

EXHIBIT D

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON STATE REPUBLICAN)
PARTY, et al.,)

Plaintiffs,)

WASHINGTON STATE DEMOCRATIC)
CENTRAL COMMITTEE, et al.,)

Plaintiff Intervenors,)

LIBERTARIAN PARTY OF WASHINGTON)
STATE, et al.,)

No. CV05-0927-JCC

Plaintiff Intervenors,)

v.)

STATE OF WASHINGTON, et al.,)

Defendant Intervenors,)

WASHINGTON STATE GRANGE, et al.,)

Defendant Intervenors.)

Deposition Upon Oral Examination
Of

TODD DONOVAN, PH.D.

Taken by: Tracey L. Juran, CCR
CCR No. 2699

August 30, 2010
Seattle, Washington

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EXHIBITS MARKED

11

No. 1 (4-page Agreement signed by
Dr. Donovan on February 5, 2010)

9

12

No. 2 (15-page Curriculum Vitae for
Todd Donovan dated September 2008)

16

13

14

No. 3 (16-page Report on Factual
Political Knowledge and Voter
Confusion dated August 2010)

23

15

16

No. 4 (1 page labeled "Report on
Factual Political Knowledge and
Voter Confusion" and 49-page
Report on Paper by Mathew

25

17

18

Manweller, both dated August 2010)

19

No. 5 (2-page Official Ballot,
General Election, Jefferson

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20

County, State of Washington, dated
November 4, 2008)

21

No. 6 (1 page headed "Washington has
a new election system")

61

22

23

No. 7 (10 pages of the U.S. Election
Assistance Commission Glossary of
Key Election Terminology dated
2007)

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1 Be it remembered that the deposition upon oral
2 examination of Todd Donovan, Ph.D., was taken on
3 August 30, 2010, at the hour of 1:08 p.m. at 925 Fourth
4 Avenue, Suite 2900, Seattle, Washington, before Tracey
5 L. Juran, CCR, Notary Public in and for the State of
6 Washington residing at Edmonds, Washington.

7 Whereupon the following proceedings were had,
8 to wit:

9 * * * * *

10 TODD DONOVAN, PH.D., having been first duly sworn on
11 oath by the Notary Public to tell
12 the truth, the whole truth, and
13 nothing but the truth, was deposed
14 and testified as follows:

15 EXAMINATION

16 BY MR. MCDONALD:

17 Q. Would you state your name and address for the record,
18 please.

19 A. Todd Donovan. 247 Cherry Street, Bellingham,
20 Washington, is my home address.

21 Q. Where are you employed?

22 A. Western Washington University.

23 Q. In what capacity?

24 A. Professor of political science.

25 Q. Do you have any other jobs?

A. No. I write books, but it's not really a job.

1 Q. Have you ever run for political office?

2 A. I ran for Charter Review Commission in 2004.

3 Q. In Whatcom County?

4 A. Yeah. I lost.

5 Q. Have you -- I know the answer to this question, but I'll
6 ask it anyway. Have you been deposed before?

7 A. Yes.

8 Q. How many times?

9 A. Two, maybe three. Two, I think.

10 Q. One of those times was in the blanket-primary case.

11 A. Yes.

12 Q. What are the other times that you're thinking of?

13 A. There was a case involving ballot access in the state of
14 Montana that I did a report on. I was deposed in that.
15 I think other cases I've done reports on haven't
16 involved depositions.

17 Q. Have you testified in court before?

18 A. No.

19 Q. Now, though I assume you're fairly familiar with it,
20 I'll restate it in any event. If you don't understand
21 my questions, just go ahead and ask me to rephrase it or
22 tell me you don't understand. I'm obviously going to
23 ask some questions, hopefully you're going to give some
24 answers, and it'll be useful to all involved. If your
25 counsel objects, you can go ahead and answer unless

1 counsel advises you not to answer.

2 A. Okay.

3 Q. And the court reporter appreciates it if we both
4 remember to speak relatively slowly and if we both make
5 our questions and answers out loud so that she can hear.

6 A. Right.

7 Q. I don't know if I've missed anything from the standard
8 protocol or not. Okay.

9 Aside from depositions, have you submitted expert
10 testimony in some other form before, such as
11 declarations, reports?

12 A. Yes.

13 Q. You had mentioned a ballot-access case in Montana,
14 there's the blanket-primary case, there's this case.
15 What other cases were you --

16 A. A ballot-access case in Alaska, did a report on that.
17 That might be all of them. Did a friend-of-the-court
18 brief for a signature-disclosure thing here in
19 Washington, but that was not a paid report.

20 Q. What type of report were you giving for signature?

21 A. As scholars who work in direct democracy, sort of our
22 overview of the literature.

23 Q. What was the issue, I guess, is what --

24 A. Oh, the issue was, should signatures be treated as
25 publicly accessible or should they be withheld from

1 release.

2 Q. Is that part of the recent case on --

3 A. Yeah.

4 Q. -- whatever it was, R-71?

5 A. I don't remember the name of the case, but yeah, it was
6 just in front of the Supreme Court.

7 Q. What was the issue in the Alaska ballot-access case?

8 A. The -- whether -- this is a while ago -- their statutes
9 provided for the ability for third parties to be able to
10 get on the office -- to get on the ballot.

11 Q. By third parties, you mean third political parties?

12 A. Yeah.

13 Q. Do you recall what the obstacle was?

14 A. This is a while ago. There's all these variables
15 involved and I can't remember which one was at issue,
16 whether it was the time before filing, the amount of
17 signatures needed, or the percentage of votes needed to
18 qualify. That was a while ago. I haven't reviewed that
19 in a while.

20 Q. Who retained you in that case?

21 A. The State of Alaska.

22 Q. You mentioned a ballot-access case in Montana. And what
23 was the issue in that case?

24 A. The same sort of things I was just going over. That
25 one, I think the main issue was whether independent

1 candidates could get on the ballot for statewide office.

2 Q. And who were you retained by in that case?

3 A. The State of Montana.

4 Q. So you have worked for -- or been retained by state
5 election officials in Alaska, Montana, and Washington.

6 A. Yes.

7 Q. Are there any other states for whom you have performed
8 work, whether it's court related or not?

9 A. No.

10 Q. Have you been retained in any capacity by local election
11 officials at any time?

12 A. No.

13 Q. Have you been retained in any capacity by federal
14 election officials?

15 A. No.

16 Q. Have you consulted on any aspect of federal elections,
17 whether or not for compensation?

18 A. No. The only thing related to that, I did some work
19 with the Centers for Disease Control about local
20 referenda that -- dealing with fluoride.

21 Q. And have you consulted in any capacity with local
22 election officials, whether paid or not?

23 A. I serve on a citizens' election-advisory commission in
24 Whatcom County. It's most definitely not paid.

25 Q. You are presently under contract with the State of

1 Washington in connection with this case; is that
2 correct?

3 A. Yes, that's correct.

4 MR. MCDONALD: Have you mark this as Exhibit 1.

5 [Off the record - discussion]

6 [Exhibit 1 marked for identification]

7 Q. (by Mr. McDonald) Do you recognize Exhibit 1?

8 A. Yes.

9 Q. And is that your signature on page 4?

10 A. Yes.

11 Q. And I don't want to know what it is, but I assume that's
12 your Social Security number that's been blacked out.

13 A. I assume so, yes.

14 Q. Other than pursuant to this contract, have you done any
15 work or research related to the top-two primary?

16 A. To the top-two primary, no.

17 Q. Have you done any other work or research in relation to
18 partisan elections in the state of Washington since the
19 Supreme Court decision in the top-two-primary case,
20 which, for reference, was March 18 of 2008?

21 A. I work on public-opinion-poll data from the University
22 of Washington poll, but I'm not publishing stuff on
23 that. I mean, that tangentially relates to parties, but
24 not published research, no.

25 Q. What is the University of Washington -- or what's the

1 Washington poll?

2 A. The Washington poll? It's a semiannual poll that's
3 administered through the University of Washington
4 directed by Matt Barreto. I put questions on there
5 every now and then.

6 Q. Aside from the work that Dr. Manweller did in this case
7 and whatever work you've done pursuant to contract, are
8 you aware of any other research relating to the top-two
9 primary in Washington?

10 A. Not offhand. It hasn't been around long enough to
11 generate much research, is my guess.

12 Q. Have -- what -- well, strike that stumbling around.

13 What research have you done pursuant to the
14 contract, then?

15 A. The reports that I submitted, one on sort of an overview
16 of political knowledge generally and one an overview of
17 the Manweller report.

18 Q. Have you done any other research relating to this case?

19 A. No.

20 Q. Is any other research contemplated relating to this
21 case?

22 A. I don't think so, but that might be contingent on what
23 else pops up from the other parties.

24 Q. Are you aware of any research in progress relating to
25 this case?

1 A. No, I'm not.

2 Q. What information did you receive from the State of
3 Washington in connection with this assignment?

4 A. The paper by Dr. Manweller, I believe a copy of his
5 vita, some material having to do with polling or focus-
6 group stuff that Stuart Elway had done which I didn't
7 really use. That's what comes to mind right off. I
8 can't remember anything else.

9 Q. You indicated you thought you had received some material
10 relating to some Elway work. Can you describe that in
11 more detail.

12 A. Yeah. There was two bits to it. One was public-opinion
13 data showing attitudes about the primary system, and the
14 other -- I didn't make much use of this, so I can't
15 really remember too clearly. I think it was something
16 that had to do with focus groups.

17 Q. Do you recall whether the second piece was a focus group
18 discussing disclaimers, ballot design, those types of
19 issues?

20 A. It very well might have. I didn't really use it, so
21 it's not clear in my mind.

22 Q. You indicated you did -- well, maybe you didn't, so
23 strike that question.

24 Did you use the information that was public-
25 opinion-poll information that came from Elway?

1 A. No. I just sort of narrowed my focus on the paper by
2 Dr. Manweller.

3 Q. Any other information that you received in connection
4 with this assignment?

5 A. I don't think so. Not that I can recall.

6 Q. And because I kind of changed the question, let me just
7 make sure that you understood it. Did you receive
8 information related to this assignment from anyone at
9 all, whether it was the State or not, other than what
10 you've previously disclosed?

11 A. No.

12 Q. What information have you given to the State related to
13 this assignment?

14 A. Two reports that sort of reference each other, the one
15 on political knowledge and the one that's an overview of
16 Dr. Manweller's paper.

17 Q. Have you had any oral briefings with the State on this
18 subject?

19 A. We spoke on the telephone at one point or two.

20 Q. For about how long?

21 A. Half hour at one time coordinating when I was going to
22 be able to get stuff done, timing. Then another time, I
23 think, before all of this, before the contract, about
24 whether I was available and what sort of work I might
25 do, maybe another half hour.

1 Q. What assignment were you given by the State?

2 A. I think, after the conversation, it was decided that I
3 would pretty much focus on the Manweller paper and
4 critique it as a piece of research.

5 Q. Did you have any discussions with the State relating to
6 doing affirmative research?

7 A. Yes.

8 Q. What were those discussions?

9 A. That it would be expensive. Ideas about potential
10 experimental surveys was one idea, but there wasn't
11 going to be time for that.

12 Q. When did you have that conversation?

13 A. Probably about the time I received the Manweller report,
14 which was -- I couldn't -- I can't remember the dates.

15 The contract was signed -- we had -- so we had some
16 discussion when the contract was signed. And then there
17 was this long period of waiting when, I guess, we didn't
18 know what information the State would be receiving and
19 that I would be available to look at that when that
20 became available. We sort of started talking about what
21 I would be doing, and that, again, focused in on there
22 was time to just deal with the Manweller report, not
23 do -- what did you call it -- affirmative research or --

24 Q. Yeah.

25 To keep the record clear, what I meant by

1 affirmative research was, in contradistinction to
2 criticizing or commenting on somebody else's work, to
3 actually go out and --

4 A. Right.

5 Q. -- test yourself or do a survey yourself.

6 Did you recommend to the State that it do
7 affirmative research?

8 A. No. I think we were just kind of kicking around ideas
9 at one point, not knowing what was going to be coming
10 down the pike.

11 Q. And in your most recent conversation, did you recommend
12 that they do affirmative research?

13 A. No, not in terms of -- no, not a positive
14 recommendation. Again, we were sort of throwing ideas
15 back and forth about what there would be time to do.

16 Q. Did you outline for the State what you thought would be
17 a proper approach to addressing the issue in this case
18 in terms of a survey?

19 A. No. We never got very far in terms of what that would
20 look like.

21 Q. Did the State give you any reason why it wasn't doing a
22 survey?

23 A. The time was really the -- I think, the main issue, time
24 and money. And we just never proceeded that far in
25 those discussions.

1 Q. Did you ever ask the State why no follow-up work was
2 done to the Elway research that you got?

3 A. No, I didn't.

4 Q. How many hours have you spent on the contract so far --
5 excuse me; strike that.

6 How many hours have you spent on this assignment
7 for the State so far?

8 A. In terms of doing those reports, 40, 50 hours, something
9 like that.

10 Q. And does that include the conversations that you had
11 with the State or are those separate?

12 A. That would be included in there. That wasn't that much.

13 Q. Was there any work for which you'll be compensated by
14 the State that wasn't included in the 40 to 50 hours?

15 A. I don't know. And if -- and I'm -- I don't mean to
16 sound ignorant on the sort of give and take of the
17 process here, but if there is another report submitted
18 by you guys, then possibly that would be something I
19 would be involved with. But --

20 Q. Let me clarify my question.

21 As of today, is there any work that you've done
22 that was not included in that 40- to 50-hour estimate?

23 A. No.

24 Q. Thank you.

25 Have you, either for the State or anyone else, ever

1 done research on ballot design?

2 A. No.

3 Q. Have you ever done research on ballot usability?

4 A. No.

5 Q. Have you ever done any research on what voters
6 understand about ballots they look at?

7 A. No.

8 Q. My impression from reading your reports is that among
9 the criticisms that you have --

10 A. Can I -- I'm sorry.

11 Q. Yeah.

12 A. Can I go back to that --

13 Q. Yeah.

14 A. -- the last question? I'm like trying to visualize my
15 vita in my head.

16 Yeah, I have done some work that would be related
17 to how much drop-off there is on ballots based on the
18 number of items on the ballot. So that would be
19 tangentially related to it.

20 Q. That's probably a good segue to my marking the next
21 exhibit, which is your vitae.

22 A. Right. If I had that, I could --

23 MR. MCDONALD: Could we mark that as Exhibit 2,
24 please.

25 [Exhibit 2 marked for identification]

1 Q. (by Mr. McDonald) Handing you what's been marked as
2 Exhibit 2, let me represent to you that this is what we
3 downloaded from the Internet on -- from something, I
4 think, called Donovan's Page or Todd Donovan's Page.

5 A. Yeah. It's all out of date, but yeah, it's --

6 Q. That was described as a brief vitae?

7 A. There is a brief version. I must have had it linked
8 wrong, but -- this is an old version.

9 Q. Was this accurate as of September 2008, which is the
10 date in the upper right?

11 A. Yeah. The only difference is now there's a couple more
12 books and papers published.

13 Q. Can you generally describe what would be added to this.

14 A. I have another book forthcoming with University of
15 Chicago Press on the Iowa caucuses. I have probably two
16 or three more articles, one in Public Opinion
17 Quarterly -- oh, that's listed in here as forthcoming.
18 But there's a couple more articles. But must be 98
19 percent the same, so --

20 Q. What is the -- what is your book about the Iowa
21 caucuses? Do you have a --

22 A. It's called Why Iowa. So part of it is why does Iowa go
23 first, what are the effects of having Iowa go first, how
24 do people interact at the caucuses, do they learn, are
25 Iowans representative of the rest of the country, is

1 there a different way to do the nomination process
2 than -- that's what it's about.

3 Q. We'll speak about that afterwards.

4 A. Yeah. Coming to bookstores near you.

5 Q. Now, what I started to ask a moment ago, one of the
6 general understandings I received from your report is
7 that, in your opinion, Dr. Manweller's research cannot
8 be generalized to a larger population. Is that --

9 A. That's consistent with what I'm saying.

10 Q. Do you have an opinion whether his conclusion is wrong?
11 That is to say, is it -- it may or may not be
12 generalizable, but does that mean that the full
13 population will necessarily be different than what he
14 concluded?

15 A. Yes, I have an opinion on that, and I would believe that
16 there would be different conclusions drawn from a --
17 different samples.

18 Q. What conclusion do you think would be drawn from a
19 different sample?

20 A. My sense from -- I'm trying to remember what I wrote in
21 the report specifically. But if your samples are
22 overrepresenting who are probably the least-informed
23 voters and you're trying to measure what he calls
24 confusion, you would see less of that in a sample that
25 included more-informed voters, and that his sample is

1 biased towards having -- his samples; there's three
2 different samples -- having less-informed voters.

3 Q. What is your basis for assuming that, in connection with
4 this particular test, a more-informed voter would
5 respond differently than a less-informed voter?

6 A. In terms of how they would interact with the ballot?

7 Q. Yes.

8 A. Okay, couple things. The more-informed voter's going to
9 be just more accustomed to the practice of voting and
10 more attentive to what is on the ballot in terms of
11 notifications, more likely to take it more seriously.

12 Q. Would that suggest that in the voting population, a
13 more-casual voter is more likely to be confused than a
14 well-informed voter?

15 A. Say it again.

16 MR. MCDONALD: Would you read back my question,
17 please.

18 [Record read back as requested]

19 MR. AHEARNE: I'll object to the form of the
20 question.

21 A. Yeah, I'm not sure how to answer that. I mean, the main
22 point of my report is that on many levels, his research
23 is biased towards finding what he is calling confusion,
24 and that if you did the experiments properly on a more-
25 informed voting population, you would measure much less

1 of what he is claiming to call confusion. I'm not sure
2 if that directly answers --

3 Q. (by Mr. McDonald) No, it doesn't directly answer. I
4 understood that that was your answer. I'm asking
5 whether, as a necessary corollary to what you just said,
6 in your opinion, a casual voter is more likely to be
7 confused by the ballot design than an informed voter.

8 MR. AHEARNE: Same objection.

9 A. Yeah, I don't think I necessarily agree with that.
10 You'd have to run the experiments. You can test that.
11 But the -- again, I mean, the point I'm trying to make
12 is about the report not -- on many levels not properly
13 measuring what confusion would be. So I guess we'd have
14 to figure out what you mean by confusion --

15 Q. (by Mr. McDonald) Well, what's --

16 A. -- first.

17 Q. -- confusing me -- get that in a -- that into the
18 question. But what's confusing me is, you indicate that
19 if the sample were representative, the overall result
20 would be that there's -- would show less confusion
21 because there would be greater numbers of informed
22 voters in the population.

23 As a matter of mathematics, I don't see how you can
24 reach that result unless you're also saying that the
25 population that exists there now is more confused than

1 the population that would be added in if you had a
2 representative sample. Can you explain the math. How
3 do you get to this opinion without having the
4 corollary --

5 A. Okay, I guess the -- did I -- in the first version of
6 that question, I did say I'm assuming that the casual
7 voter, the less-informed voter, or the nonvoter in the
8 case of his samples -- it seems to potentially be a
9 problem -- would approach the ballot more casually. But
10 the main thing here is, you know, that research is
11 trying to measure what the meaning of particular words
12 are and how people respond to these words.

13 So it's not just that the samples are flawed --
14 that's part of the problem -- but it's also, you know,
15 confusion about what does the word "nominee" mean. And
16 that would be something -- I think you could assume
17 somebody who has never voted before, doesn't follow
18 politics, isn't engaged in the political process might
19 have less knowledge about the meaning of that word than
20 somebody who's a regular, informed voter.

21 Q. Am I correctly summarizing your testimony that if you
22 assume that casual voters would approach the ballot
23 differently, then you have an opinion that the result
24 would be different?

25 A. Which result? The result if you'd done the studies --

1 Q. The conclusion, yes.

2 A. If you had done these studies properly with a
3 representative sample of voters, you would measure less
4 voter confusion, as --

5 Q. And that's based on -- as I understood your testimony,
6 that's based on an assumption by you that casual voters
7 would approach the ballot differently than informed
8 voters.

9 MR. AHEARNE: Same objection.

10 A. I'm not sure if they'd approach the ballot differently.
11 But there's just -- there -- in that report on political
12 knowledge with -- what I'm saying, there's a base-line
13 level of what we might call confusion that exists among
14 all voters and that when you start looking at, say,
15 younger people, you're going to measure more of that.
16 And that's what Dr. Manweller's doing.

17 Q. (by Mr. McDonald) Are younger people less able to read
18 a disclaimer on a ballot than older people?

19 A. They may be -- I would only be venturing a guess at
20 that, but they're less likely to even vote. They're
21 less likely to have information. So they're less likely
22 to receive whatever information you're probably giving
23 them.

24 Q. Focusing for the moment exclusively on the ballot and
25 reading it at the time that you're voting, is a younger

1 voter less likely to read and understand a sentence
2 written on that ballot than an older voter --

3 A. I wouldn't --

4 Q. -- in your opinion?

5 A. No, I wouldn't say that. I think that -- I mean, you
6 can think of voting as something that you learn the more
7 you do it in all the forms about -- you know, whether
8 you're interacting with the ballot or just understanding
9 what the concepts are that you're dealing with in
10 politics. That's a learned behavior. People who are
11 older who have voted more often on all levels are going
12 to be more understanding and more comfortable with the
13 process.

14 So it's not that the younger voters can't read,
15 they just haven't sort of gotten the habit of
16 interacting with the political process yet.

17 Q. As a general matter, is it possible for a biased sample
18 to produce the same survey result as a representative
19 sample would?

20 A. As a general matter, that is possible, yes.

21 MR. MCDONALD: Mark this as Exhibit 3, I think.

22 [Exhibit 3 marked for identification]

23 MR. GROVER: Is Exhibit 1 a vitae also?

24 MR. MCDONALD: Excuse me. Exhibit 1 was the
25 contract between Dr. Donovan and the State of Washington

1 which either Jeff or Allyson sent us recently. It
2 doesn't have a Bates number on it. Exhibit 2 was his
3 vitae that I downloaded from the Internet last night.
4 Exhibit --

5 MR. GROVER: From the Western Washington University
6 Web site?

7 MR. MCDONALD: I don't know whether that was the
8 Web page it --

9 THE WITNESS: Yes.

10 MR. MCDONALD: -- was on.

11 THE WITNESS: Yeah.

12 MR. MCDONALD: Yes, okay.

13 And then Exhibit 3, which I'm in the process
14 of marking, is a document entitled "Report on Factual
15 Political Knowledge and Voter Confusion."

16 Q. (by Mr. McDonald) So having handed --

17 MR. GROVER: Thank you very much.

18 MR. MCDONALD: Yeah.

19 Q. (by Mr. McDonald) Having handed you Exhibit 3, do you
20 recognize it?

21 A. Yes.

22 Q. What is it?

23 A. It is the report I wrote on general political knowledge.

24 Q. Have you updated this report at all?

25 A. No.

1 Q. Have you changed any opinions that are reflected in it?

2 A. No.

3 MR. MCDONALD: Okay, let me also mark as Exhibit 4
4 a document entitled "Report on" --

5 THE WITNESS: I put the wrong title on that one;
6 sorry.

7 MR. MCDONALD: Okay, let me mark as Exhibit 4 a
8 document that has a similar title --

9 THE WITNESS: If you flip --

10 MR. MCDONALD: -- but which --

11 THE WITNESS: -- the page, actually, the title's on
12 the front there. So --

13 MR. MCDONALD: -- but which on page 2 (sic) is
14 entitled "Report on Paper by Mathew Manweller," just for
15 your reference, Orrin.

16 Could we mark this, please.

17 MR. GROVER: Thank you, Counsel.

18 [Exhibit 4 marked for identification]

19 MR. WHITE: So up until now I've been calling them
20 the 16- and 49-page report.

21 THE WITNESS: I just realized the other day that
22 I'd done that.

23 MR. MCDONALD: But you would have been robbed,
24 because page -- the first page is page 0, so it's a 50-
25 page report. Okay, let me pull this up.

1 Q. (by Mr. McDonald) Do you recognize Exhibit 4?

2 A. Yes.

3 Q. What is Exhibit 4?

4 A. It is the report I did on the Manweller paper.

5 Q. Have you updated Exhibit 4?

6 A. No.

7 Q. Have you changed any opinions reflected in Exhibit 4?

8 A. No. I would change the first-page title if I had a
9 chance to.

10 Q. Aside from that particular error, are there any other
11 errors that you're aware of in Exhibit 4?

12 A. No, not that I'm aware of.

13 Q. Between them, do Exhibits 3 and 4 contain all of the
14 opinions that you've prepared in this case?

15 A. Yes.

16 Q. On Exhibit 4, if you could turn to page -- numbered
17 page 4 of the exhibit in the lower-right-hand corner.
18 About partway through the second paragraph, the phrase
19 appears, "candidates appear with a standard party label
20 by their name." What do you mean by a standard party
21 label?

22 A. I'm sorry; I'm not finding that sentence. Oh, I see,
23 okay. The label of a party name that would simply say
24 Democrat, Republican, Libertarian, whatever.

25 Q. Would you also include within that abbreviations for the

1 party names, such as a D, an R, an L?

2 A. Yes, I guess.

3 Q. Down at footnote 8 on that same page, is there something
4 missing?

5 A. Oh, yeah. There was a longer footnote there that -- and
6 I can get a copy of that. Yeah, I don't know what I did
7 there. There were a number of counties whose ballots I
8 looked at and I thought I had them all listed out there.
9 Yeah, I apparently either didn't save the change when I
10 was editing it or something.

11 But I couldn't offhand remember which counties
12 those were, but a number of counties had either a
13 colored sheet of paper separate from the ballot that
14 came with the notification, the does-not-imply stuff.
15 Some of them had it in bold font. And I could come up
16 with the names of those counties that I thought I had
17 listed in that footnote.

18 Q. Did you obtain the ballots that you were looking at
19 yourself or was that material you were given by the
20 State?

21 A. The State gave me some of them, and some I just trolled
22 onto county-auditor Web sites and looked them up.

23 Q. If you would turn to page 13 of the report. The
24 sentence that begins, "For example," the second line
25 says, "we needs sample that are representative." Is

1 that a typo of some kind?

2 A. Yes, that's a typo.

3 Q. What should it read?

4 A. We need samples.

5 Q. Samples, plural, and need, singular?

6 A. Yes.

7 Q. If you would turn to page 20, the first complete
8 sentence on that page that begins with "Such" reads,

9 "Such information can be used to generate a random
10 sample of that represents active voters."

11 A. "Of" is a typo.

12 Q. "Of" should be deleted?

13 A. Right.

14 Q. At page 22, the first sentence of footnote 38, is there
15 a typo in that sentence?

16 A. The sentence that begins, "This is the reason"?

17 Q. "This is know as sampling error."

18 A. Oh, yeah. That should be known.

19 Q. Known, with an N on the end?

20 At page 25, in footnote 48 it says, "This number is
21 calculate." Should that be calculated?

22 A. Yes.

23 Q. At page -- sorry. At page 27, the second line from the
24 end of the first full paragraph that begins with Roman

25 XIII and XIV, that sentence reads, "Sections XIII and"

1 14 "of this report also shows." Should that be show?

2 A. Show.

3 MR. WHITE: Sections -- does it say "Sections" --

4 MR. MCDONALD: XIII --

5 MR. WHITE: -- "XIII and" --

6 MR. MCDONALD: -- X (sic).

7 MR. WHITE: -- "IX"?

8 MR. MCDONALD: Sorry --

9 THE WITNESS: IX.

10 MR. MCDONALD: -- X (sic) and IX; excuse me. Yeah,
11 I apologize.

12 A. Sections VIII and IX.

13 Q. (by Mr. McDonald) Is that VIII or XIII?

14 MR. WHITE: That's XIII.

15 Q. (by Mr. McDonald) That's --

16 A. I believe that is supposed to be VIII and IX, not XIII
17 and IX. There is no section XIII.

18 Q. So it should be a Roman VIII as opposed to Roman XIII.

19 A. Correct.

20 Q. Then at page 37, I believe, the second sentence of the
21 last paragraph of that page reads, "Dr. Manweller fails
22 to report the degrees of freedom or numbers of case."
23 Do you --

24 A. Cases should be plural.

25 Q. Should it be numbers of cases or number of cases?

1 A. Number of cases.

2 Q. Number, singular, cases, plural.

3 A. Yeah.

4 Q. At footnote 81, which is on paragraph -- or page 46,
5 what URL should be there?

6 A. I have saved some URLs. God, you know, that listed news
7 articles reporting on endorsements from at least Whatcom
8 County and King County, I believe. Just the Bellingham
9 Herald and I believe it was The Seattle Times.

10 Q. Can you supply those at some point?

11 A. Yeah.

12 Q. Thanks.

13 And at page 47, in the full paragraph that begins,
14 "Furthermore," down around five -- line five, the
15 sentence begins, "They may assume that a person who has
16 ever voted for a" political "party's candidate is
17 'affiliated with.'" Should that be never?

18 A. No, I don't think so. "They may assume that a person
19 who has ever voted for a particular party's candidate
20 is," quote, "affiliated with." That should be ever.

21 Q. Should be never with an N?

22 A. No, it should be ever.

23 Q. Should be ever?

24 A. Yeah.

25 Q. And at page 48, on line three the quote reads, "Forty-

1 two percent felt candidate were the party's
2 representative." Is -- do you know if that's a typo on
3 your part?

4 A. That's probably a typo on my part. Candidates, plural.

5 Q. So other than the ones that I have identified, are you
6 aware of any errors?

7 A. No.

8 Q. Turning to Exhibit 3, on page 2 you have a sentence that
9 says, "For example, in 1964, only 10% could define the
10 meaning of," quote, "liberal," closed quote, "or,"
11 quote, "conservative," closed quote. Is that still true
12 45 years later?

13 A. Not those exact numbers, no. I mean, not 10 percent,
14 but there's still a consensus in the literature that
15 people are not very able to define the meanings of those
16 terms.

17 Q. In your opinion, if the only thing a voter knows about a
18 candidate is that he or she says she's conservative,
19 would that affect the voting behavior?

20 A. If there was a vacuum and you knew nothing else?

21 Q. Yes.

22 A. Potentially. It's a big hypothetical, but --

23 Q. Would it cause some people to vote in favor of the
24 candidate and some people to vote against the candidate
25 because of their reaction to the word "conservative"?

1 A. Again, in a vacuum with no other information, I would
2 expect any single piece of information could affect some
3 voters in some direction and some the other direction.

4 Q. Even though they couldn't define it, that might affect
5 their voting behavior?

6 A. Potentially. It's not something -- I'm not aware of
7 anybody actually testing that.

8 Q. Is that a situation that can occur when you get very far
9 down the ballot and voters have less and less
10 information about the candidates?

11 A. Yeah, it would be more likely. The less information
12 there is, the more that any one piece -- particularly in
13 like a nonpartisan race among unknown candidates.

14 Q. The footnote 4 down there has a sentence partway through
15 that says, "Others argue that minimally informed
16 citizens are able to act rationally by relying on
17 shortcuts and heuristics"?

18 A. Mm-hm.

19 Q. What are some examples of shortcuts and heuristics?

20 A. That could be almost anything: An endorsement from an
21 interest group, party label, gender.

22 Q. Have there been any studies as to the extent to which
23 people rely on shortcuts and heuristics?

24 A. Yes. I've done some of them.

25 Q. Is it a small percentage of the population that does

1 that or is it a large percentage?

2 A. It's a bit of a debate in the literature, I think. But
3 depending on like if you're talking about low-
4 information elections, ballot propositions, could be a
5 substantial proportion. I think the point isn't whether
6 or not people use the cues, it's -- the debate's more
7 how many. It's what are the most important ones or at
8 what levels of election are they more relevant.

9 Q. What are the most important ones?

10 A. Party identification -- or party labels.

11 Q. At what levels of election is that most important?

12 A. Any partisan election. But yeah, it's probably, as you
13 go down the ballot, more relevant than -- I mean, more
14 information about the candidates' personalities are
15 known at the top of the ballot.

16 Q. If you could turn to page 5 of this report, in the first
17 paragraph, second sentence reads, "For example, in early
18 2010 (during intensive media coverage of health care
19 legislation in Congress), respondents were asked,"
20 quote, "In the United States Senate, opponents to
21 legislation can delay a vote by filibustering. Do you
22 know how many senators are needed to break a filibuster
23 and bring a bill to the floor," question mark, "51, 60,
24 67 or 75," closed quote. What was the reason that you
25 mentioned that this was during intensive media coverage?

1 A. Just to point out that in a context where this is
2 actually out there in the news, you still don't get very
3 many people knowing the correct answer. My guess would
4 be, you know, if you'd asked that when that wasn't in
5 the news, even fewer people would know the correct
6 answer.

7 Q. Do you have any basis for comparing the amount of media
8 coverage there was on the health-care legislation to the
9 amount of advertising that happens in a typical
10 campaign?

11 A. Would I have any basis of making a comparison between
12 the two?

13 Q. Yeah.

14 A. No. You could measure airtime in terms of paid media
15 and free media. I couldn't guess. Few campaigns would
16 have the resources to probably put up as much paid media
17 as a news story like that would be getting. But again,
18 I'm, you know, just guessing.

19 Q. Would you expect voters in general to be less informed
20 about campaigns than they were about the health-care
21 legislation because of that?

22 A. Not necessarily. Again, it would -- what campaign are
23 we talking about? City council or president or --

24 Q. State insurance commissioner, which is marginally
25 related to the health-care debate.

1 A. Yeah. So your question is, would they be -- would I
2 expect them to be receiving more information about, say,
3 a state insurance campaign --

4 Q. No. Would they be less informed about the -- would they
5 be better able to answer questions about the state-
6 insurance-commissioner race than they would health-care
7 legislation or less given the disparity in the amount of
8 advertising --

9 A. Yeah, I --

10 Q. -- in the media?

11 A. -- I honestly don't know. I'm just using that as one of
12 many examples of if we want to measure some political
13 fact, that we should expect to get a high level of
14 people who don't necessarily know the correct factual
15 answer.

16 Q. Have you done research in this area yourself in terms of
17 the extent to which people absorb information about
18 campaigns?

19 A. Somewhat, yeah. I mean, I've done work on public
20 opinion and issues that may be primed during campaigns,
21 done some work on the effects of campaign spending on
22 elections and perceptions of elections.

23 Q. As a general matter, do you need to repeat a message
24 multiple times to get a voter to absorb it?

25 A. Yeah, I would assume so.

1 Q. Are you aware of any rules of thumb that are used by
2 campaigns or campaign consultants of the number of times
3 that you need to get a message across to a voter before
4 they really recall it?

5 A. I've heard people say three, but those are more driven
6 by people's campaign budgets than whether there's any
7 hard evidence about that.

8 Q. Do you expect that campaigns would repeat it more times
9 if they could afford it, as opposed to less?

10 A. I expect they would, yes.

11 Q. On page 6, in the paragraph at the bottom, partway
12 through there is a sentence that reads, "Half of the
13 respondents could not correctly recall who won their
14 party's caucus, despite intensive media attention to
15 Iowa." Do you see that sentence?

16 A. Mm-hm.

17 Q. Was that more intense coverage than the health-care
18 legislation or about the same or what?

19 A. I -- again, I -- you could measure that with data
20 from -- the Pew Research Center tracks how much
21 different stories get in the news. But the -- I don't
22 have it with me, but -- yeah, in the book we actually --
23 that footnote references a book that I worked on. There
24 are literally hundreds of stories on the Iowa caucuses
25 in the New York Times in 2007 to 2008.

1 Q. The data point that you're using on page 6 about Iowa is
2 obtained a month after the caucuses versus on page 5,
3 when you're talking about health care, you're talking
4 about a data point taken during the coverage of the
5 health-care legislation. Does the passage of time make
6 a difference?

7 A. Probably.

8 Q. In what regard?

9 A. The longer the period of time, probably less likely you
10 would know the information, although in this case, at
11 some point the passage of time is going to -- so you win
12 the Iowa caucus. There's going to be some point where
13 that's still going to be in the news as time goes on and
14 at some point it's probably going to diminish. I
15 couldn't make a guess about what the length of that
16 would be.

17 Q. For many of the political messages and political facts
18 that have been the subject of your research, is it the
19 case that the voters tend not to recall them very long
20 even after they've been told them?

21 A. I'm not sure. I don't really -- I mean, that's
22 interesting. I don't know if we measured how long
23 factual knowledge endures. It's usually cross-
24 sectional; we survey somebody once. It's really
25 expensive to do panels where you come back and survey

1 the same people.

2 Q. Is there any data that suggests that for most of the
3 political information people get, they tend to forget it
4 over time?

5 A. I'm not sure. I don't know.

6 Q. Any studies, for example, on how well voters recall the
7 promises that were made by candidates and whether they
8 kept them?

9 A. Well, that would be -- I'm not aware of such studies.
10 But then you'd also have to realize that you're both
11 measuring whether they're remembering and whether
12 they're being reminded by people who are running against
13 them about the promises. But it -- you know, in survey
14 research, it is -- that would be the sort of thing where
15 we'd want to track the same people over time, and
16 that -- those studies tend to be expensive and done less
17 than just some cross-sectional surveys.

18 Q. At page 11 of this report, the first sentence under
19 "Conclusions," you said that, "In sum, the Manweller
20 experiments attempt to measure voter knowledge about
21 political facts related to candidates and political
22 parties." What causes you to conclude that that's what
23 he was trying to measure, as opposed to what voters
24 understood about a ballot? Were any of the candidates
25 on his ballots real?

1 A. Well, I think your first question --

2 Q. Yeah, I'll strike the second one. Just stay with the
3 first.

4 A. Yeah. I mean, I'm reading his research as he's
5 attempting to measure -- and I -- you know, whether
6 people are confused, and the only -- the way he's
7 defined confusion is whether they believe these
8 hypothetical candidates are, in fact, the nominee of the
9 party. And he -- I couldn't point out to the page
10 number, but I believe he does treat that as a fact that
11 he's trying to measure whether people are correct or
12 not. And he uses the phrase "correct," so -- incorrect
13 being his measure of confusion. That leads --

14 Q. In --

15 A. -- me to believe that he's measuring what he claims to
16 be a political fact.

17 Q. In the context of purely hypothetical candidates, there
18 is no factual basis to determine whether they are or are
19 not actually the nominees of the parties, are they -- is
20 there?

21 A. In terms of the report I'm writing on Dr. Manweller's
22 paper, he's -- his research is predicated on the
23 assumption that he's trying to measure what he claims
24 is, are these candidates, in fact, perceived to be
25 nominees or not. I mean, if we just --

1 Q. Right.

2 He's trying to measure they're perceived that way.
3 But there's no independent, objective source you could
4 go to about a hypothetical candidate to determine
5 whether they are or are not, in fact, the nominee; is
6 that correct?

7 A. They're -- because they're hypothetical candidates?

8 Q. Yes.

9 A. By that line of reasoning -- or I guess I'm not
10 following the question. If we just say there's no fact
11 that he's measuring, then his -- the research doesn't
12 make any sense then.

13 Q. He's not trying to measure facts, he's trying to measure
14 perceptions of relationships, isn't he?

15 A. Right. But he's claiming that one is factually correct
16 and that another one isn't factually correct. That's
17 how he codes his definition of voter confusion and
18 error. I'm just -- I'm going with the way the report
19 was structured.

20 Q. In other words, he's saying that voters, at least in his
21 experiment, perceive the hypothetical candidates in some
22 cases to be nominees and they are, in fact, not
23 nominees?

24 A. He says that there are correct and incorrect answers.

25 Q. I think in the other report you make a point about

1 whether the participants in Dr. Manweller's study
2 understood what a nominee is or words to that effect.
3 Do you recall that section of your report?

4 A. Yes.

5 Q. What is your understanding of what the party nominee is?
6 Let me start with the -- first, party nominee. I
7 realize I've added a word.

8 A. I'm going with what Professor Manweller was using in his
9 paper, which -- the -- I don't know if I have this in my
10 report -- the nominee would be the party's -- let me
11 back up. So traditionally, just as a political-science
12 answer, the nominee would be the candidate that somebody
13 in the party organization or some process in the party
14 organization has designated as the candidate they wish
15 to see on the ballot.

16 Q. Do you have any opinion about what percentage of the
17 population would have the same understanding of the
18 party nominee?

19 A. I don't. And had these experiments been done
20 differently, we might know that.

21 Q. I believe you had suggested in your report that one of
22 the things that should have been done would have been to
23 add some type of prefatory comment to the question that
24 either explained or indicated something about what a
25 nominee was?

1 A. Yes.

2 Q. Why do you suggest that?

3 A. In the context of my report, I was putting that in there
4 just as somebody trying to measure public opinion about
5 a concept that might not be assumed to be something
6 people are thinking about often. You want to give some
7 kind of preface to be sure you are asking -- that
8 they're responding to the question in terms of the
9 concept in the same way that you are thinking about the
10 concept.

11 So if you just ask, you know, who is the party
12 nominee, you'll get a different response than if you
13 say, here is the definition of party nominee, now ask
14 somebody, who is the party nominee. So it's -- a
15 clarifying statement at the beginning of a survey
16 question can get you a more precise instrument to
17 measure with.

18 Q. I take it we're in agreement that the clarifying
19 statement can affect the answer, whether that's for good
20 or for bad. But it can affect the answer; is that
21 right?

22 A. Yeah. And, I mean, that's -- in honest survey research,
23 you try to make the clarifying statement clarifying, but
24 not necessarily leading or misleading.

25 Q. Let's see. At table 2 of Exhibit 3, page 14, you've

1 cited a study partway down that indicates 36 percent
2 could define a primary election.

3 A. Yeah.

4 Q. Do you see that?

5 A. Mm-hm.

6 Q. Do you anticipate that statistic would still be true if
7 it were checked today?

8 A. I honestly don't know. But I would still expect fairly
9 high levels of incorrect answers to a question trying to
10 measure that as just knowledge of a political fact.

11 Q. How would you define a primary election?

12 A. Depends what kind of primary we're talking about.

13 Q. How would you define partisan primary election?

14 A. A process where political parties allow voters to select
15 the nominee for the general election.

16 Q. Then there's a statistic that 25 percent -- I'm about
17 three down -- 25 percent correctly answered the question
18 of how long a U.S. Senator's term is.

19 A. Mm-hm.

20 Q. Do you see that?

21 Would you expect that to still be a valid
22 statistic?

23 A. Again, I -- you know, I couldn't guess. That's -- the
24 level of education in the electorate or civic education
25 changed since 1991? I wouldn't expect it to be that

1 different, but, again, I don't know.

2 Q. Why don't we turn to Exhibit 4. At page 2, partway
3 through the summary, item 9 you've identified as a
4 problem which you summarize as, "The failure to validly
5 measure perceptions of official party nominees, party
6 endorsed candidates, and party association with
7 candidates." What perception -- why is it necessary to
8 measure those perceptions?

9 A. My understanding is that Dr. Manweller's paper is
10 motivated by the idea that he will assess how voters
11 perceive the ballot, how they perceive the relationship
12 between candidates and parties as that is conditioned by
13 the way the ballot is set up and the language he's done
14 the ballots. So to measure those perceptions, I think
15 you would use the language on the ballots. He doesn't
16 necessarily do that. He does not use the word
17 "endorsed," I don't believe, in his research. The
18 ballot does.

19 Q. On page 3, the second sentence at the top of the page
20 says, "At issue here is whether the Top Two ballot
21 designed by the state of Washington causes voters to be
22 confused about whether candidates listed on the ballot
23 are nominated by, endorsed by, or approved by the
24 official agents of Washington's political parties."
25 What is the source of that summarization of the issue?

1 A. That's me summarizing what I assume his paper's trying
2 to do.

3 Q. So you're not talking about what you think the issue is
4 in the case, you're talking about what you think he
5 was --

6 A. The issue --

7 Q. -- testing?

8 A. Yeah, the issue in the research design, what he was
9 trying to do.

10 Q. Then in the next paragraph, it begins, "Several key
11 empirical questions here are." And then question 1 is,
12 "Does the Manweller paper determine whether the Top Two
13 ballot design causes voters to be more or less confused
14 about the status of candidates than they already are."
15 Do you have an opinion as to whether voters are confused
16 about the status of candidates?

17 A. That was the point of the first report or Exhibit 3 now.
18 My opinion is, voters are generally confused about most
19 things having to do with politics, and this would be one
20 of them.

21 Q. As I recall, when we get into the guts of this paper,
22 you have an opinion that the disclaimer that's on the
23 ballot reduces the confusion among the voters. Do you
24 recall that section --

25 A. Yeah.

1 Q. -- of your report?

2 Any idea by how much you think it reduces?

3 A. Have to look at the -- that section again. There's,
4 even in some of Dr. Manweller's data, which I wouldn't
5 put too much stock in, something that would show that.
6 But my -- I think my main point about that is that
7 the -- you could design an experiment to test that. But
8 I wouldn't -- but I couldn't venture to guess what the
9 percentage reduction in confusion would be.

10 Q. Do you have an opinion as to whether, without the
11 disclaimer, there would be confusion?

12 A. Yeah. I mean, there's, like I -- I'm assuming there is
13 confusion on all -- most all matters politics that we're
14 trying to measure with any kind of survey research.

15 Q. So that the disclaimer is necessary to reduce that
16 confusion?

17 A. I don't want to say it's necessary, but it probably does
18 reduce confusion. Whether it's necessary, that's more
19 of a legal question than a scholarly, academic bit.

20 Q. But you have no estimate as to how much it reduces
21 confusion -- let me rephrase it.

22 You have no estimate as to the effectiveness of the
23 disclaimer at reducing confusion?

24 A. No. I mean, I could tease through some of
25 Dr. Manweller's things and see if you can get a

1 percentage reduction from his things. But I don't know
2 if I would generalize -- well, I know I wouldn't
3 generalize from beyond the samples.

4 Q. On page 4, the second full paragraph, first sentence
5 says, "The Top Two ballots clearly inform voters that
6 candidates listed on the ballot are not endorsed by any
7 political party." Where does -- where is that
8 information?

9 A. That's where my footnote fell apart there on -- for
10 number 8. The ballots are somewhat different in
11 different counties, but some of them have it right on
12 the front of the ballot. Some of them have it on the
13 front of the ballot with another thing on a separate
14 piece of paper inserted with the ballot, like a colored
15 piece of paper.

16 Q. My question's not clear.

17 Are you referring to the disclaimer that you quote
18 about two sentences later in the sentence that becomes
19 (sic), "The ballot clearly states"?

20 A. Yeah.

21 Q. Is there something other than that disclaimer that
22 you're thinking of on the ballot that tells the voters
23 that the candidates are not endorsed?

24 A. No. It's -- well, the same thing put in as a redundant
25 second piece of information as well in some counties.

1 Q. Does the sentence that you've quoted say that the
2 candidate is not endorsed or does it say the preference
3 statement doesn't tell you one way or the other whether
4 he's endorsed?

5 A. Can you repeat that.

6 Q. Does the disclaimer that you've quoted say that the
7 candidate is not endorsed or does it say that the
8 candidate's statement does not tell you one way or the
9 other whether the candidate is endorsed? In other
10 words, is this an affirmative statement that this
11 candidate absolutely is not endorsed by that party?

12 A. No, that's not what it's saying.

13 Q. Am I correct that it -- that the -- in fact, the
14 disclaimer does not clearly inform voters that
15 candidates are not endorsed by a political party, it
16 simply leaves the question up in the air?

17 A. Yes. Okay, I see what you're saying.

18 Q. It creates an ambiguous situation as to whether the
19 candidate is endorsed or not endorsed because it doesn't
20 clarify it one way or the other?

21 MR. AHEARNE: Object to the form of the question.

22 A. It clearly states that the preference of the party that
23 the candidate uses does not reflect an endorsement.

24 Q. (by Mr. McDonald) So it leaves the voter without
25 information about whether the candidate is endorsed or

1 not endorsed; is that correct?

2 A. In that it is not affirmatively saying that the
3 candidate is not endorsed.

4 Q. What's a nonpartisan primary?

5 A. It's like we have in some counties and cities for local
6 offices or, I guess you could say, Nebraska has for
7 their state legislature where party labels don't appear
8 on the ballot.

9 Q. In a nonpartisan primary, there's no information on the
10 ballot about the candidate in relationship to the party
11 at all; is that right?

12 A. In a pure nonpartisan primary.

13 Q. Right.

14 Isn't it fair to say that at least in the case of a
15 nonpartisan ballot of the kind you're describing, there
16 is no confusion about party status caused by the ballot?

17 A. If there's no party status on the ballot.

18 Q. Right.

19 There's zero confusion in that instance, right?

20 A. So the converse, then, any partisan primary of any sort
21 would then induce confusion about the status of the
22 candidate and the party.

23 Q. Is that correct?

24 A. Would be the same logic, yeah. But by my definition,
25 that --

1 Q. Yeah.

2 A. -- there's just a lot of confusion out there generally.

3 Q. At page 7 of this report in the bottom paragraph, the
4 paragraph that begins, "It is highly likely," the
5 sentence that opens that paragraph reads, "It is highly
6 likely that given the general baseline level of voter
7 confusion, and given the lack of any disclaimer on a
8 partisan primary ballot, and given the use of robust
9 party labels on partisan primary ballots, many voters
10 would" probably "be confused by a partisan primary
11 ballot," paren, "in the sense that Dr. Manweller
12 measures confusion," closed paren, "because many voters
13 would probably respond," paren, "wrongly," closed paren,
14 "that candidates listed with partisan labels on the
15 partisan primary ballot are party nominees."

16 Do you see that sentence?

17 A. Mm-hm.

18 Q. My actual question is, what do you mean by robust party
19 labels? It was a long sentence to read.

20 A. Social scientists use that word too often. Just simple,
21 clear; what we were saying earlier, just the name of the
22 party.

23 Q. What would be an example of a nonrobust party label?

24 A. Prefers party, you know. That -- I mean, robust isn't a
25 great -- but just simple, direct is more what I mean by

1 robust.

2 Q. Let's see; I asked you that question.

3 At page 9, I'll read you the sentence. It'll take
4 you a minute to find it, but it's near the bottom of the
5 first full paragraph. The sentence reads, "A proper
6 experiment would use mock ballots that replicated the
7 actual voting experience." And my question is going to
8 be about the actual voting experience. What was it that
9 you thought was missing in that connection?

10 A. Something that looked very -- well, exactly like a
11 ballot, maybe with the extra pamphlet of some sort.
12 It's not just that the experiment would use the exact
13 sort of replica ballot, but then you're designing the
14 survey to measure concepts that are represented by the
15 ballot.

16 Q. Is that because you need to have the response generated
17 in the same context as it would otherwise appear? In
18 other words, a real voter has these additional
19 disclaimers and you want that context for the response
20 to be valid?

21 A. It makes you more confident you can generalize from
22 beyond it.

23 Q. Would the perception of what's said on the ballot be
24 influenced by other aspects of context, such as all the
25 political advertising that will have happened around

1 that election?

2 A. Possibly. I'm not -- I wasn't going that far in terms
3 of how -- I mean, this is just -- I would have designed
4 an experiment where you would maybe highlight the
5 disclaimer a bit more than his ballots do. You couldn't
6 create an experimental setting of the campaign.

7 Q. You are a voter in the state of Washington, are you not?

8 A. Yes.

9 Q. In connection with partisan races in the state of
10 Washington, do you get advertising about the candidates?

11 A. Yes.

12 Q. Is that part of the actual voting experience that is
13 going to be your context when you use the top-two ballot
14 in the real world?

15 A. Are you asking do people use campaign advertisement when
16 they're -- as a source of information?

17 Q. Yes.

18 A. Yeah, some do.

19 Q. If the campaign advertising says that a candidate is a
20 Democrat, do you think the receipt of that campaign
21 advertisement will influence the voter's perception of
22 whether what they see on the top-two ballot is also
23 indicating that the candidate is a Democrat?

24 A. I don't know if I could answer that. That if they
25 receive campaign advertisements, they would be -- can

1 you be more specific about how you think it would
2 influence?

3 Q. Let's just do a thought experiment between two voters.
4 One of them is in the famous isolation booth and all
5 they have is the ballot with the disclaimer --

6 A. Okay.

7 Q. -- that's come in the mail. And candidate B has three
8 or four pieces of campaign literature from a candidate,
9 all of which say, Democrat, at the bottom.

10 A. Mm-hm.

11 Q. We ask both of those voters, based on the ballot that
12 you've received, does that ballot indicate that the
13 candidate is a Democratic candidate? Would you expect
14 both of them to answer the same or would you expect the
15 one who's received the advertising to be more likely to
16 say that the ballot does indicate?

17 MR. AHEARNE: Objection; foundation.

18 A. There's too many, you know -- it would depend what the
19 advertisement is doing. I don't know. I mean, you
20 could have literature that says, this candidate is the
21 official nominee, or, the only nominee, or whatever or,
22 endorsed candidate of a party. I don't know what --

23 Q. (by Mr. McDonald) All that the advertising says is
24 that -- that's relevant to this is that so and so is a
25 Democrat.

1 MR. AHEARNE: Same objection.

2 A. I'm trying to make sure I'm following your question. So
3 if you --

4 Q. (by Mr. McDonald) Let me simplify it a little bit.

5 Your three neighbors have got yard signs that say,
6 Todd Donovan, and down in the lower-right-hand side they
7 say, DEM.

8 A. Okay.

9 Q. The voter who's not in the isolation booth has those
10 three yard signs and is asked the same question as the
11 voter who's in the isolation booth that has only the
12 ballot. Would you expect their responses to be
13 different?

14 A. And they're given --

15 MR. AHEARNE: Same objection.

16 A. And they're given a survey instrument like
17 Dr. Manweller's, then?

18 Q. (by Mr. McDonald) No, they're just asked the question,
19 is the candidate associated with the Democratic Party?

20 A. Okay, so this has nothing to do with the ballot, then,
21 or --

22 Q. Well, the ballot -- they're both looking at the ballot.
23 They're both being asked, does -- looking at this
24 ballot, does that ballot suggest to you that this
25 candidate is associated with the Democratic Party?

1 MR. AHEARNE: Same objection.

2 A. And the ballot would be like the ballots we're talking
3 about in the Manweller study?

4 Q. (by Mr. McDonald) No, the ballot that you -- like the
5 ballots that you used when you looked up disclaimers.
6 It'll have the disclaimer and everything else on it.
7 It's a real ballot.

8 A. Okay.

9 MR. AHEARNE: Same objection.

10 A. I mean, we could do this; we could do the experiment.
11 But I'm -- I guess I'm not comfortable answering this
12 because I'm not sure exactly if I understand the
13 question and I'm not sure how much I could speculate on
14 how an experiment like that would turn out. You'd have
15 to do -- have to have a control group to figure out how
16 many people think the candidate would be a Democrat.
17 Then your treatment would be exposing some people to
18 advertisement.

19 Q. (by Mr. McDonald) Is it possible in your mind that the
20 advertising could suggest an answer to the respondent
21 who's not in the isolation booth that would influence
22 their response to the survey question?

23 MR. AHEARNE: Same objection.

24 A. I suppose. But they're not advertising anything. It's
25 possible, but it's a very open-ended question. I mean,

1 I don't know what the advertising is we're talking
2 about. But, again, I'll go back there: I'm assuming
3 that there is a base-line level of confusion to start
4 with. I don't know how that treatment would necessarily
5 affect it.

6 MR. MCDONALD: Maybe we should take a break. It's
7 2:30.

8 [Off the record - recess]

9 MR. MCDONALD: Let's go back on the record.

10 Q. (by Mr. McDonald) Before I forget, you had indicated
11 that you didn't make use of Dr. -- or of -- I don't know
12 whether he's a doctor, professor, or just a citizen --
13 Elway's materials.

14 A. Right.

15 Q. Why didn't you use them?

16 A. It didn't -- I didn't know what use it would be to show
17 how popular or -- the primary was or how liked it was.
18 That's sort of what I -- my initial look at the stuff
19 that they had was just some sort of cross -- I don't
20 think there was any cross-tabs, but just measures about
21 whether people approved of, didn't approve of the
22 primary. It didn't seem relevant. I can't even really
23 remember what exactly he had in terms of opinion
24 measures.

25 Q. Do you recall why you didn't use the focus-group

1 material?

2 A. Yeah. I don't -- it's -- it was a very small sample. I
3 don't even remember what it was about. But given that
4 much of my report was going to be talking about sampling
5 and kind of research based around representative
6 samples, it would be an odd segue to then be talking
7 about focus groups, which are nonrepresentative samples.
8 So --

9 Q. Do you know whether Elway's focus-group personnel -- or
10 participants were randomly chosen?

11 A. I don't know. I didn't really -- I just sort of glanced
12 at it and it didn't seem relevant, so --

13 Q. Let's see.

14 A. I should say it didn't seem relevant to what I was going
15 to be doing with this study. It may be relevant to
16 other things.

17 Q. I'm at page 38 of your report. We covered a lot of
18 ground there, see?

19 A. Yeah.

20 Q. The first paragraph there talks, generally speaking,
21 about survey researchers including clarifying
22 information in their questions, that "In cognitive
23 survey experiments . . . respondents must comprehend key
24 elements of the questions."

25 A. Mm-hm.

1 Q. Do you have any data indicating one way or the other
2 whether voters comprehend key elements of the disclaimer
3 that's on the ballot?

4 A. No. But again, I'm assuming there's reasonably high
5 levels of confusion about most matters having to do with
6 politics.

7 Q. So that it's quite possible that voters who read that
8 disclaimer don't understand what it means to be
9 nominated by, endorsed by a party?

10 A. It's possible.

11 Q. If they don't understand it, would the disclaimer have
12 any effect in terms of reducing confusion?

13 A. If they -- yeah, if they had absolutely no concept of
14 what a nomination or endorsement is, probably wouldn't
15 have much effect on those.

16 Q. You indicated that Dr. Manweller's ballot does not --
17 excuse me; his test ballots don't really present the
18 disclaimer the way it's presented on the existing
19 ballot. I'm not going to ask you a question. That -- I
20 want to talk about the subject of what's wrong with his
21 ballot design as a test instrument. So let me just make
22 a statement to give you a prompt as to where we're
23 going.

24 A. Okay.

25 Q. Turning to the test ballot that he is -- that he used,

1 what criticisms did you have of those test ballots as to
2 how they affected survey results -- excuse me; the
3 experiment results?

4 A. The main criticism is the instrument. His questions
5 more -- I mean, they could have used a bigger font or a
6 bolder label or something of that in terms of the
7 disclaimer. I don't think that's my main point. My
8 main point is that the instrument, his survey
9 instrument, doesn't ask questions that are well designed
10 to get at the effects of that disclaimer.

11 Q. Am I correct, then, that you didn't really think that
12 his results were skewed by the placement of the
13 disclaimer, for example, in his test?

14 A. No. That wouldn't be the main problem.

15 Q. Was the disclaimer inaccurately quoted?

16 A. I don't believe I said that, no.

17 Q. Based on your familiarity with the ballots that you
18 looked at from around the state, was the disclaimer in
19 Dr. Manweller's test ballot, generally speaking, closer
20 to the material that it related to than would be the
21 case on actual ballots?

22 A. What do you mean, closer to the material it related to?

23 Q. Physically in closer proximity to the race that the
24 disclaimer was intended to affect.

25 A. Compared to some of the ballots, yeah. Compared to

1 others, others -- there's a lot of variation across the
2 counties.

3 Q. Have you -- are you familiar with any research about the
4 extent to which voters recall instructions all the way
5 through the ballot?

6 A. I'm not.

7 Q. Is there any reason to believe that as they proceed
8 through a long ballot, they might forget instructions
9 that they read at the beginning of the exercise?

10 MR. AHEARNE: Objection; foundation.

11 A. I don't know.

12 Q. (by Mr. McDonald) At page 46 of your report, the last
13 full sentence of the paragraph B says, "This would
14 suggest that a reasonable person would conclude that
15 most Democratic candidates listed on the Top Two general
16 election ballot are in fact the official nominee of the
17 Party." Which are the Democratic candidates listed on
18 the ballot?

19 A. Let me read the whole paragraph.

20 Q. Sure.

21 A. Okay, your question is which --

22 Q. You said the "Democratic candidates listed on the Top
23 Two." Did you mean the candidates who had said they
24 preferred the Democratic Party?

25 A. Yeah. The point is, there are candidates. This

1 complicates what Dr. Manweller's trying to measure as
2 either being, quote, correct or incorrect, unquote,
3 responses, that on an actual top-two primary or general-
4 election ballot, some of those candidates are, in fact,
5 nominated and/or endorsed. So it complicates what he's
6 trying to measure with his survey, then.

7 MR. MCDONALD: Let me mark this as the next
8 exhibit.

9 [Off the record - discussion]

10 [Exhibit 5 marked for identification]

11 Q. (by Mr. McDonald) I've handed you what has been marked
12 as Exhibit 5. This is part of the exhibits attached to
13 the declaration of Katie Blinn -- excuse me; Catherine
14 Blinn filed in this matter last week. And I didn't
15 attach her declaration to this, but she identified it as
16 a general-election ballot from Jefferson County in the
17 2008 election, and I so represent that to you based on
18 her representation to us. I have not checked it
19 independently.

20 MR. MCDONALD: Then if you would mark this, please.

21 [Exhibit 6 marked for identification]

22 Q. (by Mr. McDonald) Exhibit 6 is the Bates-numbered page
23 that precedes the ballot I just gave you, and I believe
24 it's identified as an insert or material that
25 accompanied the Jefferson County ballot. To the best of

1 my knowledge, at least with respect to that particular
2 declaration, these are the only materials that were
3 attached in connection with the 2008 general election
4 from Jefferson County.

5 So with that background, do you have an
6 understanding of what the term "partisan office" means?

7 A. In terms of political science?

8 Q. Yes.

9 A. Yes.

10 Q. What is it?

11 A. An office that is elected with partisan candidates.

12 That's a bit of an oversimple definition there. Where
13 the election is structured so that party labels appear
14 on the ballot.

15 Q. Isn't it the case that a partisan office -- a general
16 election for partisan office is one in which
17 representatives or nominees of parties are running
18 against each other?

19 A. We -- saying the same thing I just said? I'm sorry; I
20 don't --

21 Q. That's what I'm -- I'm trying to find out if I'm saying
22 the same thing.

23 A. Yeah, where -- I mean, where party labels appear on the
24 ballot is -- I think would be sort of the way most
25 people in political science would define it.

1 MR. MCDONALD: The -- let's mark this as Exhibit 7.

2 [Exhibit 7 marked for identification]

3 Q. (by Mr. McDonald) And I will represent to you that
4 Exhibit 7 is not a complete document. I left out pages
5 between roughly page 9 and page 40, but if it becomes
6 relevant, we can obtain the complete document. Have you
7 ever seen a document like Exhibit 7 before?

8 A. I've seen stuff that the -- this commission has
9 published, but I haven't seen this one.

10 Q. Are you familiar with the U.S. Election Assistance
11 Commission?

12 A. Yeah.

13 Q. And how is it composed?

14 A. I'm not sure how it's composed. I just know it's a
15 federal agency that issues reports and recommendation.
16 I think it was set up after the HAVA Act passed.

17 Q. This document is entitled "Glossary of Key Election
18 Terminology." And at the very back, page 40 -- which,
19 as I indicated, is not consecutive in the original
20 document -- page 40 is a page of the glossary related to
21 the letter P. And partway down on the right side it
22 says, "partisan office" -- I can't pronounce it
23 correctly -- "partisan office," colon, "cargo
24 partidista," whatever that word -- "Definition," colon,
25 "An elected office for which candidates run as

1 representatives of a political party."

2 Do you disagree with that definition?

3 A. Have to -- I don't disagree with it, but that wasn't
4 exactly the same one that I just gave.

5 Q. The disclaimer that's Exhibit 6 -- excuse me; the insert
6 that is Exhibit 6 contains the disclaimer that you
7 referred to as reducing confusion, am I correct, at
8 paragraph -- second paragraph?

9 A. Reducing perceptions that the candidate may be nominated
10 or endorsed by the party.

11 Q. Isn't it true that the same document uses the term
12 "partisan office" twice?

13 A. This (indicating)?

14 Q. Exhibit 6, yes. Once in the first paragraph, which
15 begins, "In each race for partisan office" --

16 A. Okay, I see that. I didn't see this. Yes.

17 Q. -- and once in the second paragraph, where it says,
18 "Each candidate for partisan office"?

19 A. It does say that.

20 Q. Just as a matter of the English language, in your
21 understanding, doesn't the disclaimer apply to
22 candidates for partisan office only?

23 A. I assume so.

24 Q. And if, in fact, the reader has the same definition of
25 partisan office as the Federal Election Commission --

1 Assistance Commission has, then what the reader has been
2 told is that every candidate running in a race where
3 they are the representative of a party is entitled to
4 make a statement as to the party they prefer. Isn't
5 that what it would say?

6 A. I don't know if I would assume that people have the
7 understanding of partisan office that either you or I
8 would have.

9 Q. But if they do have that understanding, isn't that what
10 the sentence would say?

11 A. That a candidate running for party -- partisan office
12 may state a political party that he or she prefers.

13 Q. Right.

14 A candidate running for partisan office, which, if
15 they have the same --

16 A. Right.

17 Q. -- understanding, is defined as an office for which
18 candidates are running as representatives of the party,
19 would have the ability to state a party that they
20 prefer. Isn't that what it would translate?

21 A. Yes.

22 Q. Turning to Exhibit 5, the disclaimer language that we're
23 talking about, I believe, is in the right-most column up
24 near the top. Do you --

25 A. Mm-hm.

1 Q. -- see it?

2 A. Yep.

3 Q. Preceded by the capital-letter "READ," the disclaimer in
4 this case reads, "Each candidate for President and
5 Vice-President is the official nominee of a political
6 party." And then it goes on to say, "For other partisan
7 offices, each candidate may state a political party that
8 he or she prefers." As a matter of the English
9 language, doesn't that indicate that the other party
10 offices are the same as the office for President and
11 Vice President?

12 A. I --

13 Q. They're all partisan offices?

14 A. I'm not sure about that. You're asking do I perceive it
15 or does the voter perceive it?

16 Q. Isn't that the way it reads, that the President and Vice
17 President are partisan offices and for other partisan
18 offices, the candidate may state a political party?

19 A. And your question is what?

20 Q. Is there any difference in the nature of the partisan
21 office being communicated there between the President
22 and the Vice President and the offices referred to in
23 the second sentence?

24 MR. AHEARNE: Objection; foundation.

25 MR. PHARRIS: Objection.

1 A. You're asking me if I think the -- I'm still not
2 following the question. The other -- the phrase "for
3 other partisan offices" would suggest those are another
4 set of offices?

5 Q. (by Mr. McDonald) It's a bad question. We'll drop it.

6 On that page the disclaimer appears once. And does
7 it appear anywhere else in the ballot that you're aware
8 of?

9 A. Not on the ballot, but this insert came with the same
10 disclaimer -- a similar disclaimer.

11 Q. Right.

12 So the -- as far as we know, this ballot had two
13 disclaimers and both of the disclaimers indicate that
14 they relate only to partisan offices, right?

15 A. Apparently so.

16 Q. And therefore, if the reader assumes the same definition
17 as the U.S. Election Assistance Commission has, they
18 apply only to offices in which candidates are running as
19 representatives of parties; is that correct?

20 MR. AHEARNE: Objection; foundation.

21 A. Again, I don't know if we can assume that -- I mean, you
22 can potentially test this. But I don't know if I would
23 assume that voters would have that definition of
24 political parties or party offices. I'm sorry; say the
25 question again. I'm not sure I was tracking it.

1 MR. MCDONALD: Can you read back the question.

2 [Record read back as requested]

3 MR. AHEARNE: Same objection.

4 A. No, I don't think that would be correct. I mean, you're
5 making an assumption about them -- you're assuming the
6 voters are assuming the candidates are representatives
7 of parties, and I'm not sure I would assume that the
8 voters would be making that assumption. It -- and it's
9 quite possible, but you're -- it's kind of a level of
10 speculation here beyond --

11 Q. (by Mr. McDonald) Am I correct that you have no data
12 that tells you one way or the other what a voter
13 understands by the phrase "partisan office"?

14 A. Correct.

15 Q. Are you aware of any data possessed by the State of
16 Washington as to what a voter understands by the phrase
17 "partisan office"?

18 A. I'm not aware.

19 Q. Am I -- just looking at Exhibit 5, I see the phrase
20 "partisan office" at the top of the page about an inch
21 and a half down. All the way across the column on the
22 right it says, "Federal - Partisan Offices." Do you see
23 that?

24 A. Yeah.

25 Q. That's one.

1 Then in the middle of the second column -- sorry;
2 in the middle column at the top of the heading, it also
3 says, "Partisan Offices." Do you see that?

4 A. Yeah.

5 Q. That's two.

6 Then just to the right of that it says, "State -
7 Partisan Offices." Do you see that?

8 A. Yes.

9 Q. That's three.

10 Turning to the second page of the ballot, at the
11 top of the left-hand column it says, "Partisan Offices,"
12 at the top of that column, does it not?

13 A. Mm-hm.

14 Q. That's --

15 A. Yes.

16 Q. -- four.

17 Partway down that column, just before the
18 insurance-commissioner race it again says, "Partisan
19 Office," does it not?

20 A. Yes.

21 Q. That's six.

22 Then just beneath that, for Legislative District 24
23 does it again say, "Partisan Offices"?

24 A. Yes.

25 Q. That's seven.

1 And then on the right-hand column at the top, does
2 it say, "Partisan Offices," again with respect to the
3 county-commissioner offices?

4 A. Yes, it does.

5 Q. So if I counted correctly, that's eight times that
6 offices are identified as partisan offices on this
7 ballot; is that correct?

8 A. Mm-hm.

9 Q. And am I also correct that there's only one disclaimer?

10 A. And the insert, yes.

11 Q. Well, if we included the insert, then would it be fair
12 to say that there are ten references to partisan office
13 and two disclaimers?

14 A. Yes.

15 Q. Is it also fair to say that in all but one case, the
16 identification of an office as a partisan office is much
17 closer to the voting ovals than the disclaimer, the one
18 exception being United States Representative?

19 A. Say that again. In all but one case, the disclaimer is?

20 Q. Further away from the voting ovals than the
21 identification of the race as a partisan office.

22 A. On this county's ballot, yes.

23 Q. Do you know how partisan offices are labeled in counties
24 with high Hispanic populations?

25 A. I'm not familiar.

1 Q. Do you know if they're labeled according to the
2 translation or consistent with the translation in the
3 U.S. Election Assistance glossary for Spanish language?

4 A. I have not done work on that matter, no.

5 Q. Do you know what the Hispanic population is of the state
6 of Washington?

7 A. I don't.

8 Q. Do you know whether it's a significant part of the
9 voting population?

10 A. Yes.

11 Q. Do you know whether the Chinese voters are a significant
12 part of the King County voting population?

13 A. Yes, I believe so.

14 MR. MCDONALD: I have nothing further at this time
15 and I want to offer time for everybody else.

16 MR. AHEARNE: John?

17 MR. WHITE: You want me to go next?

18 MR. AHEARNE: Sure.

19 MR. WHITE: Okay.

20

21 EXAMINATION

22 BY MR. WHITE:

23 Q. Professor Donovan, are you fluent in any languages other
24 than English?

25 A. No.

1 Q. Can you read and write any other languages at any level?

2 A. A wee bit of German, but no. Middle school.

3 Q. Are the offices of President and Vice President partisan
4 offices?

5 A. Yes.

6 Q. I'd like to direct your attention to Exhibit 6. The
7 second paragraph, the second line, the word is imply.
8 If instead of the word "imply" the disclaimer included
9 the word "mean," would that -- would you have a
10 different understanding of that paragraph?

11 A. I don't think so.

12 Q. So to your understanding, you would read imply and mean
13 as being codefinitional?

14 A. Similar.

15 Q. Do you know whether the State used the Elway focus
16 groups in any way as part of its implementation of
17 Initiative 872?

18 A. I don't know.

19 Q. In the partially missing footnote 8, you indicated there
20 were some counties that you obtained from the State and
21 some that you looked up on your own.

22 A. Yeah.

23 Q. Which counties did you obtain from the State?

24 A. I can't remember. I think it was the larger ones:
25 Spokane, King. I've got, I believe, a version of the

1 paper with that footnote in it. I could send it to you,
2 but I'm --

3 Q. Do you have the communications from the State that
4 transmitted those --

5 A. Yeah.

6 Q. -- ballots?

7 A. Yeah.

8 Q. Can you provide those?

9 MR. PHARRIS: Yeah.

10 Q. (by Mr. White) And, Professor Donovan, can you provide
11 copies of the ballots that you pulled up off the
12 Internet?

13 A. Yeah.

14 Q. In discussing your contract with the State of
15 Washington, which representatives of the State did you
16 speak to?

17 A. The two attorneys here and Jeff Even as well, I think,
18 was on some of these conversations.

19 Q. Did you -- in connection with the contract, did you talk
20 with anyone else on behalf of the State?

21 A. I don't think so. I think at some point there was
22 something I wanted to get from the Secretary of State's
23 Office, and I don't think I ever called them on it.

24 But --

25 Q. And it would have been one of those three persons you

1 identified, Mr. Pharris, Ms. Zipp, or Ms. Even (sic),
2 who told you that there wasn't time to do affirmative
3 research?

4 A. Yeah, I think those were a consensus among all of us.

5 Q. Are you a precinct committee officer, Professor Donovan?

6 A. No, I'm not.

7 Q. Have you ever attended a precinct caucus?

8 A. Yeah.

9 Q. When did you attend the precinct caucus?

10 A. 2008. I've probably been to -- 2004, the presidential
11 caucus date.

12 Q. Did you vote in the presidential primary in Washington
13 State at any time?

14 A. Probably.

15 Q. Do you recall if you voted in 2008?

16 A. I'm going to say yes, because I vote in almost every
17 election. So I'm pretty sure I did, but I'm not a
18 hundred percent sure.

19 Q. Are you a member of the Democratic Party in Washington
20 State?

21 A. I don't pay money, so I don't think I'd be a member.

22 MR. WHITE: No further questions.

23 MR. AHEARNE: Orrin?

24 MR. GROVER: Yeah, I have a couple of questions.

25 Give me just a second here.

1 EXAMINATION

2 BY MR. GROVER:

3 Q. If we go to your report, Professor Donovan -- hang on
4 one second here -- the report which is Exhibit 3, and on
5 page 1 of that report, you talk about two categories of
6 people. And I'm looking at the paragraph that starts
7 with the words, "The Manweller experiments attempt to
8 measure."

9 A. Mm-hm, yes.

10 Q. And one category of people are the people who, quote,
11 have much lower levels of political knowledge than most
12 voters. And then there's apparently another category of
13 people which are very, quote, reasonably informed
14 voters. Do you see those two terms?

15 A. I'm looking.

16 Q. They're down near the end of the paragraph in two
17 successive sentences.

18 A. Yes.

19 Q. What would you say are the respective percentages in the
20 state of Washington in your mind of the people who have
21 much lower levels of political knowledge versus
22 reasonably informed voters?

23 A. What percentage in the electorate, you asked?

24 Q. Yes.

25 A. I couldn't be specific about that, but I would -- you

1 could use age as a surrogate and figure out what
2 proportion of voters are in various age categories to
3 arrive at an estimate of that, maybe.

4 Q. Well, and so if I was creating a model, would it be --
5 what would the age cutoff I would use -- what would be
6 the age cutoff that I would use to mark reasonably
7 informed voters?

8 A. Oh, I don't know if there's --

9 MR. AHEARNE: Objection; lack of foundation.

10 THE WITNESS: I'm sorry.

11 A. I don't know if there would be a specific cutoff. It's
12 more of a linear effect with age.

13 Q. (by Mr. Grover) I don't understand what you mean by
14 linear effect.

15 A. Oh, I'm sorry; that there's not like -- I wouldn't
16 expect there's a magic age at which you could say those
17 people are now the informed class of voters. But I'm --
18 and I think the way I've got things divided up in here,
19 I was showing some data with comparing people under 30
20 to people over 50. Those are reasonably arbitrary
21 cutoffs, but they do demonstrate substantial
22 differences.

23 Q. So then if we looked at voters under 30 years of age --
24 for example, Dr. Manweller's college students -- we
25 would expect to have a higher percentage there of the

1 people who have, quote, much lower levels of political
2 knowledge than most voters, unquote.

3 A. Yes.

4 Q. And then if we looked at people over 50 -- and I
5 understand that's an arbitrary breaking point -- we
6 would expect to find a larger percentage of reasonably
7 informed voters, as you use the term.

8 A. Yes.

9 Q. Now, does that mean that, if we get to voters who are 65
10 or 70 years old, that they're super well informed?

11 A. There is -- I'm trying to recall from some of the -- I
12 think I was using mostly data from the Pew surveys.
13 There is an increase at least up to 65. I don't know
14 beyond that in terms of factual political knowledge.

15 Q. And in thinking of people, say, between age 60 and 65,
16 what does that mean in terms of what percentage of those
17 people do you believe are reasonably informed voters?

18 A. I couldn't venture to guess. My point was just that
19 when you get to that category of voters, they are better
20 informed than younger voters. I couldn't say, you know,
21 what percentage of the -- yeah, I'll leave it at that.

22 Q. Well, can you give me an example of why you would
23 believe that they're better informed?

24 A. You can look at the data at the back of the report we're
25 talking about, Exhibit 3, just a simple standard of

1 using responses to factual questions about politics.

2 There's higher levels of correct responses among older
3 voters than younger voters.

4 Q. And is that the sole source of your information?

5 A. Those survey data? There's some -- I think, maybe, some
6 literature cited in here that might also make a similar
7 point.

8 Q. Well, you said the American National Election Studies
9 from 2004 and 2008. I'm asking if they -- are those the
10 sole sources for your opinion?

11 A. No, the Pew data as well. And this is just a standard,
12 known fact in the academic literature, that older voters
13 are more factually informed than younger voters. But
14 then I have data from the Pew surveys to show that and
15 data from the American National Election Study to show
16 that.

17 Q. In table number 3 where it has "n/a," does that mean
18 that it just wasn't asked in that year?

19 A. It means I couldn't break that survey down by age. I
20 found just the frequencies for the entire population,
21 but I couldn't run a cross-tab on the 2008 data. I
22 mean, I have the data; I can do it at some point, but --

23 Q. I'm sorry; where do you have the data?

24 A. They're publicly available. You can download them from
25 the American Election Studies Web site. But the form I

1 initially had them in was just not the raw data, but the
2 frequencies. I now have the raw data, but I haven't
3 done the cross-tabs.

4 Q. Then on page 4 of your report you say, "Many (perhaps
5 most) Americans lack basic factual knowledge about" the
6 "political process related to parties, candidates, and
7 nominations." You see where it says that? It's --

8 A. Yeah.

9 Q. -- the first sentence --

10 A. Yes.

11 Q. -- top of the page? Okay.

12 As to Americans lacking basic factual knowledge as
13 to parties, is that many or most Americans?

14 A. You -- it would probably depend on what specific item
15 we're asking them about. There may be some things that
16 are more visible to people than others. So what -- you
17 know, if you're asking them what is a party nominee,
18 what is a party endorsement, what is a precinct
19 committee officer, who is the Democratic nominee for
20 President, those will elicit more or less correct
21 answers depending on the item you're asking about.

22 But my assumption is, and I think I'm supporting it
23 with data, on a lot of these things, we measure very
24 high levels of error in response to factual questions.

25 Q. Well, specifically relating to parties, for example,

1 would you expect that many Americans would not know that
2 the elephant is the symbol of the Republican Party?

3 A. I'm not sure about that one. That'd be interesting to
4 test.

5 Q. But you're not aware of any testing that's been done
6 with regard to that?

7 A. No. I'm -- I think that is maybe something that's much
8 more visible than the rules of the political process.
9 That's the sentence -- I'm sorry; that sentence refers
10 to factual knowledge about the process of politics.

11 Q. And what would you mean by the process of parties, then?

12 A. The internal workings of political parties, what a party
13 is and does. Those are just not things that most people
14 are going to have detailed knowledge of.

15 Q. And you -- the statement continues that many or most
16 Americans lack basic factual knowledge about candidates.
17 You -- that -- you stand by that conclusion?

18 A. About the political process related to parties'
19 candidates and nominations. So --

20 Q. Well, what is it that Americans lack knowledge about
21 with regard to the political process as to candidates?

22 A. This relates to the Manweller study, that if we're going
23 to be measuring confusion, we need to be aware of most
24 people don't know what a nomination process probably is.

25 Q. Well, I know.

1 But nominations are separate -- you have three
2 things in the sentence --

3 A. Okay.

4 Q. -- parties, candidates, and nominations. I haven't
5 gotten to nominations yet. I'm just asking about
6 candidates.

7 A. Okay. Well, the sentence is meant to say, the relations
8 between parties, candidates, and nominations in terms of
9 the political process and how those three entities
10 interact is not something most Americans have detailed
11 factual knowledge about.

12 Q. So actually, the sentence should read, many, perhaps
13 most, Americans lack basic factual knowledge about how
14 the political process relates as between parties,
15 candidates, and nominations?

16 A. I like the sentence the way I wrote it, but --

17 Q. But I thought you just said it was that you meant
18 something a little bit different than what it says.

19 A. I -- it means what it says, that most Americans lack
20 basic factual knowledge about political process related
21 to parties, candidates, and nominations. I was trying
22 to --

23 Q. Well, let's focus on nominations, then. What factual
24 knowledge about political -- about the political process
25 related to nominations do most Americans lack?

1 A. A lot of the concepts that we've been talking about here
2 today. We can't assume people know what it means to
3 call something a primary versus a general election.
4 These things that might seem straightforward to us might
5 not be straightforward to the average voter.

6 Q. Well, do you think that they are not straightforward to
7 the average voter?

8 A. That's the point of this report, is that on many items
9 where we're trying to measure factual information about
10 the political process, people just don't have basic
11 factual information.

12 Q. And so they -- does that mean -- I'm sorry; let me
13 rephrase it.

14 So does that mean they don't know what a nomination
15 is?

16 A. Yeah.

17 Q. So most Americans can't tell the difference between a
18 preference and a nomination.

19 A. I haven't tested that. I don't know. That -- but on
20 things relating to the process of candidate nominations,
21 I -- you're on any question probably going to measure a
22 lot of factual errors.

23 Q. And how is that -- how does that contradict
24 Dr. Manweller's conclusions?

25 A. It's -- the point is to show that there's a base-line

1 level of confusion that needs to be recognized when
2 you're designing an experiment and then trying to make
3 claims about causality and how the ballot design may
4 increase or decrease confusion; that there's a high base
5 line to start with.

6 Q. And do you have an opinion as to what extent that base
7 line is reduced by the design of the Washington State
8 ballot for the 2008 election?

9 A. I didn't do work on that, no.

10 Q. So that means you don't have an opinion about that?

11 A. Not based on empirical research that I've done. I think
12 I've got a statement in my report where I can infer --
13 or try to infer from the data in Dr. Manweller's
14 experiments that show substantially less as he codes
15 voter confusion with the ballot statement, but I haven't
16 done my own independent work to come up with an estimate
17 of that.

18 Q. I don't understand.

19 First of all, you don't have any conclusion that's
20 based on your own empirical research; correct?

21 A. Right.

22 Q. With regard to that issue.

23 A. Correct.

24 Q. And you're taking Dr. Manweller's report, which finds
25 that there is confusion, and saying, based upon his

1 report, which finds there is confusion, you believe
2 there is no confusion because you disagree with his
3 methodology.

4 A. No, I didn't say that. There's --

5 Q. What was wrong with what -- with my description of what
6 you said?

7 A. Can you -- the court reporter repeat it or --

8 Q. Sure, sure.

9 MR. GROVER: Could you read it back, please.

10 [Record read back as requested]

11 A. No, I would disagree with that statement. I was saying
12 there is substantial confusion. You start with
13 confusion. The Manweller report leaves unresolved the
14 issue of how the ballot relates to voter confusion.

15 Q. (by Mr. Grover) So you can't draw any conclusion about
16 voter confusion from Dr. Manweller's report.

17 A. I would be hesitant to. But the -- his own report --
18 your initial question was, you wanted me to venture a
19 guess on how much the ballot statement might reduce
20 voter confusion. I can't do that. But if you look in
21 the Manweller report, his experiments do show a notable
22 reduction in confusion as he measures it as a result of
23 the ballot disclaimer.

24 Q. And you -- I'm sorry; go back here. In -- sorry; got to
25 look one up -- one other thing up here.

1 What courses are you teaching this semester?

2 A. I'm not teaching this semester. We haven't started our
3 term yet and I'm on leave this coming semester. This
4 summer session I taught a campaigns-and-elections
5 course.

6 Q. And in the winter term, you're teaching what courses?

7 A. I don't know. I usually teach an introduction-to-
8 American-politics class at some point, a state-and-
9 local-politics class at some point, research methods,
10 statistics. I have a senior seminar thrown in there
11 somewhere this winter. I really try not to think about
12 that in summer.

13 Q. Well, according to the Web site, you're -- in the winter
14 term you're teaching the senior seminar and parties,
15 campaigns, and elections?

16 A. I'll take your word --

17 Q. Well, I'm just looking at the Web site.

18 That's a 400-level course. Can you tell us what
19 that -- I assume 400-level course means it's a senior
20 course?

21 A. Yeah, it's usually juniors and seniors. It's upper-
22 division course.

23 Q. And is that a course you taught before?

24 A. Yes.

25 Q. And what's the content of the course?

1 A. It changes fairly frequently. I do stuff on voter
2 turnout, I do stuff on the presidential nominations. I
3 just finished a book on that. It's often whatever I
4 happen to be doing research on at the time. Talk about
5 media, advertising. I don't -- there's a syllabus on-
6 line. It's -- if you go to my Web page, it'll be there.

7 Q. I couldn't figure out how to do that, but --

8 A. Yeah.

9 Q. -- I'm one of those older voters.

10 What books would students for that course be
11 required to purchase?

12 A. Depends on the quarter. There's a book by Russ Dalton
13 called Citizen Politics I've used various editions of,
14 another book by Russell Dalton called The Good Citizen.
15 I think there's some -- sometimes there's a, you know,
16 sort of off-the-shelf standard textbook, parties,
17 campaigns, and elections sort of thing -- I don't know
18 if I used that this year, but -- by Larry Bartels on --
19 called Unequal Democracy I've used in the past. There's
20 usually two or three and then various articles that are
21 usually available on-line.

22 Q. Well, what about your book, Practical Approaches?

23 A. Practical -- that's not my book. I have a textbook in
24 state and local politics that I use in my state-and-
25 local class. I have a book that's sort of old I don't

1 use anymore called Forming the Republic. I don't have a
2 campaigns-and-elections text. Practical Approaches
3 isn't ringing a bell. Usually -- be a shame if I forgot
4 a book I wrote.

5 Q. What is your view about the role of political parties in
6 the political process in the United States?

7 MR. AHEARNE: Objection; foundation.

8 A. That -- I'm sorry; that's like asking what is my view of
9 the role of the Constitution. I could -- that's a very
10 open-ended question, so open that I don't think I'd know
11 how to respond to it. I mean, the standard --

12 Q. (by Mr. Grover) We won't start with the Constitution,
13 then.

14 Would you agree that a -- one of the more important
15 roles of a political party in the political process is
16 to nominate candidates for voters to choose?

17 MR. AHEARNE: Same objection.

18 A. I'll give you my standard sort of introduction-lecture
19 tag line for political parties, which -- the most
20 important thing about political parties is, they allow
21 voters to figure out who to hold accountable. By having
22 candidates run under labels, that they can then figure
23 out who's in power, who's not in power. That's usually
24 where we start on the party stuff.

25 Q. (by Mr. Grover) How do they communicate their -- the

1 fact that they support a particular candidate?

2 A. They the parties or the voters?

3 Q. The parties.

4 MR. AHEARNE: Same objection.

5 A. I mean, my introduction-lecture response to your
6 question about what -- you know, what do I think about
7 the role of political parties is, that's more a
8 votercentric perspective of parties, not a partycentric
9 vision of the parties.

10 Q. (by Mr. Grover) I'm not sure if you've answered my
11 question.

12 How do the parties communicate -- you said that the
13 voters look to the parties to -- as people to hold
14 responsible and for the communication of ideas.

15 A. No, I --

16 Q. How --

17 A. The parties provide labels or cues so that voters know
18 potentially who's in government, who's not in
19 government. So you're asking how does the -- how do the
20 parties as organizations communicate that to voters? I
21 think it'd be more the candidates can --

22 Q. Yes.

23 A. Okay. No, I think in that definition, I mean, with the
24 candidates and the voters, the voters are receiving that
25 information from the candidates, they'd be receiving

1 information from the media. I think the parties as
2 organizations are rather invisible to voters.

3 Q. Then how do the voters look to them for cues if they're
4 invisible?

5 A. They're -- as I just said, the -- if you are listening
6 to the news right now, you would probably learn that
7 there is a Democratic majority in Congress and a
8 Democratic incumbent in the White House. And a simple
9 model of voting would be that's all that a voter needs
10 to know if they want to reward or punish the incumbent
11 government. They'd receive it from the media and from
12 the candidates. Most people don't know who the chair of
13 the national party committees are or much about the
14 parties themselves.

15 Q. The book that I was referring to before was State and
16 Local Politics: Institutions and Reform.

17 A. Yes.

18 Q. Is that your --

19 A. That is mine.

20 Q. And you use that as a textbook?

21 A. Yes.

22 Q. And it's -- you're still currently using it, the 2009
23 version?

24 A. Yeah.

25 Q. Is that one of the books that you might use in your

1 upcoming winter course? And I know you probably haven't
2 decided on what -- exactly what your syllabus is.

3 A. No, I don't use it in a campaigns/elections class. I
4 use it in a state-and-local-politics class.

5 Q. Would you agree with the statement that the single most
6 important factor in state politics is the political
7 party?

8 MR. AHEARNE: Objection; lack of foundation.

9 A. No, I don't know if I -- I don't think I'd -- I don't
10 agree or disagree with it, but -- say it again.

11 Q. (by Mr. Grover) The single most important factor in
12 state politics is the political party.

13 MR. AHEARNE: Same objection.

14 A. You finding that in my book?

15 Q. (by Mr. Grover) Yes.

16 A. Yeah, my coauthor wrote the chapter on parties; sorry.

17 No, I don't dis -- I don't necessarily agree or
18 disagree with it. I could maybe think of other things
19 that we could say are quite important, but I don't deny
20 the importance of parties in state politics.

21 Q. So they would at least be an important factor even if
22 it's not the single most important factor.

23 A. Certainly, yeah. No, I mean, we -- and going back to
24 the introduction-to-American-politics lecture, we would
25 say that the political system would not work without

1 political parties.

2 Q. And under the Washington top-two primary system, how do
3 political parties indicate to their -- or assure that
4 their preference for a particular candidate is
5 communicated to the voters?

6 A. How do the parties in the state communicate that
7 their -- how do they do that under any ballot?

8 Q. Well, in Oregon, they're entitled to put Republican
9 after their designation on the ballot, indicating that
10 they're the nominee of the Republican Party. In
11 Washington, they're not permitted to do that.

12 A. Yeah, I guess --

13 Q. The party's not able to register any communication
14 through the ballot or through the voters' pamphlet.

15 A. They're --

16 Q. Is that correct?

17 A. Yeah, I think the disconnect we're having in this is
18 that -- I'll get back. The voter's conception of the
19 party is largely independent of the party organization.
20 So the party -- you know, you can say that the party is
21 fundamentally important to state politics. That doesn't
22 necessarily mean voters have any sense of how candidates
23 have labels listed next to their name and how that
24 relates to a party organization.

25 Q. Well, that kind of dodges my question.

1 My question was, how does the political party
2 communicate through the ballot and through the voters'
3 pamphlet or does it have any opportunity to communicate
4 its preference for a particular candidate?

5 A. I don't know how the parties do this. They can, I
6 assume, run ads. They -- I don't know what they're
7 allowed to put in the voters' pamphlet in Washington.

8 Q. So you don't know one way or the other whether they're
9 allowed to put anything in the voters' pamphlet with
10 regard to candidates.

11 A. No, I'm not familiar with that, with what the candidate
12 can put in the candidate statement. I don't know what
13 regulations there are on that. But candidates and
14 parties communicate through media, they communicate
15 through ads. I don't think of the ballot as the primary
16 medium for communication.

17 Q. Well, you're familiar with the Supreme Court decisions
18 that say that -- that talk about the importance of the
19 ballot because it's the last thing the voter looks at
20 before the voter votes.

21 A. I --

22 MR. PHARRIS: I'd object to foundation on that
23 question.

24 A. I'm not a lawyer. I work more in social science, so I
25 wouldn't be able to --

1 Q. (by Mr. Grover) I understand that.

2 But you teach constitutional law, right?

3 A. No, no.

4 Q. Oh, I'm sorry; I'm -- never mind. I take that back.

5 You've read the Supreme Court decisions with regard
6 to electoral politics.

7 A. Several of them, yeah. But I don't claim to be an
8 expert in the law.

9 Q. Have you read *Eu v. San Francisco*?

10 A. Not in a long time, and I wouldn't claim to have any
11 expertise in that.

12 Q. You don't really remember what that case was about?

13 A. Something about California's parties being able to
14 endorse candidates in nonpartisan races. Am I right?
15 I'm just guessing.

16 Q. Pretty good.

17 A. No, I -- honestly, I don't claim to have any expertise
18 in electoral law. I mean, I try to keep up on some of
19 that stuff, but it's not my area of expertise.

20 Q. I've got to check one thing here.

21 What is your opinion with regard to the statement
22 that after looking at the ballot, no reasonable voter in
23 Washington State will regard the listed candidates as
24 members of or otherwise associated with the political
25 parties that the candidates claim to prefer? And I'd be

1 glad to have the court reporter read that back again so
2 you can hear it again.

3 A. Yeah, that'd be good.

4 [Record read back as requested]

5 A. Social scientists don't ever talk in absolutes like
6 that, so I would -- you know, and this gets to the
7 report on voter confusion. On any ballot, any
8 structure, you're still going to find some levels of
9 confusion.

10 Q. (by Mr. Grover) Among reasonable voters.

11 A. Certainly. There's no perfection.

12 MR. GROVER: I don't have any other questions at
13 this time.

14 MR. AHEARNE: I have just a handful.

15

16 EXAMINATION

17 BY MR. AHEARNE:

18 Q. If I can ask you to look at Donovan Exhibit 7, please.

19 A. Is that the ballot? Oh, got it.

20 Q. And what's listed as page 40, the last page of that
21 exhibit, the Democrats' attorney asked you some
22 questions about this partisan-office definition. Do you
23 recall that generally?

24 A. Yeah.

25 Q. And that several times throughout your deposition,

1 you've referred to yourself as a political scientist or
2 a social scientist.

3 A. I use them interchangeably.

4 Q. And what do you mean by that?

5 A. That -- try to use empirical data to answer empirical
6 questions, as opposed to having -- I contrast that with
7 like, you know, asking me questions about the law. I
8 don't --

9 Q. And would that also contrast with, let's say, a
10 layperson's interpretation?

11 A. Yeah.

12 Q. And when the Democrats' attorney asked you if you
13 disagreed with the definition of partisan office that's
14 on page 40 of Exhibit 7, were you answering as a
15 political scientist?

16 A. Yeah.

17 Q. Do you know if that definition in -- of partisan office
18 is the same definition that's in Initiative 872?

19 A. I don't know that.

20 Q. Do you know if that's the same definition that's in
21 Washington elections law?

22 A. No. And again, I don't make claim to have any expertise
23 in the law.

24 Q. Have you read Initiative 872?

25 A. Not in length, no.

1 Q. Not in like (sic) no?

2 A. No. I mean, you know, the ballot summary, the
3 statements, but not the text of the initiative, no.

4 Q. In your deposition when you've been answering with
5 respect to partisan office, was your definition you were
6 using as a political scientist?

7 A. Yeah.

8 Q. One of the attorneys also asked you some questions about
9 whether there's -- you're aware of any data on what
10 voters understand the term "partisan office" to be. Do
11 you recall that generally?

12 A. Yeah, I recall, and I think I said I'm not aware of any
13 data.

14 Q. Are you aware of any data on what voters understand the
15 term "party nominee" to be?

16 A. No. No, there -- that was -- I had hoped the Pew people
17 had asked something like that, but that's not something
18 that we have usually running on standard surveys.

19 Q. Are you aware of any data on what voters understand the
20 term "representative of a party" to mean?

21 A. No.

22 Q. Could you describe to me what your understanding is of
23 the top-two election process that's in Washington today.

24 A. The first two candidates after the count go on to the
25 general-election ballot; that the primary is a winnowing

1 process to produce two candidates to go on to the
2 general election independent of what their party
3 preference or party listing is.

4 Q. And how many years have you been voting in Washington?

5 A. Since 1991.

6 Q. And have you voted in just about every election since
7 1991?

8 A. I think so, yes. I want to say all, but I probably have
9 missed some.

10 MR. AHEARNE: That's all I have.

11 MR. PHARRIS: Can we take a short break?

12 MR. MCDONALD: Sure.

13 [Off the record - recess]

14 MR. PHARRIS: I have no questions.

15 MR. MCDONALD: I have no questions.

16 MR. WHITE: I have none.

17 MR. AHEARNE: Orrin?

18 MR. GROVER: I have no questions either.

19 MR. AHEARNE: I have no questions.

20

21 (Whereupon the deposition
22 concluded at 3:50 p.m.)
23
24
25

CERTIFICATE

STATE OF WASHINGTON)

)

COUNTY OF SNOHOMISH)

I, the undersigned Notary Public in and for the State of Washington, do hereby certify:

That the foregoing is a full, true, and correct transcript of the testimony of the witness named herein, including all objections, motions, and exceptions;

That the witness before examination was by me duly sworn to testify truthfully and that the transcript was made available to the witness for reading and signing upon completion of transcription, unless indicated herein that the witness waived signature;

That I am not a relative or employee of any party to this action or of any attorney or counsel for said action and that I am not financially interested in the said action or the outcome thereof;

That I am sealing the original of this transcript and promptly delivering the same to the ordering attorney.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 6th day of September, 2010.

Notary Public in and for the State of Washington
residing at Edmonds, Washington.

(Notary expires 3/09/13)

(CCR No. 2699)