestern
9 University in 1984 with an emphasis on radio, television and
10 film. In 1985, I received a Master's degree from Stanford
11 University, and in 1988, a Ph.D. in communication from
12 Stanford.

13 Q. Did you have a particular focus for your Ph.D.?

14 A. Political communication.

15 Q. Can you tell us a little bit about positions you've held
16 since you got your Ph.D.?

17 A. My first academic job was at the University of
18 Wisconsin, Madison. I was there for about ten years. After
19 that, I was at Ohio State University, and beginning about ten
20 years ago at the University of Pennsylvania.

21 All three of those places, I held joint appointments as
22 a tenured member of the faculty in both political science and
23 communication.

24 Q. We'll come back to that. Let's focus on your most
25 recent position, which is at I believe you said the University

1 of Pennsylvania?

2 A. Mm-hmm.

3 Q. Tell us about your positions there.

4 A. I am a member of the faculty of the Annenberg School for
5 Communication as well as a faculty member in political
6 science. I run something that's part of the Annenberg Public
7 Policy Center that's called the Institute for the Study of
8 Citizens and Politics.

9 This institute is basically set up to study politics
10 from the citizen's point of view. We do research on all kinds
11 of non-electoral consequences, political process; and by that
12 I mean, we study levels of civic knowledge, how mass media
13 contributes to levels of civic knowledge, what kinds of things
14 the media chooses to emphasize and so forth.

15 And my particular position is an endowed chair, that's
16 between political science and Annenberg; and it was originally
17 endowed by Walter Annenberg to try to build bridges between
18 those fields.

19 Q. Does the Annenberg School have a particular focus?

20 A. It does all kinds of communication.

21 Q. But it is specifically focused on communications?

22 A. Right.

23 Q. Tell us a little bit about the types of communications
24 that you study.

25 A. I study the impact of both mass media and interpersonal

1 communication on public opinion, on attitudes toward the
2 political process, how people feel about politicians in
3 general and the political process, that sort of thing.

4 We don't do what I would call political marketing work.
5 That is, we don't study how to persuade people to vote for one
6 candidate over another. That's something that, because of the
7 way we're funded, we don't do any partisan work.

8 Q. So, there's no partisan political activity?

9 A. Absolutely not.

10 Q. So, you don't work for a political candidates?

11 A. No.

12 Q. Political parties?

13 A. No.

14 Q. As part of your work, do you have the opportunity to
15 review public education campaigns?

16 A. Frequently. And I teach doctorate level courses that
17 are to students who will do communication campaigns in all
18 kinds of areas, not just in the political realm, but also
19 health communication and so forth.

20 Q. And if you look at last page of your CV, is that the
21 courses taught? Is that a description of what it is you
22 teach?

23 A. Yes.

24 Q. Both graduate and undergraduate?

25 A. Mm-hmm.

1 Q. Let's talk a little bit about your expertise, and you
2 said political communication. Tell us what that entails.

3 A. Political communication is all forms of communication
4 that affect the citizens' relationship to the political
5 process. Whether they feel included in it or not, whether
6 they feel politicians represent them or not, and so forth.

7 So, we look at levels of public knowledge about issues
8 of the day as well as, you know, attitudes toward them,
9 whether they perceive a given policy as beneficial,
10 detrimental to themselves, the community at large and so
11 forth.

12 Q. Can you tell us a little bit about your research areas?

13 A. Currently, I am finishing a book this summer called In
14 Your Face Politics that is a study that involves both
15 experimental and survey based work on how citizens are
16 affected by incivility in political discourse.

17 I have done many studies on this, and am putting them
18 together as a book. Obviously, we're all aware of the
19 incivility in political discourse and it does have
20 consequences for how people relate to the political process,
21 how they think about politicians and so forth.

22 I also am working on journal articles and a subsequent
23 book that has to do with public perception of the legitimacy
24 of the political process and the electoral process. Looking
25 at what makes people feel that they're willing to go along

1 with an outcome of an election, even when it isn't their
2 preferred outcome.

3 Q. Now, starting on page four, there's what looks like a
4 list of books and then refereed journal articles and book
5 chapters?

6 A. Mm-hmm.

7 Q. Are there particular books you might want to point us to
8 as representative of your work that would be relevant to this
9 case?

10 A. Well, Hearing the Other Side is a book that many people
11 feel is relevant to legitimacy in particular, and how the
12 public views the political process. It addresses issues of
13 polarization, compromise and so forth and looks at the impact
14 of surrounding yourself with like-minded versus diverse others
15 in terms of their political viewpoints and how that affects
16 people's political behavior.

17 Other books here, they all cross over in various ways.
18 Impersonal Influence looks at how mass media influences our
19 perceptions of mass opinion and behavior in ways that don't
20 always correspond to what's really out there. And by virtue
21 of shaping those perceptions, it also shapes people's
22 behaviors.

23 Q. I note on your CV, you have got one, two, three, four,
24 looks like four-and-a-half pages of articles, and those are
25 all articles that you personally worked on or have been the

1 lead author on?

2 A. They're peer reviewed journal articles. That's really
3 the currency in my discipline when there's quantitative work
4 involved. Particularly, most of the time we get out the
5 technical details of our studies in journal article form and
6 eventually, when we want to sort of put greater emphasis on
7 the big idea, we put them into a book manuscript.

8 Q. What do you mean by peer reviewed?

9 A. Peer reviewed means they go out and are anonymously
10 reviewed by other members of your discipline. They don't know
11 whose work they're reviewing at the time. It's a very
12 competitive process. The top journals have about a 5%
13 acceptance rate. You go through a lot of objections.

14 Q. Now, back on page two of your CV, I note there's some
15 honors and awards. Can you tell us a little bit about those?

16 A. Sure.

17 Q. Let me ask you, what is a Lifetime Career Achievement
18 Award in pol com from -- political science, political
19 communications from APSA? What is APSA?

20 A. The American Political Science Association is the
21 largest professional organization in political science. It
22 basically has a small number of Lifetime Career Achievement
23 Awards for all of your contributions to the discipline during
24 the course of your career.

25 In 2011, I was awarded the Lifetime Career Achievement

1 Award in political communication for work I have done since I
2 started in the field.

3 Q. You said only one person gets that a year?

4 A. Correct. I'm not even sure it's awarded every year. It
5 may be every other year. I don't know.

6 Q. What other significant awards might you point us to?

7 A. I guess the one that's most significant to me is the
8 American Association of -- I'm sorry, the American Academy of
9 Arts and Sciences Fellowship. I was elected a Fellow of the
10 AAAS not that long ago.

11 It's an organization with a very esteemed history. It
12 was originally created by the founders of the country at the
13 time of the American Revolution, to try to bring academics to
14 -- academic knowledge to bear on matters of public policy, and
15 that is an award that you're elected to by people outside your
16 discipline. So, it -- your reputation has to go beyond
17 political science or communication in order to receive that
18 honor.

19 Q. When you say people outside of your discipline, what,
20 for example.

21 A. Physicists, mathematicians, so on, so forth. You're
22 voted in by the pre-existing Fellows, and it covers all of
23 those areas, so only those people in the field who know the
24 position.

25 I have been involved in many cross-disciplinary kinds of

1 endeavors through the National Science Foundation and as a
2 result my work is interdisciplinarian and known across
3 multiple disciplines.

4 Q. Lastly, on page eight of the CV, you have a section on
5 professional service. Tell us a little bit about that.

6 A. I've -- since I have been elected a Fellow of AAAS, I
7 have also been involved in selecting new members. I've also
8 served for many years on the American National Election
9 Studies Board of Overseers, and that's the largest electoral
10 behavior project in the United States.

11 Q. What do you mean by electoral behavior?

12 A. It's a study that's funded by the National Science
13 Foundation to -- around every presidential election year, also
14 often they study midterm elections as well. It's a group of
15 people that get together and plan that project, and make sure
16 that the money is being spent wisely.

17 Q. And what is it in particular that the project looks at?

18 A. There's public information about candidates, what people
19 are learning during the course of a campaign. How they feel
20 about the electoral process after it's over. All of those
21 kinds of things are incorporated.

22 It's also a historical time series. This study has been
23 going since the 1940s. It's one of the few sources we have of
24 over time knowledge of levels of public information and public
25 involvement and so forth.

1 Q. So, you look at the public's perception of the political
2 process?

3 A. Correct.

4 Q. And you look at the influence of what, for instance,
5 politicians or government leaders are saying on the public?

6 A. Exactly.

7 MR. WALCZAK: Your Honor, we would proffer
8 Dr. Mutz as an expert in political communication and political
9 behavior.

10 MS. HICKOK: Your Honor, may I voir dire this
11 witness, please.

12 THE COURT: Sure.

13 MS. HICKOK: Thank you.

14 CROSS-EXAMINATION ON QUALIFICATIONS

15 BY MS. HICKOK:

16 Q. Good morning, Professor Mutz.

17 A. Good morning.

18 Q. Have you any background in advertising?

19 A. Yes, I do.

20 Q. What is your background in advertising?

21 A. I worked for Leo Burnett in Chicago.

22 Q. How long did you do that?

23 A. A short period of time. It was before I went to
24 graduate school.

25 Q. What was your role there?

1 A. I worked in the research department and I worked on a
2 number of accounts, including Oldsmobile, McDonald's, Glad.
3 Glad Wrap, that kind of thing.

4 Q. What did you do for those accounts?

5 A. We did research on everything from commercials they
6 produced to lifestyle research to try to chart future trends
7 that would affect the advertising, and to be incorporated into
8 the advertising.

9 Q. And your particular role in that, what kind of thing did
10 you particularly undertake as your tasks?

11 A. I did all kinds of things. I ran focus groups, when
12 needed. I analyzed data that we collected. I analyzed large
13 scale databases on lifestyle changes in the United States.

14 I gave presentations to clients at, you know, corporate
15 headquarters of McDonald's, places like that. Wide variety of
16 things involving evaluating advertising effectiveness.

17 Q. And you said you did that for a short period of time,
18 right?

19 A. Right.

20 Q. How much time?

21 A. It's been so many years ago, I'm not sure exactly.
22 Probably under a year.

23 Q. Okay. And you said it was many years ago?

24 A. Yes.

25 Q. How many years ago?

1 A. Well, it was after I received my B.S., but before I went
2 to graduate school. I graduated early from Northwestern, and
3 then got a job at Leo Burnett.

4 Q. What is your background in marketing?

5 A. All of the kinds of things that we do at the Annenberg
6 School are designed so that we can place our students in
7 marketing positions of all kinds. In fact, many of my
8 graduate students are in marketing positions, either in the
9 context of advertising and public relations or in some cases
10 they work for, say, the CDC working on health information
11 campaigns, that kind of thing.

12 Q. Now, you provided some statements here about the
13 non-partisan nature of your role. Are you aware that many of
14 the Professors at the University of Pennsylvania have been
15 very vocal in their opposition to the photo ID law?

16 A. No, I'm not.

17 Q. Are you aware that there was a symposium held at Penn
18 last year at which one of the centerpoints was presentations
19 about photo ID and about other things like that?

20 A. No, I'm not. I don't think those were people from my
21 department, because I wasn't aware of it.

22 Q. Now, you're actually in two departments; is that
23 correct?

24 A. Correct.

25 Q. And you also work with people like Professor Goldman who

1 is in another department; is that correct?

2 A. Professor Goldman?

3 Q. Have you not? I thought I saw that you had co-authored
4 some materials with Professor Goldman?

5 A. He is now a Ph.D. He was my graduate student.

6 Q. Oh, okay.

7 A. And he's in the Annenberg School.

8 Q. He is in Annenberg?

9 A. Yes.

10 Q. Okay. You also in your sources have cited extensively
11 to two of the witnesses who have been in this case, or are
12 listed to be in this case. One is Dr. Barreto and one is
13 Dr. Minnite. Have you talked to either of those people?

14 A. No, I have not.

15 Q. And how did you come to testify here today?

16 A. I was called and asked if there was someone at the
17 Annenberg School who was an expert on information campaigns
18 who can evaluate a communication campaign.

19 Q. And have you testified in any other cases?

20 A. Not in court, no. When I was at Ohio State, I was hired
21 by the State of Ohio as an expert witness in a case involving
22 the Ohio State lottery. It was settled. I didn't end up
23 appearing in court, but I did prepare materials for the state
24 on behalf of the state lottery.

25 Q. So you have not yet had any court find you qualified to

1 testify?

2 A. No.

3 Q. And you talked about the fact that you have been doing a
4 lot of study on knowledge and citizens' knowledge and that
5 kind of thing. You actually have a publication posted on your
6 website that's forthcoming that's talking about -- I think I
7 left it over here. I believe it's called Televised Exposure
8 to Politics: New Measures For a Fragmented Media Environment?

9 A. Correct.

10 Q. Is that correct?

11 A. Yes.

12 Q. And in it are you describing an experimental method that
13 you have worked up to measure the way that people gain and
14 assimilate knowledge?

15 A. This is not an experimental study. I do do experiments.
16 This particular study is based on five ways of panel data
17 during the course of the 2008 campaign where we're tracking
18 levels of political knowledge over time, and looking at that
19 in relation to the amount of media that people consume.

20 Q. Did you not say that the study of media effects outside
21 of experimental context could benefit from repeated
22 measurement of dependent variables in order to avoid
23 confounding individual differences with effects?

24 A. Yes, that's correct.

25 Q. And isn't this article pervaded throughout with

1 references to the fact that it's new and innovative?

2 A. It is new and innovative, yes.

3 Q. Okay. So, it's not something that's been generally
4 accepted or adopted throughout the country?

5 A. No, it has. In fact, the American National Election
6 Studies saw the article before it was actually published, and
7 decided to change the way that they measure media exposure
8 based on the evidence we provided. So, it's already had a
9 very big impact on measurement in the field.

10 It's a long-term problem that self-reports of people's
11 levels of media exposure tend to be pretty inaccurate, because
12 they either don't remember how much media they have consumed,
13 or they remember only certain things and not others. So, it's
14 very hard to measure by just asking people. And as a result,
15 there have been many efforts to improve measurement of
16 exposure in observational studies.

17 Ours is the first one to offer panel evidence that this
18 measurement actually does predict what people are getting from
19 media over time and how much they're learning.

20 Q. Is there anything other than that one organization that
21 would say that this has been generally and pervasively
22 accepted?

23 A. Yes. There are many other scholars using this approach
24 now. People who are studying -- anyone with an interest,
25 really, in studying media exposure has shifted to a method

1 like this, if they try to measure media exposure at all.

2 Because we have --

3 Q. Have you --

4 A. -- the evidence that the other methods are poor.

5 Q. You're saying that everyone has?

6 A. I don't know of anyone who is measuring it the old way.

7 Either they're not doing it at all or they're measuring it

8 like this.

9 The old fashioned measures that were used were simply
10 asking people, you know, how much news do you consume on an
11 average day? We now know those are vastly inaccurate. Partly
12 because we don't even agree on what news is these days.

13 Q. In terms of what you are measuring here, it's all being
14 measured based upon the way the consumer responds to
15 information; is that correct?

16 A. What we're asking people are items that have to do with
17 knowledge that they can acquire from mass media during the
18 course of a presidential election. So, they acquire it or
19 they don't.

20 Q. And that knowledge is related primarily to candidates or
21 the candidates' perspective, is that correct?

22 A. Correct. Because we are trying to prove measurement of
23 studying levels of citizen knowledge during campaigns. We
24 focus on asking people what they knew about candidate issue
25 positions.

1 MS. HICKOK: Okay. Your Honor, I don't think
2 this witness has anything to answer as to the questions that
3 are before this Court, and I would move that she not be
4 admitted.

5 THE COURT: We'll refuse that.

6 CONTINUED DIRECT EXAMINATION

7 BY MR. WALCZAK:

8 Q. Professor Mutz, if you look at Exhibit 2099c?

9 A. Yes.

10 Q. What is that?

11 A. It is a list of materials that you had me read before I
12 wrote my report.

13 Q. Now, are there some other materials that you may have
14 looked at since then?

15 A. Yes. I know we didn't have the final versions of the
16 ads in time for filing the report, so I've reviewed those
17 since we have received them after the report was due.

18 I also, you know, consulted the literature in my field
19 on information campaigns and so forth.

20 Q. When you say "we had not received the ads, the final
21 versions of that, the ads," to your knowledge, was that ads
22 that we received from the Respondents in this case?

23 A. Yes.

24 Q. Have you also been looking more recently at the
25 Department of State and PennDOT information regarding voter ID

1 that's on their website?

2 A. Yes.

3 Q. So you've maintained kind of up to date --

4 A. Right. As recently as a few days ago.

5 Q. And Exhibit 2099d, what is that?

6 A. These are additional pieces of scholarly work that were
7 referenced in my report.

8 Q. Now, we're going to talk about three opinions that
9 you're going to render in this case. Let's start with the
10 first one.

11 Do you have an opinion to a reasonable degree of
12 professional certainty whether the Commonwealth's media and
13 education campaign reached its goals of, A, insuring every
14 eligible Pennsylvania voter knows that they need a certain
15 type of ID to vote, and B, insuring every eligible voter is
16 prepared with photo ID on Election Day and is able to cast a
17 vote?

18 A. Yes. I think given those stated goals, I am very
19 confident that they didn't achieve them.

20 Q. Could you summarize or just -- we'll go through it in
21 more detail, but just briefly summarize the basis for that
22 opinion?

23 A. With respect to the first goal of informing every
24 eligible voter about the new voter ID requirements, my biggest
25 concern is that the "show it" campaign message was never

1 pretested at all, and pretesting is a standard practice. It's
2 very quick, very inexpensive, where you find out --

3 Q. I'm sorry, inexpensive or expensive?

4 A. Inexpensive, yes. Where you simply find out, did people
5 understand that message the way that you intended it. This is
6 one of the standard practices when launching any kind of
7 information campaign.

8 The reason it concerns me is because I don't know that
9 people understood "show it" to mean what was intended by the
10 vendors. I can't say definitively one way or another on that
11 one.

12 On the second goal, I feel very strongly that it would
13 have been extremely difficult for people to find out about how
14 to obtain free ID, mainly because, as Mr. Royer mentioned
15 yesterday, they purposely did not mention it as part of the
16 campaign.

17 Q. Are there any measurable metrics?

18 A. One of the biggest oversights I think in the entire
19 campaign is that we really don't have effectiveness metrics
20 built into the campaign to know how many people got the
21 message, how many people understood it, how many people
22 responded the way that, you know, they had hoped and went and
23 called or went to the website and so forth.

24 Effectiveness metrics are extremely important in
25 executing a campaign because obviously, effectiveness is what

1 we want.

2 If you know the goals of the campaign upfront, you
3 engineer some way that you can assess how they're doing also
4 relate.

5 In this particular case, in reading through these many,
6 many materials, the only thing that I saw that could qualify
7 as an effectiveness metric is really the number of people who
8 got the Department of State ID, and that was 17,000 out of --
9 I know there are many different estimates of how many people
10 don't have it, but even if you go with a very conservative
11 estimate, it's, you know, of 100,000, it would be only 17%.

12 So, that is not a very good result to have.

13 Q. When you say 17,000 Department of State IDs, are you
14 including the PennDOT IDs that were issued for voting
15 purposes?

16 A. I don't think so. I think that's the Department of
17 State.

18 Q. All right. Are there standard practices in the field
19 for competently or well executing an information campaign?

20 A. There absolutely are, and the reason is that so much
21 money has been spent and wasted on information campaigns. So,
22 the Federal Government, the National Research Council,
23 actually pulled together a group of academics who were most
24 deeply involved in the formulation of information campaigns,
25 had this commission put together a list of best practices, and

1 these are widely followed.

2 I'm sure the list will have additions over time because
3 the media environment is changing and so forth, but they're
4 certainly widely taught and well understood to be any serious
5 information campaign should follow those.

6 They include a large number of recommendations, but the
7 basic idea is, you know, you have to start out a campaign with
8 some pretty well defined goals and some sort of metric for
9 finding out whether you're achieving those goals down the
10 road.

11 You also have to do some research on your target
12 audience to find out, you know, what are the kinds of
13 impediments they face to comply with whatever it is you are
14 trying to get people to do ultimately. Beyond that, a message
15 pretesting is something that is absolutely essential, and the
16 reason is because --

17 Q. I'm sorry, what do you mean by message pretesting?

18 A. Usually it's something as quick and easy as getting
19 together 15 people for a focus group or maybe 15 people that
20 you pay \$20 bucks each to come watch the ad and then you ask
21 them a series of questions like, well, what did you understand
22 this ad to be saying? What did you remember from the ad? If
23 you were watching this ad at home, you know, how would you
24 respond? What would you think of it? What's the relevance to
25 you, and so on and so forth.

1 Q. I'm sorry, is that -- is that something that can be done
2 quickly, easily, and inexpensively?

3 A. Yes, in under 24 hours. When I worked at the ad agency,
4 it was Leo Burnett's rule that nothing went out if the message
5 hadn't been pretested, so we often did it overnight. It was,
6 again, not expensive to do, and it I think prevented a lot of
7 headaches, because people who are really close to a message
8 have a hard time knowing that others are not thinking about it
9 as deeply as they are. And as a result you really have a
10 tendency to fall in love with your own message and not
11 necessarily accept the fact that, you know, people didn't
12 understand it the way you intended them to.

13 Q. So, have you had experiences or evaluated campaigns
14 where people thought it was an effective message and, as it
15 turns out, people were not understanding it in the way they
16 intended?

17 A. Oh, absolutely. There are many of them. There are some
18 examples that are -- I would say, shocking in the sense that
19 sometimes they not only didn't work well, they actually
20 backfired and produced consequences opposite of what was
21 intended.

22 The one I'm thinking of right now is the national
23 anti-drug campaign that was done during the 1990s. This
24 campaign, billion dollars was spent on it.

25 Q. What -- just -- so maybe we can recall what that

1 campaign was, what were kind of the elements of that campaign?

2 A. It was a TV campaign primarily, and it was directed at
3 teen-age Americans with the desire to reduce illegal drug use.

4 Again, it had an amazing level of reach and frequency,
5 meaning that 95% of the target audience used in this age group
6 were exposed to these ads in media, two or three times a week.

7 So that's --

8 Q. 200 you said?

9 A. Two to three times a week.

10 Q. Oh, two to three times.

11 A. Yes. That's a lot. And what the evaluation of this
12 project told us was that, the more you were exposed to those
13 ads, the more likely you were to initiate marijuana use.

14 And obviously, it was not their intent in spending all
15 of this money. Turned out that what happened was that by
16 virtue of featuring teen-agers and drugs in the ads, they
17 created the impression on teen-agers that it was a more
18 socially acceptable thing and that more people were doing it;
19 and as a result, it increased the number of people who
20 initiated marijuana use rather than decreasing it.

21 So, that's obviously a big disappointment, and
22 obviously, not money well spent.

23 Q. You said that was a billion dollars for that campaign?

24 A. Right.

25 Q. Do you have any other examples you can give us briefly

1 about campaigns that really didn't have the desired effect and
2 didn't achieve the goals?

3 A. Yeah. Unfortunately, there are an endless number of
4 them.

5 There are -- one of them that I think illustrates really
6 well the problems of judging whether a message is effective or
7 not without any kind of actual viewer reaction is an
8 anti-pollution campaign that was done many years ago.

9 It featured a Native American in a canoe, and he starts
10 canoeing through a pristine wilderness on a river, and
11 gradually, the water becomes more and more littered until he
12 is clearly near a metropolitan area, and people are dumping
13 trash out of their cars into the river.

14 Q. Is that the one where he's got the tear --

15 A. That's what I was about to say. At the very end for
16 emphasis, and I think it is a very emotional ad, you see the
17 Native American shedding a tear.

18 And then the tagline at the end is, "people start
19 pollution, people can stop it." And this ad won all kinds of
20 creative awards; it was beautiful. It was a very, very pretty
21 ad, very creative and so forth.

22 Again, unfortunately, the data showed that it didn't
23 have any effects at all on litter, and the main reason was
24 that it didn't tell people what to do. It said, "people start
25 pollution, people can stop it."

1 And so, yeah, people agree with that idea, but they
2 really didn't know what they were supposed to do to help
3 improve the situation. As a result, it wasn't effective, even
4 though it was very pretty.

5 Q. Give us maybe one more example of a prominent ad
6 campaign that did not achieve its intended goal.

7 A. One from the health realm where there are a lot of
8 information campaigns done was one that was designed to
9 prevent the spread of HIV by encouraging condom use, and the
10 message that the campaign vendor decided on was to encourage
11 people to talk to their partners. And the idea was, you know,
12 get people to talk about it, and they'll be more likely to use
13 condoms.

14 Well, the campaign was actually extremely successful as
15 encouraging people to talk to their partners. They had lots
16 of evidence that it work it worked on that front. The problem
17 was, the message had told people that talking to your partner
18 reduced your risk. So, as a result they felt like they really
19 didn't need to use condoms.

20 So, again, it was especially unfortunate because the
21 people who were most likely to talk to their partners were
22 also the most sexually active, and thus high-risk people, and
23 so, the more they talked about their previous sexual
24 experiences, the more their partner felt they were not at
25 risk, when they were actually at heightened risk.

1 So, again, another example of a campaign that didn't
2 work out the way it was intended.

3 Q. So, does that all go to the point that it's important to
4 both do some kind of evaluation in the message development as
5 well as at the end of the campaign to assess whether it's been
6 effective?

7 A. Yes. Message testing, as I said, is inexpensive, quick
8 and easy; and you always want to do that to make sure that
9 people are understanding things the way you want them to.

10 And also that, you know, even these kinds of situations
11 we're talking to them five minutes after they have seen it.
12 If they don't remember and understand it five minutes later,
13 they're not going -- when they're out in the real world where
14 they're distracted by other things, they are not going to
15 remember it at all. If anything, it's a very low bar for
16 message testing.

17 But in addition to that, one of the things that the
18 National Research Council is very, very emphatic about
19 incorporating into communication campaigns is what we call
20 formative evaluation.

21 What that means is that you don't -- most of the money
22 in campaigns is spent on airing ads. Media is expensive, and
23 television in particular. What they recommend doing is you
24 start your campaign in one small area.

25 In the case of something like voter ID, it can be a

1 particular metropolitan area, something like that; and you
2 start your campaign, and then you look at the measures of
3 effectiveness. How many calls are you getting. How many
4 people are going to the website and so forth. Then you
5 fine-tune the campaign based on what you learn from that
6 experience. What kinds of things are people misunderstanding.
7 Are we just not getting any reaction at all here or what.

8 That prevents you from spending a lot of money on a
9 message that may not be accomplishing what you want.

10 Q. Another one of the best practices you identify in your
11 report is a need to pay attention to follow-through. What do
12 you mean by that?

13 A. Follow-through is particularly important in campaigns
14 where you want people to do something after viewing the ad;
15 and in this case, follow-through means either calling the
16 hotline or it means going to the website for more information.

17 You have to give people a reason to do that. You have
18 to encourage them to do something that takes their own
19 initiative, and you know, the way that you usually do that is
20 by telling them why they might want to do that.

21 You know, in the case of voter ID, you would want to
22 tell them, if you need an ID, call this number. Get one for
23 free with no documentation, or if, you know, if you're not
24 sure you have an appropriate ID, you can get more information
25 here.

1 Those kinds of things that tell you explicitly why you
2 might want to take this next step are extremely important to
3 motivate people to do that.

4 Q. Okay. And then, but when in terms of follow-through,
5 would that also include that, at the point where the person
6 does what they have been asked to do, should there be some
7 assessment of what happens then and how that works?

8 A. Yeah, you need to make it as easy for them as possible
9 because you're obviously asking them to take the initiative;
10 and once they have done so, you want to make sure that they
11 can get what they need quickly, easily and so forth.

12 We know that the more of an investment people have to
13 make in terms of time, money, and inconvenience and so forth,
14 the less likely they are to do it.

15 So, once they take that step, you have to be there and
16 immediately ready to help them.

17 Q. Now, are there some types of campaigns that are more
18 difficult than others? I know Miss Hickok asked you about
19 your early advertising work and you mentioned McDonald's and
20 Glad. Are there different types of campaigns with different
21 degrees of difficulty?

22 A. Yes, there are.

23 Product advertising is something that's different from
24 promoting information acquisition. Again, most advertising is
25 product related; and in many cases, all you're trying to get

1 people to do is, you know, pick a different breakfast cereal
2 off the shelf when they're already at the grocery.

3 So, making people aware of your brand and the cereal and
4 so forth means it's a very low cost thing for them to do to
5 try that new cereal.

6 In this case, what we're trying to get people to do is
7 considerably more involved. What we know from past experience
8 in information campaigns is that the lower the cost and the
9 higher the benefit for them, the more likely the campaign is
10 to work; and one of the examples I mentioned in the report of
11 a campaign that worked quite well was information campaign for
12 sudden infant death syndrome, crib death.

13 Q. Is that SIDS for short?

14 A. SIDS, yes.

15 Basically, those ads told people, encouraged people to
16 put their babies to bed on their backs rather than on their
17 stomachs as a means of preventing crib death.

18 Again, this was easy to do. It doesn't take more time
19 and energy to put them to bed on their backs than their
20 stomachs, and obviously, the benefit is huge. And in fact,
21 that television campaign demonstrated a 50% reduction in crib
22 death and so, it was very, very worthwhile.

23 Q. Now, and you were in the courtroom yesterday for Deputy
24 Secretary Royer's testimony; is that correct?

25 A. Yes.

1 Q. And you heard a good amount of his testimony about how
2 much money they had spent on the campaign.

3 Is money a good predictor of success?

4 A. No, it's not, overall. A much better predictor of
5 success is how many of the standard practices that you follow.
6 We know that even if you follow all of them, you're not
7 guaranteed success; but the more of those best practices you
8 follow, the higher your probability of success.

9 You can spend a lot of money and you can have things
10 backfire as in the case of the anti-drug campaign, and you can
11 also spend smaller amounts very wisely and get the desired
12 result. So, it really has more to do with how much thought
13 was put into the campaign.

14 Q. I want to turn now to the actual "show it" campaign.
15 What were the Commonwealth's goals in the campaign? Go ahead.

16 A. My understanding from the RFQs that went out for -- to
17 vendors was that they had a variety of different statements
18 and goals; but it whittled down to two things: One, to let
19 everybody who was an eligible voter in the state now that
20 there was a voter ID law, and that they needed photo ID; and
21 then secondly, to tell people who didn't have it how they
22 could go about getting it.

23 Q. I'd like to put up Petitioners' Exhibit 1941. Do you
24 recognize this document?

25 A. I do.

1 Q. And what is this?

2 A. This is the RFQ that went out to the vendors.

3 Q. Could you go to page I believe it's 26.

4 MR. KEATING: You have 26 and 29. How many do
5 we have here?

6 MS. HICKOK: 12.

7 MR. KEATING: We have 12 pages and a blank
8 page after that, Vic.

9 MS. MOORE: What do you have?

10 MR. KEATING: 12 to 29 and then a blank page
11 after that.

12 MS. MOORE: Let me see if I have another copy.

13 THE COURT: They may all be that way.

14 MR. KEATING: Is yours the same way, Your
15 Honor?

16 THE COURT: Mine is the same.

17 MS. MOORE: Let's use this one instead. Sorry
18 about that.

19 BY MR. WALCZAK:

20 Q. I believe it's on page 26 of 29; is that right?

21 A. What I'm looking at, I think you mean it says where the
22 Department is committed to ensuring that every eligible voter
23 is informed of the new requirement and is prepared with photo
24 identification on Election Day and is able to cast a vote.

25 Q. Now, if we turn to the bottom of page 25, under the

1 section that's titled nature and scope of the project?

2 A. Mm-hmm.

3 Q. Could you look at that last paragraph there. It says
4 the primary goal and could you read that.

5 A. "The primary goal of this campaign is to inform voters
6 of the new requirements, and insure that no one will be denied
7 the right to vote because of the new law. The messaging under
8 this campaign is strictly limited to voter education with a
9 strong focus on the photo identification requirement. Voters
10 must know that they must bring photo identification to the
11 polls, and if they do not have acceptable photo
12 identification, they must know how to obtain it."

13 Q. I note in that third sentence there, it says the
14 messaging under this campaign is strictly limited to voter
15 education, it says, with a strong focus on the photo
16 identification requirement.

17 A. Right.

18 Q. Is that right?

19 In your opinion, was the campaign designed to reach each
20 of these two goals?

21 A. Well, it's difficult for me to say how well designed it
22 was to accomplish the first goal; that is, informing people
23 about the new law. I'm sure some people probably did, and
24 others did not get the message.

25 In part, I say that because the "show it" campaign has

1 some ambiguity inherent in the message. So, without any kind
2 of message testing, I'm not positive about that. I can't say
3 one way or another. We don't have any evidence of
4 effectiveness in conveying that information.

5 In terms of the second goal, "knowing how to obtain
6 photo identification if they don't have it" I really didn't
7 see that emphasized at all in the media campaign. So, I don't
8 think they could have accomplished that.

9 Q. On the actual message, let's talk about that in terms of
10 the first goal of informing people in the "show it" campaign.
11 Can you talk to us a little bit about that.

12 A. Well, the "show it" campaign was designed as a double
13 entendre, meaning that it meant two different things at the
14 same time, meaning it meant show your enthusiasm, and it also
15 meant show ID; but it wasn't always clear what "it" was when
16 they were saying "show it" in these messages.

17 So that's why I say I'm not really sure people
18 understood them the way that they intended.

19 Q. You said you're not sure about the message there or how
20 it might have been perceived. Are you aware of whether they
21 did any kind of -- they being the Commonwealth, did any kind
22 of pretesting or formative evaluation?

23 A. They did not.

24 Q. And are you aware of whether even the vendor for
25 producing the creative work for the Commonwealth indicated

1 that this was an important element?

2 A. Yeah, I read the deposition from Gloria Blint at Red
3 House Communications. She said that she thought that all of
4 their clients ought to do that, but that it wasn't part of
5 what they were asked to do by the State.

6 And in fact, in the questions and answers that the
7 vendors put forth for the Department of State to answer, one
8 of the vendors asked, is there going to be an effectiveness
9 metric such as seeing how many people show up at the polls
10 unaware of this requirement; and the state explicitly said no,
11 they didn't want that.

12 Q. Now, and I believe Ms. Blint also said that sometimes
13 it's not done.

14 A. That's correct. She mentioned one client who didn't do
15 any kind of evaluation of effectiveness. Again, the only --
16 I'm not aware of any information campaigns that don't look at
17 effectiveness, but --

18 Q. Wait. I'm sorry. So when you say information
19 campaigns, you're contrasting that with what?

20 A. Consumer campaigns.

21 Q. So that's like product --

22 A. Right. And the example she gave was a consumer
23 campaign. I'm not exactly sure what the product was in the
24 case. Let's say you're trying to do something like raise your
25 profile of your brand name, and you do ads and they're just

1 designed to get the name of your company in front of people so
2 they have heard it more often and they're aware of it.

3 In situations like that, you can imagine that they might
4 not do any kind of effectiveness testing; but for information
5 campaigns, I'm not sure why you do the campaign unless you
6 cared about whether or not people were affected by it.

7 Q. Let's take a look at some of the ads that the
8 Commonwealth used as part of their "show it" campaign. If we
9 could play -- let's -- this is Respondents' Exhibit 217 from
10 yesterday. Do you know what this is, Professor Mutz?

11 A. This looks like the 30-second television ad.

12 Q. Let's start by playing just a --

13 MS. HICKOK: Would you clarify, please, the
14 dates on which this ad was?

15 MR. WALCZAK: I'm sorry. This is a
16 pre-injunction ad. Yeah. Sorry about that.

17 (THE AD PLAYED AS FOLLOWS:

18 "If you care about this election."

19 "If you care about this election."

20 "If you have an opinion."

21 "If you want a voice."

22 "If you want a voice."

23 "If you want to make a difference.")

24 BY MR. WALCZAK:

25 Q. What's wrong with that?

1 A. Well, again, it's pretty, and it looks very
2 professional; but at this point, if I were the average person
3 sitting at home, I wouldn't know what this was actually about.

4 They don't mention voter ID. When I first watched it, I
5 thought it was about showing your enthusiasm about getting
6 involved in your community, that kind of thing, because we're
7 10 seconds into the ad. They're saying if you want to make a
8 difference. If you want to get involved. It's a "show your
9 enthusiasm" kind of message.

10 I don't -- if I were concerned about voter ID, I
11 wouldn't know that this ad was about voter ID to begin with at
12 this point.

13 Q. So, they haven't even mentioned voter ID in the first
14 third.

15 A. No, not at all.

16 Q. Let's watch the remainder of the ad.

17 (THE AD PLAYED AS FOLLOWS:

18 "Show it."

19 "Show it."

20 "Show it."

21 "Show it."

22 "To vote in Pennsylvania on Election Day, you
23 need an acceptable photo ID with a valid expiration date.

24 Learn more at 1-877-votes-PA or visit votespa.com."

25 "If you care about this country, it's time to

1 show it.")

2 BY MR. WALCZAK:

3 Q. What's wrong with that?

4 A. Obviously, they do now mention in the voiceover voter
5 ID. That's good. One of the problems, and I think Gloria
6 Blint also pointed this out in her deposition, is that as
7 human beings our attention is drawn to faces. What you look
8 at are the people who are talking on the screen. We can't
9 help that. We are drawn to orient to faces.

10 It's unfortunate that the voter ID message is done by
11 the voiceover, someone you never see rather than someone on
12 the screen that's actually speaking. Again, we tend to focus
13 on what we're seeing on the screen in front of us.

14 So, the voiceover does mention voter ID; and if you are
15 watching closely enough and listening closely enough, you can
16 connect what they're showing to the idea of voter ID, but it
17 takes both paying close attention visually to the message and
18 listening at the same time. And again, there are lots of
19 examples where when the audio and the visual don't reinforce
20 one another, people don't get it.

21 One of my favorite examples of this is an AT&T ad where
22 there are a bunch of men going fishing for the weekend, and it
23 rains constantly and they don't actually do any fishing and
24 one of the guys calls home and he is staring. The whole
25 screen has a picture of hamburgers cooking, and he is telling

1 the folks back home what a wonderful time they're having and
2 how great the trout is. You know, it's meant as a joke.
3 Meant to be funny and meant to be clever.

4 That's fine, but the pretesting showed that when you
5 asked people what were they eating for dinner? They all said
6 trout. Nobody got the joke. And so, they had to recut the ad
7 to make it more obvious.

8 And so, we have situations where the visual and the
9 audio are saying different things, and it's very hard to
10 assume people will integrate those somehow.

11 It's also problematic in that a lot of people are not
12 sitting there staring at the screen during advertising pods.
13 They get up; they walk around. If you were just hearing this,
14 it would be very hard to understand what "show it" meant.
15 "Show it." Show what? "It" is undefined here.

16 Q. Unless you see the --

17 A. Right, right.

18 Q. -- the screen.

19 A. Well, even then it's not exactly clear what it is. They
20 show a variety of different IDs. Already knowing what they're
21 talking about, obviously, I make the connection; but it's
22 dangerous to assume that a member of the public who doesn't
23 know anything about this will make that connection themselves.

24 And again, it's one of the situations where it's a
25 clever idea, the double entendre is clever, but it might be

1 too clever to communicate clearly.

2 Again, that's one of the reasons we want to talk to
3 people who don't know anything about this to see what their
4 interpretation of it is.

5 It's also, I think, pretty clear from this that even
6 though they mention voter ID at the end, they don't really say
7 anything to the people who don't have it to show. To say
8 "show it" presumes that you have it. And I don't know what
9 those people -- how they would react; and if I were doing
10 this, I would definitely want to pretest this message on
11 people who don't already have it to see if it speaks to them.

12 Because to me, "show it" says show what you've got,
13 what you already have; not if you don't have this, here's how
14 to get it. And so, I would be particularly concerned about
15 that audience.

16 Q. In terms of this campaign, how much attention is paid to
17 that second goal of helping people who might not have the
18 right kind of ID get it?

19 A. There's very little in this ad; and again, TV ads are
20 the dominant medium that they use to communicate with the
21 public. So, if you are likely to see this campaign at all, it
22 was probably on television.

23 What happens is they say, learn more, and give you the
24 phone number. It's flashed on the screen as well as the
25 voiceover, or go to the website.

1 Again, it's very hard, when you only say it once in the
2 course of the whole ad for people to be prepared to write it
3 down, or to remember it.

4 So, part of the problem is, we're not sure why we want
5 to learn more. It's almost like, well, if you have an
6 abstract academic interest in voter ID, you can learn more
7 here; but that's a very different message from, if you need
8 ID, this is where to go to find out how to get it.

9 It's a common thing when you have a complex message like
10 this, to send people to a secondary source. That's not
11 inherently a problem. The problem here is it doesn't tell you
12 why you might want to learn more because it doesn't say, you
13 know, you can get a free ID without documentation by going to
14 this website or calling this number.

15 Q. So, that second goal of advising people who don't have
16 ID and might want to get it is really neglected in this ad?

17 A. It's not mentioned at all.

18 Q. Let's move to radio here. And just before -- we're just
19 going to play -- this is -- I'm sorry, a pre-injunction radio
20 ad.

21 Before we play this, what do you know about how they
22 made the radio ad and it's distinguished from the TV ad?

23 A. What they did with the radio ad is they took the audio
24 portion of the TV ad and just stripped it and used that for
25 the first part of the radio ad.

1 Again, that in many ways is even more problematic
2 because when you say show it, there is no visual. You don't
3 know -- you don't have any clue what it is, in that case, on
4 the radio because you only have the audio portion.

5 They did add in the second half of the radio ad more
6 information than is contained in the television ad. So, I
7 actually thought that the radio ad was better than the
8 television ad because it did incorporate at least more
9 information on types of IDs and so forth.

10 They still only mentioned the phone number and website
11 once at the very end, so, you know, it's not great; but at
12 least they mentioned -- they still don't mention that you can
13 get a free ID without supporting documentation at this number.

14 Q. Okay. Let's play the ad, and this would be -- we're
15 again using Respondents' exhibits admitted yesterday. This
16 would be Exhibit 213.

17 (THE AD PLAYED AS FOLLOWS:

18 "If you care about this election."

19 "If you have an opinion."

20 "If you want a voice."

21 "If you want to make a difference."

22 "If you want to vote, then show it."

23 "Show it."

24 "Show it."

25 "Show an acceptable picture ID with a valid

1 expiration date because in Pennsylvania on Election Day, you
2 need one. So, whether it's a PennDOT issued ID, student ID,
3 or passport, if you want to vote, you are going to have to
4 show it. To learn more, call 1-877-votes-PA or visit
5 votespa.com. Sponsored by the PA Department of State.)

6 BY MR. WALCZAK:

7 Q. Does that ad say anything about if you don't have ID,
8 here's how you get it.

9 A. No. In fact, we know some people with the TV ad thought
10 it only meant driver's licenses because that's what they
11 noticed. In this case they at least mentioned other types of
12 ID, but they don't -- they say, if you are going to vote, you
13 are going to need to show it; and that doesn't tell people who
14 don't have it to show what to do at all.

15 "Learn more," again, is sufficiently vague that I'm not
16 sure why you want to learn more unless there was a reason to
17 do so. For example, if you don't have an ID, you want to
18 vote, here's what you do.

19 Q. Now, you mentioned earlier that the majority of the
20 advertising was spent on the TV campaign; is that right?

21 A. Yes. Radio was used as I think they called it a support
22 medium to target certain groups like African-Americans by
23 playing it on stations that are popular with
24 African-Americans.

25 Q. Let's take a look at some of the print ads that they

1 used, and let's start with bus ads, and we'll go with
2 Respondents' Exhibit 158.

3 Can you tell us what this is?

4 A. Yeah. It's a little difficult to see on that screen,
5 but this is a banner ad on the side of a bus. What's visible
6 is the words "show it." And that is the campaign theme, but
7 again, if you're even in the next lane, or so, I doubt you are
8 going to be able to read the fine print at the bottom that
9 says phone number or the website address.

10 It also doesn't say anything about going somewhere to
11 get ID or, you know -- it's again focusing on showing it if
12 you already have it. So, it seems the emphasis also from what
13 Mr. Royer said yesterday was very much just made sure people
14 who already had it brought it with them, not getting people ID
15 who didn't already have it.

16 Q. Okay. Let's -- I think we can see in more detail this
17 ad on the next exhibit, which is Respondents' Exhibit 155.

18 Now, I'm sorry, the last ad, can you tell us where that
19 bus ad ran?

20 A. I think that's a Harrisburg bus.

21 Q. And can you tell us what Respondents' Exhibit 155 is?

22 A. Is that another bus banner?

23 Q. I'm sorry, yes.

24 A. I think it is.

25 Q. They're all similar, but a label says it's a picture of

1 King bus ad.

2 A. Sounds like a large bus.

3 Q. Right.

4 A. Again it's basically the same thing. The emphasis is on
5 "show it," not on getting ID if you don't have it. And not
6 even on the VotesPA website or phone number. Again, if you
7 really -- that's the key thing, to get people to take that
8 next step. That's what I would enlarge because people are
9 looking at this from a distance and they need to be able to
10 see votespa.com and they need to be able to see that phone
11 number because that's the important part. That's where
12 follow-through takes place.

13 Q. And again this ad says "show it" and doesn't say what
14 "it" is, and shows a picture of a license, and then says learn
15 more and go to either the website or the phone.

16 Do people have any idea why they should go there and
17 what they're learning about?

18 A. Not that I can tell from here. In fact, we know that --
19 from the emails that the Department of State received that
20 there were people who said, "so, you have to have a driver's
21 license to vote?" There was quite a bit of misunderstanding
22 of what it meant.

23 We don't know exactly how much because they didn't
24 evaluate it. But particularly in a situation like this, where
25 all you see is the driver's license, "show it," okay, what

1 does that -- it's very hard to figure out what people would
2 make of this.

3 I think the most logical interpretation is that that's
4 what you need to show in order to vote; and if you don't have
5 one -- I don't know what.

6 Q. Now, you mentioned from some complaints or emails that
7 the Commonwealth got. What is it that you looked at?

8 A. I looked at email communications among members of the
9 Department of State staff that said people -- one of them was
10 encouraging more IDs to be shown, because people were
11 interpreting it as being just a driver's license that was
12 required.

13 There was also a lot of confusion after the
14 post-injunction ads that came out as well, because the ads
15 were similar enough that many people thought they hadn't
16 changed them and they had; but they were so similar and people
17 didn't notice the difference and they complained about that.

18 Q. Let's look at some magazine or newspaper ads, and
19 Secretary Royer testified that they displayed print ads in a
20 number of locations.

21 A. Mm-hmm.

22 Q. Do you recall where those are?

23 A. This one, I think, is the example from Milestones
24 Magazine, which is a magazine for seniors; and again, this is
25 a case where the emphasis is all on "show it" and furthermore,

1 they really need to think about their audience more.

2 If you look at the fine print at the bottom, I can't
3 read it, and I don't consider myself a senior citizen, but
4 it's teeny tiny at the bottom. Very hard to read. So, I --
5 you know, the ad, again, emphasizes the wrong message.

6 MS. HICKOK: Your Honor, I object to
7 characterizing what's on the screen in -- in a reduced format
8 like this, as not large enough. If they have the actual size
9 of what was posted, then you can comment on the print size;
10 but it's -- I mean, you can look at the Respondents' Exhibit
11 label to know that this is greatly reduced.

12 THE COURT: You will get a chance to have
13 cross-examination, Counsel.

14 MR. WALCZAK: Toby, if you could blow up the
15 small print at the bottom so we could see what that says.

16 BY MR. WALCZAK:

17 Q. Now, this is obviously a pre-injunction ad, but if you
18 could see and read that, and if you did go and see and read
19 that, what does it say about needing to get -- needing
20 documents to get ID?

21 A. Yeah. It says "under new law, voters are required to
22 show an acceptable photo ID with a valid expiration to vote on
23 November 6. Registered to vote but don't have an ID? Get one
24 for free at PennDOT driver's license centers with supporting
25 documentation."

1 MS. HICKOK: Your Honor, can you clarify again
2 what times this was run?

3 BY MR. WALCZAK:

4 Q. Do you know this is from --

5 A. Pre-injunction. Yes.

6 Q. Yes, this is pre-injunction; and it ran in something
7 called Milestones. This is something that was provided to us
8 by I believe Harmelin.

9 Let's look at one more print ad. Respondents' Exhibit
10 177. This is an example of a billboard; is that right?

11 A. Correct.

12 Q. What's wrong with this?

13 A. Again, it's really focused exclusively on telling people
14 to show it, show a driver's license. It does have the website
15 and phone number at bottom; but again, I don't know why you
16 want to go to those if you don't convey the message that if
17 you need ID to vote, here's where you can get it for free.

18 Q. The ad that -- and the ID that's depicted on there is
19 what?

20 A. The driver's license.

21 Q. Let's -- last -- second to last ad we'll look at here,
22 and Secretary Royer also testified that they used some online
23 banners or ads, and online would be on the internet?

24 A. Correct.

25 Q. Let's look at Respondents' Exhibit 168. This is -- do

1 we know whether it's pre or post? It's pre-injunction. This
2 is a pre-injunction?

3 A. I don't know.

4 Q. Yeah, I think this is pre-injunction ad and what's the
5 problem with this one?

6 A. Well, again, it's sort of puzzling to me why you would
7 want to emphasize "it" as much as this particular thing does.

8 For one, we have no clue what "it" is. So, it's one of
9 these kinds of ads that raises more questions than it answers
10 ultimately. If you want to vote, show it. Doesn't even tell
11 us what "it" is let alone move on to the second goal and tell
12 people what to do if they need ID.

13 Q. So, this doesn't even display a -- an ID to give people
14 a clue about what it is?

15 A. Right. Right. To me it's just way too minimalist. And
16 with the wrong emphasis.

17 Q. Do you know the time periods during which various
18 aspects of the campaign ran?

19 A. You're talking about different media?

20 Q. Yes.

21 A. I mean, I know most of the television started in August,
22 as I recall. It stopped for two weeks around the injunction,
23 and then went back up after that.

24 Many of the billboards stayed through that period. Do
25 you want me to go medium by medium, or --

1 Q. Yeah, what about radio ads?

2 A. Radio ads were later, as I recall. But again, they were
3 very limited, because they were just used to target certain
4 ethnic groups.

5 Q. Now, on October 2nd, this Court entered an injunction
6 against the law, and was there any change to the advertising
7 campaign?

8 A. Yes. They changed it to say, you will be asked, but not
9 required to show it. But basically, just that line was
10 changed in the media that they used for the ads; and as I
11 mentioned earlier, one of the problems that occurs is that
12 when people have heard an ad before, they tend to tune out,
13 because they have already heard it.

14 And many people didn't realize that they had in fact
15 changed these ads, and I saw it in the materials I was given,
16 emails back and forth at the Department of State, they were
17 complaining about people complaining about because they
18 mistakenly thought they were the old ads.

19 Q. Let's just play the TV --

20 MS. HICKOK: Your Honor. I'm sorry, I object
21 to this line of questioning. This was brought before the
22 Commonwealth Court and the Commonwealth Court expressly
23 rejected this complaint earlier.

24 MR. WALCZAK: Your Honor, we're trying to
25 present the Commonwealth's ad campaign, and we're going to

1 show one ad that demonstrates how the campaign changed after
2 the injunction, and this all relates to what is it from the
3 beginning of the passage of the law until the present, is it
4 -- is this campaign likely to have been able to transmit the
5 message to individuals not only that there's an ID
6 requirement, but that if you don't have an ID, that you can
7 get one for free without documentation. This is part of the
8 history of the ad campaign.

9 THE COURT: Okay. We'll permit it.

10 MR. WALCZAK: Let's play the post-injunction
11 TV ad which is Respondents' Exhibit 220.

12 (THE AD PLAYED AS FOLLOWS:

13 "If you care about this election."

14 "If you care about this election."

15 "If you have an opinion."

16 "If you want to have a voice."

17 "If you want a voice."

18 "If you want to make a difference."

19 "Then show it."

20 "Show it."

21 "Show it."

22 "Show it."

23 "When voting in Pennsylvania this Election
24 Day, November 6th, you will be asked but not required to show
25 a photo ID. To learn more about how to get a photo ID for

1 future elections and the voter ID law, call 1-877-votes-PA or
2 visit votespa.com.")

3 BY MR. WALCZAK:

4 Q. So, that's largely the same ad?

5 A. Right. The only thing that they changed is the
6 voiceover at the end.

7 Q. Saying that you will be asked, but not required?

8 A. Right, right.

9 Q. Again, is there anything in these post-injunction ads
10 that tells people that they can get a free ID by going to
11 PennDOT?

12 A. In that ad, they said that you could get an ID by going
13 to PennDOT. They didn't say -- I can't remember if they said
14 it was free or not, and they didn't mention documentation
15 issues one way or another.

16 My particular concern with this ad is that, I know by
17 this point in time, a lot of people very eager to vote had
18 already tried to get PennDOT IDs; and as a result, you know,
19 they -- many didn't succeed. This ad, I would have hoped,
20 would tell people, you know, even if you were denied one
21 before, you can go back now. You can get one for free without
22 documentation. Because those folks really wanted to vote.
23 They were first in line for getting the ID, and they were
24 turned away.

25 The rules changed over time, and in large part because

1 there were many different changes along the way and
2 requirements for documentation and then ultimately, there was
3 the introduction of a DOS ID, but I don't know any way the
4 public would know about that.

5 I didn't know about that at all before I was handed
6 these materials and read them.

7 So, for a person to know, they can go back and succeed
8 this time, I don't know how they would learn that.

9 Q. So, the big change for purposes of voters' ability to
10 get an ID if they didn't have one was the elimination of the
11 document requirement --

12 A. Right.

13 Q. -- is that right? And so initially, you had to show a
14 birth certificate, Social Security card and two proofs of
15 residency and that had created problems which led to the DOS
16 ID.

17 A. Exactly.

18 Q. Did the advertising campaign change in any way to
19 reflect that change in underlying circumstances?

20 A. Not that I'm aware of, no. In part because, as
21 Mr. Royer said yesterday, they didn't -- they purposely didn't
22 talk about the DOS ID. I don't know how people would find out
23 about it.

24 Q. Let's look at some of the information put out by the
25 Department of State prior -- over time. I'm sorry. Let's go

1 to Respondents' Exhibit 43.

2 Do you recognize this document?

3 A. I do.

4 Q. What is it?

5 A. This is a letter that was sent to people who didn't
6 match in the database as having PennDOT ID. That was sent by
7 Secretary Aichele to tell them about the ID requirement.

8 Q. So, would this be -- this was sent to the 759,000 that
9 didn't match?

10 A. Right.

11 Q. Would this be the voters who at that point the
12 Commonwealth established as most likely to not have --

13 A. Yes.

14 Q. -- ID?

15 A. Yes.

16 Q. At the top there, it says, "here are the types of IDs
17 that can be used"?

18 A. Right.

19 Q. Do you know when this letter was mailed?

20 A. I think it was July of 2012.

21 Q. In that list that -- and these letters were sent to
22 people's homes --

23 A. Correct.

24 Q. -- is that right? And in that list does it mention a
25 Department of State ID?

1 A. No. At this point, it didn't exist yet. It's mentioned
2 at the bottom of a paragraph that I'm looking at here, that
3 they're working with PennDOT to develop an alternative form of
4 photo ID, but that at that point it didn't exist.

5 Q. All right. And in that paragraph below the bolded text,
6 it says, "if you've never had a Pennsylvania driver's license
7 or PennDOT photo ID, you may also need further documentation"?

8 A. Right.

9 Q. "Such as a birth certificate and Social Security and two
10 proofs of residency"?

11 A. Mm-hmm.

12 Q. So, this would be the information that PennDOT or that
13 the Department of State specifically targeted on the voters
14 who are least likely to have the ID.

15 A. Right. And again, good idea in theory, but the
16 information ultimately was inaccurate, because they didn't
17 need a birth certificate and they didn't need these things and
18 so forth. So, in a lot of ways it probably discouraged those
19 folks from pursuing it, if they didn't have that
20 documentation.

21 Q. Is this form of communication -- I mean, how effective
22 is it in relation to the other types of communication?

23 A. Direct mail can be. I asked at one point for what the
24 envelope looked like that this letter came in, because it
25 really depends a lot on the packaging. We all get a lot of

1 junk mail, and if you're like me, you kind of sort through it
2 and decide what you are not even going to open; and it really
3 depends a lot on what it looked like, whether it looked like a
4 letter of some importance that you might want to read or
5 whether it looked like a lot of other junk mail. I don't
6 know. So, I couldn't say.

7 But to the extent that people did read it, I don't think
8 they got information that turned out in the long run to be
9 accurate.

10 Q. Let's look next at Respondents' Exhibit -- I guess it's
11 Plaintiffs' Exhibit -- Petitioners' Exhibit 2067. Do you
12 recognize what this is on the first page?

13 A. Right. This is the insert that Mr. Royer was discussing
14 yesterday that went out to 700,000 people, inserted inside
15 this piece of the mailing.

16 Q. And the insert -- so, this is a letter from the
17 Department of Health to senior citizens, part of the PACEnet
18 program?

19 A. Right.

20 Q. Toby, if you could go to the third page.

21 Now, is this -- this is the insert that was sent to I
22 guess delivered to 700,000 people.

23 A. Mm-hmm.

24 Q. Is this a postcard that's in there? This is the size.

25 A. I think that's the front of it, and then the next image

1 is the back of it, and that's the size.

2 Q. So, when you look at the front of this, what's the
3 message? Stay on that.

4 A. Voters are required to show ID on Election Day.

5 Q. Is there anything about, if you don't have ID, you can
6 get it easily?

7 A. No.

8 Q. Or how to get it?

9 A. Nothing.

10 Q. Let's go to the second page.

11 MS. HICKOK: Your Honor, can I make a note for
12 the record that it appears that this is actually truncated.
13 If you look down in the right corner, Secretary of State is
14 cut off and so is Aichele.

15 THE COURT: Noted.

16 BY MR. WALCZAK:

17 Q. If you could go to the next page which I believe would
18 be the back of the insert. Again, this on the left-hand side
19 lists the acceptable IDs; is that right?

20 A. Right.

21 Q. Now, is the Department of State ID listed there?

22 A. No, it's not.

23 Q. Then on the right-hand side, does that relate at all to
24 helping people get ID?

25 A. Well, it's interesting because it depends, if you read

1 the left and you don't have any of those, you could stop. But
2 if you go to the far right, it says, "if you are registered
3 voter and do not have one of these IDs but require one for
4 voting purposes, you're entitled to get one free of charge
5 with supporting documentation at a PennDOT driver's license
6 center."

7 So, again, with supporting documentation, I think, would
8 convey to people who have already been refused, that they're
9 not going to succeed this time, either.

10 Q. And it doesn't say what supporting documentation you
11 need?

12 A. No, it doesn't.

13 Q. Let's look at one more mailing. Can you go to
14 Respondents' Exhibit 179. Can you do a rotate so you can see
15 that.

16 While that's happening, what is this Exhibit?

17 A. I think it's a postcard that was sent.

18 Q. Is this -- would this be the postcard that was sent to
19 all households with a voter?

20 A. Yes.

21 Q. And this would have been sent at some point in early to
22 mid September?

23 A. Right. This is, aside from the television advertising,
24 where the bulk of the communications budget was spent.

25 Q. Again, this is a direct form of communication between

1 the Department of State and voters in Pennsylvania?

2 A. Right.

3 Q. In relation to the potential for effectiveness with some
4 of the electronic communications; how would you assess that?

5 A. Postcards are not great. Letters are better, in terms
6 of your likelihood of getting someone to read it. Because
7 again it's cheaper to send postcards than letters and that's a
8 reason a lot of junk mail comes in the form of postcards.

9 So, you know, I don't know in this case any precise
10 numbers, but less effective than the earlier letter.

11 Q. So, on the front of the postcard, is there any mention
12 about getting ID, if you don't have it?

13 A. No. Again, if you want to vote, show it, which could
14 easily be interpreted as a message about make sure that you
15 turn out to vote or something along those lines. So, it's
16 very difficult to know what it's about.

17 Again, the driver's license is the ID shown, and we do
18 know that people misinterpreted that.

19 Q. Go to the second page, which would be the back of this
20 postcard.

21 Again, what problems do you see with this?

22 A. Well, in this case, the Department of State ID is listed
23 in that list of acceptable photo IDs. It's halfway through,
24 basically. I don't know how people would know what it meant,
25 what a Department of State ID actually is, just because

1 there's no effort to publicize that.

2 But to me what's more problematic is up at the top in
3 the larger font where it says, "registered to vote, but don't
4 have an ID? Get one for free at a PennDOT driver license
5 center with supporting documentation."

6 Again, the documentation emphasis is not appropriate,
7 given what ultimately came to pass.

8 Q. This is a mailing that went out in September?

9 A. I think it was spread out over a longer period of time,
10 yeah.

11 Q. Now, are you aware of any messaging by the Commonwealth
12 that advised voters that they could get ID free, and without
13 any documentation?

14 A. No, not in any materials that I have seen.

15 Q. Even after the circumstances changed, and PennDOT made
16 it -- changed the Department of State ID process so that,
17 supposedly, all you had to do was show up at PennDOT to get
18 one.

19 A. Right, and that change was again something that was not
20 publicized or incorporated into any of the communication
21 materials.

22 Q. Now, I know that yesterday, Secretary Royer said that
23 the Department of State made a deliberate decision not to put
24 out information about the Department of State ID, because
25 there was a concern that it might confuse voters who had the

1 driver's license.

2 MS. HICKOK: Objection. Mischaracterizes his
3 testimony.

4 MR. WALCZAK: I'm sorry. I'll withdraw the
5 question, Your Honor.

6 BY MR. WALCZAK:

7 Q. Do you recall Secretary Royer's testimony about it?

8 A. I do.

9 Q. What is your recollection?

10 A. My recollection is he said they purposely did not talk
11 about the DOS ID because they thought it would be confusing to
12 people.

13 To a certain extent, I agree; that is I don't think most
14 average people in Pennsylvania know what the Department of
15 State is. If anything they may think of the Federal
16 Department of State. So, I don't think it's a salient enough
17 thing, in most people's lives, that they necessarily have a
18 clue what that is.

19 On the other hand, I don't think that was a good reason
20 not to tell people, there's a free ID available without
21 documentation at PennDOT.

22 It's not necessary to mention Department of State
23 anything one way or another. You just need to tell people if
24 they don't have one, here's where you go to get it, and it's
25 free and you don't need the documentation that we may have

1 asked you for a few months ago.

2 Q. Do you recall secretary Royer testifying that they had
3 cancelled robo calls that had been planned?

4 A. Yes.

5 Q. And what's -- are robo calls something that may have
6 been helpful?

7 A. I think at that point in time there was an excellent use
8 that could have been made for them. Yes. I know they were
9 originally planned just to remind people to bring IDs on
10 Election Day. But I know that the reason that it was given
11 for cancelling was that they might cause confusion.

12 I think a lot of this can cause confusion in the
13 post-injunction campaign, not just the robo calls. But the
14 essential thing that could have been done with those robo
15 calls is to tell people, you know, this election you will be
16 asked but not required to show ID. If you are concerned you
17 may not have an appropriate ID, push one and we'll connect you
18 with someone who can tell you what to do.

19 That's wonderful because they don't have to write down
20 phone number and they don't have to remember. They don't have
21 to do anything. So, it's a reminder to precisely those people
22 who will be paying attention at that time because they're
23 interested in voting, hey, if you don't have an ID, we'll just
24 connect to you someone at the hotline and they can give you
25 the relevant information.

1 So, to me, that's just an ideal setup. It's something
2 that Red House had done with clients previously.

3 Q. That's information that was contained in their
4 application for the contract?

5 A. Exactly, that they had the capacity to do that kind of
6 thing.

7 Q. And did they in fact offer or suggest at one point that
8 there's a text messaging platform that could be developed to
9 help connect voters without ID to getting ID?

10 A. They did. I don't know what happened to that.

11 Q. Did that campaign run?

12 A. Not to my knowledge.

13 Q. I want to move to the follow-through.

14 So, is it fair to say that the campaign was very much
15 designed, in addition to telling people they need ID, but if
16 you needed more information about how to get it, directing
17 people to either the hotline or the internet; is that --

18 A. Right. Most of the ads didn't say, if you need more
19 information on how to get it. They just said, "learn more"
20 which is again a little more ambiguous than saying "go here to
21 get ID."

22 But, yes, the strategy, which again is a common one,
23 especially with a complex kind of message as this ID
24 requirement, is to send people to talk to an actual human
25 being on a hotline or to send them to the website for more

1 information.

2 Q. Okay. Did you investigate at our request how both the
3 hotline and the website worked?

4 A. I did.

5 Q. Okay. Tell us about your experience with the phone
6 line. Which line did you call?

7 A. The votes-PA.

8 Q. The one that's --

9 A. That's advertised in the ads.

10 Q. And when did you make this call?

11 A. A couple of weeks ago.

12 Q. Did you do it once?

13 A. I called at least five you times.

14 Q. And tell us what happened when you called.

15 A. Well, if you call outside of regular business hours, you
16 get a recording that says, you have reached the Bureau of
17 Commissions, Elections and Legislation. To be honest, I was a
18 little confused, because I thought I was getting the voter ID
19 card hotline and they said nothing about voter ID, and I don't
20 know what the Bureau of Elections, Commissions and Legislation
21 is. So, you get that voicemail. You can't leave a message or
22 anything like that.

23 Q. I'm sorry, you cannot leave a message?

24 A. No. They tell you when to call back. If you call
25 during regular business hours, you go through some phone

1 menus. What happens is initially, they ask you if you want
2 Spanish or English. You press a button to indicate which
3 language you want. Then they give you a menu of many
4 different options to choose from, and in that list is
5 information on voter ID.

6 So, pick the voter ID option. Then you get to a third
7 phone menu; and this one, I'm not even sure why it's there
8 because it says just to hit the same button again for voter
9 ID. So, anyway, there's a third menu to get through.

10 Once you get through that third one, you're asked to
11 hold until someone's available. Again, I -- every single time
12 I was put on hold for exactly the same length of time. So, I
13 think it's just relaying the call during that period of time.

14 When I called a couple of weeks ago, it wasn't likely to
15 be a heavy period of calling in, so I don't think it was
16 because of the backlog.

17 Q. And how long were you on hold?

18 A. A short period of time.

19 Q. Short being what?

20 A. You know, under a minute.

21 Q. And did you eventually talk to an individual?

22 A. I did.

23 Q. Were they helpful or knowledgeable? Did you ask them --

24 A. They didn't know the answer to my question initially;
25 and then they went and talked to somebody else while they put

1 me on hold and came back with an answer.

2 Q. Do you recall what your question was?

3 A. Yes. I was asking about the requirements for college
4 students and did they have to give up their driver's license
5 in order to get a DOS ID, and that was something that they
6 didn't immediately know the answer to. I was confused myself.

7 I mean, this was an honest question on my part, because
8 in some of the memos that I had read, one of them said that
9 you did have to give it up, and the other one said you didn't,
10 and I didn't know the answer.

11 Q. And the person who answered the hotline didn't know the
12 answer, either?

13 A. No, not immediately.

14 Q. And this call was made within the last month?

15 A. Correct.

16 Q. So, 15 months after voter ID had gone into effect?

17 A. Right.

18 Q. Now, I want to focus on the website. Does everybody
19 have access to the internet?

20 A. No. In Pennsylvania, 22% don't have any internet access
21 either through home or through their workplace.

22 Q. So, that's more than one in five?

23 A. Correct.

24 Q. Did you investigate at our request how the web referral
25 process worked?

1 A. I did.

2 Q. Did you produce some slides of screen shots of what you
3 found when you went on the internet?

4 A. I did.

5 MR. WALCZAK: These have been shared with
6 Respondents' counsel, Your Honor.

7 BY MR. WALCZAK:

8 Q. First of all let's --

9 THE COURT: Can I ask our court reporter if
10 she needs a break.

11 MR. WALCZAK: I know we're under tight time
12 frames today.

13 THE COURT: Five minutes.

14 THE BAILIFF: Commonwealth Court is now in
15 recess.

16 (COURT RECESSED AT 11:00 A.M. AND RECONVENED
17 AT 11:07 A.M.)

18 THE BAILIFF: Commonwealth Court is now in
19 session.

20 BY MR. WALCZAK:

21 Q. Dr. Mutz, before we resume looking at the Department of
22 State's PennDOT website, at the outset of your examination,
23 you indicated that you thought that there had been 17,000
24 Department of State IDs issued?

25 A. Right.

1 Q. Do you recall that? If I told that you in fact there
2 were only 33,830 or fewer DOS IDs issued and the rest were
3 PennDOT, non-driver's license IDs, does that affect any part
4 of the opinion you've rendered today, any of the opinions?

5 A. Well, it sounds like it was less effective then because
6 a large portion of those could have been for some other
7 reason. The PennDOT IDs, I assume.

8 Q. Those PennDOT IDs are for voting.

9 A. No, I think they work for voting, but people get them
10 for other purposes, too.

11 Q. Let me ask you. So, when, if -- we're now talking about
12 people who got the message and are motivated to go to the
13 website they're directed to in all of these ads.

14 A. Right.

15 Q. And what's the name of the website?

16 A. VotesPA.

17 Q. And that -- is that a good name for them to use?

18 A. Yeah. It's fine. You know, it obviously has to do with
19 voting.

20 Q. Is there a practice that -- of buying up domain names
21 for websites like that?

22 A. I have set up quite a few websites and it's standard
23 practice when you have a website that we know the most likely
24 mistake that you can make when they type in the domain name is
25 that they don't know, should it be .com, .net, .org,

1 .whatever, .gov.

2 Because again, even Mr. Royer told us to go to the
3 VotesPA website and we often don't mention which suffix we're
4 talking about, and there are a lot of them these days.

5 So, yeah, in general what you want to do, and it only
6 costs a couple more dollars to do it when you purchase a
7 domain name, you want to get all of the suffixes. So if
8 somebody does type votespa.org rather than .com, it redirects
9 them automatically to your website. That's common practice.

10 Q. Did you try typing in votespa.gov?

11 A. I did.

12 Q. Is it common for government websites to have the suffix
13 G-O-V?

14 A. It is. I was surprised that there wasn't anything
15 there.

16 Q. Toby, could you put up 2074c.

17 Is that what you got when you pulled up?

18 A. Yeah, this is the image from my laptop and it says
19 server not found. So, if you go to votespa.gov, there's
20 nothing there.

21 Q. And how recently did you do this?

22 A. I think yesterday, two days ago, maybe.

23 Q. Is another common suffix O-R-G for organization?

24 A. Yes.

25 Q. Did you try to pull up votespa.O-R-G?

1 A. I did.

2 Q. Kelly, could you put up 2074b.

3 When did you pull this up?

4 A. I think it was last week.

5 Q. What is displayed on the screen?

6 A. Ads for hot tubs. It's apparently vote-spa.org instead
7 of VotesPA.

8 Q. But somebody looking at this at the top would see the
9 votespa.org and --

10 A. Right. Right. In many ways, the .gov and the .org make
11 a lot of sense for this particular kind of function because
12 it's not a commercial product. People would think it would be
13 natural for .org or .gov.

14 What is worse if you look on the left side, there are
15 links to information on voting. I don't know if you see it
16 over there. But right over -- blow up -- it's not showing.
17 There it is. Right over here, it says, act, voter
18 registration, absentee ballot voter registration, a bunch of
19 things. Those actually don't have anything to do with VotesPA
20 at all. If you did mistakenly end up here, you could be on a
21 wild goose chase.

22 Q. Is there anything on here that would redirect you to the
23 proper page?

24 A. No.

25 Q. So, what in fact is the suffix for the Department of

1 State website?

2 A. It's .com.

3 Q. It's votespa.com?

4 A. Right.

5 THE COURT: Any capitals in that?

6 THE WITNESS: Pardon me?

7 THE COURT: Any capital letters?

8 THE WITNESS: It's not case sensitive.

9 BY MR. WALCZAK:

10 Q. Now, did you prepare at our request a series of screen
11 shots as you navigated the website?

12 A. Yes, I did.

13 Q. Can we put up Exhibit 2094. These have been shared with
14 the Respondents' counsel, Your Honor.

15 So, now, you have got the right website.

16 A. Right.

17 Q. This is the Department of State.

18 A. I assume that you got the message. You understood that
19 you needed to go here in order to get information you needed
20 and all of those preliminary steps along the way had gone
21 well. This is where you would land.

22 Q. Can you walk us through what happened when you attempted
23 to navigate this page? And just to be clear, how -- when did
24 you do this?

25 A. I think about a week ago.

1 Q. But not last year.

2 A. No, no, no. Very recent.

3 Q. This is the current state of the website.

4 A. Current.

5 Q. Please, if you could walk us through what happened when
6 you went on the website?

7 A. Sure. When I first got here, my attention was drawn to
8 the "I am" as I think it's intended to here. I went to the "I
9 am" drop-down box which you see -- see if I can make it show
10 up here. This arrow right here to pick what the next step
11 would be.

12 So, actually, if you want to go to the next slide, it
13 shows what happens when you pull the drop-down box. You get a
14 list of different categories.

15 MS. HICKOK: Your Honor, I'm sorry. Can I
16 interrupt. The pages are truncated on here. They are not
17 showing the entire website page that would have been viewed.
18 If you went back to the first one, and now to this one,
19 they're truncating the view on the website.

20 THE WITNESS: This is my whole laptop screen.

21 MR. WALCZAK: Your Honor, I think I can
22 clarify with a couple of questions here if that's okay.

23 BY MR. WALCZAK:

24 Q. Dr. Mutz, you heard Miss Hickok's concern that this is
25 not the entire screen. Do you have an explanation; can you

1 tell us how this works?

2 A. I didn't know there was more to the screen initially,
3 and so, you know, I went and did the "I am" drop-down. I'll
4 show in a minute what happens if you do scroll down further.

5 Q. All right. But just -- the point I want to make is what
6 were you viewing this website on?

7 A. On my IBM laptop.

8 Q. This is a standard laptop that most laptop owners would
9 have?

10 A. Right. It's actually a pretty nice laptop. It has a
11 bigger screen.

12 Q. Now, are there different types of monitors where maybe
13 more of the screen would be shown?

14 A. I suppose if you had one of those vertical kinds --

15 MS. HICKOK: Your Honor --

16 THE WITNESS: -- yeah, you could see more. I
17 don't have one at work or home.

18 MS. HICKOK: Your Honor, this is pure
19 speculation. I object.

20 THE COURT: Noted.

21 BY MR. WALCZAK:

22 Q. But so what is on these screen shots is what actually
23 showed up on your entire screen. You didn't cut off --

24 A. No. In fact, you can see clear to the edge of my
25 computer screen here at the picture. This is -- you know,

1 when you have a computer screen with a horizontal aspect,
2 ratios we call it, like traditional television is, this is all
3 you can see on the screen.

4 Q. Okay. Let's go back up to the first screen, which is --
5 we just want to make sure that nobody's being misled here.

6 So, when you opened your -- when you went to this page,
7 this is what's visible before you do any kind of scrolling on
8 the page?

9 A. Right. This is when you go full screen with the
10 website. You maximize the space.

11 Q. Okay. Now, let's go to the next slide. So, you clicked
12 on the that drop-down box and this is what you get?

13 A. Right.

14 Q. Now, please continue.

15 A. Sure. So, it has a list of categories that are you
16 supposed to select one from, obviously. Citizen with a
17 disability, college student, convicted felon or misdemeanant
18 or pretrial detainee, experienced voter, member of the
19 military, and older Pennsylvanian, and so on and so forth.

20 My problem is I didn't think I fit very well into any of
21 these categories. You know, my kids would say I'm an older
22 Pennsylvanian, but I wouldn't self-select into that category.

23 At this point, I really didn't know what to do next
24 because none of seemed to describe me and I wasn't sure why I
25 was describing myself in one of these categories anyway.

1 So, I just ignored that, I didn't click any of those
2 because I didn't know what to click. So, I tried clicking
3 around elsewhere on the webpage, to figure out, you know,
4 where the information was that I needed to find.

5 Q. So, where did you click next? Do we need to go to the
6 next slide?

7 A. Yeah, I think so. Yeah, yeah, no, this is what happened
8 if you scroll down and that is what I did next. I couldn't
9 find where I was supposed to click, so I ended up scrolling
10 down, and I found that there was a bottom half to this page.

11 Q. Okay. So, just to be clear -- so, this is the bottom --
12 if we go back two slides, Toby.

13 So, if you go on the website, this is what you see?

14 A. Right. One other thing I should mention. I did -- if
15 you see these drop-down menus here, these four categories? I
16 did try each of those, and there isn't a voter ID thing there.
17 I was -- the last two don't have any drop-downs. These first
18 two do, but it's about registering to vote, and voting in
19 elections, and none of those drop-down menus said anything
20 about the information that I was seeking. So, that's when I
21 went down further.

22 Q. Before we go down, and underneath the young lady there,
23 it says, voter ID. What about that?

24 A. Initially, I didn't do anything with that, until I read
25 a memo among the people involved in the communications

1 campaign where someone said, you should put a button on the
2 first page, a red button. Then I went back and I was trying
3 to figure out what the red button was.

4 I didn't immediately recognize that that voter ID thing
5 was a button. Because it didn't say click here in part --
6 because usually buttons look raised on the screen and you know
7 to push them and click on them in order to go somewhere.

8 So, yes, I can click on the voter ID button and I will
9 show you where that goes. But the first thing I did was I
10 scrolled down, and if I you can go to the bottom half.

11 Yeah, here. And you see this to me was the most
12 straightforward. If you see this red band right here. What
13 it says is click here for more information on Pennsylvania's
14 voter ID law.

15 That's what I was looking for. So, once I scrolled down
16 and found that bar, that's what I clicked on. And that's what
17 led me to the next page. It actually takes you to the same
18 place that that red button does at the top. I just didn't
19 recognize it as a button.

20 Q. Do you have any commentary on the placement of that
21 message?

22 A. Well, you always have to have it on the main screen
23 because the problem that I had is common. Most people don't
24 have vertical screens. When we put together websites, we
25 don't ever put information that we care about below the line

1 where you see it on a single screen because most people don't
2 need to scroll down.

3 Q. And please keep going. So, you clicked on the red bar,
4 and --

5 A. Right, I clicked on the red bar, and go ahead and take
6 me to the next slide. This is where I landed. Learn about
7 Pennsylvania's voter ID law. And here there are listed a
8 number of types of ID; and as I read through it, I saw the one
9 that said the Department of State voter ID card which is right
10 here.

11 There's obviously the link because it's blue. That told
12 me, I could probably click on that to get where I needed --
13 what I needed. So, that's what I did next is I clicked on
14 that.

15 Here, what you're not seeing is that this isn't an HTML
16 page. What that means is that when you click on that button,
17 it says, are you sure you want to download this document, and
18 this is a PDF document. It's not just a page you go to. It
19 says do you want to save it. Do you feel it's safe to open it
20 from this website.

21 Again, if I were to be doing this website, I wouldn't
22 put information in a document that is going to sit in any way
23 on a computer because many people quite logically are afraid
24 to do that because you get a lot of computer viruses and so
25 forth when you put things on your computer. So, ideally, this

1 would have been a page that you just click on and go to
2 without actually going into PDF.

3 Q. You finally get to this page.

4 A. Yes, you finally get to this page. I think on the big
5 screen it's kind of hard to read, and this is the Department
6 of State identification card FAQ page. What it says here, I
7 read through the first two parts and then I got to the third
8 part here, it says "where will the voter be able to receive a
9 free Department of State ID for voting?" And the part on the
10 right says, "you can obtain it for free at local PennDOT
11 driver's license center. PennDOT's driver's license center
12 locations can be found on the web at," and then you have
13 another link that you can click on right here.

14 So that's what I did next. Okay. Now I'm going to
15 learn how to do this. So, I clicked on the link to find out
16 where to go.

17 Q. The next slide.

18 A. This is where that one takes you. It appears that at
19 this point, you're crossing out of the VotesPA website into
20 PennDOT's website. So, this is where you land. At this
21 point, to me what seems most obvious is to click on that voter
22 ID box right here because that's what I wanted to know about.

23 That is not a link. It doesn't go anywhere.

24 Q. I'm sorry. It's not a link?

25 A. No, it's not a link.

1 Q. So, you click on it --

2 A. This is a picture.

3 Q. -- and nothing happens?

4 A. Yes. Nothing happens. You don't go anywhere that has
5 to do with voter ID. So at this point, I felt like I was at a
6 dead-end. I didn't know where to go next. Because it said to
7 go here, and once I got there, there really wasn't any
8 relevant information on the Department of State voting ID or
9 where I should go to get it or those kinds of things.

10 Q. So, what did you do?

11 A. I went back several screens. I thought, you know, I
12 must not be the right link. I went back to that screen that's
13 after you click the voter ID button. Yeah. Right there.

14 Learn about Pennsylvania voter ID law. Okay. I had
15 already clicked on the Department of State voter ID thing, so
16 at this point I continued to read through the additional
17 material; and at this point, I couldn't really see what to
18 click, and again, this was as big as my screen was. If you go
19 further down --

20 Q. Now, is this on the next exhibit?

21 A. Yeah, yeah.

22 Q. If you, if you put --

23 A. If you go further down, there's another link.

24 Q. Can we put up Exhibit 2095.

25 This is a continuation of your effort to navigate the

1 website. Okay. So, this is -- we're now back at the screen
2 that you get when you click --

3 A. Voter ID.

4 Q. -- once you find the voter ID on the home page, this is
5 where you are at. Okay?

6 A. Right.

7 Q. What happens?

8 A. Again, right here, you don't see anything to click on
9 but have to go down further.

10 Q. So, you have to scroll down.

11 A. Yeah. Another -- ways down. There you go. So, beyond
12 what we just saw at the very bottom, it says, "if you do not
13 have one of these IDs and require one for voting purposes, you
14 may be entitled to get one free of charge at a PennDOT
15 driver's license center. To find the driver's license center
16 nearest you, and learn what supporting documentation you will
17 need to get a photo ID, visit PennDOT's voter ID website or
18 call these numbers."

19 So, that link there that says PennDOT's voter ID website
20 is the one right there that I clicked on because that seemed
21 like that's where it was telling me to go next.

22 I found it disappointing that it said that you would
23 need supporting documentation again here because this is the
24 Department of State ID which my understanding is you don't
25 need supporting documentation. But it suggests that you may

1 be able to get one free of charge, and to learn what
2 supporting documentation you need.

3 So, that was confusing to me.

4 Q. This is the information on the Department of State
5 website within the last couple of weeks?

6 A. Correct. It's still in there now, yeah. Last I saw.

7 Q. All right. So, you click on what?

8 A. Right. I clicked on that PennDOT voter ID website link
9 there at the very bottom. Right there. Right. The next
10 screen will show you where that takes you.

11 Here you land -- again I think this is crossing over,
12 but as a person using the web, you're not going to pay
13 attention to where you are, based on the URL at the top. But
14 here it says, obtaining a free ID for voting purposes, and in
15 bright red at the top, it says "find a driver's licensing
16 center near you that issues voter IDs including days and hours
17 of operation." So, I clicked on that. If you go to the next
18 screen, it shows you what happens.

19 So, this is general information, and looking for a
20 driver's license center or photo center and so on and so
21 forth. It says, check our hours of operation, and so forth.

22 Then in red, if you see at the bottom of that screen
23 right there, it says, "PennDOT driver license and photo
24 license centers only accept payment by check or money order.
25 No cash or credit cards are accepted."

1 That was really confusing, because I thought this photo
2 ID was free. But I think what's actually happened is the
3 interface between PennDOT and VotesPA has just thrown you into
4 the regular process for getting a driver's license. That's my
5 guess anyway. I don't know that for sure.

6 Q. But the suggestion you get from that is that you have to
7 pay?

8 A. Right. So, that was very confusing to me.

9 Q. So what happened? Did you click on that?

10 A. No. I scrolled down because, see, it says "to find a
11 location near you, please follow the directions below" and it
12 does say there's something below. And I scroll down, it says
13 step one, choose where you want to search. I put in my zip
14 code since that was the first box that you could fill in
15 there.

16 Q. And --

17 A. And then if you can scroll down to the next screen, step
18 two -- no, go back up. I'm sorry. I guess we don't have that
19 screen on here.

20 Here if you see there's step two at the bottom, it says,
21 "choose the services that you need." They have a long list of
22 services from learner's permit to all kinds of things, but
23 among those is the box that you can check for voter ID. So, I
24 checked voter ID because I wanted to make sure to get a place
25 that was appropriate for what I wanted. And then I hit the

1 search button.

2 This is what I got. It says "location, search results,
3 19096 zip code, services, driver's license, photo ID, voter
4 ID. Sorry, we could not locate any service centers in the
5 specified location that offer all of the services that you
6 requested.

7 Again, I was very puzzled because I know there's a
8 driver license center not that far from me. I don't know if
9 it's the right kind and so on and so forth, but it didn't
10 really tell me what to do.

11 There's a new search button right here, and that's a
12 link, so I went to the new search button and clicked on that
13 so I could try it again. I didn't know what I did wrong, but
14 I clearly -- either I did something wrong or there really
15 isn't anything there, and I did that and went back and tried
16 again.

17 Q. Next screen?

18 A. Yes. Okay. And back on this screen, if you see the top
19 in red, it says, "you entered a zip code and selected a
20 statewide search. Please select only one option, and try
21 again."

22 Again, I'm not really sure what that means. But I was
23 confused. I just did the same thing I did before. I went
24 down and put in my zip code because that seemed the way to get
25 the closest driver's license center. So, I did it again.

1 This time, I was more successful.

2 If you want to go to the next screen. This time, I got
3 results. Locator search results. 19096 zip code. I don't
4 know why it's different this time, but it did list a whole
5 bunch of driver's license photo and exam centers, and they're
6 obviously linked so I can click on one of those and decide
7 which one I want to go to. So, I then clicked on one of
8 those. Go to the next screen.

9 Q. Okay.

10 A. Here's the information that you get. "Important
11 information. Please take your signed temporary license,
12 Social Security number and another form of identification
13 containing your signature when you go to process your photo
14 license. Acceptable forms of signature identification include
15 Pennsylvania driver's license, photo ID card" -- anyway, it
16 goes through this list. And again it looks to me like this is
17 not about voter ID at all because obviously we're not going to
18 ask them for a driver's license if they already have one.
19 They don't need it.

20 So, this looks like it has thrown me into a general
21 funnel that people go into for any kind of PennDOT
22 information. It's not about voter ID. It's very confusing if
23 you think it is because none of this information makes much
24 sense, based on that.

25 Q. Do they talk about voter ID here?

1 A. I don't see anything here about voter ID. Nope. It's
2 not mentioned.

3 Q. What did you do next?

4 A. I went on -- I scrolled further -- go to the next
5 screen, please -- and I got hours. This is below that. What
6 it shows you here is, again it's kind of fuzzy on the screen;
7 but the first part of this says driver's license center, and
8 then it tells you they're closed on Monday. It tells you
9 their hours on each day of the week, and then it has photo
10 license center, the next line right here, and then it says,
11 best times to come in the third line.

12 One of the things that I learned from reading all of the
13 documentation involved in this is that you actually have to go
14 at a time when both the driver's license center and the photo
15 license center are open at the same time. Either that or you
16 have to make two trips. I didn't know that. I didn't see
17 anywhere on the website that mentioned that.

18 It's particularly important because, as you can see, the
19 hours at those two places are not the same. So, you can show
20 up when one was open and the other was closed and have to come
21 back and so forth.

22 Q. So, I'm sorry, so we're -- for instance it says
23 Wednesday, it says photo license center is open from 8:30 to
24 4:15.

25 A. Right. But driver license center is not.

1 Q. And is there anything on there that tells you that both
2 have to be open in order to get photo ID?

3 A. No. I only knew that because of the materials that I
4 had read outside of this.

5 Q. Is that the end of your investigation?

6 A. I think so. I think that's the last slide. Yeah.

7 Q. So, when you did what the ad campaign was directing you
8 to do, how easy was it to get information about getting the
9 ID?

10 A. This website is not at all easy to navigate. It is very
11 confusing in part because they seem to be using the same
12 website for multiple purposes, and so the people who come for
13 voter ID are thrown into a situation that isn't going to give
14 them useful information, that it may in fact mislead them into
15 thinking that you have to pay something, you have to have ID
16 to get ID, and so forth.

17 So, I didn't find this at all straightforward to use.
18 And I use computers every day in my work, so I'm used to them
19 and I go to websites regularly.

20 Q. Just to be clear, different size monitors may show more
21 or less of those screens; is that --

22 A. No, it's really the aspect ratio that matters. That is,
23 is it a horizontal one versus a vertical one. My screens are
24 all horizontal like this one here is, but I know there are
25 people who have screens that are turned the other way.

1 They're vertical, so you can see the material that you
2 normally have to scroll down to see.

3 Q. Let's move to effectiveness metrics. You talk about
4 this in your report. What are effectiveness metrics?

5 A. They are means of deciding how well you're achieving
6 your goal, and they're essential to directing a campaign.
7 They can be any of a wide variety of things.

8 In the earlier example I gave you in the SIDS campaign,
9 they're obviously interested in how many crib deaths there
10 were. They were also interested in finding out how many
11 people were following this practice of putting babies to sleep
12 on their backs rather than their stomachs because that was a
13 change from what parents had traditionally had been taught to
14 do.

15 Those could be metrics, they can be all kinds of things.

16 In the case of the voter ID campaign, it would be really
17 useful to know, you know, how many people got the message,
18 understood it, and took the appropriate action that was
19 recommended. Again, the only thing that comes close to that
20 that I have seen in any of the materials that I was given is
21 the figure on DOS IDs.

22 Q. Is this a good practice, a standard practice of
23 effective education campaigns?

24 A. Yes. For information campaigns, education campaigns,
25 there's just no other way to know whether you accomplished

1 anything without doing that.

2 You know, in the examples that Gloria Blint gave us of
3 their previous projects that were information campaigns --

4 Q. I'm sorry, Gloria Blint is the head of --

5 A. Red House.

6 Q. Which was contracted by the Commonwealth to design these
7 ads?

8 A. Right.

9 Q. And what did she say?

10 A. In the information campaigns that they had designed,
11 they did have measures of effectiveness. They knew for the
12 HIV campaign that they did in Pittsburgh, I think it was, how
13 many calls were made to the hotline and so forth.

14 So, they could launch the campaign, look at the kind of
15 reaction they're getting, and know that they were getting the
16 reaction they wanted or know that they weren't, and therefore
17 they needed to change something.

18 Q. And in fact, during the process of the RFQ process,
19 request for quotation, that the Commonwealth used to find
20 vendors for this campaign, was there a question raised about
21 doing this here in this campaign?

22 A. Yes. A vendor asked the question of whether or not --

23 Q. I'm sorry, can we put up 1472, Toby. And go to question

24 29. I believe it's at the bottom of page six.

25 So, that is -- these are questions that were posed by

1 vendors who were considering applying for the contract to
2 create this ad campaign; is that right?

3 A. Right.

4 Q. This is a question that was raised about measurement?

5 A. Right. It asks -- it says, "While it's not delineated
6 in the statement of work, what efficacy measurement is the
7 Department seeking? Is there a measurement mechanism
8 currently in mind or is that something that is being sought
9 out from responding contractors?"

10 "For example, will there be surveys listed at polling
11 locations to determine if the voters were exposed to the
12 education campaign elements, or will a record be kept of
13 voters turned away for not bringing photo ID?"

14 Q. And what was the answer posted by the Department of
15 State?

16 A. The answer -- let's see where it says. The -- wait, was
17 that the one for 29? Okay. The Department will evaluate the
18 success of the initiative based on the number of impressions
19 recognized by each tactic. And there will be no polling place
20 survey sponsored by the Department.

21 Q. So, the Department of State is using something called
22 impressions.

23 A. Right.

24 Q. And that's a term that Secretary Royer referred to
25 repeatedly yesterday. Can you tell us what impressions are?

1 A. Impressions are kind of a catch-all metric that was
2 originally designed to try to equate all different kinds of
3 media -- TV, radio, print ads, web ads and so forth.

4 What an impression is, it's not an actual exposure to a
5 message. An impression --

6 Q. What do you mean by exposure to a message?

7 A. A person seeing the ad. It doesn't represent that. It
8 represents opportunities for exposure.

9 So, for example, the website that we just looked at,
10 even if we never scroll down to the rest of that page, we
11 would be considered an impression for all of that information
12 on the bottom of the screen.

13 So, it doesn't tell you if people saw it. It doesn't
14 tell you if they read it or anything of that kind. They're
15 based on the equivalent of circulation figures. So, if for
16 example, if you have a magazine with a circulation of a
17 million people, that refers to how many people picked it up
18 and read even the first page. If the ad is on page 15, that's
19 still an impression, even though they never saw page 15.

20 So, impressions are, you know, extremely high estimates.
21 It's well known in the industry that they are -- they're not
22 measures of actual exposure. They're possible exposures that
23 could have happened if everybody who read the newspaper saw
24 the ad on page 15.

25 Q. Are impressions an effective measure of reaching or --

1 an audience, getting the message to the audience in your
2 profession?

3 A. No. They're called navigational metrics; and what that
4 means is that they're used to navigate your way to your target
5 audience. They tell you, for example, oh, we want this many
6 impressions for this particular income group.

7 So you might use them to find a target audience of some
8 kind, but they're explicitly not effectiveness metrics, and
9 that is something that any advertising textbook will tell you.

10 Everybody knows you can't equate these things to begin
11 with. It doesn't mean that people actually saw it. It's not
12 the same thing as that at all. It just means a number of
13 people who potentially could have.

14 So, obviously, you like big numbers there; but in my
15 report, I cite several advertising folks who say it's
16 misleading. We give this information to our clients and
17 really we don't know that this doesn't tell you anything about
18 the effectiveness of the ad.

19 Q. And let's briefly talk about some of the limits of TV.
20 I know Secretary Royer testified that a majority of, I
21 believe, of the advertising budget was spent on TV. What, if
22 any, limits are there of this form of advertising?

23 A. There are many different limits. For one thing, the --
24 in Pennsylvania, about 4% of the population doesn't have a TV.
25 So, the reach estimates and things like that that we see

1 documented are of households with televisions. They don't
2 include everybody.

3 Beyond that, what happened with the television
4 advertising was that the six major media markets they ran a
5 lot of ads in. There were two other media markets that they
6 ran cable only. That's obviously problematic because 30% of
7 people in Pennsylvania don't have cable.

8 So, those people obviously could not have been exposed
9 to the television campaign at all.

10 In addition to that, there were three other counties
11 where they ran no TV whatsoever.

12 Q. Do you remember those counties?

13 A. Tioga, Potter and I can't remember the third one
14 offhand.

15 Q. You said there were two media markets that were not run?

16 A. They didn't do any broadcast media; they only did cable.
17 I think Youngstown was one of them and I can't remember the
18 second one.

19 Q. So Youngstown would reach Western Pennsylvania, or
20 Northwestern Pennsylvania?

21 A. Mm-hmm.

22 Q. The New York market would reach into northeastern.

23 A. Right. It's obviously very expensive to run things in
24 markets that go over state lines. It's a similar kind of
25 problem, that, you know, candidates have when they're trying

1 to advertise for office as well. They chose to do cable only.

2 Again, you are going to hit mainly upper socioeconomic
3 strata, if you can pay for cable.

4 Q. In terms of the whole medium of television, is there a
5 concept called ad avoidance.

6 A. Yeah, it's increasingly a problem. As technology has
7 improved and we have things like DVRs and TiVo, what we know
8 based on Nielsen's research is that about 47% of the people
9 who have that technology skip all of the ads.

10 And I confess, I'm one of them. I hit the button and I
11 don't watch the ads for the most part. So, it makes it very
12 difficult to know how many people you're reaching with
13 television these days because it is so easy to avoid the ads.

14 It's always been a problem to some extent because we
15 know people get up, do other things during the advertising,
16 even if they don't skip over the ads technologically.

17 So, that's the reason, as I was mentioning before, that
18 it's particularly important that a message be reinforced via
19 audio, because you can't assume during the ads everybody is
20 sitting there and constantly staring at the screen. It's
21 typically when we get up and take a break, usually.

22 Q. Briefly, they also did some radio spots. Are there
23 limits to the effectiveness of radio?

24 A. Well, again, radio impressions mean, you know, when you
25 have radio on in the background at your workplace all day

1 long, that counts as an impression for everybody who is there.
2 Even though it's background noise, it's not necessarily the
3 case that people heard anything.

4 Q. That's when you use impressions to measure that. It's
5 just --

6 A. Right. Right. Again, with impressions, it's a very
7 minimalist measure because we don't know what people heard or
8 didn't hear.

9 Radio is used a lot also in people's automobiles, and
10 again, we're multitasking as we often are these days with our
11 media, and particularly when you are driving, I really hope
12 you're not writing down that phone number or that website
13 address because, you know, that's not a good time to be doing
14 something like that.

15 Q. What about limits of print advertising these days?

16 A. Print in newspapers, I think everybody's heard about the
17 demise of newspapers. There are very, very low audiences for
18 newspapers these days. Again, it's something that's -- a
19 severe concern to the industry. Obviously, they have online
20 versions and so forth and some of them are trying to make that
21 transition, but the business model isn't in place for how you
22 support a newspaper online without subscriptions and so forth.

23 So, newspapers are limited to those people who are
24 already going to be politically involved, politically active.
25 Those are the folks who still read newspapers.

1 Q. Last, Secretary Royer provided lists of community
2 meetings and all of these events that he attended and other
3 people attended. What's your observation of that?

4 A. Well, it was a good idea. I mean, one of the things
5 that we know is the best practice is reinforcing the message
6 through face-to-face communication. So, overall, it's a good
7 idea.

8 The problem that I saw with this is there's really two
9 kinds of events you might attend. One of them is an event
10 that's, you know, designed around politics, around voter ID.

11 The problem is that people who come to those meetings
12 tend to be people who already know what they need to know,
13 because they're already highly politically involved,
14 interested and civically minded and involved.

15 The second kind of event that they attended were things
16 like street fairs and that kind of things. And what they did
17 at those kinds of meetings was set up a table and booth and
18 put fliers out on a table. If somebody was interested and
19 came up to them, they talked with them and they gave them
20 whatever information they needed, but they had -- you know,
21 the person had to know they needed information to begin with,
22 and had to initiate the interaction.

23 So, although those events are better because you get a
24 more diverse group of people, people who are there for a
25 reason other than politics, it is unclear how many people they

1 actually talked to; and even, you know, given the number of
2 events they attended and the size of attendance at those
3 events and the number of people they could interview and
4 potentially talk to, it's extremely small. Not enough to make
5 a dent in the problem.

6 Q. So, did the Commonwealth use any effective metrics to
7 measure the campaign?

8 A. Not that I'm aware of. The only one that I know of,
9 which again they weren't looking at necessarily as an
10 effectiveness metric, was the measure of people coming in and
11 getting DOS IDs.

12 Q. Would you include that if people were coming in to get a
13 PennDOT ID for voting purposes, that would be included, too?

14 A. It's hard to say. Because people have been getting
15 PennDOT IDs since long before this campaign ran, for other
16 reasons. So, you know, again, if I were designing this, I
17 would say when people call in on the hotline, you know, we
18 need to keep track of how many people are calling in, because
19 they're concerned about getting appropriate voter ID as
20 opposed to something else. And some of these may have been
21 capable of getting PennDOT IDs. I don't know.

22 Q. And so, to sum up, to a degree of professional
23 certainty, do you believe that the Commonwealth's campaign
24 came close to achieving its goals of educating all voters
25 about the need for ID, and advising voters without ID about

1 how and where to get one?

2 A. With respect to that first goal, they probably did
3 inform some of those people. Without any kind of pretesting
4 of the message or effectiveness metric, I can't tell you how
5 successful they were; but you know, it's conceivable that
6 people got the message.

7 Q. That message would be that you need ID?

8 A. That you need ID. Bring your driver's license to the
9 polling place. That message.

10 Where I have a very hard time believing anybody got the
11 message very easily is with respect to the availability of
12 free ID without that supporting documentation; and because the
13 requirements changed so many times along the way, a lot of
14 these communication materials were produced before that was
15 true; that is, before it was possible to get an ID without
16 that additional documentation.

17 So, I understand why the materials say those kinds of
18 things, but there was never an effort to go back and tell
19 people, it's a new ball game, things have changed, you can now
20 get one for free without all of this additional documentation.

21 So, there has to be a great deal of confusion out there
22 about that.

23 Q. I want to do very quickly your last two opinions, and
24 these will be less than ten minutes total. I want to focus
25 your attention on the Commonwealth's public education campaign

1 since the November election; and I believe when you wrote your
2 report, that the Commonwealth was planning to use just earned
3 media; is that correct?

4 A. Right, I think a day before I turned in my report, there
5 was an email that I was on a copy of that suggested that they
6 might do something more, but that was not confirmed at that
7 point.

8 Q. So, subsequently, they did announce, as I think
9 Secretary Royer testified yesterday, that they were going to
10 spend \$2.1 million on a campaign?

11 A. (WITNESS NODS HEAD.)

12 Q. Okay. We'll come back to that momentarily. So, they
13 were going to rely on earned media. What is earned media.

14 A. Earned media is coverage that you get, you know, mainly
15 in newspapers, occasionally via television news that -- by
16 putting out a press releases, that kind of a thing, hoping
17 that the press will find it newsworthy enough that they will
18 put it in an article and relay it to the public for you.

19 Q. How -- what are the limitations of earned media?

20 A. It has changed greatly. In part because there's so much
21 intense competition for media audiences that most press
22 releases are ignored these days, particularly if they're not
23 exciting and, you know, newsworthy and the kind of thing that
24 will draw reader or viewer attention.

25 It's much harder to get earned media now than it was 30

1 years ago for sure. You know, it highly is unlikely that you
2 could get a lot of coverage that way, but I think what's even
3 more problematic in this particular case is you can't control
4 what they say; that is, believe it or not, the press gets
5 things wrong a whole lot. I have seen examples of this even
6 in the past week surrounding voter ID.

7 So, you can't count on them to relay the information
8 that voters need. They don't see that as their job. In fact,
9 they're much more interested in the conflict angle and playing
10 that up than they are conveying information that people need
11 to get voter ID IDs.

12 Q. Now, you say -- one of the things you just said is that
13 when you put out this press release, you can't control what
14 the press chooses to publicize. I mean, do you have a couple
15 of examples involving, recent examples involving voter ID?

16 A. Well, there was one that I put in my report that was a
17 press release that Carol Aichele had just put out. I think it
18 was right at the end of month.

19 Q. I'm sorry, the end of June?

20 A. I'm sorry?

21 Q. Was it the end of June?

22 A. End of June, yeah. The 25th, I think.

23 Again, it was an effort to draw attention to voter ID
24 and to the fact that you could get an ID at PennDOT for free
25 and so forth. The problem was none of the article, and I did

1 a LexisNexis search of any newspaper, and they covered all ten
2 major newspapers in Pennsylvania, that picked up that story.

3 None of the stories that I look at mentioned anything
4 about the requirements for voter ID.

5 They wanted to talk more about the upcoming trial and so
6 forth. She also, I think, met with the editorial board of the
7 Sun Gazette I think it was, and again even that effort did not
8 generate the kind of coverage that would educate the public
9 about voter ID.

10 Q. And I note that yesterday through Secretary Royer, the
11 Commonwealth displayed seven press releases. Now, is just
12 issuing a press release alone an effective way of getting a
13 message out?

14 A. No. And again, those press releases -- I'm sure they
15 put them out, but I didn't see that information, and I
16 actually read newspapers. I am one of the folks that still
17 do.

18 Yeah, it's not the kind of thing that's likely to get a
19 lot of press attention. I didn't search for articles on those
20 particular press releases that might have come out, but it's
21 doubtful that they generated a lot of coverage, and certainly,
22 they didn't present any evidence that they were covered.

23 People don't read press releases. They read articles in
24 the media or see stories on local TV, and we don't realize
25 those are out there.

1 Q. Is there a recent example of still inaccurate
2 information being generated about voter ID?

3 A. When I was getting ready to come here, I read the
4 coverage that was in the Philadelphia Inquirer of the first
5 day of the trial, just curious what was going on and so forth.
6 And they quoted Keating as saying that there was voter ID
7 easily available with supporting documentation for people.
8 So, what's the problem? I was surprised to see the "with
9 supporting documentation" there; and when I got here, you
10 know, I was saying, well, that's interesting that he said
11 that. So, I was surprised.

12 Again, I think it turns out not to be accurate. It was
13 a misrepresentation of what was said. And that's part of the
14 problem. Every politician knows the problems with earned
15 media are the lack of control over the message.

16 Q. So, just recently, the Commonwealth requested and
17 received from the General Assembly a supplemental 2 million --
18 approximately \$2 million budget for a paid campaign. In your
19 professional opinion, is this campaign likely to be effective
20 in helping folks without voter ID get that ID?

21 A. I don't think so, in particular because what I read in
22 the memos is they're planning to use the same campaign as they
23 used before, the "show it" campaign.

24 And as we saw today when you were presenting examples,
25 that campaign did not include information on telling people

1 you can get a free ID without supporting documentation from
2 PennDOT. That's not what was emphasized, and Mr. Royer
3 yesterday echoed that same idea and said we purposely weren't
4 doing that because we thought it would confuse people.

5 Again, I don't think it's important that people know
6 what DOS is or anything like that, but it is important that
7 they know there's a free ID and that it doesn't require all of
8 the documentation that it did last time. That seems to me to
9 be the key message they need to get out.

10 The other problem with repeating a "show it" campaign is
11 that, as we saw with the post-injunction ads, a lot of people
12 didn't know it was it a different message because it was so
13 similar. And I fear the same thing would happen again in
14 rerunning the "show it" campaign as people wouldn't hear these
15 subtle differences, and you know, we have changed the rules
16 back and forth and back and forth, and so they are likely to
17 be very confused and not necessarily get what is the key
18 message they need to hear.

19 Q. Last point, have you studied, personally studied
20 people's confidence in the integrity of elections?

21 A. Yes, I have. I study, as I mentioned earlier, not a --
22 a large number of non-electoral consequences of elections;
23 things like do people feel like their voice has been heard.
24 Do people think the process has been fair, and so on and so
25 forth. So, yes.

1 Q. And in your studies and in the research that you've
2 reviewed, what are people's perceived problems or concerns
3 about elections?

4 A. Well, what we do, and we have done this over many
5 different presidential elections thus far, is we recontact
6 people after the election, and we ask them why they think
7 so-and-so won. You know, if it's the other candidate.

8 The reason we do this is because you don't ever have any
9 problem with people whose candidate won. They're very happy
10 and they'll tell you, because obviously this person was a
11 better candidate; that's why he won.

12 The problem and the source of legitimacy that we need to
13 worry about are the people who are the losers; that is, they
14 have to be willing to go along and be governed by this person
15 for the next four years.

16 So, the question is, do they perceive the outcome as
17 legitimate. That's really what's key to making democracy work
18 is accepting an outcome that you don't like.

19 So, we particularly are focused on what those who -- who
20 voted for the candidate who lost say about why the election
21 came out the way it did.

22 What we find is that perceptions of voter fraud are not
23 a major reason at all. In fact, I think in 2008, it was
24 one-tenth of one percent of a sample of 12,000 people
25 mentioned anything to do with that. And we didn't

1 differentiate different types of it, or mention anything about
2 that.

3 Q. What are the biggest concerns that people have about
4 elections?

5 A. The biggest concerns that they used to sort of
6 delegitimize an outcome they don't like are, they say money
7 has too much influence in campaigns. They say the candidates
8 lie and don't really say what they're actually going to do and
9 people are misled by that.

10 And they mention turnout quite a bit, because if there
11 are stories about long lines or people being prevented from
12 voting, that kind of thing, many people point to the fact that
13 one group had a much heavier turnout than another as evidence
14 that all voices were not heard.

15 So, that's an often rationale that people give for why
16 their guy didn't win.

17 And again, because people live in areas where they're
18 usually surrounded by people who agree with them politically
19 and there's a tendency for people to say, well, everybody I
20 know voted for so-and-so and so, how can this be?

21 So what's really important is that people know what the
22 rationales are for the other side so that they are willing to
23 accept the outcome and that they don't see it as some sort of
24 a flukey thing that happened because one versus another group
25 did this or had long lines in this area that they perceive as

1 unfair, and that makes them much less willing to accept the
2 outcome.

3 Q. So, in your professional opinion is voter fraud a
4 concern among members of the public?

5 A. No. I mean, it's teeny, tiny. As I said, one-tenth of
6 one percent of a huge sample, 12,000 people, mentioned
7 anything connected to the voter fraud.

8 MR. WALCZAK: Thank you, Your Honor.

9 MS. HICKOK: Your Honor, as a housekeeping
10 matter, do you want me to begin the cross right now? The
11 timing is -- aren't we almost at noon?

12 MR. KEATING: It is noon.

13 THE COURT: Well, we don't have much time. My
14 intention was to quit at noon, but I want to get this witness
15 completed.

16 MS. HICKOK: Okay. Well, Your Honor, I have
17 quite a bit of cross of her. I'm happy to start. I want to
18 be -- I know you had wanted to get out of here, and I don't
19 want to hold you back on it.

20 THE COURT: Well, what -- cross is what, an
21 hour?

22 MS. HICKOK: At least an hour. Maybe more.

23 THE COURT: Well, we'll go for an hour and see
24 how it looks then.

25 MR. WALCZAK: Your Honor, just to be clear,

1 Professor Mutz could not be here I think before I think next
2 Thursday. She could come back, but she has got engagements in
3 other cities prior to that.

4 MS. HICKOK: Your Honor, may I inquire?

5 THE COURT: Sure.

6 CROSS-EXAMINATION

7 BY MS. HICKOK:

8 Q. Professor Mutz, let's start with some simple questions
9 and then we'll move from there. On the website screen shots
10 that you produced, those screen shots were taken at different
11 dates, even though some of them are just the next level of
12 page from one to another.

13 Why were they not all done on the same date?

14 A. I went through and took all of them on the same date.
15 The ones that I might have taken earlier were the .org and --

16 Q. No, I'm not talking about those. I'm talking about
17 these. Maybe we can put them up. Do you have them to put on
18 the screen?

19 A. They're all done on exactly the same computer, the one
20 that I have here with me.

21 MR. KEATING: What is the number? What
22 exhibit do you have?

23 MS. HICKOK: 2095 and 2094. Is there any way
24 to focus in on the date and time markings?

25 THE WITNESS: It may have been deciding, you

1 know, which ones we were going to use and which ones didn't
2 need to be in there. You know, they were all taken recently.

3 BY MS. HICKOK:

4 Q. So, the last one we say was 7/13 and this one is 7/14.

5 A. Mm-hmm.

6 Q. This is also 7/14. I guess my point on this is that not
7 all of these were done at the same -- you didn't go in and do
8 a single search and take screen shot by screen shot and you
9 took them at various points in time.

10 A. No, I mostly did do that, but I -- in order to see --
11 yeah, you can see number --

12 Q. Is this another 7/14 --

13 THE COURT: One at a time. One at a time.

14 THE WITNESS: I was going to say, the only
15 reason that they might have come from different dates is
16 because we didn't know how much we were going to include in
17 the presentation.

18 BY MS. HICKOK:

19 Q. On the two screen shots that you took that were 2074b
20 and c, those screen shots were taken from using a browser
21 called Mozilla Firefox?

22 A. Okay.

23 Q. The other things were done using Explorer.

24 A. I have both.

25 Q. Are you familiar with how many people use the one

1 browser over the other?

2 A. I know a lot of people use both because some work better
3 than others with certain kinds of websites. That's why I have
4 both.

5 Q. Did you do the search this year on Explorer?

6 A. I probably did them on both. Because I remember
7 noticing it looked somewhat different on one versus the other;
8 that is, the arrangement on that main page was different. It
9 didn't change what was viewable at all, but it changed it a
10 little bit, orientation.

11 Q. Okay. If you could turn back to Exhibit No. 42.

12 Hold that up and I don't know if -- I believe they were
13 using that with her earlier today.

14 Are you familiar with that exhibit?

15 A. Yes. This is something that was shown yesterday.

16 MR. WALCZAK: We did not use this, Your Honor,
17 with the Doctor.

18 MS. HICKOK: Do you have copies of that? We
19 only have this one?

20 It was admitted yesterday, Your Honor. Can I
21 just refer to it on the screen and hand her my copy?

22 THE COURT: Sure.

23 MS. HICKOK: I'm sorry.

24 BY MS. HICKOK:

25 Q. Is this one of the documents that you reviewed for your

1 testimony?

2 A. Yes.

3 Q. On it it has the numbers of impressions that we talked
4 about?

5 A. Correct.

6 Q. And it has the numbers of specifically targeted
7 outreaches to specific groups; is that correct?

8 A. I don't know if it's just specific groups. I don't --

9 Q. Or at least some specific lead groups. For example,
10 where there's ethnic and senior magazines, where that's things
11 broken down by ethnic impressions and college impression.

12 A. I thought you meant outreach as in meetings, but you
13 mean media.

14 Q. No, meetings are on a different --

15 A. Okay.

16 Q. All right.

17 A. Yes, that's what you mean by outreach.

18 Q. Now, if you turn to the second page of that.

19 Do you see where it has votespa.com statistics?

20 A. Yes.

21 Q. You see where it talks about the number of unique
22 visitors to the website?

23 A. Yes.

24 Q. You see where it talks about page views?

25 A. Yes.

1 Q. And the number of pages viewed per visit?

2 A. Yes.

3 Q. And the time spent on the site?

4 A. Mm-hmm.

5 Q. Does that suggest to you that the viewers that came to
6 the site, number one, were numerous; and number two, were at
7 least committed enough to go past the initial screen page?

8 A. With unique visitors, it isn't actually unique people.
9 For example, I would count as three of those because I used
10 three different computers to go on the website.

11 So, we don't mean computers more than people here. So,
12 that isn't human beings that we're talking about.

13 In terms of how long they spend on it, given my
14 experience on it, it would be very hard to get the information
15 you needed with only three pages of -- because it took me a
16 lot more pages than that to get to what I needed ultimately.

17 Q. You were looking at a number of different things on it,
18 so that's why --

19 A. I was looking for a Department of State ID information.

20 Q. And if you have gone to the -- if you had gone to the
21 cover page and had looked at it and clicked either on the red
22 button or on the voter ID page, you would have been at the
23 voter ID information on your second page; isn't that correct?

24 A. I would be at that list that I showed as the second
25 screen.

1 Q. Okay.

2 A. Yeah.

3 Q. So, a person who has viewed three pages, if they knew
4 what they wanted and went to voter ID first would have gotten
5 there within those three pages --

6 A. Not --

7 Q. -- of the web page.

8 A. Not to the information on the ID. Because when I
9 clicked on the thing for DOS ID, it didn't get me immediately
10 to that. It took a couple more. I mean, if you went to the
11 general voting ID document, that other PDF, it's a much longer
12 document; and if you read all of those pages, yes, you could
13 find information in there, but it was a lot. I mean, it's a
14 complex law.

15 Q. And you testified that there are a percentage of the
16 population that does not have a computer; is that correct?

17 A. No, I don't know about owning a computer. I know about
18 internet access.

19 Q. Okay. So --

20 A. 22% of Pennsylvanians don't have internet access through
21 home or work.

22 Q. That's home and that's office. That is not talking
23 about the numbers of people who have access, say, through the
24 public library; is that correct?

25 A. Correct.

1 Q. And do you know how many public libraries there are in
2 Pennsylvania?

3 A. I don't.

4 Q. Do you know that the Public Library Association -- did
5 you hear Mr. Royer's testimony yesterday that the Public
6 Library Association made certain not just that there was
7 internet access, but that there were buttons on the home page
8 so that anyone who went in to a library would know immediately
9 how to get voter ID information?

10 A. No. I heard the part of the testimony yesterday where
11 the guy tried to go to the library to get information and they
12 didn't know what to do, but --

13 Q. Oh, so, you listened to Mr. Rogoff's testimony
14 yesterday?

15 A. Yes, he was here right before Royer yesterday.

16 Q. And did you hear Mr. Rogoff testify that even though he
17 wasn't paying close attention, that he recognized in the
18 senior center in which his father lived that there was a
19 poster up there telling him that he could get senior ID from
20 the center itself for him?

21 A. I think what he said was he didn't know if he could or
22 not.

23 Q. No, he testified -- well, I mean -- the testimony will
24 be what it is, but he had testified that he saw a poster, and
25 he didn't pursue it because he was in the process of pursuing

1 this other.

2 MR. WALCZAK: Your Honor, I believe that
3 counsel here is misrepresenting the record. We certainly
4 don't recall any -- Mr. Rogoff testifying about a poster. I
5 think he said he was aware that they issued IDs, but he didn't
6 investigate that; but I would ask that counsel not
7 misrepresent evidence that was --

8 THE COURT: It's close enough for government
9 work.

10 MS. HICKOK: Thank you.

11 BY MS. HICKOK:

12 Q. So, if a person who did not have a home computer or a
13 business computer went to the library and there was a button
14 on the home page saying voter ID, would that change your
15 testimony as to how accessible information was to somebody who
16 might be just a common citizen walking in and looking for
17 information?

18 A. I don't know why they would go do that because the ads
19 didn't tell them this is the way to get free ID.

20 So, if they somehow knew that some other way, but I
21 don't know how they would do it given that it wasn't
22 emphasized in the communications.

23 Q. You're saying that you don't think that a person walking
24 into the library and seeing a website that is right there, the
25 home screen, the first thing they look at when they see the

1 computer, seeing something that's says voter ID in bright
2 colors with a button, would not possibly be curious and click
3 on it to find out more information?

4 A. Curious just as academic curiosity, do you mean?

5 Q. Well --

6 A. Usually when you use the web, you want something from
7 it.

8 Q. And this is going to get to something that's been
9 bothering me throughout your testimony.

10 A lot of the people that you talk about in terms of
11 those public information ads are people with whom we wish to
12 change behavior. We want people to start using condoms. We
13 want people to, you know, not use drugs. We want people to do
14 those things. So, we're talking about persuading people to
15 change from something that they currently view is a positive
16 activity; is that not correct?

17 A. I'm not sure what you mean, a positive activity?

18 Q. If a young person has found pleasure smoking marijuana
19 or doing something like that, the campaign to which you
20 referred was trying to tell that person to stop using drugs.

21 A. Oh, no --

22 Q. Or never to start.

23 A. Yeah, no, the campaign was not designed to stop people.
24 It was designed to prevent them from starting. That's why it
25 was targeted the way it was age-wise.

1 Q. So, that was trying to tell people, here's a good
2 behavior and here's a bad behavior; is that correct?

3 A. No. They would not use that kind of approach. It
4 doesn't really work with teen-agers too much.

5 Q. Was the normative decision in terms of what they were
6 trying to convey that they wanted people to do what they
7 perceived as socially proper behavior?

8 A. Socially proper. They wanted to discourage drug use.

9 Q. That's correct.

10 A. Yes.

11 Q. So, they wanted to discourage drug use, and they were
12 trying to convince people to do that; is that correct?

13 A. Not convince in a -- what we call a cognitive sense, a
14 "let me argue you into this." It's, the kind of efforts that
15 they make are not -- not direct persuasive argumentation.
16 Again, because that doesn't generally work very well.

17 So, no, that wasn't the approach they were using but
18 yes, absolutely they're trying to discourage drug use.

19 Q. And they were trying to set up a kind of conduct that
20 they wanted people to adopt; is that correct?

21 A. Or not adopt.

22 Q. Or not adopt in this case. Yes.

23 A. Yeah.

24 Q. We'll get back to that ad in a minute. So, now, isn't
25 that a different perspective from the perspective that we're

1 looking at here where we are saying to people, if voting is
2 important to you, and you want to vote, you need to know that
3 there is an expectation associated with something you have
4 already decided to do.

5 Isn't that very different from asking somebody, don't
6 undertake this, don't find this attractive?

7 A. No, I don't think it is, because in most of these
8 campaigns, you know, for example, Stanford heart disease
9 prevention campaign I was involved in for a while; and you
10 know, people are going to eat. It's just a choice of what
11 they choose to eat that affects heart disease probably, and so
12 forth.

13 So, trying to get them to adopt healthier behaviors is
14 something that, you know, you can do in a variety of different
15 ways, whether through conveying that this is a popular thing
16 to do, this is an "in" thing to do. There are lots of ways
17 that you can persuade people.

18 Q. But it is that same thing, you're trying to tell
19 somebody to adopt a new behavior. The education process here
20 that the statute requires -- and by the way, I don't know,
21 have you read Act 18?

22 A. At some point I did. It's been a while.

23 Q. So you're aware of what the statute asked?

24 A. Mm-hmm.

25 Q. And what is it that the statute asked the Department of

1 State to do?

2 A. The goals that we outlined earlier in the testimony that
3 educate the public about voter ID and --

4 Q. Can we get Act 18, please.

5 A. Sure. One thing I want to make sure is different.
6 We're talking about registered voters, and these are people
7 who have already demonstrated interest and participated in the
8 political process. They're not people who haven't gone to the
9 trouble to do something already.

10 Q. And that's exactly my point, but hold on just a second.
11 Do we have a copy for her that she could look at? If we
12 could look at Section 206a.

13 MR. WALCZAK: I'm sorry. What page?

14 MS. HICKOK: It's whatever page it's on. 11.

15 BY MS. HICKOK:

16 Q. What does that say?

17 A. Did you want Section 206, is what you want me to read?

18 Q. 206a, yes, please.

19 A. 6a.

20 Q. A.

21 A. "Requirements relating to voter identification. A, the
22 Secretary of the Commonwealth shall prepare and disseminate
23 information to the public regarding the proof of
24 identification requirements established under Sections 1210
25 and 1302."

1 Q. Then if you look down further, there is -- do you know
2 where the soft rollout section is?

3 MR. WALCZAK: I'm sorry, Your Honor. I'm
4 going to interpose an objection that Ms. Hickok has asked to
5 read a narrow portion of that section, so she asked her to
6 read from 206a but there's really more relevant information at
7 the end of 206c, so.

8 THE COURT: You will get a chance to redirect.
9 BY MS. HICKOK:

10 Q. While they're finding the specific place, do you know
11 what I am saying when I refer to a soft rollout?

12 A. Yes.

13 Q. And do you know how many soft rollouts there have been?

14 A. I think three.

15 Q. That's correct. And do you recall what the testimony
16 was yesterday about what occurred during the soft rollouts?

17 A. I'm not sure what you are referring to. I mean, there
18 was --

19 Q. I mean Mr. Royer's testimony about the soft rollouts.

20 A. That they occurred, yes. That there --

21 Q. That -- okay.

22 A. I think the -- I know he talked about turnout at some of
23 those elections and so forth.

24 Q. Okay. We'll refresh your recollection in a minute.

25 Okay. So, the provisions here in Section 10. If you

1 could read 1 and 2 for me.

2 MR. WALCZAK: I'm sorry. Which page are we
3 on?

4 MR. KEATING: 28.

5 MS. HICKOK: 28.

6 THE WITNESS: 28. Okay. This is at Section
7 10?

8 MR. KEATING: Yes.

9 THE WITNESS: Is that where you mean?

10 MS. HICKOK: Yes.

11 BY MS. HICKOK:

12 Q. There's -- hold on. So, it's going to go on to the next
13 page. I'm sorry. Go ahead.

14 A. Start with 1?

15 Q. Yeah, go ahead and start with "except as."

16 A. "Except as provided under subparagraph 2 and
17 notwithstanding any law, election officials at the polling
18 place at an election held after January 1, 2012, shall request
19 that every elector show proof of identification.

20 "2, notwithstanding subparagraph 1, prior to September
21 17th, 2012, if the elector does not provide proof of
22 identification and the elector is otherwise qualified, the
23 elector may cast a ballot that shall be counted without the
24 necessity of presenting proof of identification and without
25 the necessity of casting a provisional ballot except as

1 required by the Act."

2 Q. Keep going.

3 THE COURT: Counsel, can we do this a little
4 quicker? Can you tell us what you are trying to do?

5 MS. HICKOK: Yes, what I -- in the next
6 section, and I'm sorry, I was responding to Mr. Walczak's
7 concern that I wasn't being complete.

8 BY MS. HICKOK:

9 Q. It says that if any person is asked for proof of
10 identification at the soft rollout election and does not
11 provide it, he will be given educational information to tell
12 him about the requirements and about how to meet those
13 requirements.

14 Mr. Royer testified yesterday that at each of three
15 elections that had occurred, and as you said you recalled, he
16 also testified about the November 2012 election being a
17 presidential election at which the turnout is very high,
18 comparatively to the ones before and after, and the ones that
19 are upcoming.

20 And part of my question to you is: Is that not an
21 educational effort?

22 A. I think, you know, to the extent that it happened, it's
23 a good idea. I asked to see what was that -- what was handed
24 out, and I don't think we have had that. We don't seem to
25 have any copies of that, that I have seen. Yeah. So, I don't

1 know what information people were given.

2 I know that the way it was disseminated was that the
3 Department of State didn't print anything up. They asked each
4 of the county election folks to print themselves and have
5 people pass them out to people that didn't have ID. But I
6 don't know anything more than that.

7 Q. So, the people who received that were the people who
8 came to vote at any one of the three elections; is that
9 correct?

10 A. I don't know, to the extent it was actually implemented.
11 It depended on each county, I guess.

12 Q. Okay. Well, it was directed to each county to do that,
13 and it was directed by the statute, and you have no
14 information, do you, that it didn't happen?

15 A. I do, from my own polling place, but that's all.

16 Q. So, to the extent that a person was a voter, so that
17 person has already said, I am committed to this process and I
18 want to come, that person has had a one-on-one interaction
19 three times, if they came to all three elections, telling them
20 here is what is going to be needed, here is what the law
21 provides, and here is how you get what you need under the law;
22 is that not correct.

23 A. Very few people would have showed up at all three of
24 those elections, as Mr. Royer said. It's like 11% turnout at
25 those other ones, so.

1 Q. Right. Okay. So, maybe they would not have gotten
2 three separate messages; but if they had shown up to any of
3 the three elections, they would have gotten it at least once.

4 Is that correct?

5 A. Yeah, if they did it. I don't know. I don't know what
6 that said.

7 Q. And so, that wasn't something that you took into account
8 in your analysis of how many people knew or understood the
9 message that was given; is it?

10 A. I couldn't because I was never able to obtain a copy of
11 this document that was distributed, so I don't know.

12 Q. To the extent that there were personal interactions
13 where people asked for ID and there was an opportunity for
14 conversation at the polling place, that would fit into the
15 category that you were talking about, about personal
16 interactions; would it not?

17 A. Yeah, no, it would be good, especially if those people
18 are well informed. I know volunteer poll workers may not know
19 all of the ins and outs of voter ID rules because they are
20 complex; but you know, I -- in part because there are lines
21 and so forth, I don't think they're going to chat for too
22 long, but if that happened, that would be great.

23 Q. Okay. You do know that poll workers are trained, do you
24 not?

25 A. I know they're given materials, but I guess it's not

1 required that they go through training.

2 Q. We'll leave that there.

3 Let's go back to what we were talking about, about the
4 persuasion and the needing to -- to change behavior. Was --
5 when looking at the language of the statute, was the
6 Department of State told that they were responsible for
7 insuring that everyone decided to get identification of a
8 specific sort?

9 A. No.

10 Q. Okay. Was the Department of State told that they needed
11 to take all people who might be eligible to vote and convince
12 them to register to vote, and convince them to show up at the
13 polls?

14 A. No.

15 Q. And was the Department of State instead told that what
16 they needed to do was to insure that somebody who had already
17 determined that they were going to vote understood that they
18 would need to bring ID, and that there was a statutory list of
19 forms of identification that they could get?

20 A. Right, but I think they were also supposed to tell
21 people who were registered to vote that, here's a way that you
22 can get ID if you don't have it, so that they can vote.

23 Q. Can you cite to me anything in the statute that says
24 that?

25 A. I'll be honest, this version of the statute is not what

1 I have seen before. I have seen a very short thing; but this
2 long document, I have not read before.

3 Q. Okay. Well, we'll maybe revisit that later.

4 For people who are committed, they care about voting,
5 for those people, even when you TiVo through something, and
6 you see something that you know affects you, are you not
7 likely to stop and say, wait a minute, I need to pay attention
8 to this?

9 A. I don't know by virtue of "show it" that they know what
10 it's about. It just seems like that could mean a lot of
11 things.

12 Q. Do you know what phrase Nike uses to promote its
13 products?

14 A. I know there's a swoosh.

15 Q. If I told you that "just do it" --

16 A. Yeah, yeah.

17 Q. "Just do it" is commonly associated with Nike?

18 A. Yeah.

19 Q. That association came about despite the fact that none
20 of those words references -- you know, Nike. It doesn't
21 reference sporting equipment. It doesn't reference anything
22 else. It is something that brings up an association.

23 And given that this was in the context of an election,
24 in the context of voting, in the context of, you know, you're
25 going to exercise a right of citizenship by showing up at the

1 polls. When you show up at the polls, show up with
2 identification.

3 How is anything about that message ambiguous?

4 A. They don't say anything about voter identification
5 directly in most of the ads. They say, if you care about this
6 country, show it.

7 I show I care about this country in a lot of different
8 ways beyond voting. I am not sure people immediately would
9 get that.

10 For people to recognize it the way you are talking about
11 the Nike thing, recognize "just do it" as a Nike ad because
12 they have promoted that slogan for so long, you have to have
13 first had that association made for you. At some point, you
14 have got to see the whole thing connected, because otherwise,
15 where would you come up with that to begin with?

16 Q. And so, if the point of the advertising campaign was to
17 be that kind of emphasis, that kind of reminder on top of all
18 of the other educational efforts and outreach that the
19 Department of State was making, then would that campaign serve
20 that function?

21 A. Well, the Nike campaign is about brand awareness.
22 They're aware of Nike, "just do it." I don't think that's an
23 information campaign. The -- this particular campaign was
24 about voter education and getting information to voters.

25 I think that's very different from associating Nike with

1 a -- you know, the tennis shoe, or the sports products of some
2 kind and giving it a positive image. I don't think they're
3 really the same thing because you don't need any information
4 at all to say, Nike is cool. You know, it doesn't really
5 matter that you have detailed information on how the shoe is
6 made or why.

7 Q. If most people in the Commonwealth were to see an
8 advertisement and to them it was to mean, wait a minute, I
9 better pick up my wallet when I walk out the door because I'm
10 going to need my identification at the polls, do you believe
11 that that ad accomplished that purpose?

12 A. If they already had a driver's license and were exposed
13 to the ad, it could have, yeah. Because that was what was
14 emphasized.

15 Q. And if you were a person who fit into one of the other
16 categories, did you do any effort whatsoever to determine what
17 kind of outreach the senior citizen centers were doing, what
18 kind of outreach that the Department of State was
19 participating in with the colleges and universities, what kind
20 of outreach was being done to other places that issued
21 specific forms of identification that complied with the
22 statute?

23 A. Yes, I did look at those materials. Again, I know there
24 were some ads run in college newspapers. Some colleges
25 decided to change their ID so that they would be -- would have

1 expiration dates and things like that. Is that what are you
2 referring to?

3 Q. That's in part what went on, isn't it; but there were
4 also outreaches to, for example, the Department of Aging, the
5 Department of Health, the Department of Public Welfare. You
6 probably saw the press release where Temple University had its
7 own students say, let's get compliant identification?

8 So that raising the awareness of a need for
9 identification also allowed people to work with their
10 constituent organizations that were empowered to produce that
11 identification to insure that voters had it.

12 How is that not an effective way of communicating both
13 to the places that issue identification, and to the persons
14 who need it, that here is a way that you can get
15 identification to bring with you to the polls?

16 A. Well, you know, I'm sure in the cases that you
17 described, it was.

18 The problem is, I know with the care centers and so
19 forth, they could, if they wanted to issue IDs; but they
20 didn't have to.

21 So, I don't know how many of them really, you know, did
22 that, and how much that made a difference.

23 Q. Sitting here today, you don't know how many of them
24 didn't, either?

25 A. That's correct.

1 Q. And you don't know whether any resident was motivated by
2 the materials to ask their care center, do you have a form of
3 identification, and how many then actually got the
4 identification from that interaction?

5 A. Yeah, because there were no effectiveness metrics in the
6 campaign, we really can't say much of anything.

7 Q. Now, wait a minute, one of the effectiveness measures
8 that you talked about in your testimony was website visits,
9 and --

10 A. No.

11 Q. Yes, you did.

12 A. Website -- not visits to the website, because again,
13 there's no way to track any visitors to a website.

14 We looked at the website ad.

15 Q. You had said, you had said that it would be useful to
16 know how many people got the message and used it by going to
17 the website or calling the number.

18 A. Right. But I -- by that I don't think we can tell that
19 based on impressions data, because we know that that doesn't
20 represent that.

21 Q. I'm not talking about the impressions data. I'm talking
22 about the website data that was on the same document that you
23 looked at earlier that talked about the number of discrete
24 visits to the website?

25 A. Right.

1 Q. And why is that website data not a measure of how many
2 people followed up to a message that said, go to the website,
3 and then went to the website?

4 A. Well, for one thing, there are a lot of people other
5 than people looking for voter ID looking at the website like
6 me.

7 We can't tell how many people were going there to get
8 ID. We can't tell how many people found the information they
9 needed there. That kind of thing just isn't possible to tell
10 from what we're looking at here.

11 Q. But we do know that there were over a million hits on
12 that website, and that more than one page was looked at on
13 those hits?

14 A. Correct.

15 Q. Okay.

16 A. But not separate people, necessarily.

17 Q. I said it carefully by saying hits.

18 You had given some testimony earlier about the fact that
19 the reason that the PennDOT non-drivers ID didn't count to you
20 was because it could be used for purposes other than driving.

21 A. No, no. It counts for voting purposes. I understand
22 that.

23 Q. Right, but --

24 A. But I was saying I can't tell how many people found
25 their birth certificate and went and got one of those because

1 they wanted to vote. Maybe if we had the figures on an
2 increase over time and the number of those it might tell us
3 something about that.

4 Q. I think perhaps you're confused about the process.

5 If you went in to PennDOT and you said to them, I need
6 an ID for voting, and I want it to be a PennDOT ID as opposed
7 to the DOS ID, you could sign an oath in affirmation and
8 provide your documents, and you would get a free ID from
9 PennDOT to be used for voting purposes that would be -- that
10 would look just like the non-drivers ID that's used for other
11 purposes.

12 A. Right. No, I'm aware of that.

13 Q. And those numbers are in that 17,000 number that he was
14 asking you about.

15 A. Uh-huh.

16 Q. And you said those don't count, because --

17 A. No, I said I can't tell if they were a result of the
18 campaign or the regular flow of people that get PennDOT IDs.

19 Q. Well, okay. I don't want to argue with you, but your
20 testimony was you would be getting those IDs for other
21 purposes in addition to voting.

22 A. You could be. I don't know.

23 Q. But you couldn't for those 17,000 because you signed an
24 affirmation.

25 A. Oh, I see what you're saying; that you weren't going to

1 use it for anything but voting?

2 Q. No, that said that you needed it for voting purposes.

3 That it was a voting document, that you were getting it -- you
4 were getting it for the purpose of voting.

5 A. Right. Right.

6 Q. So that has already been separated out in the
7 statistics --

8 A. Mm-hmm.

9 Q. -- from somebody who comes in and says, I want to go buy
10 cigarettes so I want an ID to do that. Okay?

11 A. Okay, uh-huh.

12 Q. So those numbers have been developed separately. Given
13 that clarification, do the 17,000 actually count as part of
14 the identification that was gotten pursuant to, "go to PennDOT
15 and get an ID"?

16 A. If people came there because they knew that, yeah.

17 Q. Okay. Thank you.

18 You had some testimony about people who did not have
19 cable, and you gave us a specific statement about, you know,
20 30% of the state does not have cable.

21 A. Right.

22 Q. You have looked at any of the demographics on that 30%?

23 A. I know, not from studies of Pennsylvania in particular,
24 but I know the demographics of people who don't have cable
25 nationwide.

1 Q. Okay. Are you familiar with the general practice that
2 in a broadcast center that cable is not as necessary as it is
3 in someplace that might be -- not have broadcast reception?

4 A. A broadcast center, you mean media -- major media
5 market?

6 Q. Right. Right.

7 A. Okay.

8 Q. If you are in Philadelphia and therefore you have access
9 to broadcast or you're in Pittsburgh and you have access to
10 broadcast, you're less -- it's less necessary -- you may still
11 want it, because you want cable. That's a different issue.

12 A. Mm-hmm.

13 Q. But it's less necessary for you to have cable in order
14 to be able to access any television; is that correct?

15 A. Access any television. I guess, yeah. I mean --

16 Q. Let me put a finer point on it, okay?

17 A. I'm confused.

18 Q. I used to live in rural Oregon. In rural Oregon, the
19 only way that you were able to watch television is if you had
20 a cable station, a cable provider.

21 A. Mm-hmm.

22 Q. Okay. Couldn't do it any other way.

23 A. Mm-hmm.

24 Q. So that if you look at the top band of the state, those
25 people that are in the Allegheny National Forest; is that

1 correct?

2 A. I don't know how many are out there in the Allegheny
3 Forest. I haven't looked at that.

4 Q. And so, the people that are in that New York border who
5 are in the mountainous region and in the forest region, are
6 those people -- those people don't have access to a standard
7 broadcast from Philadelphia or from Pittsburgh; correct?

8 A. I don't know.

9 Q. You don't know.

10 A. No.

11 Q. Okay. So, if the decision was made that the people in
12 those rural counties who are in a place where they are not
13 getting broadcast signals are more likely or maybe solely able
14 to be reached by cable, would that change your assessment of
15 whether the decision to use cable there was reasonable?

16 A. I know in the region frequency statistics that were
17 provided by Harmelin, they -- I don't understand why, but it
18 says zero percent for those counties; and I guess, to me, that
19 doesn't sound too good, but I'm sure it's more than zero. I
20 don't know what the region zero means there.

21 Q. So, you would look at region frequency to make that
22 assessment?

23 A. Yeah.

24 THE COURT: We'll break now. I'll see you all
25 back here at 1:00.

1 MS. HICKOK: Thank you, Your Honor.

2 MR. WALCZAK: Thank you, Your Honor.

3 THE BAILIFF: Commonwealth Court is now in
4 recess.

5 (COURT RECESSED AT 12:40 P.M. AND RECONVENED
6 AT 1:03 P.M.)

7 THE BAILIFF: Commonwealth Court is now in
8 session.

9 MS. HICKOK: Good afternoon, Your Honor. If I
10 may continue.

11 BY MS. HICKOK:

12 Q. Professor, you had given testimony at the end of your
13 testimony about a sample that you did in which one-tenth of
14 one percent of 12,000 surveyed had talked about voter fraud;
15 is that sample a nationwide sample?

16 A. Yes, it is.

17 Q. Was it meant to the representative of the United States
18 population?

19 A. Yes.

20 Q. Thank you. Now, you also had some testimony about web
21 banners, and in the testimony you were shown a single element
22 of the web banner that is actually an animated group that
23 moves across the page.

24 I'm going to show you what's Exhibit 169, and it was
25 admitted yesterday, Your Honor. So that you can see the

1 entire animation?

2 A. Mm-hmm.

3 Q. So, now understanding that all of those pieces are in
4 the web banner, does that change your testimony as to whether
5 it's confusing just to see the one part in isolation?

6 A. I mean, it's obviously better because at least there's a
7 learn more button and it says something about ID. To vote in
8 the November 6th election, you must show acceptable photo ID.
9 So, it's better.

10 It obviously doesn't tell people, you know, if they
11 don't have an ID what to do, what I -- whether it has the
12 driver's license again, and so forth but, yeah, it's better.

13 Q. Did you review of the testimony of any of the
14 Petitioners' witnesses as to whether they had heard of the
15 voter ID law and its requirements?

16 A. No.

17 Q. When you testified about the elements of the advertising
18 campaign and what was done and what was not done, were you
19 suggesting that the Department of State should have looked to
20 another advertising buyer in a different group to develop a
21 more, as you call it, effective campaign?

22 A. No. I was suggesting that they should let people like
23 Red House do what they often do, which is measure
24 effectiveness, and also, that they not expressly say, no, we
25 don't want to do that. Because obviously if you care about

1 making sure people who are registered to vote can do so, you
2 want to make every effort possible to inform them and to
3 connect them with the information they need.

4 So, I would just say, you know, why exclude it, when
5 it's the only way to know if we're getting the job done.

6 Q. So, is it your impression that Red House or Harmelin or
7 Bravo advised the Department of State to do things that they
8 said they would not do?

9 A. I don't know.

10 Q. You don't know. Okay. You were talking -- let's go
11 back to the drug ad.

12 You said that the problem with the drug ad is that it
13 told people that the activity shown in the ad was normative
14 and acceptable?

15 A. Yeah. I mean, I'm not sure if those are the words that
16 exactly used, but the research on the effectiveness of that
17 campaign showed that the more ads you were exposed to, the
18 more prevalent you thought that drug use was in your age
19 group.

20 Q. So, if you were exposed to ads that said it that it was
21 normative and acceptable, and it reinforced bringing an
22 identification card to the polls, that would actually
23 reinforce that positive behavior in the same way?

24 A. I don't know. I mean, it would -- it's possible.

25 Q. By inference, if the research on the drug ads said the

1 effect of showing this over and over was to reinforce the
2 behavior shown, then showing the other one over and over might
3 be expected to reinforce the behavior shown, correct?

4 A. Reinforce is a little different than changing people's
5 impressions of how many people are doing drugs.

6 Q. Well, it doesn't it -- also?

7 A. To so it -- no, I was going to say --

8 Q. Sorry. I didn't mean to step on your testimony.

9 A. No. So, in these ads, I don't know if -- I mean, we
10 have actual data against the drug ad, so we know what happened
11 is that it increased their perception of how common drug use
12 was. In this case I don't know if, you know, the people
13 showing IDs and saying "show it" increased how many people
14 thought were, I guess, showing IDs because everybody was
15 supposed to show IDs. So I guess I'm not sure exactly how
16 that translates.

17 Q. Are you aware that under the prior statute there was an
18 identification requirement?

19 A. The prior statute; what are you referring to?

20 Q. That when people came to the polls, some of the people
21 needed to show ID?

22 A. I think first time voters, wasn't it?

23 Q. No, actually, it wasn't. It was every a person first
24 came to an election district.

25 A. Oh, yes.

1 Q. So any person who moved had to show ID.

2 A. Mm-hmm.

3 Q. Now, wouldn't you think that it would be harder for
4 someone to have in their head, this may or may not affect me,
5 I may or may not need to bring ID, than to get in their head,
6 oh, wait a minute. I'm going to vote. I need ID. It's a
7 universal association between the two as opposed to perhaps.
8 It may not -- do you understand what I'm asking?

9 A. I think so, but my understanding is that's a different
10 ID requirement. It didn't have to be a photo ID. It didn't
11 have to be a PennDOT issued ID and so forth.

12 Q. Well, does this ID have to be a PennDOT issued ID?

13 A. It can be a Department of State one now that that
14 exists.

15 Q. Are you aware that it can also be one of a number of
16 other kinds of ID?

17 A. Yes, I have seen that list.

18 Q. Okay. So, it's not that it has to be a PennDOT ID?

19 A. Well, but it can't be -- you know, it can't be something
20 that doesn't have a picture, and it can't be something that
21 doesn't -- isn't issued by one of those particular places.

22 Q. Can you tell me -- how long have you been a resident of
23 Pennsylvania?

24 A. About ten years.

25 Q. How many times have you moved during that time?

1 A. Zero.

2 Q. When you first showed up to vote in Pennsylvania, can
3 you tell me what the list of acceptable IDs was?

4 A. No.

5 Q. Okay. Thank you. I've been a little concerned about an
6 undercurrent that I have seen in your work in the things that
7 you have said publicly and in what you testified to today.

8 I think today the way it came out was that it's
9 important to make things as easy for people as possible. In
10 the article that you have forthcoming, you said that there is
11 an emphasis on reducing cognitive demands. Do you recall --

12 A. I'm not sure what context you're talking about.

13 Q. I have the article, and I can give copies if people need
14 it, but I -- if I can just read this sentence.

15 A. Can you tell me what article it is.

16 Q. It's the article we discussed this morning.

17 A. Oh, on learning television.

18 Q. Your televised exposure to politics, new measures for
19 fragmented media environments.

20 A. You're referring to where I'm talking about in survey
21 research. We want to make it easier for people to answer
22 accurately questions about how much television that they have
23 watched.

24 Q. You're actually -- yeah. You're talking about the
25 program list. If I can read the paragraph, I think the

1 paragraph is enough to put it in context.

2 MR. WALCZAK: What page?

3 THE WITNESS: Can you tell me what page it is.

4 MS. HICKOK: I'm not good with the pages. Can
5 you tell me what page it is. It looks like four. It's on the
6 top right.

7 MR. WALCZAK: Looks like the fourth page in
8 this document at the top left.

9 BY MS. HICKOK:

10 Q. I'll represent that I got this document off your
11 website, and the paragraph says, "The program list approach
12 advances two goals. First, it decreases the cognitive demands
13 placed on respondents. When viewers watch TV, they likely
14 think in terms of the program they watch rather than in time
15 units, such as hours or days, or in terms of researcher
16 designed categories of political programs. Thus, it should be
17 easier for respondents to recognize and report regular
18 viewership of specific programs than to mentally tally summary
19 amounts of time devoted to abstract categories of
20 programming"; is that correct?

21 A. Yes.

22 Q. Does that reflect your position that it's important --

23 A. Position on survey measurement, yes.

24 Q. And your position that it's important in terms of

25 anything that's conveyed to reduce cognitive demands to make

1 things as easy as possible?

2 A. This is about a survey research technique. It's about
3 how you ask people questions in surveys to get accurate
4 responses.

5 You can ask people questions like how much TV did you
6 watch this week, and we'll give you an answer, even though
7 it's massively inaccurate.

8 The program list approach is a technique for increasing
9 the accuracy of what they tell you because there is a -- they
10 want to answer, you know, the question, and they're not going
11 to sit down and think about each and every program they
12 watched and how long they watched it and then mentally tally
13 those.

14 So, when we do surveys and we want people to report
15 things accurately, we break it down for them. And what we
16 have found is in terms of memory, they're very accurate at
17 recalling which programs they watch regularly. They are not
18 accurate at all at telling us how much TV on the whole they
19 watch.

20 So, in turns out to be a far more reliable and valid
21 measure of television exposure to ask them and give them a
22 list of Nielsen's top 50 program, and they tell us which ones
23 they watch regularly.

24 Q. Now, do you recall giving an interview on an
25 iCitizenForum?

1 A. I don't know what that is. Assist --

2 Q. ICitizenForum.

3 A. It must have been some kind --

4 Q. You gave an interview that's available on the web.

5 A. That's probably true. I do a lot of interviews, but I
6 don't know iCitizen, exactly.

7 Q. Do you recall during that you were asked questions about
8 your perspectives on voter participation? You would it help
9 if we showed you part of the video?

10 A. Sure. Do you know what year it was?

11 Q. I believe it was about 2008.

12 (THE VIDEO PLAYED AS FOLLOWS:)

13 "DR. MUTZ: -- beyond wealth, gender and race
14 and focussing on representatives and perhaps income levels and
15 economic levels and gender and race and so forth, that's a
16 much bigger problem than the fact that we have 75 versus 50%
17 turnout. If that 50% were a representative 50%, I would be
18 fine with that."

19 "INTERVIEWER: America has one of the lowest
20 participations in the world to have a vote."

21 "DR. MUTZ: It is, but I also think all of
22 those comparisons are not that all fair. Americans are asked
23 to vote on absolutely everything: Huge number of offices,
24 huge number of referenda, especially in some states. We are
25 actually, I think, overburdened, as voters go, in terms of if

1 we were really to be in this ideal citizen that people have in
2 mind and do all of our research and so forth, it would be a
3 full time job. The economy would have to grind to a halt. So
4 we ask an awful lot of American citizens. On the one hand,
5 Americans are kind of in love with the idea of having more
6 say, and on the other hand, expecting people to do the amount
7 of research that it would take to make that many decisions on
8 an ongoing basis is asking a huge amount."

9 (THE VIDEO CONCLUDED.)

10 BY MS. HICKOK:

11 Q. Is that your position; do you agree with what you said
12 then?

13 A. Yes. I agree that we do ask a lot of American citizens.
14 We make it -- you know, we have registration requirements that
15 many other countries don't. The government assembles a list
16 for them. We do make people not only vote more often on more
17 offices, we make them -- if they are going to make good
18 decisions, it's a huge amount of information that you need to
19 acquire.

20 So, it's true. I think the comparisons in many ways to
21 other countries are often unfair because we do have a bigger
22 burden. We also, you know, don't vote on slates of party
23 candidates and so forth the way they do in many other
24 enterprises.

25 MS. HICKOK: I have no further questions.

1 MR. WALCZAK: No questions, Your Honor.

2 THE COURT: Thank you, doctor.

3 THE WITNESS: I'm sorry.

4 THE COURT: I think you're finished.

5 THE WITNESS: Oh, okay.

6 MR. WALCZAK: Your Honor, we would move in the
7 exhibits we used with Dr. Mutz, so it's 2099a, b, c, d, 1941,
8 2074c and b, 2094, 2095, and 1472.

9 MS. HICKOK: Your Honor, to the extent that
10 some of these may be excerpt or extracts, I would ask that we
11 have complete -- I am not positive at this moment. I haven't
12 had time to review everything, but it appears that some of
13 them were truncated versions, and I just wanted to make
14 certain that it's the complete one that goes in.

15 We can admit them conditionally now, and then
16 substitute if there's something that's not complete.

17 THE COURT: I think you can get together on
18 that on Monday morning.

19 MS. HICKOK: Yeah. We'll do that.

20 THE COURT: Okay.

21 MS. HICKOK: I just want that caveat. Thank
22 you.

23 MR. RUBIN: Your Honor, one more housekeeping,
24 Mr. Gersh, there was some discussion yesterday about what was
25 before the Court previously in terms of the public education

1 campaign, and Mr. Royer didn't recall it. Mr. Gersh made some
2 representation and Respondents' counsel also made
3 representations that there was evidence before.

4 Mr. Gersh had offered to put together the
5 relevant excerpts in exhibits. We have a package for you if
6 you would like, so we wanted to offer that at this time, and
7 Respondents have a copy as well.

8 MS. HICKOK: Your Honor, we just received a
9 copy today at the beginning of the testimony. We have not
10 been able to review it to determine anything about it. If you
11 would like, we can take that up Monday as well.

12 THE COURT: Yeah. I want you to meet about
13 10:00 Monday morning, and have everybody meet here at 10:00.

14 MS. HICKOK: Thank you, Your Honor.

15 THE COURT: I noticed that we have a typo in
16 the order that we can rectify. If you go to page three, this
17 is the order regarding Respondents' Motion in Limine.

18 In the last paragraph of the "therefore"
19 paragraph as to Exhibit 1167. Mr. Rubin, what should that be.

20 MR. RUBIN: 1677, Your Honor.

21 THE COURT: It should be 1677. So we have
22 transposed that or done something to it that we shouldn't have
23 done to it, so, I will make a correction and I'll file a
24 corrected order. Okay.

25 MR. RUBIN: Thank you, Your Honor.

1 THE COURT: Thank you, counselors.

2 MR. RUBIN: Have a good weekend.

3 THE BAILIFF: Commonwealth Court is now
4 adjourned.

5 (THE PROCEEDINGS WERE RECESSED FOR THE DAY AT
6 1:19 P.M.)

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REPORTER'S CERTIFICATE

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I, Marjorie Peters, a Registered Merit Reporter, Certified Realtime Reporter, and Notary Public in and for the State of Pennsylvania, that the foregoing record was taken at the time and place stated herein and was recorded stenographically by me and then reduced to typewriting under my direction, and constitutes a true record to the best of my skill and ability.

I certify that I am not a relative or employee of either counsel, and that I am in no way interested, directly or indirectly, in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office this day of 2013.

Marjorie Peters, RMR, CRR

My commission expires March 13, 2016

Original certification on file at Miller Verbano Reporting.



Adam N. Miller, Custodian _____



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