

EXHIBIT E

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON
3 AT SEATTLE
4

5 WASHINGTON STATE REPUBLICAN)
PARTY, et al.,)

6)
Plaintiffs,)

7)
WASHINGTON STATE DEMOCRATIC)
8 CENTRAL COMMITTEE, et al.,)

9 Plaintiff Intervenors,)

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

No. CV05-0927-JCC

11 Plaintiff Intervenors,)

12)
v.)

13 STATE OF WASHINGTON, et al.,)

14 Defendant Intervenors,)

15 WASHINGTON STATE GRANGE, et al.,)

16 Defendant Intervenors.)

17
18 Deposition Upon Oral Examination
Of

19 MATHEW S. MANWELLER, PH.D.
20

21
22 Taken by: Tracey L. Juran, CCR
CCR No. 2699

23
24 August 30, 2010
25 Seattle, Washington

1 APPEARANCES

2
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EXHIBITS MARKED

No. 1 (Double-sided 7-page Curriculum Vitae for Mathew Manweller dated July 2010 and 35-page "The Very Partisan Non-Partisan Top-Two Primary: Understanding What Voters Don't Understand")	17
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1 Be it remembered that the deposition upon oral
2 examination of Mathew S. Manweller, Ph.D., was taken on
3 August 30, 2010, at the hour of 9:00 a.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 MATHEW S. MANWELLER, 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
14 deposited and testified as follows:

15 EXAMINATION

16 BY MR. PHARRIS:

17 Q. Dr. Manweller, have you had your deposition taken
18 before?

19 A. No.

20 Q. The purpose of a deposition is to exchange information
21 about a case between the parties, possibly be used in
22 trial and other proceedings that go on. The reporter
23 will make a transcript, which will be furnished to you
24 for the chance to correct misquotes and obvious errors.

25 If you don't understand a question, please go ahead
and ask me for clarification. You don't do that, I will

1 assume you did understand it, probably go on to the next
2 question. So if you don't know the answer, it's
3 perfectly all right to say that you don't; don't have to
4 make something up. Make sure you speak your answers
5 aloud and in words, because the court reporter's taking
6 that down, so gestures and body language aren't enough.
7 And I'll try to remember to remind you of that and to
8 avoid doing it myself.

9 Your attorney may object in order to make a record,
10 but unless the attorney instructs you not to answer, go
11 ahead and answer the question and we'll handle the
12 issues with the objections at a later time. Any
13 questions that that gives rise to?

14 A. No.

15 Q. Could you state your name for the record and spell it so
16 that we make sure to have it down correctly.

17 A. Mathew Shon Manweller, M-A-T-H-E-W, S-H-O-N,
18 M-A-N-W-E-L-L-E-R.

19 Q. Dr. Manweller, are you a resident of the state of
20 Washington?

21 A. I am.

22 Q. What city and county do you live in?

23 A. Ellensburg, Kittitas.

24 Q. How long have you lived in Washington?

25 A. Seven years.

1 Q. Do you regularly vote in state elections?

2 A. Yes.

3 Q. How many years have you been voting?

4 A. Since I was 18.

5 Q. And have you been voting in Washington for the seven
6 years that you've lived here?

7 A. I have.

8 Q. Dr. Manweller, you've been identified as somebody who
9 may testify as an expert witness in this case. Is that
10 consistent with your understanding?

11 A. It is.

12 Q. Which person or organization asked you to serve as an
13 expert witness in this case?

14 A. John White.

15 Q. And do you know who he was representing?

16 A. I do.

17 Q. Who would that be?

18 A. It's my understanding he's representing Washington State
19 Republican Party in partnership with the other two
20 parties.

21 Q. What were the services that Mr. White engaged you to
22 perform?

23 A. To test whether or not the new top-two ballots, both
24 primary and general, are confusing.

25 Q. Did he agree to compensate you for the services that

1 you're going to perform?

2 A. He did not.

3 Q. He did not, okay.

4 And have you received any payment for those
5 services?

6 A. None.

7 Q. Have you incurred any expenses in the course of
8 performing these services?

9 A. I have.

10 Q. Have you been reimbursed for those?

11 A. I have been reimbursed for some of them by my
12 university.

13 Q. Do you expect to receive reimbursement in the future?

14 A. No.

15 Q. Do you expect to receive any compensation in the future?

16 A. No.

17 Q. Dr. Manweller, what is your work history? Where have
18 you been employed before your current position?

19 A. I guess my first job was at the University of Montana as
20 a research teaching assistant. My second job in
21 academia was in the same position at the University of
22 Oregon, and then I was hired at Central Washington
23 University as a professor of political science.

24 Q. And that's where you currently are --

25 A. It is.

1 Q. -- is that correct?

2 Describe generally what your current position
3 involves. What are your duties?

4 A. I am an associate professor of political science, which
5 means that I have achieved tenure. I teach a battery of
6 classes that range from constitutional law to political
7 economics to intro classes, such as American government.

8 Q. Which of those courses are you scheduled to teach in the
9 2010-'11 academic year?

10 A. I will be teaching constitutional law, I will be
11 teaching politics in film, I will be teaching American
12 government, I believe I will be teaching political
13 methods, and I believe I will be teaching -- at that
14 point, I don't remember. I only know so many quarters
15 out.

16 Q. And I gather, when you say quarters, these are classes
17 that will be taught in various quarters, not all of them
18 the fall quarter --

19 A. We --

20 Q. -- is that correct?

21 A. -- usually teach three, two or two, three, two.

22 Q. So what are you scheduled to teach for the next upcoming
23 quarter?

24 A. It's American government, constitutional law, and
25 politics in film.

1 Q. Did you teach any courses during the summer?

2 A. I did not.

3 Q. What about last spring? Which courses did you teach?

4 A. I taught American political thought and political
5 economy.

6 Q. Now, I understand you have a Ph.D. in political science;
7 is that --

8 A. I do.

9 Q. -- correct?

10 What was the subject of your doctoral dissertation?

11 A. It was the tensions in constitutional law caused by the
12 advent of direct democracy.

13 Q. By direct democracy, what --

14 A. The initiative --

15 Q. -- what's that mean?

16 A. -- and referendum process.

17 Q. Just generally, what conclusions did you reach in that
18 dissertation?

19 A. That legislation by direct democracy is invalidated by
20 federal and state courts at a significantly higher rate
21 than legislation passed by elected legislatures and for
22 a variety of reasons.

23 Q. What type of research did you do to lead to those
24 conclusions?

25 A. The primary source of original data was interviews of

1 initiative elites, men and women who had written
2 initiatives throughout the state, people like Tim Eyman.

3 Q. So was Mr. Eyman one of the people you interviewed?

4 A. Mr. Eyman was not, but current Supreme Court Justice Jim
5 Johnson was his attorney at the time, and I interviewed
6 him.

7 Q. Let's see if I can avoid falling over here.

8 Within the field of political science, is there an
9 area where you concentrate your own research and
10 interest?

11 A. As a relatively -- well, seven years in, I would say
12 that my research has focused on direct democracy,
13 constitutional law, and I would also throw in state
14 courts, and then -- what was I going to say -- direct
15 democracy, constitutional law, and a little bit of
16 political economy, primarily tort reform.

17 Q. What's the most recent work that you published?

18 A. The most recent publication for me was actually a survey
19 of syllabi to find out what economics theories
20 professors are teaching. So it was actually an internal
21 pedagogy study of academia.

22 Q. And where was that published?

23 A. The Political Science Reviewer.

24 Q. What time period?

25 A. I believe a year ago. That should be on my vita that I

1 submitted to you.

2 Q. It is.

3 A. Okay.

4 Q. Are you currently engaged in some research project
5 that's at least headed, you hope, for --

6 A. Yes.

7 Q. -- for publication?

8 What would that be?

9 A. Well, the study that you're about to grill me on would
10 be one. I've also done a massive end study on the views
11 of political editors, television and newspaper editors,
12 on what type of journalist they would like to hire, and
13 I am also engaged in some study with Professor Tony Gill
14 at the University of Washington on religious behavior
15 and their voting tendencies. So those would be the
16 three that I will probably submit for publication within
17 the next year.

18 Q. Now, we'll talk in a minute about the report that you
19 prepared for this case.

20 The second thing you mentioned, could you repeat it
21 just because I've already --

22 A. We did a massive survey of television, newspaper, and
23 periodical editors, asking them what type of
24 qualifications they would like to become reporters for
25 them, to see if they were more interested in journalism

1 backgrounds or content areas, such as political science
2 and economics.

3 Q. How did you contact these editors?

4 A. You -- we were -- my colleague, partner, was -- who was
5 a journalist for 30 years, had access to purchasing
6 massive Email lists and contacts of existing editors.
7 And then we contacted them through an on-line survey-
8 research company called Qualtrics.

9 Q. And just for the record, what was the name of your
10 partner?

11 A. His name is -- oh, my gosh -- I will have to look it up
12 for you.

13 Q. That's fine. At some point or other, if you could
14 supply that.

15 A. Mm-hm.

16 Q. The other one -- project you mentioned was with
17 Mr. Gill --

18 A. Mm-hm.

19 Q. -- on something to do with religion. And could you
20 explain what that is.

21 A. Many studies who -- which assess the way in which
22 religious people vote do it by denomination: How do
23 Catholics vote, how do Protestants vote, how do Jews
24 vote. We argue that it's actually more illustrative to
25 count how often they go to church rather than what

1 denomination they are. So our argument is that the
2 Protestant who goes to church once a year will vote far
3 more like the Jew who goes to church once a year than
4 across denominations.

5 Q. What sort of research are you doing to sort of test
6 this --

7 A. We have --

8 Q. -- hypothesis?

9 A. -- access, like all research (sic) do, to the NAS
10 massive national surveys, which are public record,
11 housed at the University of Michigan.

12 Q. So you're working from that.

13 A. Yes.

14 Q. What's your training in designing social-science
15 experiments?

16 A. I was mentored by Dr. John Orbell, who is one of the
17 founders of the experimental movement back in the 1970s.
18 Mr. Orbell was on my dissertation committee and I took
19 my methodology and training from him.

20 Q. Where does Mr. Orbell work?

21 A. He is currently at the University of Oregon.

22 Q. Dr. Manweller, have you ever held elected political
23 office?

24 A. I am a PCO, which is technically an elected office.

25 Q. Have you ever -- other than PCO, have you ever run for

1 office?

2 A. No.

3 Q. You've already mentioned that you're a precinct
4 committee officer. Have you ever held any other offices
5 in the party?

6 A. I am the chairman of the Kittitas County Republican
7 Party and I serve on the executive board of the
8 Washington State Republican Party representing the 4th
9 Congressional District.

10 Q. And I was going to ask you on which -- for which party
11 you're a PCO. I think I know the answer.

12 A. Yes.

13 Q. That would be the Republican Party.

14 Are you compensated as county chair?

15 A. I receive \$208 a month for expenses.

16 Q. In that connection, I think you already indicated you
17 serve -- are -- you serve on the state party committee,
18 right?

19 A. Mm-hm.

20 Q. Have you ever attended a state party convention?

21 A. Yes.

22 Q. Have you ever been a delegate to a national Republican
23 convention?

24 A. No.

25 Q. Dr. Manweller, have you ever managed a political

1 campaign?

2 A. Yes.

3 Q. What type of campaign?

4 A. My best friend in Idaho ran for state legislature,
5 Darren Clemenhausen, for state legislature. That was
6 back in the early '90s. I have overseen several
7 campaigns in Kittitas County for county-level officials:
8 County commissioner, auditor, sheriff, assessor,
9 prosecutor.

10 Q. Am I -- would I be correct in guessing that all of those
11 candidates were Republican candidates?

12 A. Except for the first one. Darren Clemenhausen was
13 running as a Democrat. I do not know how to spell
14 Clemenhausen.

15 Q. I don't either, for the record.

16 And you say that was in Idaho?

17 A. Yes.

18 Q. What part of Idaho?

19 A. Hailey, Sun Valley. It would have been in Blaine
20 County.

21 MR. PHARRIS: Okay, just off the record.

22 [Off the record - discussion]

23 MR. PHARRIS: Back on the record.

24 Q. (by Mr. Pharris) I think you've already answered this
25 question, but just to clarify it, what issues were you

1 asked to address in your research for this report?

2 A. I would say that it was very general in the request:
3 Would you please study and examine these ballots and
4 test for voter confusion. But the research design and
5 the specific questions were generally left to me.

6 Q. Did you do any research beyond what's described in your
7 report?

8 A. On that topic?

9 Q. Right.

10 A. No.

11 Q. Now, you -- did you do any research on related topics
12 that didn't end up in the report?

13 A. I'm sure that there were papers that I read about the
14 associational-clause challenges that did not make the
15 first two pages, where I was trying to summarize, you
16 know, the current case law. But in general, you have a
17 summary of what I studied.

18 Q. Thank you.

19 And by -- and you -- when you say in general, you
20 mean it's contained in the report.

21 A. Yes.

22 Q. Based on your work, did you form opinions on the matter
23 you were addressing?

24 A. I did.

25 And if I may go back, I think to more accurately

1 answer your question, since receiving Mr. Donovan's
2 critique of the paper, I did go back and reexamine some
3 of my data. So I have done, I guess, not new data
4 collection, but I have relooked at the data collected
5 following Mr. Donovan's critique.

6 Q. Since that.

7 What -- just generally, would -- could you describe
8 the opinions you reached as a result of your study.

9 A. It's my opinion that if you put the word "Republican"
10 under a candidate's name on a state ballot, there is a
11 portion of the population that will believe that that
12 candidate is associated or the nominee of the Republican
13 Party, and if you put the word "Democrat" under a
14 candidate's name on a state ballot, there is a portion
15 of the public that will believe that that person is
16 associated with the Democratic Party.

17 Q. Anything you want to add to that or is that --

18 A. Yeah. I mean, I would add that those misperceptions,
19 which is an issue of fact, vary based on certain
20 demographic characteristics.

21 MR. PHARRIS: I'm going to ask you to mark this as
22 an exhibit.

23 [Exhibit 1 marked for identification]

24 Q. (by Mr. Pharris) Dr. Manweller, I'm asking you to look
25 at what's been marked as Exhibit 1.

1 A. Yes.

2 Q. Could you identify what that is. It's actually a
3 combination of things, but --

4 A. This is my curriculum vita as of July 2010; it is --
5 appears to be a copy of the paper that I gave to
6 Mr. White.

7 Q. So just to clarify the record, the first -- these are
8 marked in the lower-right-hand corner with what's called
9 a WSDCC --

10 A. Mm-hm.

11 Q. -- number. Numbers 1 through 7 are your curriculum
12 vita, and then starting on page 8 is your report; is
13 that correct?

14 A. That is correct.

15 Q. I'm going to refer to the page number in the report.
16 And if -- I believe it's correct that if anybody wants
17 to look at the Bates number, the WSDCC number, it will
18 be seven higher than the number I give, because I'm not
19 asking right now any questions about your curriculum
20 vita.

21 First thing I want you to look at is page 2 of the
22 report, which is entitled "Abstract." In the third
23 paragraph of the abstract, you say that your "findings
24 are based on a series of cognitive experiments run on
25 Washington State voters." How would you define the term

1 "cognitive experiments"?

2 A. It is to distinguish between opinion. Political-science
3 researchers try to understand a variety of phenomenon.
4 Sometimes we want to measure people's opinions: How do
5 they feel about gay marriage, how do they feel about the
6 death penalty, right? Those are essentially what we
7 would call a subjective in the sense that there's not a
8 right and wrong, okay? But sometimes we want to measure
9 how people think: How did you arrive at the fact that 2
10 plus 2 is 4, right? That's not an opinion and it's not
11 amenable to public-opinion research.

12 So cognitive experiment meant what we were trying
13 to measure was how people comprehend or understand, not
14 how they feel about.

15 Q. And that's what the -- the word "cognitive," that's what
16 that's --

17 A. Yes.

18 Q. -- it's what they --

19 A. What they are thinking.

20 Q. Right.

21 Besides the experiments conducted for this report,
22 have you had other occasions to conduct cognitive
23 experiments?

24 A. This was my first as the primary researcher. I have
25 observed others being done by Mr. Orbell and his

1 graduate students as he ran a lab at the University of
2 Oregon, and we were allowed to participate and observe.
3 But this is the first one in which I would be the
4 principal investigator.

5 Q. On the same page you state, "Participants were asked to
6 read and answer questions about one of three mock
7 ballots modeled off of Washington State's traditional
8 partisan ballots and newer Top-Two ballot." Is that a
9 correct quote?

10 A. Mm-hm.

11 Q. Just to clarify, did you use actual, real ballots in
12 your study?

13 A. No. We asked for a copy of a Kittitas County ballot
14 that was printed, and then we copied it word for word
15 except for the names of the candidates.

16 Q. So those -- you changed the names of the candidates --

17 A. That is it.

18 Q. -- in other words.

19 Otherwise, did you make the mock ballots look just
20 like the real ballots?

21 A. Absolutely.

22 Q. Were the mock ballots labeled at the top with their
23 type? And let's refer to Appendix A of your report.

24 A. Mm-hm.

25 Q. For instance, page 22, 23, 24. They're all headed

1 "KITTTITAS COUNTY BALLOT" --

2 A. Mm-hm.

3 Q. -- "General Election," or --

4 A. What --

5 Q. -- something --

6 A. What the respondent to the experiment would have seen is
7 everything except for the term "Appendix A" and
8 "Partisan General Election Ballot."

9 Q. Right.

10 A. But from "Directions" on down, it is literally a
11 picture --

12 Q. So that is actually --

13 A. -- of what they saw.

14 Q. -- what they saw. Thank you.

15 A. Oh, one -- except for -- you'll notice that there's a
16 little line next to the box. That is a copier issue.
17 There was just a box, not a little -- it looks like a T.
18 That did not appear on their ballot.

19 Q. So that wasn't there. Yeah, I see that mysterious --

20 A. It barely shows up, but it is --

21 Q. Right.

22 A. -- there.

23 Q. Did each participant in your study read and answer
24 questions about only one of these ballots?

25 A. Absolutely.

1 Q. So nobody participated by reading more than one of them;
2 is that correct?

3 A. That is correct.

4 Q. With respect to the on-line participants -- and we'll
5 talk about that in a minute -- was there any control in
6 place to prevent a person from participating more than
7 once?

8 A. Yes. The --

9 Q. What was that?

10 A. -- survey-research company, Survey Monkey, has a
11 mechanism built in so that once an Email has been used,
12 they cannot go back in and answer again.

13 Q. Let's look at page 8 of your report, which would be page
14 number 15.

15 A. Yes.

16 Q. In the first full paragraph the report says,
17 "candidates" -- it says, "Instead, candidates can place
18 the language," quote, "prefers Republican Party," closed
19 quote, "or," quote, "prefers Democratic Party," closed
20 quote, "next to their name on the ballot." Now, is it
21 your understanding of current Washington law that
22 candidates may only state a preference for one or the
23 other of those two parties?

24 A. No. They can put any 17 characters they want as long as
25 it's not obscene or offensive according to the Secretary

1 of State's Office.

2 Q. So in your statement there, you didn't mean to imply
3 that it excluded other parties.

4 A. No.

5 Q. Page 10 of your report, you indicate that you used three
6 different ballot types in your report. Could you --

7 A. Yes.

8 Q. -- describe what those were.

9 A. One was modeled after the traditional partisan ballot
10 that was employed in 2006, which used the more
11 traditional monikers of D, R, and I, representing
12 Democratic Party, Republican Party, and independent; the
13 second ballot was a top-two primary ballot, which used
14 the language you just mentioned, "prefers," in front of
15 the party names; and then there was a top-two general-
16 election ballot, which used the same language but,
17 obviously, was limited to two candidates, as the name
18 suggests.

19 Q. Now, the first one you referred to, I think, as a
20 traditional --

21 A. Yeah.

22 Q. -- 2006. Was that a primary ballot or a general-
23 election --

24 A. It was a --

25 Q. -- ballot?

1 A. -- general-election ballot.

2 Q. Is there a reason you didn't use a traditional primary
3 ballot?

4 A. Mm-hm. Well, there are two reasons. The first is that,
5 as with the study, the more ballots you use, the more
6 you subdivide the N, the number of experimental subjects
7 you have. And, of course, sample size can be important,
8 and if you do too many, you keep dividing and dividing
9 and you end up with too few respondents.

10 The second is, we were using the partisan general
11 ballot to establish a base line. We were more concerned
12 with testing confusion rates on the top-two ballots,
13 primary and general. We weren't necessarily as
14 interested in comparing primary to primary or general to
15 general.

16 Q. I'm going to refer now to the language at the end of top
17 ten and going over to the top of -- I said -- page 10,
18 I'm going over to page 11. The sentence that goes over
19 the page there is, "That exact language adopted by the
20 state was added" -- and then I --

21 A. I see where you are.

22 Q. You see where it is?

23 A. Yes.

24 Q. Could you read that sentence.

25 A. The "exact language" was -- "adopted by the state was

1 added to the Top-Two ballots (primary and general)
2 utilized in the experiment. See Appendix A for" a
3 design.

4 Q. Let's look at Appendix A, which begins at page 22 of
5 your report.

6 A. Mm-hm.

7 Q. Could you identify where that language appears on your
8 mock ballots.

9 A. On the first general-election partisan ballot, you will
10 see it in the upper-left-hand corner under the bold
11 print, mark "your ballot." That language is taken word
12 from word (sic) from a state ballot. It only differs
13 from the other two ballots in that you'll see that there
14 is additional language underneath that with the
15 disclaimer language explaining that candidates for
16 partisan office may state a political party, et cetera,
17 et cetera.

18 Q. And that additional language is the disclaimer that you
19 were referring to --

20 A. Yes.

21 Q. -- is that correct?

22 And that appeared on the mock ballot used on
23 page 23 and the one on page 24 --

24 A. Yes.

25 Q. -- but not on the one on page 22.

1 A. No.

2 Q. And I assume that that is because page 22 referred to --
3 was not about a top-two --

4 A. Right.

5 Q. -- primary.

6 A. It would be incorrect --

7 Q. So --

8 A. -- with that language there.

9 Q. -- accurate.

10 Did you attempt to copy -- you mentioned that you
11 used an actual ballot from Kittitas County.

12 A. Yes.

13 Q. Did you copy that ballot with respect to the placement
14 of that disclaimer language on the page?

15 A. Everything --

16 Q. Everything.

17 A. -- including the bolding of certain languages, the
18 capitalization of certain words, and the word for word
19 and the punctuation and the placement.

20 Q. Thank you.

21 Before asking participants to answer questions
22 about one of these mock ballots, did you provide them
23 with any explanation or instructions about how a top-two
24 primary works?

25 A. Absolutely not.

1 Q. Did you ask them if -- without instructing them, did you
2 ask them questions designed to find out if they already
3 understood what a top-two primary did?

4 A. There was no communication between me and the
5 experimental subjects except for the directions that
6 were provided with the ballot.

7 Q. So do you know if any of your participants had any
8 actual knowledge outside of what they might have learned
9 in your survey as to how the primary worked?

10 A. I did not conduct a political-knowledge questionnaire
11 with the ballot.

12 Q. So presumably they had varying levels of knowledge which
13 you don't know.

14 A. Absolutely, although we intentionally sampled three
15 different demographics that would have different levels
16 of knowledge, which is why we had a purposeful sample of
17 younger college students, we had a purposeful sample of
18 registered voters, and then we had a purposeful sample
19 of very active, highly educated, older voters in the
20 sample, so that we got all three types.

21 Q. That leads nicely into the next question I'd written --

22 A. Okay.

23 Q. -- down, which was about these three different
24 populations. How did you define -- and you just
25 about -- maybe I'll just go to the next question.

1 Why did you organize your experiment around those
2 three populations?

3 A. Well, I think that -- well, according to the Oxford
4 Handbook on Political Methods, the way in which to
5 ensure for external validity in an experimental design
6 is to sample multiple purposeful samples within your
7 population. So in accordance with what is accepted
8 practice in an experimental design, I chose three
9 purposeful samples.

10 Second, those exhibited the wide range of types of
11 voters you would get. You would get everything in
12 Washington from a brand-new voter who is 18 to a senior-
13 citizen voter who has been voting their whole life to
14 somewhere in the middle. And from those three points,
15 hopefully you can draw a straight line.

16 Q. Did you consider any additional categories besides those
17 three?

18 A. Well, as is also the case with experimental designs, you
19 are limited to what type of populations you can get
20 access to. Given that experiments require voluntary
21 participation, we experiment in all cases on population
22 samples who are willing to participate.

23 Q. I'm not -- thank you for that answer. It's very
24 interesting, but I'm not sure it directly answered my
25 question, which is whether there were any other

1 additional types of population that you considered in --

2 A. I don't remember --

3 Q. -- addition to those particular three groups.

4 A. -- at this stage whether I considered a fourth or fifth
5 purposeful sample and rejected it. So I cannot remember
6 doing that. But I have no recollection of trying -- I
7 know that I did not try to get at a fourth sample and
8 failed.

9 Q. On page 11 of your report, you state that your sample
10 population for the newer voters was drawn from the
11 student population at Central Washington University; is
12 that correct?

13 A. That is correct.

14 Q. How were the students chosen for this sample population?

15 A. I sent out an Email to the faculty at Central Washington
16 University asking if they would be willing to volunteer
17 their classes for a certain amount of time in which to
18 allow their students to participate in the experiment.
19 I got a series of yes answers that were very well
20 distributed across the disciplines: Music classes,
21 engineering classes, accounting classes, political-
22 science classes, anthropology classes. And then we
23 would go into the class and we would conduct the
24 experiment.

25 Q. Was your Email -- did you send your Email to all the

1 faculty or did you choose certain departments?

2 A. I do not remember.

3 Q. But you do indicate that you got response from a variety
4 of --

5 A. I did.

6 Q. -- disciplines.

7 What were the students told about the study when
8 they were asked to participate in it?

9 A. Absolutely nothing. They were read the directions that
10 are on the top of the ballot and then I would not answer
11 any questions. If anybody asked a question, I'd say,
12 the directions on the ballot are the only information
13 that you have access to.

14 Q. You mentioned that the students ranged in age from 18 to
15 24. How do you -- how'd you find out the age range?

16 A. That is an estimate, okay? We did not in the student
17 sample ask for demographic information, because asking
18 for education seemed pointless. We knew they had a
19 high-school degree or they wouldn't be there; we knew
20 they had no higher than a bachelor's or they wouldn't be
21 there; and we knew that in general, college students are
22 18 to 24. And so when you ask -- when you divide up
23 demographic samples, 18 to 30, doesn't really matter if
24 they were 18 to 25, 18 to 26; that variation wouldn't
25 have been captured.

1 So I will tell you that that statement is based on
2 general knowledge of what the education and age levels
3 are of the typical undergraduate student at Central
4 Washington University.

5 Q. And likewise, you indicated that they were students --
6 they were people who had voted zero to two times. Is
7 that an estimate also?

8 A. Well, that would be a function of the law. We know
9 that, if you're 18 to 24 years old, that there would
10 only be that many possible variations.

11 Q. What was -- you indicated -- I think you've given this
12 answer, but am I correct that this was -- when these
13 questions were asked, it was in a classroom setting?

14 A. Yes.

15 Q. Always? Were all of them --

16 A. Yes.

17 Q. -- in a classroom? Okay.

18 And you indicated that you declined to answer any
19 questions beyond what was written on the report; is that
20 correct?

21 A. Yes, it is.

22 Q. Were the students allowed to discuss the answers with
23 one another before they wrote the answers down?

24 A. No. There was no communication allowed between
25 students.

1 Q. You also indicate at the bottom of page 11 that, "No
2 follow-up questions were answered by the proctors." Who
3 were the proctors?

4 A. I was the proctor in --

5 Q. You were.

6 A. -- all cases.

7 Q. And --

8 A. Although I guess in some cases the professor whose class
9 I was using helped collect the papers, which by
10 definition makes them a proctor as well.

11 Q. And since you say you were a proctor and the professor
12 who helped collect the papers was a proctor --

13 A. Mm-hm.

14 Q. -- you know that neither you nor the professor answered
15 any additional questions --

16 A. Absolutely.

17 Q. -- because you were present.

18 A. Yes.

19 Q. Why was it part of your study not -- I gather it's
20 intentional not to answer any additional questions.

21 A. Absolutely. The experimenter cannot influence the
22 experiment subjects by giving information. And then you
23 have a problem with consistency: I would not be there
24 to answer questions on the survey that went out
25 electronically. And what if one question was asked in

1 one class but not in another? Then you inject variation
2 into your study as soon as you start interacting with
3 the proctor, so it is not allowed.

4 Q. Did you consider trying to find a population of newer
5 voters beyond the students at Central Washington
6 University?

7 A. I did not seek out a different population than that.

8 Q. Is there a reason why you did it that way and not some
9 other way?

10 A. Well, I guess the question would be, what other way? If
11 we look at the history of experiments in academia,
12 whether we go back to the Milgram study in the 1950s, it
13 has almost always been that we use a purposeful sample
14 of those experiment subjects that are within our range.
15 To get other younger voters seemed to be a cumbersome
16 process which would not improve either the internal or
17 external validity of the study.

18 Q. On page 12 of your report -- and now we're turning to
19 the sample population for registered voters, so I'm
20 looking at the first full paragraph on page 12.

21 A. Mm-hm.

22 Q. You indicate that your sample population of registered
23 voters was drawn from the Secretary of State's Office;
24 is that correct?

25 A. Yes, it was.

1 Q. And how did you obtain that sample?

2 A. I was made aware of it, by coincidence, by Dr. Todd
3 Donovan and -- who had worked with Matt Barreto at the
4 University of Washington. And they had done a study on
5 a topic that I cannot remember, but they had let me know
6 that Sam Reed had let them have access to that. So I
7 was also able to get an access to those same 1,500
8 population through a public-disclosure request.

9 Q. Now, when you say same 1,500, you're actually talking
10 about the same 1,500 names as used in another study?

11 A. Yes. And I would say same 1,500 Emails. I had no idea
12 what their real names were.

13 Q. And so all of these people were contacted by Email --

14 A. Yes.

15 Q. -- is that correct?

16 Is there a reason you used that particular sample
17 rather than, for instance, asking for another 1,500
18 voters or finding it some other way?

19 A. I believe the reason was, that was all they would give
20 me. I remember having a conversation with somebody in
21 Mr. Reed's office who said that they would not supply
22 any other contacts, but these were available through
23 public disclosure, so they had no option.

24 Q. Now, am I correct that these were voters who had
25 registered to vote on-line; is that correct?

1 A. Yes.

2 Q. And I gather from what you've just said you did not
3 choose these particular 1,500 Emails, someone else did.

4 A. I did not.

5 Q. Once you got the names from the Secretary of State, how
6 did you contact them?

7 A. Well, first of all, in order to ensure internal
8 validity, there was a complete randomization of which
9 Emails were given which ballot, okay? And at that
10 point, the survey-research software allows you to upload
11 Emails into the various experimental designs. So I had
12 three, okay, one for each ballot, and each ballot was
13 randomly assigned 500 Emails from the Secretary of
14 State's Office.

15 Q. So you're saying 500 Emails about --

16 A. Yes.

17 Q. -- the first ballot, 500 about the second, 500 about the
18 third.

19 A. But they were all sent simultaneously.

20 Q. So because of that, no one would have received more than
21 one of them.

22 A. It was impossible.

23 Q. What instructions were given when you sent these ballots
24 out?

25 A. I can get you a copy of the accompanying Email from

1 Survey Monkey, but it was boilerplate. As best I can
2 remember, it said, Washington State has adopted a new
3 primary system. I am a researcher at Central Washington
4 University. We are attempting to ascertain how voters
5 understand that. If you're willing to participate,
6 please click on the link below. If you do not want
7 future Emails, please click on this Email below. But
8 that was the gist of it. I can get you a copy of that
9 exact language.

10 Q. I think we would like to have a copy of it, if you don't
11 mind.

12 Was any record kept of how many people went to the
13 link but then didn't answer questions?

14 A. I do not believe so.

15 Q. Were the ballot and the questions on the same screen and
16 same page?

17 A. I believe it scrolls. I would have to go assign myself
18 the experiment again, but I believe, like all computers,
19 there's not really pages that --

20 Q. Right.

21 A. -- you can -- right, scroll up and down.

22 Q. So the question is really whether participants just
23 simply scrolled up and down or possibly had to move
24 between two screens --

25 A. Yes. I would have to check to verify.

1 Q. Also on page 12 of the report, you talk about the third
2 sample population of highly active voters. For purposes
3 of this study, how would you define the term "highly
4 active voter"?

5 A. And this is a question of semantics more than
6 empiricism. But generally, the empirical research and
7 literature in political science suggests that older
8 voters tend to vote at a much higher rate than younger
9 voters, that more-educated voters tend to vote at a much
10 higher rate, and that both more-educated and older
11 voters are more receptive to political information and
12 seek it out more.

13 So the term I used as "active voters" was to
14 distinguish the -- this group from just your average
15 registered voter who will cast a ballot, but doesn't eat
16 and breathe politics like some of us do.

17 Q. Now, how did you select this group of the -- excuse me;
18 of the -- group of the highly active voters?

19 A. I was given 3,000 Emails from the Washington State
20 Republican Party and the Washington State Democratic
21 Party, and their Emails came from a list of people who
22 were amenable to receiving whatever term you want to
23 use -- spam, propaganda, communications -- from a party.
24 And so that does distinguish them in the sense that your
25 typical voter, your -- one that is less interested in

1 politics, probably doesn't seek out Emails from
2 political parties.

3 Q. Just to clarify one little bit of your previous answer,
4 when you said you received 3,000, was it 3,000 each from
5 the Republican --

6 A. Yes --

7 Q. -- Democratic parties?

8 A. -- for a total of 6,000.

9 Q. On what basis did you conclude, for instance, that this
10 group was largely older voters?

11 A. Actually, in the on-line surveys, okay, in which our
12 sample -- purposeful samples were from a much wider
13 range than our first purposeful sample, which was all
14 college students, we did ask demographic information.
15 We asked them how old, how many years they had gone to
16 school, et cetera, et cetera.

17 And by simply running the cross-tabs -- and I have
18 that information here -- it became very clear that these
19 were very active voters. They were highly educated,
20 skewed towards a more-elderly sample; actually, quite
21 the exact opposite of what Mr. Donovan wrote in his
22 report, which -- he suggested that they were skewed
23 towards younger and less-educated voters. The exact
24 opposite was true: This was skewed towards older and
25 more-educated voters.

1 Q. Do you believe that a person must be involved with a
2 major political party to be considered a highly active
3 voter?

4 A. No.

5 Q. Who supplied you with the specific names, the 3,000 from
6 each party?

7 A. Again, the specific Emails. As with the registered
8 voters I got from Mr. Reed's office, I did not know
9 anyone's name or where they live or anything like that.
10 I was given an Email. So -- but who gave them to me, is
11 that the question?

12 Q. Well, I think you indicated that each party gave you --

13 A. Yes.

14 Q. -- 3,000 names.

15 A. Mm-hm.

16 Q. But did you select the Emails or did --

17 A. No --

18 Q. -- someone else?

19 A. -- they did. I was given a file.

20 Q. Is there a reason you asked for an equal number from
21 each party or did you ask or was that just coincidence,
22 they each gave you 3,000?

23 A. I think they agreed to the -- to that equal sharing.

24 And to be perfectly honest, as an experimental
25 design, I don't think it would matter whether or not

1 they were -- there was an unequal number of Republicans
2 or Democrats because there is no literature to suggest
3 that Democrats and Republicans engage in cognitive
4 processes different. Do they feel differently about
5 different things? Of course, and that would show up in
6 a public-opinion poll. But in an experimental design
7 where you are measuring cognition, Republicans come to
8 the conclusion that 2 plus 2 is 4 the exact same way
9 that Democrats do.

10 But, you know, there are always people who are
11 looking for reasons to criticize a study. By having an
12 equal number of Republicans and Democrats, you can
13 control for partisanship. And that's something that
14 researchers do; we try to control for external
15 variables.

16 Q. But as far as your opinion about the experiment is
17 concerned, you don't think it would seriously have been
18 different if the group -- if it hadn't been balanced
19 between the two parties.

20 A. Yes. And that's not only my opinion, but that's the
21 opinion of three decades of the political-science
22 literature in experimental design.

23 Q. Again, with these highly active voters, could you
24 describe how they were contacted.

25 A. The exact same way that the Sam Reed voters or the

1 act -- the registered voters were. You had 3,000
2 Emails, they were broken up into three groups of a
3 thousand, and then the other group of 3,000 were broken
4 up into three groups of a thousand. Those were put into
5 the three separate ballots. They went out
6 simultaneously.

7 Q. Did they receive exactly the same message as the --

8 A. Same introductory Email --

9 Q. -- as the 1,500?

10 A. -- and the same directions on the ballot. There is
11 absolutely no difference between what the two samples
12 saw other than the fact that they were different people.

13 Q. And I believe you just testified that the parties each
14 made these 3,000 Emails available to you. Do you know
15 how the parties selected those names?

16 A. I do not.

17 Q. Do you know what kind of database or databases they used
18 to draw the names from -- the Emails from?

19 A. It is my understanding that they drew them from the
20 list -- the in-house list that both parties have to
21 engage in member communication. Both parties have
22 massive Email lists where they send out Emails to go
23 vote and support this candidate. And it is my
24 understanding that that's the body that it was drawn
25 from.

1 Q. I believe you indicate somewhere in here, and I don't
2 have the specific reference, that it might have been
3 from donor lists. Is that true or --

4 A. I believe that some of these people, the way they get on
5 the list is by donating to the political party.

6 Q. To your knowledge, did either the Democratic or
7 Republican Party contact or communicate with any of
8 these voters concerning the nature of your study?

9 A. To my knowledge, no.

10 Q. Did you instruct them not to or --

11 A. I did not instruct them not -- I did not instruct them
12 to do anything.

13 Q. My next questions are about two of the sample ballots
14 used in your experiment. The first one in Appendix A is
15 the one that relates, I believe you say, to the more
16 traditional --

17 A. Yes.

18 Q. -- ballot. But I'm -- so I'm going to concentrate on
19 the other two --

20 A. Okay.

21 Q. -- related to the top-two primary. And again -- so I'm
22 referring to the one on page 23 --

23 A. Mm-hm.

24 Q. -- which says, "KITTTITAS COUNTY BALLOT, Primary Election
25 August 25th, 2008." And it's the one that in the lower-

1 left corner of the box includes the disclaimer about the
2 statement of political preference; is that --

3 A. Yes.

4 Q. -- correct?

5 Again, just to repeat, am I correct that a
6 participant who read this ballot and answered the
7 questions read only this ballot and not either of the
8 other two used in the experiment?

9 A. That is correct.

10 Q. The first name on the ballot -- and I'm looking at
11 the -- again, page 23 --

12 A. Mm-hm.

13 Q. -- is John Smith --

14 A. Mm-hm.

15 Q. -- and then it says, parenthesis, "Prefers Democratic
16 Party"; is that correct?

17 A. Yes.

18 Q. And then the first question on -- in Appendix B, which
19 is at page 25 of your report, is, "Would you consider
20 Candidate John Smith the nominee of the Democratic
21 Party"; is that correct?

22 A. This is correct.

23 Q. If a participant in your question (sic) answered the
24 question yes, did you treat that as a correct answer?

25 A. Yes -- no, no, no, no; sorry. I'm looking at the wrong

1 ballot.

2 Q. Right.

3 A. That would be considered wrong and, therefore, voter
4 confusion. Mr. Smith is not the nominee of the
5 Democratic Party on the top-two primary ballot.

6 Q. Now, in fact, if this were an actual election, would it
7 be possible that John Smith, not because he appeared on
8 the ballot, but because he had been nominated by the
9 Democratic Party, in fact, was the Democratic nominee?

10 A. It is possible that a lot of things could happen in the
11 real world that are not reflected in this experiment.
12 The purpose of an experiment is to control for all the
13 variation that can happen in the real world. So yes, it
14 is possible that in the real world, a candidate running
15 under prefers Democratic Party had been nominated. But
16 the respondents to this experiment were not given any
17 such information.

18 Q. To your knowledge, isn't it fairly common for the major
19 parties to nominate candidates under the top-two
20 primary?

21 A. It is common for them to nominate candidates after
22 they've already won in an ex post facto manner.

23 Q. By after they've already won, that means after the
24 primary?

25 A. Yes.

1 Q. So at least in the general election, is it fair to say
2 that in any real election, one or more of the candidates
3 may indeed be the nominee of a party?

4 MR. WHITE: I'll object to the form of the
5 question.

6 A. Can I answer?

7 Q. (by Mr. Pharris) Go ahead and answer.

8 A. First, I would say we don't have enough data yet to say
9 what may or may not happen. We're looking at a ballot
10 that has only been used once, in 2008, so we have a data
11 point of one. So I would be hesitant to draw general
12 conclusions about a ballot that has been used in one
13 election.

14 And two, I hesitate to answer about a hypothetical
15 in terms of a variety of variables that could or could
16 not be employed outside the experimental design. What
17 we're measuring here is, based on the information you
18 have here, what are the answers to these questions?
19 Now, what may or may not happen in the real world, I
20 really can't -- I mean, I could only speak to as a lay
21 political observer, but not with regard to this study.

22 Q. Now I'd like to draw your attention to the mock ballot
23 that appears on page 24 of your report.

24 A. Got it.

25 Q. How is this ballot different from the one on page 23?

1 A. There's one important distinction. In the primary
2 election, it is possible for more than one candidate to
3 have prefer the same party, right? It's a primary. You
4 are fighting it out for that -- one of those spots. But
5 in a top-two general election, as the name of the
6 process indicates, you can only have the top two.

7 So if you'll look at the primary ballot, I have
8 both John Smith and Joe Keen preferring the Democratic
9 Party, and I also have George Marker and Kirk Freeman --
10 I'm sorry; George Marker and Mark Allen preferring the
11 Republican Party. When you go to the general-election
12 ballot, there is, of course, only two candidates.

13 Q. So to summarize, what -- this general-election ballot on
14 page 24 assumes that a primary's been conducted and that
15 John Smith and Mark Allen were the top two who advanced
16 to the general election for governor.

17 A. That is correct.

18 Q. And that Jane Miller and Mary Johnson were the two who
19 advanced to the general election for the office of state
20 representative.

21 A. That is also correct.

22 Q. In each of those cases on your mock ballot --

23 A. Mm-hm.

24 Q. -- page 24, the ballot shows one person who states,
25 "prefers Democratic Party," and one who states, "prefers

1 Republican Party"; is that correct?

2 A. Yes.

3 Q. Did you consider using any ballots in which one or both
4 of the top two candidates had expressed a preference for
5 some other party?

6 A. So for example, prefers Constitution Party or prefers
7 some -- whatever name they use for their 17 letters?

8 Q. Right.

9 A. I did. I rejected it for the same reason that I
10 indicated earlier.

11 When you have a limited sample size -- and in this
12 case, my sample size is pretty significant, over 800.
13 But when you start to divide it up over multiple
14 permutations, where does that end? I could have done
15 one ballot with prefers Constitution and prefers
16 Democrat. I could have done one ballot where they both
17 prefer Democrat. I could have done another ballot when
18 they preferred both Republican. What we're going to end
19 up with is a series of results where the N in each box
20 is going to be about 5.

21 And so all research designs and all experimental
22 designs have to consider all the options and then make
23 rational decisions about how to limit the scope of the
24 experiment. This is going to be the result in a
25 majority of the elections, one Republican prefers, one

1 Democrat prefers. But we hesitate to create
2 experimental designs based on the exception rather than
3 the rule.

4 Q. Referring to the questions again, which are on page 25
5 of your report --

6 A. Mm-hm.

7 Q. -- first question is, "Would you consider Candidate John
8 Smith" to be "the nominee of the Democratic Party"; is
9 that correct?

10 A. "Would you consider Candidate John Smith the nominee."

11 Q. "The nominee"; excuse me. I didn't read that right.

12 Did you instruct participants on the meaning of the
13 word "nominee"?

14 A. Absolutely not. They were given no definitional
15 information.

16 Q. So the same would be true -- looking at questions -- at
17 the rest of the questions, the same would be true of the
18 terms "affiliated," "representative," and "associated."

19 A. That is true.

20 Q. How did you decide to use those four terms in your
21 questions?

22 A. Well, nominee was a must because that is the legal term
23 that we use and fight over, right? I added the word
24 "associated" because the -- associated and nominated are
25 used by Secretary of State Sam Reed's language, right,

1 which we specifically denied in the disclaimer, so it
2 would be effective to test.

3 The other terms are just general terms about
4 representativeness where we tried to move -- to have a
5 variety from specific to abstract. So nominee is
6 incredibly specific term. It's a legal term; it has a
7 legal meaning. Representative has a slightly less
8 narrow, but it is, you know, more specific than, say,
9 associated and affiliated. So what we are trying to do
10 is kind of create a -- from narrow to broad in terms of
11 specific to abstract.

12 And that is why the paper is divided into two
13 sections, one in assessing their cognitive understanding
14 as a nominee and then a second section for those other
15 three terms, which were more abstract terms.

16 Q. The first -- just looking at the structure of your
17 questions on page 25 -- you look at the first four, and
18 then the same would be true of 5 through 8 with the
19 Republican Party -- did you consider the possibility
20 that people who answered these questions would draw the
21 conclusion that at least one of the first four questions
22 should be answered yes?

23 A. Any experiment, survey, poll that asks multiple
24 questions is going to run into the problem of, there is
25 now influence on the respondent after they've been asked

1 the first question. There's more influence after
2 they've been asked the second question. Given that the
3 only option to avoid that is to have one-question polls
4 or one-question surveys or one-question experiments, we
5 generally reject that as an answer in political science.

6 Q. Did you consider adding any options besides yes and no
7 as answers?

8 A. One of the reasons that we used the language "Would you
9 consider," rather than is, "Candidate John Smith the
10 nominee" is that the latter language requires an I-
11 don't-know or I'm-not-sure answer, whereas when we do
12 not want to do that -- which, of course, messies the
13 water when you have three possible answers instead of
14 two -- we use terminology which is very common, like to
15 the best of your opinion or to the best of your
16 knowledge or would you consider. That eliminates the
17 need for a yes, no, and maybe or I-don't-know response.

18 Q. What is your own understanding of the meaning of the
19 term "nominee" in the context of a top-two primary?

20 A. My personal --

21 MR. WHITE: I'll object to the --

22 A. -- understanding?

23 MR. WHITE: -- form of the question.

24 THE WITNESS: Okay.

25 Q. (by Mr. Pharris) Yeah, your personal understanding of

1 the --

2 A. Well --

3 Q. -- of the term.

4 A. -- I'm, I would say, a nonrepresentative sample in the
5 sense that I have a Ph.D. in constitutional law and
6 study elections and serve as a political-party
7 representative. But my understanding of the term
8 "nominee" is one candidate who has gone through an
9 official procedure that has been outlined by said party
10 to earn that party's designation as this is our sole
11 representative speaking for us and on our behalf in this
12 election.

13 Q. Based upon either your knowledge -- instead of -- based
14 upon your experience and given your professional status,
15 do you think the average voter has the same
16 understanding of the term "nominee"?

17 A. Based on the results of my experiment, I would say no.

18 Q. Could you state what you think the average voter's
19 understanding of the term "nominee" would be?

20 A. I cannot, because we did not test for that.

21 Q. Let's go back just for a minute to page 6 of your
22 report. Have to figure out the -- right at the end,
23 last sentence going over onto page 7 --

24 A. Mm-hm.

25 Q. -- you say, "The proliferation of a top-two primary

1 system could ultimately result in the rise of," quote,
2 "stealth candidates," closed quote, "so common in other
3 types of nonpartisan elections."

4 A. Mm-hm.

5 Q. What do you mean -- could you define what the term
6 "stealth candidate" means.

7 A. A stealth candidate is one that purposely hides their
8 true political preferences during an election. It is
9 most common in America where members of, I would say,
10 the religious right run for school-board member, which
11 is a nonpartisan election, and they don't reveal their
12 true political values and then, after elected, it turns
13 out that they hold values that are probably outside the
14 median voter of the population that elected them.

15 Q. How would that work as applied to a partisan office in a
16 top-two primary?

17 A. Well, because nobody needs the permission of the party
18 to use their name, I as a Republican could walk into my
19 auditor's office and run as a stealth Democratic
20 nominee, and there's nothing that anybody can do to stop
21 me from doing that. And if I were elected and then
22 said, oh, ha, ha, I was just kidding, I'm a Republican,
23 there's really nothing that political parties can do to
24 stop that. So that would be one example of a stealth
25 candidate.

1 Q. Now, in that previous answer you used the term "stealth
2 Democratic nominee." Are you referring -- what did you
3 mean by that?

4 A. I meant stealth candidate, stealth Democratic candidate.
5 I could go in as a Republican and tell the auditor, I
6 want prefers Democratic Party. Now, that would be a
7 stealth candidate because I am not being honest with the
8 voting public about my true political persuasions. And
9 because the party cannot deny me the right to use that
10 name, it would go forward.

11 Q. And that preference that you expressed would appear on
12 the --

13 A. Insincere --

14 Q. -- primary ballot?

15 A. Yeah, right. The political scientists refer that to
16 (sic) as insincere political preferences.

17 Q. In your experience as a party officer -- and now I'm
18 going to --

19 A. Mm-hm.

20 Q. -- refer to the experience with top-two elections in
21 Washington, not broader --

22 A. Okay.

23 Q. -- are you aware of instances in which a candidate has
24 falsely stated a preference, or let's call it an
25 insincere political preference, for a political party

1 when filing for office?

2 A. Yes.

3 Q. What would be examples of that?

4 A. Currently, Mr. Steve Verhey, who is the past local-
5 chapter president of MoveOn.org and a lifelong Democrat,
6 has filed as prefers no party. Now, the reason that
7 he's done that, in conversations with him, is that the
8 Democratic Party name is the same place the Republican
9 Party name was in 2006. And so he knows that as a
10 strategic candidate, it is better to claim no party
11 preference than his actual party affiliation.

12 So there would be an example of a stealth
13 candidate. He's running as a moderate independent and
14 he is no such thing.

15 Q. Just for the record, could you spell this gentleman's
16 name.

17 A. V-E-R-H-E-Y, candidate for Kittitas County commissioner,
18 2010.

19 Q. And Mr. Verhey filed and, you said, states -- did he
20 state no party --

21 A. No party preference.

22 Q. Did he -- is he advancing to the general election?

23 A. He is.

24 Q. Who's the other candidate for that office?

25 A. Obie O'Brien, prefers Republican Party.

1 Q. And as I believe you earlier testified, you are the
2 Kittitas County Republican chair; is that correct?

3 A. I am.

4 Q. What other county offices are on the ballot this year?

5 A. Prosecutor; assessor; auditor; clerk; treasurer;
6 Kittitas County Commissioner Seat 3, which I just
7 identified; all three legis -- no, two legislative
8 races, but not our senate.

9 Q. Have candidates filed for any of those offices stating
10 they prefer the Republican Party?

11 A. Yes.

12 Q. Which ones?

13 A. There was a prefers-Republican candidate for assessor,
14 treasurer; there were two for prosecutor; and for both
15 legislative seats.

16 Q. Would you regard any of those candidates as insincerely
17 stating a Republican preference?

18 A. No.

19 Q. Has your county party taken steps to nominate any
20 candidates for office this year?

21 A. We do.

22 Q. You say you do.

23 A. No, we do not nominate --

24 Q. Have you yet?

25 A. -- of course, we endorse; I'm sorry.

1 Q. And have you endorsed candidates for local office?

2 A. We hold that at -- we do that before the primary.

3 Q. And so you did so before the 2010 primary?

4 A. We did.

5 Q. Did you publicize the results of your action?

6 A. We try. We issue press releases. Whether they run them
7 or not is hit and miss.

8 Q. Do you plan to nominate or reconsider any -- well, I'll
9 ask it separately.

10 Do you plan to nominate any candidates before the
11 general election?

12 A. I do not believe so. We have a single-shot process.

13 Q. If, for instance, you and -- are there any candidates
14 that you nominated who didn't advance to the general
15 election? That you endorsed; excuse me. You used the
16 word "endorsed."

17 A. Well, as is typically the case in Eastern Washington,
18 all of them ran unopposed. So it is probably not the
19 best example. We did have one race, in the prosecutor's
20 race, where there were two Republicans running against
21 each other, and we endorsed neither in that case, as is
22 typical of political parties.

23 Q. And did either or both of them advance to the --

24 A. One of them --

25 Q. -- general election?

1 A. -- did.

2 Q. One of them did, okay.

3 So since you endorsed that candidate, that
4 candidate's presumably the only one you've endorsed in
5 the general election.

6 A. We did not endorse, remember?

7 Q. Oh, that's right. You said you --

8 A. We --

9 Q. -- didn't endorse either one.

10 A. With a competitive Republican against Republican, we
11 took a different route.

12 Q. So now that it's -- you say one is a Republican. What
13 was the party preference of the other candidate?

14 A. Prefers no party. States no party preference, I
15 believe.

16 Q. And do you have any plan to endorse either candidate
17 before the general election?

18 A. We do not at this point.

19 Q. How about candidates for state offices? Have you
20 participated in the nomination by the Republican Party
21 of candidates for state office?

22 A. No.

23 Q. I'd like to ask you a couple questions about the tables
24 at the end of your report.

25 A. Yes.

1 Q. Let's look first to page 26, Table 1.

2 A. Okay.

3 Q. Could you describe what Table 1 shows.

4 A. Table 1 is a measurement of error rates on each of the
5 three ballots by each of the three demographic groups,
6 resulting in nine results.

7 Q. By error rate, could you explain that term.

8 A. How many people who looked at the ballot answered the
9 question regarding nominee incorrectly? The nominee
10 question is the one question that there is a right and
11 wrong answer to. The other ones are more abstract. And
12 so we can call -- we can mark them right or wrong, okay?
13 So that table measures how many people got it wrong on
14 the three different ballots.

15 Q. And there are nine boxes because, given three
16 populations of voters and three different ballot styles,
17 that produced nine different --

18 A. Nine different results, yes.

19 Q. -- possible results.

20 Let's look at, say, the first box --

21 A. Mm-hm.

22 Q. -- under -- it's "New Voters" and under "Partisan
23 General."

24 A. Mm-hm.

25 Q. Explain what that -- what the numbers in that box mean.

1 A. What that means is that 18 percent or 18.6 of the people
2 who were younger, newer voters who looked at a partisan
3 general ballot said that the person was not the nominee
4 when, in fact, they were the nominee.

5 Q. And by partisan general, now you're referring back to
6 the pre-top-two party --

7 A. Absolutely.

8 Q. -- nomination system.

9 A. Yes.

10 Q. So a person who, in looking at that ballot --

11 A. Mm-hm.

12 Q. -- said that the person was not the nominee was -- that
13 was regarded as an incorrect answer; is that correct?

14 A. And it is an incorrect answer.

15 Q. And that's where you derive the 18.6 percent.

16 A. Yes.

17 Q. What does the "22/118" mean?

18 A. The number of observations that actually answered
19 incorrectly with how many observations, 118.

20 Q. And what does "N = 59" mean?

21 A. There were 59 people. They each answered two questions.
22 If you take 59 and multiply it by 2, you'll get 118. Of
23 those 118 observations, 22 of them were in error.

24 Q. Now, I notice looking at all the boxes --

25 A. Mm-hm.

1 Q. -- often --

2 A. Yes.

3 Q. -- N is half the number --

4 A. Right.

5 Q. -- in the numerator (sic), but sometimes not. Why is
6 that?

7 A. Some people skipped a question, which is -- which, you
8 notice, did not happen in person. But on the survey you
9 can skip a question, and therefore, it's not an exact
10 doubling.

11 Q. So that's why --

12 A. Yes.

13 Q. -- even though there were two questions, not everyone --

14 A. Right.

15 Q. -- answered both questions.

16 A. Right.

17 Q. Right.

18 Again, I believe you testified that in each group,
19 the three ballot types were distributed evenly among the
20 population; is that correct?

21 A. Yes, they were distributed evenly. Obviously, they did
22 not respond evenly.

23 Q. Right.

24 So for instance, in the new-voter row --

25 A. Mm-hm.

1 Q. -- under "Partisan General," it says 22 out of 118 --

2 A. Mm-hm.

3 Q. -- 33 over 128 in the top-two primary, 68 out of 120 in
4 the top-two general; is that correct?

5 A. Yes.

6 Q. And then the N numbers are 59, 64, and 60. So --

7 A. Right.

8 Q. -- am I correct, that would show that, obviously,
9 approximately one third received each of --

10 A. Yes.

11 Q. -- the ballot types?

12 A. And I could control for that one a little easier.

13 Remember, these are the ones I was handing out in person
14 in class, so it was a little bit easier to make sure
15 that it was even. Now, you'll notice that the numbers
16 tend to separate when we get on-line and there's more of
17 a --

18 Q. Right.

19 A. -- voluntary participation.

20 Q. But with that first group, as you say, where you handed
21 them out.

22 A. Yes.

23 Q. So the variation on the number in the first row, where
24 it says, "118," and then, "128," "120," not a
25 significant variation, I'm sure, but that was just due

1 to which students happened to actually --

2 A. Not everybody -- not every professor had the exact same
3 class size.

4 Q. Now, moving on to the other two rows, which were done
5 on-line, I believe you've indicated that you didn't have
6 the same direct control over how many people answered
7 each question; is that correct?

8 A. This is correct.

9 Q. So for instance, at the bottom category, "Active
10 Voters," where the N numbers vary, either 180, 138, 231,
11 that indicates that there was some variation in the
12 number of active voters who actually answered the
13 questions as among the three ballot types; is that
14 correct?

15 A. Yes.

16 Q. But that doesn't reflect the fact -- let me strike that.

17 But I believe you testified they each -- that one
18 third of the participants received each of the --

19 A. Yes.

20 Q. -- ballot types.

21 A. Two thousand Emails -- 2,000 respondents were asked for
22 each one of those categories. Obviously, more of the
23 2,000 in the top-two general responded than they did in
24 the top-two primary.

25 Q. And do you have any idea why that would have been?

1 A. No. I mean, there's always going to be a variation in
2 response rates, normal minutia in the numbers. But
3 other than that, I cannot predict why -- I have no data
4 collected on why there was a higher response rate for
5 the top-two general than there was for the top-two
6 primary.

7 Q. And as you say, that number -- the variance in that
8 group is somewhat higher than it is for the new voters
9 or the registered voters; is that correct?

10 A. Variance is a specific statistical term. But I think --

11 Q. Excuse me; I don't --

12 A. -- what you mean by it is that whereas the registered
13 voters only range from 31 (sic) to 41, in the active
14 voters it ranged from 138 to 231. Is that what you mean
15 by variance?

16 Q. That's what I meant, yes.

17 A. Okay.

18 Q. I'd like to refer briefly to the next three tables,
19 pages (sic) 2, 3, and 4 --

20 A. Sure.

21 Q. -- on the next three pages, 27, 28, 29.

22 A. Okay.

23 Q. Would you explain what those show.

24 A. Right. What these show is the perceived relationship,
25 right? The question about nominee is a test of the

1 actual relationship. You either are or you are not a
2 nominee; there's no subjectiveness there. The other
3 three questions, do you think this person's a
4 representative, affiliated, associated with, those are
5 perception, okay? And so we -- I separated those
6 responses out from the very legalistic question about
7 nominee.

8 Q. So these would be based on the answers to -- going back
9 to page 25, to answers 2, 3, 4, 6, 7, and 8 --

10 A. That's correct.

11 Q. -- is that correct?

12 And so Table 2 --

13 A. Mm-hm.

14 Q. -- is -- relates to the population of new voters as
15 defined in your study --

16 A. That is correct.

17 Q. -- and Table 3 is the registered voters --

18 A. Also correct.

19 Q. -- and Table 4 is the active voters --

20 A. Also correct.

21 Q. -- as you defined the term.

22 And in each of them, you show them in bar-graph
23 form.

24 A. Yes.

25 Q. Referring to the registered voters, you indicated that

1 you contacted 1,500 Email addresses that you'd been
2 given by the Secretary of State's Office; is that
3 correct?

4 A. Yes.

5 Q. How many people actually participated?

6 A. Hundred and two.

7 Q. Hundred and two.

8 Now, looking at the active voters, am I correct
9 that you sent out 6,000 Emails?

10 A. (Witness nodded head.)

11 Q. How many of those voters actually participated?

12 A. We'd have to add up all three. One eighty plus 138 plus
13 231 appears to be about -- two, three, four -- 549.

14 Q. And did you consider that number a good result in terms
15 of getting a representative sample?

16 A. Wow. Okay, the term "representative sample" is probably
17 a debate that we would want to have, especially given
18 Mr. Donovan's use of the term in his report.

19 So what I will say is that, obviously, all
20 researchers would yearn for 100 percent response rate.
21 It doesn't happen. Over time, with the development of
22 cell phones, caller ID, no-call lists, and spam filters,
23 we have seen a precipitous decline in response rates,
24 now falling below 20 percent, which is what we, you
25 know, hope to achieve. However, the good news is,

1 despite the precipitous decline in response rates, the
2 empirical research shows the decline in response rates
3 have not affected external validity.

4 Q. Did you have any expectations going into the study as to
5 what percentage were likely to respond?

6 A. Well, I'm a political nerd, so I thought everybody would
7 want to fall over themselves to take my survey. So
8 apparently I am an outlier in the general population.
9 So I was surprised that I only got about 102 out of
10 1,500 to ask people, you know, to weigh in on this. But
11 I was quite happy with the numbers in the active voters.
12 To have an N of over 500 puts you in the upper -- you
13 probably won't be able to find an experimental design
14 out there in the literature in the last 15 years who has
15 an N that high. So that one made me very happy.

16 Q. Just to clarify your last answer, you said has an N,
17 meaning --

18 A. A number of --

19 Q. -- capital N, right?

20 A. -- experimental subjects that responded.

21 MR. PHARRIS: Can we take a little break.

22 [Off the record - recess]

23 MR. PHARRIS: We can go back on the record.

24 Q. (by Mr. Pharris) Dr. Manweller, I'm going to go back
25 over some of the early questions and clarify a couple of

1 different things.

2 Early on you testified that you had managed some
3 political campaigns, including the campaign in Idaho of
4 a candidate who was running as a Democratic candidate;
5 is that correct?

6 A. Yes.

7 Q. At that time, did you consider yourself a Democrat?

8 A. Oh, no. He was just my friend.

9 Q. During the time that you've been in the state of
10 Washington, have you always considered yourself a
11 Republican?

12 A. Yes.

13 Q. I want to take a look at the ballot form that would be
14 used. Let's, just as example, use the one on page 23.

15 A. Twenty-three, yes.

16 Q. I notice that the sample or mock ballot that was given
17 out here is a big box, and then it's divided kind of
18 quite clearly by a double bar into an upper and lower
19 half.

20 A. Mm-hm.

21 Q. The upper half on the right side says, "STATE PARTISAN
22 OFFICES," and the lower half says, "LEGISLATIVE PARTISAN
23 OFFICES." In the upper-left part are instructions on
24 marking the ballot, and then in the lower-left part is
25 the statement that you called the disclaimer.

1 A. Mm-hm.

2 Q. Did you consider whether this design might lead people
3 to believe that the disclaimer related only to the
4 state-representative position and not to the state
5 partisan position?

6 A. I followed the ballot from the auditor to the letter.
7 So that would be a good question for Mr. Reed.

8 Q. So if you did, you were still following exactly the way
9 the Kittitas County auditor had made up that ballot.

10 A. Yes.

11 Q. You referred in your testimony to the Oxford Handbook on
12 Experimental Method; is that correct?

13 A. Yes.

14 Q. Could you describe what that is.

15 A. It's a compilation of articles written by experts in the
16 field of political science discussing the appropriate
17 methodological design for various types of study.

18 Q. Would you regard that as a reliable authority to turn to
19 on the subject?

20 A. I would.

21 Q. In your sample of students --

22 A. Mm-hm.

23 Q. -- and I think I know the answer from your testimony,
24 but -- did you make any effort to determine whether the
25 students who participated were registered to vote?

1 A. I did not.

2 Q. You indicated that you used a particular 1,500 Emails
3 that -- for your population of registered voters that
4 you obtained from the Secretary of State's Office; is
5 that correct?

6 A. Yes.

7 Q. And you obtained those under a public-disclosure
8 request --

9 A. Yes.

10 Q. -- is that correct?

11 And they were the same 1,500 Emails that had been
12 used by Dr. Donovan in his study?

13 A. I believe it was Dr. Donovan or Barreto or them
14 together, but you could ask them.

15 Q. Do you know what their study was about?

16 A. I do not remember.

17 Q. And you indicated that Secretary of State's Office -- or
18 at least you believed they would not supply any other
19 contacts; is that --

20 A. I had a --

21 Q. -- correct?

22 A. -- conversation with them. I called and asked and they
23 said no.

24 Q. Do you remember who you talked to?

25 A. No.

1 Q. That's fine.

2 You testified earlier that you invited these
3 people, and this would mean both of the on -- the people
4 you contacted on-line, to participate, but I think you
5 also said something about they were allowed to opt out,
6 which -- is that correct?

7 A. Right. It is a requirement of the company, to avoid
8 complaints about spam, that if you do not wish to
9 receive further Emails, you can opt out, right.

10 Q. However, I believe your report says that you did send
11 out follow-ups.

12 A. I did to those who had not opted out.

13 Q. But as soon as someone opted out, you didn't --

14 A. You're not allowed to --

15 Q. -- send out any follow-ups.

16 A. -- contact them anymore.

17 Q. The ones who didn't opt out, what did the follow-up
18 message say?

19 A. I don't know if there is a follow-up message. I just
20 don't think they received any further Emails. Their
21 Email is then blocked from the distribution list.

22 Q. I'm talking about those who didn't block, but then you
23 followed up. What did -- how did you follow up? What
24 did --

25 A. There would be a second Email -- again, I don't remember

1 the exact wording, but I could probably find it for
2 you -- that said, a week ago you were asked to
3 participate in this survey. It's very -- you know,
4 something, in fact -- just please -- asking them to try
5 again. It's pretty boilerplate: I sent you an Email a
6 week ago. You haven't responded. If you're still
7 willing to do it, click on this thing below. But
8 like -- literally like two or three sentences.

9 Q. You earlier testified that you have not participated --
10 and I'm going to refer to this year just to make that
11 clarified -- in 2010 in the nomination or endorsement --
12 and I'll let you use the words and describe what you
13 mean by that -- of any state party candidates of the
14 Republican Party; is that correct?

15 A. Well, actually, I -- that's not correct as of Saturday.
16 I was at the Republican Party meeting in Seatac and we
17 officially nominated Dino Rossi as our candidate for
18 senator.

19 Q. That answers that question.

20 Let's look back at the ballot dates -- or at the
21 tables -- excuse me; the sample ballots.

22 A. Mm-hm.

23 Q. I notice that on page 23 --

24 A. Mm-hm.

25 Q. -- and on page -- the primary-election date stated is

1 August 25th, 2008 --

2 A. Mm-hm.

3 Q. -- is that correct?

4 A. Yes.

5 Q. And on page 24, the date stated is, "General Election
6 November 5th, 2008"; is that correct?

7 A. Mm-hm, yes.

8 Q. And both of those relate to elections under the top-two
9 system, is that --

10 A. Yes.

11 Q. That is the second and third.

12 A. Mm-hm, right. These were both modeled after the actual
13 ballots that I received from the auditor's office, and
14 that was the dates that they had on their ballots.

15 Q. Right.

16 And the 2008 election was conducted as a top-two
17 election; is that correct?

18 A. Yes, it was.

19 Q. The mock ballot on page 22 you indicated earlier was not
20 about a top two, but about a -- what you called as a
21 more traditional partisan nomination.

22 A. Right.

23 Q. I notice the date on that one is November 5th, 2008.

24 A. Yes.

25 Q. Now, in fact, the election conducted in November 2008

1 was a top two, not a --

2 A. Yeah.

3 Q. -- traditional one; is that correct?

4 A. That's true.

5 Q. Were you concerned that that confused anyone in filling
6 out that form?

7 A. Didn't occur to me. The other thing is, since each
8 person gets only one ballot, there's no comparative
9 effect that would cause confusion. But I can't imagine
10 that somebody would look at that ballot and say, well,
11 wait a minute; it's 2008 and this is a 2006-type
12 election and, therefore, that's going to affect my
13 answer. But I guess you could make that argument if you
14 wanted to.

15 Q. You indicated when talking about the students who
16 participated --

17 A. Mm-hm.

18 Q. -- that you -- that these were distributed in several
19 different classes from different professors; is that
20 correct?

21 A. Yes.

22 Q. Did you take steps to make sure no student happened to
23 be in more than one of these classes and, therefore,
24 participated more than one time?

25 A. Yes, I actually did. I asked if anybody had already

1 taken the experiment. And there were about a handful
2 that did, and I asked them not to participate.

3 Q. One thing I didn't get clarified: In any one class did
4 you distribute all three ballot forms, or in a single
5 class did you only use one of them?

6 A. In one class, which was a very large class, we
7 disseminated different types of the ballot, right. But
8 still, each student would only view one.

9 Q. Right.

10 A. Yes.

11 Q. But within that class, you used more than one.

12 A. Right. It was a music class.

13 Q. Now, you said in one class you used more than one. Does
14 that mean in the other classes you'll -- you picked --

15 A. Yeah.

16 Q. -- one of the three?

17 A. Yes.

18 Q. And then from adding up the total participants, you
19 tried to make sure that you -- that only --

20 A. As equal --

21 Q. -- one third --

22 A. -- as possible.

23 Q. You indicated earlier in response to a question about
24 the size of the response that there has been a decline
25 in response rates. Could you go over that again, in

1 recent years.

2 A. Yeah. I would refer you, as the best review of this
3 literature, to the 2006 Public Opinion Quarterly special
4 edition, which -- they dedicated the entire issue to
5 this phenomenon, a review of it, you know, the effects
6 of.

7 And the fact of the matter is, technology has
8 allowed respondents to telemarketing polls, whatever,
9 whether it be -- we don't have random lists of cell-
10 phone numbers like we do phone numbers, like landlines.
11 Caller IDs can see if it's somebody they know. We have
12 a legal do-not-call list which you can get on. We have
13 developed pretty accurate spam filters. So what we have
14 seen over time is that response rates have fallen in --
15 as -- accordingly.

16 So the question that they dedicated that entire
17 issue to was, is this going to affect the external
18 validity of our studies that we do in this manner? And
19 the conclusion was that it did not.

20 Q. You say this is the conclusion to. This was a
21 consistent conclusion reached throughout this study
22 or --

23 A. What -- well, consistent is always a subjective term.
24 What they did is, they went back and they have studies
25 that they had conducted when response rates were

1 relatively high.

2 Q. I'm --

3 A. Yeah.

4 Q. -- sorry to interrupt, but who is they in this question?

5 A. It would be -- I would suggest you look at the Keeter,
6 et al., K-E-E-T-E-R. There were about five coauthors on
7 the paper, okay?

8 But what they did is, they found studies that they
9 could replicate. And what they did is, they looked at
10 the studies where there were high response rates and
11 then they absolutely to the letter replicated those
12 studies but in current time, with much lower response
13 rates, and then they compared the results. And there
14 was no difference. So what they concluded is, the lack
15 of response rate did not affect the results of the
16 study. That's a pretty strong empirical finding.

17 Q. Are you aware of any other studies on that issue?

18 A. Oh, response rates, you can -- there's volumes of them
19 if you want to go to the academic literature. It is of
20 massive concern to pollsters, like Mr. Donovan. It is
21 not that much of concern to people who run other types
22 of studies.

23 Q. You quoted a particular study.

24 A. Mm-hm.

25 Q. Based on the ones you've read, do you think the

1 conclusions of that study are consistent with most of
2 the literature?

3 A. I would --

4 MR. WHITE: I'll object to the form of the
5 question.

6 THE WITNESS: Okay.

7 A. I would say yes. I considered that study the most
8 rigorous, which is why I cite it.

9 Q. (by Mr. Pharris) Can we go back to page 6 of your
10 study. This is the -- looking at material in the
11 abstract in the beginning of your study now. On the
12 paragraph at the bottom of page 6 that actually goes
13 over onto page 7, the first sentence is, "Stripping
14 political parties of their nomination power could have
15 profound effects on American democracy." Do you recall
16 that sentence?

17 A. Yes.

18 Q. Do you believe that Washington's top-two primary strips
19 political parties of their nomination power?

20 A. Absolutely.

21 Q. And could you explain why.

22 A. The parties have absolutely no legal standing or
23 authority to determine who uses their name or who goes
24 on to the -- we don't have a partisan political primary.
25 It's -- we -- for example, if the Democratic Party had

1 nominated somebody other than Patty Murray, it would
2 have made no difference; Patty Murray would be in the
3 general-election ballot. And if the Republican Party
4 had nominated somebody other than Dino Rossi, it would
5 have made no difference.

6 The power to select candidates in the final
7 election now is outside of the political parties.

8 Q. So you use the term "nomination power" with reference to
9 the way in which candidates advance to the general
10 election.

11 A. I think that's fair, yes. It does not strip them of
12 their ability to say, hey, that's our guy, or, our
13 person, or something.

14 Q. Right.

15 Now, I'm referring to the next page --

16 A. Mm-hm.

17 Q. -- top of page 7. That says, "the type of primary a
18 state uses goes a long way in determining the
19 'ideological purity' or extremism of candidates." Do
20 you see that sentence?

21 A. Yes.

22 MR. WHITE: I'm sorry; where are you, Jim?

23 MR. PHARRIS: At the top of page 7, and I apologize
24 that it's obscured by the letterhead.

25 THE WITNESS: On mine as well.

1 A. I know what it says, so go ahead.

2 Q. (by Mr. Pharris) Right.

3 Okay, referring to the sentence, "type of primary a
4 state uses goes a long way in determining the
5 'ideological purity' or extremism of candidates," what
6 do you mean by that statement?

7 A. Well, what we know from empirical research -- and I have
8 actually published a paper on this with
9 Professor Southwell from the University of Oregon -- is
10 that the more open the primary, the more moderate the
11 candidate or more, you know, middle-of-the-road, and the
12 more closed the primary, the more in line with party
13 values it will be.

14 So if you have an -- for example, in 2000, John
15 McCain won most of the open primaries, but George Bush
16 won most of the closed primaries. Why? Because in an
17 open primary, anybody can vote and, therefore, that
18 shifts the median voter to the middle. But in a closed
19 primary, it shifts the median voter towards either the
20 right or the left.

21 We can see this also in 1988, where the winner of
22 the very closed caucuses in Iowa were Jesse Jackson and
23 Pat Robertson. Now, obviously, Jesse Jackson and Pat
24 Robertson did not go on to get the nominee (sic),
25 because there were more open, moderating primaries that

1 allowed Mr. Dukakis and Bush Senior to win.

2 Q. Now, you indicate you published a paper on this subject?

3 A. Yes.

4 Q. And you probably have listed it as --

5 A. It is in my vita and it will say, "with Priscilla
6 Southwell."

7 Q. With Priscilla Southwell.

8 When was the date of this publication, about?

9 A. I can look that up for you.

10 THE WITNESS: Oh, you have --

11 A. It is --

12 Q. (by Mr. Pharris) It's right in the beginning.

13 A. Yes. "Different Rules for Different Folks," the winter
14 of -- oh, there's no date on there. 2004, though, I
15 believe. It has to be, because publications are
16 indicated in chronological order and I have a 2004 below
17 it and a 2005 above it.

18 Q. Are you aware of any other studies on the same subject?

19 A. Yeah. This is pretty much conventional wisdom. This is
20 not a radical finding in any means.

21 Q. Do you know of any experts -- and I'm excluding yourself
22 from this question --

23 A. Mm-hm.

24 Q. -- who have studied whether a nonpartisan primary causes
25 voter confusion?

1 A. There are. Most -- I have to tell you that voter
2 confusion has not been an area of political-science
3 study because it didn't become an issue until the
4 Supreme Court made it an issue in 2008 with the Grange
5 case. We weren't examining a phenomenon that we didn't
6 think was -- mattered.

7 Most of the research on nonpartisan election
8 focuses on what we call raiders or insincere voting.
9 And that would be an example of, let's say, in Seattle
10 the Democratic nominee's already got it wrapped up, so a
11 bunch of Democrats go vote in the Republican primary to
12 pick the most extreme candidate, or, in a Republican
13 state, they know Bush has already got it wrapped up, so
14 they go in and they vote for Howard Dean, not because
15 they like Howard Dean, because they want to hurt John
16 Kerry.

17 Most of the research in nonpartisan is on strategic
18 voting. There are studies on voter confusion, but they
19 have to do with ballot type, okay, but not primary type.
20 Like, for example, there are different mechanisms for
21 voting. There's on-line -- you know, there's the
22 different machines or there's different types of
23 elections. People have studied how different election
24 types have caused voter confusion, but not how different
25 ballot types. There's not a lot of it.

1 Q. In your opinion, has the manner in which the State of
2 Washington has implemented the top-two primary caused
3 voter confusion?

4 A. I would say that that is the general conclusion of my
5 paper, is that the manner in which the State has
6 developed ballots has caused voter confusion.

7 However, I would not blame the State. I would say
8 the root of the confusion is not necessarily the
9 disclaimer language, which is very clear, or the way
10 things are set up, but the mandate of the law of the
11 initiative that says, you must place the language
12 "prefers Republican Party" or "prefers Democratic Party"
13 under the candidate who is applying. So I would not
14 blame the Secretary of State, I would not blame the
15 State, I would just say given -- the parameters that are
16 demanded by I-872 is what causes the confusion.

17 And I would come back to the first question you
18 asked me: If you put the word "Democratic Party" under
19 a candidate's name, it's not a radical conclusion to
20 come to the fact that voters are going to be confused by
21 the fact that if you put Democratic Party under a guy's
22 name, they're going to think that he's associated with
23 the Democratic Party. And they have to do that
24 according to the law.

25 Q. Now, given what you just said, which is they have to do

1 that according to the law --

2 A. Mm-hm.

3 Q. -- have you considered whether there are any steps the
4 State might take that would reduce the level of voter
5 confusion and yet stay consistent with Initiative 872?

6 A. There are always state -- steps the State can do to
7 educate its citizens and/or voters. And, in fact, that
8 is recommended by Justice Thomas in the Grange case and
9 even suggested in the concurring opinion by Roberts.
10 That's probably more of a legal question I'll leave to
11 the guys to my right.

12 But as a hypothetical, yes. We could do PSAs. We
13 could, you know, have mandatory classes: You're not
14 allowed to vote unless you pass this class. I mean, it
15 would range from a whole spectrum of things that the
16 State could do. But again, I guess that would be more
17 of a question outside the scope of my study. I studied
18 what they are doing.

19 Q. Right.

20 Aside from your study --

21 A. Mm-hm.

22 Q. -- because of the fact that you are a professor of
23 political science and also politically active --

24 A. Mm-hm.

25 Q. -- is there anything you think the State could do that

1 would reduce the level of voter confusion and yet remain
2 consistent with the language of 872 itself?

3 MR. WHITE: I'll object to the form of the
4 question.

5 A. But do I go ahead and answer?

6 Q. (by Mr. Pharris) Yes.

7 A. Okay. Are there things the State could do? Yeah, like
8 I said, there's a list of things they could do: They
9 could run television commercials. They could run PSAs
10 on the radio. They could try to have more instructions
11 in the ballot that arrives by mail. Again, there's a
12 whole host of things that you can do to try to educate
13 voters.

14 MR. PHARRIS: Okay, I have no more questions.

15 THE WITNESS: Well, thank you.

16 MR. PHARRIS: But these gentlemen may have some.

17 THE WITNESS: They may? Okay, that's fine.

18

19 EXAMINATION

20 BY MR. AHEARNE:

21 Q. My name's Tom Ahearne; I represent the Grange.

22 A. Okay.

23 Q. And I actually just have a lot of questions to follow up
24 on what the State's attorney asked you. And I'll just
25 try to follow the same order as he did and I'll just

1 jump around. I'm just trying to fill in gaps in things.

2 Near the beginning of your testimony, you said that
3 some of the expenses have been reimbursed by the
4 university?

5 A. Mm-hm.

6 Q. Which expenses are those?

7 A. It cost \$29 a month to maintain a Survey Monkey account,
8 and I have like a \$300 what's called a professional-
9 development fund. So I was able to get reimbursed for
10 about eight months of the time that I was paying \$29 for
11 the Survey Monkey account.

12 Q. And why is the university reimbursing part of the cost
13 of this study?

14 A. Because this is an academic study. And I made it very
15 clear to Mr. White when he first approached me that I
16 was publishing the results of my study regardless of
17 whether it helped him or hurt him and that this was
18 something that I was doing as an academic, not as a
19 partisan or as a hired hand. And so it was very clear
20 up front that the results get published regardless of
21 what those results are.

22 Q. And I'll flaunt my ignorance about how the Central
23 Washington University works. Do you have to submit some
24 sort of a form or a request to be able to use university
25 money for studies you're doing?

1 A. No. There is a human-subjects clearance that you have
2 to do if you do any type of research on human beings.
3 This is considered exempt because I don't know who they
4 are and I have no way to follow up, whereas when you
5 study prisoners, there's a huge form. But other than
6 that, the professional-development fund I have of \$300,
7 they're pretty loose. You know, I can use that to buy
8 books, I could use that to travel to a conference, or I
9 can use it for a survey fee.

10 Q. Not to use a derogatory term, is it sort of like a slush
11 fund where, Professor, you get 300 bucks to do what you
12 think helps your profession?

13 MR. WHITE: And I will object to the form of the
14 question.

15 A. In general --

16 MR. GROVER: I also object to the form of the
17 question.

18 A. It is a fund that I can use to engage in -- you know,
19 whether it be research or professional development. But
20 it does have to be signed off on by my department chair,
21 my dean, and my provost. So there are checks on that it
22 be used to go have a drink at the bar.

23 Q. (by Mr. Ahearne) And when the -- your superiors sign
24 off on it, is there something other than the receipt you
25 just send them?

1 A. No. I think you just submit a receipt, yeah, which I
2 did. My secretary has all the paperwork if that's
3 something you want.

4 Q. Now, if I understand it correctly -- I'm sort of jumping
5 around here -- you're a PCO for the Republican Party in
6 Kittitas; correct?

7 A. Yes, I am.

8 Q. And which precinct is that?

9 A. Twenty-five, Ellensburg 25.

10 Q. And you're also the county Republican Party chairman?

11 A. I am.

12 Q. And then you said you're on the state party committee?

13 A. I'm on the state executive board. There are two
14 representatives per congressional district, and I
15 represent the 4th.

16 Q. Given all those, would you consider yourself a
17 Republican Party officer?

18 A. Yes.

19 Q. And could you explain briefly your understanding of what
20 the Republican state party does to nominate candidates
21 today.

22 A. Not a whole lot. The truth of the matter is, we sit
23 back and wait, you know. And there is a formal process.
24 I have not memorized the bylaws. You could ask for them
25 from Luke Esser and he would show you the process by --

1 which we go through to nominate a party. So I think
2 that that would be something that's just -- you could
3 get. But since I am not a -- I don't work at the party.
4 I show up to the meetings and vote.

5 Q. But you're on the executive board of the state party;
6 correct?

7 A. Yes, I am.

8 Q. And so without getting into the details of the written
9 process, what's your --

10 A. Mm-hm.

11 Q. -- understanding of what the state party does when
12 they're deciding to nominate somebody?

13 A. I -- from what I understand, it is a function of -- the
14 117 members of the state party get to vote. It's not --
15 I know that it's not done at our state convention. I
16 know that it's done by the 117 members that are elected
17 from the various counties. And they get to vote, and I
18 believe it's a majority vote. Other than that, I'm not
19 quite sure.

20 Q. And in your experience, is there -- are there any
21 factors or anything that these people consider on
22 whether to nominate someone for the state Republican
23 nomination?

24 A. I mean, are there set established criteria, you have to
25 have done A, B, and C, in order to get our nomination?

1 Q. Well, let's do it in two parts. One, are there --

2 A. Yeah, I don't think there are.

3 Q. Are there just some general factors or considerations
4 that everybody applies in deciding whether someone is
5 going to be the Republican state party nominee?

6 MR. WHITE: I will object to the form of the
7 question.

8 A. I just -- I can't remember right now. I mean, I know we
9 voted just basically three days ago, but it was like,
10 hey, the primary's over, there's -- your choice is Dino
11 or Patty. You're a Republican, so who do you want to
12 raise your hand for? And we raised our hand for Dino.
13 So it's not like we had a lot of debate. Nobody came up
14 and talked about the rules. It was literally a 15-
15 second process.

16 Q. (by Mr. Ahearne) Now, in your testimony you also
17 mentioned endorsements. How does that differ from a
18 nomination?

19 A. Well, that's a good question. I mean, a nomination is
20 the indication of a process in which you indicate that
21 this is your singular nominee, right? A nominee usually
22 implies in a legal sense singularity, all right?
23 There's never been more than one nominee in a general
24 election, or traditionally. An endorsement is, we
25 support this person. You can support all types of

1 people. And so, you know, Clint Didier can endorse Dino
2 Rossi. That's not the same as a nomination.

3 Q. Right.

4 And if I understood your testimony correctly, at
5 the county level in Kittitas, the county Republican
6 Party does not nominate any candidates, they just
7 endorse candidates?

8 A. We have no legal authority to nominate anyone. It's a
9 nonpartisan election.

10 Q. But as of, let's say, this most recent election --

11 A. Mm-hm.

12 Q. -- did the Kittitas County Republican Party nominate any
13 candidate as the Republican nominee?

14 A. No. We have an internal rule process where you either
15 get our endorsement or you don't.

16 Q. And what are the factors that are considered on whether
17 someone gets the Kittitas County Republican Party
18 endorsement?

19 A. They have to have 60 percent of the vote of the PCOs.
20 They get to come talk to us for 15 minutes, we get to
21 ask them questions for 10, they leave the room. If they
22 get 60 percent, we consider them endorsed.

23 Q. And are -- from your experience, especially as chairman
24 of the county party and as a PCO, what are the types of
25 factors that PCOs consider on whether or not to endorse

1 someone?

2 A. Well --

3 MR. WHITE: I will object to the form of the
4 question.

5 A. Whether they like them, whether they think they're
6 conservative enough, whether they're real Republicans,
7 you know.

8 And to follow up on your question, there have been
9 many times where more than one candidate has come before
10 us, we've endorsed one, and the loser says, well, I
11 don't care; you don't have any authority. And they go
12 down and they register with the auditor's office and
13 they put Republican on the ballot. So again, we don't
14 have any power. It's utterly symbolic. We've had many
15 losers who say, well, forget you; you don't have any
16 authority. I'm going to register as a Republican
17 anyways.

18 Q. (by Mr. Ahearne) And when you said register as a
19 Republican or put Republican on the ballot --

20 A. Yeah.

21 Q. -- do you mean anything other than put that preference
22 statement --

23 A. Yeah.

24 Q. -- I prefer the Republican --

25 A. Right.

1 Q. -- Party?

2 A. We've had many losers of our endorsement process walk
3 over to the auditor's office, file, and say, prefers
4 Republican Party. And I have no ability to stop them
5 and neither does the auditor.

6 Q. And you -- can you point to any one of those individuals
7 who said they prefer the Republican Party that you
8 believe were lying and truly do not prefer the
9 Republican Party?

10 A. I would say that we have had candidates where we doubted
11 whether they were Republicans, given the fact that -- I
12 mean, I don't want to attack people, especially since I
13 know them. But we have had people run for office in the
14 Republican Party in 2004 where all of the supporters who
15 put out yard signs had his sign and John Kerry's sign.
16 So that was kind of an indication to us that maybe he
17 wasn't really a Republican if all of his supporters were
18 also supporting John Kerry.

19 Q. And 2004, was that a top-two election?

20 A. I don't believe it was.

21 Q. So let's look at the --

22 A. Oh, then I only have an N of one, 2008, and -- yeah.
23 No, it was -- I would only have like basically one
24 election to go by.

25 Q. So my question is, are you aware of anyone who wrote

1 down, I prefer the Republican Party, in the top-two
2 process that was not telling the truth?

3 A. Oh, that wrote down Republican, which is slightly
4 different than his (indicating) question of earlier.

5 Q. I'm asking my own questions.

6 A. Okay. Yeah, well, I just wanted to make sure.

7 You (indicating) asked me, is there anybody that
8 has been insincere, and I chose an example of a guy who
9 said he was an independent.

10 But you're specifically asking me, have -- you know
11 of anybody who has been insincere about writing
12 Republican down.

13 Q. Well, I -- this sincerity thing, you can use whatever
14 phrase --

15 A. Okay --

16 Q. -- you want. I --

17 A. -- then I'm sorry; ask the question again and I'll make
18 sure that I have it correct.

19 Q. Are you aware of anyone that wrote, I prefer the
20 Republican Party, that was not telling the truth?

21 MR. WHITE: I will object to the form of the
22 question.

23 A. In my personal experience in Kittitas County, no.

24 Q. (by Mr. Ahearne) Are you aware of anyone who identified
25 a preference for a party --

1 A. Mm-hm.

2 Q. -- that was not telling the truth?

3 A. Oh, in Kittitas in my experience?

4 Q. Yes, sir.

5 A. Yes -- oh, no, no. You said indicated a party.

6 Q. Yes, sir.

7 MR. WHITE: I'll object to the form of the
8 question.

9 A. We had somebody indicate prefers Bull Moose Party in our
10 election this year who ran against
11 Representative Hinkle. I don't know if he was being
12 truthful or not. Did he really prefer a party that has
13 been defunct for 80 years or was he being dishonest?

14 Q. (by Mr. Ahearne) And when you say a party that's been
15 defunct for 80 years, what are you referring to?

16 A. Well, I don't think there's any organized Bull Moose
17 Party with the death of Teddy Roosevelt. So he
18 obviously indicated a party preference that was probably
19 dishonest.

20 Q. And why do you say it was dishonest?

21 A. Well, I think a party has to be in existence and have a
22 platform for you to prefer it. I mean, I guess you
23 could -- he could -- I don't -- haven't spoken to him,
24 but you asked me the question, so in my opinion, I
25 thought that that was dishonest. I mean, I guess we

1 could bring him in here and depose him and ask if he
2 sincerely supported the Bull Moose Party.

3 Q. Could you explain to me what it takes to form a
4 political party in the state of Washington?

5 MR. WHITE: I'll object to the form of the
6 question.

7 A. How do you form a political party? Well, I mean, I
8 guess it's -- you employ your associational rights and,
9 you know, you call people together, you elect delegates,
10 you have a convention, you draft a platform. That's one
11 process. It's not the only process.

12 Q. (by Mr. Ahearne) Well, you referred to a political
13 party that's defunct and no longer in existence;
14 correct?

15 A. Mm-hm.

16 Q. What's your understanding of what it takes to have a
17 party in existence --

18 A. Mm-hm.

19 Q. -- in the state of Washington?

20 MR. WHITE: I'll object to the form of the
21 question.

22 A. Well, I mean, I guess technically, you get two guys to
23 meet in a phone booth and call themselves the Phone-
24 Booth Party. If they're allowed to put the first Phone-
25 Booth Party on the ballot, I guess you're a party in the

1 state of Washington.

2 Q. (by Mr. Ahearne) Are you a member of the Republican
3 Party?

4 A. Yes.

5 Q. What makes you a member?

6 A. I self-identify. There is no voter registration in the
7 state of Washington and there's no official state
8 mechanism to make myself a party. However, in
9 presidential elections, during a presidential primary,
10 the federal law and the state law do ask that I swear an
11 oath or an affidavit affirming that I am a member when I
12 take a presidential-primary ballot. So that's the only
13 mechanism that the state employs for me to declare that
14 I'm officially a Republican. Otherwise, it's just by
15 self-identification.

16 Q. Just so I understand, when you say self-identification,
17 does that mean if you say you're a member of the
18 Republican Party, you are?

19 A. Well, I guess that's the rub. That's a good question.
20 I'm a member of the Republican Party because I've been
21 elected as an official PCO of the Republican Party and
22 been given a certificate by the State of Washington that
23 says I am. If somebody on the street says, hey, I liked
24 what this, you know, Mitt Romney guy is saying, I'm now
25 a Republican, but next election I might be a Democrat, I

1 don't know if that -- you know, that's a legal question
2 that you'd have to ask somebody else.

3 Q. But as a member of the state Republican Party executive
4 board and the --

5 A. Mm-hm.

6 Q. -- county chairman for Kittitas County and a PCO, what
7 is your understanding of what it means to be a, quote,
8 member, closed quote, of the state Republican Party?

9 A. Under those parameters, I would say that there are only
10 117 members of the state Republican Party in Washington.
11 They are the three elected -- state committeeman, state
12 committeewoman, and chair of the 39 counties times 3,
13 117.

14 Q. What does it mean to be a Republican?

15 A. Wow. I guess it depends on who you ask.

16 Q. I'm asking you.

17 A. Okay. What does it mean for me to be a Republican?

18 Q. Yes, sir.

19 A. Well, I believe that it's a belief in limited
20 government, free markets, free trade, sanctity of human
21 life, the idea that individuals are more creative than
22 bureaucrats; you know, it's the idea that we judge
23 people based on their merit rather than their status in
24 any demographic group. But, you know, that's my
25 personal beliefs. I think that there are other people

1 who call themselves Republicans who wouldn't hold all of
2 those opinions.

3 Q. And the people that you referred to that call themselves
4 Republicans but don't hold all those opinions, would you
5 consider them to be stealth Republicans or false
6 Republicans or still they're Republicans?

7 MR. WHITE: I'll object to the form of the
8 question.

9 A. I guess I'll have to tell you I don't know. Again, are
10 they Republicans? Under what criteria or definition? I
11 mean, there are a variety of ways you could get to that
12 answer. I gave you a very procedural one. I know you
13 can become a Republican by getting elected as a PCO and
14 I know you can become a Republican by being elected to
15 the state party. Other than that, it's really an
16 esoteric question.

17 Q. (by Mr. Ahearne) What do you mean, esoteric?

18 A. Well, what's the meaning of life, I guess, would be an
19 esoteric question. Are you a Republican outside the
20 legal and procedural definitions becomes very esoteric.

21 Q. So other than the 118 (sic) elected Republican officials
22 that you referred --

23 A. Yeah.

24 Q. -- to --

25 A. And all the PCOs.

1 Q. -- the question of are you a Republican is, at least in
2 your opinion, an esoteric question, like what's the
3 meaning of life?

4 MR. WHITE: I will object to the form --

5 THE WITNESS: Yeah.

6 MR. WHITE: -- of the question.

7 A. In some ways as you're defining it. However, you
8 know -- well, and I'll just answer the questions that
9 you ask.

10 Q. (by Mr. Ahearne) So is that a yes, a no, or you need to
11 expound on the answer?

12 A. I guess it means that there are stratifications of what
13 it means to be a Republican, you know. There are legal
14 definitions, there's bureaucratic definitions, there's
15 esoteric definitions, there's personal-opinion
16 definitions. So I'm having a hard time answering your
17 questions in the sense that you're using Republican as a
18 generic term which may or may not apply to one of those
19 four criteria.

20 Q. Is part of the difficulty that just using the term
21 "Republican" is such a generic term that it has no set
22 meaning?

23 MR. WHITE: I will object to the form of the
24 question.

25 A. No, I wouldn't say that at all. I mean, I think at the

1 root of the legal case is -- and, you know, I don't know
2 if you want to get into a legal discussion here or not,
3 since I'm an expert witness and I won't be testifying to
4 the legal definitions.

5 But at the heart of the case is whether or not
6 somebody can associate with those who do not want to
7 associate with you or there can be forced association.
8 And I guess if I ran naked through the streets and said
9 I was a member of your law firm, you would probably want
10 to make it very public that I am not a member of your
11 law firm if I'm behaving that way. So can I force
12 myself to associate with your brand name or not?

13 But I think those type of questions are the ones
14 that the two of you will be arguing in court. I was
15 called as an expert witness to assess the levels of
16 voter confusion.

17 Q. (by Mr. Ahearne) And what I'm asking you with respect
18 to your work and voter confusion, the topic you're
19 testifying about --

20 A. Mm-hm.

21 Q. -- what does it mean to be a Republican?

22 MR. WHITE: I will object to the form of the
23 question.

24 A. I don't know.

25 Q. (by Mr. Ahearne) In your report, you refer to the

1 values of the Republican Party. What are the values of
2 the Republican Party?

3 A. Can you give me a page?

4 Q. Soon as I find it. It's one of the pages, I think, the
5 State asked you about. Okay, page 7. And actually,
6 it's -- your statement is, "Open primaries tend to
7 nominate more moderate candidates while closed primaries
8 tend to nominate candidates more in line with the values
9 of a particular party."

10 A. Right.

11 Q. You see that?

12 A. Yes.

13 Q. So my question is, you are a Republican Party officer,
14 right?

15 A. Yep.

16 Q. What are the values of the Republican Party?

17 A. I think I listed them for you. I believe that they are
18 a belief in limited government, free markets, free
19 trade, the sanctity of human life, minimal defensive
20 property rights. I mean, these are pretty much our core
21 values that you can find in either state or national
22 platforms.

23 Q. So to determine -- would it be accurate to say that to
24 determine the values of the Republican Party, I would
25 look to the state -- Washington State and national

1 Republican Party platforms?

2 MR. WHITE: I will object to the form of the
3 question.

4 A. That is one place. That is one measurement to look to
5 the values of the Republican and Democratic Party. But
6 I would tell you that as a past platform chair, there is
7 intense disagreements even on the committees that draft
8 that platform, and that's when you have all Republicans
9 in a room.

10 Q. (by Mr. Ahearne) Well, let me just ask you a more open-
11 ended question, then.

12 If I'm a voter and I want to determine what the
13 values are of the Republican Party --

14 A. Mm-hm.

15 Q. -- where would I look?

16 A. Well, there are a variety of ways. You could listen to
17 candidates who are running. You could go to their party
18 platform and look. You could talk to your neighbors who
19 call themselves Republicans. You could interact with
20 the media, I guess. Those would probably be the far
21 most prominent ways in which people try to figure out
22 who they're voting for and what party they like.

23 Q. You referenced a platform committee or something. What
24 was that?

25 A. Every two years, both parties put together a platform

1 committee in which they draft a statement of their
2 beliefs and issue it.

3 Q. And what was your role on the platform committee?

4 A. I was the chair.

5 Q. And what does that mean?

6 A. It means that you're stupid. It means that you don't
7 know how to say no.

8 What it means is that I called together the other
9 39 delegates in which we have marathon meetings to try
10 and hash out, you know, a four- to five-page documents
11 (sic) that says, here's what the Washington State
12 Republican believes.

13 Q. So you were the chair of the platform committee for the
14 Washington State Republican Party.

15 A. Yes.

16 Q. And what year was that?

17 A. Both 2010 and 2008.

18 Q. Does the Kittitas County Republican Party have a
19 platform as well?

20 A. We do.

21 Q. And could you briefly describe the process to determine
22 that platform.

23 A. At our county convention, we nominate five people to sit
24 in a room and hash it out over long meetings to write
25 down a two- or three-page document of what we believe.

1 Q. And are all of the Republican county party platforms in
2 the state of Washington the same?

3 A. No.

4 MR. WHITE: I will object to the form of the
5 question.

6 A. They are widely different. And which -- what makes the
7 state platform meeting so intense is that 39 members
8 representing 39 different counties all come with
9 different views.

10 Q. (by Mr. Ahearne) And you mentioned you worked on a
11 political campaign in Idaho; correct?

12 A. (Witness nodded head.)

13 Q. And you've lived in Washington for seven years; correct?

14 A. Yes.

15 Q. Do I take it correctly from your resume that you lived
16 in Oregon before that?

17 A. No, no, it's in the middle. I lived in Idaho --

18 Q. Idaho.

19 A. -- then I lived in Oregon, then I lived in Washington.

20 Q. And you've also lived in Montana as well?

21 A. Yes, for one year.

22 Q. And any other states other than --

23 A. Utah.

24 Q. Utah?

25 A. Mm-hm.

1 Q. So Utah, Montana --

2 A. California.

3 Q. -- California, Idaho --

4 A. Mm-hm.

5 Q. -- Oregon, Washington.

6 And this is all while you were of voting age?

7 A. I was -- I made it to the age of 18 in California, so
8 yes, I have voted in all those states.

9 Q. And are --

10 A. No, I didn't vote in Montana because I was only there a
11 year and there wasn't an election.

12 Q. Are the state Republican Party platforms in the various
13 states you've lived in all the same?

14 MR. WHITE: I will --

15 A. No.

16 MR. WHITE: -- object to the form of the question.

17 THE WITNESS: Sorry.

18 A. No, they are not.

19 Q. (by Mr. Ahearne) Does that have the same type of wide
20 variety amongst them that you mentioned with respect to
21 the county platforms in --

22 A. They do.

23 Q. -- Washington?

24 Then you mentioned what the values are of the
25 Republican Party. How is that different from what the

1 values are of the Democratic Party?

2 MR. WHITE: I will object to the form of the
3 question.

4 A. The Democratic Party has a different outlook on the role
5 of government in our lives. They believe that the
6 government should be more activist in redistributing
7 wealth. They believe in a larger regulatory state to
8 protect consumers and individuals from the business
9 world. They believe in different social values in terms
10 of gay marriage and abortion. So we have opinions that
11 are different from each other.

12 Q. (by Mr. Ahearne) What are the different values --
13 social values between the Democratic Party and the
14 Republican Party on gay marriage?

15 MR. WHITE: I will object to the form of the
16 question.

17 A. Well, again, your question implies or suggests a
18 dichotomous answer, that there is a Republican view and
19 a Democratic view. And I would put it to you that that
20 is inaccurate, that there are pro-gay-marriage
21 Republicans, like Arnold Schwarzenegger to Susan
22 Collins, from California to Maine, and there are also
23 anti-gay-marriage Democrats. Two that I would point to
24 would be Joseph Biden and Barack Obama, who have come
25 out opposed to gay marriage. Ironically, Dick Cheney

1 has come out for gay marriage.

2 So to suggest this uniformity of opinion, I think,
3 complicates the question.

4 Q. (by Mr. Ahearne) What, if any, difference on values is
5 there between the Democratic Party and the Republican
6 Party when it comes to abortion?

7 MR. WHITE: I'll object to the form of the
8 question.

9 A. I would almost give you the same answer. Now, what we
10 can do is speak in generalities, if you want, okay,
11 where you could say, is there a view held by a majority
12 of Republicans? And I would say that in general, a
13 majority, but not all -- I mean, a majority can be as
14 little as 51 percent -- are more pro-life, and I would
15 say a majority but not all of Democrats tend to be pro-
16 choice. So -- but those are speaking in wide
17 generalities.

18 Q. (by Mr. Ahearne) And would it be accurate to say that
19 there are substantial numbers of Republicans that are
20 pro-choice and substantial numbers of Democrats who are
21 pro-life?

22 MR. WHITE: I will object to the form of the
23 question.

24 A. There is public-opinion research that suggests that that
25 is true.

1 Q. (by Mr. Ahearne) And you've talked about what the
2 values of the Republican Party are. How do those differ
3 from the values of the Libertarian Party?

4 A. Well, the Libertarian Party has the benefit of actually
5 being consistent in their political views. They believe
6 that the government should not be involved in social
7 policy or economic policy, where both the Democratic and
8 Republican Party appear to be conflicted. They believe
9 in just a minimal state in both social and economic
10 policies and probably a more noninterventionist foreign
11 policy.

12 Q. And when you said it appears the Democratic and
13 Republican parties are conflicted, what do you mean by
14 that?

15 A. Well, Republicans go around saying, we want a limited
16 state, stay out of my business, state out of my wallet,
17 but tell me what to do in the bedroom. Democrats say,
18 hey, I'm all for pro-choice, you know, I can do whatever
19 I want, but mandate that you wear a seat belt, that you
20 can't do -- that they should redistribute your wealth
21 and tell you how to run your business. So they both
22 suffer from cognitive dissonance.

23 Q. I was hoping to avoid using those kinds of fancy terms.
24 When the State's attorney was asking you questions
25 about page 6 of your report and the statement,

1 "Stripping political parties of their nomination power
2 could have profound effects on American democracy," do
3 you --

4 A. Mm-hm.

5 Q. -- recall that?

6 A. Yes.

7 Q. And I just want to make sure I understand this
8 correctly. By stripping political parties of their
9 nomination power -- well, let me strike that.

10 I understood your testimony to say that you believe
11 that the top-two process under Initiative 872 strips the
12 political parties of their nomination power; is that
13 correct?

14 A. Doesn't particularly say that. It says that if you do
15 strip parties of their nomination power, there could be
16 profound effects on American democracy. And there's a
17 large body of literature that says that the presence of
18 political parties has been one of the key variables of
19 successful democracies.

20 Now, whether -- the question of does the law of
21 I-7 -- 872 strip political parties of their nomination
22 power, I would say that that is a yes and no in the
23 sense that no, a political party can still go out
24 through a nomination process, right? We can do that
25 independent.

1 But I would say that unlike the other 48 states in
2 the union, the nomination power that the parties have in
3 Washington are moot in the sense that they have no
4 effect, whereas when the California Republican Party or
5 Democratic Party engages in a nominating primary, the
6 person they nominate will be on the general-election
7 ballot. Not so in Louisiana and Washington. We can
8 nominate somebody who will not be on the general-
9 election ballot.

10 And that is an important legal and political
11 distinction, but, again, beyond the scope of my paper.

12 Q. Just so I understand what your testimony is, though,
13 under the top-two process under Initiative 872, the
14 Republican Party can still nominate a candidate --

15 A. Mm-hm.

16 Q. -- correct?

17 A. Yes.

18 Q. And when you said but that power is moot --

19 A. Yes.

20 Q. -- if I understand you correctly, you meant they can't
21 guarantee their candidate a spot on the November ballot;
22 is that right?

23 MR. WHITE: I will object to the form of the
24 question.

25 A. Okay, in the other 48 states that do not use a top-two

1 version, the partisan nomination process by a party
2 results in the placement of that candidate on the
3 general election. The exception would be Washington and
4 Louisiana.

5 Q. (by Mr. Ahearne) And so I just want to make sure I
6 understand. When --

7 A. Okay.

8 Q. -- you said the Republican Party nominating a candidate
9 is moot, what did you mean by that?

10 MR. WHITE: I will object --

11 THE WITNESS: Yeah.

12 MR. WHITE: -- to the form of the question.

13 A. Moot in the sense that it will have no impact on who
14 ends up on the general-election ballot, would be a more
15 specific answer.

16 Q. (by Mr. Ahearne) When the State's attorney was asking
17 you some questions about your various sample groups, you
18 said one of the three voter groups you used were younger
19 college students at Central Washington University;
20 correct?

21 A. Yes.

22 Q. Is it accurate to say that the only new-voter group you
23 used were those college students at Central Washington
24 University?

25 MR. WHITE: I will object to the form of the

1 question.

2 A. We cannot definitively answer that. A registered voter
3 that I got from Sam Reed could have technically been a
4 new voter. That could have been the first time that
5 they registered to vote.

6 Q. (by Mr. Ahearne) No, I understand that.

7 But you have three groups, new voters, registered
8 voters, and active voters; correct?

9 A. Yes.

10 Q. And so my question is, with respect to your new-voter
11 group --

12 A. Okay.

13 Q. -- is it accurate to say that it is only the college
14 students at Central Washington University that you used?

15 A. Oh, yes, yes. In operationalizing new voters --

16 THE WITNESS: I'll spell that for you later.

17 A. -- I used college students.

18 Q. (by Mr. Ahearne) And those would be the college
19 students at Central Washington University that --

20 A. Yes.

21 Q. -- you used.

22 A. Absolutely.

23 Q. And you said the responses were from several disciplines
24 when you sent out the Email to the professors; is that
25 correct?

1 A. Yes.

2 Q. Did you keep track of which professors actually
3 responded to you?

4 A. I may be able to find that out. We delete Emails after
5 a year at Central. I can remember some just by my
6 actual memory, but I can't remember them all.

7 Q. And if I understand the process correctly, you would go
8 into the classroom with the professors who said, hey,
9 you can come and use up some of my class time, right?

10 A. This is correct.

11 Q. And approximately how long did it take, just ballpark?

12 A. I would come in; I would explain that I was going to
13 hand out a ballot to them; I would ask them to read the
14 directions; I told them that I would not answer any
15 questions, that they were not to speak to anybody else
16 or look at anybody else's ballot; I would hand it out; I
17 asked them to raise their hand when they were done; I
18 would pick up the ballot. I would say that it ranged,
19 from the student who, you know, went through it quite
20 quickly to the one who really read everything and stuff,
21 from about a five- to 20-minute process.

22 Q. And over what course of time were you doing this? I
23 mean like a month, a week --

24 A. I --

25 Q. -- one day, all --

1 A. I would say a month would be very close. I can't
2 remember the specific dates on which I started and
3 stopped, but that would be -- if you hadn't offered one,
4 I would have said about a month.

5 Q. And if I understood your testimony correctly, with the
6 exception of the large music class --

7 A. Mm-hm.

8 Q. -- every other class you went into, you would only hand
9 out one of the three sample ballots; is that correct?

10 A. Yes, yes.

11 Q. And did you keep track of which types of classes got
12 which ballots?

13 A. No.

14 Q. The active-voter group, as I understood your testimony,
15 you got 300 Email --

16 A. Three thousand.

17 Q. I'm sorry.

18 -- 3,000 Email addresses from the Republican state
19 party and 3,000 from the Democratic state party;
20 correct?

21 A. Yes.

22 Q. What instructions did you give to the political parties
23 when you were saying, this is what I want?

24 A. I did not give them any instructions. They volunteered
25 access to 3,000 from their contact list. What I asked

1 for is a random sample.

2 Q. So if I understand correctly, you asked the parties for
3 a random sample of Email addresses --

4 A. Yeah.

5 Q. -- and they gave you 3,000 each.

6 A. Yes.

7 Q. And do you know the process that the parties went
8 through to create this random sample?

9 A. I do not. You'd have to ask, I would assume, the two
10 executive directors who created the file.

11 Q. I'm going to ask you to look at page 26 of your report,
12 please --

13 A. Yes.

14 Q. -- and a couple questions.

15 If I understood it correctly, the N is number of
16 human beings; correct?

17 A. Yep.

18 Q. And then the bottom number in the fraction -- so for
19 example, 22 over 118 --

20 A. Yes.

21 Q. -- that bottom number is the number of answers; correct?

22 A. Yes.

23 Q. And the reason it's usually double is because there were
24 two questions you were looking at?

25 A. Yes.

1 Q. Could you tell me which two questions you were looking
2 at.

3 A. One and 4, the two nominee questions. Oh, I'm sorry; 1
4 and 5, 1 and 5.

5 Q. Did you do a similar table for answers to other
6 questions as well?

7 A. No.

8 Q. And then if I understand it correctly, with the active
9 voters, you had the universe of 6,000 and about 549
10 responded, right?

11 A. Yes.

12 Q. And you -- for the registered voters, you had a universe
13 of 1,500 and about 102 responded; correct?

14 A. Yes.

15 Q. And at some point, you said something about spam filters
16 affecting the response rate. What does that mean or how
17 does it affect it?

18 A. Well, obviously, we now have technology to catch Emails
19 that have more than so many address recipients, right?
20 That's the most common way. And since I was sending it
21 to 500 people three times, it probably triggered some
22 spam filters.

23 Q. And both for the registered voters and the active
24 voters, you were doing that through the Survey Monkey
25 that you referred to?

1 A. Yes.

2 Q. Could you just briefly explain what Survey Monkey is.

3 A. Survey Monkey is a survey-research software in which you
4 get to go in and write all your questions, determine if
5 there's anything you want the person to see, and then it
6 will distribute it to your respondents, it will collect
7 all the data, it will compile all the data.

8 And so it's just a -- you know, the methodology
9 hasn't changed. I would say that it's the difference
10 between using a chalkboard and a white board, right?
11 You know, what you write on the board, you know, doesn't
12 change, just the manner in which you disseminate it has.
13 It has all the internal controls of standard survey-
14 research methodologies.

15 Q. Does it allow you to see how many people actually opened
16 the Email that was sent out?

17 A. I know that Qualtrics does. I would have to check if
18 Survey Monkey does -- has that function.

19 Q. And the reason I'm asking, of course, is if spam filters
20 filtered out a ton of these Emails, if they --

21 A. Mm-hm.

22 Q. -- didn't open it, that's a good indication --

23 A. Well, actually --

24 Q. -- that maybe a spam filter --

25 A. Oh, they didn't open the Email, not open the link.

1 Q. Right.

2 But if they opened it, clearly the spam filter
3 didn't --

4 A. Yeah, I would have to check for you.

5 Q. Still on page 26, under the new voters, you have 183
6 responses and the universe of people you handed it out
7 to was 183.

8 A. Right. I did not receive back a blank ballot from any
9 student.

10 Q. Because you had the --

11 A. I guess people just --

12 Q. -- like a --

13 A. Yeah. I think that, yeah, you had a captive sample,
14 maybe.

15 Q. If I can move on to page 23. And this is the sample
16 ballot you used for the top-two primary election; is
17 that correct?

18 A. It is.

19 Q. And I'm just trying to get an idea of what exactly was
20 in front of the person's face. Was it page 23 but
21 without the "Nonpartisan Top-Two Primary Ballot" heading
22 at the top and without the "WSDCC 00030" and page 23 at
23 the bottom?

24 A. Yes. They had everything from "Directions" to the
25 bottom of the ballot, and then, I believe, as they

1 scrolled down they could see the questions. It said,
2 you know, answer -- oh, actually, you know, that was the
3 one change I would update. You know, when I handed out
4 the ballot it said, "on the other side." But when I
5 submitted it to survey research, I changed it to, below,
6 because there was not another side of a computer screen.
7 It just said, answer the questions below.

8 Q. And what -- I just want to make sure I -- visually what
9 I would see is exactly from the word "Directions" on
10 down to the bottom of --

11 A. Yeah.

12 Q. -- the box.

13 A. Right.

14 Q. And it's laid out the same way it was laid out --

15 A. Mm-hm.

16 Q. -- for your --

17 A. Absolutely. And we actually made it the appropriate
18 size that you could see the entire ballot on one screen.
19 So there was no breaks in the ballot or anything. You
20 had a single screen shot.

21 Q. And if I look at page 24, is -- the general-election
22 ballot that people in your survey saw was everything
23 from the word "Directions," colon --

24 A. Yep.

25 Q. -- down to the bottom of the box?

1 A. Yes.

2 Q. And if I understood your testimony correctly, you did
3 not give the participants in your work here any
4 information other than the ballot itself?

5 A. That's right. We were trying to mimic reality as best
6 as possible, which is the goal of all experimental
7 designs. And since our auditors and secretaries of
8 state don't come to your house and explain the ballot,
9 we weren't going to either. They basically received a
10 ballot just like they would in the real world that would
11 come in the mail.

12 Q. And when did you do this? What was that month,
13 approximately?

14 A. I do know that the in-person population was done first.

15 Q. And approximately -- was that like, you know, May, June,
16 I mean, January?

17 A. Oh, gosh. I would have to reference the Email that I
18 sent to Mr. White when I was done. I think I sent him a
19 very rough draft, and I'd have to go look at the date of
20 that Email. I think you may have a copy of it. But I
21 would say it's been at least a year.

22 Q. What I'm trying to get an idea of is, when is the first
23 sample ballot you sent out --

24 A. Mm-hm.

25 Q. -- and when did you send out the last sample ballot?

1 A. I don't know. I would have to log on and get those
2 dates. And they do keep track of when -- the last
3 response you got in, so I could estimate from there.
4 But I don't know. In terms of dates, as we were doing
5 the experiment, it didn't occur to me or anybody that I
6 spoke to that it would be necessary to keep tracks (sic)
7 of beginning and end times since it's not a causal
8 variable. So I probably don't have that information for
9 you, at least not to the day. I could probably estimate
10 that information.

11 Q. Let me -- let's go to page 26 just for a second.

12 A. Okay.

13 Q. And you have three voter groups, new voters, registered
14 voters, and active voters; correct?

15 A. Yes, mm-hm.

16 Q. Could you give me just an estimate of the time frame
17 which the new-voter questioning and answering was done?

18 A. Like I said, the date or how long it took?

19 Q. Well, no, like it was in June of 2009 or something like
20 that.

21 A. I would be guessing.

22 Q. Do you have any idea of when you actually did the new-
23 voter surveys?

24 A. I would be guessing.

25 Q. How about the registered-voter surveys? Do you have any

1 idea of when you did those?

2 A. I don't.

3 Q. Active voters, same answer?

4 A. I would say it's been -- about six months ago is when
5 the survey was done, because I've spent about six months
6 writing the paper. So I would go from this date back
7 six months. That's when the survey was done, so I would
8 go back another month from that. I would say about
9 eight months ago is when this went into the field.

10 Q. For the active voters?

11 A. For the active and registered voters. The on-line one
12 done -- were done very, very close together.

13 Q. And for the new voters, do you have any recollection
14 whether it was even like fall semester -- or fall
15 quarter, winter quarter, spring --

16 MR. WHITE: I will object to the form of the
17 question.

18 A. I just -- I don't remember, sir. I will -- I can try to
19 find out by viewing Emails if I have the Email that I
20 sent out. Like I said, the problem is that our IT
21 department erases Emails that are over a year old, and I
22 think it would be very close to that. So -- but I will
23 go look when I get home.

24 Q. (by Mr. Ahearne) Going back to page 23 and just using
25 this as an example, you referred at some point to a

1 disclaimer in your testimony. Is that the part in the
2 lower-left-hand corner that says, "VOTER-PLEASE READ:
3 Each candidate for partisan office" --

4 A. Yes.

5 Q. -- et cetera, et cetera? Okay.

6 Could you tell me what your understanding of the
7 top-two election process in Washington is today.

8 A. Well, what's the process?

9 Q. Right.

10 A. Well, there is a filing period that is in the first week
11 in June. Any eligible resident can go to their local
12 auditor's office or their secretary of state's office
13 and pay a fee, register for office, and, at that point,
14 declare their party preference as long as it is within
15 17 letters and is not profane or obscene.

16 At that point, there is a primary election in which
17 all those names will appear on a singular column, okay,
18 in which point those two candidates which receive the
19 top two -- the two candidates that get the top two most
20 ballots go on to the general election. There's a
21 general election, and the winner of that is the elected
22 officeholder.

23 Q. And on this disclaimer, the "VOTER-PLEASE READ" --

24 A. Mm-hm.

25 Q. -- is that the disclaimer that you reference in your

1 testimony as being very clear?

2 A. Yep.

3 Q. And the first part of the statement, "Each candidate for
4 partisan office may state a political party that he or
5 she prefers," do you see that?

6 A. Mm-hm.

7 Q. Did your research examine whether voters do not
8 understand that statement?

9 A. No, I guess not. I mean, we were -- I mean, I guess
10 what we have here is a situation where, obviously, the
11 State concedes that there is voter confusion.
12 Otherwise, there wouldn't be a need for the disclaimer
13 in the first place, which is why we don't have a
14 disclaimer on the partisan ballots. So obviously, when
15 they changed the ballots, they assumed that there would
16 be voter confusion and they did their best to explain
17 it.

18 What my experiment tests is, did their disclaimer
19 language get -- do enough to clarify that confusion or
20 not?

21 Q. And I understand the -- where you relate to the second
22 part. But my question is, this part of the disclaimer
23 that states, "Each candidate for partisan office may
24 state a political party that he or she prefers," do you
25 see that part of the statement?

1 A. I do.

2 Q. And did your research examine whether voters do not
3 understand that statement?

4 MR. WHITE: I will object to the form of the
5 question.

6 A. And I would say no, in the fact that Justice Thomas did
7 not indicate that that was a variable that would decide
8 the constitutionality of such primaries. But he did
9 indicate that the way that they understood the second
10 sentence would go to determining the constitutionality.
11 So we were trying to answer Justice Thomas's question.

12 Q. (by Mr. Ahearne) And I understand you want to get to
13 the second sentence, and I will get to --

14 A. Okay.

15 Q. -- the second sentence. I want to make sure I'm clear
16 on, did your research examine whether voters do not
17 understand the statement in the disclaimer that says,
18 "Each candidate for partisan office may state a
19 political party that he or she prefers"?

20 MR. WHITE: I will object to the form of the
21 question.

22 A. And we did not test for that.

23 Q. (by Mr. Ahearne) So now let's get to the second
24 sentence --

25 A. Okay.

1 Q. -- in the disclaimer, which states, "A candidate's
2 preference does not imply that the candidate is
3 nominated or endorsed by the party or that the party
4 approves of or associates with that candidate." Do you
5 see that?

6 A. I do.

7 Q. Do you personally understand that statement?

8 A. I do.

9 Q. And if I understand your work correctly, your conclusion
10 is that some voters do not understand that statement; is
11 that correct?

12 MR. WHITE: I will object to the form of the
13 question.

14 A. I would say that the accurate interpretation of Table 1
15 is -- and Tables 2, 3, and 4 are that there are a
16 significant number of Washington voters who do not make
17 that connection, that they do not understand the second
18 sentence. It's quite clear, and yet we have 30 to 40
19 percent of them that say they are. So --

20 Q. (by Mr. Ahearne) And when you say it's quite clear,
21 that second sentence to you, at least, is quite clear.

22 A. Yes.

23 Q. Do you believe it's reasonable for a voter to read a
24 statement that says, "A candidate's preference does not
25 imply that the candidate is nominated or endorsed by the

1 party," but conclude that a candidate's preference does
2 imply that the candidate is nominated or endorsed by the
3 party?

4 MR. WHITE: I will object to the form of the
5 question.

6 A. I know this is terrible. I -- that was kind of a
7 confusing question and I know it was a long one, but I
8 think I'm going to have to hear it again for me to give
9 you a good answer.

10 Q. (by Mr. Ahearne) And thank you for pointing that out.

11 Do you believe it is reasonable for a voter to read
12 a statement that says, quote, a candidate's preference
13 does not imply that the candidate is nominated or
14 endorsed by the party, closed quote, but conclude that a
15 candidate's preference does imply that the candidate is
16 nominated or endorsed by the party?

17 MR. WHITE: I will object to the form of the
18 question.

19 A. I don't know if it is reasonable or not, but I do know
20 that it happens about 30 to 40 percent of the time.

21 Q. (by Mr. Ahearne) Do you believe it is reasonable for a
22 voter to read a statement that says, a candidate's
23 preference does not imply that the party approves of or
24 associates with that candidate, closed quote, but
25 conclude that a candidate's preference does imply that

1 the party approves of or associates with that candidate?

2 MR. MCDONALD: I'm going to object to the form of
3 the question.

4 A. And I would give you --

5 MR. WHITE: Object to the form of the question.

6 A. -- pretty much the same answer. I don't know whether it
7 is reasonable, but I do know that, according to the data
8 I collected, it does happen.

9 Q. (by Mr. Ahearne) And is it accurate to say that the
10 data you collected is all contained within your report,
11 which is the -- part of Exhibit 1?

12 A. All the data? No, no. I mean, there's volumes of
13 different types of breakdown of the data I could give
14 you. I could give you breakdowns based on age,
15 education, gender. I could give you breakdowns -- you
16 know, there's always more ways to represent the data.

17 Q. I'll reask the question.

18 A. Yeah, okay.

19 Q. Is all the data that, in your opinion, confirms your
20 conclusion in the report that's part of Exhibit 1?

21 A. I would say that all the data that confirms my
22 conclusion is available in Exhibit 1. I would not say
23 that, in response to Mr. Donovan's query, all the data
24 is there that would respond to his criticisms, okay? So
25 I gave you the data which I thought showed that

1 conclusion. Now, he has responded with some
2 methodological concerns. And I could provide you
3 additional data which I believe clearly undermine his
4 erroneous claims, but that is not provided in Exhibit 1.

5 MR. AHEARNE: I have nothing further.

6 THE WITNESS: Thank you.

7 MR. AHEARNE: Thank you.

8 MR. MCDONALD: Orrin?

9 MR. WHITE: Are you there, Orrin?

10 THE WITNESS: I bored him to death.

11 MR. GROVER: Yes, I just had the phone muted.

12 I don't think that I have any questions.

13 MR. MCDONALD: I have one; at least, one topic.

14

15 EXAMINATION

16 BY MR. MCDONALD:

17 Q. When you initially contacted your experimental subjects,
18 did I understand you correctly that you advised them
19 that they would be participating in an experiment?

20 A. I did.

21 Q. And that the purpose of the experiment was to -- related
22 in some fashion to understanding of the ballot?

23 A. It was very -- they -- I did not -- you do not want to
24 lead your subjects by telling them what you're looking
25 for. So it was very vague language: Please help us

1 understand how voters perceive the new ballot.

2 Q. But --

3 A. It was very general language.

4 Q. Was every subject who responded -- strike that.

5 Had every subject who responded received a
6 communication that included that general --

7 A. Yeah.

8 Q. -- statement?

9 A. There was no way you could respond to my survey unless
10 you got the initial Email with the request and the
11 explanation: Here's what I'm doing, the explanation;
12 please go click on this link, the request.

13 MR. MCDONALD: Okay, I have nothing further.

14 MR. WHITE: I have no questions.

15 MR. PHARRIS: I have no further questions.

16 MR. AHEARNE: I have no further questions.

17 MR. GROVER: And I have no further questions.

18 MR. MCDONALD: Lunchtime.

19 MR. AHEARNE: David, does that mean you have no
20 further questions?

21 MR. MCDONALD: I have no further questions.

22 MR. AHEARNE: John?

23 MR. WHITE: I still have no further questions.

24

(Whereupon the deposition
25 concluded at 11:43 a.m.)

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 9th 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)