IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

- -

WILLIAM WHITFORD, et al.,

       Plaintiffs,

   v.   Case No. 15-CV-421-bbc

GERALD NICHOL, et al.,

       Defendants.

- -

DEPOSITION OF

SEAN P. TRENDE

Milwaukee, Wisconsin

December 14, 2015

8:00 a.m. to 11:12 a.m.

Kathy A. Halma

Registered Professional Reporter

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1   A P P E A R A N C E S
2   FOR THE PLAINTIFFS:
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1   FOR THE DEFENDANTS:
2   STATE OF WISCONSIN DEPARTMENT OF JUSTICE
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9   I N D E X
10 SEAN P. TRENDE
11 By Mr. Strauss..4
12   E X H I B I T S
13 Exhibit 15 Declaration of Sean P. Trende.............4
14
15 (The original exhibit was retained by the court
16 reporter and attached to the original transcript.)
17
18 (The original transcript was sent to Attorney Strauss.)
19
20
21
22
23
24
25

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1   P R O C E E D I N G S
2   (Exhibit 15 was marked.)
3   SEAN P. TRENDE, called as a witness
4   herein by the Plaintiffs, after having been first
5   duly sworn, was examined and testified as
6   follows:
7   EXAMINATION
8   BY MR. STRAUSS:
9   Q   Would you state and spell your name for the
10   record, Mr. Trende?
11 A   **Sean Patrick Trende; S-E-A-N P-A-T-R-I-C-K**
12   **T-R-E-N-D-E.**
13 Q   Are you suffering from any illness today? Have
14   you taken any medication that would interfere
15   with your memory, your thinking process or your
16   ability to remember?
17 A   **I have Crohn's disease. I am not taking any**
18   **medication that interferes with my thinking**
19   **process, my ability to remember or whatever the**
20   **third factor was.**
21 Q   And does the Crohn's disease interfere with your
22   memory or your ability to think clearly or --
23   well, does it interfere with your memory or your
24   ability to think clearly?
25 A   **No, the only thing is that I may have to get up**

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1   **suddenly. I will answer whatever question you**
2   **have pending, but when stress kicks in, things**
3   **happen quickly.**
4   Q   Okay. I would ask you to make sure you
5   understand my question. If you don't understand
6   my question, please ask me to rephrase it. If I
7   use a term that doesn't make sense, please tell
8   me. Will you do that?
9   A   **I will do that.**
10 Q   Have you ever written an article that was
11   published in a peer-reviewed publication?
12 A   **No.**
13 Q   Do you serve or have you ever served on any
14   editorial board of any peer-reviewed journals?
15 A   **I have peer-reviewed articles, but I never served**
16   **on an editorial board.**
17 Q   What do you mean you have peer-reviewed articles?
18 A   **I have been a peer reviewer for articles.**
19 Q   I see. And you have been a peer reviewer for
20   what journals?
21 A   **Party Politics and PS.**
22 Q   And what are those publications?
23 A   **They are political science journals.**
24 Q   Have you ever written anything about partisan
25   gerrymandering in any peer-reviewed publication?

2 (Pages 2 to 5)

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1   A   I have never written a peer-reviewed article, so
2   no.
3   Q   Have you ever written anything about partisan
4   gerrymandering prior to your affidavit in this
5   case?
6   A   Yes.
7   Q   And where have you written about partisan
8   gerrymandering?
9   A   At RealClearPolitics. I believe there is -- and
10   just for our purposes, I'm not going to -- when I
11   use the term "partisan gerrymandering," I'm going
12   to use it in a lay sense. If you want to talk
13   about the efficiency gap as partisan
14   gerrymandering, I'm happy to do that. But I have
15   written about partisan gerrymandering in the lay
16   sense at Real Clear Politics, and I believe it is
17   in my book, as well.
18 Q   Have you ever written anything about geographic
19   clustering as it relates to gerrymandering
20   outside of this case?
21 A   Yes.
22 Q   Where?
23 A   I have written about it at RealClearPolitics.
24   It's contained in my book. There may be stuff in
25   The Almanac that I wrote about it, The Almanac of

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1   American Politics 2014, and I can't remember if
2   either of the Sabato articles include a section
3   on it.
4   Q   Prior to getting paid to work on this case, had
5   you ever done any study or writing related to
6   state legislative districts in Wisconsin?
7   A   No.
8   Q   Prior to getting paid on this case, had you ever
9   done any study or work or writing about
10   redistricting of state legislative districts in
11   Wisconsin?
12 A   There may be something in my work at
13   RealClearPolitics, but nothing I can remember off
14   the top of my head. I have something on the
15   order of 200 to 300 articles online. I can't
16   remember everything in them, but my recollection
17   is no.
18 Q   Prior to getting paid to work on this case, have
19   you ever done any study or done any writing about
20   the geographic location of Democratic and
21   Republican voters in Wisconsin?
22 A   Again, with the caveat that I don't remember
23   everything that is contained in my online body of
24   work, I can't remember anything as I sit here.
25 Q   Prior to getting paid to work on this case, what

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1   study or writing had you done about politics in
2   Wisconsin?
3   A   I know I wrote about the recall election in 2011
4   at RealClearPolitics. I almost certainly covered
5   it for the presidential, gubinatorial and senate
6   elections for 2010, 2012 and 2014.
7   Q   You do not have a PhD, correct?
8   A   I do not.
9   Q   Did you consider going into a PhD program?
10 A   Yes.
11 Q   Did you apply to any graduate school PhD programs
12   anywhere?
13 A   Yes.
14 Q   Where did you apply?
15 A   The Ohio State University.
16 Q   And were you admitted there?
17 A   It's pending.
18 Q   I see. When did you apply there?
19 A   Last month.
20 Q   I see. Your master's thesis is not published
21   anywhere, is that correct?
22 A   No.
23 Q   You were an editor for the Duke Law Journal?
24 A   That's correct.
25 Q   Did you publish anything in the Duke Law Journal?

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1   A   Yes.
2   Q   What was the article you published in the Duke
3   Law Journal?
4   A   It was about racial gerrymandering or -- I'm
5   sorry -- racial profiling. It wasn't an article,
6   either, it was a note.
7   Q   And the Duke Law Journal is edited by law
8   students, correct?
9   A   That's correct.
10 Q   It's not a peer-reviewed publication?
11 A   That's correct.
12 Q   Now in your affidavit in Paragraph 5 you say, "I
13   have a tremendous amount of respect for
14   Dr. Jackman's work." That's referring to Simon
15   Jackman, one of the plaintiffs' experts. Would
16   you agree that Professor Jackman is more
17   qualified to do political science analysis than
18   you are?
19 A   No. And I believe that's in Paragraph 6.
20 Q   Would you agree that he's more prominent in the
21   field of political science than you are?
22 A   Yes. And I would agree that there are certain
23   types of political science work that he's
24   certainly more qualified than me to do. I would
25   think that he could write and R package better

3 (Pages 6 to 9)

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1   than I could, but as broadly as that question is
2   phrased, I will say no.
3   Q   What other areas of political science work would
4   you say he's more qualified to do work than you?
5   A   Oh, I would have to look over his CV, but I
6   believe -- the example that I came up with, I
7   know he's written a few R packages. That's
8   political science work where he's clearly more
9   qualified.
10 Q   Would you agree that Professor Jackman has
11   greater expertise in statistical analysis than
12   you do?
13 A   As a general matter, yes. I don't know about
14   every particular subdiscipline of statistical
15   analysis, but he's a professor of statistics.
16 Q   You worked at three law firms over the course of
17   eight years, is that correct?
18 A   That's correct.
19 Q   Were you ever offered a chance to become a
20   partner at any of those firms?
21 A   No.
22 Q   Why did you leave David, Kamp & Frank?
23 A   Because I was offered a job at RealClearPolitics.
24 Q   Before you left David, Kamp & Frank, were you
25   told that you would not become a partner there?

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1   A   No.
2   Q   Did you have a job lined up at RealClearPolitics
3   when you left David, Kamp & Frank?
4   A   Yes.
5   Q   How much were you last paid at David, Kamp &
6   Frank?
7   A $90,000 a year.
8   Q   And when you started at RealClearPolitics, you
9   started as a part-time employee, is that right?
10 A   In early 2009, yes.
11 Q   And what was your rate of pay when you started
12   there?
13 A $20,000 a year.
14 Q   So why did you choose to leave a job at David,
15   Kamp & Frank where you were paid $90,000 a year
16   to go to a part-time job at RealClearPolitics
17   where you were paid $20,000 a year?
18 A   That's not correct.
19 Q   Explain, please.
20 A   Well, I left David, Kamp & Frank in 2010.
21 Q   And you started at RealClearPolitics in 2011?
22 A   No, I began at RealClearPolitics full time in
23   2010. I was paid $87,500 a year.
24 Q   I'm confused. I thought you said that when you
25   started you were part time and you were paid

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1      $20,000 a year?
2   A   That was in 2009.
3   Q   Oh, you started at RealClearPolitics while you
4   were working at David, Kamp & Frank?
5   A   I think that's right.
6   Q   Okay. And so did you begin working full time at
7   RealClearPolitics immediately after leaving
8   David, Kamp & Frank?
9   A   Yes.
10 Q   I see.
11 A   And I took the $2,500 pay cut because my son was
12   diagnosed with autism and I needed the
13   flexibility to take him to therapies. My wife is
14   also an attorney.
15 Q   So did you write any published writings related
16   to politics while you were an associate at the
17   firm of David, Kamp & Frank?
18 A   Yes.
19 Q   And you published in RealClearPolitics, is that
20   right?
21 A   That's correct.
22 Q   Did you publish anywhere other than
23   RealClearPolitics prior to beginning to work
24   there?
25 A   RealClearPolitics has a blog, and I wrote on the

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1   RCP blog.
2   Q   Your position title when you started at
3   RealClearPolitics was Senior Elections Analyst?
4   A   I don't know if that was my title on day one when
5   I was part time, but that was the title when I
6   started full time.
7   Q   And that's what your title is today?
8   A   Yes.
9   Q   Have you ever been promoted at RealClearPolitics?
10 A   No. We don't really have the structure of
11   promotions that way. I guess in a sense I have
12   been promoted in that I have someone working
13   under me now and we're looking to hire additional
14   people to work under me, but I don't know what
15   the promotion above that would be other than
16   owning the company.
17 Q   Do you have any role in editing articles written
18   by other people at RealClearPolitics?
19 A   Yes.
20 Q   What role do you have?
21 A   I supervise and edit the work of David Bieler,
22   our election analyst.
23 Q   RealClearPolitics is a political website, is that
24   right?
25 A   That's correct.

4 (Pages 10 to 13)

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1 Q   Is it published in paper form or only online?
2 A   **No, we don't do dead tree publishing. It's only**
3   **online.**
4 Q   Dead tree publishing. That's quite a term. In
5   the old days we called that reading things on
6   paper.
7 A   **Yeah.**
8 Q   Who owns RealClearPolitics?
9 A   **RealClear Holdings, LLC.**
10 Q   And who owns that?
11 A   **I don't know.**
12 Q   Is it a publicly-traded company?
13 A   **No.**
14 Q   Is it a family-owned company?
15 A   **Again, you are getting into -- you are getting**
16   **into the ownership structure that I'm not**
17   **intimately familiar with.**
18 Q   Is it paid for by subscriptions?
19 A   **No.**
20 Q   Do you know if it's supported by advertising?
21 A   **I know that advertising plays a role.**
22 Q   Do you know if it's fully supported by
23   advertising?
24 A   **I don't know.**
25 Q   Do you know the size of the readership of

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1 Q   Are articles peer-reviewed at RealClearPolitics?
2 A   **In the sense that a political science article**
3   **would be peer-reviewed or refereed, no.**
4 Q   Does RealClearPolitics have staff that writes --
5   That's a bad question. Let me start again.
6   Do only staff at RealClearPolitics write
7   articles that are published in RealClearPolitics
8   or are there also guest writers who publish in
9   RealClearPolitics?
10 A   **There's a guy Bill Scher, S-C-H-E-R, and I'm not**
11   **really sure exactly -- pardon the pun -- I'm not**
12   **really certain exactly what his relationship to**
13   **the site is, if he's full time or on a 1099**
14   **relationship with us, a contractor. I think**
15   **there are people who from time to time write**
16   **guest posts. And, of course, you know, a large**
17   **portion of the front page is providing links to**
18   **other sites. I don't know how you characterize**
19   **that.**
20 Q   You write in your affidavit in Paragraph 41 that
21   RealClearPolitics is routinely cited by people,
22   including David Brooks of the New York Times,
23   Brit Hume of Fox News, Michael Barone of The
24   Almanac of American Politics, Paul Gigot of the
25   Wall Street Journal and Peter Beinart of The

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1   RealClearPolitics?
2 A   **Somewhere in excess of 1 million people. I don't**
3   **know if that's a month or a day.**
4 Q   Can you describe the characteristics of the
5   average reader of RealClearPolitics?
6 A   **No.**
7 Q   Who is the -- When you write for
8   RealClearPolitics, who do you imagine is the type
9   of person who's going to read your articles?
10 A   **Well, judging from the feedback that I get**
11   **through email and conversations, it's a variety**
12   **of political science professors all the way to,**
13   **you know, media type, members of Congress and**
14   **senators, all the way down to, you know, people**
15   **who write and can't really read and say to you.**
16 Q   Are there any requirements or prerequisites to
17   write for RealClearPolitics?
18 A   **You have to be hired.**
19 Q   Is there a PhD requirement?
20 A   **No.**
21 Q   A law degree requirement?
22 A   **No.**
23 Q   A college degree requirement?
24 A   **I would assume we would only hire people with**
25   **college degrees, but I don't know.**

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1   Atlantic. Is it fair to say that all of those
2   people are journalists and political opinion
3   writers?
4 A   **Barone, B-A-R-O-N-E, is a little different, but**
5   **certainly I think that would apply to the other**
6   **four.**
7 Q   And how is Barone different?
8 A   **Well, he's been the author of The Almanac of**
9   **American Politics for 40 years now. He's**
10   **probably accidentally forgotten more about**
11   **elections than all of us sitting at the table**
12   **combined have ever known. I don't -- he doesn't**
13   **have a PhD. He has a JD. He's just kind of in a**
14   **separate category.**
15 Q   Do you know any political scientists or
16   economists or other academics at colleges or
17   universities who routinely cite RealClearPolitics
18   as an authoritative source of information?
19 A   **I get emails from people saying they are using my**
20   **work. I know a guy Cuzan, C-U-Z-A-N, in Florida**
21   **said that -- was anxious for me to finish a piece**
22   **I'm writing on statistics boiled down so he could**
23   **use the third part in his class. I don't know**
24   **about routinely. I'd have to look at syllabi**
25   **across the country. I know that David Mahew at**

5 (Pages 14 to 17)

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1   Yale University had my book on his syllabus for
2   his election law seminar. But, again, I don't
3   see the syllabi that professors put out, so I
4   couldn't say with certainty on that.
5   Q   In Paragraph 42 of your affidavit you describe
6   what you call your main responsibilities at
7   RealClearPolitics. Is it correct to say your
8   main responsibilities at RealClearPolitics do not
9   include studying or writing about state
10   legislatures?
11   A   No. I mean, state legislatures are important to
12   elections, especially in redistricting years.
13   You know, there's no caveat on elections. Even
14   state legislative -- in state legislative
15   elections like Wisconsin's in 2011 can be -- and
16   2012 can be crucial for presidential politics and
17   federal politics. So I wouldn't answer that
18   question yes as broadly as it's asked.
19   Q   Well, you wrote that you are -- you specifically
20   mention in Paragraph 42 rating the
21   competitiveness of House of Representative races
22   and collaborating in rating the competitiveness
23   of Presidential, Senate and gubinatorial races.
24   You did not mention anything about rating the
25   competitiveness of state house elections, state

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1   legislative elections. Why did you not include
2   that in your list of your responsibilities in
3   Paragraph 42?
4   A   Because we don't have a separate page where I
5   rate the competitiveness of state legislative
6   races, but that doesn't mean that I don't track,
7   analyze or write about them.
8   Q   So you have a separate page for writing about the
9   competitiveness of these other types of
10   elections?
11   A   No, we have a page that summarizes the outcomes
12   of House of Representative races, how we believe
13   they lean. The same is true for Presidential,
14   Senate and gubinatorial races. We don't have a
15   page for state legislatures, what we think the
16   outcome is going to be.
17   Q   And isn't it correct to say that your main
18   responsibilities at RealClearPolitics do not
19   include studying or writing about state
20   legislative redistricting?
21   A   That's part of what I do, but it's not -- I mean,
22   the focus tends to be on federal races.
23   Q   So it's not one of your main responsibilities at
24   RealClearPolitics to study or write about state
25   legislative redistricting, is that correct?

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1   A   Well, again, it's part of what I do, but the
2   focus is on federal races.
3   Q   Have you ever written anything about state
4   legislative redistricting?
5   A   You would have to check the publicly available
6   articles. I'm sure I have at some point. As a
7   matter of fact, I know I have, especially in the
8   wake of the 2010 elections. I just don't know
9   the specifics of it.
10   Q   Have you ever drawn a state legislative map?
11   A   For pay?
12   Q   No, no, not for pay. Just period. Have you ever
13   drawn a state legislative map?
14   A   Out of curiosity, yes.
15   Q   And for any purpose other than your own curiosity
16   have you ever drawn a state legislative map?
17   A   Yes, I might have done it for the articles that
18   are on RealClearPolitics, especially during the
19   redistricting cycle. I don't know off the top of
20   my head which specific articles.
21   Q   You wrote chapters in books edited by Larry
22   Sabato. Larry Sabato is a professor at the
23   University of Virginia?
24   A   Yes, Dr. Sabato, S-A-B-A-T-O, is at UVA, and I
25   believe he's a professor there.

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1   Q   Is he a consultant to any political party?
2   A   Not to my knowledge.
3   Q   Is he a consultant to any political candidate?
4   A   Not to my knowledge.
5   Q   Is he a commentator on television?
6   A   Yes.
7   Q   On which networks on television is he a
8   commentator?
9   A   I don't know.
10   Q   What was the thesis of the book The Surge:
11   2014's Big GOP Win, if you can say generally what
12   the thesis was?
13   A   There wasn't a thesis. It's a collection of
14   articles by different analysts. There's a
15   chapter from a Democrat saying what this means
16   for 2016, there's a chapter from a Republican
17   saying what it means for 2016. It doesn't have a
18   central thesis. It's a variety of perspectives.
19   Q   You wrote Chapter 12 in the book?
20   A   Yes.
21   Q   And what is that chapter? What's the title of
22   that chapter?
23   A   I don't remember the title of it.
24   Q   What is the chapter about?
25   A   The chapter is about the Electoral College and

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1	**2016.**
2	Q Can you explain a little bit more?
3	A **Oh, yeah, sure. So the idea is that a lot of**
4	**analysis of elections have looked -- have tended**
5	**to focus on popular vote and demographic shifts**
6	**over time. But when you are looking at the**
7	**presidential election, you need to look at the**
8	**Electoral College, and that's a different type of**
9	**analysis because different demographic groups**
10	**tend to be clustered, and so the impact of the**
11	**Hispanic population is substantial, for example,**
12	**on the popular vote, but on the Electoral College**
13	**it tends to be minimized because it's so heavily**
14	**concentrated in states like California and Texas.**
15	**So what I look at is over time how --**
16	**The analogy that I draw is that the Electoral**
17	**College is like a ladder where the individual**
18	**states are rungs ordered from say the most**
19	**Democratic to the least Democratic, and then you**
20	**imagine a swimming pool where the level rises and**
21	**falls, and that's kind of the national mood. As**
22	**the tide rises, states that were Democratic go**
23	**into the Republican pool.**
24	**So it looks at how stable the ordering**
25	**of the ladder has been historically and in recent**

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1	**years, and then has a short analysis of what we**
2	**could expect with the pool, although I tend to**
3	**defer to Dr. Alan Abrmowitz's chapter on that to**
4	**give an idea how to think about the 2016**
5	**election.**
6	Q Did you make any recommendations in that chapter?
7	A **No.**
8	Q Who was your intended audience for that chapter?
9	A **Again, Dr. Sabato's books tend to be the crystal**
10	**ball. The Center for Politics generally caters**
11	**to a more academic audience, professional**
12	**audience. You know, they have people like Dr.**
13	**Alan Abramowitz writing there, Dr. Ted Arrington**
14	**writing there. So I did have a more heavily**
15	**skewed towards academics and professional**
16	**audience in mind there.**
17	Q Was your chapter peer reviewed before
18	publication?
19	A **It didn't go through what we would call the**
20	**formal peer review process for a political**
21	**science journal. Dr. Sabato is a political**
22	**scientist and he, obviously, analyzed it, but it**
23	**wasn't double-blind reviewed.**
24	Q Was there any fact checking before publication of
25	your chapter?

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1	A **Yes.**
2	Q Who did the fact checking?
3	A **Either Kyle Kondik or -- K-O-N-D-I-K or Geoffrey**
4	**Skelley, S-K-E-L-L-E-Y.**
5	Q Do you consider that chapter that you wrote to be
6	the equivalent in terms of academic rigor to a
7	publication in a peer-reviewed academic journal?
8	A **There's a lot of assumptions in the terms you use**
9	**there. I would say it has a different form and a**
10	**different intended audience, but I think the**
11	**conclusions of it would stand up, as well.**
12	Q And what's different about the intended audience?
13	A **Well, like I said, the audience is intended to**
14	**have an academic bent to it, but also**
15	**professionals. I wanted to write it in a**
16	**language that anyone could understand, which is**
17	**generally the goal of my writing, whereas if you**
18	**are writing peer-reviewed literature, you are**
19	**writing in jargon that most political scientists**
20	**will understand. So it has a different style to**
21	**it.**
22	Q When you say that your intended audience includes
23	professionals, what type of professionals are you
24	talking about?
25	A **Oh, like congressional staff, professional**

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1	**writers, journalists, analysts, consultants, kind**
2	**of the professional political class.**
3	Q What was the thesis of this Sabato book Barack
4	Obama and the New America?
5	A **It's the same answer. It doesn't really have a**
6	**thesis.**
7	Q Paragraph 47 of your affidavit says it discussed
8	the demographic shifts accompanying the 2012
9	elections. What did it say about those
10	demographic shifts?
11	A **Well, that's I guess -- I guess I could have used**
12	**a copy edit. The clause or phrase, whichever it**
13	**is, refers back to the chapter, not the book.**
14	Q Oh, I see. So you wrote Chapter 12 in this book,
15	also?
16	A **I think it's Chapter 12 in both books, actually.**
17	Q And what was the title of Chapter 12 in the book
18	Barack Obama and the New America?
19	A **Again, I don't remember the exact title.**
20	Q What was the thesis of your chapter?
21	A **Well, the question was whether 2012 was a**
22	**realigning election, and I say, no, I don't**
23	**really believe in realigning elections. But even**
24	**setting that aside, I kind of go through the**
25	**traditional metrics for discerning what a**

7 (Pages 22 to 25)

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1   realigning election is and show how 2012 doesn't
2   really meet those various metrics.
3   Q   What do you mean when you say you don't believe
4   in realigning elections?
5   A   Well, so this is going to require some
6   background, but there's an old theory dating back
7   to the '50s from V. O. Key who had an article
8   called Critical Elections. I'm sorry. I'm
9   blanking on the article, the name of Key's
10   article, but he talks about some elections that
11   bring about sudden and enduring changes, and he
12   looks at 1896 and 1928 in New England, and from
13   this has kind of grown this cottage industry in
14   political science about this idea of realigning
15   elections.
16   Walter Dean Burnham in the 1960s has a
17   book Critical Elections in the Mainsprings of
18   American Politics hypothesizing that there's like
19   a 30-year cycle, and you see that repeated from
20   people who got their undergrad degrees in
21   political science in the 1970s and '80s, but the
22   idea is increasingly falling out of favor.
23   David Mayhew had a book in 2003 that was
24   just I think devastating to the theory. It
25   doesn't have as much cache among younger

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1   political scientists, and I tend to agree with
2   the viewpoint that realignment theory doesn't
3   explain elections very well.
4   Q   Was that chapter peer reviewed before
5   publication?
6   A   Again, Dr. Sabato is a political scientist and he
7   would have read it, but it doesn't follow the --
8   it doesn't follow what we would think of as the
9   traditional peer-reviewed process of double-blind
10   reading.
11 Q   Did you make recommendations in that chapter?
12 A   No. Well, other than people shouldn't write
13   about realignment theory anymore.
14 Q   And, again, what was your intended audience for
15   that publication?
16 A   It would have been the same as the 2014 book, the
17   book on 2014 which I guess came out in 2015 for
18   more of an academic/professional audience.
19 Q   Your resume lists publications from the last ten
20   years. Do you have a list of publications of
21   yours from before that?
22 A   It would just have been the Law Review note.
23 Q   Okay. Now you have made a number of
24   presentations and appearances that are noted on
25   your resume. One of them is at The Heritage

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1   Foundation. How did you come to speak there?
2   A   I was invited.
3   Q   Okay. Now the website of The Heritage Foundation
4   says, "Founded in 1973, The Heritage Foundation
5   is a research and educational institution, a
6   think tank, whose mission is to formulate and
7   promote conservative public policies based on the
8   principles of free enterprise, limited
9   government, individual freedom, traditional
10   American values and a strong national defense."
11   Would it be fair to characterize The Heritage
12   Foundation as a conservative institution?
13 A   Oh, yes. I think as traditionally as that word
14   is used at least in American politics, that's
15   correct.
16 Q   Why do you think The Heritage Foundation asked
17   you to speak there?
18 A   Because they read my analysis of the implication
19   of the Evenwell, E-V-E-N-W-E-L-L, case and was --
20   were having a symposium that included a panel on
21   Evenwell, and not many people have a lawyer who's
22   written on it, but not many people have written
23   on the implications of it. I had and they wanted
24   me to write or speak on the potential
25   implications of the decision.

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1   Q   What did you write about the potential
2   implications of the decision?
3   A   Oh, it's an article on -- it's in an article on
4   the site, but I wrote about how if the court were
5   to find for the plaintiffs, it would push
6   districts out into -- in a lot of states into
7   Republican territory and make them more
8   Republican and probably result in a five to ten
9   seat GOP pickup, at least in the short term.
10 Q   Another place you spoke was at Berry College.
11   How did you come to speak there?
12 A   I was invited to engage in a debate about the GOP
13   primary process.
14 Q   Did you have any previous association with Berry
15   College?
16 A   No.
17 Q   And who participated in this debate?
18 A   Jay Cost.
19 Q   Who was he?
20 A   He was a writer at RealClearPolitics at the time.
21   He's with The Weekly Standard now.
22 Q   And was one of you taking a liberal position and
23   one of you taking a conservative position?
24 A   No, the debate was over whether the primary
25   process makes sense. I don't know what you would

8 (Pages 26 to 29)

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1   call a liberal or conservative position for that.
2   Q   What position were you taking?
3   A   I said that the primary process, the
4   primary/caucus process makes sense.
5   Q   From the website of Berry College it says, "Berry
6   College is a comprehensive liberal arts college
7   with Christian values. The college furthers our
8   students intellectual, moral and spiritual
9   growth, proffers lessons that are gained from
10   worthwhile work done well and challenges them to
11   devote their learning to community and civic
12   betterment. Berry emphasizes an educational
13   program committed to high academic standards
14   based on Christian principles, practical work
15   experience and community service in a distinctive
16   environment of natural beauty." Would you agree
17   that -- Well, would it be fair to characterize
18   Berry College as a conservative institution?
19   A   It's sounds like a Christian institution. I
20   don't know about its politics.
21   Q   Would it be fair to say that in the United States
22   most institutions that characterize themselves as
23   Christian institutions are conservative in their
24   politics?
25   A   I actually don't think I would agree with that.

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1   Q   All right. You spoke at the American Enterprise
2   Institute?
3   A   Yes.
4   Q   And how did you come to speak there?
5   A   I was invited to do a lecture on my book The Lost
6   Majority.
7   Q   And would you agree that the American Enterprise
8   Institute -- Would it be fair to characterize the
9   American Enterprise Institute as a conservative
10   institution?
11   A   I would probably call it neoconservative.
12   Q   And what is the difference in your mind between
13   neoconservative and conservative?
14   A   So neoconservatism kind of grows out of -- it
15   actually grows out of the Bobby Kennedy campaign
16   of all places, but it tends to be more aggressive
17   in its -- or assertive, if you prefer, in its
18   foreign policy than traditional paleoconservatism
19   that has more of an isolationist streak to it.
20   It tends to be open to a more activist role for
21   government to utilize markets to bring about
22   fixed social welfare problems. Today it's most
23   famous for the foreign policy of it, but
24   traditionally it has involved that government
25   aspect, as well.

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1   Q   And in what aspects would you call it a
2   conservative institution?
3   A   Well, again, it gets to the question of what
4   counts as conservative. I would call it
5   neoconservative.
6   Q   You spoke also at the CATO Institute?
7   A   Yes.
8   Q   How did you come to speak there?
9   A   Someone from the CATO Institute saw my speech at
10   AEI about my book The Lost Majority and offered
11   to let me speak at CATO.
12   Q   Would it be fair to characterize the CATO
13   Institute as a conservative institution?
14   A   I would not characterize as conservative. I
15   would call it Libertarian.
16   Q   You spoke at something called the Bipartisan
17   Policy Center?
18   A   That's true.
19   Q   What is that organization?
20   A   It's an organization that aims to be centrist
21   and, I mean, I don't want to be reductionist, but
22   kind of offers bipartisan takes on political
23   problems.
24   Q   How did you get asked to speak at the Bipartisan
25   Policy Center?

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1   A   I was invited. I honestly don't remember who
2   gave the offer. I remember I was in a room with
3   John Fortier and Dan Glickman talking about --
4   before I went on the panel. But, like I say, I
5   don't remember exactly who gave me the invite.
6   Q   So when you spoke at the Bipartisan Policy
7   Center, you spoke on a panel, is that right?
8   A   Correct.
9   Q   Who was on the panel?
10   A   I was on the panel and Ruy Teixeira,
11   T-E-I-X-E-I-R-A.
12   Q   And who is he?
13   A   He's an author who believes in realignment
14   theory, and so we were discussing realignment.
15   Q   He was taking the position that there is
16   realignment elections, and you were taking the
17   position that there are not realignment
18   elections, is that right?
19   A   Yes, he's a coauthor of The Emerging Democratic
20   Majority, which is a book that I reference later
21   on, and so we were discussing political trends.
22   Actually, now as I talk it through, he had a book
23   on the Mountain West that had just been
24   published, and we were talking about political
25   trends in the Mountain West, but also taking a

9 (Pages 30 to 33)

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1   broader discussion of realignment politics.
2   Q   You also spoke at something called the Annual
3   Family Office Wealth Management Forum?
4   A   Yes.
5   Q   What is that organization?
6   A   There are a group of investors who wanted me to
7   discuss elections. That was a paid presentation.
8   Q   Were you asked to speak about elections -- any
9   particular aspect of elections?
10   A   The 2012 elections and what the likely outcomes
11   were.
12   Q   And what did you say about that?
13   A   I would never give a definitive answer in June as
14   to what's going to happen in November, and the
15   tack that I -- the tack that I tend to take in
16   those paid presentations is to say, "This is what
17   the polls show today, but this is what I look at
18   when I think about elections." And so, for
19   example, you should follow, for understanding
20   what's going to happen with the Presidential
21   election, follow the President's job approval,
22   and if it gets up to 48, 49 percent, it's a good
23   sign for Barack Obama. I think at the time of
24   the election he was at 46 or 47 percent. I
25   remember saying that -- I think I used Intrade, I

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1   think that was still active at time, as an
2   indicator of what the conventional wisdom was,
3   and it had the House at some -- I don't remember
4   the exact number, but I said if it wasn't 100, it
5   was pretty well undervalued.
6   The Senate, and I don't remember the
7   exact numbers on the Senate or what I said, but I
8   do remember saying that the Republicans were
9   almost certainly going to keep the House.
10   Q   Who sponsors the Annual Family Office Wealth
11   Management Forum?
12   A   It's a trade association. I don't remember the
13   exact name of it.
14   Q   Now you have spoken at the Brookings Institution,
15   according to Paragraph 49 of your affidavit?
16   A   Yes.
17   Q   Why is that not listed on your resume?
18   A   You'd have to show me the resume. Is it on the
19   exhibit?
20   Q   Yes, it is.
21   A   I have spoken there twice.
22   Q   Let's state for the record that Exhibit 15 is in
23   front of the witness. Would you just identify
24   what Exhibit 15 is, please?
25   A   Exhibit 15 is the Declaration of Sean Trende.

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1   It's the expert report that I filed in this
2   litigation. No, I don't believe it was an
3   intentional omission, as a matter of fact it was
4   not an intentional omission, but it says selected
5   presentations and appearances, so I'm sure
6   there's other ones.
7   Q   Well, did you leave it off your resume because
8   you wanted to present a consistent conservative
9   portrayal of your speaking engagements?
10   A   No, no. The point of this is -- this paragraph
11   is that I do -- that I speak on both sides, and
12   this CV is never used for anything except for
13   expert reports. I don't have any other CV, but I
14   haven't applied for a job in -- actually, I
15   didn't even apply for RealClearPolitics, so since
16   David, Kamp & Frank.
17   Q   You spoke at the Brookings Institution twice?
18   A   That's right.
19   Q   How did you come to speak there?
20   A   The first time was on marijuana legalization, and
21   I was invited by Jonathan Rauch, R-A-U-C-H, who
22   likes my work. The second time was on the -- it
23   was in the aftermath of the 2012 elections, and
24   it was about the future of the GOP.
25   Q   What did you say about the future of the GOP?

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1   A   It's my general view that politics kind of rises
2   and flows with -- ebbs and flows with national
3   tides. There may be good reasons for the GOP to
4   take one tack or the other, but given that
5   elections are generally determined by
6   fundamentals, like the economy and Presidential
7   job approval, it probably doesn't matter nearly
8   as much as people think.
9   Q   When you spoke at the Brookings Institution, did
10   you speak by yourself or as a member of a panel?
11   A   Both times was a member of a panel.
12   Q   And in the marijuana discussion, who else was on
13   the panel?
14   A   Well, Jonathan Rauch was on it. E. J. Dionne,
15   D-I-O-N-N-E. Oh, what's her name, Anna
16   Greenberg, and Bill Galston.
17   Q   What was your position about marijuana?
18   A   My position was that the debate we have -- The
19   question was why have attitudes shifted on
20   marijuana legalization and, you know, is it
21   similar to gay marriage and is it a shift towards
22   Libertarian views of economics. I said that that
23   may well be part of it, but a large part of it is
24   class based, as well, and that as people who are
25   in upper, middle-class families have increasingly

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1   had experiences with marijuana in college, it's
2   become more accepted in middle-class America than
3   it was, say, 80 years ago, much the same way as
4   more middle-class families have had gay family
5   members, it impacted their views. And that kind
6   of bourgeois morality is what dominates our
7   politics, and that that was the key, and that's
8   why attitudes on other issues haven't shifted.
9   It was characterized by Dionne's wonderful
10   Marxist analysis of American politics.
11   Q   When you spoke at the Brookings Institute on the
12   future of the Republican party, did you speak
13   alone or as a member of a panel?
14   A   It was a panel.
15   Q   Who else was on the panel?
16   A   Liz Mair, M-A-I-R, Robert Costa, who is a writer
17   for the Washington Post, and I cannot remember
18   who the fourth panelist was.
19   Q   Have you ever spoken at the Center for American
20   Progress?
21   A   No.
22   Q   Is there a reason why you haven't spoken there?
23   A   They haven't invited me.
24   Q   Your resume lists -- it says selected
25   presentations and appearances. Are there other

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1   presentations and appearances that you have made
2   that are not listed on your resume?
3   A   Oh, I'm sure there are more. The selected is in
4   there as a catchall. For example, if I forgot to
5   put the Brookings Institution panels on there, I
6   have my caveat. There are paid speeches I have
7   done for trade associations, like the Society of
8   the Plastics Industry, that I don't know are
9   particularly relevant here. I did a speech
10   for -- last week so, obviously, after this was
11   filed, for the Berkeley Research Group. I did a
12   paid presentation after this was filed for -- oh,
13   what was that group -- another trade association
14   a couple weeks ago, but that's what comes to
15   mind.
16   Q   Have you ever spoken at any conservative
17   conventions?
18   A   No.
19   Q   Have you ever spoken at any Republican Party
20   functions?
21   A   No.
22   Q   Have you ever spoken at any Democratic Party
23   functions?
24   A   No.
25   Q   Now in your affidavit you say you have made

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1   appearances on radio and television on Fox News,
2   MSNBC, ABC News Australia, Fox News Radio,
3   Beijing Radio, CNN Radio, NPR and other outlets.
4   Of these, on which of those have you appeared the
5   most?
6   A   I couldn't tell you.
7   Q   About how many times have you appeared on
8   television on Fox News?
9   A   I don't know.
10   Q   About how many times have you appeared on
11   television on MSNBC?
12   A   I don't know.
13   Q   Have you appeared more on Fox News than MSNBC?
14   A   It's probably close.
15   Q   How many times have you appeared on NPR?
16   A   You know, I will be perfectly honest. I do a ton
17   of radio, and it all blurs together. I'm not
18   trying to dodge you here. I honestly couldn't
19   begin to count. Some of these shows, like Sean
20   Yoes I think is on NPR for Baltimore, but I'm not
21   entirely certain.
22   Q   When you appear on television and radio, are any
23   of your comments reviewed by anyone before you
24   speak?
25   A   No.

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1   Q   When you appear on television and radio, are any
2   of your comments fact checked before you speak?
3   A   No. Well, I think on some of my early
4   appearances I talked with our editor in chief
5   about some of the elections and the RCP averages
6   and where things stood, but no instruction on how
7   to answer questions or anything like that.
8   Q   You are being paid $300 an hour for your time on
9   this case?
10   A   Yes.
11   Q   How much have you been paid for your work so far
12   on this case?
13   A   Nothing.
14   Q   Do you have an outstanding invoice?
15   A   No.
16   Q   Why is that?
17   A   I have been too busy to file one, and I'm not in
18   any hurry to get paid.
19   Q   Do you know how much time you have spent on the
20   case so far?
21   A   Probably in the range of $20,000, so whatever the
22   math -- like 60 hours.
23   Q   And how much more time will you be paid for your
24   work preparing for this deposition and spending
25   time at this deposition?

11 (Pages 38 to 41)

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1   A   Hopefully very little, but I imagine it's going
2   to be probably 8 times 300, so about 2,400.
3   Q   When you appear on radio and television, are you
4   paid?
5   A   No.
6   Q   And when you give the speeches or talks that we
7   have talked about like at the CATO Institute or
8   at the American Enterprise Institute or Berry
9   College, are those paid?
10   A   Berry College was paid.
11   Q   How about at the American Enterprise Institute
12   and the CATO Institute?
13   A   Yes, those were paid.
14   Q   All right. So leaving aside your earnings from
15   this case, what do you anticipate your total
16   earnings for the year 2015 will be?
17   A   Somewhere in the range of $250,000. It depends
18   when things get paid out. Maybe 225.
19   Q   So your earnings from this case will constitute
20   about equal to a tenth of your total earnings?
21   A   If you put my wife's income into it, it will be
22   about a twentieth of the household income.
23   Q   Leave your wife's income out for a minute. Let's
24   just talk about your income.
25   A   We're married, so it's all the same, but $25,000

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1   would be a tenth of 225, 250.
2   Q   Now in your affidavit you discuss what you
3   describe as the geographic concentration of
4   Democratic voters in Wisconsin, correct?
5   A   Correct.
6   Q   Now assuming for the moment that there is such a
7   geographic concentration of Democratic voters in
8   Wisconsin, is it your conclusion that the
9   Democratic concentration of voters in Wisconsin
10   is responsible for some portion of the efficiency
11   gap caused by the current Wisconsin Assembly map
12   or is it your conclusion that some portion of the
13   efficiency gap caused by the current Wisconsin
14   Assembly map could be due to the concentration of
15   Democratic voters in Wisconsin?
16   A   My opinion -- Well, I believe that it accounts
17   for a part of it. I guess the answer is yes.
18   Q   You believe it is responsible for some portion of
19   the efficiency gap, not just that it could be?
20   A   I believe that it is, but it also could be and
21   that it's something that the -- the real opinion
22   is that it's something that the efficiency gap
23   metric doesn't account for.
24   Q   Have you done any work of any kind to determine
25   how much of the efficiency gap in Wisconsin is

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1   due to the alleged concentration of Democratic
2   voters in Wisconsin?
3   A   No.
4   Q   It's a fact, isn't it, that you don't know if 10
5   or 1 percent or 0 percent of the efficiency gap
6   in Wisconsin under the current map is due to the
7   concentration of Democratic voters in Wisconsin?
8   A   Or 100 percent. No, I don't.
9   Q   Was the current Wisconsin map drawn by
10   Republicans with a partisan intent?
11   A   I would guess that intent played a role. I know
12   it did at the congressional level, so I assume it
13   had something at the legislative level.
14   Q   Have you done any work to determine how much of
15   the efficiency gap created by the current map in
16   Wisconsin is due to intentional gerrymandering
17   and how much is due to natural clustering of
18   Democratic voters that you claim exists?
19   A   No.
20   Q   Would you take a look at the hypothetical map you
21   describe in Paragraph 15 of your affidavit?
22   A   Paragraph 15?
23   Q   Yep.
24   A   Okay.
25   Q   Would you agree that that hypothetical map you

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1   describe in Paragraph 15 would be a partisan
2   gerrymander in favor of Republicans?
3   A   It would depend.
4   Q   What would it depend on?
5   A   For example, if you had a court that came up with
6   these lines, I think you would have a hard time
7   arguing it was a partisan gerrymander, at least
8   as traditionally understood. There might be
9   communities of interest, for example, if these
10   were city boundaries that a legislature opted to
11   follow, but it could be a gerrymander, as well.
12   Q   How can you tell that -- What is there about this
13   that leads you to say it could be a gerrymander?
14   A   Well, the districts are oddly shaped.
15   Q   Anything else?
16   A   No. My answer is complete.
17   Q   Look at Paragraph 120 of your affidavit which
18   describes North Carolina's 2002 redistricting.
19   A   Okay.
20   Q   Would you describe that as an example of partisan
21   gerrymandering?
22   A   Yes.
23   Q   And why is that an example of partisan
24   gerrymandering?
25   A   Because we have bizarrely -- And, again, I'm

12 (Pages 42 to 45)

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1   using the term partisan gerrymandering not in a
2   legal sense, but in kind of a colloquial term, a
3   colloquial sense. You have bizarrely shaped
4   districts, such as the lengthy district that runs
5   from Charlotte up through Greensboro and
6   Winston-Salem, the infamous 12th District. We
7   have the 2nd District, which I think I say looks
8   like a dragon in flight. We have communities of
9   interest that are being broken up. We have
10 evidence of partisan intent, clear evidence from
11 the legislature as to what they were trying to
12 do, and we have neutral sources, such as The
13 Almanac of American Politics, describing it as
14 partisan gerrymandering.
15 Q   The other defense expert in this case, Professor
16   Goedert, do you know him?
17 A   No.
18 Q   Have you discussed any aspect of your work with
19   him?
20 A   No.
21 Q   Have you read his report?
22 A   No.
23 Q   Well, let me represent to you that in his expert
24   report he wrote that the approach used by
25   Professor Jackman is an appropriate and useful

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1   summary measure of the efficiency gap, and he
2   used it in subsequent examples in his report. Do
3   you disagree with his opinion?
4   A   Without reading the actual report, I don't know
5   what context that's in, so I couldn't tell you.
6   Q   You are not endorsing in this case any of
7   Dr. Goedert's opinions?
8   A   I haven't read Dr. Goedert's opinions, so I don't
9   have opinions on them.
10 Q   You describe some hypothetical configuration of
11   voters in districts in your affidavit in
12   Paragraphs 17 through 23 with diagrams at
13   Paragraphs 17 and 20. Would you look at those?
14 A   Okay.
15 Q   Do you think any of these hypotheticals portray
16   in any way anything close to the distribution of
17   Democratic and Republican voters in Wisconsin?
18 A   Phrased that broadly, yes.
19 Q   Which one looks like the distribution of
20   Democratic and Republican voters in Wisconsin?
21 A   Well, you have the City of Milwaukee, which is on
22   the eastern edge of the state with a
23   concentration of Democratic voters. Here I have
24   them aligned on the southern portion of the
25   state. Yes, there are concentrations of

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1   Democratic voters that I think look like this.
2   Q   Which map are you looking at?
3   A   I'm looking at the maps in Paragraphs 17 and 20.
4   Q   So you are saying that because there are
5   concentrations of Democratic voters in the
6   southeast portion of the state, that is to you
7   similar to concentration of Democrats in
8   Wisconsin in the -- I'm sorry. Start again.
9   You are saying that because in your
10   hypothetical there is a concentration of
11   Democrats in the southwest portion of the state,
12   that reminds you of the concentration of
13   Democrats in the southeast portion of Wisconsin,
14   is that right?
15 A   Well, I think as broadly as the question is
16   phrased, yes, it reminds me of that. But this
17   portion of the report is just meant to illustrate
18   how clustering works and the implications of it.
19   It's actually not intended as a specific trying
20   to re-create Wisconsin. It's an example.
21 Q   In your examples there are how many districts?
22 A   Four.
23 Q   And how many districts are there in the State of
24   Wisconsin?
25 A   For state legislature?

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1   Q   Yes.
2   A   I believe it's 99.
3   Q   And do you think that a hypothetical that uses
4   four districts is reasonably comparable to the
5   State of Wisconsin with 99 districts?
6   A   Yes.
7   Q   And why is that?
8   A   Because all I'm doing here is illustrating how
9   clustering works and what the implications of it
10   are. I couldn't draw 99 districts because there
11   are only 100 people on this map, but the same
12   basic principle holds.
13 Q   You make a number of assertions about the
14   clustering of Democratic voters. Can you tell us
15   generally where you found the methodologies you
16   used as a basis for these assertions?
17 A   You will have to be more specific.
18 Q   Okay. We will get to that. In Paragraphs 66 to
19   70 of your affidavit you show maps of counties
20   won by each presidential candidate in 1996, 2004
21   and 2008 in the West Central region and in
22   Virginia. Do you see that?
23 A   Yes.
24 Q   Why did you omit 1992, 2000 and 2012 from your
25   analysis?

13 (Pages 46 to 49)

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1   A   When I did these maps, 2012 hadn't happened yet.
2   These are just meant to -- I guess you could use
3   2000 and 1992. To be honest, it would probably
4   show more of the gradual progression, because
5   Gore finished somewhere between Bush and -- I'm
6   sorry -- between Clinton and Kerry in the region.
7   Q   Why did you consider only the West/Southwest
8   Central region in Virginia in your analysis?
9   A   I could have done more states. These were just
10   states for which I had maps drawn because I used
11   them for my book, and it seemed a more efficient
12   use of my time to illustrate the phenomenon we
13   are talking about.
14   Q   Do you know whether the phenomenon looks the same
15   in other areas of the country?
16   A   Yes.
17   Q   Have you done any work to show that?
18   A   Yes. I could have included a map, for example,
19   of North Carolina that shows a similar
20   phenomenon, the kind of Democratic pool drying up
21   in the western portion of the state and growing
22   in the Research Triangle Park area. I think I
23   have looked at Pennsylvania and a few other
24   states.
25   Q   Can you identify any peer-reviewed studies that

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1   have analyzed the geographic clustering of
2   Democratic and Republican voters by examining
3   trends in counties won by each parties'
4   presidential candidate?
5   A   Can you repeat that question?
6   Q   Yes. Can you identify any peer-reviewed studies
7   that have analyzed the geographic clustering of
8   Democratic and Republican voters by examining
9   trends in counties won by each parties'
10   presidential candidate?
11   A   Oh, no.
12   Q   Why did you -- How did you come up with the idea
13   that that would be a good way to analyze
14   geographic clustering of Democratic and
15   Republican voters?
16   A   Well, because I, unlike your average political
17   science journal, I don't say that to cast
18   aspersions, it's just a descriptor, I'm not
19   writing for an audience where some of the more
20   technical terms would be helpful. Quite frankly,
21   not in litigation, either. I want it to be
22   something that's easily understood that I think
23   accurately depicts the phenomenon, and if there
24   are, you know, glaring problems, other than
25   political scientists haven't used it, with the

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1   methodology, I'm sure the adversarial process
2   will reveal it in the reply briefs.
3   Q   Isn't it correct that the county maps that you
4   present only show which party won each county and
5   don't show the margin of victory in each county?
6   A   That's correct.
7   Q   What would the maps look like if they displayed
8   the margin of victory?
9   A   I would suspect they would look very similar.
10   Q   Why didn't you include the margin of victory
11   information in the maps?
12   A   Because that's an incredibly time-consuming
13   process, and I already had these maps drawn, and
14   I believe they sufficiently represent what
15   happened. I mean, I guess to an extent it does
16   show percentages, because anything that's, not to
17   be snippy, but anything that's blue is above
18   50 percent, and if it falls below that, it turns
19   red, so you can still see the decrease in the
20   Democrats total vote count in most of these
21   districts. In some of the states -- some of the
22   counties that turn red, like Dallas County and
23   Harris County and Jefferson County in Alabama
24   represent the clustering that I'm talking about.
25   Q   It's correct that the counties vary enormously in

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1   population size, isn't it?
2   A   They do vary in population size, yes, especially
3   in a state like Texas.
4   Q   In Texas how large is the gap between the most
5   populous and the least populous county in Texas?
6   A   I don't know the population of Harris County,
7   which is Houston. There are counties with like
8   100 people in them.
9   Q   So there are differences on the order of at least
10   1,000 times? One county is at least 1,000 times
11   more populous than another?
12   A   Sure, but that's the point. Districting has a
13   geographic basis to it, and as you push yourself
14   into these high population counties that have a
15   more compact geographic basis to it, it creates
16   the clustering.
17   Q   Why didn't you take into account the population
18   of each county in the maps you presented?
19   A   I don't know how I would do that. I guess I
20   could -- There's a map type that skews the size
21   of the counties. I'm blanking on the term for
22   it, but I find those for most people are not
23   particularly useful because you lose sight of
24   what it is you are actually looking at.
25   Q   Why did you present these maps with presidential

14 (Pages 50 to 53)

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1   election results rather than the results of state
2   legislative election results?
3   **A   Well, you would have somewhere on the order of --**
4   **I mean, you would have one, two, three, four,**
5   **five, six -- around 800 state assembly districts**
6   **just assuming about 100 per state, which I think**
7   **is right for these states. Again, an incredibly**
8   **time-consuming process, and I think this**
9   **illustrates the issue. I don't think anyone**
10   **would dispute, especially today, presidential**
11   **results correlate with congressional state**
12   **legislative results. As a matter of fact, I**
13   **think that's in Dr. Mayer's report.**
14   Q   Which results do you think are more relevant to a
15   lawsuit alleging state legislative partisan
16   gerrymandering, the presidential results or the
17   state legislative results?
18   **A   Well, according to Dr. Mayer's report, they are**
19   **pretty much the same thing, so I don't think**
20   **there's really a huge difference.**
21   Q   Have you heard of an analysis called a Global
22   Moran's I?
23   **A   No.**
24   Q   So you can't define it?
25   **A   If you -- if it has a more commonly used term, I**

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1   **could probably define it, but I don't know what**
2   **Global Moran's I is.**
3   Q   Have you heard of the Isolation Index?
4   **A   No.**
5   Q   Have you heard of the Index of Dissimilarity?
6   **A   I have, but I couldn't describe it.**
7   Q   You show maps of Wisconsin counties' Partisan
8   Indexes in 1988, 1996, 2004 and 2012 in
9   Paragraph 79 through 86 of your affidavit.
10   **A   That's some of the maps that I show, yes.**
11   Q   Are you aware of any peer-reviewed articles that
12   have used a Partisan Vote Index to study or
13   describe state legislative redistricting?
14   **A   If they don't, they should, but, no, I don't.**
15   Q   And how did you come up with the idea of using
16   Partisan Vote Index to study state legislative
17   redistricting?
18   **A   Well, Partisan Index and Partisan Vote Index are**
19   **slightly different, but we will just call it PVI.**
20   **The PVI is a way of controlling for national**
21   **forces. Some elections you have wave elections,**
22   **or a year like 2008 where Democrats do very well**
23   **nationally, but the actual partisanship of the**
24   **state hasn't changed. Basically it's the**
25   **analysis contained from Paragraphs 72 to 77 of**

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1   **the report.**
2   Q   Can you identify any peer-reviewed studies that
3   have analyzed the geographic clustering of
4   Democratic and Republican voters by examining
5   trends in County Partisan Indices?
6   **A   No, but, again, I think the maps illustrate**
7   **pretty nicely how clustering is occurring in**
8   **Wisconsin.**
9   Q   In your maps of Wisconsin County Partisan
10   Indices, why did you omit 1992, 2000 and 2008
11   from your analysis?
12   **A   Again, I'm trying to use -- because a Partisan**
13   **Index is a national term, but state Partisan**
14   **Indexes can fluctuate, so I picked three years,**
15   **and this is in Paragraph 79. I picked three**
16   **years where the Partisan Indices were similar and**
17   **went from there.**
18   Q   Why exclude the year 2000? Isn't 2000 especially
19   relevant because it was an essentially tied
20   election?
21   **A   2000 is difficult because you have Ralph Nadar**
22   **running, and he pulls disproportionately from**
23   **Democrats. That's part of why the Partisan Index**
24   **in Wisconsin was low in 2000. So, no, I think**
25   **you want to compare apples to apples as best you**

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1   **can, and so '96, 2004 and 2012 are the best**
2   **choices.**
3   Q   You also show maps of the change in Wisconsin --
4   I'm sorry. Let's start again.
5   You also show maps of the change in
6   Wisconsin Counties Partisan Indices from 1996 to
7   2004, from 2004 to 2012 and from 1996 to 2012.
8   Why did you pick those years?
9   **A   They are the same years as I picked before,**
10   **because those are the years where the Partisan**
11   **Indices were similar as explained in**
12   **Paragraph 79.**
13   Q   Why don't you show the change from 1988 since you
14   showed the 1988 County Partisan Index Map?
15   **A   Because 1988 is a -- is shown as where things**
16   **were before Bill Clinton kind of changed the**
17   **analysis or the orientation of a lot of the**
18   **counties in the U. S. If anything, everything**
19   **would look even redder because we are shifting**
20   **from a year where the state was generally blue.**
21   **But '96, 2004 and 2012 are the main maps for**
22   **analysis.**
23   Q   And why is that again?
24   **A   Because those are the years where the Partisan**
25   **Indices are substantially similar.**

15 (Pages 54 to 57)

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1 Q   What would the changed maps look like if you used
2   1992 to the present?
3 A   I don't know.
4 Q   And what would the changed maps look like if you
5   used 2000 to the present?
6 A   I don't know.
7 Q   Now the Wisconsin counties vary enormously in
8   population, right?
9 A   That's correct.
10 Q Do you know how large the gap is between the most
11   populous and the least populous county in the
12   state?
13 A   Less than in Texas, but I imagine it's still
14   pretty substantial.
15 Q   Do you know what the standard deviation is of the
16   county populations?
17 A   No.
18 Q   Why didn't you take into account the population
19   of each county in the maps?
20 A   Well, because part of the problem with clustering
21   is geographic in nature. In other words, if you
22   get pulled into these large population counties.
23   That's the whole point, is that because districts
24   have a geographic bases to them, it's more
25   important than the -- or it's more important than

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1   the population of the individual counties.
2 Q   How can we tell from these County Partisan Index
3   Maps how clustered Democratic and Republican
4   voters are? Do we just have to eyeball the maps?
5 A   I think in this instance it's pretty clear from
6   looking at the maps where things have become more
7   Republican and where they have become more
8   Democratic.
9 Q   In Paragraph 25 of your affidavit you say that
10   you use a, quote, "simple visual inspection." Is
11   that a technique supported in any peer-reviewed
12   literature?
13 A   Well, I don't know if peer-reviewed literature
14   uses it, but again trying to answer a question of
15   interest for the court, I think a court can look
16   at this and pretty clearly see what's going on in
17   the state.
18 Q   Can you convert the map's information into
19   quantitative scores for Democratic and Republican
20   clustering?
21 A   No. There may be states where this sort of
22   analysis isn't appropriate, but in Wisconsin I
23   think it's readily apparent what is going on.
24 Q   If you look at --
25 A   What time are we at?

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1 Q   Do you need to take a break?
2 A   Yes.
3   MR. STRAUSS: That's fine. Let's take a
4   break.
5   (A recess was taken.)
6 BY MR. STRAUSS:
7 Q   I asked you if you knew about a form of analysis
8   called a Global Moran's I is what I called it.
9   Have you ever heard of a Global Moran's i?
10 A   No. I'm not playing games there on the
11   terminology.
12 Q   Have you ever heard of Local Moran's i?
13 A   No.
14 Q   You said you have drawn state legislative
15   district maps for your own use. What states have
16   you drawn maps for?
17 A   Probably most of them over time. I know I have
18   drawn them for California. There's a debate
19   over -- a lot of Republicans claim that the
20   Democrats had gamed the Commission in California,
21   so I wanted to kind of draw neutral
22   state legislative -- not neutral, compact state
23   legislative districts and see what the outcome
24   was. It's kind of the same.
25   In the west you tend to get the issue in

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1   reverse that you get east of whatever the
2   meridian is that runs through Texas and Nebraska
3   where in the western states like California you
4   get kind of purplish-blue suburbs, and then you
5   have a large Hispanic population in the rural
6   area, and so you get kind of a reverse
7   clustering, and that's kind of what I found
8   happened in California, was that a Commission
9   that was drawing neutral maps is going to tend to
10   draw maps that lean towards the Democrats because
11   of the dispersion of the vote there.
12 Q   When you drew maps, did you use Adobe Illustrator
13   to draw your maps?
14 A   No, because Adobe Illustrator wouldn't pick up
15   the underlying partisan indexes or the underlying
16   partisanship.
17 Q   Did you use -- What did you use?
18 A   It's an online tool. Dave's Redistricting App is
19   the flippant name for it, but it's been used by
20   Professor -- and I'm not even going to try to
21   butcher his name. It's Ansalabar (phonetic, I
22   think. I can't even spell it. It was used in a
23   case in Virginia.
24 Q   Do you know what GIS, geographic information
25   systems software, is?

16 (Pages 58 to 61)

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1   A   Yes.
2   Q   And have you ever used that to do your
3   redistricting?
4   A   No, that's too expensive I believe.
5   Q   What is the basic unit of geography that you use
6   when you are drawing maps?
7   A   I think it generally uses voting districts is
8   what it's called, which tends to be precincts,
9   but some places are different.
10 Q   And are voting precincts of equal population?
11 A   It depends. It depends. Some states do have
12   requirements to try to keep the precincts roughly
13   proportional, but as you go through and you fill
14   in the precincts, this app adds up the total
15   population of the precincts to make sure that you
16   are getting districts of equal population.
17 Q   Looking at Paragraph 84 of your affidavit and the
18   map that's at the top before Paragraph 85 where
19   it says, "Wisconsin County PI 2012," do you see
20   that?
21 A   Yes.
22 Q   Now there are about 10 adjacent red counties in
23   the southeast corner of the state, right?
24 A   Right.
25 Q   Can you identify any clusters of 10 very blue

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1   counties anywhere in the state?
2   A   No.
3   Q   Does that indicate that Republicans are more
4   clustered in the State of Wisconsin in 2012 than
5   Democrats?
6   A   No.
7   Q   Why not?
8   A   Because the -- there are also -- the rest of the
9   counties in the state outside of Milwaukee, the
10   southwest corner and the far northern are also
11   red leaning, and so the overall effect is going
12   to be to still favor Republican-leaning
13   districts. With that said, there is Republican
14   clustering that occurs in the Milwaukee suburbs.
15 Q   Did you do any kind of analysis to try to
16   determine whether the clustering of Republicans
17   was greater or less than the clustering of
18   Democrats?
19 A   Yes.
20 Q   And what analysis did you do?
21 A   That's the median nearest neighbor analysis.
22 Q   Okay. Now if you look at the 1988 County
23   Partisan Index Map, there are about 10 adjacent
24   very blue counties in the northwest corner of the
25   state. Do you see that in Paragraph 79?

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1   A   Yes.
2   Q   And can you identify any clusters of 10 very red
3   counties anywhere in the state?
4   A   No.
5   Q   Based on this eyeballing, doesn't it appear that
6   Democratic clustering has decreased since 1988
7   and Republican clustering has increased?
8   A   No.
9   Q   Why not?
10 A   Because the state as a whole has become
11   substantially less blue. That entire swath
12   through the northwest has turned red, and the
13   Democratic area that's covered has been relegated
14   to a handful of counties, which makes it harder
15   to draw Democratic districts, for example, in
16   Northwestern Wisconsin. That's why the 7th
17   District at the congressional level switched to
18   Republicans and isn't particularly competitive
19   anymore. Same with the 7th District around Green
20   Bay and its environs.
21 Q   Don't you have to admit when you look at the map
22   from 1996 to 2012 that there's a much greater
23   concentration of Republicans in the southeast
24   part of the state than there was in 1996?
25 A   No, no, not at all.

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1   Q   I'm sorry. Take a look at the 1988 map that goes
2   with Paragraph 79. Now if you compare the 1988
3   map to the 2012 map, doesn't that show an
4   increased clustering of Republican voters in the
5   southeast corner of the state?
6   A   Well, first, this is part of the reason that you
7   try to look at years that have similar Partisan
8   Indexes, because the state as a whole becomes
9   more Republican. So you expect to see more red
10   and more -- more red and less blue when you do
11   that transition.
12   With that said, I don't think I would
13   agree that the clustering has increased. You
14   have more red areas down in the southeast, but
15   you have more red over the course of the entire
16   state. I don't know that that results in more
17   clustering.
18 Q   Looking at the 2012 Ward Map that goes with
19   Paragraph 87, what would you say is the largest
20   single partisan cluster in Wisconsin?
21 A   Well, there's a large partisan cluster in the
22   southeast in the Republican suburbs.
23 Q   That's the largest partisan cluster in the state,
24   isn't it?
25 A   Without measuring it, it's hard to say, but I

17 (Pages 62 to 65)

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1   think it's probably larger than the cluster
2   that's in the southwest around Dane and LaCrosse.
3 Q   You show a chart reproduced from Chen and Rodden
4   using 2000 presidential election results in
5   Paragraph 90 of your affidavit?
6 A   Correct.
7 Q   What would this chart look like using 2012
8   presidential election results?
9 A   I suspect it would look like 2000 except more so.
10 Q   What do you mean by that?
11 A   You would get even more -- given that the
12   partisanship of Democratic-leaning wards has
13   increased and we can see that the Democratic vote
14   is increasingly concentrated in these urban
15   counties, you would get even more of a tilt for
16   Republican versus Democratic wards.
17 Q   Now if 2000 is the year that Chen and Rodden used
18   for their analysis, why do you exclude the year
19   2000 from your County Partisan Index Maps?
20 A   Because using the maps I'm trying to control for
21   the overall partisanship of Wisconsin by using
22   states where the overall PVI is the same so you
23   can see the changes within the state.
24 Q   In the Chen and Rodden chart for Wisconsin,
25   what's the correlation between the Bush vote

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1   share and population density?
2 A   I haven't run the regression analysis, so I don't
3   know.
4 Q   In Chen and Rodden's work do they simulate
5   non-partisan districts?
6 A   They simulate -- they run -- Well, the way you
7   ask that question, I'm not sure that's right.
8   They generate random districts and see what the
9   partisanship is.
10 Q   Well, are the plans they simulate legal plans?
11 A   I believe they use -- I don't believe in this
12   article they are taking into account the Voting
13   Rights Act. In Wisconsin there may be state laws
14   about splitting districts or counties that
15   prevent it from -- that would prevent the maps
16   from being introduced. But in this article I
17   don't even think they look at Wisconsin. They
18   are looking at Florida, if I remember correctly.
19 Q   Do they include any measure to protect
20   communities of interest?
21 A   No, no.
22 Q   If you were trying to determine the underlying
23   partisanship of the state, wouldn't you want to
24   use plans that were legal in terms of including
25   the requirements of the Voting Rights Act and

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1   respecting legislative boundaries and protecting
2   communities of interest?
3 A   If you were trying to get to the underlying
4   partisanship of the state, no. You would look at
5   how Democratic and Republican the wards are. You
6   might then take an additional step and look to
7   see how the Voting Rights Act would influence it
8   or how requirements of communities of interest
9   influence things.
10 Q   When Chen and Rodden produce a sample of 10,000
11   possible plans, will that be a random sample of
12   the solution space for non-partisan plans?
13   MR. KEENAN: Just object as vague and
14   ambiguous.
15   THE WITNESS: Can you be more specific?
16 BY MR. STRAUSS:
17 Q   Well, do you know what the distribution is of the
18   possible non-partisan plans that Chen and Rodden
19   produce? Is it a normal distribution? Is it
20   skewed?
21 A   I'm not sure I understand your question, but I
22   believe the answer is it depends on what the
23   underlying partisanship of the state is. I mean,
24   if a state has a substantial amount of
25   Republican -- say Republican clustering, the

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1   outputs are going to skew towards Republicans.
2   In Florida, for example, you are going
3   to end up with a district in the northwest corner
4   of the state which is going to be Republican.
5   You are going to end up with districts in the
6   southeast corner of the state which are going to
7   be Democratic because that's how the vote is
8   clustered in Florida.
9 Q   Have you seen any redistricting plans for the
10   Wisconsin State Assembly simulated by Chen and
11   Rodden?
12 A   No.
13 Q   Are you aware if they have made such simulations?
14 A   I believe they have done a national study, but
15   I'm not entirely certain. They might have just
16   done it at the congressional level and not the
17   state legislative level.
18 Q   In Paragraphs 92 to 95 of your affidavit when you
19   show the partisan leans of the average Democratic
20   and the average Republican wards, how do you
21   determine which wards lean Democratic and which
22   ones lean Republican?
23 A   It has to do with the Partisan Index of the
24   state. So if it's a Republican-leaning
25   average -- if it's a Republican-leaning Partisan

18 (Pages 66 to 69)

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1   Index, it will be Republican leaning, and if it's
2   Democratic leaning, it will be a Democratic
3   leaning.
4   Q   Do you change your determinations by year or do
5   you keep the same wards in the same categories
6   for the entire period?
7   A   Oh, it's the average Democratic ward, so it will
8   change over time.
9   Q   In Paragraph 92 you say you looked at the top of
10   the ticket race in the state. Can you identify
11   which was the top of the ticket race that you
12   looked at? Was it the senatorial race or the
13   gubinatorial race?
14   A   So in the presidential years, it's the
15   presidential race. In 2014 it would be
16   gubinatorial. In 2006 it was gubinatorial. I
17   believe in 2010 it was senatorial. I don't
18   remember 2002, but it should be apparent from the
19   code I provided.
20   Q   And why would you use the senatorial race in some
21   years and the gubinatorial race in others?
22   A   Because there aren't Senate races every year.
23   There's no Senate race in 2014, for example.
24   Q   So in 2006 did you use -- I'm sorry. Did you use
25   the gubinatorial race or the Senate race?

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1   A   I believe in 2006 I used Senate. The other thing
2   is that it's not really, since you are
3   controlling for the overall result in the state,
4   it shouldn't alter the outcome, but I am pretty
5   sure and I'd have to see the code, but I'm pretty
6   sure I used governor in 2006.
7   Q   In calculating your ward lean means, did you
8   weight the ward leans by the wards' populations?
9   A   No.
10   Q   And why not?
11   A   Because I'm looking at the effective clustering
12   and how far you have to go from the -- or I'm
13   looking at the overall -- I'm sorry. I'm getting
14   confused on the -- on which thing we are talking
15   about. Start over.
16   I'm looking just to see kind of what the
17   average Democratic ward is and what its partisan
18   lean is, and so the population for -- the
19   overpopulation size isn't that important. Plus,
20   when you get down to the ward level, the
21   population deviations exist, but they are not
22   like they are at, say, the county level.
23   Q   Can you identify any peer-reviewed studies that
24   have analyzed the geographic clustering of
25   Democratic and Republican voters by examining

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1   trends in wards' average partisan leans?
2   A   No.
3   Q   Now in your nearest neighbor analysis in
4   Paragraphs 96 through 99 of your affidavit, why
5   did you use Ward Partisan Indices as opposed to
6   using state legislative election results?
7   A   Well, the state legislative election results I
8   would think would beg the question. I mean, I
9   don't know what that would tell you about the
10   underlying partisanship of Wisconsin elections
11   or -- I'm sorry -- of the Wisconsin maps.
12   Q   Wouldn't the election results show you how the
13   voters voted, which party candidate they
14   supported?
15   A   Well, yes, but the question here -- ultimate
16   question here is whether there's gerrymandering
17   that's gone into effect or not. I don't know
18   what running this off of 99 Assembly districts
19   would show better than running it off of 6,600
20   wards.
21   Q   How did you compute Ward Partisan Indices for
22   years without presidential elections?
23   A   Using the statewide result in those years.
24   Q   And using the top of the ticket?
25   A   The same that I described. It will be apparent

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1   from the code.
2   Q   All right. In this analysis why did you use the
3   median distance instead of the mean distance
4   between wards?
5   A   Because when you look at the map of Wisconsin,
6   you get outliers like, you know, Menominee County
7   that are going to produce excess weight on an
8   average, and so I used the median which is what
9   you tend to use when you have a distribution that
10   outliers will affect.
11   Q   Turn to the graphs that are part of Paragraph 98.
12   A   Yes.
13   Q   If we look at the Republican lines, there's a
14   roughly 0.3 to 0.4 difference between the lowest
15   line and the highest line for each quartile,
16   right?
17   A   Quantile, yes.
18   Q   Quantile.
19   A   Yes.
20   Q   And if we look at the different Democratic lines,
21   there's roughly a 0.1 mile difference between the
22   highest and lowest line for each quantile, right?
23   A   I don't think that's right.
24   Q   Well, if you look at the -- if you look at, say,
25   the 15th quantile, the difference is between 0.5

19 (Pages 70 to 73)

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1   and 0.6, right?
2   A   Oh, I'm sorry. You are talking about for the
3   different years. I was comparing beginning
4   points to end points. I apologize. Then the
5   answer to your last question was, yes, a
6   difference of about .1 and the same thing for the
7   Republican line. I'm sorry. I was confused.
8   Q   So does that mean there's been about three or
9   four times more change in how close Republican
10   wards are to one another than how close
11   Democratic wards are to one another?
12 A   I don't know if it's changed. These distances
13   look fairly constant.
14 Q   Why did you -- When you drew these charts, why
15   did you put the Democratic wards on a different
16   scale than you put the Republican wards?
17 A   Because none of the Republican wards came under
18   .7.
19 Q   I don't understand why that would mean you would
20   put them on a different scale.
21 A   Well, because if I put the Republican wards on
22   the same scale as the Democratic wards, it would
23   be off the chart.
24 Q   I don't see why that's true. I don't see why you
25   couldn't just draw a chart that had the same

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1   scale and was simply a larger chart.
2   A   Oh, I see what you are saying. So, yeah, the
3   Democratic chart could be extended up to two. I
4   think that's just the defaults from Excel. There
5   was no intention there.
6   Q   To what extent do Wisconsin wards differ in their
7   land areas?
8   A   Well, you can go back to the map on Paragraph 87
9   and see that there is some difference.
10 Q   What's the average land area of a Wisconsin ward,
11   do you know?
12 A   I don't know.
13 Q   Do you know what the standard deviation of the
14   land area distribution is?
15 A   I don't know. I'd be interested to see if you
16   weighted by it what the result would be.
17 Q   Did you make any adjustment for wards' different
18   land areas?
19 A   No, no, because you are just looking at the
20   distance from one to the next.
21 Q   Well, do you have any reason to doubt the
22   following, that the average ward size in
23   Milwaukee is 0.3 square miles and that the
24   average ward size outside Milwaukee is 8.8 square
25   miles?

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1   A   I don't have any reason to believe it or doubt
2   it.
3   Q   Do you have any reason to doubt that the average
4   ward -- size of wards that are more than
5   50 percent Democratic is .6 square miles and that
6   the average ward size of wards that are more than
7   50 percent Republican is 3.5 square miles?
8   A   I don't have any reason to believe or doubt it.
9   Q   Wisconsin's wards were redrawn prior to the 2012
10   election, right?
11 A   Yes.
12 Q   Do you make any adjustment for the fact that you
13   have one set of wards from 2002 to 2010 and
14   another set of wards from 2012 to 2014?
15 A   I don't know how you would make that adjustment.
16 Q   If we take two adjacent wards that are highly
17   partisan and in one case their centers are
18   0.5 miles apart and in another case there centers
19   are 2 miles apart, is it any easier to draw a
20   district around the wards in one case than in
21   another? In both cases all the line drawer has
22   to do is join the adjacent wards, right?
23 A   I'm sorry. Can you repeat that?
24 Q   Sure. If we're looking at two adjacent wards
25   that are highly partisan --

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1   A   Okay.
2   Q   -- and in one case their centers are 0.5 miles
3   apart and in another case their centers are
4   2 miles apart, is it any easier to draw a
5   district around the wards in one case than
6   another?
7   A   I don't think so, unless you split the ward, but
8   I don't think so.
9   Q   Okay. Assume we have a highly Republican region
10   like Southeast Wisconsin with many adjacent wards
11   that are highly Republican whose centers are
12   relatively far from one another. Wouldn't it be
13   easy to draw a district around these wards?
14 A   You could draw a district there, yes.
15 Q   Your analysis doesn't tell us what the most
16   likely neighbors are for any given ward, does it?
17 A   No.
18 Q   If we know a ward is highly Democratic or
19   moderate or highly Republican, we can't say from
20   your analysis what its neighbors look like,
21   right?
22 A   Correct.
23 Q   We know its average distance from other similar
24   wards, but not what wards it actually borders,
25   right?

20 (Pages 74 to 77)

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1   A   Its median district, that's right. But if the
2   nearest ward is of a similar partisanship, it
3   will reflect that, because that will be the
4   nearest neighbor.
5   Q   But under your analysis we know a ward's median
6   distance from other similar wards, but not what
7   wards it actually borders, right?
8   A   Unless the nearest -- unless the nearest ward is
9   of similar partisanship, and that will move --
10   that with tend to move the median.
11 Q   But if it's not of similar partisanship, it won't
12   show?
13 A   Well, it will. The median will tend to move away
14   if there's enough of that sort of non-clustering.
15 Q   Your analysis doesn't take into account whether
16   wards are adjacent, does it? It only considers
17   their distance from one another?
18 A   Well, no, because if the adjacent ward is of a
19   similar partisanship, then that's going to be
20   recorded as the nearest neighbor.
21 Q   But if there's a ward of a different
22   partisanship, that's not going to show up in
23   your -- If there's a ward of a different
24   partisanship in between, that's not going to show
25   up in your analysis, is it?

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1   A   No, that's the whole point of the analysis. If
2   there are wards in between of different
3   partisanships, then you have to travel further to
4   get to the nearest neighbor.
5   Q   Can you identify any peer-reviewed studies that
6   have analyzed the geographic clustering of the
7   Democratic and Republican voters by examining the
8   median distance between wards of the same
9   partisan composition?
10 A   No.
11 Q   Isn't it correct that since 2008 Republicans have
12   gained control of a greater share of state
13   legislatures?
14 A   Compared to what?
15 Q   Compared to before 2008.
16 A   Okay. Yes, they picked up a large number of
17   state legislatures in 2010.
18 Q   And isn't it correct that Republicans have gained
19   greater control of state redistricting decisions
20   in the cycle of redistricting after the 2000
21   census and in the cycle of redistricting after
22   the 2010 census?
23 A   That's correct.
24 Q   Now you argue that there's been a national trend
25   -- I'm sorry. You agree that there's been a

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1   national trend towards increasingly
2   Republican-leaning efficiency gaps, correct?
3   A   Yes.
4   Q   You suggested the trend towards more
5   Republican-leaning efficiency gaps may be due to
6   increasing concentration of Democratic voters, is
7   that right?
8   A   Correct.
9   Q   But isn't a better explanation for the
10   increasingly Republican-leaning efficiency gaps
11   the greater control Republicans have had of the
12   state redistricting processes following the 2002
13   and 2010 census?
14 A   No.
15 Q   Well, have you done any work to try to calculate
16   the amount of the increase in the Republican lean
17   of the efficiency gap that is due to the
18   increasing control of Republicans over the
19   redistricting process?
20 A   Can you repeat that?
21 Q   Yes. Have you done any work to try to calculate
22   the amount of the increase in the Republican lean
23   of the efficiency gap that is due to the
24   increasing control of Republicans over the
25   redistricting process?

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1   A   No. The only thing that I have done is noted
2   when the changes in the efficiency gap occur, but
3   I haven't looked at trying to apportion the
4   differences.
5   Q   For all you know, the Republican control of state
6   legislatures has had an impact on the
7   increasingly Republican tilt to the efficiency
8   gap that is 5 times or 10 times or 100 times more
9   important than the concentration of Democratic
10   voters. You just don't know, is that right?
11 A   Well, from what I have read I don't think anyone
12   knows what that breakdown is. I just know that
13   clustering has a substantial impact. It's
14   probably the best explanation for why things
15   start to change in non-redistricting years, but
16   as far as apportioning percentages, that would be
17   an interesting exercise, but I don't believe
18   anyone has engaged in it.
19 Q   When you say clustering has had a substantial
20   impact, have you done anything to measure how big
21   that impact is?
22 A   No.
23 Q   In your affidavit you discuss congressional
24   redistricting -- I should emphasis congressional
25   redistricting -- in Alabama, Georgia, Illinois in

21 (Pages 78 to 81)

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1   2002, Iowa, North Carolina, Arizona, Colorado,
2   Illinois in 2011 and Pennsylvania. In those
3   instances did you do an efficiency gap
4   calculation for state legislative redistricting?
5 A No.
6 Q Why not?
7 A Because I don't know that I had those data.
8 Q The data was available and used by plaintiffs'
9   experts in this case, wasn't it?
10 A Well, the data was somewhat available, but you
11   have to put it through all sorts of R analyses
12   that were about half provided by Dr. Jackman, so,
13   no, I couldn't have used the data plaintiffs
14   provided. There's a file called MI in
15   Dr. Jackman's code that I didn't get. There's a
16   fonts file that I managed to work my way around
17   to reproduce some of the charts, but, no, I
18   couldn't have used plaintiffs' data.
19 Q When reporting on the efficiency gap for
20   congressional elections, what method of
21   calculating the efficiency gap did you use?
22 A I used Dr. Jackman's, I believe. It's in the
23   data I provided.
24 Q From where did you get your data?
25 A I believe it's cited. It's from the House of

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1   Representatives report.
2 Q When you were doing calculations on the
3   efficiency gap for these congressional
4   redistrictings, were there uncontested races that
5   you had to deal with?
6 A Yes.
7 Q And how did you deal with uncontested races?
8 A I used presidential results.
9 Q Can you explain what you mean?
10 A From Dr. Jackman's and Dr. Mayer's work, the idea
11   is that you use presidential election results
12   when there are uncontested seats, and so I looked
13   up the presidential results in the various
14   Almanacs of American Politics, which I believe
15   have recently been calculated by PolyData, I
16   don't know about the earlier Almanacs, and I
17   utilized those. I imputed those results to the
18   congressional races.
19 Q So in terms of analyzing uncontested races, you
20   agree with the methods used by Dr. Jackman and
21   Dr. Mayer?
22 A If I'm going to use Dr. Jackman's measure of the
23   efficiency gap, that seemed the appropriate way
24   to proceed. The point in, say, Part 3 of the
25   report is that using Dr. Jackman's approach you

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1   are underinclusive and overinclusive, and so I'm
2   trying to utilize Dr. Jackman's and Dr. Mayer's
3   results as closely as possible.
4 Q Now Stephanopoulos and McGhee in their article
5   only analyzed congressional plans with at least
6   eight seats in order to get more reliable
7   results. Can you identify any support in the
8   literature for calculating the efficiency gap for
9   congressional district plans with only five seats
10   like Iowa in 2002 or seven seats like Alabama in
11   2002 and Colorado in 2002 and 2012?
12 A I don't know if the University of Chicago Law
13   Review is peer reviewed, so I don't know if
14   there's any peer-reviewed literature on this, but
15   my understanding is that there's no magic reason
16   to select eight instead of seven. Maybe there
17   is. So I don't know why you wouldn't be able to
18   use it for Alabama, especially if you are trying
19   to create a workable standard for the country as
20   a whole. I don't know what a court would do to
21   try to evaluate maps in Alabama, so I used it.
22 Q You mean that you don't know what a court would
23   do to analyze congressional maps, is that right?
24 A Well, I don't believe -- I don't believe there
25   are any state legislative maps that are under

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1   eight. I think Delaware has the smallest state
2   legislature, but, again, I don't know that this
3   would be able to be utilized for congressional,
4   and the McGhee and Stephanopoulos article
5   indicates that it would be.
6 Q Have the plaintiffs or their experts argued that
7   a 7 percent efficiency gap should be used for
8   congressional plans?
9 A Again, I don't know how you would draw that line.
10   Maybe there's a reason that the court would look
11   at to draw that line, but I thought it was a
12   useful exercise to look at how this would work in
13   a congressional race, especially since some of
14   these states also have, you know, large, like New
15   York has 29 congressional seats, which is more
16   analogous to some of the assembly and state
17   senate maps.
18 Q Well, I asked a different question. Have the
19   plaintiffs or their experts argued that a
20   7 percent efficiency gap threshold should be used
21   for congressional plans?
22 A Well, like I said, I don't know that you -- that
23   plaintiffs or their experts have argued that. I
24   just don't know how you would draw such a line,
25   especially since some of these states have

22 (Pages 82 to 85)

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1   congressional numbers that are similar to what
2   you see in some state senates or state -- at
3   least some state senates.
4 Q   What threshold do Stephanopoulos and McGhee in
5   their article propose for congressional plans?
6 A   I don't remember.
7 Q   Do you recall them saying that thresholds should
8   be whether there was a two seat change?
9 A   Yes, they are using -- Yes, that sounds familiar.
10 Q   In terms of the Alabama redistricting and drawing
11   the congressional district lines, were the people
12   who drew those lines constricted by the
13   provisions of Section 5 of the Voting Rights Act?
14 A   In which year?
15 Q   Let's see. It's in Paragraph 117 of your
16   affidavit, so that's 2002.
17   MR. KEENAN: 117 is Georgia.
18   MR. STRAUSS: Georgia. Okay. I'm
19   sorry. Alabama is Paragraph 115. That is 2002.
20   THE WITNESS: Yes, in Alabama in 2002
21   you had to draw a minority majority district.
22 BY MR. STRAUSS:
23 Q   And what effect did that have on the efficiency
24   gap calculation?
25 A   Well, I don't know, because I don't know the map

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1   that they would have drawn in the absence of the
2   Voting Rights Act.
3 Q   And in Georgia, which you discuss in
4   Paragraph 117 of your affidavit, did the people
5   who drew the lines, were they constricted by the
6   provisions of Section 5 of the Voting Rights Act?
7 A   Yes.
8 Q   And how did that affect the efficiency gap
9   calculation?
10 A   Again, I don't know which -- what map you would
11   draw in the absence of Section 5, and I also
12   don't know that, say, District 13 and District 2
13   were drawn to be Section 5 or even Section 2
14   districts. I don't remember what the percentage
15   of the African-American population in those
16   districts was, but I think it was below
17   50 percent.
18 Q   Now if I understand your criticism in
19   Paragraph 117, you are saying that there was a
20   strong partisan intent by Democrats to
21   gerrymander, but we end up with what you describe
22   as a slight Republican efficiency gap?
23 A   Correct.
24 Q   And it's your argument that the efficiency gap is
25   not a good measure because in the case of a

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1   strong partisan intent, the efficiency gap
2   doesn't show a strong partisan result, right?
3   That's your argument?
4 A   I don't think I would phrase my argument that
5   way.
6 Q   How would you phrase it?
7 A   I would say that one of the problems with the
8   efficiency gap is that maps that are generally
9   recognized, at least under lay terms, as usually
10   talked about as partisan gerrymanders don't show
11   up as partisan gerrymanders, and sometimes show
12   up as partisan gerrymanders pointing the other
13   direction.
14 Q   Well, is it your contention that every time
15   legislators intend to create a partisan
16   gerrymander, they will necessarily be successful
17   in doing so?
18 A   I think if we're trying to -- No, I think that
19   the point is that if you are trying to draw -- if
20   you are trying to ferret out instances where
21   legislators are trying to hurt the other side,
22   and we have examples where everyone agrees that's
23   exactly what they are trying to do, and you come
24   up with a gerrymander that looks not only not at
25   the .7 threshold, but pointing the other

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1   direction, that that's a problem with the metric.
2   As a matter of fact, part of the point
3   of the analysis as a whole is that some states
4   the best you can do when you are trying to engage
5   in a gerrymander is to draw, let's say a
6   Democratic gerrymander, is to draw a Republican
7   gerrymander. I think that's certainly the case
8   in, say, New York, but that's a problem at
9   least -- that's a problem with the metric at
10   least as currently used, is that in some cases
11   the clustering of partisans makes it more likely
12   that, quote/unquote, "a neutral plan" would be a
13   gerrymander and that a gerrymander pointing the
14   other direction would not show up as one, at
15   least as commonly understood.
16 Q   Is it your critique that plaintiffs' method
17   should condemn a redistricting if it was done
18   with a partisan intent, even if it wasn't
19   successful in creating a partisan effect?
20 A   I think it's a problem for the metric if you have
21   instances where we know a party was trying to
22   draw a highly partisan map, and what they end up
23   with is a map that points the other direction.
24   At least in trying to have something -- have a
25   metric that measures what most people would think

23 (Pages 86 to 89)

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1   of as gerrymandering.
2 Q   Look at Paragraph 120 of your affidavit which
3   describes North Carolina.
4 A   Correct.
5 Q   In 2002 were the people who drew the lines for
6   North Carolina in 2002 constrained by Section 5
7   of the Voting Rights Act?
8 A   In some counties.
9 Q   Did you measure how that affected the result in
10   the efficiency gap?
11 A   No, because, again, I don't know what the counter
12   factor would look like. Some of these districts,
13   like 2, are not direct results of the Voting
14   Rights Act. I don't know what the ruling was for
15   Section 5 on '12, if it was even litigated. But,
16   again, we don't know what it would look like in
17   the absence of Section 5 and what they would have
18   done.
19 Q   Let's look at Paragraph 121 of your affidavit.
20 A   Yes.
21 Q   You say that Arizona had an efficiency gap of .16
22   in 2002?
23 A   2012.
24 Q   2012. Right. And your argument, as I understand
25   it, is that the congressional lines were drawn by

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1   an independent commission, so there cannot have
2   been a gerrymander, yet the efficiency gap is
3   showing a gerrymander so there must be something
4   wrong with the efficiency gap as a metric. Is
5   that your argument?
6 A   I think that's an oversimplification.
7 Q   Well, why don't you describe your argument.
8 A   Well, like I said, I think the issue is that one
9   of the problems with the efficiency gap is that
10   it captures lines drawn by independent
11   redistricting commissions which we would not
12   suspect -- we would not think would be partisan
13   lines, except maybe in the case of Ohio where you
14   get these independent commissions that have
15   partisan bases.
16 Q   Isn't it a fact that Republicans in Arizona have
17   been so upset with the Arizona Commission that
18   they have brought two Supreme Court cases against
19   it in the last two years?
20 A   One unsuccessful one and one that's pending, yes,
21   and I believe the unsuccessful one, the Supreme
22   Court goes on at length about the benefits of
23   independent redistricting commissions as a way to
24   overcome partisan gerrymandering.
25 Q   All right. Go back and take a look at

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1   Paragraph 115 of your affidavit. You say there
2   that the Alabama map had an efficiency gap of
3   negative .125 in 2002, correct?
4 A   Yes.
5 Q   If we multiply that by Alabama's seven districts,
6   we get negative .875 seats, right?
7 A   I don't know about that calculation.
8 Q   Well, you can multiply 7 times .125, right?
9 A   Do you have a pen and paper?
10 Q   Yeah, sure.
11 A   Sorry. You are deposing someone who practiced
12   law for eight years. I don't take anything for
13   granted. I come up with .855.
14 Q   I think it's .875.
15 A   Oh, you are right. You are right.
16 Q   Okay. That's below Stephanopoulos' and McGhee's
17   proposed two seat threshold for congressional
18   maps, correct?
19 A   It's below the Stephanopoulos and McGhee metric,
20   not the Jackman and Mayer metric.
21 Q   Well, Jackman and Mayer don't provide a metric
22   for congressional maps, do they?
23 A   Well, again, I think that's one of the
24   interesting questions, is whether you would use
25   the same methodology for all the maps or whether

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1   you would employ something different for some
2   reason for congressional districts, but not apply
3   it to state legislative maps. For example, using
4   the McGhee and Stephanopoulos method for all
5   maps.
6 Q   Well, they don't -- the plaintiffs' experts in
7   this case, Jackman and Meyer, don't provide a
8   metric to be used for congressional maps, do
9   they?
10 A   No, but if you are going to use --
11 Q   No, I --
12 A   I get to explain my answer.
13 Q   First just answer.
14 A   I said no, but if you are going to use, say, the
15   Stephanopoulos and McGhee method for
16   congressional lines, I don't know why you
17   wouldn't use it for all the lines. For that
18   matter, I don't really know why you wouldn't use
19   the Jackman method for all lines, as well, but I
20   understand that's a question for the court.
21 Q   Look at Paragraph 116. You say that Colorado's
22   congressional map had an efficiency gap of
23   negative .09 in 2002 and 0.1 in 2012, correct?
24 A   Where are we?
25 Q   Paragraph 116. You said that the plan had an

24 (Pages 90 to 93)

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1   efficiency gap of negative 0.9? Let's just stick
2   with that.
3   **A   Negative .09?**
4   Q   Negative .09.
5   **A   Correct.**
6   Q   If we multiply that score by Colorado's seven
7   districts, we get negative .63, and that's
8   negative .63 seats, correct?
9   **A   That I can do in my head. It's negative .63.**
10   Q   And that's below Stephanopoulos' and McGhee's
11   proposed two seat threshold for congressional
12   maps, right?
13   **A   Correct.**
14   Q   And we could go through this with your other
15   calculations for congressional maps and show that
16   there are instances where you have found an
17   efficiency gap in percentage terms, but that
18   multiplying it out it shows a level less than the
19   two seat standard used by Stephanopoulos and
20   McGhee, correct?
21   **A   We may well be able to do that.**
22   Q   Professor Jackman found that the total variation
23   in the efficiency gap, about 76 percent of that
24   is variation between plans while only 24 percent
25   of the variation is within plans. Do you have

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1   any reason to disagree with that finding?
2   **A   I haven't investigated that one way or the other.**
3   Q   So you have no reason to disagree with it?
4   **A   Right. I haven't looked at it either way.**
5   Q   In Paragraphs 140 to 142 of your affidavit you
6   argue that strong get-out-the-vote efforts,
7   better candidates --
8   **A   I'm sorry. Where are you?**
9   Q   I'm sorry.
10   **A   That's okay.**
11   Q   Paragraphs 140 to 142.
12   **A   140 to 142. Okay.**
13   Q   Yes. So you argued there that strong
14   get-out-the-vote efforts, better candidates or
15   fewer incumbents can alter the popular vote
16   totals and alter the efficiency gap. Have you
17   done any work to determine the effect of any of
18   those factors on the calculation of the
19   efficiency gap for Wisconsin?
20   **A   Well, I believe Dr. Mayer has a variable in his**
21   **regression analysis as to whether or not fewer**
22   **incumbents have an effect and finds that it does**
23   **have a statistically significant impact. But,**
24   **no, I don't know what the total impact of it is**
25   **and I don't believe that anyone at this point**

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1   **does, and that's a problem.**
2   Q   So you don't know if these factors affect the
3   calculation of the efficiency gap of Wisconsin by
4   1 percent or one-thousandth of 1 percent, do you?
5   **A   Or by 100 percent, no, I don't know the total**
6   **impact of it, but it's an important question to**
7   **resolve.**
8   Q   Professor Jackman used actual district vote
9   shares to calculate the efficiency gap, correct?
10   **A   I believe so, yes.**
11   Q   Those actual vote shares reflect candidate
12   quality, campaign spending and recruiting
13   advantages, don't they?
14   **A   The ultimate result does, but there's no control**
15   **for it. In other words, he has no way under this**
16   **metric of knowing whether the efficiency gap**
17   **results from better get-out-the-vote efforts,**
18   **better candidates, et cetera.**
19   Q   You spend some time in your affidavit arguing
20   that the work of plaintiffs' experts is flawed
21   because they use different methods of calculating
22   the efficiency gap. I'm talking about Paragraphs
23   56 through 61 of your affidavit.
24   **A   Correct.**
25   Q   Can you identify -- Let me ask you first of the

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1   two methods that you identify, which one do you
2   prefer?
3   **A   I don't have a preference, because I think they**
4   **both have overall problems.**
5   Q   Can you identify any states where the efficiency
6   gap would look extreme using one approach, but
7   acceptable using the other?
8   **A   I don't know whether any -- I don't recall**
9   **whether there's any such observation in the**
10   **report, but with that caveat in mind, I don't**
11   **have any, not as I sit here.**
12   Q   Look at Paragraph 109 of your affidavit. 109
13   lists a -- it has a chart with a number of
14   states.
15   **A   Yes.**
16   Q   You determined for these states the party that
17   controlled the governor's office in each state
18   legislative chamber?
19   **A   Correct.**
20   Q   For these states and their redistricting did you
21   determine if there was litigation that resulted
22   in a court drawing any of these plans?
23   **A   Unless it's, for example, Wisconsin in 2002, I**
24   **believe it was a court-drawn map.**
25   Q   Do you know if any of the other ones were

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1   court-drawn maps?
2 A   I think Michigan in 1992 ended up being court
3   drawn. California in '92 was court drawn. But
4   if it ended up being court drawn, it doesn't
5   really affect the outcome, if it was already a
6   split map, because the point is that you have --
7   whether you have split control of redistricting
8   or a court-drawn map, I mean, the court-drawn map
9   strikes me as even more difficult to label it a
10   clear partisan gerrymander. That would seem to
11   be even worse for the metric.
12   MR. STRAUSS: Can you read that back for
13   me?
14   COURT REPORTER: "I think Michigan in
15   1992 ended up being court drawn. California in
16   '92 was court drawn. But if it ended up being
17   court drawn, it doesn't really affect the
18   outcome, if it was already a split map, because
19   the point is that you have -- whether you have
20   split control of redistricting or a court-drawn
21   map, I mean, the court-drawn map strikes me as
22   even more difficult to label it a clear partisan
23   gerrymander. That would seem to be even worse
24   for the metric.
25 BY MR. STRAUSS:

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1 Q   Okay. In Paragraph 133 of your affidavit you
2   write that when state house vote shares are
3   missing because of an uncontested election,
4   Dr. Jackman substitutes presidential vote share
5   from a similar district. Do you see that?
6 A   In 133, no. Oh, yes, the last sentence. Yes, I
7   do see that. I'm sorry.
8 Q   Now didn't Professor Jackman actually model state
9   house vote shares as a function of presidential
10   election results?
11 A   You'd have to show me in his report.
12 Q   What's the difference between regression modeling
13   and substituting presidential vote share from a
14   similar district?
15 A   Again, it would depend on how it was done.
16   Modeling would be coming up with an estimate.
17   Substitution would be using actual numbers.
18 Q   Look at Paragraph 139 of your affidavit.
19 A   When we get to the end of this line of
20   questioning, I could use a break.
21 Q   Yeah, sure. Why don't we take a break right now.
22 A   Okay.
23   (A recess was taken.)
24 BY MR. STRAUSS:
25 Q   When you talk about wards leaning one way or

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1   another, are you talking about -- what's your
2   cutoff for saying that a ward leans one way? Is
3   it simple majority or is it 55 percent or
4   60 percent?
5 A   Yes, generally for the ultimate kind of take away
6   when I'm looking at the quantiles I exclude the
7   45th to 55th quantile, since they are effectively
8   neutral for the charts in Paragraph 98.
9 Q   So the charts show wards that are more than
10   55 percent?
11 A   Well, I bring that -- it's the 0th to 45th
12   quantile for Republican lean and the 0th to 45th
13   quantile for Democratic lean. Like I said, the
14   ones in the middle are effectively neutral, so I
15   didn't run the calculation that far.
16 Q   Okay. In your analysis, particular races and
17   elections -- I'm sorry. Strike that.
18   In your analysis of particular maps, why
19   did you provide only congressional examples and
20   not state legislative examples?
21 A   Maybe the question is different than what I asked
22   earlier, but -- or what I answered earlier, but I
23   couldn't reproduce the state legislative results
24   given the data I had. I tried.
25 Q   With respect to uncontested races, did you

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1   construct a model for those or just plug in the
2   presidential numbers?
3 A   I did the actual presidential numbers.
4 Q   Let me read to you from Dr. Jackman's report what
5   he did, what he says he did. This is Exhibit 11
6   on Page 26. It says, "I fit a series of linear
7   regressions of V sub 1 on the Democratic share --
8   MS. GREENWOOD: Can we hold for a
9   second? Sorry.
10 BY MR. STRAUSS:
11 Q   I'm going to hand you the exhibit and let you
12   read the underlined portion for yourself, and
13   then I will read it into the record.
14 A   Do you want me to read it out loud?
15 Q   Yes, you can read it into the record.
16 A   Dr. Jackman writes, "I fit a series of linear
17   regressions of V sub I on the Democratic share of
18   two-party vote for president in District I as
19   recorded in the most temporally proximate
20   presidential election for which data is available
21   and for which the current elections districting
22   plan was in place. Separate slopes and
23   intercepts are estimated depending on the
24   incumbency status of District I."
25 Q   Now you did not do that, right?

26 (Pages 98 to 101)

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1   A   No, my understanding of what Dr. Jackman was
2   doing here was validating the relationship
3   between presidential and district vote shares.
4   Q   Why did you not do the type of analysis that he
5   did?
6   A   Because after Dr. Jackman validates the
7   relationship between presidential and party vote
8   share, it's validated and I don't need to
9   validate it further.
10 Q   Okay.
11 A   I don't believe it's ever said that these are the
12   numbers utilized in the districts.
13 Q   In the congressional maps that you looked at, did
14   you determine if a map with a smaller efficiency
15   gap could have been drawn?
16 A   I didn't calculate -- Well, no.
17 Q   And in the cases where you say you are looking at
18   congressional maps and you say there was a
19   partisan intent, there was no judicial finding of
20   partisan intent in any of those cases, was there?
21 A   I think in Paragraph 124 I talk about a
22   Pennsylvania map for the 2000s that the Supreme
23   Court labeled a partisan redistricting plan,
24   presumably for the Democrats, since the Democrats
25   were in charge. I'm sorry, the Republicans,

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1   since the Republicans were in charge, but the
2   efficiency gap in 2006 was negative and -- or was
3   not past the threshold, while in 2008 it was
4   actually positive.
5   Q   And in any other case was there any judicial
6   finding of partisan intent?
7   A   I don't believe so.
8   Q   Go ahead.
9   A   I was going to say the North Carolina lines and I
10   believe the Illinois lines were litigated, as
11   were the Georgia lines. They were litigated on
12   racial gerrymandering grounds. I don't know if
13   there were any findings on partisanship, but I
14   know that the attorney for North Carolina likes
15   to try to get those findings in cases he handles.
16   I don't know if he handled the 2002 case.
17 Q   And you don't know if there was any finding of
18   partisan intent?
19 A   No, I don't know.
20 Q   In your near neighbor analysis, if we start with
21   a very Democratic ward, what does your analysis
22   tell us about the characteristics of the adjacent
23   ward?
24 A   Well, it tells us -- if the distance is very
25   short to that ward or -- I'm sorry -- if the

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1   district -- if the ward is of similar
2   partisanship, then that will be the nearest
3   neighbor and that will be recorded as the nearest
4   neighbor for that ward.
5   Q   But your nearest neighbor analysis doesn't tell
6   you whether the adjacent ward is of similar
7   political characteristics, does it?
8   A   It can, because if it is recorded as the nearest
9   neighbor, then they have similar characteristics.
10 Q   But you don't know whether the adjacent ward is
11   the nearest neighbor under your analysis?
12 A   I do after I run the analysis.
13 Q   In Paragraphs 92 to 95 of your affidavit when you
14   are talking about partisan leans of the average
15   Democratic and average Republican wards, do you
16   know how many wards are Democratic and how many
17   wards are Republican by year?
18 A   No.
19 Q   Now if the number changes by year, how can we
20   know whether the change in the mean is because of
21   a time trend or because of a different sample?
22 A   Well, I suppose you could plot it out with the
23   data I provided and see.
24 Q   You didn't do that, did you?
25 A   I didn't do that.

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1   Q   In Paragraph 98 of your affidavit does the number
2   of wards in each quartile --
3   A   Quantile.
4   Q   Quantile. Excuse me.
5   A   I'm sorry. It is a meaningful difference. I'm
6   not being pedantic.
7   Q   No, and I appreciate that. Does the number of
8   wards in each quantile in Paragraph 98 change in
9   each year?
10 A   Not unless the total number of wards changes in a
11   redistricting year, because a quantile is a
12   percentage. So if you have 6,600 wards in 2012
13   and 2014, then it's going to be the 3 percent
14   most Democratic or most Republican wards
15   regardless.
16 Q   Does the identity of the wards change?
17 A   It can.
18 Q   Now in your analysis where you use the median
19   distance instead of the mean distance between
20   wards, your R code included the mean distance,
21   didn't it?
22 A   I'd have to see the code. Are you talking about
23   the median nearest neighbor?
24 Q   Yes.
25 A   I would have to go see the code.

27 (Pages 102 to 105)

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1   Q   Do you have it with you?
2   A   No.
3   MS. GREENWOOD: Can I ask what the name
4   of the file is? Do you know?
5   THE WITNESS: I don't remember.
6   BY MR. STRAUSS:
7   Q   Look at Paragraph 139 of your affidavit. You
8   claim that it, quote, "skews the imputation to
9   use presidential election votes to predict state
10   legislative election votes in Wisconsin." What's
11   your basis for that claim?
12 A   Well, it's from looking at Dr. Mayer's regression
13   analysis which shows that in highly Democratic
14   wards there's more of a dropoff from presidential
15   turnout to assembly turnout. There's more under
16   votes down ticket, whereas for Republican wards
17   there's no similar dropoff. So if you are
18   imputing from presidential votes, you know, 90
19   votes for Obama and 100 for Romney, it shows it
20   as 90 percent Democratic, but since there's
21   probably going to be a dropoff for Obama, I'm
22   just coming up with a number, it would be more
23   along the lines of, say, 89 percent with 900
24   votes cast.
25 Q   Do you think that Professor Mayer's model reports

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1   that a ward with 100 votes for Romney and 900
2   votes for Obama, does he report that as a
3   90 percent Democratic ward with 1,000 votes cast?
4   A   I don't think Professor Mayer reports these
5   numbers. I'm just trying to explain how a
6   dropoff can affect the total vote shares.
7   Q   Have you ever done any work for any political
8   party? I don't mean work as a spokesman, but any
9   campaign work or any work for a political party
10   in any capacity?
11 A   No.
12 Q   Have you ever done any consulting or other work
13   for any political campaigns?
14 A   No. We specifically do not consult for
15   campaigns.
16 Q   And I'm going back to when you were in college or
17   whenever.
18 A   No.
19 Q   Have you ever canvassed door to door for any
20   political candidate?
21 A   No.
22 Q   Are you registered to vote?
23 A   Yes.
24 Q   In what state?
25 A   Ohio.

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1   Q   Are you registered as a Democrat or as a
2   Republican or as an Independent?
3   A   Ohio doesn't have partisan registration.
4   Q   Do you vote primarily for Republican or
5   Democratic or Independent candidates?
6   A   In the last decade it's been about 50/50.
7   Q   Who did you vote for in the presidential election
8   of Obama versus Romney in 2012?
9   A   Romney.
10 Q   Who did you vote for in the presidential election
11   of Obama versus McCain in 2004?
12 A   Sorry?
13 Q   I'm sorry. In 2008.
14 A   I would have voted for McCain. I think he was
15   closer to the center than Obama.
16 Q   Who did you vote for George W. Bush for president
17   against John Kerry in 2004?
18 A   Again, I think Bush was closer to the center than
19   Kerry.
20 Q   Well, you voted for Bush?
21 A   Yes.
22 Q   And who did you vote for in the campaign of
23   George W. Bush for president against Al Gore in
24   2000?
25 A   I don't think I voted in that election.

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1   Q   Did you ever belong to the Young Republican
2   Society?
3   A   No.
4   Q   Are you a member or have you ever been a member
5   of The Federalist Society?
6   A   Yes.
7   Q   When did you join The Federalist Society?
8   A   It would have been in 1998.
9   Q   And have you been a member continuously since
10   then?
11 A   No. I would have stopped in law school.
12 Q   Now if you look at Paragraph 60 of your
13   affidavit, it says that similarly, according to
14   Dr. Mayer's calculations, the efficiency gap for
15   his demonstration plan is negative .219. Do you
16   see that?
17 A   Yes.
18 Q   That's an error, right?
19 A   Yes.
20 Q   It's actually negative .0219, correct?
21 A   Yes.
22 Q   So the difference between the two approaches for
23   the demonstration plan is actually only
24   1.4 percent, correct?
25 A   Right, right. That's in Paragraph 61.

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1   Q   And are you familiar with Andrew Gelman and Gary
2   King's Measure of Partisan Symmetry?
3   A   No.
4   Q   You're familiar with Chen and Rodden's work,
5   obviously, since you referred to it, right?
6   A   Yes.
7   Q   Have you ever tried to simulate district plans?
8   A   No, no, their algorithm is not particularly user
9   friendly, but it's something I'm working on.
10 Q   Are you familiar with the work of Roland Fryer
11   and Richard Holden on simulating district plans?
12 A   No.
13 Q   Do you know what they conclude as to which party
14   if any, has benefited by compact districts?
15 A   Nope.
16 Q   Are you familiar with the work of Adam Cox, John
17   Friedman and Richard Holden on how to construct
18   an optimal gerrymander?
19 A   No.
20 Q   Do you know what strategy they recommend to
21   gerrymander?
22 A   No.
23 Q   How did you learn R code?
24 A   The same way I learned Word or Excel. I used it.
25   I have a number of textbooks that I consult,

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1   about ten, there's an online -- number of online
2   tutorials, there's websites like Stack Overflow
3   and Stack Exchange that can tell you how to
4   perform different functions.
5   Q   In the three law firms that you moved -- that you
6   were in, is it correct to say that for each one,
7   each move was to a less prestigious law firm?
8   A   Depends what you consider prestigious.
9   Q   Well, Kirkland & Ellis --
10 A   Hunton & Williams would certainly disagree with
11   you.
12 Q   You mean that Hunton & Williams would say it was
13   just as prestigious as Kirkland & Ellis?
14 A   Absolutely. Trust me on this.
15 Q   Let me ask you this. What was your billing rate
16   when you left Kirkland & Ellis?
17 A   I have no clue. I was an associate. They didn't
18   let associates know that kind of thing.
19 Q   And Kirkland & Ellis is an international practice
20   that represents Fortune 100 companies, is that
21   right?
22 A   Yes.
23 Q   And how would you compare the practice of Hunton
24   & Williams?
25 A   It's an international practice that represents

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1   Fortune 100 companies.
2   Q   And how about David, Kamp & Frank?
3   A   It's a local law firm where you get into court.
4   MR. STRAUSS: Okay. Let's take a break
5   there.
6   (A recess was taken.)
7   BY MR. STRAUSS:
8   Q   Did you have any assistance from anyone in doing
9   your work on this case?
10 A   I have an assistant, David Bieler, who had done R
11   code for earlier litigation and for earlier work
12   that I adapted for this case. So, for example,
13   the Wisconsin maps, I use maps regularly in my
14   work as an elections analyst you can see from the
15   2014 elections. So he had drafted R code that
16   would do like Louisiana maps. So I adapted --
17   and I would use it for that. And so I adapted
18   the code for the maps to Wisconsin.
19 Q   Okay. What peer-reviewed literature have you
20   read about partisan gerrymandering?
21 A   Well, for this litigation -- I had read the Chen
22   and Rodden stuff before, because it was of
23   interest to me. I have read the Stephanopoulos
24   and McGhee article. I believe -- I think McGhee
25   has a separate article that I looked at, as well.

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1   Q   That's all?
2   A   I'm sure along the way I have read other stuff,
3   but that's what I remember for this litigation.
4   Q   Can you turn to Paragraph 19 of your affidavit.
5   At the end of the paragraph you say that in this
6   scenario an efficiency gap would be transformed
7   into an efficiency gap of negative .25 under the
8   Jackman approach and of negative .19 under the
9   Mayer approach. Can you explain how or why you
10   get different numbers for the two approaches?
11 A   I believe I provided the R code that does those
12   calculations. I don't know why they result in
13   different numbers.
14 Q   Paragraph 61 of your affidavit. You say that the
15   difference in measurement with respect to
16   Dr. Mayer's estimated Act 43 result is .0141
17   points, and then you say that that's a
18   substantial meaningful amount of uncertainty.
19   Why is that 1.4 percent out of a total range of
20   about 30 percent in your mind a substantial
21   meaningful amount of uncertainty?
22 A   Because that's like 6 percent of the range. I
23   think that's substantial and meaningful by any
24   reasonable metric.
25   MS. GREENWOOD: So I have all of your

29 (Pages 110 to 113)

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1   disclosure here on a computer and --
2   THE WITNESS: Are we done?
3   MR. STRAUSS: We're not done.
4   MS. GREENWOOD: I'm just telling you
5   what I'm giving you. Anyway, this is I think the
6   R code that we are talking about.
7   BY MR. STRAUSS:
8   Q   Does this R code show that you did calculate the
9   mean distance, as well as the median, in your
10   analysis?
11   MR. KEENAN: For the record, why don't
12   you state what file this is.
13   THE WITNESS: Yes, this is Wisconsin
14   clustering computation, which I think is a rename
15   of what I had it, but it looks to be the same.
16   Just so we are on the same page, can you tell me
17   what lines we are talking about?
18   MR. STRAUSS: No, I can't, but someone
19   else on this side may be able to.
20   MS. GREENWOOD: I think it's R71.
21   MR. STRAUSS: The answer from my side of
22   the table is 71.
23   THE WITNESS: No, that's not what that
24   is.
25

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1   BY MR. STRAUSS:
2   Q   What is R71?
3   A   **That's the mean partisanship of Democratic wards,**
4   **not the distance.**
5   MR. STRAUSS: I don't have any further
6   questions. That concludes the deposition. What
7   would you like to do with respect to review and
8   signature?
9   MR. KEENAN: We would like to do that.
10   MR. STRAUSS: So 30 days from receipt of
11   the transcript for review?
12   MR. KEENAN: That seems fine.
13   MR. STRAUSS: And the transcript is
14   going to you?
15   MR. KEENAN: And I will send it to you.
16   (At 11:12 a.m. the deposition
17   concluded.)
18
19
20
21
22
23
24
25

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1   CERTIFICATE OF WITNESS
2
3
4   I, SEAN P. TRENDE, have read the
5   foregoing pages and the corrections, if any, having
6   been noted. The same is now a true and correct
7   transcript of my testimony.
8
9   _____
10   SEAN P. TRENDE
11
12
13   STATE OF WISCONSIN   )
14   _____ COUNTY)
15
16   Subscribed and sworn to before me this
17   _____ day of _____, 2015.
18
19
20   _____
21   Notary Public
22   In and for the State of Wisconsin
23   My commission expires _____, ____.
24
25

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1   STATE OF WISCONSIN)
2   MILWAUKEE COUNTY   ) SS:
3
4
5   I, KATHY A. HALMA, Registered
6   Professional Reporter and Notary Public in and for the
7   State of Wisconsin, do hereby certify that the
8   deposition of SEAN P. TRENDE was taken before me at Law
9   Office of Peter Earle, LLC, 839 North Jefferson Street,
10   Milwaukee, Wisconsin, on the 14th day of December,
11   2015, commencing at 8:00 a.m.
12   I further certify that I am not a
13   relative or employee or attorney or counsel of any of
14   the parties, or a relative or employee of such attorney
15   or counsel, or financially interested directly or
16   indirectly in this action.
17
18   In witness whereof, I have hereunto set my hand and
19   affixed my seal of office on this 16th day of December,
20   2015.
21
22   _____
23   Kathy A. Halma
24   Notary Public in and for the State of Wisconsin
25   My commission expires September 30, 2017.

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