

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS,	:	
	:	
Plaintiff,	:	Docket No. CA 12-128
	:	
vs.	:	Washington, D.C.
	:	Tuesday, July 10, 2012
ERIC H. HOLDER, JR., in his	:	9:05 a.m.
official capacity as	:	(Day Two)
Attorney General of	:	
the United States,	:	
	:	
Defendant, and	:	
	:	
ERIC KENNIE, et al.,	:	
	:	
Defendant-Intervenors.	:	
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(A.M. SESSION)
TRANSCRIPT OF BENCH TRIAL
BEFORE THE HONORABLE DAVID S. TATEL
UNITED STATES CIRCUIT JUDGE
THE HONORABLE ROSEMARY M. COLLYER
THE HONORABLE ROBERT L. WILKINS
UNITED STATES DISTRICT JUDGES

APPEARANCES:

For the Plaintiff:	ADAM MORTARA, Esquire
	ASHA L. I. SPENCER, Esquire
	JOHN M. HUGHES, Esquire
	Bartlit Beck Herman
	Palenchar & Scott LLP
	54 West Hubbard Street
	Suite 300
	Chicago, IL 60654

Appearances continued:

JONATHAN F. MITCHELL, Esquire
MATTHEW FREDERICK, Esquire
PATRICK SWEETEN, Esquire
JOHN MCKENZIE, Esquire
STACEY NAPIER, Esquire
Office of Attorney General of Texas
209 West 14th Street, 7th Floor
Austin, TX 78701

For the Defendant:

ELIZABETH S. WESTFALL, Esquire
DANIEL J. FREEMAN, Esquire
MEREDITH E.B. BELL-PLATTS, Esquire
BRUCE I. GEAR, Esquire
JENNIFER L. MARANZANO, Esquire
RISA BERKOWER, Esquire
BRYAN L. SELLS, Esquire
SPENCER FISHER, Esquire
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

For Defendant-
Intervenors:

EZRA D. ROSENBERG, Esquire
Dechert LLP
902 Carnegie Center
Suite 500
Princeton, NJ 08540-6531

JOSEPH GERALD HEBERT, Esquire
J. Gerald Hebert, P.C.
191 Somerville Street,
Suite 405
Alexandria, VA 22304

NANCY ABUDU, Esquire
American Civil Liberties Union
Foundation, Inc.
230 Peachtree Street NW
Suite 1440
Atlanta, GA 30303

CHAD W. DUNN, Esquire
Brazil & Dunn
4201 FM 1960 West
Suite 530
Houston, Texas 77068

1 Appearances continued:

2 ADAM HARRIS, Esquire
3 Fried, Frank, Harris, Shriver
& Jacobson, LLP
4 One New York Plaza
New York, New York 1004

5 JOSE GARZA, Esquire
6 Law Office of Jose Garza
7414 Robin Rest Dr.
San Antonio, Texas 98209

7 Court Reporter: CRYSTAL M. PILGRIM, RPR
8 Official Court Reporter
9 United States District Court
District of Columbia
10 333 Constitution Avenue, NW
Washington, DC 20001

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13 by computer-aided transcription.

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

2 THE DEPUTY CLERK: Civil action 12-128, State of
3 Texas versus Eric H. Holder, Jr.

4 For the plaintiffs, Jonathan Mitchell, Patrick Sweeten,
5 Matthew Frederick, Reynolds Brissenden, Stacey Napier, Adam
6 Mortara, John McKenzie, Asha Spencer and John Hughes.

7 For the defense, Meredith Bell-Platts, Elizabeth
8 Westfall, Daniel Freeman, Bruce Gear and Brian Sells.

9 For the intervenor defendants, Chad Dunn, Gerald Hebert,
10 Ezra Rosenberg, Nancy Abudu, and Adam Harris.

11 JUDGE COLLYER: Good morning everyone. Is my little
12 thing working, can you hear me?

13 THE DEPUTY CLERK: Yes, Your Honor.

14 MR. MORTARA: Yes, Your Honor.

15 JUDGE COLLYER: Good. I just wanted to remind you
16 and say on the record because I let you know yesterday off the
17 record how much time we had used yesterday since we're timing
18 this.

19 Texas had used between opening, directs and some crosses
20 -- oh, you didn't do any crosses yet, did you, 216 minutes.

21 The United States 138 minutes, and the intervenors 30
22 minutes. And I'm on pad two so that you know that we're going
23 forward.

24 Are we making progress yet, Mr. Mortara?

25 MR. MORTARA: I'm all in favor of progress, and yes,

1 we are.

2 JUDGE COLLYER: Okay, then we are making progress by
3 declaration.

4 Go ahead, sir. Did you want to recall your witness or
5 did you have something else?

6 MR. MORTARA: No, Your Honor, we recall Professor
7 Thomas Sager to the stand.

8 JUDGE COLLYER: Yes, Professor Sager, if you'd come
9 forward, sir.

10 PLAINTIFF WITNESS THOMAS SAGER SWORN

11 DIRECT EXAMINATION CONTINUED

12 MR. MORTARA: Your Honor, may I proceed?

13 JUDGE COLLYER: Yes, sir, when you're ready.

14 BY MR. MORTARA:

15 Q. Good morning, Professor Sager.

16 A. Good morning, Mr. Mortara.

17 Q. We had left off yesterday talking about Professor
18 Ansolabehere's match sweeps. Since yesterday we have a board,
19 I have personally updated the board with some red text below it
20 with nine digit social security number summarizing your
21 testimony from yesterday that only 45 percent of the voter
22 registration database in Texas have a full social security
23 number with nine digits.

24 Was that your testimony yesterday?

25 A. That is a correct figure, yes.

1 Q. And on the screen separately from the board we have a
2 summary of your match sweeps that you did and yesterday we
3 discussed the differences between your analysis and Professor
4 Ansolabehere's and the cleaning Professor Ansolabehere did on
5 his database.

6 Do you remember that?

7 A. Yes, I do.

8 Q. One of your sweeps on your list is for SS, actually two of
9 them use SSN 4. What percentage of the voter registration base
10 just has a four digit social security number?

11 A. About ten percent.

12 Q. And what about the remaining 45 percent of the voter
13 registration database?

14 A. They have no social security number, it's missing.

15 MR. MORTARA: I'm going to go put that on the board,
16 Your Honor.

17 (Pause.)

18 BY MR. MORTARA:

19 Q. We talked a lot about cleaning of the driver's license
20 base or DPS database performed by Professor Ansolabehere. Did
21 Professor Ansolabehere do anything to clean the voter
22 registration database of ineligible voters like he did on the
23 driver's license database?

24 A. No, he did not.

25 Q. Now that we understand cleaning, can you describe the

1 matches that you did very briefly, and then describe the
2 theoretical error rates of at least one of them?

3 A. There were four sweeps that I applied. They were the full
4 social security number, nine digits, combo called SSN9 combo,
5 which is full social security number plus at least one of first
6 name, last name, date of birth required for matching.

7 The second sweep was to match on an identical first name,
8 last name and date of birth, all three.

9 The third sweep four digit social security number, plus
10 first name, plus last name, all three required for exact
11 matches.

12 And the fourth was four digit social security number plus
13 date of birth both required for exact match.

14 Q. When you talk about the work you did on Professor
15 Ansolabehere's set, Professor Sager, did you work alone?

16 A. No, I did not.

17 Q. Did you have the assistance of someone else?

18 A. Yes, I did.

19 Q. Who was that?

20 A. I had the use of Mr. Oscar Valles of the office of
21 Attorney General. He's employed by the legal and technical
22 services branch there.

23 Q. And the last of your match sweeps is --

24 JUDGE WILKINS: Can you spell that name, please?

25 MR. MORTARA: Valles, V-A-L-L-E-S, Your Honor.

1 BY MR. MORTARA:

2 Q. The last of yours is SSN 4 plus DOB. I imagine my SSN 4
3 and DOB is not unique in the world.

4 So what is the theoretical error rates of accidentally
5 mismatching somebody?

6 A. Well, we can give at least a ballpark figure by doing some
7 back of the envelope calculations, and if you'll indulge me
8 I'll explain roughly what that would amount to.

9 JUDGE COLLYER: Why don't you just tell us first what
10 the error rate would be, plus or minus what?

11 THE WITNESS: Okay, somewhere between five and ten
12 percent.

13 JUDGE COLLYER: Thank you. Now you can explain it.

14 THE WITNESS: Thank you, Your Honor.

15 With four social, four digit social security numbers
16 there are 10,000 possible distinct values for that because any
17 number less than 10,000 can be one social security number four
18 digits.

19 Now let us suppose for the sake of simplicity that four
20 digit social security numbers are roughly evenly distributed.

21 Let us further suppose a driver's license population
22 consisting of let's say 20 million individuals just to keep the
23 math simple.

24 So if I ask the question how many Texas drivers would I
25 expect to have the same four digit social security number that

1 I have or indeed that any one individual has, we can calculate
2 20 million divided by 10,000 and get the answer 2,000.

3 So about two, I would expect about 2,000 individuals in
4 the Texas driver's license list to have the same social
5 security number four digit as I do or as anybody else does.

6 But the fourth match here is not just on social security
7 number four digits, it also includes date of birth. The
8 calculations for that might proceed roughly as follows.

9 We know that there are 365 days in a year. And if we
10 suppose that a life time of driving consists of about 50 years,
11 then we can multiply 50 times 365 and get a number that's
12 somewhat less than 20,000 as the number of possible distinct
13 dates of birth.

14 Now, again dates of birth are not evenly distributed
15 because there are fewer older people than there are younger
16 people but again, because I'm getting at an order of magnitude
17 ledger, let's just suppose for the sake of argument that they
18 are roughly evenly distributed.

19 So then with date of birth having about 20,000 possible
20 distinct values and there being 20 million drivers in Texas, I
21 would divide 20 million by 20,000 and get the answer of 1,000
22 as the number of Texas drivers that I would expect to have the
23 same birthdate, day, month and year as I do.

24 Putting these together SSN 4 plus date of birth how many
25 distinct combinations of SSN 4 and date of birth are there?

1 Well, with 10,000 distinct SSN 4s and maybe about 20,000
2 distinct dobs, we multiply those together and get 200 million.
3 So there are about 200 million distinct possible combinations
4 of SSN 4 and date of birth.

5 With there being about 20 million Texas drivers, that
6 means that I would expect there to be about a one in ten chance
7 that somebody in the driver's population would have the same
8 combination of SSN 4 and date of birth as I do.

9 So if I take a random SSN 4 and date of birth that would
10 have about a ten percent chance of matching somebody on that
11 basis in the Texas driver's license, and that is what motivates
12 my rough estimate of about ten percent as the probability of a
13 false match for that particular category.

14 I supplemented that calculation with further empirical
15 work and it shows that roughly somewhere between maybe five and
16 ten percent would be a rough approximation for the false match
17 rate for this particular sweep.

18 BY MR. MORTARA:

19 Q. Does your report contain a theoretical analysis for the
20 false match rate of your sweeps?

21 A. Yes, it does.

22 Q. Where is that in your report?

23 A. It is in the appendices. There is a theoretical
24 discussion in Exhibit D and there is further empirical work
25 there and in Exhibit B.

1 Q. I'm just going to put those theoretical error rates on the
2 screen. For the Court's benefit, it's zero percent for SSN9,
3 about four percent for first last DOB, and about four percent
4 for four digit social security, plus first and last name.

5 Professor Sager, did you do any quality control of the
6 matches that were performed to determine whether these
7 theoretical error rates were in fact seen in practice?

8 A. Yes, I did.

9 What I did was I took all of the thousands of individuals
10 in Dr. Ansolabehere's VRNID and I applied these matches to
11 them. I obtained thousands of individuals matched in each one
12 of the four categories. Too many to check individually.

13 So what I had done was the selection of a random
14 representative sample of 1,000 matches from each. These were
15 individuals in Dr. Ansolabehere's VRNID, together with their
16 matches in the driver's license file.

17 And then I individually examined all of them. And I
18 quality checked and verified that in fact it seems as though
19 the false match rate was about as indicated here on the screen.

20 Q. Would you say that for each of these matches your quality
21 control checked out?

22 A. Yes.

23 Q. On the screen I've added a column indicating that the
24 quality control check was passed in your sample review.

25 Professor Sager, have you also prepared a slide summarizing

1 the number of matches found for each of these sweeps that you
2 performed?

3 A. Yes, I have.

4 Q. And I'm going to put that on the screen and summarizing
5 for the Court, could you please just quickly read the numbers
6 of matches and then explain to me why the total doesn't equal
7 the sum of all of the parts?

8 A. For SSN9 combo, I found in Dr. Ansolabehere's VRNID
9 210,601 matches. For first name, last name and date of birth,
10 I found 646,912 matches.

11 For SSN 4 plus first name plus last name I found 297,447
12 matches. For SSN 4 plus date of birth I found 404,226.

13 The total matches shown at the bottom is 814,903. This
14 avoids double counting because many of these matches could be
15 obtained on more than one sweep.

16 Q. Professor Sager, did you do any investigation into whether
17 the matching algorithm that Professor Ansolabehere used for his
18 report shown on the board was biased against matching certain
19 sub groups of people?

20 A. Yes, I did. I found that there were at least two groups
21 that it was biased against matching. Those were women and
22 Hispanics.

23 Q. Could you please explain to the Court how Professor
24 Ansolabehere's matching algorithm was biased against matching
25 women?

1 A. It results from the requirement of an exact name match.
2 What I saw when I was going through the samples that I had
3 prepared, let's take SSN9 combo for example, that has virtually
4 a zero error rate.

5 So my samples consisted of and I had my computer screen set
6 up so that on the left hand side I was looking at the match
7 with the information from the voter registration file and on
8 the right I was looking at the match of driver's license
9 information.

10 Now since I was looking at SSN9 combo I was virtually
11 certain that I was looking at the same people from both sides
12 of my computer screen.

13 However, what I was finding was that for females there were
14 a lot of them that had entirely different last names. And
15 these are suppose to be the same individuals. Common sense
16 explanation for that was that the female was using her maiden
17 name in one file and using her married name in another file.

18 In my SSN9 combo file 1,000 sample items I found more than
19 200 instances of that.

20 Q. Professor Sager, these are people who match so no harm, no
21 foul, right?

22 A. Well, no because what we're looking for are those that do
23 not match. And so those that end up in the VRNID are those
24 that do not in fact match. With the requirement of a match on
25 first name and last name, those women who are using their

1 married name in one file and their maiden name in another file
2 will fail to match on Dr. Ansolabehere's three sweep procedure.
3 Therefore, they will end up in the VRNID which is suppose to
4 recommend voters who lack access to ID.

5 Now this is very perplexing to me because I don't know of
6 any theoretical reason why you would expect females to have
7 less access to ID than males.

8 Q. Professor Sager, did you help me prepare a slide
9 summarizing the gender bias in Professor Ansolabehere's match?

10 A. Yes, I did.

11 Q. I put that on the screen. For the Court's benefit, it's
12 the same slide that I used yesterday in opening.

13 Could you describe what's shown on the slide, Professor
14 Sager?

15 A. In the upper line we have the percentage of males and
16 females among all Texas registered voters, this is about 13
17 million.

18 What we see are that females are 49 percent, males are 42
19 percent with a gap of 7 percent in between.

20 For those of you who are wondering if there's a third
21 gender that is somehow omitted, I assure you that there is not,
22 that in fact about 7 percent do not disclose their gender on
23 the form.

24 Then in the bottom line we have the VRNID composition of
25 females and males, and the female percentage jumps from 49

1 percent to 53 percent, and the male percentage drops from 42
2 percent to 36 percent which means that the gap widens from 7
3 percent to 17 percent.

4 Q. What do you conclude from your analysis of the gender
5 distribution in the VRNID set?

6 A. Well, this is the strikingly large difference. And the
7 most obvious explanation for it is that Dr. Ansolabehere's
8 requirement of a match on name is selectively funneling more
9 females than it should into the bottom match list.

10 Therefore, Dr. Ansolabehere's match which requires match on
11 name is biased against matching females.

12 Q. That's Dr. Ansolabehere matches, is that also a problem
13 for yours?

14 A. Yes, it is. I noticed that in every one of my sweeps that
15 involved criteria that did not require exact name matches.

16 Q. You also had mentioned that Professor Ansolabehere's
17 matching algorithm in his database project was biased against
18 matching Hispanics.

19 Can you explain how you discovered that?

20 A. Yes. Once again, it happened when I was going through my
21 samples. Let's take SSN9 combo for instance. I have 1,000 of
22 those items. On the left side of my computer screen I have the
23 information from the voter registration file, on the right side
24 of my screen I have the matching information from the driver's
25 license file.

1 Now with the SSN9 combo I'm almost certain that every one
2 of my matches is the same individual which means that any
3 difference in name cannot be attributed to a mismatch, to a
4 false match, they are the same individuals.

5 And what I observed was that there were still some
6 differences in names and it seems as though there were more
7 problems with the Hispanic names than with the non Hispanic
8 names.

9 So I started making a tally, a tally of problems with name
10 matching for Hispanics and non Hispanics. And what I found
11 with my sample was that there were about twice as many problems
12 with names in Hispanics than there were with non Hispanics.

13 So I decided to do a more robust test of this. To do that
14 test properly I needed a large dataset where I could rule out
15 the possibility that they were false matches that were
16 accounting for these differences in the names.

17 And so what I did was to match the entire voter
18 registration list of 13 million Texas voters on the list with
19 the entire driver's license list on the basis of SSN9 combo
20 which was my most reliable matching indicator.

21 What I found was that on SSN9 combo I came out with about
22 five and a half million matches, and I could be pretty sure
23 that these are the same individuals in the voter registration
24 as in the driver's license list; therefore, there was no
25 problem with the name differences arising out of false matches.

1 What I did next then --

2 MR. SELLS: Objection. I think Professor Sager has
3 gone way beyond his report.

4 Mr. Mortara can tell me if I'm wrong on it, but this
5 large match that he's discussing now is nowhere disclosed in
6 his report and I would move to strike the previous answer.

7 MR. MORTARA: Your Honor, this large match that
8 Professor Sager is discussing was not in his report. It was
9 disclosed to counsel. At Professor Sager's deposition he was
10 extensively examined about it. That is true of every expert in
11 this case, it is true --

12 JUDGE COLLYER: You don't need to make a comparison.
13 You just need to say it was revealed and he was questioned on
14 it.

15 Did you do the deposition, sir?

16 MR. SELLS: Yes, Your Honor, I did.

17 JUDGE COLLYER: And you don't remember this part?

18 MR. SELLS: He's gone beyond what he said in his
19 deposition.

20 If Mr. Mortara wants to bring it back to the exhibit
21 that was introduced for the first time in his deposition, then
22 maybe I'll see where we're going.

23 JUDGE COLLYER: Why don't you come forward to the
24 microphone so we be sure that we get the objection clearly
25 stated.

1 If you could just say in a piffy word or sentence what
2 the objection is.

3 MR. SELLS: Your Honor, the objection is that
4 Professor Sager's testimony has gone beyond the report. I
5 think it's gone beyond what was disclosed at his deposition as
6 well.

7 JUDGE COLLYER: All right. Do you have the exhibit
8 from the deposition, Mr. Mortara?

9 MR. MORTARA: Your Honor, I can pull it up very
10 briefly but it has not gone beyond. It's Plaintiff's Exhibit
11 16 if counsel wants to refer to it, and I can pull it up in
12 just moments if that's necessary.

13 Would you like me to pull up Plaintiff's Exhibit 16?

14 JUDGE COLLYER: I want everybody to have a chance to
15 look at it to decide whether or not Professor Sager has gone
16 beyond what he testified to in his deposition.

17 MR. MORTARA: We can have it for you momentarily,
18 Your Honor.

19 JUDGE COLLYER: All right.

20 I know that the font who knows all things can pull it up
21 in a heart beat.

22 MR. MORTARA: Yes, she can.

23 Would you like to come up here.

24 I can also pull it up relatively quickly.

25 JUDGE COLLYER: It's not that I question your

1 ability. I just have great confidence in Amanda. You're a
2 lawyer, she's a real person.

3 (Laughter.)

4 MR. MORTARA: Thank you, Your Honor.

5 JUDGE COLLYER: I think that's a compliment to Amanda
6 actually.

7 MS. SALIGA: No, that's okay.

8 JUDGE COLLYER: I have to tell the assembled ears
9 that we had a trial together in January and so I have full
10 respect for Amanda's capabilities.

11 MR. MORTARA: Your Honor, Mr. Hughes has been so kind
12 as to provide Plaintiff's Exhibit 16 which --

13 JUDGE COLLYER: Should I say that Mr. Hughes is a
14 person too?

15 MR. MORTARA: Sure.

16 Mr. Sells extensively deposed Professor Sager about this
17 in his deposition. The relevant analysis is both here --
18 excuse me, Your Honor, we are having a little bit of a screen
19 issue, you're not seeing everything.

20 But in the upper right, upper left here you can see the
21 5.6 million he just talked about.

22 Your Honor, do you see that?

23 JUDGE COLLYER: I see that.

24 MR. MORTARA: And in the, what he's about to talk
25 about next refers to something I mentioned in opening which is

1 the stunning bias here against matching people with Spanish
2 surnames.

3 Very sorry, Your Honor but you can see it's 2020 percent
4 Spanish surname in the general SSN9 combo match. That means
5 2020 percent of the people in that match --

6 JUDGE COLLYER: I don't need testimony from you.
7 That's okay.

8 MR. MORTARA: Sorry, Your Honor.

9 JUDGE COLLYER: That's all right.

10 MR. MORTARA: It was 28 percent --

11 JUDGE COLLYER: I got that part.

12 All right now, sir. Yes?

13 MR. SELLS: Your Honor --

14 JUDGE COLLYER: Can you come to the mic again. I am
15 so sorry, but it helps the record.

16 MR. SELLS: And I apologize for delaying.

17 If this is what Professor Sager is testifying about, I
18 would withdraw my objection. I could not tell that given the
19 foundation. It sounded to me like he was going off in another
20 direction.

21 JUDGE COLLYER: All right, then we'll keep him to
22 this and allow the examination to proceed.

23 Thank you, sir, for your assistance, Mr. Hughes.

24 MR. MORTARA: For the record, Your Honor, as I stated
25 in redistricting Mr. Sells and I are very close friends.

1 JUDGE COLLYER: Okay.

2 BY MR. MORTARA:

3 Q. Professor Sager, we'll pick this back up.

4 Did you prepare a slide summarizing your findings on the
5 Hispanic bias?

6 A. Yes, I did.

7 Q. Is the slide based on the exhibit from your deposition
8 that you just showed Mr. Sells?

9 A. Yes, it is.

10 Q. Could you please continue to describe the bias you found?

11 A. Okay. Let's see where did I leave off?

12 JUDGE COLLYER: The question is the last one you
13 explained the reason for a bias on women and then we said what
14 it was.

15 What's the reason for a bias on Hispanics?

16 THE WITNESS: Thank you, Your Honor.

17 JUDGE COLLYER: You're welcome.

18 THE WITNESS: This is something that I noticed in
19 looking at the samples, and then I decided to do a more robust
20 test which was shown on the exhibit that you just identified
21 right here.

22 I used the most reliable matching of criteria SSN9 combo
23 to come up with five and a half million from the individuals
24 from the Texas voter registration list who matched the Texas
25 driver's license list so I know that these are the same

1 individuals.

2 Most of these individuals also have identical first
3 name, last name and date of birth. So I took those matching
4 individuals who had identical first name, last name, date of
5 birth out of the five and a half million. That left me with
6 about 500,000 individuals.

7 These 500,000 individuals now are the same individuals,
8 but they have differences in their first name, last name and
9 date of birth. So I asked the question what is the Spanish
10 surname composition of the original set, the SSN9 combo set,
11 and what is the Spanish surname composition of the remnant set
12 from this after you eliminate those that have identical first
13 name, last name, date of birth.

14 In the original SSN9 combo set of five and a half
15 million the Spanish surname composition is 20 percent. But in
16 the remnant set it jumps up to 28 percent. What this shows is
17 that Spanish surnames are represented 40 percent more, that's
18 20 percent of 28 percent, an increase of 8 percent is a 40
19 percent increase, 40 percent more than you would expect based
20 upon their composition of the original universe from which this
21 was selected.

22 Q. What does that mean for Professor Ansolabehere's matching
23 process?

24 A. Since Professor Ansolabehere's entire VRNID database of
25 1.5 million were all exposed to this matching first name, last

1 name, date of birth, then that means that Professor
2 Ansolabehere's dataset is biased against matching Hispanics.
3 That is, the use of first name, last name selectively funnels
4 more Hispanics into the remnant set VRNID than it should.

5 Q. Could that bias account for the SSVR Spanish surname
6 disproportionality that Professor Ansolabehere observed?

7 A. Well, Professor Ansolabehere remarked that the Spanish
8 surname composition of all of his VRNID is about 27 percent.
9 Now that's a number that looks very familiar because we see 28
10 percent up here.

11 So what I infer from this is that the magnitude of this
12 ethnicity name selection bias by itself is sufficient to
13 account for all of the excess Hispanics that Dr. Ansolabehere
14 found in VRNID. It is not necessary to invoke an explanation
15 dealing with lack of ID.

16 Q. Now I want to move on from bias to some further quick
17 analysis you did. Did you do any further analysis of the data
18 with respect to age or voting status of the VRNID at the
19 request of the state?

20 A. Yes, I did. With respect to age I looked at those who
21 were over 65 because my understanding is that those who are
22 over 65 may vote by mail and need not go to the polls and show
23 ID.

24 I also looked at suspense status in the voter registration
25 database because my understanding is that that indicator may

1 arise because the person may have been sent mail which was
2 return to sender indicating that they may have moved.

3 Q. Professor Sager, please for the Court, you are not an
4 expert on how hard it is to vote by mail or in what means to be
5 on suspense status are you?

6 A. I am not.

7 Q. Did you do these matches and these further exclusions at
8 the request of the state?

9 A. Yes, I did.

10 Q. Did you --

11 JUDGE COLLYER: Can you tell me, Mr. Mortara, I'm
12 right aren't I that somebody 65 or older can go vote in person
13 and if they do they need an ID?

14 MR. MORTARA: Under Senate Bill 14 someone over 65
15 can still vote in person. Everyone has a right to do that and
16 they will require a photo ID to vote in person, correct, Your
17 Honor.

18 JUDGE COLLYER: Okay. So what your point is here is
19 that persons 65 and over are also allowed to vote by mail if
20 they get the ballot on time, get it in, et cetera, et cetera,
21 all of the points to which others testify, not the Professor
22 and if they do that, they do not have to have an ID?

23 MR. MORTARA: That is correct, Your Honor.

24 It is essentially I would say it's a dispute about the
25 gradation of any possible effect here, people over 65. And

1 it's a dispute between us and the Justice Department.

2 I'm just merely trying to clarify with the witness that

3 --

4 JUDGE COLLYER: I appreciate that. I just wanted to
5 be sure that I understood the point.

6 Go ahead.

7 BY MR. MORTARA:

8 Q. Professor Sager, did you prepare a slide with the number
9 of exclusions on these two basis?

10 A. Yes, I did.

11 Q. I'm showing that slide on the screen now.

12 Can you just summarize for the Court the number of
13 exclusions in the suspense for over 65?

14 A. Over 65 tallied 330,377, in suspense tallied 335,939. The
15 sum of those two numbers is not the number at the bottom
16 because there's some overlap between the two. Those that are
17 either over 65 or in suspense or in both total 605,696.

18 Q. There's one further exclusion to discuss. Did you prepare
19 a slide on the remainder with us?

20 A. Yes, I did.

21 Q. I'm showing that slide on the screen, it's got a few
22 numbers on it. Can you explain it in detail to the Court?

23 A. Well, I found the total of approximately 800,000 matches
24 in VRNID by virtue of my four sweeps. And after excluding
25 those, plus the additional exclusions based on over 65 and

1 suspense, that left 429,611.

2 Now there's an additional exclusion that is shown right
3 here because my understanding is that when a voter registers to
4 vote they may provide a certification to the state that they
5 have ID. If they have done so, then the state takes them at
6 their word and does not require that ID, and so they have
7 certified that they have ID and if we adopt that point of view
8 they should not be counted as not having access to ID.

9 So among the 429,611 I tallied 261,887 in this category as
10 having certified that they are, that they do have ID. So that
11 gives us a remainder of 163,724.

12 And this is the end of the line as far as my matches are
13 concerned. This does not mean that the 167,724 are indeed
14 eligible Texas voters who do not have access to ID.

15 It simply means that this is as far as the simple sorts of
16 matching algorithms that were employed can go. There may be in
17 fact further judgments that could be made about the matching,
18 looking at the error problems with the matching on the name, or
19 matching on other criteria. Indeed, there might be some dead
20 people in here. There might be some convicted felons, maybe
21 people moved out of state that the state's records have not
22 picked up.

23 Q. You have an SSVR calculation for this database remainder.
24 What is it?

25 A. Yes, it's 31.6 percent.

1 What we note is that this is a little bit higher than the
2 28 percent that I reported as the ethnicity name selection
3 bias.

4 However, there's another bias that's at work right here and
5 that is that those over 65 have been excluded. As Dr.
6 Ansolabehere himself remarked, there are relatively fewer
7 Hispanics over 56 than under 65.

8 So if those over 65 are excluded the proportion of the
9 Hispanics that remain will be bumped up. So in my opinion
10 perhaps all of this 31.6 percent could be accounted for by the
11 operation of the biases.

12 Q. Do you have an opinion in this case as to whether those
13 with Spanish surnames possess ID at a different rate than those
14 without Spanish surnames?

15 A. In my opinion the sort of matching that has been done in
16 this case is rather inconclusive.

17 What we know for sure is that in the remnant datasets that
18 we see on the screen right here and also in Dr. Ansolabehere's
19 remnant dataset that the proportion of Hispanics is higher than
20 the proportion of Hispanics in the general voting population,
21 we know that.

22 But what is the explanation? Is the explanation that they
23 lack access to ID? Well, I have shown that there is a bias in
24 the name selection and all of these individuals in VRNID were
25 exposed to that bias. And that bias is approximately the same

1 order of magnitude as the proportion of Hispanics in the
2 remnant dataset.

3 So in statistical terms, the hypothesis of lack of access
4 to ID is totally confounded with the existence of this
5 ethnicity remainder bias.

6 MR. SELLS: Your Honor, objection and move to strike
7 again.

8 This opinion has never been disclosed even in his
9 deposition.

10 JUDGE COLLYER: Right. The issue is that what Dr.
11 Sager is doing is discussing Dr. Ansolabehere's analysis and
12 isn't discussing his own.

13 I don't, I mean, he may want to say that
14 Dr. Ansolabehere's analysis doesn't show that, but he can't
15 make that conclusion from this analysis when he didn't run it.

16 I mean, I'm sorry, he's got to do his own work. I'm
17 sure he did. Excuse me, sir, I don't mean again any attack on
18 you.

19 What you are doing is challenging the expert report from
20 someone else. Perfectly legitimate thing for an expert to do.
21 You got to do your own work to make that conclusion.

22 MR. MORTARA: Your Honor, the answer to the question
23 was actually just no, correct, Mr. Sager?

24 JUDGE COLLYER: Well, no is the answer, but that's
25 not the answer you got.

1 BY MR. MORTARA:

2 Q. Professor Sager, to clarify --

3 A. Would you please ask the question again?

4 Q. -- did you come to the conclusion that those with Spanish
5 surnames possessed state ID at a different rate than those
6 without Spanish surnames?

7 A. No.

8 JUDGE COLLYER: Thank you.

9 BY MR. MORTARA:

10 Q. Do you agree with Professor Ansolabehere's observation
11 that there's something important about the statistical
12 significance of the difference in ID possession between
13 Hispanics and Anglos?

14 A. I'm not able to make that judgment because I'm not able to
15 distinguish Anglos from other non Hispanics.

16 There is a SSVR indicator in the file that indicates
17 whether or not the person has a Spanish Hispanic surname. It
18 does not distinguish among those who do not have Spanish
19 surnames.

20 Q. With regard to the statistical significance calculation of
21 Professor Ansolabehere, do you have any concerns?

22 A. Yes, I do. Well, as far as just his statistical
23 calculation is concerned, no. Because the hypothesis that's
24 being tested is that Hispanics have the same proportionality
25 within VRNID that they do in the original population. Dr.

1 Ansolabehere's conclusion is that no, they do not and with that
2 I concur.

3 Q. What about with respect to whether that statistical
4 significance calculation that Professor Ansolabehere did
5 directly leads to the conclusion based on just that P value for
6 the confirmation of his hypothesis?

7 A. The hypothesis is that there's a difference in rate. The
8 hypothesis is not what the difference is attributable to. I
9 have shown that there is a hypothesis which I have proven that
10 there is an ethnicity bias in the same order of magnitude.

11 Q. Was there any way to solve the problems with the matching
12 that you have identified?

13 A. The matching that was done is a relatively simple type of
14 match requiring identical matches on first name, last name,
15 date of birth, social security number.

16 What I saw when I was going through the matches that I had
17 on the left and right side of my screen is that one could
18 exercise human judgment in determining whether or not there
19 were matches there.

20 The sorts of human judgment that was involved were things
21 that would be rather difficult in my opinion to program a
22 computer to do. So I rather think that doing the exercise
23 manually might give more reliable results but that would take a
24 lot of time and resources.

25 MR. MORTARA: I have no further questions, Your

1 Honor, and pass the witness.

2 JUDGE COLLYER: Thank you very much, sir.

3 Go ahead, sir.

4 CROSS EXAMINATION

5 MR. SELLS: Your Honor, good morning.

6 Your Honor, Brian Sells for the Attorney General.

7 BY MR. SELLS:

8 Q. And good morning, Professor Sager.

9 A. Good morning, Mr. Sells.

10 Q. I'm going to try this morning to start with some things
11 that perhaps we can agree upon. Now you agree that the role of
12 database matching in this case is to help the Court determine
13 which of the approximately 13 million registrants on the State
14 of Texas' voter registration list do and do not have one of the
15 forms of state issued ID that they can use to vote under SB 14,
16 correct?

17 A. That I believe is the intent.

18 Q. So that's a yes?

19 A. Yes, that's the intent.

20 Q. And the concept of database matching is not neither novel
21 or untested is it?

22 A. That's correct.

23 Q. Now as a statistician do you understand the term
24 population of interest?

25 A. Yes, I do.

1 Q. Would you please explain for the record your understanding
2 of that term?

3 A. Population of interest is the set of individuals that have
4 been identified which will be the subject of a statistical
5 inquiry.

6 Q. And as a statistician do you have an understanding of the
7 term population perimeter of interest?

8 A. Yes, I do.

9 Q. And would you briefly explain for the Court your
10 understanding of the term population perimeter of interest?

11 A. A perimeter is a numerical quantity that is calculated
12 from the population of interest. An example could be the mean
13 of the population on some particular numerical field. It could
14 be a percentage of the population, it could be any other
15 numerical characteristic that is calculable from the
16 population.

17 Q. And so would it be fair to say for purposes of the
18 database matching portion of this case that the population of
19 interest consists of the approximately 13 million registrants
20 on Texas' voter registration list?

21 A. Well, I think I would make a clarification here in that I
22 believe the population of interest consists of eligible Texas
23 voters for which the list of voter registrants is what we in
24 statistics would call a frame which is not necessarily
25 identical to the population of interest.

1 Q. Okay, but if we are looking at the database matching
2 portion of this case that includes or presumes that frame does
3 it not because that voter registration list is the foundation
4 of the database matching?

5 A. Well, the reason that we have the concept of frame is so
6 that we can keep clear in our minds that the list we actually
7 work with may be different from the actual population interest.

8 To the extent that there are those differences, then
9 inferences that are based on the frame may not be correct in
10 applying to the population of interest.

11 JUDGE COLLYER: As a statistician, this is a really
12 serious question. As a statistician when the only population
13 to which you have access is the population that constitutes the
14 frame as you just described it, does that mean that you cannot
15 perform an analysis because you're not confident that the
16 framed population actually constitutes the, only the population
17 of the interest or may be too big?

18 THE WITNESS: It may be too big or too small, but it
19 may be some areas of dis overlap between them.

20 JUDGE COLLYER: I understand that.

21 The question is with those issues, does that mean that
22 you cannot perform a balanced statistical analysis?

23 THE WITNESS: Your Honor, you may analyze the frame
24 but we have to keep in the back of our minds that there may be
25 some differences between the frame and the population of

1 interest.

2 If it is possible qualitatively or even quantitatively
3 to assess the extent of those differences, then one may want to
4 modify the interpretation of the results of analyzing the
5 frame.

6 JUDGE COLLYER: In this instance was it possible to,
7 for you to make the frame more narrow because of what you
8 perceived to be possible errors in it? That is, to reduce the
9 size of the population to be studied from the 13 million voters
10 on the registration list to something less than that?

11 THE WITNESS: I took the frame as my focus of
12 interest, Your Honor, because my task here was to examine Dr.
13 Ansolabehere's VRNID which is a subset of that frame.

14 JUDGE COLLYER: I thought you did your own analysis
15 as well. Is that not true?

16 THE WITNESS: I did my own analysis of the VRNID for
17 the purpose of my testimony, Your Honor.

18 JUDGE COLLYER: I'm sorry, I misunderstood.

19 Go ahead, sir.

20 BY MR. SELLS:

21 Q. Professor Sager, would you agree with me that possession
22 of one of the forms of state issued ID that can be used to vote
23 under SB 14 is a population perimeter of interest for purposes
24 of the database matching portion of this case?

25 A. If you quantify that, yes.

1 Are you talking about -- well, I'll let you quantify it
2 with what you mean.

3 Q. Well, in fact, that's what we're trying to do with the
4 database matching is estimate the population perimeter of
5 interest being possession of a usable SB 14 ID?

6 A. Well, simply possession is not a numerical characteristic.
7 You have to convert that into numerical characteristics.

8 Q. In this case --

9 A. It's like saying being female. That's not a numerical
10 characteristic.

11 Q. Okay. So the population perimeter then would be the
12 number of people who have possession of this ID?

13 A. Okay.

14 Q. You agree with that, that the number of people who have
15 and do not have a SB 14 ID is a population perimeter of
16 interest?

17 A. Yes, yes, it is.

18 Q. And would you also agree with me that having a valid voter
19 registration is another population perimeter of interest
20 because people with invalid registrations presumably are not
21 effected by SB 14?

22 A. Again, if you quantify it, yes, that could be a population
23 perimeter.

24 Q. So if we quantify it by looking at the number?

25 A. Yes.

1 Q. What we're trying to do with the database matching portion
2 of this case is identify the number of people who have both
3 valid ID and a valid voter registration, correct?

4 A. That could be one intent, yes.

5 Q. Is that Dr. Ansolabehere's intent?

6 A. You have to ask him, I don't read his mind.

7 Q. So you don't know what role database matching plays in
8 this case; is that correct?

9 A. Well, no, yes, I do know what role it plays.

10 Q. For purposes of this case, do you understand that --
11 strike that.

12 Now Professor Sager, you don't hold yourself out to be an
13 expert in voting rights election law or election
14 administration, do you?

15 A. I do not.

16 Q. In fact, you've never published a scholarly article or
17 taught a course in any of those areas have you?

18 A. That is correct.

19 Q. And it would be fair to say wouldn't it that your past
20 professional experience with voting politics and elections has
21 been fairly minimal?

22 A. That is correct.

23 Q. And even in this case, sir, you haven't actually read SB
24 14, have you?

25 A. I have not.

1 Q. You've also never read the regulations implementing SB 14,
2 correct?

3 A. Oh, heavens no.

4 Q. So you don't know how SB 14 and its regulations will
5 legally impact voters at the polls, correct?

6 MR. MORTARA: Your Honor, I'm going to object as
7 outside of the scope.

8 I'm happy to have the Justice Department use its time on
9 this line of inquiry, but if the Court wishes to sustain an
10 objection because it's not hearing about this, then I object.

11 JUDGE COLLYER: Okay. I think though it goes to
12 something to the weight of the analysis, so as long as the
13 Justice Department is selecting how to use its time and it
14 still has time, we'll let them.

15 This isn't quite like what was in the deposition, or the
16 evidence that's already been presented which I again urge
17 everybody not to go through today.

18 Go ahead, sir. Cross examination is always fair.

19 MR. SELLS: Your Honor, I'll try to move things
20 along.

21 JUDGE COLLYER: Good. Thank you.

22 BY MR. SELLS:

23 Q. But getting back to my question, Professor Sager, you
24 don't know how SB 14 will legally impact the voters in Texas
25 when they show up at the polls, correct?

1 A. Correct.

2 Q. And so for example, you don't know whether a driver's
3 license that has been expired for more than two years is a
4 valid ID for purposes of SB 14, correct?

5 A. That is correct.

6 Q. And you relied on instructions from the attorneys for the
7 State of Texas to tell you how to deal with those IDs, correct?

8 A. They gave me certain assumptions that I could adopt.

9 Q. And you don't know whether a driver's license that has
10 been expired for more than 60 days but less than two years is a
11 valid ID for purposes of SB 14, do you?

12 A. That is correct.

13 Q. And again, there you relied on instructions and
14 assumptions from the attorneys for the State of Texas on how to
15 handle those?

16 A. I relied upon assumptions given to me, yes.

17 Q. And you don't know whether a driver's license with a
18 woman's unmarried name on it is a valid ID for purposes of SB
19 14 if she used her married name on the voter registration
20 records, do you?

21 A. I do not.

22 Q. That's another one where you have relied on instructions
23 and assumptions from Texas' attorneys, correct?

24 A. Yes.

25 Q. In fact, you don't know whether SB 14 requires an exact

1 match between the name on the voter registration records and
2 the name on the voter ID, correct?

3 A. That is correct.

4 Q. These are all categories where we have been discussing
5 where the Attorney General's attorneys -- excuse me -- the
6 State of Texas' attorneys have instructed you how to deal with
7 those categories, correct?

8 A. I have been given assumptions about those categories.

9 Q. That would apply to suspense voters and disabled voters
10 and voters over age 65?

11 A. Yes, I have been given assumptions about those categories.

12 Q. Thank you.

13 Now I want to turn to your supplemental report also known
14 as the rebuttal report. It's Plaintiff's Exhibit 13.

15 First, you mention Oscar Valles. Who is Oscar Valles?

16 A. Mr. Oscar Valles is an employee of the office of the
17 Attorney General in the Legal and Technical Services Division.

18 Q. He's the gentleman who actually ran these analyses,
19 correct?

20 A. He ran these analyses, yes, at one point. Some of them.

21 Q. The ones specifically in your supplemental report? I'm
22 talking now about Plaintiff's Exhibit 13?

23 A. There are numbers in the report that Mr. Valles produced,
24 yes.

25 JUDGE COLLYER: Are there numbers in the report that

1 he did not?

2 THE WITNESS: That I did, that he did not, yes.

3 JUDGE COLLYER: Okay.

4 BY MR. SELLS:

5 Q. Can you tell the Court which numbers you produced and
6 which numbers Mr. Valles produced?

7 A. Well, Mr. Valles -- let me say this. I don't want to give
8 the false impression right here.

9 Mr. Valles did some calculations because of some exigencies
10 of my schedule. And then I subsequently have verified those
11 analyses.

12 And if I could, I can explain those exigencies. This
13 arrangement I was initially contacted by the state --

14 Q. Professor Sager --

15 A. I don't want to take your time.

16 Q. Thank you very much. We are on a limited time schedule.
17 If Mr. Mortara wants to ask you about that, that's fine.

18 Let me go right to your sweeps. Did Mr. Valles perform the
19 sweeps?

20 A. Yes, he did.

21 Q. Okay. Do you know what software Mr. Valles used to
22 conduct his analysis?

23 A. He used a program called Microsoft Server Sequel,
24 Microsoft Sequel Server.

25 Q. And do you, did you review the sequel code used to run

1 these match sweeps?

2 A. I saw it but I did not review it.

3 Q. Okay. You don't understand sequel code, do you?

4 A. I know a little bit about it, but I'm not real familiar
5 with it.

6 Q. And you say you reviewed samples from these sweeps,
7 correct?

8 A. Yes.

9 Q. Did you review any log files?

10 A. No, I did not.

11 Q. And you haven't reviewed the code or the log files to
12 determine that the sweeps were actually performed in an
13 accurate manner, have you?

14 A. My test of that was whether the product was produced
15 appropriately or not. So that's why I had the samples
16 produced. I analyzed the samples to determine that in fact
17 they were operating as instructed.

18 Q. But again, you didn't review any log files, did you?

19 A. No, I did not.

20 Q. And you didn't review the actual code?

21 A. That is correct.

22 Q. And you can't verify the accuracy of either?

23 A. I can verify the results because I did it too.

24 Q. You repeated the analysis, is that what you're saying?

25 A. Independently, yes.

1 Q. With Mr. Valles' code?

2 A. No, I wrote my own.

3 Q. Okay. So you don't know whether the code that Mr. Valles
4 ran is accurate and correct, do you?

5 A. I got the same results that he did and so I suppose that
6 it was accurate.

7 Q. Okay. Professor Sager, you admitted in your deposition in
8 this case that your rebuttal report contains a number of errors
9 in it, correct?

10 A. They were corrected at my deposition.

11 Q. Okay, but Mr. Mortara didn't correct them for the record
12 here today, did he?

13 A. No.

14 Q. So those errors are still in the supplemental report that
15 are at PX 13, correct?

16 MR. MORTARA: Your Honor, I object.

17 There's errors are in every expert's report and we are
18 going to initiate a protocol to correct all of the errors
19 including the errors in Professor Ansolabehere's report and I
20 don't think that it's a proper line of inquiry.

21 JUDGE COLLYER: Well, I think it's a proper line of
22 inquiry, but it's nice to know that everybody understands that
23 such errors exist and that corrections will be made.

24 We are going to be relying on these, so if anybody wants
25 to make corrections, they better make corrections quickly.

1 MR. MORTARA: Your Honor, we're going to initiate
2 protocol with the Justice Department.

3 JUDGE COLLYER: Good.

4 MR. MORTARA: Mr. Ansolabehere has corrections too.

5 JUDGE COLLYER: Well, that's fine, and I'm glad to
6 hear that everybody is going to look at their expert reports.

7 Go ahead, sir. But I think it's legitimate cross
8 examination.

9 MR. SELLS: Thank you, Your Honor.

10 BY MR. SELLS:

11 Q. Professor Sager, some of those errors resulted in numbers
12 being off by more than a 150,000, correct?

13 A. One of them did, yes.

14 Q. Do you have a list of the corrections here today?

15 A. I do not?

16 Q. In that case, I'm going to focus in on two errors. These
17 appear -- let's go ahead and pull up Plaintiff's Exhibit 13.

18 JUDGE TATEL: I have just a quick question. Before
19 you go on, could I just ask Dr. Sager, could you clarify what
20 you said about when you said you redid the matches yourself?

21 THE WITNESS: Yes.

22 JUDGE TATEL: Does that mean that you actually using
23 your own computer program redid the actual matches using your
24 own computers and you produced the same result?

25 THE WITNESS: That is correct, Your Honor.

1 JUDGE TATEL: Thank you. Okay.

2 JUDGE COLLYER: Go ahead.

3 BY MR. SELLS:

4 Q. Plaintiff's Exhibit 13, do you recognize that as your
5 supplemental report?

6 A. Yes, I do.

7 Q. Thank you.

8 Page 13, please. Should be paragraph 31, there we go.

9 Professor Sager, do you remember making corrections to
10 paragraph 31 at your deposition?

11 A. I believe there were some corrections in that paragraph.

12 Q. In fact, that 11 -- excuse me -- the number I've just
13 circled, 141,182 should be 140,666, correct?

14 A. I do not recall what the exact number is.

15 Q. If I showed you your deposition would that refresh your
16 recollection?

17 A. Probably.

18 Q. Okay. You want to take my word that those are, that's the
19 correction you gave me?

20 A. If you will certify to that, then I'll take your word.
21 After all, you are an attorney.

22 Q. And the other correction that you made to paragraph 31 is
23 right here, I've just circled it, a 17,094 should be a 116,797,
24 correct?

25 A. If you assert that and certify that, I'll take your word

1 for it.

2 Q. We could spend time going over your deposition where you
3 made those corrections, but I want it to be clear on the record
4 because we are going to be going over some of those numbers in
5 just a moment?

6 JUDGE COLLYER: Is there any dispute about that?

7 MR. MORTARA: Provided, Your Honor, that those are
8 the corrections that the Professor made in his deposition, no.
9 They are Professor Sager's correction the --

10 JUDGE COLLYER: Wait, wait.

11 Did you defend the deposition? Who defended the
12 deposition?

13 MR. MORTARA: I did not, Your Honor.

14 Mr. Brissenden did -- sitting in the second row.

15 JUDGE COLLYER: I'm sorry, sir, do you recall this
16 discussion and the corrections?

17 MR. BRISSENDEN: Your Honor, there were corrections
18 that were made to this paragraph. The exact numbers are
19 reflected in the deposition transcript.

20 JUDGE COLLYER: Okay thank you, sir.

21 Would you do me a favor when there's a break or
22 something, would you come up and just tell the Court Reporter
23 what your name is so that we get the record straight?

24 MR. BRISSENDEN: Yes.

25 JUDGE COLLYER: Thank you, sir.

1 Go ahead, Mr. Sells.

2 MR. SELLS: Thank you, Your Honor.

3 BY MR. SELLS:

4 Q. Professor Sager, I want to go over the methodology in your
5 report. You started with the VRNID list that was provided by
6 Professor Ansolabehere, correct?

7 A. Yes.

8 Q. And then you deleted or excluded a number of records on
9 that VRNID list, correct?

10 A. Are you talking about the match sweeps that I made?

11 Q. No. I'm talking about straight off the bat you deleted a
12 number of records.

13 A. I'm not sure I recall that.

14 Q. I'd like to publish a demonstrative that might refresh
15 your recollection.

16 Do you recall that the VRNID list originally consisted of
17 1.89 million records?

18 A. Yes.

19 Q. And then you deleted a 125,015 records because there was
20 insufficient information to match?

21 A. This is a count that was provided by Dr. Ansolabehere.

22 Q. And you also deleted 266,151, correct?

23 A. Again, this is a number that was provided by Dr.
24 Ansolabehere. He himself made these two deletions in his
25 analyses.

1 Q. Okay. Is it your testimony here today that the VRNID list
2 consists of 1.89 million or 1.5 million?

3 A. Actually, Dr. Ansolabehere analyzed both as he reports in
4 his declarations.

5 Q. Just to be clear, when you are talking about the VRNID
6 list that you ran for your sweeps and that you have analyzed in
7 your supplemental reports, you're analyzing the 1.5 million
8 records, correct?

9 A. Yes.

10 Q. Okay. And I refer to it on this demonstrative as the
11 Sager VRNID just to distinguish between the 1.5 and the 1.89?

12 A. I'm not sure I'm comfortable with associating my name with
13 it.

14 JUDGE COLLYER: Well, you're not. It's okay, sir, he
15 is.

16 THE WITNESS: Okay, thank you.

17 JUDGE COLLYER: You're welcome.

18 BY MR. SELLS:

19 Q. And the total number of records deleted is 391,166, do you
20 see that?

21 A. Yes, I do.

22 Q. Now the second thing you did in your supplemental report
23 and your analysis of the reduced VRNID is you used the
24 uncleaned driver's license and license to carry database,
25 correct?

1 A. Correct.

2 Q. Now your report doesn't identify precisely what the
3 differences are, but we can tell from your report what --

4 A. Excuse me, the differences between what?

5 Q. The driver's license database that you used versus the
6 driver's license database that Professor Ansolabehere used?

7 A. I started with the same database that he did. But I did
8 not make the deletions that he did.

9 Q. Okay. So if we wanted to examine the differences between
10 the database that you ran your sweeps against, and the one that
11 Professor Ansolabehere used, we would have to look at the
12 records that Professor Ansolabehere cleaned from the driver's
13 license and license to carry databases, correct?

14 A. Yes, we could do that.

15 Q. And you present those in your supplemental report, do you
16 not?

17 A. Yes.

18 Q. I'd like to publish another demonstrative. Go over the
19 records that you added to, that are in your uncleaned driver's
20 license database that Professor Ansolabehere had removed.

21 MR. MORTARA: Your Honor, I have an objection of a
22 specific nature to this.

23 JUDGE COLLYER: Why don't you come to the mic so we
24 have it on the record.

25 MR. MORTARA: Your Honor, my objection and I honestly

1 did not anticipate that this was going to come up today or
2 Brian and I would have discussed it.

3 My objection is not to the discussion of what's in
4 Professor's Sager's report, but to something that happened
5 subsequently that I must disclose to the Court and I didn't
6 think it was going to be necessary.

7 Subsequent to Professor Ansolabehere's deposition we
8 asked the Justice Department to give us the cleaned driver's
9 license database so we could ensure what Professor Ansolabehere
10 had actually done was accurate.

11 We received that cleaned driver's license database of 19
12 million records from the Justice Department. We loaded it into
13 our computers and Oscar Valles actually at LTS in Austin
14 through sheer accident came across the fact that the data file
15 that we received from the Justice Department contained 93
16 persons repeated 47,000 times each. So that 4.3 odd million of
17 the 19 million dataset that we received from the Justice
18 Department that they said was the clean database was in fact
19 just a bunch of perfect bogus entries.

20 Obviously, Your Honor, frankly I went to depth con
21 twenty-five (sic) about this because it was Friday before
22 trial. Mr. Sells and I and Ms. Bell-Platts worked very hard.

23 JUDGE WILKINS: What's your point, sir? Get to the
24 point. What's your objection?

25 MR. MORTARA: My problem is that to the extent

1 there's substantive cross examination about this, we have yet
2 to be provided even today with the accurate cleaned database
3 from Professor Ansolabehere. So my concern is only that I have
4 no ability whatsoever to evaluate the quality of Professor
5 Ansolabehere's cleaning. I have accepted for now the Justice
6 Department's representation.

7 JUDGE TATEL: Was the error built into the, was the
8 error -- did the error exist in the study that the Government
9 expert did or was that error produced, did that error get into
10 the data subsequently to his work?

11 MR. MORTARA: Your Honor, that's exactly the right
12 question.

13 Our best understanding right now that I have received
14 from the Justice Department, is that this error did not effect
15 the outcome of the analysis. It was an error in data export.

16 JUDGE TATEL: I see.

17 MR. MORTARA: But as of today, we have not been able
18 to confirm this because I have not received the cleaned
19 driver's license file.

20 JUDGE COLLYER: Well, as of today is Tuesday. All
21 right, I'm sorry, just one second.

22 I'm sorry, ma'am. If you could come forward to the
23 microphone and give us your name so the record is clear and
24 then explain.

25 MS. BELL-PLATTS: My name is Meredith Bell-Platts.

1 JUDGE COLLYER: Thank you.

2 MS. BELL-PLATTS: We disclosed our data to the State
3 of Texas on June 1st when we disclosed our expert report.

4 The State of Texas contacted us after Dr. Ansolabehere's
5 deposition roughly the week of June 25th, and asked for us to
6 provide data to them in a form that they preferred.

7 They didn't ask for this during the ESI conference.
8 They didn't raise it on June 1st. With all due respect, we did
9 attempt to provide that.

10 Based on our understanding and we tried to do so in the
11 format that they preferred, not the format that Dr.
12 Ansolabehere used. There were some errors in the export. We
13 can confirm that's what happened.

14 As we know from this case, there are numerous problems
15 with trying to transport data from one place to another. We
16 are in the process of once again trying to provide the State of
17 Texas now today with a form that they claim they will be able
18 to use.

19 But again, to raise the objection that somehow we
20 delayed this process is improper. They have had many
21 opportunities at this point since June 1st to ask for this data
22 in a format that they could use which they never specified
23 initially.

24 JUDGE COLLYER: Okay. Let's not interrupt the trial
25 anymore and let's go on with the cross examination.

1 Thank you for the explanation, Ms. Bell-Platts.

2 Thank you for the objection, Mr. Sells. Please
3 continue.

4 BY MR. SELLS:

5 Q. Professor Sager, in your report you identified the items
6 that Professor Ansolabehere had removed or cleaned from the
7 driver's license database, correct?

8 A. Yes. The figures that you are showing right here were
9 provided in Dr. Ansolabehere's report.

10 Q. And they also appear in your report at paragraph 5,
11 correct?

12 A. Where I quote them.

13 Q. The no license or ID, those are people who are recorded on
14 the cleaned -- excuse me -- on the driver's license database as
15 not having a license or an ID, correct?

16 A. That's my understanding.

17 Q. And so the version of the driver's license database that
18 you used for your sweeps includes those people who don't have a
19 license or an ID?

20 A. Unfortunately yes. However, it makes very little
21 difference in terms of the number of matches.

22 Q. Okay and the version of the database that you used also
23 includes 3.144 million driver's license records that have been
24 expired for more than two years, correct?

25 A. Yes.

1 Q. And 1.5 million that have been expired between 60 days and
2 two years?

3 A. Yes.

4 Q. And it includes 779,000 driver's licenses that have been
5 marked as belonging to someone who is deceased, correct?

6 A. I'm saying yes, but when I say yes, I haven't confirmed
7 that. I'm simply taking Dr. Ansolabehere's word for it as I
8 took your word just a few moments ago.

9 Q. And --

10 JUDGE COLLYER: But he's not a lawyer.

11 THE WITNESS: Even better, he's a Professor.

12 JUDGE COLLYER: So you didn't require him to certify
13 did you?

14 THE WITNESS: No.

15 JUDGE COLLYER: Go ahead, sir. I'm sorry.

16 BY MR. SELLS:

17 Q. And Professor Ansolabehere eliminated 724,974 duplicate
18 social security number records from the driver's license
19 database and your sweeps included those, correct?

20 MR. MORTARA: Your Honor, I object to the question
21 because it presumes that Professor Ansolabehere has done what
22 he said which is exactly what I'm not able to confirm right
23 now.

24 JUDGE COLLYER: The objection is overruled.

25 You can continue.

1 BY MR. SELLS:

2 Q. And this is in paragraph 5 of your report, correct?

3 A. Yes, as we, with the qualifications as previously
4 mentioned.

5 Q. And the total number of records that you added to or that
6 have been added to the driver's license database between your
7 version and Professor Ansolabehere's clean version 6,472,532,
8 correct?

9 MR. MORTARA: Your Honor, same objection.

10 JUDGE COLLYER: All right. I just need to say that
11 it behooves little for Texas to object to getting data linked.

12 We have had an horrendous record in discovery in this
13 case with Texas not producing information that was requested
14 again, again and again.

15 Now we have an explanation for why you can't clarify the
16 accuracy of these figures and you are just going to have to
17 deal with that fact. But you get no sympathy from this Court
18 and this is not to you directly, sir, not at all to you
19 directly. It's to Texas generally not its lawyers.

20 Texas has failed to abide by court orders, has failed to
21 act on time, has failed to produce databases when requested and
22 has caused defendants inordinate difficulty in preparing for
23 trial and here we are. So we're going to deal with what we
24 have.

25 Go ahead, Mr. Sells.

1 MR. SELLS: Thank you, Your Honor.

2 BY MR. SELLS:

3 Q. Professor Sager, the total difference in records between
4 your driver's license database and Professor Ansolabehere's is
5 roughly 6.4 million, correct?

6 A. I'll take your word for it.

7 Q. Well, it is in your report isn't it?

8 A. I cite Dr. Ansolabehere, yes, but I have no independent
9 way to verify this.

10 Q. You also used the uncleaned version of the license to
11 carry database, correct?

12 A. Yes.

13 Q. Okay.

14 JUDGE WILKINS: Let me ask you a question, sir.

15 Did you attempt to verify it before you wrote your
16 report?

17 THE WITNESS: Did I attempt to verify?

18 JUDGE WILKINS: Yes, those figures before you wrote
19 your report, did you attempt to verify what Dr. Ansolabehere
20 said?

21 THE WITNESS: I did not.

22 BY MR. SELLS:

23 Q. Going back to the cleaned driver's licenses, the
24 demonstrative that we were just examining, the full version of
25 the driver's license database that you used had a flag or field

1 for no license or ID, correct?

2 A. I believe that it may have.

3 Q. And it would have been a very simple matter for you to
4 count the number of records having that flag, right?

5 A. If that's the case, yes.

6 Q. And same with the number of expired records, correct? You
7 could have checked that against your complete driver's license
8 database?

9 A. Well, let me back up here for just a moment.

10 There are some of these fields that I did not have access
11 to because I was given only the person field. I was not given
12 the issuance or the admin field where some of these fields
13 appear.

14 Q. Did you ever ask for more fields?

15 A. I did not know that there were these other databases.

16 Q. Do you know whether the expired field or some field
17 indicating expiration date was in what you got?

18 A. I do not believe it was in what I got.

19 Q. How about the deceased marker, was that in the database
20 that you received from the State of Texas?

21 A. It was not.

22 Q. How about social security number? Now that's one you
23 could have checked, correct?

24 A. Yes.

25 Q. And you made no effort to do so?

1 A. I have calculated the number of, somewhere in my analysis,
2 yes. I do not remember what that count was, though.

3 Q. My question though, sir, is that you could have verified
4 the number of 724,974 because you had that field in the
5 database provided to you by the State of Texas?

6 A. Yes, I could have.

7 Q. Now let's turn to the license to carry database. You used
8 the uncleaned version of that database and Professor
9 Ansolabehere used a cleaned version, correct?

10 A. Yes.

11 Q. Okay, and your report identifies the records that
12 Professor Ansolabehere cleaned from that database just like --

13 A. Yes.

14 Q. -- just like the driver's license database, correct?

15 A. Yes. I might say here by the use of the word cleaned that
16 has a connotation of being good and it isn't always, there are
17 deletions.

18 We often refer to them as cleaning, yes, but that doesn't
19 carry over with the good connotation that it does in ordinary
20 parlance.

21 Q. In fact, that's the word you use in your report, don't
22 you?

23 A. Yes.

24 Q. Okay. Back to the cleaned license to carry database and
25 the difference with yours. Professor Ansolabehere removed

1 roughly 2300 records shown on this demonstrative that had been
2 marked as belonging to a deceased person, correct?

3 A. That's what it shows.

4 Q. And your sweeps included a database that -- or excuse me
5 -- your sweeps were run against a database that included those
6 records?

7 A. Yes.

8 Q. There was one record that was unratable. Your sweeps ran
9 against that one record, correct?

10 A. Yes, that would make very little difference.

11 Q. There were roughly 38,000, 39,000 that Professor
12 Ansolabehere deleted because they were indicated as belonging
13 to a non citizen.

14 Your sweeps ran against the full database that included
15 these non citizen licenses to carry, correct?

16 A. One should not infer from that that's inappropriate as I
17 commented during my direct testimony.

18 I think that it's quite appropriate to leave the deceased
19 and non U.S. citizens in these datasets so that they are
20 available for matching to the voter registration list so that
21 they do not end up in a remnant set like VRNID.

22 Q. Professor Sager, my question was simply did your sweeps
23 include these or did they not?

24 A. Yes.

25 Q. Your answer is yes?

1 A. Yes, they did appropriately so.

2 Q. Okay. How about for failed applications? These are
3 people who applied for a license to carry but their application
4 was rejected. The Professor Ansolabehere excluded roughly
5 12,000 of those and you ran your sweeps against the database
6 that included those, correct?

7 A. They were not removed, that's correct.

8 Q. And you think it's appropriate to include people who
9 applied but did not get an ID that can be used to vote under SB
10 14; is that correct?

11 A. No.

12 Q. Okay. How about the expired licenses to carry? There
13 were almost 200,000 of those, do you see that?

14 A. Yes.

15 Q. And your sweeps included these expired licenses that are
16 not renewable, correct?

17 A. They are labeled not renewable, yes.

18 Q. In total it's almost 250,000 records that were added to
19 the cleaned version of the license to carry database that you
20 ran your sweeps against?

21 A. Yes. Well, the entire license to carry database makes
22 very little difference in totals.

23 Q. One of the other things that you did that is different
24 from Professor Ansolabehere's, you ran four sweeps instead of
25 three, correct?

1 A. I ran four, yes.

2 Q. And Professor Ansolabehere used three sweeps?

3 A. Correct.

4 Q. That is a difference in the algorithm, correct?

5 A. Yes.

6 Q. You understand that term algorithm?

7 A. Yes.

8 Q. Legitimate difference between what you did and what
9 Professor Ansolabehere did, different algorithm obtained
10 different results?

11 A. Yes.

12 Q. And we can debate about whose algorithm is better or
13 worse?

14 A. We could, yes.

15 Q. Your sweeping protocols used many to one matches, did they
16 not?

17 A. Yes.

18 Q. Would you explain to the Court what a many to one match
19 is?

20 A. The many to one match is when you have more than one
21 record with the same identical criteria matching to a single
22 record that has that set of criteria.

23 Q. So let's say --

24 JUDGE COLLYER: What's the consequence of that?

25 THE WITNESS: I'm sorry, Your Honor. Is that a

1 question for me?

2 JUDGE COLLYER: Yes, I'm sorry, that's a question,
3 I'm sorry. I was writing it down so I wouldn't forget.

4 THE WITNESS: There are a number of different types
5 of matches, Your Honor.

6 You could have one to one, one to many, many to one, and
7 many to many.

8 JUDGE COLLYER: I understand all of that. But what's
9 the consequence of having many to one?

10 THE WITNESS: The consequence of having many to one
11 is that suppose you have two John Smiths in the voter
12 registration list, and you have one John Smith in the driver's
13 license file.

14 Then permitting many to one matches would allow both
15 John Smiths in the voter registration list to match the single
16 John Smith in the driver's license file and vice a versa.

17 JUDGE COLLYER: Okay, I got it.

18 Thank you, sir.

19 JUDGE TATEL: Why would you do that?

20 THE WITNESS: Why would you do a many to one?
21 Because it could be the case that a single person is in the
22 voter registration list more than once or let's take the point
23 of view of, yes, let's suppose that a single person is in the
24 voter registration more than once. He may be in the driver's
25 license file only once, so you would want to be able to match

1 out those two individuals because they are the same person.

2 JUDGE TATEL: Got you, I see.

3 BY MR. SELLS:

4 Q. There are other possibilities though, aren't there,
5 Professor Sager?

6 A. Yes.

7 Q. Here are your match sweeps. I'd like to ask you to assume
8 for me that the three Judges sitting in front of you match on
9 the third sweep. They are all on the voter registration --

10 A. Excuse me, Mr. Sells, do you mean four?

11 Q. Excuse me, I misspoke.

12 Presume that the three Judges sitting in front of you are
13 all on Texas voter registration list.

14 A. Yes.

15 Q. They all have the same last four digits of their social
16 security number and they happen to have the same birthday.
17 That could be a fictitious birthday or dumb luck that they are
18 all born on the same day?

19 A. I doubt very much that that's the case, but I will go
20 along with your hypothetical.

21 Q. Okay. So then we have the driver's license database on
22 the other side. Now imagine that I'm in the driver's license
23 database and there's one record in it that has the same social
24 security number last four digits and date of birth.

25 Do you follow my hypothetical so far?

1 A. Yes, I do.

2 Q. Which one of these three Judges gets to use the ID to
3 vote?

4 A. Under a many to one matching regime all three of them
5 would be matched.

6 Q. But which of the Judges would get to vote with this ID?

7 A. If that's your ID, then the assumption is that none of the
8 three is you and so none of them would.

9 Q. We don't know which one of them this ID belongs to.

10 A. I thought, excuse me, I thought your hypothetical was that
11 was your ID.

12 Q. No. All we know is that this has the same, this driver's
13 license record has the same SSN 4 and DOB as these three
14 Judges?

15 A. Yes.

16 Q. They can't all use the same ID can they?

17 A. Correct.

18 Q. That's going to result in a false match in that instance,
19 correct?

20 A. Yes, it would.

21 Q. Now when Mr. Valles was running these sweeps, did he allow
22 for matching to null entries?

23 A. He did not.

24 Q. How do you know that, sir?

25 A. By personal discussion with Mr. Valles.

1 Q. That occurred after our deposition; is that correct?

2 A. I think it in fact occurred during our deposition.

3 JUDGE WILKINS: Just so that the record is clear,
4 what do you mean when you say matching to null entries?

5 THE WITNESS: Well, suppose that a record is missing
6 in both the voter registration and the driver's license file.
7 Then the computer recognizes those fields as having the same
8 value, but clearly the field is missing, and so does the
9 computer recognize that as being a match or does it not?

10 And so if the computer does not recognize that as being
11 a match, then it does not match to nulls so Mr. Valles said
12 that the program does not permit matching to nulls.

13 JUDGE WILKINS: Thank you.

14 BY MR. SELLS:

15 Q. Thank you, Professor Sager.

16 Now I would like to turn to your results. One step in your
17 supplemental report you report how many you matched to the
18 cleaning categories on the driver's license database?

19 A. Yes.

20 Q. Do you recall that?

21 A. Yes.

22 Q. This is in paragraphs 25, 26, 27, and 28 of your report
23 and I'm showing you a demonstrative that gathers these numbers.

24 You found 746 people -- excuse me -- 746 records on the
25 VRNID, the reduced VRNID that matched to someone who had no

1 license or ID according to the driver's license database,
2 correct?

3 A. These, let me say for the record that these counts were
4 prepared for me by Mr. Valles because I lacked access to the
5 records in the issuance and admin files where those fields are
6 maintained.

7 Q. Okay, but you report these in your supplemental report?

8 A. I don't recall the exact figures, but I do recall there is
9 a table to that effect.

10 Q. There is a table, and it reports 746 matches to the record
11 that Professor Ansolabehere had cleaned because the database
12 indicated no ID?

13 A. Yes. I think that I comment in my report that those
14 should not have been included.

15 Q. Your report also indicates that Mr. Valles was able to
16 match 468,000 records on the reduced VRNID to expired licenses,
17 driver's licenses, correct?

18 A. I'll take your word for it that that's the number.

19 Q. And he doesn't break out in that portion of your report
20 two years or 60 day expiration?

21 A. I don't recall.

22 Q. And do you recall that your report indicates that
23 Mr. Valles matched approximately 57,000 records on the reduced
24 VRNID to records that were marked as belonging to a deceased
25 driver?

1 A. I do recall a number of about that magnitude.

2 Q. Okay. And your report does not indicate how many records
3 on the VRNID were able to be matched to records that had been
4 cleaned because they have a duplicate social security number
5 now does it?

6 A. I don't recall, sir.

7 Q. And so you don't know how many records that could have
8 been?

9 A. I'm not sure.

10 Q. Your report indicates a total number of records that match
11 a cleaning category or -- excuse me -- that don't match a
12 cleaning category and that number that appears in your report
13 is 993,111.

14 Do you recall that number approximately?

15 A. Roughly, I think.

16 JUDGE COLLYER: Forgive me. Of the question what
17 does that number represent again?

18 MR. SELLS: The ones that do not match one of the
19 records that Professor Ansolabehere cleaned.

20 JUDGE COLLYER: Okay, thank you.

21 BY MR. SELLS:

22 Q. So by subtracting the reduced VRNID -- excuse me --
23 subtracting that number, 993,000 from the reduced VRNID yields
24 the number of 508,866. That number does not appear in
25 Professor Sager's report but can be calculated with that simple

1 subtraction.

2 Those are the records that match in your sweeps to the
3 records that Professor Ansolabehere had cleaned, correct?

4 A. Yes.

5 JUDGE COLLYER: Can I ask you a question, Mr. Sells?

6 MR. SELLS: Yes.

7 JUDGE COLLYER: On an earlier slide you did identify
8 the number of duplicate social security numbers that Dr.
9 Ansolabehere omitted or removed or cleaned, whatever verb you
10 want.

11 What was that number, sir?

12 MR. SELLS: 724,974.

13 JUDGE COLLYER: Thank you.

14 MR. SELLS: And Your Honor, I would be happy to hand
15 up a copy of my demonstratives when I'm finished if that would
16 assist the Court.

17 JUDGE COLLYER: Thank you.

18 BY MR. SELLS:

19 Q. Now I'd like to talk about the records on the reduced
20 VRNID that you and Mr. Valles were able to match to the records
21 that have been cleaned from the license to carry database?

22 JUDGE COLLYER: Wait, I want to go back again,
23 forgive me. So sorry to interrupt.

24 Dr. Sager, the social security number duplications that
25 Dr. Ansolabehere said there were 724,924, and you, your

1 matching numbers didn't find any of those?

2 When you ran your sweeps you did not find any persons
3 with duplicate social security numbers?

4 THE WITNESS: Well, I'm sure that we did, Your Honor.
5 But as I have testified earlier, the decision was made to leave
6 in the duplicate social security numbers because they might
7 provide useful in matching on other fields other than social
8 security numbers.

9 JUDGE COLLYER: Okay, thank you. I didn't catch that
10 the first time around.

11 Go ahead, sir.

12 BY MR. SELLS:

13 Q. To follow up on that point, Professor Sager, in your
14 report you identified this matching to duplicate social
15 security numbers as a potential problem with Professor
16 Ansolabehere's technique, correct?

17 A. Potentially, yes.

18 Q. But you don't analyze the magnitude of that problem
19 because you don't report the matches to those duplicate records
20 like you reported the matches to the expired records or to the
21 deceased records or to the no ID records, correct?

22 A. I'll take your word for it that there's no report for that
23 in the table.

24 Q. You're not familiar with your supplemental report?

25 A. I am familiar with it, sir, but I don't remember all of

1 the details.

2 Q. And you don't remember whether you instructed Mr. Valles
3 to run a check to see how big of a problem those duplicate
4 social security numbers were?

5 A. I'm not sure.

6 Q. Back to the license to carry database and the records that
7 Professor Ansolabehere had cleaned. Now I couldn't find
8 anywhere in your report an indication of how many of your
9 supposed matches to the reduced VRNID could be attributed to
10 the cleaning categories from Professor Ansolabehere's report.

11 Did I miss that, Professor Sager?

12 A. I'm not sure. I would have to look at my report.

13 Q. So we don't know how many of the matches that you were
14 able to find can be attributed to these failed applications, do
15 you see that?

16 A. Yes.

17 Q. You don't know what that number should be?

18 A. Not off the top of my head, no, I don't.

19 Q. You don't know how many of your matches are attributable
20 to the non renewable licenses to carry, now do you?

21 A. That's correct.

22 Q. In fact, you have no idea what the total number of your
23 matches are that are attributable to the cleaning categories,
24 the records that Professor Ansolabehere cleaned for the license
25 to carry database?

1 A. That is correct. However, I would point out that the
2 magnitude of this problem is probably not very large because
3 the total license to carry dataset consists of approximately
4 840,000 before cleaning which is very small potatoes compared
5 with the driver's license file which starts off with about 25
6 million orders of magnitude larger.

7 Q. Fair enough. But we don't know what scope of the problem
8 is do we?

9 A. Correct.

10 Q. Now I would like to get to the report, excuse me, the
11 results that you report of your matches to the reduced VRNID,
12 not just the cleaned records, the entire thing?

13 JUDGE COLLYER: So this is the report to the 1.5?

14 MR. SELLS: That's correct, Your Honor.

15 JUDGE COLLYER: Thank you.

16 BY MR. SELLS:

17 Q. And you provide some figures in your report, some of these
18 Mr. Mortara went over with you. Some of them he did not.

19 We start with the 1.5 million, that's what you started with
20 in your matching sweeps, correct?

21 A. Yes.

22 Q. And you report that you were able to match 814,903 to the
23 Department of Public Safety Driver's License database or
24 license to carry database, correct?

25 A. Yes.

1 Q. In the paragraph that we just looked at, the correction
2 that we just made, you indicate that you matched a 140,666 --
3 or excuse me -- you reduced that figure further. Let me start
4 again because I'm unclear.

5 After you matched those, there were some remaining on the
6 VRNID?

7 A. Yes.

8 Q. You excluded a 140,666 that did not match but were over
9 65?

10 A. Yes.

11 Q. And you excluded a 116,797 that did not match but were in
12 suspense status?

13 A. Correct.

14 Q. You excluded from your reduced VRNID --

15 A. If I may just to clarify here.

16 I believe that these were sequential in nature. So
17 whatever was left from the remaining is what the next line
18 applies to.

19 JUDGE COLLYER: Well, they are numbers, they're not
20 percentages so it doesn't matter, right?

21 THE WITNESS: That's right, but what I mean, Your
22 Honor, is that there is no overlap with the preceding category.

23 JUDGE COLLYER: Thank you.

24 BY MR. SELLS:

25 Q. Right. We're winnowing down that 1.5 million, that's what

1 you are doing in your report, right?

2 A. Yes.

3 Q. You winnowed the 140,000 that you can't winno in any way
4 except that they're over 65?

5 A. That is the number that was winnowed after the application
6 of my four sweeps. Not any other way but those four sweeps.

7 Q. But some of those might have been in suspense or might
8 have reported an ID. But that's the next category that you
9 went over.

10 A. Yes.

11 Q. In winnowing the number 146,666 is the number that you
12 cite in your report, correct?

13 JUDGE COLLYER: A 140,666.

14 MR. SELLS: Thank you, Your Honor.

15 JUDGE COLLYER: You have to have the record have the
16 right number.

17 MR. SELLS: Thank you, Your Honor.

18 BY MR. SELLS:

19 Q. And you winnowed those at the direction of the attorneys
20 for the State of Texas, correct?

21 A. I made my own decisions about what to winnow but it was
22 based on the assumptions given to me by the state.

23 Q. Okay, fair enough.

24 I think we've talked about the 116,797 that represents
25 voters who did not match from the VRNID list to either database

1 but are in suspense status?

2 A. Okay.

3 Q. And the final winnowing category that you report are those
4 who do not match but report an ID.

5 Do you see that number?

6 A. Yes, I do.

7 Q. And that was 261,887?

8 A. Yes.

9 Q. Do you see that?

10 A. Yes.

11 Q. Now that number is the number of people you were
12 discussing with Mr. Mortara right at the end of your testimony
13 this morning where you were talking about certifying on the
14 voter registration application that people have an ID.

15 Do you recall that testimony?

16 A. Yes, I do.

17 Q. Is that something that the state, that the attorneys
18 representing the State of Texas told you to do?

19 A. Is that? Could you explain what you mean by that?

20 Q. Excluding people who report ID?

21 A. I was given the assumption that that's relevant because
22 those who report ID, the State of Texas takes them at their
23 word. Therefore, they presumably do have ID and should not be
24 counted in the dataset like VRNID which is suppose to represent
25 people who do not have ID.

1 Q. In the database that you got from the State of Texas what
2 did that field contain?

3 A. The field name as I recall was official ID number. It
4 contained blanks and numbers.

5 Q. Blanks and numbers. Have you ever seen the voter
6 registration application for the State of Texas?

7 A. I'm sure I filled one out initially some three or more
8 years ago when I first came to Texas, but not since.

9 Q. Again, these are people who did not match according to any
10 of your four sweeps, correct?

11 A. Correct.

12 MR. SELLS: Can we pull up Defendant's Exhibit 186,
13 please.

14 BY MR. SELLS:

15 Q. Do you recognize this document?

16 A. I do not.

17 Q. May we see page 2?

18 Do you know what that document is?

19 A. At the top it says Texas voter registration application.

20 JUDGE COLLYER: It's been introduced so I can promise
21 you that's what it is. Everybody stipulates.

22 THE WITNESS: Thank you, Your Honor.

23 JUDGE COLLYER: It's not a guessing game I promise.

24 BY MR. SELLS:

25 Q. Can we blow up Section 8.

1 Now this approximately is the official ID number that is,
2 that voters are asked to supply on their voter registration
3 application, correct?

4 A. It appears to be that.

5 Q. And so if I'm a voter and I'm filling out a form in good
6 faith and I put in my last four digits of my social security
7 number, that's what shows up in the field of the database that
8 you got, correct?

9 A. Social security number, yes.

10 Q. You made no effort to try to verify that last four of
11 social or the other number against the known information for
12 that voter, did you?

13 A. I'm not sure I follow what you mean.

14 Q. Let me ask it again.

15 You made no effort to match these numbers that are in the
16 voter registration file to the social security numbers either
17 SSN9 or the driver's license number, driver's license number
18 here or the social security number here? You made no effort to
19 match those to information in the driver's license database,
20 did you?

21 A. Well, the driver's license file usually includes full
22 social security number, all nine digits, so I was able to
23 extract the last four as the SSN 4 for the driver's license
24 file and so that information was available.

25 However, I did not match it to the -- well, yes indeed I

1 did because there were some of my matches that involved SSN 4.

2 Q. But these are people that you excluded as you winnowed
3 down the VRNID are people who did not match on SSN 4 and date
4 of birth?

5 A. Yes.

6 JUDGE COLLYER: My question, let me interrupt and I'm
7 sorry to do so.

8 My question is if they did, there was no match but they
9 were suspense voters, how did you identify the fact that they
10 were suspense voters?

11 THE WITNESS: Suspense was a category that I did not
12 have available but was in one of the driver's license files --
13 excuse me -- I beg your pardon, Your Honor.

14 Suspense is indicated in the voter registration.

15 JUDGE COLLYER: So one can run a program from
16 whatever population you're looking at to identify all who are
17 suspense voters?

18 THE WITNESS: Yes.

19 JUDGE COLLYER: And one can run an inquiry to
20 identify all who are 65 or older by putting in a date of birth
21 or something like that?

22 THE WITNESS: Yes, Your Honor.

23 JUDGE COLLYER: That's how you identified these
24 people?

25 THE WITNESS: Yes, Your Honor.

1 JUDGE COLLYER: But those who do not match but report
2 ID, that had to be run against the driver's license file,
3 right, not the voters registration file?

4 THE WITNESS: Those who report ID, Your Honor, are in
5 the field in the voter registration file. The name of that
6 field is official ID number.

7 JUDGE COLLYER: Okay. I guess that's right because
8 it's an application.

9 JUDGE WILKINS: What is your understanding, if any,
10 as to what that official ID number is or where it comes from?

11 THE WITNESS: My understanding is that if it is not
12 blank, then it comes from the voter registration application,
13 so I presume that it would be the driver's license number but
14 that's my presumption.

15 JUDGE WILKINS: Thank you.

16 BY MR. SELLS:

17 Q. You made no effort to match that driver's license number
18 on the voter registration file to the driver's license file?

19 A. That is correct.

20 Q. So after your winnowing of the reduced VRNID you get down
21 to a 167,724 that you call unaccounted for, right?

22 A. Yes.

23 Q. You have identified the SSVR of those unaccounted for as
24 31.6 percent, correct?

25 A. Yes.

1 Q. You concede that that 31.6 percent is statistically
2 significant in its difference from the 22.25 percent SSVR that
3 Professor Ansolabehere reports for the entire voter
4 registration database, correct?

5 A. That is correct as it's a statistical test.

6 Q. As a statistical test, that means that the difference is
7 real and not attributable to chance, correct?

8 A. Correct.

9 However, it says nothing about what the explanation for
10 that is.

11 Q. Now, Professor Sager, in paragraph 14 of your report and
12 in your direct testimony today and yesterday you suggested that
13 the expired licenses may belong to people that have moved out
14 of state and are therefore ineligible to vote in Texas; is that
15 correct?

16 A. Some of them at least.

17 Q. But that's just mere conjecture?

18 A. No, it's not mere conjecture.

19 Q. Isn't it right that you told me in your deposition that it
20 was your conjecture, Professor Sager?

21 A. I have subsequently learned by calculation that there are
22 a large number of those that are in fact out of state using
23 fields that are available in the issuance or admin file.

24 MR. SELLS: Objection, move to strike. Clearly comes
25 after the deposition not disclosed to the United States.

1 MR. MORTARA: Your Honor, Mr. Sells likes to on cross
2 open doors, then when he sees what's behind them try to shut
3 them.

4 But I don't really object to this not coming in. It's
5 just the problem Mr. Sells asked questions and the witness
6 answers them. It's cross, he's opening doors.

7 JUDGE COLLYER: He has a point.

8 We'll take that for what it's worth.

9 Go ahead, Mr. Sells.

10 BY MR. SELLS:

11 Q. Well, certainly in your report you haven't cited any
12 evidence to support that conjecture, have you?

13 A. No direct evidence, yes.

14 JUDGE COLLYER: Well, okay, which means that you're
15 using deduction rather than observation rather than facts, I
16 mean?

17 THE WITNESS: Well, Mr. Sells called it conjecture.

18 It's not mere conjecture. It's part of the result of my
19 experience from walking around on the earth and having common
20 life experiences.

21 JUDGE COLLYER: Okay, we all have those things, sir.
22 It's not part of your expertise.

23 THE WITNESS: That is correct, Your Honor.

24 JUDGE COLLYER: Okay. Then as a lay person it
25 constitutes legally, not factually perhaps, legally it

1 constitutes conjecture.

2 Go ahead.

3 BY MR. SELLS:

4 Q. And you haven't reported any analysis of the addresses on
5 file with the Department of Public Safety for these voters have
6 you?

7 A. Not in my report.

8 Q. And you don't know how the Department of Public Safety
9 treats licenses when people move away?

10 A. What do you mean treats?

11 Q. What they do with licenses when people report moving away?

12 A. No, I do not.

13 Q. And you don't know how the Secretary of State treats voter
14 registrations when the Secretary of State learns that a person
15 has moved, do you?

16 A. That is correct.

17 Q. You're not familiar with the list maintenance provisions
18 of the National Voter Registration Act, are you?

19 A. I am not.

20 Q. And it's plausible too, Professor Sager, that a license
21 might be expired because a person is too old to drive or
22 because a person can't afford a license anymore?

23 A. I have no knowledge of that.

24 Q. You have no less evidence of those possibilities than you
25 do of the one that you conjecture in your report, do you?

1 A. It's plausible.

2 Q. Now you don't report the racial or ethnic break down of
3 the expired licenses that you were able to match to the VRNID,
4 do you?

5 A. I don't think that I do.

6 Q. And so if the Court were to determine that an expired
7 license is not a valid license for purposes of SB 14, it
8 wouldn't be able to look at your report, carve that section out
9 and then go on with your report, if it were interested in the
10 racial break down?

11 A. Is your question about over 65 and -- I'm sorry, could you
12 repeat your question?

13 Q. I'm asking about the racial break down of the --

14 A. Please clarify by what you mean by racial? Are you
15 talking about ethnicity?

16 Q. SSVR, SSVR.

17 A. SSVR, yes, Hispanic or non Hispanic.

18 Q. Correct?

19 A. Then would you repeat the rest of your question, please?

20 Q. If the Court were to decide that the records that you
21 matched to expired licenses should not count as matches because
22 an expired license is not a valid ID for purposes of SB 14, and
23 wanted to put those back in your winnowing down, it wouldn't be
24 able to determine the SSVR of the resulting unaccounted for
25 number because you don't report the SSVR of those matches,

1 correct?

2 A. I think that's correct, yes.

3 Q. In paragraph 15 of your report you suggested that some of
4 the expired licenses might belong to persons over age 65 and
5 you think it's okay to include those because there's a
6 possibility of using an exemption.

7 You haven't studied the propensity of voters over age 65 to
8 use mail in applications have you?

9 A. I have not studied that, no.

10 Q. You mention on line renewal of voter -- driver's licenses
11 - excuse me. You have no idea whether any voters in Texas have
12 equal access to the computers and the internet do you?

13 A. I have not studied that issue.

14 Q. And so to the extent that you report that these categories
15 of voters, suspense voters, elderly voters, disabled voters
16 might be excludable from the VRNID, that's just conjecture on
17 your part, correct? You haven't cited any evidence in your
18 report to support those claims?

19 A. It's based on assumptions that I was given by the state.

20 Q. Okay. Professor Sager, you mentioned bias, could you
21 please for the record --

22 JUDGE COLLYER: Are you going into a new area?

23 MR. SELLS: I am.

24 JUDGE COLLYER: I was going to take a break at 11
25 o'clock, but if you are about to enter a brand new untested

1 that can be used at the polls to vote under SB 14, you remember
2 that; right?

3 A. Yes, I do.

4 Q. Okay. Now, all of your talk about bias, if I understand
5 you correctly, you're saying that with respect to women,
6 there's a bias because women's names are more likely not to
7 match from the voter registration list to either the driver's
8 license for the license to care or the license to carry list.
9 Do I understand that correctly?

10 A. That's a common sense explanation for it, yes.

11 Q. And the same is true of Hispanic voters, their names are
12 less likely to match from the voter registration list to either
13 the driver's license list or the license to carry list;
14 correct?

15 A. Yes.

16 Q. And that is what you're calling bias; correct?

17 A. Yes. The fact that both women and Hispanics are
18 selectively funneled at a higher right than they should into
19 the remnant dataset VRNID.

20 Q. But if SB 14 requires an exact match between the voter
21 file and the photo ID that is presented by the voter at the
22 polls, in order to vote scot-free under SB 14, that's not in
23 evidence, that's not evidence of bias, that's actually evidence
24 of accuracy, isn't it, Professor Sager?

25 A. It could be interpreted as such, yes.

1 Q. Now, Professor Sager, at the end of the day, when we've
2 looked at what you've done and what Professor Ansolabehere has
3 done, isn't it true that your findings are not irreconcilable
4 with his?

5 A. What findings do you mean? If you mean the findings of a
6 difference in the proportion of Hispanics between the remnant
7 dataset and the population from which they come, I think we
8 agree on that, that there is a difference.

9 We would disagree, I think, in the interpretation of that
10 because I have shown the existence of a bias against matching
11 Hispanics which provides in my view a complete explanation for
12 the difference between the remnant dataset proportion and the
13 population proportion.

14 Q. Well, let's go back to that. You haven't done any
15 calculations to determine the number of false matches, as you
16 say, that would be required to eliminate the disparate impact
17 that Professor Ansolabehere finds, have you?

18 A. The number of false matches?

19 Q. Yes, what you're calling a false match or evidence of
20 bias, i.e., that women's names don't match at a higher rate
21 from one to the other list?

22 A. Well, that's not a false match, that's a false negative.

23 Q. False no match, excuse me, I spoke backwards.

24 A. Because what the matching procedure does is to eliminate
25 those who match, leaving a group that do not match.

1 Q. And you haven't calculated the number of what you're
2 calling false no matches that would be required to reduce
3 the -- reduce and eliminate the racial disparity that Professor
4 Ansolabehere finds with respect to SSVR in the VRNID?

5 A. Let me just be sure you're referring, when you say racial,
6 to SSVR, which is Hispanic versus non-Hispanic; right?

7 Q. I'm referring to SSVR. You haven't done any calculations
8 to determine the number of false no matches, this bias that
9 you're talking about, the mismatch between names of women and
10 Hispanics, specifically Hispanics, that would be required to
11 eliminate that disparity?

12 A. It's easily calculable. I mean, you have the proportion
13 in the population, which is about 22 and a quarter percent, I
14 think. Then you have the proportion that we find, which is
15 about 27 percent in the case of Dr. Ansolabehere, and about 28
16 percent in the case that I find, which is a difference of about
17 six percent.

18 Now, if we apply that six percent to the full 1.5 million
19 of the VRNID, then we see that that's about, if my math works,
20 maybe around 90,000 or so.

21 Q. You don't report those calculations anywhere in your
22 reports, do you?

23 A. In the reports, I don't recall having done that, well,
24 maybe I did. I can't say for sure on that.

25 Q. And it's your testimony here that 90,000 false no matches

1 would be enough to eliminate the disparity that Professor
2 Ansolabehere finds in the VRNID?

3 A. I'm not sure, I'd have to put pencil and paper to it.

4 Q. Well, I'd like to try to compare what you've done with
5 what Professor Ansolabehere has done. So I think we've gone
6 over a number of categories here today, and I want to try to
7 put them all together.

8 Can you see all those numbers on your screen?

9 A. Yes.

10 Q. All right. So you started with the full VRNID of 1.89
11 million. Then you deleted or winnowed a 125,000 because there
12 was insufficient info to match. You deleted 266,000 because of
13 an ambiguous driver's license status?

14 A. These are deletions that Dr. Ansolabehere made, and I
15 simply adopted them.

16 Q. Okay. Fair enough, if that's your testimony.

17 And you were able to match 508,866 to the records that
18 Professor Ansolabehere thought appropriate to clean from the
19 driver's license list; do you remember that?

20 A. I remember going over that, yes.

21 Q. So it's simply a matter there, that number is whether it's
22 appropriate to clean those records. Although in that instance
23 you did not indicate how many you had matched to one category
24 of cleaned records, i.e., those with duplicate Social Security
25 numbers. Do you remember that?

1 A. Yes.

2 Q. And you didn't report how many matches you were able to
3 make to the records that Professor Ansolabehere thought was
4 appropriate to clean from the license to carry database; right?
5 You remember we couldn't find that number in your report?

6 A. Yes.

7 Q. So that's why I've got question marks here for that.

8 The next line on here is matches due to fuzzy matching, and
9 that's my term. But what I'm referring to there is the many to
10 one match.

11 You didn't calculate how many additional matches you were
12 able to match using your many to one whereas Professor
13 Ansolabehere thought it appropriate to use one to one matching;
14 correct?

15 A. Yes.

16 Q. We don't know what that number is. And you used a
17 different algorithm with extra sweeps, and your report hasn't
18 indicated how many records you were able to match with your
19 extra sweeps that Professor Ansolabehere wasn't able to match?

20 A. My report does include counts of the number that were
21 matched on each of the four sweeps that I employed.

22 Q. Okay. But yours doesn't say how many extra matches you
23 were able to find because of those extra sweeps?

24 A. By extra sweeps, do you mean comparing the sweep,
25 comparing the counts that Dr. Ansolabehere got with his three

1 sweeps with the sweeps that I employed?

2 Q. Correct.

3 A. I did not report that, no.

4 Q. Okay. But those are differences between your methodology
5 and Professor Ansolabehere, we just don't know how to quantify
6 those differences at this point?

7 A. There are differences between our approaches, yes.

8 Q. And then another difference was you eliminated a 140,666
9 that did not match, but were over 65 because of assumptions
10 that you were given by counsel?

11 A. Yes.

12 Q. And you also went over the 116,797 that did not match, but
13 were in suspense status because of instructions given by
14 counsel?

15 A. Because of assumptions, yes.

16 Q. And you also went over 261,887 that did not match, but
17 reported some ID because of instructions from counsel?

18 A. Because of assumptions yes.

19 Q. Right. And you found 167,000 unaccounted for, and those
20 would have also been unaccounted for by Professor Ansolabehere
21 because they were on the VRNID; correct?

22 A. They were, yes.

23 Q. So that's something you have in common. At the end of the
24 day the difference between your analysis and Professor
25 Ansolabehere's is 306,037 records, if you account for all those

1 categories that we've just discussed. Does that seem right to
2 you?

3 A. I'll take your word for it.

4 Q. And isn't it possible that the difference, the 306,000
5 could well be accounted for, taken up by the question mark
6 categories that we've got there, that you may have matched some
7 to the records that Professor Ansolabehere cleaned from that
8 license to carry database?

9 A. It could be, yes.

10 Q. And your three to one or many to one matching may have
11 caught some extra matches that Professor Ansolabehere didn't
12 catch?

13 A. It could, yes.

14 Q. So at the end of the day, while 300 000 seems like a
15 significant number, it's not a huge difference when we account
16 for those question marks in this list; correct?

17 A. I presume, although I have not investigated that.

18 Q. Now, you're not offering an opinion as to the validity --
19 strike that.

20 MR. SELLS: Can we see Professor Sager's report? I
21 think it's PX 13.

22 BY MR. SELLS:

23 Q. Now, you're not offering an opinion as to the validity of
24 the assessments made in Professor Ansolabehere's report outside
25 of paragraphs 19 to 29 in his report, that's what your report

1 says here on paragraph two?

2 A. It says in general my critique of his work is limited to
3 his protocol from matching databases.

4 Q. And the last sentence of that paragraph reads, "I note
5 those qualitative assessments, but it is not within the scope
6 of my first declaration nor the supplemental declaration to
7 opine as to their validity." Did I read that correctly?

8 A. Yes, you did.

9 Q. So you're not opining as to the validity of what appears
10 outside of paragraphs 19 to 29 in Professor Ansolabehere's
11 report?

12 A. I remark in that it's in general, so there may be some
13 instances, there may not be.

14 MR. SELLS: Can we see Defendant's Exhibit 544,
15 please?

16 BY MR. SELLS:

17 Q. Is this Professor Ansolabehere's report that you were
18 referring to in paragraph two?

19 A. It appears to be.

20 Q. So you're not opining as to the validity of the
21 conclusions that appear, say, in paragraph 43 of that report
22 because that's outside the scope that you indicated in
23 paragraph two; correct?

24 A. Well, I commented that that was in general.

25 JUDGE COLLYER: Have you offered an opinion here

1 today that comments beyond those paragraphs?

2 THE WITNESS: Your Honor, I cannot testify to that
3 with certainty.

4 JUDGE COLLYER: Okay.

5 BY MR. SELLS:

6 Q. Well, paragraph 50 is outside of the scope of 19 to 29;
7 correct?

8 A. I haven't seen paragraph 50 up here.

9 JUDGE COLLYER: Well, wait, now that wasn't the
10 question. It's not a trick question, I promise. Paragraph 50
11 is outside the scope of 19 to something or other; right?

12 THE WITNESS: Yes.

13 JUDGE COLLYER: Okay. It's not a trick.

14 THE WITNESS: Okay, Your Honor.

15 JUDGE COLLYER: Okay.

16 MR. SELLS: Thank you, Your Honor.

17 BY MR. SELLS:

18 Q. And do you indicate anywhere in your supplemental report
19 that you take issue with the conclusions in paragraph 50?

20 A. I'd like to see paragraph 50 before I comment.

21 Q. Okay. My question is not about paragraph 50 at this
22 point, it's about whether in your report you have taken issue
23 with paragraph 50?

24 A. How can I answer that without seeing paragraph 50?

25 Q. Because I'm gathering that you're familiar with your

1 report?

2 A. I don't remember all the paragraphs by number.

3 Q. And as you wrote your report, you specifically flagged 19
4 to 29 paragraphs; correct?

5 A. Yes, as indicating the general area of my focus, it does
6 say in general.

7 MR. SELLS: Can we see paragraph 50, please?

8 BY MR. SELLS:

9 Q. Now, Professor Sager, paragraph 50 says, "The voter
10 identification requirement will affect whites and minorities
11 differently, and the difference is substantial."

12 Did I read that correctly?

13 A. Yes.

14 Q. Thank you.

15 MR. SELLS: No further questions.

16 JUDGE COLLYER: Thank you.

17 Is there any redirect?

18 MR. HARRIS: Your Honor.

19 JUDGE COLLYER: Yes, I'm sorry, forgive me, sir. Of
20 course.

21 MR. HARRIS: Thank you, Your Honor, I'm Adam Harris
22 on behalf of the defendant intervenors.

23 **CROSS-EXAMINATION**

24 BY MR. HARRIS:

25 Q. And good morning, Dr. Sager.

1 A. Good morning, Mr. Harris.

2 Q. Now, from your testimony today and yesterday one might get
3 the impression that your work in this case began after Dr.
4 Ansolabehere studied the voter registration and DPS and license
5 to carry databases, but that's not true, is it?

6 A. I do not know when he studied the databases.

7 Q. Well, you, in fact, began your work in this case prior to
8 ever even seeing Dr. Ansolabehere's report; isn't that correct?

9 A. That's correct.

10 Q. And, in fact, initially you were retained by the state to
11 perform an analysis of two no match lists provided to you by
12 the state; is that correct?

13 MR. MORTARA: Your Honor, I object, it's outside the
14 scope of direct examination, subject to a stipulation between
15 Texas and the Justice Department.

16 JUDGE COLLYER: Well, it is subject to a stipulation
17 between Texas and the Justice Department. It's not a
18 stipulation with the intervenors, is it?

19 MR. HARRIS: That's correct.

20 MR. MORTARA: No, it is not, but we have not
21 presented that report as part of Professor Ansolabehere's
22 testimony.

23 JUDGE COLLYER: I agree with that, it's outside the
24 scope of his direct testimony. But in this crammed time frame,
25 I wouldn't require the intervenors to call him back. That

1 would be unfair to Dr. Sager. The fact -- he can, he can
2 inquire into this because it goes to the credibility or the
3 weight or the analysis of Dr. Sager, but don't spend a lot of
4 time on it, we all know about the stipulation and everything,
5 so. But since the stipulation is not with the intervenors, I
6 don't think you can stop him.

7 Go ahead, sir.

8 MR. HARRIS: Thank you, Your Honor, I'll be brief on
9 this line.

10 BY MR. HARRIS:

11 Q. Well, you were provided two no match datasets by the State
12 of Texas to analyze; is that correct?

13 A. That's correct.

14 Q. And you attempted to replicate the matching that the State
15 of Texas did to produce these two no match lists; isn't that
16 right?

17 A. That's correct.

18 Q. And you've described the process used by the State of
19 Texas to generate its no match list as very simple; isn't that
20 right?

21 A. It was quite simple as indeed all of the matches were that
22 had been done in this case.

23 Q. And you've previously agreed that the work of replicating
24 a data match like that performed by Texas would take a few
25 hours; is that correct?

1 A. If done from scratch, probably. Depends upon the speed of
2 the computer and the skill of the programmer and so forth.

3 Q. And prior to submitting your first expert report in this
4 case, you spent several hours trying to replicate the two no
5 match sets provided to you by the state; isn't that right?

6 A. Yes, I did.

7 Q. But you did not complete that work; isn't that right?

8 A. At that time, I did not.

9 Q. And nowhere in your first expert report did you state that
10 you wanted to replicate Texas's data matching, but had been
11 unable to; isn't that right?

12 A. I don't recall.

13 Q. You don't recall whether you stated that or not?

14 A. That's correct.

15 Q. You gave a deposition in this case; correct?

16 A. Yes, I did.

17 Q. And you felt that your deposition raised a number of
18 questions about the Texas data match that produced those two no
19 match sets; isn't that right?

20 A. I had some questions, yes, as I recall.

21 Q. And because of those questions, you again stated at your
22 deposition that you wanted to replicate the no match list prior
23 to trial. Do you remember that?

24 A. Yes.

25 Q. You haven't done that, have you?

1 A. Yes, I have.

2 Q. You have?

3 A. Yes.

4 Q. Have you produced the results of those to any party in
5 this case?

6 A. I have not.

7 Q. And then you subsequently withdrew your opinions about the
8 number based on Texas's no match list that were in your first
9 report; isn't that right?

10 MR. MORTARA: Your Honor, I object.

11 JUDGE COLLYER: And what's the objection?

12 MR. MORTARA: The objection is Professor Sager did
13 not withdraw those opinions, the State of Texas in agreement
14 with the Justice Department entered into a stipulation.

15 JUDGE COLLYER: Well, okay, but the question remains
16 whether or not this witness continues to give full faith and
17 credit, I don't know what you want to say, to support his own
18 reports or whether in light of subsequent events he now
19 doesn't, and I think that's a fair question.

20 Go ahead, you can answer the question, Professor.

21 THE WITNESS: May I hear it repeated, Your Honor?

22 JUDGE COLLYER: Yes, of course. Ask it again,
23 please.

24 BY MR. HARRIS:

25 Q. Sir, you withdraw your opinions that were contained in

1 your first report regarding the number of individuals that
2 could be matched based on Texas's no match sets; isn't that
3 right?

4 A. I did not withdraw.

5 Q. Those opinions had been withdrawn?

6 A. This is the first time I've heard about it.

7 Q. You're not -- you haven't testified about them today,
8 though, have you?

9 A. I have not.

10 Q. And unlike Dr. Ansolabehere, you've never done a complete
11 database match from scratch in this case. And from scratch I
12 mean working with the Texas driver's license database, Texas
13 license to carry database, and Texas voter registration
14 database; isn't that right, Dr. Sager?

15 A. I have done such an analysis except that for the driver's
16 license file, I used the person table and was not provided the
17 admin or the issuance table.

18 Q. In which report do you cover that from scratch database
19 matching that you now claim to have done?

20 A. I'm not sure that's stated in the report. It's something
21 that I have done subsequently.

22 Q. Have you ever revealed the results to any of the other
23 parties in this case, Dr. Sager?

24 A. No, I have not.

25 Q. Now, let's talk about your second report. I think that's

1 what you're here to testify about primarily.

2 You mentioned that there were some exigencies in your
3 schedule when you were preparing the second report; isn't that
4 right?

5 A. Yes.

6 Q. Now, your initial report that you submitted in this case
7 was dated June 1st; correct?

8 A. I recall that date, yes.

9 Q. And on June 1st, you left for a vacation in Hawaii; isn't
10 that right?

11 A. That's correct.

12 Q. And your second rebuttal report, the report you're here
13 testifying about primarily, is dated June 11th. Do you recall
14 that?

15 A. That's correct.

16 Q. And the report itself indicates that you signed it in
17 Kihei, Hawaii; isn't that right?

18 A. It's a beautiful place, yes.

19 Q. And that's because, Dr. Sager, you did not return from
20 your vacation until June 19th; isn't that right?

21 A. That's correct.

22 Q. And while you were in Hawaii on vacation --

23 A. My wife was angry with me.

24 Q. Understandable. And while you were in Hawaii on vacation,
25 you relied on attorneys for the State of Texas or individuals

1 working for attorneys for the State of Texas to do the analysis
2 that you've testified about here today; isn't that right?

3 A. I can perhaps shed some light on that if you would permit
4 me to give a more extensive reply.

5 Q. I think a "yes" or "no" will answer the question.

6 A. Okay, please answer -- ask the question again.

7 Q. While you were in Hawaii on vacation, you relied on others
8 to do analysis that underlies the opinions you're here to
9 testify about today; isn't that right, Dr. Sager?

10 A. An employee of the legal and technical services of the
11 Office of the Attorney General was made available to me to do
12 the work that I directed under my supervision. I told him what
13 to do, he did it. And I reviewed the work that he did for
14 quality.

15 Q. And that review was based on a sample; correct?

16 A. The initial review was based upon samples, yes.
17 Subsequently I repeated his work to verify that, in fact, it
18 was correct.

19 JUDGE COLLYER: And, Dr. Sager, you have every right
20 to feel that this is questioning on cross-examination because
21 it is. But that doesn't mean you can add to the answer, you
22 just have to answer the questions, and counsel for Texas will
23 ask you on direct again.

24 THE WITNESS: Thank you, Your Honor.

25 MR. HARRIS: Thank you, Your Honor.

1 BY MR. HARRIS:

2 Q. Dr. Sager, it's your opinion that Dr. Ansolabehere's
3 matching methodology, specifically using first name, last name
4 and date of birth, could lead to a selection bias favoring the
5 funneling of Hispanics into Dr. Ansolabehere's VRNID list; is
6 that accurate?

7 A. Yes, it is.

8 Q. And that opinion that there's a selection bias depends on
9 an assumption; right?

10 A. Would you identify that assumption?

11 Q. Sure. Your opinion is based on the assumption that a
12 voter, a Hispanic voter showing up at the polls, who has an ID
13 with a name that may be different than that on the voter rolls
14 would be still be allowed to vote; isn't that right?

15 A. My identification of bias has to do with a matching
16 procedure. It does not have to do with what happens at the
17 polls.

18 Q. And, in fact, Dr. Sager, you testified earlier that your
19 understanding of Dr. Ansolabehere's VRNID list is that it's
20 supposed to represent voters who lack access to ID. Do you
21 remember stating that?

22 A. I think that was the probable intent of it. Of course, we
23 have to distinguish between the frame and the target population
24 as we distinguished earlier.

25 So I think the point of doing the VRNID was to come up with

1 a frame that would represent that remnant population that
2 lacked access to ID.

3 Q. But it's not your understanding that the VRNID that Dr.
4 Ansolabehere produced was supposed to represent voters who lack
5 access to ID where that ID is valid for voting under SB 14;
6 isn't that right?

7 A. Again, my analysis was directed toward the method of
8 matching, that there is a bias in the method of matching.

9 Q. Well, let's talk about your method of matching.

10 First, with respect to the expired IDs that you removed
11 from the -- well, let me ask you. Did you remove expired IDs
12 from the Texas driver's license database?

13 A. I did not.

14 Q. You didn't clean expired IDs from the driver's license
15 database prior to doing the matching that you talked about here
16 today?

17 A. That's correct.

18 Q. Okay. Now, you did remove from the voter registration
19 list individuals who are in suspense status; isn't that right?

20 A. No, it's not necessary to remove them. You can leave them
21 in because there's a flag in the file that identifies them.

22 Q. Dr. Sager, in the winnowing process that you talked about
23 today, one of the groups that you ended up subtracting out of
24 Dr. Sager's [sic] list were those individuals --

25 A. Excuse me, you mean Dr. Ansolabehere.

1 Q. Excuse me, yes, Dr. Ansolabehere's list, were those
2 individuals who were in suspense status; correct?

3 A. Yes.

4 Q. And that was based on an assumption that individuals on
5 suspense status had likely moved out of the state; isn't that
6 right?

7 A. Not necessarily. It was based on the assumption that the
8 suspense status is relevant for the concerns of the Court.

9 Q. And it would be relevant to the concerns of the Court
10 because of an assumption that individuals who are in suspense
11 status are not otherwise valid to vote in Texas anyway; isn't
12 that right?

13 A. Perhaps some of them are, perhaps some of them are not.

14 Q. You testified that with respect to renewing a driver's
15 license on line that it's convenient to do that; isn't that
16 right?

17 A. It was convenient for me.

18 Q. And that testimony is obviously limited to yourself as a
19 tenured professor at the University of Texas; correct?

20 A. Not necessarily with those distinctions, but with respect
21 to myself. Whether it was easy for me or not has nothing to do
22 with my being a tenured professor.

23 Q. Well, as a tenured professor you're given a computer;
24 correct?

25 A. I have my own computer at home for analysis.

1 Q. And you're also provided Internet access; correct?

2 A. I have my own access at home.

3 Q. And you make a salary that would enable you to purchase a
4 computer and Internet access at home; correct?

5 A. Sometimes I don't think so, but yes.

6 JUDGE COLLYER: Fair is fair; right?

7 MR. HARRIS: Certainly, Your Honor.

8 BY MR. HARRIS:

9 Q. Now, Dr. Sager, you also spoke about winnow, in certain
10 terms of the winnowing process removing individuals from who --
11 Dr. Ansolabehere's VRNID list who had themselves indicated on
12 their voter registration application that they had an ID; isn't
13 that correct?

14 A. Yes.

15 Q. When a voter indicates on a voter registration application
16 that he or she has ID, he or she is making a statement about
17 the ID that that individual possesses at the time of
18 registration; correct?

19 A. I would presume.

20 Q. And finally, Dr. Sager, you first became involved in this
21 case in around May of 2012; isn't that right?

22 A. Yes, I think it was on May 22nd, which is my anniversary.

23 Q. Now, you've been engaged --

24 A. Another reason for my wife to be angry with me.

25 Q. Now, you've been engaged by the State of Texas to do

1 database matching work for the Department of Health sometime
2 long prior to your work in this case; correct?

3 A. Correct.

4 Q. But while SB 14 was being considered, no one from the
5 State of Texas, no legislator, no executive -- excuse me,
6 executive official asked you to do any type of database
7 matching to determine the number of individuals who might be
8 affected by SB 14, did they?

9 A. Not before May 22nd.

10 MR. HARRIS: I have no further questions.

11 JUDGE COLLYER: Thank you.

12 MR. HARRIS: Thank you, Your Honor.

13 JUDGE COLLYER: Is there any redirect for the State
14 of Texas?

15 MR. MORTARA: Your Honor, very brief, yes.

16 JUDGE COLLYER: All right.

17 **REDIRECT EXAMINATION**

18 BY MR. MORTARA:

19 Q. Hello, Professor Sager.

20 A. Hello.

21 Q. I want to talk very briefly first about Professor
22 Ansolabehere's match.

23 Looking on the board, there are 55 percent of the voter
24 registration database that don't have SSN 9, remember that?

25 A. Yes, I do.

1 Q. And 45 percent of them do?

2 A. Yes.

3 Q. And Professor Ansolabehere used their nine digit Social
4 Security numbers to match them to the driver's license
5 database. Did he do that?

6 A. Yes.

7 Q. Professor Sager, were there large numbers of people in the
8 group from the 45 percent that have full nine digit Social
9 Security numbers who matched either the driver's license
10 database, but had name mismatches?

11 A. Yes, there were.

12 Q. And for those people, Professor Ansolabehere, was he
13 asking whether they had an exact name or just whether they had
14 an ID?

15 A. He was asking the question about whether they had Social
16 Security numbers that were the same in both files. So he was
17 asking whether it was likely that they had an ID.

18 Q. And did you see anywhere in Professor Ansolabehere's
19 report a concern about those people, that they had a name
20 mismatch between the two databases?

21 A. I don't recall that.

22 Q. And for the people that matched, he took them out of his
23 VRNID; right?

24 A. Yes.

25 Q. He took people who he matched on Social Security number,

1 but who would not have the same name between the two databases,
2 and he declared them not affected by Senate Bill 14?

3 A. I don't know about Senate Bill 14, but he removed them,
4 yes.

5 Q. They're not in the VRNID even though they don't have the
6 same name?

7 A. Correct.

8 JUDGE COLLYER: I think you've made that point.

9 MR. MORTARA: Thank you for -- I just about called
10 you Professor Collyer. Thank you, Judge Collyer.

11 JUDGE COLLYER: You're welcome, and I'm nowhere near
12 a professor.

13 BY MR. MORTARA:

14 Q. Professor Sager, when you were in Hawaii, I personally and
15 the State of Texas did not permit you to have access to the
16 state databases; correct?

17 A. That's correct. There was concern about the security of
18 those sensitive personal information that include Social
19 Security numbers. In fact, every time that the State of Texas
20 delivered those files to me, they came by police escort.

21 Q. Professor Sager, Mr. Sells, my good friend, asked you a
22 lot about the license to carry database, and your report
23 contains a detailed description of the number of matches that
24 actually happened to the LTC database?

25 A. Yes.

1 Q. And I wanted to show you on the screen Mr. Sells's chart
2 with the question marks on it, and then show you a portion of
3 your report. Remember Mr. Sells was saying you don't know how
4 many LTC matches were to cleaned entries. Do you remember
5 talking about that with Mr. Sells?

6 A. Yes, and I remember my memory being vague.

7 Q. And I'm just going to show you an exhibit from your
8 report.

9 JUDGE COLLYER: Very well done.

10 BY MR. MORTARA:

11 Q. This is the lady bug from your report which demonstrates
12 the voter in Texas who is going to be affected by Senate Bill
13 14.

14 MR. HARRIS: For the record, objection.

15 BY MR. MORTARA:

16 Q. And in your report, Professor Sager, you have a detailed
17 spreadsheet I'm showing on the screen that discloses all the
18 numbers for all the matches; right?

19 A. Yes, I recall this spreadsheet.

20 Q. And the number matches reported exclusively to LTC here in
21 the seventh or eighth line down is how many?

22 A. Eight hundred thirty-one.

23 Q. In your assessment, is the LTC database really that
24 relevant to the total number of non-matches in this case?

25 A. As I commented during the questioning earlier, it's

1 relatively small potatoes.

2 Q. There was a lot of discussion of cleaning with Mr. Sells.

3 Do you remember that?

4 A. Yes.

5 Q. No matter how you do your cleaning, whether you clean a
6 lot or a little, not at all, or take all the dead people out,
7 with the VRNID dataset, every single one of those people has
8 failed to match on an exact name basis?

9 A. That's correct, because the way that Dr. Ansolabehere's
10 sweeps work is that they are consecutive. Those that do not
11 match on Social Security number are then matched on first name,
12 last name, date of birth, and then with the addition of middle
13 name.

14 So every one of the members of the VRNID has been exposed
15 to the possibility of ethnicity name selection bias.

16 MR. MORTARA: No further questions, Your Honor.

17 JUDGE COLLYER: All right. Thank you very much.

18 I think, Dr. Sager, that you can go. Thank you, sir.

19 THE WITNESS: Thank you, your Honor.

20 (Witness excused.)

21 JUDGE COLLYER: Does the State of Texas have another
22 witness?

23 MR. MORTARA: Your Honor, by agreement of the
24 parties, the State of Texas's next witness will be Professor
25 Daron Shaw, and he will present tomorrow. So we will now turn

1 it over to my good friends, the defendants.

2 JUDGE COLLYER: Okay.

3 MR. SELLS: Your Honor, if I can just put on the
4 record that we have handed up my demonstratives and their
5 Exhibit 581.

6 JUDGE COLLYER: Thank you for making the record, but
7 yes, I agree that's happened.

8 All right, does the United States have a witness to
9 call?

10 MS. WESTFALL: Yes, we do, Your Honor. Both the
11 Attorney General and the defendant intervenor call
12 Representative Trey Martinez Fischer, and we will divide our
13 time on direct and redirect according to the duration of our
14 respective exams.

15 JUDGE COLLYER: All right. Thank you.

16 MS. WESTFALL: Mr. Garza will commence.

17 MR. GARZA: Good morning.

18 JUDGE COLLYER: Good morning. How are you today?

19 MR. GARZA: Doing well, thank you.

20 JUDGE COLLYER: Good.

21 MR. GARZA: May I remove the --

22 JUDGE COLLYER: Yes, that would be good. There are a
23 lot of people down there who can't see what's going on.
24 They'll be happy to have that removed.

25 THE DEPUTY CLERK: Please raise your right hand.

1 **TREY MARTINEZ FISCHER, DEFENSE WITNESS, SWORN**

2 THE DEPUTY CLERK: You may be seated.

3 MR. GARZA: José Garza for the defendant intervenors,
4 and may I proceed, Your Honor?

5 JUDGE COLLYER: Go right ahead, Mr. Garza.

6 **DIRECT EXAMINATION**

7 BY MR. GARZA:

8 Q. Would you state your name and residence?

9 A. Yes, sir, my name is Trey Martinez Fischer, I'm a resident
10 of San Antonio County, Texas.

11 Q. And are you currently an elected official?

12 A. I am, I'm a state representative for House District 116 in
13 San Antonio.

14 Q. And how long have you been a state representative?

15 A. I am completing my sixth term and on the ballot for a
16 seventh term.

17 Q. And you say you represent House District 116. Where is
18 that located?

19 A. That is in the central of San Antonio, and it runs in a
20 west and north westerly direction to the University of Texas at
21 San Antonio.

22 Q. And can you briefly describe for the Court the general
23 demographic characteristics?

24 A. It's a very diverse district, it's a minority opportunity
25 district of about 66 percent of African-American, Hispanic

1 voting age population. On social economic statistics it has
2 some of the poorest statistics in the City of San Antonio, high
3 levels of poverty, and at the same time it combines the
4 affluence of the medical center community, the Oak Hills
5 Country Club community and our Tier One university at the
6 University of Texas at San Antonio.

7 Q. Now, you are currently the president of the
8 Mexican-American legislative caucus; is that correct?

9 A. I'm the chairman.

10 Q. Chairman, I'm sorry.

11 A. Yes.

12 Q. And what is the Mexican-American Legislative Caucus or
13 MALC, as we call it?

14 A. MALC is the oldest and largest Latino caucus in the United
15 States. It was -- officially our records indicate we were
16 formed sometime around the early 1970s, although there's been a
17 dispute that it's been in existence since the late '60s. And
18 it's comprised of 39 members of the Texas House of
19 Representatives, both republican and democrat, that are either
20 Hispanic or they are in districts that represent over 50
21 percent of the voting age population Hispanic constituency.

22 Q. Now, in its inception, Texas, when it was first created,
23 Texas was a one-party state, and it was democratic; is that
24 correct?

25 A. That's correct.

1 Q. And why was it created?

2 A. Well, at the time the State of Texas was predominantly
3 democratic, the House and Senate was democratic, and members of
4 the Latino community felt like they didn't have a voice or did
5 not have the ability to represent their issues.

6 And so the original convening of the Mexican legislative
7 caucus was so that they could leverage their votes to put one
8 member on the Appropriations Committee because that's where the
9 budgetary decisions were made, and that's why it was formed.

10 Q. And beyond the initial purpose, what are now the goals and
11 the purposes for MALC to exist?

12 A. Over the course of time, as I mentioned, we've grown to be
13 one of the largest groups in the country. And we have both an
14 internal and an external obligation.

15 Internally we are a member services organization that has a
16 commitment to civil and social justice. But as the state
17 trends in a different demographic direction, we now realize
18 that some of the larger responsibilities from a policy
19 perspective will probably require the assistance of Latino
20 elected officials in the Texas House, and so we have a view on
21 that.

22 We have not forgotten our roots, our legacy of social and
23 civil justice, and we recognize our responsibility to go around
24 the country and help other states incorporate their own version
25 of Hispanic caucuses, and we've been very successful in doing

1 that across the country.

2 Q. Now, within the structure of the Texas House of
3 Representatives, are there legislative tools that MALC and its
4 members employ to maximize their influence?

5 A. Well, you know, the name of the game in our legislative
6 session is to pass legislation, and we do that by acquiring
7 votes. And so building coalitions, forming coalition, we have
8 a membership of 39. That's a pretty good head start to get to
9 a majority of 76 when it comes to passing legislation.

10 And so we will use our leverage as caucus to inform our
11 members to coalesce around issues that we have a common sense
12 of obligation.

13 And then we will use our ability to file original
14 legislation, craft amendments, be proactive on the floor, using
15 our knowledge of the rules and our knowledge of floor
16 procedure, to make ourselves a voice to be reckoned with so
17 that people will have to work with us to either pass things
18 that we're interested in, or to defeat things that we may have
19 some concerns about.

20 Q. And you've been a member of MALC since your initial
21 election to the House of Representatives?

22 A. Yes, I was elected in 2000, and I started serving as a
23 member of MALC in 2001.

24 Q. And in your experience, has the membership of MALC stayed
25 relatively unified when it identifies particular issues for

1 legislation?

2 A. Well, it was, you know, baptism by fire. And my very
3 first legislative session was a redistricting year. And as
4 this Court is fully cognizant of our redistricting practices,
5 that was the first legal fight that I found myself in. And
6 more specifically it involved a district that I represented
7 that was abolished by legislative leaders. And so we shared a
8 common interest in not only protecting the members of MALC, but
9 also making sure that the map of the State of Texas reflected
10 our growing demographic shifts.

11 And so whether you look at that or you look at commonality
12 or whether it's public health or public education or issues of
13 great import to the Latino community in the State of Texas,
14 MALC will have a lot of common ground with members of the
15 Latino community.

16 Q. And as you stated, that demographic growth you're talking
17 about in the Latino community?

18 A. It's significant. To put it in perspective, in the last
19 decade there were four million new Texans added to the state,
20 89 percent of them were minority, 65 percent of them were
21 Latino.

22 Q. And did MALC -- Did MALC prioritize or was voter ID one of
23 the legislative priorities for the Mexican-American legislative
24 caucus?

25 A. I think that it was a priority. It became an emergent

1 priority because it was deemed to be an emergency item by state
2 legislative leaders and our governor, so it automatically
3 vaulted to the top.

4 But, of course, I will also say that there are very, you
5 know, more pressing issues concerning public education, public
6 health, access to higher education and so forth that are
7 equally important so I can't distinguish and say one is more
8 important than the other, but certainly this became very -- at
9 the top of our list considering were it was positioned in the
10 legislative session.

11 Q. Now, the voter ID bill didn't have its inception in the
12 2011 session. It was -- some version of it was introduced in
13 prior sessions; is that correct?

14 A. The voter ID legislation has been debated in the House
15 since 2005. So that would be four sessions that we have dealt
16 with voter ID in some form or fashion, and it originated either
17 in the House or it originated in the Senate. It's been around
18 for a long time.

19 Q. And in each of those sessions, leading unto 2011, did MALC
20 and its members attempt to take a prominent role in how the
21 voter ID bill was crafted and moved through the legislative
22 process?

23 A. I think our role adjusted as the times adjusted. I think
24 initially in 2005, it challenges my memory a bit, but I
25 remember the bill making it, you know, out of the House perhaps

1 and dying in the Senate, the same thing in 2007.

2 In 2009, I think we found ourselves really dealing with an
3 issue that just didn't go away. And so consequently, members
4 became more engaged. We developed some wonderful subject
5 matter, experts, colleagues that actually took this issue on
6 and represented our caucus on their standing committees. And
7 so we became quite familiar with the law and what it does and
8 what it doesn't do, and we tried very hard to either make it
9 better or to defeat it.

10 Q. And as that evolution occurred, were Hispanic and
11 African-American legislators unified in their opposition to the
12 voter ID bills?

13 A. I believe in the early sessions of 2005 and 2007, I think
14 that is more so the case. And the election of 2010 brought a
15 number of Latinos for the first time, I believe there were five
16 or six Hispanic republicans that seemed to be in support of the
17 legislation for different reasons. And so while our caucus was
18 still unified, we were respect every individual members' right
19 to represent their districts, and some felt that this might be
20 appropriate, given their circumstances.

21 Q. Now, we're going to talk now about the 2011 process for SB
22 14. Can you describe for the Court some of the problems with
23 SB 14 that you and MALC members were concerned about?

24 A. SB 14, as it was presented, again, it was a different
25 time. And compared to the 2009 session, there were ongoing

1 discussions, there were, you know, republicans and democrats,
2 Anglos and Hispanics, African-Americans, all working to, you
3 know, maybe try to persuade to make some changes to the bill,
4 to try to find some common ground.

5 I think you will find MALC has made several statements that
6 if protecting the integrity of the ballot box is a driving
7 issue, that we would be open to that, provided that access was
8 also open. And we had members who would file amendments
9 saying, you know, let's call for -- if the driver's license is
10 the standard, then anybody that has one can vote and show up on
11 election day. So that was sort of the environment in 2009 as I
12 recall.

13 In 2011, that didn't exist. I think it was very much,
14 looking in the rear view mirror, this was an issue that did not
15 go away. There was always a reason for its defeat. And it
16 seems to me that procedures and barriers that were preventing
17 this bill from passing in sessions past were moved to the side,
18 and there was a -- there was a determined effort to pass this,
19 not only to pass it for the session, but to pass it in a record
20 time.

21 Q. All right. Now, one of the things that you mentioned just
22 now was that there concerns about the lack of access. And I
23 assume by that you mean access to DPS stations, for example?

24 A. Well, a lack of access in general. I mean, we wanted to
25 make sure that if there's an attempt to bring some voter

1 identification standard, that let's do this with a scalpel,
2 let's be laser-like in our fix, and let's not make a mallet to
3 a problem.

4 So, in other words, we shouldn't attempt to purposely
5 disenfranchise people that could potentially be impacted by
6 this.

7 Now, in terms of access to a driver's license, there was
8 also an equal concern. MALC members are from all over the
9 State of Texas. We have members from west Texas that represent
10 districts that are larger than most northeastern states.

11 And so for some of their constituents, they might have to
12 make a 200-mile round trip to go to the DPS office, and while I
13 realize that may be a way of life for people in rural Texas,
14 there are over 70 counties in our state that do not have a DPS
15 facility.

16 So yes, access to these licenses would certainly be a
17 concern, and at the same time if you live in a big urban
18 environment like I do, I'm from San Antonio, it's the second
19 largest city in the state, there are three DPS offices in the
20 City of San Antonio, the most utilized one is in the district
21 that I represent. And it's common to have a two-hour wait
22 that's been reported, it's just a matter of public record.

23 And you will not find a DPS office from downtown San
24 Antonio to the western boundary, which is heavily concentrated
25 with African-Americans, and particularly Hispanics. And so

1 even access in larger cities would certainly pose a problem in
2 terms of where you could go to receive these IDs, and, in fact,
3 there were discussions and attempts to let our county officials
4 designate when and where and how you can receive these
5 officials -- to receive these voting cards or let the county
6 assume that responsibility since everybody has a county
7 courthouse, everybody knows they can go to the county
8 courthouse and get these things. But those were not acceptable
9 and were otherwise rejected.

10 Q. And as you went through this process, did you find that
11 there were clear objectives and behind the justifications for
12 the legislation?

13 A. You know, the rationale was constantly changing. I think
14 that, you know, one of the remarks made at the beginning of the
15 trial was this was a solution in search of a problem. And I
16 think that that sort of, does capture the essence of this
17 legislation.

18 You know, initially when it was filed back in '05 and '07,
19 and it was still talked about in '09, was that this was
20 something that we needed because too immigrants were voting at
21 the polls. And we know that a voter ID, immigrants have
22 driver's licenses and up until very recently their driver's
23 license looked just like the one in my pocket. And so that
24 can't be the case.

25 And so a second data point came up about, well, let's do

1 away with the fraud that we have at the ballot box. There's
2 rampant fraud all over the place. And we know that the
3 majority of the fraud exists with the handling of mail ballots,
4 and I think that there's sufficient data that's been presented
5 and lots of argument that's been made that supports that.

6 And when it comes to integrity at a poll location, we know
7 that poll activity and electioneering that takes place is also
8 rampant and is not impacted, is not affected by the bill.

9 And so when I take those things and I combine with the
10 change of procedures and sort of the greasing of the skids, if
11 you will, to make this legislation pass on a very fast track,
12 I, you know, I begin to question what the purpose is, and so --

13 Q. We'll get to the specific procedures that concerned you
14 about this.

15 But let's talk a little bit first in terms of were these
16 concerns that you've described to the Court, the lack of
17 access, the lack of a legitimate purpose, the impact on
18 minority voters, were these things that were discussed openly
19 during the legislative process by minority legislators, Latino
20 and African-American legislators.

21 MR. HUGHES: Leading, objection, leading.

22 JUDGE COLLYER: It is leading so be careful, won't
23 you, please?

24 MR. GARZA: Yes, Your Honor, I'll reframe the
25 question.

1 JUDGE COLLYER: Thank you.

2 BY MR. GARZA:

3 Q. Can you describe what efforts were made by minority
4 members of the legislature to raise these issues?

5 A. The number one piece of legislation we passed in the Texas
6 House is the law of unintended consequences. We always pass a
7 measure and then these things happen, and we come back and say,
8 well, members, this was an unintended consequence, that's why
9 this bill is going to rectify what we did in the prior session.

10 In the case of voter ID, I cannot think of a single
11 scenario that was not raised either during the speaking and
12 debate portions of the legislation during the attempts to offer
13 original amendments.

14 And in the pro and con speeches that took place when the
15 bill came to a close about the -- that the potential that this
16 had to disenfranchise a large number of African-Americans and
17 Hispanics, and when you looked at the totality of circumstances
18 and balancing all the equities that we were willing to gamble
19 and put an exposure of, you know, what's been estimated here
20 anywhere between three quarters of a million Texans to a
21 million and a half Texans, so that we can bring integrity to a
22 system that's yielded only one indictment and two
23 investigations on in-person voter fraud.

24 And so I think that we made it very clear that -- that when
25 these things begin to happen that you cannot come back and say

1 that you didn't know about this. I think the debate was, the
2 election of record is very clear with respect to that.

3 Q. Now let's talk a little bit about the process in 2011.

4 Would you describe for the Court the atmosphere in the
5 legislature in 2001?

6 A. I've been in the legislature since the session of 2001.
7 I've been one term in the majority, and I've spent ten years in
8 the minority. And we've always learned to disagree and
9 disagree passionately, but we always took the time to go out
10 and have a meal together or have a cocktail together. There
11 was always this sort of rapport.

12 That also existed in 2011. But what changed is sort of the
13 environment and the pressure cooker, if you will, that things
14 had surrounded the atmosphere of the Capitol, and we had a
15 governor who wanted to secede. We had had an echo chamber in
16 the Capitol that dealt with state's rights. And you heard that
17 over and over again.

18 We had a special committee for the first time in my 12
19 years of service that was called the Select Committee on State
20 Sovereignty and looked at things like seceding, looked at
21 things like opting out of Medicare and all these things that,
22 you know, when you have these hearings and you bring, you know,
23 all sorts of Texans from all different stripes to come in and
24 voice their opinions, the atmosphere changed a little bit.

25 And so when you take that combined with folks believing

1 that the elections of 2010 constituted a mandate to do things a
2 lot different than they've been done in the past, it certainly
3 made for some uncomfortable environments, and in some
4 instances, you know, when it came to voter ID and when it came
5 to issues of immigration, you found members taking some very
6 passionate privileged speeches about sort of the demonizing and
7 the dehumanizing that was going on with respect to past
8 legislation that really wasn't on the top five things to do for
9 fixing our state.

10 Q. And so that atmosphere you think permeated into the
11 consideration of SB 14?

12 A. I do. I do believe that.

13 Q. Now, were there unique procedural processes that were in
14 place for SB 14?

15 A. Well, different from the '05, '07 and '09 session, well,
16 in part, in 2009, I guess when it was discovered that the voter
17 ID bill had a problem passing the senate for want of the
18 two-thirds rule. That rule was eliminated in 2009. And so
19 that prevented the bill or allowed the bill to come over to the
20 House.

21 And then that bill died because there were certain rules
22 that deal with the calendar and the order of business that we
23 follow and the rules of the House or that's our operating
24 procedure.

25 And it's not our only operating procedure. We could vote

1 to suspend the rules at any time, and we could vote to suspend
2 the Constitution if we wanted to, but, you know, except for
3 those rare instances, or not rare instances, but except for
4 those two ways of suspending rules, these were operating rules.
5 And so when the 2009 voter ID bill passed, then you saw that
6 rule change in 2011.

7 So as we come to the session of 2011, you don't have a
8 two-thirds rule in the Senate so the bill's coming over, the
9 bill originated in the Senate, it did come over. You didn't
10 have the order of business that would complicate and congest
11 things. You had a governor that declared this a legislative
12 emergency, which meant it was allowed to be considered and
13 debated in the first 60 days of the session, which is something
14 we can't do pursuant to our Texas Constitution.

15 And the speaker of the house created a committee to deal
16 with this issue that was called the Select Committee on voter
17 ID and voter fraud. Only one bill went to this committee, no
18 other bill in the legislature, of the 5,000 bills filed, no
19 other bill enjoyed that distinction to have its own committee.

20 And, frankly, when you compare the timetable, when you make
21 those adjustments and you compare the timetable, how long it
22 took this bill to pass out of the House, I can tell you that it
23 passed with record speed. It spent maybe six days in
24 committee. You know, I've had bills that spent two and a half
25 months in committee.

1 But, so suffice it to say, I think that it was very clear
2 that there was going to be a alteration of the rules and the
3 procedures so that this bill would not be, you know, caught up
4 by any sort of parliamentary tactic or operation of time in the
5 House, because we do have some very stringent time lines on
6 when you can consider bills and when you can't consider bills.

7 Q. In your experience, in your tenure in the legislature, how
8 often has these sorts of tactics been used to move legislation
9 through the process?

10 A. Like I said, I think that the most common way to expedite
11 things on the House -- in the House is to suspend the rules.
12 And you can do that with two-thirds. You know, but I've not
13 seen, and you would have to really be thinking about this
14 because committees are formed in January. Leadership positions
15 are designated after November elections.

16 You already know you can't have a committee without a
17 chairman. Well, the speaker picks the chairman. You can't
18 have a committee with the vice-chairman. Well, the speaker
19 picks the vice-chairman. So there had to be some thought into
20 we're going to create this special committee, hear the people
21 that we're going to put on the committee.

22 And we had to know that when the governor designated this
23 an emergency, the House went right to the work the day
24 committees were assigned. The first 250 bills were referred to
25 committees. SB 14, I believe was one of those bills.

1 And so I think it just doesn't happen by coincidence, I
2 mean, you have to know the internal workings of the House and
3 all of its procedures and mechanisms.

4 And again, I don't know how much of that was necessary,
5 considering that it was a priority item, it should have been on
6 a stand-alone basis, but that wasn't enough. It seemed that
7 everything had to be perfect and every obstacle had to be
8 minimized to ensure passage.

9 Q. Now, were there attempts made to address some of MALC's
10 concerns in SB 14 through the offering of amendments?

11 A. Well, there were attempts in the debate portion of second
12 reading to make the bill better, if you will, by filing
13 amendments and none of them were successful. I think that the
14 vote patterns on amendment sort of mirrored the vote on the
15 ultimate question, so I imagine there were --

16 If you had an amendment, for instance, I had an amendment
17 that said if we really trust the integrity of our state
18 agencies to issue out these IDs, then anyone who has one,
19 anybody who has a state ID from any state agency should vote
20 with it. And it was tabled with 90 people voting the table,
21 and about 50 people voting not to table. And I think that's
22 sort of similar what the ultimate vote was on the question.

23 Q. Were amendments that were offered to ameliorate the impact
24 on the concerns of MALC dealt with in the same way that
25 amendments for other legislation were dealt with?

1 A. Well, yes and no. I mean, on the one hand, I mean, the
2 rules, you know, dictate how amendments are going to be dealt
3 with. So you file them, you get called, you debate, you have
4 your pro and con and your vote. That part was normal.

5 What wasn't normal is that, you know, there's always a
6 matter of courtesy when you're filing an amendment that you
7 want to tell the author of the bill, by the way, I'd like to
8 amend your bill, and if you really want to try to get it on,
9 you try to work with them and have it all, you know, sort of
10 done before you offer your amendment.

11 And then on times of a large controversial pieces of
12 legislation, you know, they open up the back room, and you take
13 the subject matter experts and the leaders from both parties
14 and the caucuses that are involved, and you go to the back room
15 and you try to work it out.

16 Oftentimes, my -- you know, you can monitor our proceedings
17 on line if you're not in Austin. If you're in Austin, you
18 watch them on TV. And there's often, the House just comes to a
19 complete stop. And it says, you know, House stands at ease.
20 And you'll usually see like a big scrum somewhere around the
21 front microphone or around the speaker's rostrum. And trust
22 me, we're not talking about the weather.

23 I mean, we are trying to iron out and use leverage, and
24 that leverage may be you have a caucus with 40 votes, that
25 leverage may be you have a point of order that can kill the

1 bill for three days or kill the bill permanently, and if you
2 don't make any changes, it's going to get called.

3 And lots of times it could be just, you know, really a good
4 old-fashioned we're going to, you know, we're going to forget
5 who we are for a moment, we're going to try to do the right
6 thing, and we're going to look each other in the eye, shake our
7 hand and make an agreement.

8 That did not happen in the 2011 version of voter ID. And I
9 know that we did it for other controversial pieces of
10 legislation in the 11 session like Sanctuary Cities, which
11 probably next to voter ID or maybe right with voter ID had the
12 same ability to disenfranchise and sort of identify and single
13 out racial and ethnic minorities.

14 Q. And one final inquiry, were points of order and
15 parliamentary inquiries used in the process?

16 A. Absolutely. And I think, you know, as it relates to
17 departure of procedures, in an effort to pass this bill with
18 relatively, you know, quick ease, I myself even lodged a point
19 of order that dealt with a constitutional provision about not
20 letting these licenses deprive our Texas mobility fund because
21 we have about \$33 billion in credit agreements that rely on the
22 money to fund the debt service.

23 And while the point of order was overruled, I know I was
24 right because they ended up changing the legislation to say
25 yes, in fact, we have to go outside the bounds, which I can get

1 into if you're interested, that says we have to fix this
2 because otherwise we have an unconstitutional provision that
3 may violate our credit agreements with folks for our highway
4 construction.

5 And so, you know, going back to normal times, that
6 procedural of point of order probably could have, at a minimum,
7 set back the bill a week or three days, or if interpreted, you
8 know, another way, probably could have killed the bill all
9 together, and the fact that it was overruled without a real
10 explanation other than we're not going to get into the
11 substantive merits of Constitution, I know that I think I was
12 right because the outside the bounds resolution reflects my
13 argument that's well documented in the legislative journal.

14 Q. Is it common to fix those sorts of things in conference
15 with an out-of-bounds change?

16 A. Outside the bounds resolutions do happen. I am mostly
17 familiar with them on big ticket items like the budget. And if
18 I may, you know, the House passes a budget that says we're
19 going to do A and B; the Senate passes a budget that says we're
20 going to do C and D.

21 It goes into conference, and they come out with A, B, C, D
22 and E, and no one debated E before, then you have to go outside
23 the bounds and say, members, this is the conference report on
24 the budget, it does everything that both chambers said it's
25 going to do except we added this new provision that nobody

1 talked about, and we have to take a vote on it.

2 That's exactly what we do in voter ID. They took an
3 outside the bounds resolution, and the language, some of that
4 language that was used said specifically these IDs are free of
5 charge, and they will not be taken out of the mobility fund
6 because the language in our Texas Constitution says that you
7 will not reduce, diminish, or something else, our mobility fund
8 because this will mess up our credit agreements with our bond
9 holders.

10 MR. GARZA: Pass the witness.

11 JUDGE COLLYER: Thank you, sir.

12 Ms. Westfall.

13 MS. WESTFALL: Certainly.

14 ADDITIONAL DIRECT EXAMINATION

15 BY MS. WESTFALL:

16 Q. Good afternoon. And please take your time with water.

17 A. It's almost empty.

18 JUDGE COLLYER: Oh, oh.

19 THE WITNESS: Lots of water, thank you.

20 JUDGE COLLYER: We'll have more water by the time we
21 come back from lunch.

22 BY MS. WESTFALL:

23 Q. I just have a few additional questions about consideration
24 of Senate Bill 14 in the House for you, Representative.

25 Was Senate Bill 14 reported out of the Select Committee on

1 Vote ID and Voter Fraud?

2 A. Yes, it was.

3 Q. And was it then considered by another committee?

4 A. It was considered by the Committee on Calendars, which is
5 where all legislation goes once it's reported from the
6 committees.

7 Q. What is the role of the Calendars' Committee?

8 A. Well, the Calendars' Committee is sort of -- you could
9 have the best idea in the world. But if the members of the
10 Calendars' Committee don't think so, it will never see the
11 floor of the House as original legislation. And so it's a very
12 powerful role.

13 And for that reason any member on that committee has
14 considerable power, and we always hear about the ability to tag
15 legislation, or here in Washington, they tag nominations for
16 people who want to be, you know, appointees. Well, you have the
17 ability to tag legislation.

18 Q. Is tagging intended to facilitate getting a bill to the
19 floor or is it to slow down consideration of a bill by the
20 House?

21 A. As I understand it, at least I've had several pieces of
22 legislation tagged. Somebody can say I have a problem with
23 that bill. And because one person asks, every -- chairmen have
24 different rules, but the chairman now says we'll hold it for a
25 week just on the request by a member of the committee.

1 And so when you look at the number of members that would
2 have voted against voter ID that are on the Calendars'
3 Committee, and you look at the relative amount of time that it
4 took the bill to go from the Committee on Calendars to the
5 floor, I would have to say that anybody who tried to tag it,
6 that was not honored.

7 Q. Was it your perception based on what you just testified to
8 that tagging was not permitted for SB 14 in the Calendars'
9 Committee?

10 A. It might have been permitted, it may not have been
11 honored, and I think from the -- the best evidence is the
12 actions on the bill to show that it moved in six days of being
13 sent to the House Committee on Calendars. It was set for
14 debate schedule, and we know one tag has the ability to derail
15 legislation for a week at least.

16 Q. Based on your experience serving in the House, is it
17 fairly unusual not to allow tagging of bills?

18 A. You know, I think that part of -- in the sprita [phonetic]
19 core and the member relationship side, I think that it's sort
20 of what goes around comes around. And we always try to say
21 that we're not like other legislative chambers or national
22 congress and so fort.

23 But this is one instance where I think that, you know,
24 members of the Calendars' Committee may have worked in earnest
25 to try to delay something, and they were unable to.

1 Q. What was the practical effect of not honoring tagging by
2 the Calendars' Committee of SB 14?

3 A. Well, I think, I mean, the net result again is a bill went
4 to the House floor within six days. And, frankly, the first
5 time this bill went to the House floor, it was defeated on a
6 parliamentary point of order by a member of MALC, an officer of
7 MALC, and that bill went back to -- when you kill a bill on a
8 point of order that's procedural and the bill has to go back
9 and revert to the Standing Committee.

10 So in this instance the Select Committee on Voter ID and
11 Voter Fraud, they have to correct the error or correct the
12 flaw, send the committee report, which is additional paperwork,
13 back to Committee on Calendars. The printing has to occur, and
14 a bill like this would take some time to print, and there's a
15 queue, I mean, you just don't get to the front of the line. If
16 there's things that the House printing is doing, it just has to
17 wait in line.

18 And then ultimately it gets to the Committee on Calendars,
19 and then the chairman calls a calendar meeting, and then you
20 vote it out. And that sounds like it could take some time, but
21 in this instance it happened pretty much real time.

22 And so again, if it's back in Calendars, you're able to tag
23 it. And from the looks of things, just counting calendar days,
24 that did not happen.

25 Q. So is it your testimony that after there was a point of

1 order on the House floor and it went back to the Select
2 Committee, that it was virtually the same day or the same time
3 that it went back to the Calendars' Committee?

4 MR. HUGHES: Objection, leading.

5 JUDGE COLLYER: I think it's a clarification
6 question, you can answer that question.

7 THE WITNESS: Thank you, Judge.

8 Yes, I mean, just by virtue of time, I think that, you
9 know, the ability to get back to the floor, I think my memory
10 fades, but I think it's at least two days from the time that it
11 went to the House Committee on Calendars, it was back before
12 the floor.

13 BY MS. WESTFALL:

14 Q. And representative, did you participate in the House
15 debate on Senate Bill 14?

16 A. Yes, I did.

17 Q. Could you describe your roll?

18 A. Well, I don't know that I had a role. When legislation
19 comes to the floor, it's a members only project. And so we
20 represent our districts, and we do so very passionately.

21 As a chairman of MALC, I think I had a responsibility to
22 read, I think I knew a little bit about the subject matter, and
23 so many of us got together and engaged.

24 I offered lots of debate. I debated the author of the
25 bill. She, you know, despite the fact that it was a very bad

1 night for us, we are friends. But I debated her a lot. I
2 tried two or three points of order. And I even filed an
3 amendment.

4 Q. And while you were participate in the debate of Senate
5 Bill 14, did you become aware of the stated reasons in support
6 of the bill?

7 A. Well, I did and I didn't. I mean, again, just that the
8 goal post kept moving. It was we need to do it because of
9 this. In this instance, it was, you know, dealing with
10 immigrants, and when the counterpoint was brought up, they
11 said, well, you know, it really deals with voter fraud.

12 You know, but again, at the end of the day when you look
13 through all the rationale, you think it has something to do
14 about voting, but, you know, there's been lots of discussion
15 about the author of the bill that says that voter ID is
16 immigration policy.

17 And so anybody who thinks that voter identification
18 legislation is good immigration policy, then maybe voter
19 identification and voting in elections was not the primary
20 place.

21 And, frankly, if you're looking at illegal immigration, in
22 the State of Texas you're looking at immigration concerning
23 people that look like me.

24 Q. And so did you -- did you know if these were the real
25 reasons that the bill's supporters stated on the House floor?

1 A. I think that --

2 MR. HUGHES: Objection, Your Honor, I think that
3 calls for speculation and reading of the minds.

4 JUDGE COLLYER: Well, the answer is, the answer is,
5 did you know, yes or no, on what basis, and then you elicit
6 once you have a foundation --

7 MS. WESTFALL: Yes, Your Honor.

8 JUDGE COLLYER: -- whether or not. So the answer to
9 that question can be answered. Do you have a have any idea, do
10 you know?

11 THE WITNESS: Just for clarification, the question
12 is?

13 BY MS. WESTFALL:

14 Q. Do you know if the reasons stated on the House floor by
15 the bill's supporters were the real reasons?

16 JUDGE COLLYER: And so just say "yes" or "no" whether
17 you know that.

18 THE WITNESS: I don't know that.

19 BY MS. WESTFALL:

20 Q. Okay. Are you familiar with election identification
21 certificates?

22 A. I am now. I wasn't before. I don't think I've ever seen
23 one.

24 Q. And what are they?

25 A. Well, the election identification certificate the state is

1 talking about is something that looks like a driver's license,
2 it's, you know, processed at the same place where our driver's
3 licenses are processed, and I've yet to see a prototype or even
4 rules concerning what one would look like.

5 Q. Where can you obtain an election identification
6 certificate?

7 A. Well, I believe ultimately at DPS offices in the state.

8 Q. How many driver license offices serve the City of San
9 Antonio?

10 A. As I recall, there are three in the City of San Antonio,
11 there's one in construction in the area that I testified to
12 earlier that will not be on line in time for the November
13 elections.

14 Q. Based on your knowledge of San Antonio, does DPS
15 adequately serve the needs of the city's residents?

16 A. You know, it was very interesting because the day I was
17 deposed by the state, I was asked the very same question, and
18 it just so happened the night before there was a lead story on
19 the ABC news affiliate that talked about a two-hour wait when
20 we were about 140 days out of a national election.

21 There was a two-hour wait at the Babcock Station, which is
22 in the district I represent, without one tree for shade and
23 without one courtesy employee making sure that these people in
24 line had everything they needed to receive their license.

25 And the exact footage was of a young Latino woman who stood

1 in line for two hours and gets to the front of the line, and
2 they tell her she didn't have the necessary documents so she
3 had to leave. And she was back the very next day standing in
4 line. And so I think that that is the sentiment.

5 As a legislative leader, I've had the ability to engage in
6 conversations with our regional commander for DPS, and I don't
7 think San Antonio is a outlier with respect to that problem.

8 Q. And do the conditions that you just testified to, driver
9 license offices in San Antonio, do they affect all of your
10 constituents equally?

11 A. Not only the constituents I represent, but if you're one
12 of three facilities in the second largest city in the state,
13 that's going to affect more than the people I represent, it's
14 going to affect, you know, any one of the potential, you know,
15 1.3 million citizens of Bexar County that want to go there to
16 get their license.

17 Q. But do the conditions impact certain neighborhoods in San
18 Antonio more significantly than others?

19 A. Well, and part of the discussion and debate, it was this
20 notion of, you know, this legislation was coming at a time that
21 the governor asked all state agencies to cut five percent of
22 their budget, then cut another five percent. It's never been
23 articulated to me that there were more monies put into DPS's
24 budget to deal with this added responsibility.

25 And most importantly, when we talk about the challenges in

1 rural Texas, when we talk about the challenges in big urban
2 communities, the department has the ability to dispatch
3 resources to have mobile registration facilities.

4 And they could, you know, perhaps go to these communities
5 one day a week. Because the circumstance in the district I
6 represent, there is a tremendous amount of working poor people.
7 And if you don't have a driver's license, then you're likely
8 going to be on a bus line. And if you're on a bus line, and
9 the DPS facility is only open between the hours of eight and
10 five, you're going to have to make some personal economic
11 decisions to see if you can actually go during business hours.
12 And the only adjustment that I can see that's been made to
13 comport with the dictates of SB 14 is that DPS offices, at
14 least in San Antonio, are open till 6:00 p.m. on Tuesdays as
15 opposed to 5:00 p.m.

16 Q. And did you express any of these --

17 JUDGE COLLYER: I'm sorry, I need to call a break for
18 lunch. So we're going to call a break, and you can think about
19 it. All right.

20 We'll pick up here, sir. Please don't talk about your
21 testimony with anyone during the break. Okay?

22 THE WITNESS: Yes, ma'am.

23 JUDGE COLLYER: We're going to break for lunch. It's
24 12:30 on the button, and we'll be back at two on the button.
25 Thank you, everybody.

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WITNESSES

On behalf of the Plaintiff:

	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Professor Thomas Sager				
By Mr. Mortara	5			
By Mr. Sells		31		
By Mr. Harris			93	
By Mr. Mortara				105

On behalf of the Defendant Intervenors:

Trey Martinez Fischer				
By Mr. Garza	111			
By Ms. Westfall		131		

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CERTIFICATE

I certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages, of the stenographic notes provided to me by the United States District Court, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not financially nor otherwise interested in the outcome of the action.

/s/Crystal M. Pilgrim, RPR

Date: July 11, 2012

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