

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

JULIE CONTRERAS, IRVIN FUENTES,  
ABRAHAM MARTINEZ, IRENE PADILLA,  
ROSE TORRES, LAURA MURPHY, CRISTINA  
FLORES, JOSE ALCALA, TROY HERNANDEZ,  
GABRIEL PEREZ, IVAN MEDINA, ALFREDO  
CALIXTO, HISPANIC LAWYERS  
ASSOCIATION OF ILLINOIS, and PUERTO  
RICAN BAR ASSOCIATION OF ILLINOIS

Plaintiffs,

v.

ILLINOIS STATE BOARD OF ELECTIONS,  
IAN K. LINNABARY, WILLIAM J. CADIGAN,  
LAURA K. DONAHUE, WILLIAM M.  
MCGUFFAGE, KATHERINE S. MCCRORY,  
RICK S. TERVEN, SR. and CASANDRA B.  
WATSON in their official capacities as members of  
the Illinois State Board of Elections, DON  
HARMON, in his official capacity as President of  
the Illinois Senate, and THE OFFICE OF THE  
PRESIDENT OF THE ILLINOIS SENATE,  
EMANUEL CHRISTOPHER WELCH, in his  
official capacity as Speaker of the Illinois House of  
Representatives, and the OFFICE OF THE  
SPEAKER OF THE ILLINOIS HOUSE OF  
REPRESENTATIVES,

Defendants.

Case No. 1:21-cv-3139

Circuit Judge Michael B.  
Brennan Chief District  
Judge Jon E. DeGuilio  
District Judge Robert M.  
Dow, Jr.

Three-Judge Court Pursuant  
to 28 U.S.C. § 2284(a)

**CONTRERAS & McCONCHIE PLAINTIFFS' JOINT MOTION TO EXCLUDE DR.  
LICHTMAN'S GINGLES PRONG III TESTIMONY**

## INTRODUCTION

Defendants' expert, Dr. Allan J. Lichtman, has failed to produce materials required under Federal Rule of Civil Procedure, Rule 26(a)(2)(B)(ii) that are the basis of his racial polarization opinions and should be precluded from offering testimony relevant to *Gingles* Prong III. Failure to produce the material leaves the Court and Contreras and McConchie Plaintiffs (hereinafter "Plaintiffs") with no way to assess the reliability of his opinions, as required by *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 592-593 (1993). Should the Court decline to exclude Dr. Lichtman's testimony at this time, Plaintiffs respectfully request that the Court consider excluding Dr. Lichtman's testimony at a later date. When the gatekeeper and the finder of fact are the same, courts may admit marginal expert testimony like Dr. Lichtman's *Gingles* Prong III arguments, and, if it does not pass muster, exclude it later. *In re Salem*, 465 F.3d 767, 777 (7th Cir. 2006).<sup>1</sup>

### I. PROCEDURAL AND FACTUAL BACKGROUND

On November 24, 2021, Defendants filed their response to Contreras Plaintiffs' Remedial Maps and Statement in Support [Contreras Dkt. 150], and McConchie Plaintiffs' Response to Plaintiffs' Brief in Support of Their Remedial Legislative Redistricting Map [McConchie Dkt. 156]. Appended to that filing was Dr. Allan J. Lichtman's 205-page expert report. Contreras Dkt. 150-1, and McConchie Dkt. 156-1. Defendants later were granted leave to file a corrected brief and did so, again, submitting Dr. Lichtman's expert report. Contreras Dkt. 154, 155 and 155-1; McConchie Dkt. 160, 161 and 160-1. Dr. Lichtman's report which contains several

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<sup>1</sup> Plaintiffs filed this motion after good faith attempts to resolve differences via telephone; they were unable to reach an accord, as recited in Exhibit A, Decl. of Denise Hulett at ¶¶4-11. Moreover, as shown herein, the relief sought by this motion is to strike Dr. Lichtman's expert testimony rather than an issue as to the discovery process in this case. Accordingly, Plaintiffs respectfully submit that this is a matter for the Panel as opposed to the magistrate.

references to a racial polarization study he conducted and relies upon to opine that racially polarized voting has waned, and that bloc white voting does not thwart the election of Latino-preferred candidates. Contreras Dkt. 151-1 at 42; McConchie Dkt. 160-1 at 42.<sup>2</sup> Ecological regression, the methodology used by Dr. Lichtman, is a statistical technique used to estimate group voting behavior from electoral results. Contreras Dkt. 155-1 at 7; McConchie Dkt. at 161-1 at 7.

Aside from two or three elections about which Dr. Lichtman used his estimates to make specific points, the report contains no reported results of that regression analysis—no estimates of voter behavior for the elections he analyzed, no information about the standard errors around his estimates (the high and low possibilities surrounding each estimate), and no information about how he weighted his analysis. *Id.* at 46. In other words, his regression analysis for each election produces a percent-level estimate of support Latinos, whites, Asians, and others gave to each candidate in each race. (E.g., 45% of Latinos, 25% of whites, or 39% of non-Latinos supported candidate X.) Contreras Dkt. 155-1 at 42-44; McConchie Dkt. 161-1 at 42-44. Defendants have withheld those estimates.

After several meet and confer sessions, as well as, email discussions, Defendants have yet to produce the data Dr. Lichtman fed into the statistical program he used to generate the results, data that had to be coded properly to be functional and includes not only election results formatted in a particular way, but also racial data. (Voter estimates are generated by comparing

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<sup>2</sup> Racially polarized voting refers to Prongs II and III of the test for vote dilution, which respectively provide that “the minority group must be able to show that it is politically cohesive” and “the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it—in the absence of special circumstances . . . usually to defeat the minority's preferred candidate.” *Thornburg v. Gingles* 478 U.S. 30, 51(1986). Since Defendants concede that Latinos are politically cohesive this motion seeks only to exclude Dr. Lichtman’s *Gingles* Prong III testimony.

the racial composition of each precinct to the votes cast for each candidate in each precinct.) *See* Ex. A, Hulett Decl. at ¶¶4-11. There is no way to know whether the estimates of voter behavior, which Dr. Lichtman relied on generally and sometimes specifically, are reliable.

Therefore, Dr. Lichtman's report and the disclosures failed to comply with Federal Rule of Civil Procedure, Rule 26(a)(2)(B) or provide Plaintiffs or the Court with a meaningful opportunity to assess the reliability of Dr. Lichtman's ecological regression analysis.

By this motion, Plaintiffs seek to preclude Dr. Lichtman's testimony with regard to *Gingles* Prong III.

## II. LEGAL STANDARD

"The admissibility of expert testimony is governed by Federal Rule of Evidence 702 and the Supreme Court's opinion in *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993)." *Lewis v. CITGO Petroleum Corp.*, 561 F.3d 698, 705 (7th Cir. 2009) (citing *Naeem v. McKesson Drug Co.*, 444 F.3d 593, 607 (7th Cir. 2006)). Rule 702 requires courts to police the foundations of expert opinions. Expert evidence can be both powerful and quite misleading because of the difficulty in evaluating it." *Daubert*, 509 U.S. at 595 (1993) (citations omitted). Under Rule 702, district courts must act as "gatekeepers" to ensure that testimony is both relevant and reliable. *Daubert*, 509 U.S. at 589.

The Federal Rules of Evidence permit expert opinion testimony only to the extent that the expert's "specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue," and then *only* if the testimony is "based on sufficient facts or data" and "the product of reliable principles and methods" which the expert has "reliably applied." Fed. R. Evid. 702 (emphasis added). The trial judge occupies "a gatekeeping role" and must scrutinize proffered expert testimony to ensure it satisfies each requirement of Rule 702. *Daubert*

*v. Merrell Dow Pharms.*, 509 U.S. 579, 592-93, 597 (1993); *Ortiz v. City of Chicago*, 656 F.3d 523, 536 (7th Cir. 2011). Moreover, the purpose of Rule 26(a)(2) is to give notice to opposing counsel—before the deposition—as to what the expert witness will testify. *Ciomber v. Cooperative Plus, Inc.*, 527 F.3d 635, 642 (7th Cir.2008). The rule does not let parties cure deficient disclosures by supplementing them with later deposition testimony. *Id.*

Federal Rule of Evidence 702 permits expert testimony only if it is based on reliable data. *See United States v. Mire*, 725 F.3d 665, 675 (7th Cir. 2013). And undisclosed data is inherently suspect because it cannot be subject to the adversarial process. *See Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 171 (1951) (Frankfurter, J., concurring). The adversarial process is what allows fact finders—be they judges or juries—to assess experts. But when an expert cannot or will not produce the data he relied on or the standard metrics by which statistical analyses are evaluated, opposing counsel cannot replicate, test or assess his work. And neither can the Court. “Permitting an expert to withhold the basis for his testimony is antithetical to” *Daubert*’s requirement that there be a meaningful opportunity to cross-examine an expert. *Paramount Media Grp., Inc. v. Vill. of Bellwood*, No. 13 C 3994, 2015 WL 7008132, at \*5 (N.D. Ill. Nov. 10, 2015). But data, the basis of an expert’s testimony, cannot be tested through the adversarial process if opposing counsel and their experts do not have it.

A litigant is required to disclose to his opponent any information “considered” by the litigant’s testifying expert. Fed.R.Civ.P. 26(a)(2)(B)(ii). The disclosure obligation extends to any facts or data ‘considered’ by the expert in forming the opinions to be expressed, not only those relied upon by the expert. Fed. R. Civ. P. Rule 26(a)(2)(B) advisory comm. nn. (2010 Amends.) “If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a

motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless.”

Fed.R.Civ.P. 37(c)(1).<sup>3</sup>

### **III. DEFENDANTS HAVE FAILED TO PRODUCE ALL THE “FACTS OR DATA” THAT DR. LICHTMAN RELIED ON OR CONSIDERED.**

Defendants have represented that they have produced everything that Dr. Lichtman relied on or considered in drafting his expert report. Ex. A, Hulett Decl. at ¶ 8; Ex. 5 - Weir Vaught, Dec. 2, 2021 at 1. This is untrue, but it is not just untrue: it is impossible. It is impossible because, as Dr. Lichtman confirmed during his deposition, he did not and could not have created his expert report without considering or creating the items that remain undisclosed. Ex. C, Lichtman Depo. Tr. at 181:14-184:6. The undisclosed and disclosed items relevant to Dr. Lichtman's report are described in the table below:

Date Due to Disclose Expert Testimony Under Rule 26 (a)(2)(B)(ii)	Description	Status
November 24, 2021, with Lichtman Report in support of Defendants' Response to Plaintiffs' Remedial Statement	Excel files containing Senate and House election results provided to Allan Lichtman, unformatted for use in statistical programs. <sup>4</sup>	Disclosed on November 29, 2021

<sup>3</sup> Rule 37 (b)(2)(A) contains several alternative sanctions, including “(ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence” and “(iii) striking pleadings in whole or in part.”

<sup>4</sup> Raw unformatted publicly available election results were also provided in response to discovery requests on September 23, 2021.

November 24, 2021 with Lichtman Report in support of Defendants' Response to Plaintiffs' Remedial Statement	<p>Tables Reporting Estimates of</p> <ul style="list-style-type: none"> <li>• The level of voter support</li> <li>• for each candidate</li> <li>• by each racial group</li> <li>• in each race analyzed.</li> </ul> <p><i>Example:</i>  <i>HD 400, 2020 Primary</i></p> <table border="1"> <thead> <tr> <th><i>Candidate</i></th><th><i>Latino voter support estimate</i></th><th><i>Non-Latino voter support estimate</i></th></tr> </thead> <tbody> <tr> <td><i>Smith</i></td><td><i>75%</i></td><td><i>10%</i></td></tr> <tr> <td><i>Jones</i></td><td><i>25%</i></td><td><i>90%</i></td></tr> </tbody> </table> <p>Produced as output by the SPSS program.</p>	<i>Candidate</i>	<i>Latino voter support estimate</i>	<i>Non-Latino voter support estimate</i>	<i>Smith</i>	<i>75%</i>	<i>10%</i>	<i>Jones</i>	<i>25%</i>	<i>90%</i>	Not disclosed
<i>Candidate</i>	<i>Latino voter support estimate</i>	<i>Non-Latino voter support estimate</i>									
<i>Smith</i>	<i>75%</i>	<i>10%</i>									
<i>Jones</i>	<i>25%</i>	<i>90%</i>									
November 24, 2021 with Lichtman Report in support of Defendants' Response to Plaintiffs' Remedial Statement	Standard Error/Deviations—a measure of reliability for the estimates. Produced as standard output by the SPSS program. Ex. C, Lichtman Dep. Tr. at 243:10-245:16.	Not disclosed									
November 29, 2021 with Lichtman Report in support of Defendants' Response to Plaintiffs' Remedial Statement	Election data that is formatted and coded correctly so that it may be fed into statistical software packages like SPSS or STATA. Ex. B, Grumbach Dep. Tr. 135:11-15.	Not disclosed									
November 29, 2021 with Lichtman Report in support of Defendants' Response to Plaintiffs' Remedial Statement	Precinct Level Racial Data for each election analyzed. Latino estimation based on surname analysis or some other measure. Ex. C, Lichtman Tr. at 236:19-237:21.	Not disclosed									

November 29, 2021 with Lichtman Report in support of Defendants' Response to Plaintiffs' Remedial Statement	R factors for the regression analysis – R factors test the strength of the linear relationships that ecological regressions measure - Produced as standard output by the SPSS program. Ex. C, Lichtman Tr. at 243:10-244:9.	Not disclosed
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The data, results, and records described above are the records that enable a peer in the expert's field to reproduce the expert's results and evaluate their reliability. Ex. B, Grumbach Dep. Tr. 134:16-138:9. Indeed, academic journals in which Dr. Lichtman has published in the past require such information to be provided as part of submissions by authors. *See, e.g.,* Lichtman Dep. Exs. 27 (requiring authors to submit “the data, programs, and other details of the computations sufficient to permit replication”) and 28 (requiring authors to submit their “Data Repository Code”). Defendants have disclosed none of those records.

Dr. Lichtman relied on ecological regression analysis and refers to that analysis throughout his report. Dkt. 155-1. He explains, “For the statistical analysis of voting patterns and turnout I rely on ecological regression analysis. This is a standard procedure that I have used many thousands of times to assess racial bloc voting and the effectiveness of legislative districts for minorities.” Dkt 155-1 at 6. Dr. Lichtman emphasizes the importance of independent verification of Dr. Grumbach's and Dr. Chen's results through regression, and for that purpose relies on “the standard double-equation, weighted procedure, which.....I developed independently. This method involves separate equations for each candidate, weighting by Citizen Voting Age Population (CVAP) to adjust for differences in precinct population, and use of CVAP as denominator for candidate percentages to adjust for turnout differentials.” *Id.* at p 48 and fn. 40. But Plaintiffs are left with no way to verify Dr. Lichtman's own results. His



analysis involved running regressions on a number of elections (it is unclear, in fact, which elections) analyzed by Dr. Grumbach and Dr. Chen deemed probative by Dr. Lichtman.

Plaintiffs' experts were not able to replicate the ecological regressions that Dr. Lichtman did run because he did not produce his results or coded data – in other words, he produced neither the input necessary to his analysis, nor the output to his results. Had he produced those results and coded data, Plaintiffs could have compared his results (the output) to their results, and used the data he used (the input) to replicate his analysis and confirm Dr. Lichtman's results.

#### **A. Underlying Data Not Produced (Input)**

To run his regressions, Dr. Lichtman used a statistical software package commonly known as Statistical Package for Social Scientists ("SPSS"). Ex. C, Lichtman Dep. Tr. at 235:11-13; Ex. A, Hulett Decl. at ¶ 8, Ex. 5 Weir Vaught email. SPSS cannot process data in the format that Defendants disclosed it.<sup>5</sup> Ex. B, Grumbach Dep. Tr. at 135:11-15. The data Defendants produced are not formatted for use in SPSS. The actual data Dr. Lichtman used he received from legislative staff,<sup>6</sup> formatted for SPSS, with vote totals and racial data for each precinct, for every

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<sup>5</sup> Defendants produced election results that are available to the public, but did not produce documents showing how legislative staff coded and re-assembled the data prior to giving it to Dr. Lichtman who then fed it into the SPSS statistical program he used to estimate racially polarized voting in the 23 races he claims to have analyzed. Ex. A, Hulett Decl. at ¶ 8, Ex. 5, Vaught email, Dec. 2, 2021 at 1; Ex. B, Grumbach Dep. Tr. 135:11-15. Such coding is frequently the subject of disagreement among experts, and is a key question going to reliability. Defendants asked Contreras Plaintiffs' expert, Dr. Grumbach, a number of questions during his deposition regarding his coded data, which was produced to Defendants, and the effects the coding may have on the reliability of Dr. Grumbach's estimates. Ex. B, Grumbach Dep. Tr. at 27:22-30:18. Plaintiffs have had no opportunity to question Dr. Lichtman about results or data they have not seen or received from Defendants.

<sup>6</sup> Defendants gave Dr. Lichtman—but not Plaintiffs—the data he used to run the ecological regressions. Ex. C, Lichtman Depo. Tr. at 241:3-21; 251:5-252:1.

election. Ex. C, Lichtman Dep. Tr. at 236:1-239:20; 240:20-241:2. He fed that data into the SPSS program for each election. Ex. C, Lichtman Dep. Tr. at 239:5-20. He did not turn over that racial breakdown and electoral data. Ex. C, Lichtman Dep. Tr. at 241:3-21. Plaintiffs therefore have no way of knowing whether the data was accurate (true to the official results), altered (mistakenly or purposefully), or complete. Plaintiff also have no way of knowing how the legislative staff prepared precinct racial data, since the CVAP data Dr. Lichtman used is reported by block group, not precincts in its source (ACS).<sup>7</sup> Ex. C, Lichtman Dep. Tr. at 252:10-19. Anyone familiar with the old phrase “garbage in-garbage out” in statistical analysis can understand why evaluating the input data is important, and why peer review committees and courts require its production—including journals in which Dr. Lichtman himself publishes (*see, supra*).

In addition, since the equations involve the percent of Latino voters in each precinct, Dr. Lichtman used CVAP as denominator for candidate percentages to adjust for turnout differentials, [Dkt. 155-1, p. 48, fn 40], and did not produce that methodology or those calculations, sometimes done on a calculator or pencil and paper. Ex. C, Lichtman Dep. Tr. at 243:20-244:9.

## **B. Results Not Produced (Output)**

At issue in this case is Latino and non-Latino voter behavior. Both Dr. Grumbach and Dr. Chen produced summary tables reporting the results of their analysis – *i.e.* the estimates of support by each racial group for each candidate in each election. *See generally*, Grumbach Report and Appendix, Dkt. 135-19, and Chen Report, Dkt. 151-2 at 37-43. Defendants failed to produce summary table reporting Dr. Lichtman’s complete results for each election he analyzed.

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<sup>7</sup> United States Census Bureau, Glossary, <https://www.census.gov/programs-surveys/geography/about/glossary.html> [<https://perma.cc/A8JT-Y8Z8>] (last visited on May 6, 2021).

It is a standard function of the SPSS program to produce the following results and reliability tests: correlation coefficients (used to calculate the estimates of voter support), estimates of support for each candidate broken down by race for each election, and standard errors (used to calculate measures of confidence the expert can have in the results, and R factors to test the strength of the linear relationships. Ex. C, Lichtman Dep. Tr. at 243:10-246:7; 335:21-336:13.<sup>8</sup> These results and reliability tests, which Plaintiffs never received, are now gone because they were not preserved or printed by Dr. Lichtman or disclosed by Defendants. Ex. C, Lichtman Dep. Tr. at 241:18-21; 245:15-246:6.

**IV. Dr. Lichtman's *Gingles* Prong III testimony cannot be shown to be reliable and should be excluded.**

Defendants are obligated to disclose the results, reliability tests, and data for two reasons. First, they must disclose "the facts or data considered by" Dr. Lichtman under Federal Rule of Civil Procedure, Rule 26(a)(2)(B)(ii). Second, Federal Rule of Evidence, Rule 702 and the *Daubert* standard require experts to conform to the standards of intellectual rigor demanded by their professional work. *Chapman v. Maytag Corp.*, 297 F.3d 682, 688 (7th Cir. 2002); *Obrycka v. City of Chicago*, 792 F. Supp. 2d 1013, 1026 (N.D. Ill. 2011). Journals, including journals that Dr. Lichtman has published in, require scholars to submit data sufficient for a scholarly peer to replicate and evaluate their work. See Ex. B, Grumbach Dep. Tr. at 137:20-138:9; Ex. C, Lichtman Dep. Tr. at 341:12-345:8. Thus Dr. Lichtman has failed to follow the accepted standards of data accessibility and research transparency that is adopted and demanded in his

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<sup>8</sup> R and R2 factors test the strength of the linear relationships that ecological regressions measure. Courts that have relied on ecological regression have noted that "[c]rucial to the validity of regression analysis are the values for 'R' and 'R2', which measure the strength of the correlation and linear relationship of the variables being examined." *Garza v. County of Los Angeles*, 756 F. Supp. 1298, 1346 (C.D. Cal. 1990) (quoting *Overton*, 871 F.2d at 539). In light of the limitations inherent in ecological regression, "insistence upon the statistical significance of results" as measured by the R2 is "particularly important." *Overton v. Cty. of Austin*, 871 F.2d 529 at 539 n.12 (5th Cir. 1989).

field. As Dr. Grumbach said in his deposition when asked about the importance in the political science field of being able to replicate an analysis, “[t]op leading journals in political science when quantitative analysis is done in a research paper now mandate [replication] data files for publishing the paper and code files for publishing those papers.” *See* Ex. B, Grumbach Dep. Tr. at 137:20-138:9. He has thus failed to reliably apply his methodologies in this case. *See Muzzey v. Kerr-McGee Chemical Corp.*, 921 F. Supp. 511, 519 (N.D. Ill. 1996) (“The opinion of an expert who relies on inaccurate data does not have a sufficiently reliable basis to be admissible under *Daubert*.”); *Hill v. Koppers*, No. CIV. A. 303CV60-P-D, 2009 WL 4908836, at \*5 (N.D. Miss. Dec. 11, 2009) (excluding expert testimony under *Daubert* because an “expert is required to ‘show his work’ in his reports and the reports are to be ‘complete’ to the extent that any other person in the expert’s field could pick up the report and independently verify the contents therein.”). Permitting an expert to withhold the basis for his testimony is antithetical to that requirement and to the most fundamental notions of fairness. *Paramount*, 2015 WL 7008132 at \*5 (N.D. Ill. Nov. 10, 2015).<sup>9</sup>

Dr. Lichtman conducted and relied on an ecological regression analysis, referring to that analysis and its unproduced results throughout his report, at times to verify what Plaintiffs’ experts concluded, and at times to contradict them. Dkt. 155-1 at 52. His results contain estimates of Latino, white, Asian support for candidates in 23 races, and presumably contain

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<sup>9</sup> This would not be the first time courts have questioned or discredited Dr. Lichtman’s methodologies, as *McConchie* Plaintiffs indicated in their Reply Brief in Support of Their Remedial Legislative Redistricting Map. *See McConchie, et al. v. Harmon, et al.*, no. 1:21-cv-03091, Document No. 162 at 3 n.2 (citing *Johnson v. Mortham*, 926 F. Supp. 1460 1474-75 (N.D. Fla. 1996) (“we reject Dr. Lichtman’s results because of several critical methodological errors in his analysis”); *Feldman v. Arizona Secretary of State’s Office*, 842 D.3d 613, 622 (9th Cir. 2016), *rehearing en banc granted* by 840 F.3d 1164 (9th Cir. 2016) (identifying “several inaccuracies” in Dr. Lichtman’s report “that would clearly justify the district court’s decision not to credit it as sufficient to satisfy the Gingles factors”). Also, in *Johnson*, Dr. Lichtman himself “relied upon the R 2 (or squared-correlation coefficient) and statistical significance to assess the reliability of his regression analysis,” *Johnson*, 926 at 1460, and again in *King v. St. Bd of Elections*, 979 F. Supp. 582, 614 n.60 (N.D. Ill. 1996) (“Dr. Lichtman supplemented his ecological regression and extreme case analysis by examining the squared correlation coefficients. This value is used to assess the strength of association between two variables.”).

standard errors around the estimates (how high and how low are the possibilities for variance around each estimate – a measure of reliability of conclusions drawn based on those estimates.)

*Id.* Plaintiffs have been requesting that analysis since November 28, 2021 (Ex. A, Hulett Decl. at ¶4, Ex. 1, Herrera email Nov. 28, 2021), and as recently as December 4, 2021. Ex. A, Hulett Decl. at ¶ 11. Defendants have produced neither the data nor the analysis. *Id.* at ¶¶ 8-11.

Just one example of why Dr. Lichtman's failure to provide his analysis and underlying data is his criticism of Plaintiffs' expert's analysis because it does not separate white voters from the rest of the electorate, and his reference to an election in the 2016 Democratic primary in House District 2 to illustrate that criticism. Dr. Lichtman says that the Hispanic preferred candidate Acevedo won both the Hispanic and white vote, but that he nonetheless "lost to Asian candidate Mah because of an overwhelming vote against him by non-Hispanic, non-white minorities, mostly Asian, in this district which has a 23.8% Asian CVAP." Dkt. 155-1 at 63 n.44.<sup>10</sup> Neither Plaintiffs nor this Court has any way of knowing how reliable the estimates are underlying that claim, whether or not the results came with a standard error so large as to make the estimate unreliable. The purpose of the duty to disclose in Rule 26 is to avoid this kind of *ipse dixit* testimony from experts giving testimony whose reliability is always at issue.

Dr. Lichtman testimony should also be excluded as he admitted to opining on the ultimate issue this Court is to decide - whether Plaintiffs have met the criteria of *Gingles* Prong III. Ex. C, Lichtman Dep. Tr. at 292:10-15. Dr. Lichtman is an expert, retained by Defendants to rebut the opinions of Plaintiffs experts not to decide legal or factual issues, that is for the Court to decide. *United States v. Caputo*, 517 F.3d 935, 942 (7th Cir. 2008) (*citing Bammerlin v.*

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<sup>10</sup> Dr. Lichtman elsewhere in his report argued that a district with 21.7% Latino CVAP was insufficiently homogeneous to provide accurate estimates because it had such a small Latino population. Dkt. 155-1 at 41-42.

*Navistar Int'l Transportation Corp.*, 30 F.3d 898, 900 (7th Cir. 1994)) (“The ... meaning of the statute and regulations [is] a subject for the court, not for testimonial experts.”); *see also*, *City of South Miami v. DeSantis*, 2020 WL 7074644, at \*13-14 (S.D. Fla. Dec. 3, 2020) “Dr. Lichtman's opinion on the legislature's discriminatory intent improperly invades the province of the trier of fact by opining on the ultimate legal question in this case.... As such, Defendants’ Daubert motion is granted in part. Dr. Lichtman will be precluded from offering any opinions at trial as to the ultimate issue of discriminatory legislative intent.”

### CONCLUSION

For the foregoing reasons, Plaintiffs respectfully ask the Court to exclude Dr. Allan J. Lichtman’s *Gingles* Prong III testimony.

Dated: December 6, 2021

/s/ Julie Bauer

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*Counsel for Plaintiffs Dan McConchie, in his official capacity as Minority Leader of the Illinois Senate and individually as a registered voter, Jim Durkin, in his official capacity as Minority Leader of the Illinois House of Representatives and individually as a registered voter, James Rivera, Anna De La Torre, Dolores Diaz, Felipe Luna Jr., Salvador Tremillo, Christopher Romero, the Republican Caucus of the Illinois Senate, and the Republican Caucus of the Illinois House of Representatives*

/s/ Ricardo Meza

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161 N. Clark Street, Suite 1600  
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*Counsel for Plaintiffs Dan McConchie, in his official capacity as Minority Leader of the Illinois Senate and individually as a registered voter, Jim Durkin, in his official capacity as Minority Leader of the Illinois House of Representatives and individually as a registered voter, James Rivera, Anna De La Torre, Dolores Diaz, Felipe Luna Jr., Salvador Tremillo, Christopher Romero, the Republican Caucus of the Illinois Senate, and the Republican Caucus of the Illinois House of Representatives*

/s/ Charles E. Harris, II

Charles E. Harris, II  
Mitchell D. Holzrichter  
Thomas V. Panoff  
Christopher S. Comstock  
Heather A. Weiner  
Christopher A. Knight  
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jblackhurst@mayerbrown.com

*Counsel for Plaintiffs Dan McConchie, in his official capacity as Minority Leader of the Illinois Senate and individually as a registered voter, Jim Durkin, in his official capacity as Minority Leader of the Illinois House of Representatives and individually as a registered voter, James Rivera, Anna De La Torre, Dolores Diaz, Felipe Luna Jr., Salvador Tremillo, Christopher Romero, the Republican Caucus of the Illinois Senate, and the Republican Caucus of the Illinois House of Representatives*

/s/ John G. Fogarty

John G. Fogarty  
Clark Hill PLC  
130 E. Randolph St., Suite 3900  
Chicago, Illinois 60601  
Tel: (312) 985-5900  
jfogarty@clarkhill.com

*Counsel for Plaintiff the Illinois Republican Party*



### **CERTIFICATE OF SERVICE**

I hereby certify that on December 6, 2021, a copy of the above Contreras and McConchie Plaintiffs' Joint Motion to Exclude Dr. Lichtman's *Gingles* Prong III Testimony was filed electronically in compliance with Local Rule 5.9. All other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing.

/s/ Francisco Fernandez del Castillo

*Attorney for Plaintiffs*

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# Exhibit A

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

JULIE CONTRERAS, IRVIN FUENTES,  
ABRAHAM MARTINEZ, IRENE PADILLA, and  
ROSE TORRES

Plaintiffs,

v.

ILLINOIS STATE BOARD OF ELECTIONS,  
CHARLES W. SCHOLZ, IAN K. LINNABARY,  
WILLIAM J. CADIGAN, LAURA K. DONAHUE,  
WILLIAM R. HAINE, WILLIAM M.  
MCGUFFAGE, KATHERINE S. O'BRIEN, and  
CASANDRA B. WATSON in their official  
capacities as members of the Illinois State Board of  
Elections, DON HARMON, in his official capacity  
as President of the Illinois Senate, and THE  
OFFICE OF THE PRESIDENT OF THE  
ILLINOIS SENATE, EMANUEL CHRISTOPHER  
WELCH, in his official capacity as Speaker of the  
Illinois House of Representatives, and the OFFICE  
OF THE SPEAKER OF THE ILLINOIS HOUSE  
OF REPRESENTATIVES,

Defendants.

Case No. 1:21-cv-3139

Circuit Judge Michael B.  
Brennan; Chief Judge Jon E.  
DeGuilio; Judge Robert M.  
Dow, Jr.

Three-Judge Panel  
Pursuant to 28 U.S.C. §  
2284(a)

**DECLARATION OF DENISE HULETT IN SUPPORT OF PLAINTIFFS' MOTION TO  
EXCLUDE CERTAIN PORTIONS OF DR. LICHTMAN'S EXPERT REPORT**

I, Denise Hulett, declare:

1. I am of counsel to the Mexican American Legal Defense and Educational Fund and represent Plaintiffs in the above-captioned matter. I submit this declaration in support of Plaintiffs' motion to exclude certain portions of Dr. Lichtman's expert report or, in the alternative, preclude Defendants' arguments based on undisclosed materials.

2. Contreras Plaintiffs filed their Proposed Alternative Remedial Plan and Statement in Support on November 10, 2021. Dkt. Nos. 135 through Dkt. 135-23.
3. On November 24, 2021 Legislative Defendants filed a response to Contreras Plaintiffs' Statements and Proposed Remedial Redistricting Plans [Dkt. 150], and attached the report of expert Dr. Allan J. Lichtman [Dkt. 150-1]. Later on November 24, 2021 Legislative Defendants filed a motion for leave to file a corrected responsive statement [Dkt. 151], and on November 28, 2021 the Court granted Legislative Defendants leave to file the corrected statement [Dkt. 154]. Legislative Defendants filed a corrected brief and corresponding exhibits on November 29, 2021. Dkt. 155-155-8.
4. Upon review of Dr. Lichtman's expert report, Contreras Plaintiffs' requested that all corresponding data and information that Dr. Lichtman relied on in the creation of his expert report per Rule 26 from Legislative Defendants. Ex. 1, Herrera email, Nov. 28, 2021.
5. On November 29, 2021 all counsel met to discuss the upcoming expert depositions. At the end of the meet and confer, Contreras Plaintiffs again, asked Legislative Defendants for any and all the information and data Dr. Lichtman relied on for the production of his expert report. Later that afternoon, Legislative Defendants sent two emails with a zip folder labeled "2021-11-29 Lichtman Production, and a file labeled "DemDefs-0002266-0002306." Ex. 2, Caldwell email, Nov. 29, 2021.
6. On December 1, 2021 the parties had a status conference before Magistrate Beth Jantz and Contreras Plaintiffs raised with Magistrate Jantz that we had requested the regression analysis from Legislative Defendants and the data had not been turned

over. (Ex. 8 Hr'g Tr., 33:21-34:13, Dec. 1, 2021.) McConchie Plaintiffs joined in the request to receive Dr. Lichtman's missing data. *Id.* at 34:14-17. Legislative Defendants presented to the Court that all the information relied on by Dr Lichtman had been in fact turned over to all the Plaintiffs. *Id.* at 34:20-35:5. The Court asked if there was something specific that was missing. *Id.* at 35:6-8. McConchie Plaintiffs further clarified the missing information were regression models, results, reliability measures and underlying data Dr. Lichtman ran as part of his analysis and final production of his expert reports submitted by Legislative Defendants on November 24, 2021. *Id.* at 35:9-36:4; 36:13-37:13. Without this underlying regression data Plaintiffs own experts cannot test Dr Lichtman's conclusions to verify the results - Plaintiffs must be able to test Dr. Lichtman's data on their own to ensure there are no errors or challenges to the analysis. Magistrate Jantz encouraged the parties to meet and confer, and work together to produce any missing information, and that she would be available at the parties' request. *Id.* at 38:11-39:17.

7. Later in the afternoon of December 1, 2021, I emailed Legislative Defendants, as well as all the parties' counsel, stating Dr. Lichtman's duty to disclose all the facts and data he relied on to produce the expert report filed by Legislative Defendants, requesting that Defendants submit the disclosures by noon the following day, and expressing that any failure to do so could be a breach of his duty to disclose. (Ex. 3, Hulett email, Dec. 1, 2021). The McConchie Plaintiffs' promptly responded that they joined in the request to receive the data. (Ex. 4, Panoff email, Dec. 1, 2021). I also stated that Contreras Plaintiffs were available to meet and confer during the scheduled noon to 2 pm break during the deposition of Dr. Jacob Grumbach on December 2.

2021. Ex. 3, Hulett email, Dec. 1, 2021).
8. In the morning of December 2, 2021 Legislative Defendants responded explaining the they had produced everything Dr. Lichtman had relied on to produce the report. Ex. 5 -Wier Vaught email, Dec. 2, 2021. Given the accelerated schedule, later that afternoon, during the break from Legislative Defendants deposing Contreras Plaintiffs' expert Dr. Jake Grumbach, I reached out to Legislative Defendants to meet and confer to further discuss Dr. Lichtman's missing data. Ex. 6, Hulett email, Dec. 2, 2021.
  9. In the evening on December 2, 2021, at 10:24 pm Central Time, counsel for Defendants Heather Wier Vaught responded saying that she was available to meet on the morning of December 3, 2021. Ex. 7, Wier Vaught email, Dec. 2, 2021.
  10. At 11:30 am Central Time on December 3, 2021, I joined my co-counsel Ernest Herrera in a meet and confer with Heather Wier Vaught, McConchie Plaintiffs' counsel Thomas Panoff, and NAACP Plaintiffs' counsel Jon Greenbaum. Ms. Wier Vaught stated that she had consulted with Dr. Lichtman about the requested data, and stated that such data did not exist. I reiterated that Dr. Lichtman had not produced his summary tables of Dr. Lichtman's estimated level of support for each candidate in each analyzed election. I asked if Dr. Lichtman did an ecological regression analysis of all of the elections that Dr. Chen and Dr. Grumbach ran, and Ms. Wier Vaught stated that they are in Dr. Lichtman's report. Mr. Panoff and I stated that they were not. Ms. Wier Vaught stated that she would check with Dr. Lichtman again.
  11. In the morning of December 4, 2021, Contreras and McConchie Plaintiffs met and conferred again with Defendants to further discuss the issue of Dr. Lichtman's

missing data. Defendants stated that the data, results and reliability tests Plaintiffs sought from Dr. Lichtman did not exist, and if Plaintiffs had specific questions about the data, results and reliability tests we should ask Dr. Lichtman in the deposition.

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 6, 2021, in Chicago, IL.

/s/ Denise Hulett  
Denise Hulett

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# Exhibit 1



## **Juan Vazquez**

---

**From:** Ernest Herrera  
**Sent:** Sunday, November 28, 2021 3:36 PM  
**To:** Elizabeth.Yandell@lw.com  
**Cc:** Sean.Berkowitz@lw.com; jgreenbaum@lawyerscommittee.org; heather@wiervaught.com; Francisco Fernandez-del Castillo; Juan Vazquez; jblackhurst@mayerbrown.com; jfogarty@clarkhill.com; Thomas A. Saenz; Griselda Vega Samuel; bja@lbgalaw.com; rmeza@meza.law; cknight@mayerbrown.com; ccomstock@mayerbrown.com; mholzrichter@mayerbrown.com; charris@mayerbrown.com; hweiner@mayerbrown.com; tpanoff@mayerbrown.com; cgibbons@cooley.com; NRGilbert@winston.com; ewright@cooley.com; mary.johnston@illinois.gov; JGN@LBGALAW.COM; jtucker@lawyerscommittee.org; daa@lbgalaw.com; zillinoisredistrictingexternal@cooley.com; achablani@clccrul.org; 'cgibbons@cooley.org; agandhi@clccrul.org; erosenberg@lawyerscommittee.org; chelm@clccrul.org; MKutcher@cooley.com; Colleen.Smith@lw.com; dbruce@powerrogers.com; mjkaspar60@mac.com; AVaught@hinshawlaw.com; pal@lbgalaw.com  
**Subject:** Re: Meet and Confer

Hi Libby:

I'm writing with deposition availability for Mr. Ely and Dr. Grumbach. I also write with a question regarding Dr. Lichtman's data.

Dr. Grumbach is available for remote deposition on the morning of December 2. However, he has a 1-hour conflict at 12 noon CT / 10 am PT. If he were able to resume his deposition on that day after a break, you could still complete his deposition that day.

Mr. Ely is available for remote deposition on the afternoon of Dec. 2 and the morning of Dec. 6. He is unavailable for deposition in the afternoon of Dec. 6 due to a hearing he has then. However, if you can take his deposition that morning, that may work better. You may also take his deposition after Dr. Grumbach's on Dec. 2.

Let us know which arrangement works for Mr. Ely and Dr. Grumbach so that we can let them know.

Please also provide us all data and information upon which Dr. Lichtman relied for his report, as required by Rule 26. Thank you.

**Ernest I. Herrera**  
**Staff Attorney**  
**Pronouns: he/him/his**  
**Mexican American Legal Defense and Educational Fund**  
**634 S. Spring Street - 11<sup>th</sup> Floor**  
**Los Angeles, CA 90014**  
**(213) 629-2512 Ext. 114**  
[www.maldef.org](http://www.maldef.org)  
[facebook.com/maldef](https://facebook.com/maldef)  
[twitter.com/maldef](https://twitter.com/maldef)

# Exhibit 2

**Juan Vazquez**

---

**From:** Sheridan.Caldwell@lw.com  
**Sent:** Monday, November 29, 2021 6:03 PM  
**To:** Francisco Fernandez-del Castillo; Ernest Herrera; Thomas A. Saenz; Griselda Vega Samuel; bja@lbgallaw.com; pal@lbgallaw.com; jgn@lbgallaw.com; Ccomstock@mayerbrown.com; mholzrichter@mayerbrown.com; CHarris@mayerbrown.com; rmeza@meza.law; achablani@clccrul.org; agandhi@clccrul.org; chelm@clccrul.org; jgreenbaum@lawyerscommittee.org; erosenberg@lawyerscommittee.org; jtucker@lawyerscommittee.org; rsnow@lawyerscommittee.org; jdrayton@cooley.com; mkutcher@cooley.com; ewright@cooley.com; zillinoisredistrictingexternal@cooley.com; tpanoff@mayerbrown.com; jfogarty@clarkhill.com  
**Cc:** dbruce@powerrogers.com; sdalton@powerrogers.com; AVaught@hinshawlaw.com; cohagan@hinshawlaw.com; mjkaspar60@mac.com; heather@wiervaght.com; Sean.Berkowitz@lw.com; Colleen.Smith@lw.com; Elizabeth.Yandell@lw.com; mary.johnston@illinois.gov; JUDY.NGUYEN@LW.com; Natalie.Heim@lw.com; Miri.Gold@lw.com  
**Subject:** Contreras / McConchie / UCCRO NAACP production of additional Lichtman materials  
**Attachments:** 2021-11-29 Lichtman Production.zip

Counsel,

Following the parties' meet and confer earlier today, we are producing additional materials relied upon by Dr. Lichtman for his report. As we explained, everything else he relied on has been previously produced, identified, or is identified in footnotes in his report.

We are still waiting for confirmation from Dr. Lichtman regarding the underlying regression data you requested.

Best,

Sheridan Caldwell

**LATHAM & WATKINS LLP**  
505 Montgomery Street  
Suite 2000  
San Francisco, CA 94111-6538  
Direct Dial: +1.415.391.0600  
Email: [sheridan.caldwell@lw.com](mailto:sheridan.caldwell@lw.com)  
<https://www.lw.com>

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## Juan Vazquez

---

**From:** Griselda Vega Samuel  
**Sent:** Thursday, December 02, 2021 4:54 PM  
**To:** Juan Vazquez  
**Subject:** FW: Contreras / McConchie / UCCRO NAACP production of additional Lichtman materials  
**Attachments:** DemDefs-0002266-0002306.pdf

---

**From:** Sheridan.Caldwell@lw.com [mailto:Sheridan.Caldwell@lw.com]  
**Sent:** Monday, November 29, 2021 7:32 PM  
**To:** Francisco Fernandez-del Castillo <FFernandez-delCastillo@MALDEF.org>; Ernest Herrera <eherrera@MALDEF.org>; Thomas A. Saenz <tsaenz@MALDEF.org>; Griselda Vega Samuel <Gvegasamuel@MALDEF.org>; bja@lbgalaw.com; pal@lbgalaw.com; jgn@lbgalaw.com; Ccomstock@mayerbrown.com; mholzrichter@mayerbrown.com; CHarris@mayerbrown.com; rmeza@meza.law; achablani@clccrul.org; agandhi@clccrul.org; chelm@clccrul.org; jgreenbaum@lawyerscommittee.org; erosenberg@lawyerscommittee.org; jtucker@lawyerscommittee.org; rsnow@lawyerscommittee.org; jdrayton@cooley.com; mkutcher@cooley.com; ewright@cooley.com; zillinoisredistrictingexternal@cooley.com; tpanoff@mayerbrown.com; jfogarty@clarkhill.com  
**Cc:** dbruce@powerrogers.com; sdalton@powerrogers.com; AVaught@hinshawlaw.com; cohagan@hinshawlaw.com; mjkasper60@mac.com; heather@wiervought.com; Sean.Berkowitz@lw.com; Colleen.Smith@lw.com; Elizabeth.Yandell@lw.com; mary.johnston@illinois.gov; JUDY.NGUYEN@LW.com; Natalie.Heim@lw.com; Miri.Gold@lw.com  
**Subject:** RE: Contreras / McConchie / UCCRO NAACP production of additional Lichtman materials

All – please find one more document attached, which was inadvertently left out of the folder sent earlier today. Apologies for any inconvenience.

Best,  
Sheridan

---

**From:** Caldwell, Sheridan (Bay Area)  
**Sent:** Monday, November 29, 2021 4:03 PM  
**To:** 'ffernandez-delcastillo@maldef.org' <[ffernandez-delcastillo@maldef.org](mailto:ffernandez-delcastillo@maldef.org)>; 'Ernest Herrera' <[eherrera@MALDEF.org](mailto:eherrera@MALDEF.org)>; 'tsaenz@maldef.org' <[tsaenz@maldef.org](mailto:tsaenz@maldef.org)>; 'gvegasamuel@maldef.org' <[gvegasamuel@maldef.org](mailto:gvegasamuel@maldef.org)>; 'bja@lbgalaw.com' <[bja@lbgalaw.com](mailto:bja@lbgalaw.com)>; 'pal@lbgalaw.com' <[pal@lbgalaw.com](mailto:pal@lbgalaw.com)>; 'jgn@lbgalaw.com' <[jgn@lbgalaw.com](mailto:jgn@lbgalaw.com)>; 'Ccomstock@mayerbrown.com' <[Ccomstock@mayerbrown.com](mailto:Ccomstock@mayerbrown.com)>; 'mholzrichter@mayerbrown.com' <[mholzrichter@mayerbrown.com](mailto:mholzrichter@mayerbrown.com)>; 'CHarris@mayerbrown.com' <[CHarris@mayerbrown.com](mailto:CHarris@mayerbrown.com)>; 'rmeza@meza.law' <[rmeza@meza.law](mailto:rmeza@meza.law)>; 'achablani@clccrul.org' <[achablani@clccrul.org](mailto:achablani@clccrul.org)>; 'agandhi@clccrul.org' <[agandhi@clccrul.org](mailto:agandhi@clccrul.org)>; 'chelm@clccrul.org' <[chelm@clccrul.org](mailto:chelm@clccrul.org)>; 'jgreenbaum@lawyerscommittee.org' <[jgreenbaum@lawyerscommittee.org](mailto:jgreenbaum@lawyerscommittee.org)>; 'erosenberg@lawyerscommittee.org' <[erosenberg@lawyerscommittee.org](mailto:erosenberg@lawyerscommittee.org)>; 'jtucker@lawyerscommittee.org' <[jtucker@lawyerscommittee.org](mailto:jtucker@lawyerscommittee.org)>; 'rsnow@lawyerscommittee.org' <[rsnow@lawyerscommittee.org](mailto:rsnow@lawyerscommittee.org)>; 'jdrayton@cooley.com' <[jdrayton@cooley.com](mailto:jdrayton@cooley.com)>; 'mkutcher@cooley.com' <[mkutcher@cooley.com](mailto:mkutcher@cooley.com)>; 'ewright@cooley.com' <[ewright@cooley.com](mailto:ewright@cooley.com)>; 'zillinoisredistrictingexternal@cooley.com' <[zillinoisredistrictingexternal@cooley.com](mailto:zillinoisredistrictingexternal@cooley.com)>; 'tpanoff@mayerbrown.com' <[tpanoff@mayerbrown.com](mailto:tpanoff@mayerbrown.com)>; 'jfogarty@clarkhill.com' <[jfogarty@clarkhill.com](mailto:jfogarty@clarkhill.com)>  
**Cc:** 'dbruce@powerrogers.com' <[dbruce@powerrogers.com](mailto:dbruce@powerrogers.com)>; 'sdalton@powerrogers.com' <[sdalton@powerrogers.com](mailto:sdalton@powerrogers.com)>; 'Vaught, Adam R.' <[AVaught@hinshawlaw.com](mailto:AVaught@hinshawlaw.com)>; 'cohagan@hinshawlaw.com' <[cohagan@hinshawlaw.com](mailto:cohagan@hinshawlaw.com)>; 'mjkasper60@mac.com' <[mjkasper60@mac.com](mailto:mjkasper60@mac.com)>; 'Heather Wier Vaught'

<[heather@wiervought.com](mailto:heather@wiervought.com)>; Berkowitz, Sean (CH) <[Sean.Berkowitz@lw.com](mailto:Sean.Berkowitz@lw.com)>; Smith, Colleen (SD) <[Colleen.Smith@lw.com](mailto:Colleen.Smith@lw.com)>; Yandell, Elizabeth (Bay Area) <[Elizabeth.Yandell@lw.com](mailto:Elizabeth.Yandell@lw.com)>; 'mary.johnston@illinois.gov' <[mary.johnston@illinois.gov](mailto:mary.johnston@illinois.gov)>; Nguyen, Judy (SV) <[JUDY.NGUYEN@LW.com](mailto:JUDY.NGUYEN@LW.com)>; Heim, Natalie (Bay Area) <[Natalie.Heim@lw.com](mailto:Natalie.Heim@lw.com)>; Gold, Miri (CC) <[Miri.Gold@lw.com](mailto:Miri.Gold@lw.com)>

**Subject:** Contreras / McConchie / UCCRO NAACP production of additional Lichtman materials

Counsel,

Following the parties' meet and confer earlier today, we are producing additional materials relied upon by Dr. Lichtman for his report. As we explained, everything else he relied on has been previously produced, identified, or is identified in footnotes in his report.

We are still waiting for confirmation from Dr. Lichtman regarding the underlying regression data you requested.

Best,

Sheridan Caldwell

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Direct Dial: +1.415.391.0600

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<https://www.lw.com>

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# Exhibit 3

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**Juan Vazquez**

---

**From:** Denise Hulett  
**Sent:** Wednesday, December 01, 2021 5:40 PM  
**To:** sean.berkowitz@lw.com; heather@wiervaught.com  
**Cc:** vblopez@dlglawgroup.com; agandhi@clccrul.org; chelm@clccrul.org; jgreenbaum@lawyerscommittee.org; jdrayton@cooley.com; MKutcher@cooley.com; ewright@cooley.com; achablani@clccrul.org; jtucker@lawyerscommittee.org; zillinoisredistrictingexternal@cooley.com; rsnow@lawyerscommittee.org; erosenberg@lawyerscommittee.org; charris@mayerbrown.com; ccomstock@mayerbrown.com; mholzrichter@mayerbrown.com; pal@lbgalaw.com; tpanoff@mayerbrown.com; bja@lbgalaw.com; jgn@lbgalaw.com; rmeza@meza.law; daa@lbgalaw.com; jblackhurst@mayerbrown.com; cknight@mayerbrown.com; hweiner@mayerbrown.com; mary.johnston@ilag.gov; jfogarty@clarkhill.com; avaught@hinshawlaw.com; colleen.smith@lw.com; dbruce@prslaw.com; elizabeth.yandell@lw.com; mjkasper60@mac.com; sean.berkowitz@lw.com; heather@wiervaught.com; JBauer@winston.com; NRGilbert@winston.com; Griselda Vega Samuel; Francisco Fernandez-del Castillo; Ernest Herrera; Denise Hulett; Thomas A. Saenz; Leticia Saucedo; Juan Vazquez; cgibbons@cooley.com  
**Subject:** Rule 26 disclosures - Dr. Lichtman

Counsel,

Dr. Lichtman had a duty under Rule 26 to disclose with his reports the facts and data he relied on in reaching his opinions. With regard to his prong three analysis, Plaintiffs are entitled to information regarding the results of his ecological regression analysis, how he processed the electoral data in order to conduct the analysis, what model(s) he used, and his output for his analysis. In other words, he failed to produce not only the results, but a complete replication set and key measures of reliability, including correlation coefficients. Breach of this duty to disclose could subject his prong three opinions to a motion to strike as unreliable expert testimony under *Daubert v. Merrill Dow Pharms., Inc*, 509 U.S. 579 (1993). Please produce the materials by noon tomorrow.

We are available to meet and confer about this issue during the break in Dr. Grumbach's deposition tomorrow.  
Thank you,  
Denise Hulett



# Exhibit 4

## Juan Vazquez

---

**From:** Panoff, Thomas <TPanoff@mayerbrown.com>  
**Sent:** Wednesday, December 01, 2021 5:57 PM  
**To:** Denise Hulett; sean.berkowitz@lw.com; heather@wiervaught.com  
**Cc:** vblopez@dlglawgroup.com; agandhi@clccrul.org; chelm@clccrul.org; jgreenbaum@lawyerscommittee.org; jdrayton@cooley.com; MKutcher@cooley.com; ewright@cooley.com; achablani@clccrul.org; jtucker@lawyerscommittee.org; zillinoisredistrictingexternal@cooley.com; rsnow@lawyerscommittee.org; erosenberg@lawyerscommittee.org; Harris II, Charles E.; Comstock, Christopher; Holzrichter, Mitchell D.; pal@lbgalaw.com; bja@lbgalaw.com; jgn@lbgalaw.com; rmeza@meza.law; daa@lbgalaw.com; Blackhurst, Joseph D.; Knight, Christopher A.; Weiner, Heather A.; mary.johnston@ilag.gov; jfogarty@clarkhill.com; avought@hinshawlaw.com; colleen.smith@lw.com; dbruce@prslaw.com; elizabeth.yandell@lw.com; mjkasper60@mac.com; sean.berkowitz@lw.com; heather@wiervaught.com; JBauer@winston.com; NRGilbert@winston.com; Griselda Vega Samuel; Francisco Fernandez-del Castillo; Ernest Herrera; Thomas A. Saenz; Leticia Saucedo; Juan Vazquez; cgibbons@cooley.com  
**Subject:** RE: Rule 26 disclosures - Dr. Lichtman

The McConchie plaintiffs join in this request, as we noted during the status hearing this afternoon. In addition to the items Denise notes below, we also specifically request the code utilized by Dr. Lichtman to analyze the Cooperative Election Study Data in response to Dr. Fowler's report.

Tom

---

### Thomas V. Panoff

*Partner*

Mayer Brown LLP

71 South Wacker Drive

Chicago, Illinois 60606 United States of America

T +1 312 701 8821

[mayerbrown.com](http://mayerbrown.com)

---

**From:** Denise Hulett <dhulett@MALDEF.org>  
**Sent:** Wednesday, December 1, 2021 5:40 PM  
**To:** sean.berkowitz@lw.com; heather@wiervaught.com  
**Cc:** vblopez@dlglawgroup.com; agandhi@clccrul.org; chelm@clccrul.org; jgreenbaum@lawyerscommittee.org; jdrayton@cooley.com; MKutcher@cooley.com; ewright@cooley.com; achablani@clccrul.org; jtucker@lawyerscommittee.org; zillinoisredistrictingexternal@cooley.com; rsnow@lawyerscommittee.org; erosenberg@lawyerscommittee.org; Harris II, Charles E. <CHarris@mayerbrown.com>; Comstock, Christopher <CComstock@mayerbrown.com>; Holzrichter, Mitchell D. <MHolzrichter@mayerbrown.com>; pal@lbgalaw.com; Panoff, Thomas <TPanoff@mayerbrown.com>; bja@lbgalaw.com; jgn@lbgalaw.com; rmeza@meza.law; daa@lbgalaw.com; Blackhurst, Joseph D. <JBlackhurst@mayerbrown.com>; Knight, Christopher A. <CKnight@mayerbrown.com>; Weiner, Heather A. <HWeiner@mayerbrown.com>; mary.johnston@ilag.gov; jfogarty@clarkhill.com; avought@hinshawlaw.com; colleen.smith@lw.com; dbruce@prslaw.com; elizabeth.yandell@lw.com; mjkasper60@mac.com; sean.berkowitz@lw.com; heather@wiervaught.com; JBauer@winston.com; NRGilbert@winston.com; Griselda Vega Samuel <Gvegasamuel@MALDEF.org>; Francisco Fernandez-del Castillo <FFernandez-delCastillo@MALDEF.org>; Ernest Herrera <eherrera@MALDEF.org>; Denise Hulett <dhulett@MALDEF.org>; Thomas A. Saenz <tsaenz@MALDEF.org>; Leticia Saucedo <LSaucedo@MALDEF.org>; Juan

Vazquez <jvazquez@MALDEF.org>; cgibbons@cooley.com

**Subject:** Rule 26 disclosures - Dr. Lichtman

**\*\*EXTERNAL SENDER\*\***

Counsel,

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Thank you,  
Denise Hulett

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# Exhibit 5

## Juan Vazquez

---

**From:** Heather Wier Vaught <heather@wiervaught.com>  
**Sent:** Thursday, December 02, 2021 9:45 AM  
**To:** Panoff, Thomas; Denise Hulett  
**Cc:** vblopez@dlglawgroup.com; agandhi@clccrul.org; chelm@clccrul.org; jgreenbaum@lawyerscommittee.org; jdrayton@cooley.com; MKutcher@cooley.com; ewright@cooley.com; achablani@clccrul.org; jtucker@lawyerscommittee.org; zillinoisredistrictingexternal@cooley.com; rsnow@lawyerscommittee.org; erosenberg@lawyerscommittee.org; Harris II, Charles E.; Comstock, Christopher; Holzrichter, Mitchell D.; pal@lbgalaw.com; bja@lbgalaw.com; jgn@lbgalaw.com; rmeza@meza.law; daa@lbgalaw.com; Blackhurst, Joseph D.; Knight, Christopher A.; Weiner, Heather A.; mary.johnston@ilag.gov; jfogarty@clarkhill.com; colleen.smith@lw.com; dbruce@prslaw.com; elizabeth.yandell@lw.com; mjkasper60@mac.com; sean.berkowitz@lw.com; JBauer@winston.com; NRGilbert@winston.com; Griselda Vega Samuel; Francisco Fernandez-del Castillo; Ernest Herrera; Thomas A. Saenz; Leticia Saucedo; Juan Vazquez; cgibbons@cooley.com; avought@kilbridevaught.com; sean.berkowitz@lw.com; Sheridan.Caldwell@lw.com  
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We repeat and elaborate on what we have said below, in an attempt to avoid any further confusion:

The ecological regression methodology and the procedure used are detailed in Dr. Lichtman's report on pages 42, 43-48. These pages also compare ecological regression with ecological inference. Ecological regression is a standard method that has been used by social sciences for decades, far longer than ecological inference. It was the methodology used by Professor Bernard Grofman, plaintiffs' expert in *Thornburg v. Gingles*. Dr. Lichtman's ecological regression results have been accepted by the US Supreme Court in *Lulac v. Perry* (2006) and by Illinois courts for at least the past two decades. There is no mystery about the method. Dr. Lichtman used the standard software package, Statistical Package for Social Science (SPSS), that has been used in scores of other cases; however, the ecological regression results could readily be replicated with any of the many software packages available.

Dr Lichtman used ecological regression to verify the results of ecological inference as reported by Dr. Grumbach and Dr. Chen. As you know, he did not develop or perform his own model for this report. Your email specifically mentioned "his results." Dr. Lichtman's ecological regression results are reported in pages 46, 47, and 66. The plaintiffs have the data used for this analysis. Notably, none of the plaintiffs' experts rebuttal reports challenge a single ecological regression estimate and in fact made corrections or dropped erroneous results based on Dr. Lichtman's analysis.

Also notable is that none your experts reported or provided the type of tables or back up data that you assume exists for Dr. Lichtman. When no such data was provided, we assumed it did not exist. It goes without saying that if such tables or data exist we expect any data or reports underlying your experts' regressions to be produced immediately.

Again, all documents related to Dr. Lichtman's analysis of your experts' reports have been produced. You are requesting documents that do not exist, and would not exist as part of the methodology used by Dr. Lichtman. Though Dr. Lichtman's report also addresses the "how" if you are interested in understanding in more depth, that's more suited for a deposition and you'll have plenty of time to inquire as to the methodology and process during Dr. Lichtman's deposition on Saturday and Sunday.

Thanks,

Heather

**Heather Wier Vaught**  
815.762.2629

**Heather Wier Vaught, P.C.**

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**From:** "Panoff, Thomas" <TPanoff@mayerbrown.com>  
**Date:** Wednesday, December 1, 2021 at 5:57 PM  
**To:** Denise Hulett <dhulett@MALDEF.org>, "sean.berkowitz@lw.com" <sean.berkowitz@lw.com>, "heather@wiervaught.com" <heather@wiervaught.com>  
**Cc:** "vblopez@dlglawgroup.com" <vblopez@dlglawgroup.com>, "agandhi@clccrul.org" <agandhi@clccrul.org>, "chelm@clccrul.org" <chelm@clccrul.org>, "jgreenbaum@lawyerscommittee.org" <jgreenbaum@lawyerscommittee.org>, "jdrayton@cooley.com" <jdrayton@cooley.com>, "MKutcher@cooley.com" <MKutcher@cooley.com>, "ewright@cooley.com" <ewright@cooley.com>, "achablani@clccrul.org" <achablani@clccrul.org>, "jtucker@lawyerscommittee.org" <jtucker@lawyerscommittee.org>, "zillinoisredistrictingexternal@cooley.com" <zillinoisredistrictingexternal@cooley.com>, "rsnow@lawyerscommittee.org" <rsnow@lawyerscommittee.org>, "erosenberg@lawyerscommittee.org" <erosenberg@lawyerscommittee.org>, "Harris II, Charles E." <CHarris@mayerbrown.com>, "Comstock, Christopher" <CComstock@mayerbrown.com>, "Holzrichter, Mitchell D." <MHolzrichter@mayerbrown.com>, "pal@lbgalaw.com" <pal@lbgalaw.com>, "bja@lbgalaw.com" <bja@lbgalaw.com>, "jgn@lbgalaw.com" <jgn@lbgalaw.com>, "rmeza@meza.law" <rmeza@meza.law>, "daa@lbgalaw.com" <daa@lbgalaw.com>, "Blackhurst, Joseph D." <JBlackhurst@mayerbrown.com>, "Knight, Christopher A." <CKnight@mayerbrown.com>, "Weiner, Heather A." <HWeiner@mayerbrown.com>, "mary.johnston@ilag.gov" <mary.johnston@ilag.gov>, "jfogarty@clarkhill.com" <jfogarty@clarkhill.com>, "avaught@hinshawlaw.com" <avaught@hinshawlaw.com>, "colleen.smith@lw.com" <colleen.smith@lw.com>, "dbruce@prslaw.com" <dbruce@prslaw.com>, "elizabeth.yandell@lw.com" <elizabeth.yandell@lw.com>, "mjkasper60@mac.com" <mjkasper60@mac.com>, "sean.berkowitz@lw.com" <sean.berkowitz@lw.com>, "heather@wiervaught.com" <heather@wiervaught.com>, "JBauer@winston.com" <JBauer@winston.com>, "NRGilbert@winston.com" <NRGilbert@winston.com>, Griselda Vega Samuel <Gvegasamuel@MALDEF.org>, Francisco Fernandez-del Castillo <FFernandez-delCastillo@MALDEF.org>, Ernest Herrera <eherrera@MALDEF.org>, "Thomas A. Saenz" <tsaenz@MALDEF.org>, Leticia Saucedo <LSaucedo@MALDEF.org>, Juan Vazquez <jvazquez@MALDEF.org>,"

"cgibbons@cooley.com" <cgibbons@cooley.com>

**Subject:** RE: Rule 26 disclosures - Dr. Lichtman

The McConchie plaintiffs join in this request, as we noted during the status hearing this afternoon. In addition to the items Denise notes below, we also specifically request the code utilized by Dr. Lichtman to analyze the Cooperative Election Study Data in response to Dr. Fowler's report.

Tom

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**Thomas V. Panoff**

*Partner*

Mayer Brown LLP

71 South Wacker Drive

Chicago, Illinois 60606 United States of America

T +1 312 701 8821

[mayerbrown.com](http://mayerbrown.com)

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**From:** Denise Hulett <dhulett@MALDEF.org>

**Sent:** Wednesday, December 1, 2021 5:40 PM

**To:** sean.berkowitz@lw.com; heather@wiervaught.com

**Cc:** vblopez@dlglawgroup.com; agandhi@clccrul.org; chelm@clccrul.org; jgreenbaum@lawyerscommittee.org; jdrayton@cooley.com; MKutcher@cooley.com; ewright@cooley.com; achablani@clccrul.org; jtucker@lawyerscommittee.org; zillinoisredistrictingexternal@cooley.com; rsnow@lawyerscommittee.org; erosenberg@lawyerscommittee.org; Harris II, Charles E. <CHarris@mayerbrown.com>; Comstock, Christopher <CComstock@mayerbrown.com>; Holzrichter, Mitchell D. <MHolzrichter@mayerbrown.com>; pal@lbgalaw.com; Panoff, Thomas <TPanoff@mayerbrown.com>; bja@lbgalaw.com; jgn@lbgalaw.com; rmeza@meza.law; daa@lbgalaw.com; Blackhurst, Joseph D. <JBlackhurst@mayerbrown.com>; Knight, Christopher A. <CKnight@mayerbrown.com>; Weiner, Heather A. <HWeiner@mayerbrown.com>; mary.johnston@ilag.gov; jfogarty@clarkhill.com; avought@hinshawlaw.com; colleen.smith@lw.com; dbruce@prslaw.com; elizabeth.yandell@lw.com; mjkaspar60@mac.com; sean.berkowitz@lw.com; heather@wiervaught.com; JBauer@winston.com; NRGilbert@winston.com; Griselda Vega Samuel <Gvegasamuel@MALDEF.org>; Francisco Fernandez-del Castillo <FFernandez-delCastillo@MALDEF.org>; Ernest Herrera <eherrera@MALDEF.org>; Denise Hulett <dhulett@MALDEF.org>; Thomas A. Saenz <tsaenz@MALDEF.org>; Leticia Saucedo <LSaucedo@MALDEF.org>; Juan Vazquez <jvazquez@MALDEF.org>; cgibbons@cooley.com

**Subject:** Rule 26 disclosures - Dr. Lichtman

**\*\*EXTERNAL SENDER\*\***

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We are available to meet and confer about this issue during the break in Dr. Grumbach's deposition tomorrow.

Thank you,

Denise Hulett

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# Exhibit 6

## Juan Vazquez

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**Sent:** Thursday, December 02, 2021 12:29 PM  
**To:** Heather Wier Vaught; Panoff, Thomas  
**Cc:** vblopez@dlglawgroup.com; agandhi@clccrul.org; chelm@clccrul.org; jgreenbaum@lawyerscommittee.org; jdrayton@cooley.com; MKutcher@cooley.com; ewright@cooley.com; achablani@clccrul.org; jtucker@lawyerscommittee.org; zillinoisredistrictingexternal@cooley.com; rsnow@lawyerscommittee.org; erosenberg@lawyerscommittee.org; Harris II, Charles E.; Comstock, Christopher; Holzrichter, Mitchell D.; pal@lbgalaw.com; bja@lbgalaw.com; jgn@lbgalaw.com; rmeza@meza.law; daa@lbgalaw.com; Blackhurst, Joseph D.; Knight, Christopher A.; Weiner, Heather A.; mary.johnston@ilag.gov; jfogarty@clarkhill.com; colleen.smith@lw.com; dbruce@prslaw.com; elizabeth.yandell@lw.com; mjkasper60@mac.com; sean.berkowitz@lw.com; JBauer@winston.com; NRGilbert@winston.com; Griselda Vega Samuel; Francisco Fernandez-del Castillo; Ernest Herrera; Thomas A. Saenz; Leticia Saucedo; Juan Vazquez; cgibbons@cooley.com; avought@kilbridevaught.com; sean.berkowitz@lw.com; Sheridan.Caldwell@lw.com  
**Subject:** Re: Rule 26 disclosures - Dr. Lichtman

We are available during the break in Dr. Grumbach's deposition (now) to meet and confer on this issue.

---

**From:** Heather Wier Vaught <heather@wiervaught.com>  
**Sent:** Thursday, December 2, 2021 7:44 AM  
**To:** Panoff, Thomas; Denise Hulett  
**Cc:** vblopez@dlglawgroup.com; agandhi@clccrul.org; chelm@clccrul.org; jgreenbaum@lawyerscommittee.org; jdrayton@cooley.com; MKutcher@cooley.com; ewright@cooley.com; achablani@clccrul.org; jtucker@lawyerscommittee.org; zillinoisredistrictingexternal@cooley.com; rsnow@lawyerscommittee.org; erosenberg@lawyerscommittee.org; Harris II, Charles E.; Comstock, Christopher; Holzrichter, Mitchell D.; pal@lbgalaw.com; bja@lbgalaw.com; jgn@lbgalaw.com; rmeza@meza.law; daa@lbgalaw.com; Blackhurst, Joseph D.; Knight, Christopher A.; Weiner, Heather A.; mary.johnston@ilag.gov; jfogarty@clarkhill.com; colleen.smith@lw.com; dbruce@prslaw.com; elizabeth.yandell@lw.com; mjkasper60@mac.com; sean.berkowitz@lw.com; JBauer@winston.com; NRGilbert@winston.com; Griselda Vega Samuel; Francisco Fernandez-del Castillo; Ernest Herrera; Thomas A. Saenz; Leticia Saucedo; Juan Vazquez; cgibbons@cooley.com; avought@kilbridevaught.com; sean.berkowitz@lw.com; Sheridan.Caldwell@lw.com  
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815.762.2629

**Heather Wier Vaught, P.C.**

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**To:** Denise Hulett <dhulett@MALDEF.org>, "sean.berkowitz@lw.com" <sean.berkowitz@lw.com>, "heather@wiervought.com" <heather@wiervought.com>

**Cc:** "vblopez@dlglawgroup.com" <vblopez@dlglawgroup.com>, "agandhi@clccrul.org" <agandhi@clccrul.org>, "chelm@clccrul.org" <chelm@clccrul.org>, "jgreenbaum@lawyerscommittee.org" <jgreenbaum@lawyerscommittee.org>, "jdrayton@cooley.com" <jdrayton@cooley.com>, "MKutcher@cooley.com" <MKutcher@cooley.com>, "ewright@cooley.com" <ewright@cooley.com>, "achablani@clccrul.org" <achablani@clccrul.org>, "jtucker@lawyerscommittee.org" <jtucker@lawyerscommittee.org>, "zillinoisredistrictingexternal@cooley.com" <zillinoisredistrictingexternal@cooley.com>, "rsnow@lawyerscommittee.org" <rsnow@lawyerscommittee.org>, "erosenberg@lawyerscommittee.org" <erosenberg@lawyerscommittee.org>, "Harris II, Charles E." <CHarris@mayerbrown.com>, "Comstock,

Christopher" <CComstock@mayerbrown.com>, "Holzrichter, Mitchell D." <MHolzrichter@mayerbrown.com>, "pal@lbgalaw.com" <pal@lbgalaw.com>, "bj@lbgalaw.com" <bj@lbgalaw.com>, "jgn@lbgalaw.com" <jgn@lbgalaw.com>, "rmeza@meza.law" <rmeza@meza.law>, "daa@lbgalaw.com" <daa@lbgalaw.com>, "Blackhurst, Joseph D." <JBlackhurst@mayerbrown.com>, "Knight, Christopher A." <CKnight@mayerbrown.com>, "Weiner, Heather A." <HWeiner@mayerbrown.com>, "mary.johnston@ilag.gov" <mary.johnston@ilag.gov>, "jfogarty@clarkhill.com" <jfogarty@clarkhill.com>, "avaught@hinshawlaw.com" <avaught@hinshawlaw.com>, "colleen.smith@lw.com" <colleen.smith@lw.com>, "dbruce@prslaw.com" <dbruce@prslaw.com>, "elizabeth.yandell@lw.com" <elizabeth.yandell@lw.com>, "mjkasper60@mac.com" <mjkasper60@mac.com>, "sean.berkowitz@lw.com" <sean.berkowitz@lw.com>, "heather@wiervaught.com" <heather@wiervaught.com>, "JBauer@winston.com" <JBauer@winston.com>, "NRGilbert@winston.com" <NRGilbert@winston.com>, Griselda Vega Samuel <Gvegasamuel@MALDEF.org>, Francisco Fernandez-del Castillo <FFernandez-delCastillo@MALDEF.org>, Ernest Herrera <eherrera@MALDEF.org>, "Thomas A. Saenz" <tsaenz@MALDEF.org>, Leticia Saucedo <LSaucedo@MALDEF.org>, Juan Vazquez <jvazquez@MALDEF.org>, "cgibbons@cooley.com" <cgibbons@cooley.com>

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*Partner*

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jtucker@lawyerscommittee.org; zillinoisredistrictingexternal@cooley.com; rsnow@lawyerscommittee.org;

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# Exhibit 7

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## Juan Vazquez

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**Sent:** Thursday, December 02, 2021 10:25 PM  
**To:** Denise Hulett  
**Cc:** Panoff, Thomas; vblopez@dlglawgroup.com; agandhi@clccrul.org; chelm@clccrul.org; jgreenbaum@lawyerscommittee.org; jdrayton@cooley.com; mkutcher@cooley.com; ewright@cooley.com; achablani@clccrul.org; jtucker@lawyerscommittee.org; zillinoisredistrictingexternal@cooley.com; rsnow@lawyerscommittee.org; erosenberg@lawyerscommittee.org; Harris II, Charles E.; Comstock, Christopher; Holzrichter, Mitchell D.; pal@lbgalaw.com; bja@lbgalaw.com; JGN@lbgalaw.com; rmeza@meza.law; daa@lbgalaw.com; Blackhurst, Joseph D.; Knight, Christopher A.; Weiner, Heather A.; mary.johnston@ilag.gov; jfogarty@clarkhill.com; Colleen.Smith@lw.com; dbruce@prslaw.com; Elizabeth.Yandell@lw.com; mjkasper60@mac.com; sean.berkowitz@lw.com; jbauer@winston.com; nrgilbert@winston.com; Griselda Vega Samuel; Francisco Fernandez-del Castillo; Ernest Herrera; Thomas A. Saenz; Leticia Saucedo; Juan Vazquez; cgibbons@cooley.com; avought@kilbridevaught.com; Sheridan.Caldwell@lw.com  
**Subject:** Re: Rule 26 disclosures - Dr. Lichtman

Apologies, I am just seeing this.

Happy to meet and confer on this in the morning or at a convenient time tomorrow.

On Dec 2, 2021, at 12:30 PM, Denise Hulett <dhulett@maldef.org> wrote:

We are available during the break in Dr. Grumbach's deposition (now) to meet and confer on this issue.

---

**From:** Heather Wier Vaught <heather@wiervaught.com>  
**Sent:** Thursday, December 2, 2021 7:44 AM  
**To:** Panoff, Thomas; Denise Hulett  
**Cc:** vblopez@dlglawgroup.com; agandhi@clccrul.org; chelm@clccrul.org; jgreenbaum@lawyerscommittee.org; jdrayton@cooley.com; MKutcher@cooley.com; ewright@cooley.com; achablani@clccrul.org; jtucker@lawyerscommittee.org; zillinoisredistrictingexternal@cooley.com; rsnow@lawyerscommittee.org; erosenberg@lawyerscommittee.org; Harris II, Charles E.; Comstock, Christopher; Holzrichter, Mitchell D.; pal@lbgalaw.com; bja@lbgalaw.com; jgn@lbgalaw.com; rmeza@meza.law; daa@lbgalaw.com; Blackhurst, Joseph D.; Knight, Christopher A.; Weiner, Heather A.; mary.johnston@ilag.gov; jfogarty@clarkhill.com; colleen.smith@lw.com; dbruce@prslaw.com; elizabeth.yandell@lw.com; mjkasper60@mac.com; sean.berkowitz@lw.com; JBauer@winston.com; NRGilbert@winston.com; Griselda Vega Samuel; Francisco Fernandez-del Castillo; Ernest Herrera; Thomas A. Saenz; Leticia Saucedo; Juan Vazquez; cgibbons@cooley.com; avought@kilbridevaught.com; sean.berkowitz@lw.com;

Sheridan.Caldwell@lw.com

**Subject:** Re: Rule 26 disclosures - Dr. Lichtman

Counsel:

We are aware of Dr. Lichtman's duty, as well as our obligation, to provide Plaintiffs with the information relied up and used in his report. As we have stated on at least three separate occasions (during at least one meet and confer, in an email, and during today's status with Judge Jantz), the Legislative Defendants have produced all documents Dr. Lichtman relied on in reaching his opinions. His analyses were based on election results, demographic data, and information provided in reports produced by your expert witnesses. To be clear, there are no other documents, tables, reports, or data that exist related to the methodology, results, or output for this analysis—including the tables that Tom referenced to the Court during today's conference. Defendants have produced everything, including everything necessary for your experts to replicate his analysis, which seems to be your primary concern.

We repeat and elaborate on what we have said below, in an attempt to avoid any further confusion:

The ecological regression methodology and the procedure used are detailed in Dr. Lichtman's report on pages 42, 43-48. These pages also compare ecological regression with ecological inference. Ecological regression is a standard method that has been used by social sciences for decades, far longer than ecological inference. It was the methodology used by Professor Bernard Grofman, plaintiffs' expert in *Thornburg v. Gingles*. Dr. Lichtman's ecological regression results have been accepted by the US Supreme Court in *Lulac v. Perry* (2006) and by Illinois courts for at least the past two decades. There is no mystery about the method. Dr. Lichtman used the standard software package, Statistical Package for Social Science (SPSS), that has been used in scores of other cases; however, the ecological regression results could readily be replicated with any of the many software packages available.

Dr. Lichtman used ecological regression to verify the results of ecological inference as reported by Dr. Grumbach and Dr. Chen. As you know, he did not develop or perform his own model for this report. Your email specifically mentioned "his results." Dr. Lichtman's ecological regression results are reported in pages 46, 47, and 66. The plaintiffs have the data used for this analysis. Notably, none of the plaintiffs' experts rebuttal reports challenge a single ecological regression estimate and in fact made corrections or dropped erroneous results based on Dr. Lichtman's analysis.

Also notable is that none your experts reported or provided the type of tables or back up data that you assume exists for Dr. Lichtman. When no such data was provided, we assumed it did not exist. It goes without saying that if such tables or data exist we expect any data or reports underlying your experts' regressions to be produced immediately.

Again, all documents related to Dr. Lichtman's analysis of your experts' reports have been produced. You are requesting documents that do not exist, and would not exist as part of the methodology used by Dr. Lichtman. Though Dr. Lichtman's report also addresses the "how" if you are interested in understanding in more depth, that's more suited for a deposition and you'll have plenty of time to inquire as to the methodology and process during Dr. Lichtman's deposition on Saturday and Sunday.

Thanks,



Heather

**Heather Wier Vaught**

815.762.2629

<image001.jpg>

---

**From:** "Panoff, Thomas" <TPanoff@mayerbrown.com>  
**Date:** Wednesday, December 1, 2021 at 5:57 PM  
**To:** Denise Hulett <dhulett@MALDEF.org>, "sean.berkowitz@lw.com" <sean.berkowitz@lw.com>, "heather@wiervaught.com" <heather@wiervaught.com>  
**Cc:** "vblopez@dlglawgroup.com" <vblopez@dlglawgroup.com>, "agandhi@clccrul.org" <agandhi@clccrul.org>, "chelm@clccrul.org" <chelm@clccrul.org>, "jgreenbaum@lawyerscommittee.org" <jgreenbaum@lawyerscommittee.org>, "jdrayton@cooley.com" <jdrayton@cooley.com>, "MKutcher@cooley.com" <MKutcher@cooley.com>, "ewright@cooley.com" <ewright@cooley.com>, "achablani@clccrul.org" <achablani@clccrul.org>, "jtucker@lawyerscommittee.org" <jtucker@lawyerscommittee.org>, "zillinoisredistrictingexternal@cooley.com" <zillinoisredistrictingexternal@cooley.com>, "rsnow@lawyerscommittee.org" <rsnow@lawyerscommittee.org>, "erosenberg@lawyerscommittee.org" <erosenberg@lawyerscommittee.org>, "Harris II, Charles E." <CHarris@mayerbrown.com>, "Comstock, Christopher" <CComstock@mayerbrown.com>, "Holzrichter, Mitchell D." <MHolzrichter@mayerbrown.com>, "pal@lbgalaw.com" <pal@lbgalaw.com>, "bja@lbgalaw.com" <bja@lbgalaw.com>, "jgn@lbgalaw.com" <jgn@lbgalaw.com>, "rmeza@meza.law" <rmeza@meza.law>, "daa@lbgalaw.com" <daa@lbgalaw.com>, "Blackhurst, Joseph D." <JBlackhurst@mayerbrown.com>, "Knight, Christopher A." <CKnight@mayerbrown.com>, "Weiner, Heather A." <HWeiner@mayerbrown.com>, "mary.johnston@ilag.gov" <mary.johnston@ilag.gov>, "jfogarty@clarkhill.com" <jfogarty@clarkhill.com>, "avaught@hinshawlaw.com" <avaught@hinshawlaw.com>, "colleen.smith@lw.com" <colleen.smith@lw.com>, "dbruce@prslaw.com" <dbruce@prslaw.com>, "elizabeth.yandell@lw.com" <elizabeth.yandell@lw.com>, "mjkasper60@mac.com" <mjkasper60@mac.com>, "sean.berkowitz@lw.com" <sean.berkowitz@lw.com>, "heather@wiervaught.com" <heather@wiervaught.com>, "JBauer@winston.com" <JBauer@winston.com>, "NRGilbert@winston.com" <NRGilbert@winston.com>, Griselda Vega Samuel <Gvegasamuel@MALDEF.org>, Francisco Fernandez-del Castillo <FFernandez-delCastillo@MALDEF.org>, Ernest Herrera

<eherrera@MALDEF.org>, "Thomas A. Saenz" <tsaenz@MALDEF.org>, Leticia Saucedo <LSaucedo@MALDEF.org>, Juan Vazquez <jvazquez@MALDEF.org>, "cgibbons@cooley.com" <cgibbons@cooley.com>

**Subject:** RE: Rule 26 disclosures - Dr. Lichtman

The McConchie plaintiffs join in this request, as we noted during the status hearing this afternoon. In addition to the items Denise notes below, we also specifically request the code utilized by Dr. Lichtman to analyze the Cooperative Election Study Data in response to Dr. Fowler's report.

Tom

---

**Thomas V. Panoff**

*Partner*

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---

**From:** Denise Hulett <dhulett@MALDEF.org>

**Sent:** Wednesday, December 1, 2021 5:40 PM

**To:** sean.berkowitz@lw.com; heather@wiervaught.com

**Cc:** vblopez@dlglawgroup.com; agandhi@clccrul.org; chelm@clccrul.org; jgreenbaum@lawyerscommittee.org; jdrayton@cooley.com; MKutcher@cooley.com; ewright@cooley.com; achablani@clccrul.org; jtucker@lawyerscommittee.org; zillinoisredistrictingexternal@cooley.com; rsnow@lawyerscommittee.org; erosenberg@lawyerscommittee.org; Harris II, Charles E. <CHarris@mayerbrown.com>; Comstock, Christopher <CComstock@mayerbrown.com>; Holzrichter, Mitchell D. <MHolzrichter@mayerbrown.com>; pal@lbgalaw.com; Panoff, Thomas <TPanoff@mayerbrown.com>; bja@lbgalaw.com; jgn@lbgalaw.com; rmeza@meza.law; daa@lbgalaw.com; Blackhurst, Joseph D. <JBlackhurst@mayerbrown.com>; Knight, Christopher A. <CKnight@mayerbrown.com>; Weiner, Heather A. <HWeiner@mayerbrown.com>; mary.johnston@ilag.gov; jfogarty@clarkhill.com; avaught@hinshawlaw.com; colleen.smith@lw.com; dbruce@prslaw.com; elizabeth.yandell@lw.com; mjkasper60@mac.com; sean.berkowitz@lw.com; heather@wiervaught.com; JBauer@winston.com; NRGilbert@winston.com; Griselda Vega Samuel <Gvegasamuel@MALDEF.org>; Francisco Fernandez-del Castillo <FFernandez-delCastillo@MALDEF.org>; Ernest Herrera <eherrera@MALDEF.org>; Denise Hulett <dhulett@MALDEF.org>; Thomas A. Saenz <tsaenz@MALDEF.org>; Leticia Saucedo <LSaucedo@MALDEF.org>; Juan Vazquez <jvazquez@MALDEF.org>; cgibbons@cooley.com

**Subject:** Rule 26 disclosures - Dr. Lichtman

**\*\*EXTERNAL SENDER\*\***

Counsel,

Dr. Lichtman had a duty under Rule 26 to disclose with his reports the facts and data he relied on in reaching his opinions. With regard to his prong three analysis, Plaintiffs are entitled to information regarding the results of his ecological regression analysis, how he processed the electoral data in order to conduct the analysis, what model(s) he used, and his output for his analysis. In other words, he failed to produce not only the results, but a complete replication set and key measures of reliability, including correlation coefficients. Breach of this duty to disclose could subject his prong three opinions to a motion to strike as unreliable expert testimony under *Daubert v. Merrill Dow Pharms., Inc*, 509 U.S. 579 (1993). Please produce the materials by noon tomorrow.

We are available to meet and confer about this issue during the break in Dr. Grumbach's deposition tomorrow.

Thank you,

Denise Hulett

---

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# Exhibit 8

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

DAN MCCONCHIE, in his official ) Docket No. 21 CV 3091  
capacity as Minority Leader of the )  
Illinois Senate and individually )  
as a registered voter, and )  
JIM DURKIN, in his official )  
capacity as Minority Leader of the )  
Illinois House of Representatives )  
and individually as a registered )  
voter, )

Plaintiffs, )

Chicago, Illinois  
December 1, 2021  
1:00 a.m.

v. )

ILLINOIS STATE BOARD OF )  
ELECTIONS, CHARLES W. SCHOLZ, )  
IAN K. LINNABARY, WILLIAM M. )  
MCGUFFAGE, WILLIAM J. CADIGAN, )  
KATHERINE S. O'BRIEN, LAURA K. )  
DONAHUE, CASANDRA B. WATSON, and )  
WILLIAM R. HAINE, in their )  
official capacities as members )  
of the Illinois State Board of )  
Elections, EMANUEL CHRISTOPHER )  
WELCH, in his official capacity )  
as Speaker of the Illinois House )  
of Representatives, the OFFICE )  
OF SPEAKER OF THE ILLINOIS HOUSE )  
OF REPRESENTATIVES, DON HARMON, )  
in his official capacity as )  
President of the Illinois )  
Senate, and the OFFICE OF THE )  
PRESIDENT OF THE ILLINOIS )  
SENATE, )

Defendants.. )

JULIE CONTRERAS, IRVIN FUENTES, )  
ABRAHAM MARTINEZ, IRENE PADILLA, )  
and ROSE TORRES, )

Docket No. 21 CV 3139

Plaintiffs, )

Chicago, Illinois  
December 1, 2021  
1:00 p.m.

vs. )

ILLINOIS STATE BOARD OF ELECTIONS )

CHARLES W. SCHOLZ, IAN K. LINNABARY, WILLIAM J. CADIGAN, LAURA K. DONAHUE, WILLIAM R. HAINE, WILLIAM M. MCGUFFAGE, KATHERINE S. O'BRIEN, and CASANDRA B. WATSON, in their official capacities as members of the Illinois State Board of Elections, DON HARMON, in his official capacity as President of the Illinois Senate, and THE OFFICE OF THE PRESIDENT OF THE ILLINOIS SENATE, EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives, and the OFFICE OF THE SPEAKER OF THE ILLINOIS HOUSE OF REPRESENTATIVES,

Defendants.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

EAST ST. LOUIS BRANCH NAACP, ILLINOIS STATE CONFERENCE OF THE NAACP, and UNITED CONGRESS OF COMMUNITY AND RELIGIOUS ORGANIZATIONS,

Plaintiffs,

vs.

ILLINOIS STATE BOARD OF ELECTIONS, WILLIAM J. CADIGAN, LAURA K. DONAHUE, IAN K. LINNABARY, CATHERINE S. MCCRORY, WILLIAM M. MCGUFFAGE, RICK S. TERVEN, SR., and CASANDRA B. WATSON, in their official capacities as members of the Illinois State Board of Elections, DON HARMON in his official capacity as President of

No. 21-CV-05512

Chicago, Illinois  
December 1, 2021  
1:00 p.m.

1 the Illinois Senate, THE OFFICE )  
2 OF THE PRESIDENT OF THE ILLINOIS )  
3 SENATE, EMANUEL CHRISTOPHER )  
4 WELCH, in his official capacity )  
5 as Speaker of the Illinois House )  
6 of Representatives, and THE )  
7 OFFICE OF THE SPEAKER OF THE )  
8 ILLINOIS HOUSE OF REPRESENTATIVES, )  
9 Defendants. )

TRANSCRIPT OF PROCEEDINGS - TELEPHONIC HEARING

BEFORE THE HONORABLE BETH W. JANTZ

APPEARANCES:

For the Plaintiffs  
Dan McConchie and  
Jim Durkin:

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For the Plaintiffs  
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8 East St. Louis NAACP:

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18 For the Defendants  
19 Illinois State Board  
20 of Elections and the  
21 following members of the  
22 Illinois State Board  
23 of Elections in their  
24 official capacity:  
25 Charles W. Schulz, Ian  
K. Linnabary, William  
J. Cadigan, Laura K.  
Donahue, William R.  
Haine, William M.  
McGuffage, Katherine S.  
O'Brien and Casandra B.  
Watson, Don Harmon,  
in his official capacity as



1 APPEARANCES (Continued)

2 President of the Illinois  
3 Senate and The Office of  
4 the President of the  
5 Illinois Senate, Emanuel  
6 Christopher Welch, in his  
7 official capacity as Speaker  
8 of the Illinois House of  
9 Representatives, and the  
10 Office of the Speaker of  
11 the Illinois House of  
12 Representatives:

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13 of Elections:

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22 Court Reporter:

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Official Court Reporter  
219 South Dearborn Street, 2304-A  
Chicago, IL 60604  
(312) 818-6549  
kristin\_ashenhurst@ilnd.uscourts.go

1 THE CLERK: Court is now in session for the Northern  
2 District of Illinois, the Honorable Beth W. Jantz presiding.  
3 Calling case 21 Civil 3091, McConchie, et al, v. Illinois State  
4 Board of Elections, et al. And 21 Civil 3139, Contreras, et  
5 al v. Illinois State Board of Elections, et al. And 21 Civil  
6 5512, United Congress Community and Religious Organizations, et  
7 al v. Illinois State Board of Elections, et al.

8 THE COURT: Good afternoon, everyone. This is Judge  
9 Jantz. So everyone put your instructions on the record. We'll  
10 start with the plaintiffs' groups first, in order of the case  
11 numbers. The McConchie group representative, please introduce  
12 yourself.

13 MR. PANOFF: Good afternoon, your Honor. This is Tom  
14 Panoff, and I have my colleagues, Charles Harris and Phil  
15 Leutkehans as well.

16 THE COURT: Okay. How about for the Contreras  
17 plaintiffs?

18 MR. HERRERA: Ernest Herrera and Francisco Fernandez,  
19 and also Griselda Vega Samuel for the Contreras plaintiffs.

20 THE COURT: All right. And how about for the NAACP  
21 group?

22 MR. GREENBAUM: Hi, your Honor. Jon Greenbaum, as  
23 well as my colleagues Joe Drayton and Aneel Chablani,  
24 representing the NAACP plaintiffs.

25 THE COURT: Okay. And how about for the Illinois

1 State Board of Elections?

2 MS. JOHNSTON: Good afternoon, your Honor. Mary  
3 Johnston on behalf of the State Board defendants.

4 THE COURT: And how about for the legislative  
5 defendants? Someone may be on mute if you're trying to speak.  
6 We didn't hear any introductions yet.

7 MR. BERKOWITZ: Thank you, Judge. Sean Berkowitz on  
8 behalf of Senator Harmon.

9 MR. VAUGHT: Good afternoon, your Honor. Adam Vaught  
10 on behalf of the legislative defendants.

11 THE COURT: Okay. And (inaudible) (inaudible)  
12 Ms. Yandell filed the response. That was helpful late last  
13 night. Ms. Yandell was --

14 THE COURT REPORTER: Excuse me, Judge. I couldn't  
15 hear you. I heard a loud slamming noise and then you kind of  
16 went out.

17 THE COURT: This is the Judge. What part did we --  
18 did I --

19 THE COURT REPORTER: I got Sean Berkowitz and Adam on  
20 behalf of the legislative defendants. And then you started to  
21 say something and I heard all kinds of racket.

22 THE COURT: Okay.

23 This is probably my fault.

24 THE COURT REPORTER: Sorry.

25 THE COURT: So I was just asking if Ms. Yandell was on

1 for the defense, since she had filed the helpful response to  
2 the motion to strike.

3 MR. BERKOWITZ: She is en route, so I don't think  
4 she's on the phone. She's headed to Chicago for what may be  
5 the trial next week and the afternoon depositions.

6 THE COURT: Okay. Sounds good. All right. Does  
7 anyone else need to put their introductions on the record for  
8 any party?

9 THE COURT REPORTER: I'm --

10 THE COURT: Kris, are you still having trouble?

11 THE COURT REPORTER: I am having a little trouble.  
12 Mr. Berkowitz sounded very soft and I can hear you when you --  
13 it sounds like you're kind of moving back away from the mic,  
14 maybe, but I'm not sure.

15 THE COURT: Hmm...

16 THE COURT REPORTER: But I got what he said, "She's  
17 heading to Chicago for what may be the trial next week and the  
18 afternoon depositions." And then you said, "Okay. All right."  
19 And I got what else he said prior to that, too.

20 THE COURT: Okay. Well, why don't we, to make it  
21 easier on our court reporter here, as everyone's been good  
22 about doing, if you're not expecting to speak, if you could put  
23 yourself on mute, hopefully that will help a little bit. And  
24 I'll do my best here --

25 THE COURT REPORTER: And Judge, if you could also just

1 ask -- I didn't mean to interrupt you; I'm sorry. If you could  
2 just ask everybody to make sure they're right up by their mic  
3 and can speak into the mic, because that often is the problem,  
4 people are moving around or, you know, leaning back from their  
5 mic or their computer, so if they can remember to be close to  
6 the mic, that will help tremendously, and hopefully I won't  
7 have to bother you again.

8 THE COURT: Okay. Good reminder about speaking into  
9 the mic. And if you're on a speaker phone, go ahead and pick  
10 up your handset to help the court reporter.

11 And anybody else need to make introductions for the  
12 record for any party?

13 All right. So we'll start with expert depositions.  
14 According to my prior order, the parties were to  
15 meet-and-confer to finalize a schedule for that by Monday, so  
16 what is the status for expert depositions? And anyone can  
17 start. We'll go through all of the groups if necessary.

18 MR. PANOFF: Your Honor, this is Tom Panoff for the  
19 McConchie plaintiffs. I believe the parties have just this  
20 morning finalized the schedules for the depositions where they  
21 will be starting tomorrow. And given the number of  
22 depositions, the parties have agreed to take Dr. Lichtman over  
23 the weekend, December 4th and 5th, but I believe as of now we  
24 have them all scheduled and the parties are in agreement with  
25 the schedule.

1 THE COURT: Okay. Great.

2 Any issues from any of the parties with regard to the  
3 expert discovery schedule -- or expert deposition schedule?

4 Okay.

5 One thing that I will note, and I'm sure you already  
6 thought about this, but it's just to alert your court reporters  
7 to try to get transcripts of those depositions on an expedited  
8 basis, in case that's something that the panel need or wants,  
9 at least you'll have those available in that regard.

10 MR. PANOFF: Your Honor, I'm sorry. This is Tom  
11 Panoff. I did have one more issue. To the extent -- we  
12 obviously hope this doesn't arise and there won't be any  
13 issues, but to the extent we needed to get in touch with your  
14 Honor's chambers for any issue that came up during the  
15 deposition, what would be the best protocol for that,  
16 particularly given that Dr. Lichtman will be over the weekend  
17 as well.

18 THE COURT: Sure. Well, the good news is that I'm on  
19 criminal duty as well, so I will always have my phone, even at  
20 3:00 a.m. I doubt you will be doing a dep at 3:00 a.m., but if  
21 a representative of each group wants to reach out to my  
22 courtroom deputy via email, I'll be happy to provide my cell  
23 phone number, and, obviously, while I don't make a habit of  
24 taking those calls, I absolutely will in this case because I  
25 want to make sure you're all queued up for next week.

1           Would that work for everyone?

2           MR. PANOFF: Thank you, your Honor, and understood.  
3           And hopefully this will be something that will never arise, so  
4           we appreciate that.

5           THE COURT: Okay. All right. The next thing I asked  
6           the parties to meet-and-confer about were stipulations  
7           regarding any agreed findings of fact or conclusions of law, as  
8           well as use of depositions during the hearing and/or trial.

9           Where does the parties work stand on stipulations?

10          MR. GREENBAUM: Your Honor, this is Jon Greenbaum for  
11          the NAACP and UCRO plaintiffs. We haven't made much progress  
12          there, because, frankly, on the plaintiffs' side we were  
13          focused on trying to get our submissions in to the Court this  
14          morning. And, you know, from the standpoint of the defendants,  
15          they probably would also like to see those submissions before  
16          stipulations. But we're trying to figure out a way to endeavor  
17          to, on the plaintiff's side, identify some potential facts and  
18          points of law that could be stipulated to.

19          THE COURT: Okay. What I will ask the parties to do  
20          is this, is to continue working on that. You obviously have  
21          your hearing with the three-judge panel on Friday at 1:30. I  
22          presume they're going to want to hear from the parties what  
23          efforts have been made to do stipulations, and so I would  
24          direct the parties to do that in advance of Friday so that  
25          you're prepared to address that with the panel.

1 Anything else on stipulations at this point?

2 MR. BERKOWITZ: Sean Berkowitz. We --

3 MR. PANOFF: Go ahead, Sean.

4 MR. BERKOWITZ: Thank you. I think that we were  
5 waiting on a document with their suggested stipulations. We'll  
6 take a look at those and we'll obviously try and work as best  
7 we can as counsel indicated. You know, they've been busy  
8 putting their papers together. We're now digesting those  
9 replies, which we just got. It's a compressed schedule. We'll  
10 work as best we can to try and streamline things as  
11 appropriate, and be prepared to address that as best we're able  
12 by Friday, Judge.

13 THE COURT: Okay. Anything else on stipulations?

14 MR. HERRERA: This is Ernest Herrera, your Honor. We  
15 did discuss deposition designations and the possibility of  
16 submitting those in lieu of certain witnesses' live testimony,  
17 if the panel does, indeed, want live testimony. And the  
18 parties are still trying to figure out if we're on the same  
19 page for that, so we did discuss that.

20 THE COURT: Okay. Well, like I said, keep working on  
21 that so you can report to the panel on Friday afternoon what  
22 efforts you've made and where the talks on that stand.

23 Okay. Anything else on stipulations?

24 Okay. The, I think, last thing on my agenda, but  
25 certainly happy to hear from anyone else, is the motion to



1 strike that was filed by the Contreras plaintiffs, and then I  
2 did see the legislative defense response that was filed late  
3 last night. Like I said, I'm going to take argument on that at  
4 this time.

5 I have a couple of questions to go through with the  
6 parties here and have the lead on each side go ahead and speak  
7 up. So with respect to the plaintiffs' motion, what is the  
8 plaintiffs' response -- Contreras plaintiffs' response with  
9 respect to why they didn't forward the defendants this motion  
10 or otherwise meet-and-confer ahead of its filing?

11 MR. FERNANDEZ: Yes, your Honor. This is Francisco  
12 Fernandez for the Contreras plaintiffs.

13 THE COURT REPORTER: Who is this speaking? Mr.  
14 Herrera?

15 MR. FERNANDEZ: No. Mr. Fernandez.

16 THE COURT REPORTER: Thank you.

17 MR. FERNANDEZ: So we believe that the local rule that  
18 defendants cite, 37.2, does not apply to this motion. 37.2  
19 provides that "This Court shall refuse to hear any and all  
20 motions for discovery and production of documents under rules  
21 26 through 37."

22 Properly speaking, a motion to strike is not a motion  
23 to compel discovery or to seek a protective order. And it's  
24 not typically the kind of thing that you can compromise over.  
25 There are motions you could bring that are motions for

1 discovery under Rule 26. You could bring a 26(a)(2)(A) motion  
2 to compel disclosure, you could bring a 26(c) motion for a  
3 protective order, or you could bring a motion under 26(a)(2)(B)  
4 to compel the discovery of expert materials. But the motion  
5 that we are bringing under Rule 26 is not a motion for  
6 discovery or production of documents.

7 THE COURT: Well, it's a motion to strike based on a  
8 discovery violation, correct?

9 MR. FERNANDEZ: That is true. Though we do think it  
10 is fundamentally different, as I alluded to earlier. In  
11 discovery disputes there's an inherent ability to compromise.  
12 A motion to strike isn't exactly -- it's not the kind of thing  
13 you can negotiate over. Either the document will be struck or  
14 it won't.

15 MR. BERKOWITZ: This is Sean Berkowitz. Your local  
16 rules, obviously, Judge, your individual rules require  
17 meet-and-confer for all motions. And as we pointed out, I  
18 think we would have been able to at least productively  
19 articulate our issues so it could have been better joined than  
20 getting a surprise motion.

21 THE COURT: Okay. Next question I had for plaintiffs  
22 again is, the defendants in their response point to two  
23 interrogatory responses. I believe they're two and ten, with  
24 regard to subcommittees and incumbents. I'm speaking in  
25 general terms, but obviously it's very specific in the

1 defendant's motion. What is the plaintiffs' position with  
2 respect to why those interrogatory responses were not enough to  
3 put the plaintiffs on notice of these potential witnesses,  
4 particularly given the admonition in Federal Rule of Civil  
5 Procedure 26(e)(1)(A) that allows for, essentially, the  
6 otherwise made known to provision of that rule?

7 What's the plaintiffs' response to that point?

8 MR. FERNANDEZ: Your Honor, we don't believe that  
9 defendants' responses --

10 THE COURT REPORTER: Who is speaking, please? Who is  
11 speaking, please? Sorry.

12 MR. FERNANDEZ: Pardon. This is Mr. Fernandez on  
13 behalf of the Contreras plaintiffs.

14 THE COURT REPORTER: Okay. Sorry.

15 MR. FERNANDEZ: Apologies.

16 Your Honor, we do not believe that those responses to  
17 our discovery requests constitute adequate notice for two  
18 reasons. First, naming all incumbents potential witnesses  
19 isn't reasonable notice, because there's over 170 incumbents.  
20 Secondly, there are 65 legislators who serve on at least one  
21 redistricting committee, so pointing out that the declarants  
22 are on districting committees does not constitute adequate  
23 notice either.

24 THE COURT: Okay. Mr. Berkowitz or a team member,  
25 what's your response to that?

1 MR. BERKOWITZ: Yes. This is Mr. Berkowitz. You  
2 know, we never got any objections in terms of vagueness or lack  
3 of clarity when we identified the committees of -- people on  
4 the committees. We have links to those issues. And,  
5 obviously, it took shape as we determined who it was and what  
6 districts they were, in fact, challenging. And they could have  
7 understood specifically from those who they could have drilled  
8 down into.

9 They didn't say, "Please identify them by name." We  
10 identified people on the committees, and they never objected to  
11 that. And the concept of us having to list 180 people without  
12 knowing -- by name, without knowing specifically what districts  
13 they were challenging, seems misplaced, particularly when they  
14 didn't object. Once they identified the districts, it would  
15 have been very easy for them either to seek a clarification or  
16 for them to go to those particular committees and determine who  
17 was on the committee.

18 The concept that we in our Rule 26 disclosures would  
19 have needed to identify by name all of these individuals as  
20 opposed to by category, when they had not even articulated a  
21 theory in their complaint as to which districts they were  
22 challenging, seems misplaced on this truncated schedule.

23 THE COURT: So that segues to the next question that I  
24 had, which is another question for the plaintiffs here is, what  
25 more in the plaintiffs' suit could defendants have done, given

1 that they didn't know what districts, or at least all of the  
2 districts -- they might have known some -- but all of the  
3 districts that you were challenging until your sort of  
4 opening -- we'll call it an opening brief was filed on  
5 November 10th, which was past the close of fact discovery?  
6 What could they have done, given that they didn't know at that  
7 point what districts would be targeted?

8 MR. FERNANDEZ: Well, your Honor, we believe that  
9 the --

10 THE COURT: And Mr. Fernandez, is that you speaking  
11 again?

12 MR. FERNANDEZ: Pardon. Pardon, I'm sorry for not  
13 identifying myself. This is Mr. Fernandez on behalf of the  
14 Contreras plaintiffs.

15 THE COURT: Of course. Go ahead.

16 MR. FERNANDEZ: What I would say in response is that  
17 defendants had adequate notice that those districts were in  
18 play as of October 1st when we filed our second amended  
19 complaint. And, moreover, with respect to the issue of these  
20 members being on the redistricting committees, we requested  
21 depositions of committee chairs on October 8th and defendants  
22 refused on October 13th. The idea that defendants didn't know  
23 that these witnesses would have relevant testimony until we  
24 filed our legal submission is simply incorrect.

25 The declarations include information about racially

1 polarized voting and the justification behind the September and  
2 June plans. Those issues have been in the case at least since  
3 we filed our second amended complaint.

4 THE COURT: So let me ask a factual question, and I'll  
5 hear from both sides on this. My understanding was --  
6 the defendants can correct me if I'm wrong -- that part of the  
7 defendants' point was well, some districts were named in the  
8 second amended complaint. The plaintiffs ended up challenging  
9 more than those that were named in the amended complaint; is  
10 that correct?

11 MR. BERKOWITZ: Correct. This is Sean Berkowitz.

12 THE COURT: Okay.

13 MR. FERNANDEZ: No, your Honor, we hesitate to agree  
14 with that.

15 THE COURT: Well, let's go one at a time because I  
16 will hear from both sides on this.

17 But Mr. Berkowitz, can you identify so we have as  
18 accurate a record as possible, in the defendant's view, which  
19 districts are being challenged that were not listed in the  
20 second amended complaint?

21 MR. BERKOWITZ: And if Adam Vaught is on, I'll defer  
22 to him on terms of the specific answers.

23 THE COURT: Sure.

24 MR. VAUGHT: Your Honor, this is Adam Vaught. You  
25 know, I would just say that with the affidavits at issue, one

1 point is is that they are also just discussing the remedial  
2 plans presented by plaintiffs that we never saw. So, you know,  
3 as an after-the-fact discovery they said they want to draw  
4 districts in certain ways, and those members who filed the  
5 affidavits they are, you know, explaining why those choices  
6 were made by the legislature.

7 THE COURT: Right. But my question is --

8 MR. VAUGHT: Both -- for McConchie as well.

9 THE COURT: -- what districts were being challenged or  
10 impacted?

11 I understand part of the defendants' argument is it's  
12 not just particular districts that are challenged, but ones  
13 around it that may be impacted. What specific districts, and I  
14 mean numbers, are now being challenged or potentially impacted  
15 that were not listed in the second amended complaint?

16 MR. VAUGHT: Your Honor, let me work to pull that  
17 together. I don't have those exact numbers right in front of  
18 me. I apologize.

19 THE COURT REPORTER: Is that Mr. Berkowitz?

20 THE COURT: Kris, do you need something?

21 THE COURT REPORTER: Was that Mr. Berkowitz or Mr.  
22 Vaught? I'm sorry.

23 MR. BERKOWITZ: That was Mr. Vaught.

24 THE COURT: That was Mr. Vaught.

25 Okay. Mr. Fernandez, or a member of your team, while

1 Mr. Vaught is working on that same question, is it your  
2 position that all of the districts that are now being  
3 challenged or potentially impacted were listed already in the  
4 second amended complaint?

5 MR. HERRERA: I'm sorry. This is Mr. Herrera, your  
6 Honor, and I'm stepping in here just because I was handling our  
7 expert on --

8 THE COURT: No problem.

9 MR. HERRERA: Of course. So in our second amended  
10 complaint, we did say which districts we are challenging, and  
11 those are House districts 3, 4, 21, 23 -- I'm sorry -- 21, 24,  
12 and 39. And in our expert's report -- and then also Senate  
13 districts 2 and 11. And in our expert demographer's report,  
14 which came out -- came with our -- which we produced with  
15 our -- as well as the disclosures on November 10th when our  
16 filing was due, we -- our expert said on paragraph 25 of his  
17 report, and this is the report of Dave Ely at docket number  
18 135-21.

19 And so paragraph 25 Mr. Ely said that his changes  
20 caused minor changes to district -- House districts 1 and  
21 2 -- I'm sorry -- changes to 1 and 2, because those are  
22 districts that are abutting our challenge districts. And also  
23 district 40 and district 23 -- 23. And then he also said there  
24 were minor changes caused to House district 8 and 10.

25 And then also, I'm sorry, one more, also changed



1 to -- no that's it. I'm sorry.

2 THE COURT: I am sorry if I am missing something here.  
3 So then we're -- are there now challenges to district numbers  
4 that were not listed in the second amended complaint?

5 MR. HERRERA: No, your Honor. But when you file a  
6 remedial map, there are changes to other districts.

7 THE COURT: Sure.

8 MR. HERRERA: Our expert minimized those changes to  
9 the extent he could when remedying what we believe to be  
10 Section 2 violations. And in making those changes, there were  
11 other districts impacted.

12 THE COURT: Sure.

13 MR. HERRERA: But there were not additional  
14 challenges. And Representative Mah, she is in a district, 24,  
15 that was noticed in our amended complaint, first -- second  
16 amended complaint. And then Pacione-Zayas, she is the senator  
17 for district 40, senate district 40, one of the component  
18 districts. We did not challenge district 40, nor are we now,  
19 but district 40 contains house district 39, which we did  
20 challenge.

21 Finally, there is Senator Villanueva, and she is the  
22 senator for district 12 in the September plan. And we did  
23 challenge one of the districts, I believe, that make up  
24 her -- I'm sorry, Representative Mah's house district is within  
25 the district of Senator Villanueva. So the three people -- the

1 three declarants, all three of them, either have house  
2 districts that are in their senate district or in the case of  
3 Representative Mah we are challenging her district.

4 THE COURT REPORTER: Was that Mr. Fernandez or  
5 Herrera?

6 MR. HERRRERA: That was Mr. Herrera.

7 THE COURT REPORTER: Okay. Thanks. I got it right  
8 then. Thank you. Sorry. I just wanted to clarify.

9 MR. BERKOWITZ: And this is Sean Berkowitz, Judge. I  
10 think that it sounds like the issue is while there weren't new  
11 remedial districts that were challenged, there were a number of  
12 new ones that were impacted that weren't previously disclosed.

13 And, I guess, to step back for a moment, what we did  
14 do in our discovery responses was with respect to any district  
15 that was challenged, we identified the incumbent and the  
16 committee as persons with knowledge of the reasons. That was  
17 never challenged, questioned, or the subject of a motion to  
18 compel, and so those were all available to them and could  
19 easily have been determinable.

20 They certainly could have challenged additional  
21 districts. We didn't know until we got their map, proposed map  
22 on November 10th. The declarations that we submitted also  
23 applied to the McConchie challenge in impacted districts as  
24 well. And so the concept that this relevant information that  
25 these three legislatures are providing that go to the heart of

1 at least some of these issues that are in their challenges, it  
2 seems to elevate form over substance to say that we were doing  
3 anything other than playing by the rules and disclosing at a  
4 broad level who would have information certainly was  
5 determinable.

6 THE COURT: So just -- I want to make sure I  
7 understand this as a factual matter. So I'm looking at the  
8 defendants' response. And when I pulled this up, I'll say that  
9 I just saw that the Contreras plaintiff's daughter replied. I  
10 didn't see that before this hearing, so you should know that if  
11 you go through your arguments, I have not even looked at that  
12 because I didn't know that it had been filed sometime this  
13 morning.

14 MR. HERRERA: Your Honor, I believe -- this is Ernest  
15 Herrera. That reply that you are seeing, we did not file a  
16 reply in support of our motion to strike. What you probably  
17 are seeing is a reply in support of our written submission.

18 THE COURT: Got it. You're right. Good. Okay.  
19 Super. I just wanted to make sure that I wasn't missing  
20 something and I didn't want you to have to repeat yourself,  
21 too, so thanks for clarifying that.

22 So I'm looking at page 3 of the defendants' response  
23 on this issue, the motion to strike, this is document 161, and  
24 what it says there, and this is sort of what spurred my  
25 question, was it was not until plaintiffs submitted their

1 November 10th submission and proposed remedial maps that the  
2 defendants were made aware of all of the districts plaintiffs'  
3 submission would challenge or impact.

4 I think what I'm hearing now is all of the  
5 challenges -- all of the challenged districts had, indeed, been  
6 included in the second amended complaint. It was the districts  
7 that may have been impacted that weren't known or sort of  
8 spelled it out for me. Because it made it sound as if there  
9 were challenges to additional numbers that weren't included in  
10 the second amended complaint. So just clarify that for me  
11 based on house district numbers.

12 MR. VAUGHT: Your Honor, this is Adam Vaught. I have  
13 been able to gather everything and let me go through it. So  
14 they challenged districts on the northwest side of Chicago,  
15 house district 3, 4 and 29, senate district 2.

16 On the southwest side of Chicago they challenged house  
17 districts 21, 24 and senate district 11. In the remedial plan  
18 on the northwest side they have now changed house districts 3  
19 and 4, which were challenged; 8 and 10, which were not; 30,  
20 which was challenged; house district 40, which was not; and  
21 then it may change to senate district 2, which was challenged.  
22 But then changes to district 4 and 20, which were not. And  
23 that includes house district 8 and house district -- sorry. As  
24 I said before, that includes house district 8 and senate  
25 district 20. It includes house districts 39, which was

1 challenged, and 40, which was not.

2 On the southwest side they have impacted district 1  
3 and 2, which were not challenged. 21, which was, 23 which was  
4 not. Twenty-four which was. Then they changed to senate  
5 district 1, which was not challenged. And then senate district  
6 11 which was, but also senate district 12, which was not.

7 THE COURT: A lot of numbers. You have got to go slow  
8 with me here.

9 What particular numbers are the defendants saying are  
10 now being challenged but were not in the second amended  
11 complaint, if any?

12 MR. VAUGHT: House districts 8, 10, 40, 1, 2, 23.  
13 Sorry, that wasn't in numerical order.

14 THE COURT: That's okay. That's all right.

15 MR. VAUGHT: And then senate districts 1, 11, and 12.

16 THE COURT: Okay. So I did -- I know Mr. Herrera  
17 addressed this with respect to the expert report from Mr. Ely,  
18 so are these now newly challenged districts or impacted  
19 districts or what is the plaintiffs view of that?

20 MR. HERRERA: So your Honor, the districts, we do not  
21 have any new challenge to districts, so to the extent that the  
22 defendants think that, I am sorry for their confusion. But the  
23 house districts that we challenge are still 3, 4, 21, and 39  
24 and 24. And then the senate districts we challenge are still  
25 just 2 and 11. So to the extent that those other numbers were

1 mentioned, I can tell you that what was not -- what we did  
2 disclose along with our November 10th filing, that because  
3 there were districts that were impacted, were house districts  
4 8, 10 and 19, and those were minor changes.

5 Other districts that we impacted were house districts  
6 1 and 2. We did not challenge that one, and 23, we did not  
7 challenge it, but they were abutting other districts that  
8 neighbor our challenge district. And the reason, your Honor  
9 is -- I would refer you to our map submission and it has a map  
10 of the changes made, and you can see how minor or major those  
11 changes are. And that's, again, at 135-21, Docket 135-21, and  
12 there is a map that shows the changes we made.

13 The reason is that for your -- just to -- the senate  
14 district, each of the senate districts contain two house  
15 districts, so those two house districts are paired within a  
16 senate district.

17 THE COURT: Mm-hmm.

18 MR. HERRERA: And so when -- sometimes when we changed  
19 our house district, that would affect a -- so for example, we  
20 changed house district 39 and that affected senate district 20,  
21 even though we were not challenging senate district 20.

22 THE COURT: Okay. And so I will turn it back to  
23 Mr. Vaught or Mr. Berkowitz. So what is the defense position  
24 on why -- my understanding is you're basically saying, "Hey,  
25 there was part of this we couldn't have understood until the

1 November 10th filing." So explain to me in your view,  
2 particularly with respect to numbers, what you couldn't have  
3 known from the second amended complaint. And I understand the  
4 parties disagree on this, but I just want to be clear on what  
5 the position is.

6 MR. BERKOWITZ: Yes. So let me go. This is Sean  
7 Berkowitz. A couple of things. First of all, we couldn't have  
8 known all of the districts that they intended to challenge.  
9 And that with respect to the Contreras plaintiffs, they may  
10 have identified all of the ones that they ultimately did  
11 challenge. That's not true of the McConchie plaintiffs, for  
12 example. But also with respect to the Herrera [sic]  
13 plaintiffs, we could not have known what districts would be  
14 impacted or senate districts challenged based on the house  
15 challenges.

16 The number of new districts that were impacted by the  
17 specific challenges that they put is new. And there is also an  
18 impact to the senate districts when you change a house  
19 district.

20 The other thing to step back, your Honor, and I  
21 understand factually you want to get this right, I just don't  
22 want to buy into the construct that that's a dispositive issue.  
23 I'm not sure that's what you're suggesting, because I feel that  
24 our discovery responses actually did identify the incumbents as  
25 being involved. Those were served October 26th after the

1 second amended complaint, and there was no objection about  
2 those, nor was there a request to update them to specifically  
3 identify committee members who were probably known in any  
4 event.

5 And so all of the information that they needed, they  
6 had. And what we wanted to point out was that because of the  
7 uncertainty about what they were going to challenge, what was  
8 going to be impacted, it wouldn't -- we didn't think it made  
9 sense to identify by name every possible permutation that could  
10 have come out there. And so we did what we thought was  
11 reasonable, which was to identify that it was the incumbents  
12 and the committee members with respect to the impacted  
13 districts.

14 So two separate answers. I think the first part of it  
15 attempted to answer your question about what we didn't know and  
16 what we couldn't have known.

17 THE COURT: Yes. Okay. That makes sense.

18 All right. Just let me ask the plaintiffs, so what is  
19 the harm or prejudice that the plaintiffs are asserting if the  
20 declarations are not stricken?

21 MR. FERNANDEZ: Your Honor, this is Francisco  
22 Fernandez for the Contreras plaintiffs.

23 THE COURT: Mm-hmm.

24 MR. FERNANDEZ: So, for example, in Senator  
25 Villanueva's declaration on paragraph 13 through paragraph 16



1 there is an extensive analysis of racially polarized voting.  
2 If we knew that Senator Villanueva was going to give testimony  
3 on an issue that was going to be critical to this case, we  
4 almost certainly would have deposed her.

5 Secondly, the issues regarding Senator Villanueva's  
6 constituency that were raised for the first time on  
7 September 4th, the day before the close of fact discovery are  
8 also of significance to our claims brought under the 14th  
9 Amendment. And had we known that Senator Villanueva was going  
10 to give further testimony on that matter, we may well have  
11 deposed her as well.

12 THE COURT: Okay. Mr. Berkowitz or Mr. Vaught, any  
13 response?

14 MR. BERKOWITZ: I guess the response, your Honor, is  
15 there was an indication of an interest in deposing these people  
16 after their declarations were filed and we, as footnoted in our  
17 reply response, we said that we would not intend to call them  
18 at trial in lieu of not having their depositions taken.

19 The names of, I think, Villanueva and Mah did come up  
20 in the depositions that were taken. There was no request to do  
21 that, nor was there a specific follow-up request with respect  
22 to additional persons on the committee that could have been  
23 done and could have been dealt with in a more appropriate way  
24 during a period of fact discovery that would have allowed them  
25 to do that.

1           So those are our responses on that issue, in addition  
2 to what we have in our response, so I don't do Libby Yandell  
3 any injustice by not covering everything that she so  
4 wonderfully covered in her response.

5           THE COURT: So just one question. I know at one time  
6 we were talking, I think there were about four depositions. I  
7 could be off there, so correct me if I'm wrong. Were those  
8 plaintiffs taking those depositions? Whose depositions were  
9 those taken by?

10           MR. FERNANDEZ: Your Honor, this is Francisco  
11 Fernandez. Those depositions were taken by my colleague Ernest  
12 on behalf of the (inaudible) plaintiffs. Also other counsel  
13 (inaudible) also raised questions at the close of Mr. Herrera's  
14 questioning.

15           THE COURT: I was having trouble hearing you there.  
16 You said all of the fact depositions were taken by one of the  
17 plaintiffs' groups; is that correct?

18           MR. FERNANDEZ: Well, sorry, your Honor. I misspoke.

19           So I believe the various plaintiffs were present at  
20 all four of the depositions. I would say it's fair to  
21 characterize that my colleague, Ernest, and my colleague  
22 Griselda took the lead on those four depositions.

23           THE COURT: Okay. All right.

24           MR. BERKOWITZ: And this is Sean Berkowitz, Judge.  
25 They wanted to depose 10 people during fact discovery, and

1 given the constraints on time that were present as a result of  
2 the schedule that was set, they had to choose a reasonable  
3 number and prioritize, and we made those prioritized people  
4 that they identified available.

5 THE COURT: Okay. All right. I'll tell you that I'm  
6 going to reserve ruling on the motion, and it may be my ruling,  
7 it may be the panel's ruling, but it will be reserved and taken  
8 under advisement at this point. But anything else that  
9 either -- any party would like to add on the motion to strike,  
10 and I'll throw it to the plaintiffs first and certainly give  
11 the defendants a chance to add anything they like.

12 MR. FERNANDEZ: Yes, your Honor. This is Francisco  
13 Fernandez, Contreras plaintiffs.

14 THE COURT: Sure.

15 MR. FERNANDEZ: I would just like to say two things in  
16 closing. The first thing is that the discovery responses that  
17 the defendants reference happened approximately nine days  
18 before the close of fact discovery and they identified in  
19 excess of 230 individuals. In my view, that does not  
20 constitute adequate notice for the 3 individuals who were  
21 actually declarants.

22 The second thing I would like to emphasize is that the  
23 declarants are incumbents in districts that either we  
24 challenged in our second amended complaint or were nested in  
25 districts that we challenged in our second amended complaint.

1 So I don't think it's reasonable to say that defendants didn't  
2 have notice that these districts and incumbents residing in  
3 them would be relevant to this case.

4 THE COURT: Okay. Anything further from the  
5 defendants?

6 MR. BERKOWITZ: This is Sean Berkowitz. The only  
7 thing I would add, Judge, is I don't know what the other  
8 plaintiffs views on this are. I would note that the NAACP  
9 plaintiffs filed declarations of people who previously hadn't  
10 been disclosed at all in discovery and their reply, so I will  
11 obviously take a look at that and meet-and-confer on any issues  
12 that arise as a result of them.

13 And then the final piece is there were 118 -- and this  
14 is well known -- 118 house representatives and 59 senators, and  
15 all of them had a role to play in this map, whether they  
16 exercised that role or not. So the concept that they're  
17 surprised that incumbents had a -- a role or input in their  
18 districts, you know, from our perspective doesn't pass a common  
19 sense test. So those are just the additional things I would  
20 add, your Honor.

21 THE COURT: Okay. All right.

22 So as I said, the motion will be taken under  
23 advisement with a ruling from either myself or the panel  
24 itself.

25 So at this point that kind of covered my agenda items.

1 I don't foresee a need for another status with me from the  
2 parties that are here, if anything comes up -- but, obviously,  
3 you're meeting with the panel on Friday, so I don't see a need  
4 to set a further date on you. You obviously have your hands  
5 very, very full with all of the work you have to do.

6 But I would be happy to sort of hear if there are any  
7 other issues that anyone wants to raise at this time. I'll  
8 kind of just go through the individual groups and feel free if  
9 there is anything that you would like addressed that I can help  
10 with. So I will start with the McConchie plaintiffs first.

11 MR. PANOFF: Thank you, your Honor. This is  
12 Mr. Panoff. No, I don't think there's anything else to add. I  
13 just want to ask, I take it your Honor has not heard anything  
14 further from the panel in terms of the format or anything of  
15 what will occur next week, is that true?

16 THE COURT: I'll certainly defer to the panel on  
17 whatever they decide on that.

18 MR. PANOFF: Thank you, your Honor.

19 THE COURT: No problem.

20 How about from the plaintiffs?

21 MR. HERRERA: Your Honor, this is Mr. Herrera. We do  
22 have one other issue, and this is something that we conferred  
23 with counsel for defendants on Monday on our meet-and-confer,  
24 and we've been emailing back and forth, which were the  
25 materials upon which defendants' expert Alan Lichtman relied

1 for his report in support of defendants' response.

2 There were -- defendants -- counsel for defendants did  
3 provide additional materials and sent those, I believe,  
4 Tuesday -- Monday or Tuesday. But what is not included are  
5 technological regression results in relation to a racially  
6 polarized voting analysis that Dr. Lichtman used to critique  
7 Contreras plaintiffs' expert Jacob Grumbach, and so we would,  
8 you know, that is something that we are considering. And I  
9 don't know if it's something that we should, you know -- if we  
10 should continue to work with defendants on that. Since this is  
11 our last status conference, I thought it might be our last  
12 chance to raise it, and we'd been hoping we would get it today,  
13 but did not.

14 MR. PANOFF: Your Honor, this is Mr. Panoff. I'd just  
15 like to say, we join in that request, too and we raise that  
16 issue on the meet-and-confer as well because it's material to  
17 the McConchie case as well.

18 THE COURT: Okay. And what's the status on that from  
19 the defense perspective?

20 MR. BERKOWITZ: Adam, do you have -- I have some notes  
21 on it. I know that Heather Vaught and Libby have been dealing  
22 with it. My understanding is that the plaintiffs have been  
23 given all of the election and demographic data that was  
24 provided to Dr. Lichtman. And that Dr. Lichtman explained  
25 precisely the methodology he used for his analyses and provided

1 specific literature references on the methodology. And  
2 anything that he used has already been given or they have  
3 access to already. That's my understanding. Is there anything  
4 to add to that, Adam?

5 MR. VAUGHT: This is Adam Vaught. No, that's correct.

6 THE COURT: So it sounds like the plaintiffs think  
7 they're missing something and the defendants think that  
8 everything has been turned over; is that fair to say?

9 MR. PANOFF: Your Honor, this is Mr. Panoff. If I  
10 could just clarify. For example, the specific things that we  
11 asked for are the regression models that he ran as part of his  
12 analysis. He claims that this is his core methodology. All  
13 that we have is the summary that Dr. Lichtman has provided for  
14 that. We don't have, for example, his R-tables or any of his  
15 other information. And as your Honor probably knows from  
16 expert context in other cases, it is common for experts to look  
17 at the underlying data of the other expert to see if there is,  
18 for example, an error in the methodology that has been used.

19 And without having that underlying base -- the  
20 underlying models themselves, we don't know what Dr. Lichtman  
21 has actually run. All we have is his summary of it. And, more  
22 importantly, we weren't able to test that. And that's why we  
23 raised it before our replies were filed a couple of hours ago.  
24 We obviously didn't receive it from the defendants by that time  
25 and we still don't have it. So I understand that they're

1 saying that they gave us data, but what they didn't give us,  
2 which is common in expert discovery, is to have the actual  
3 copies of the models that Dr. Lichtman ran and that he relied  
4 on extensively throughout his report.

5 THE COURT: What's the defendants' response given that  
6 clarification?

7 MR. VAUGHT: Your Honor, this is Adam Vaught. Dr.  
8 Lichtman's report identifies (inaudible) but it actually cites  
9 to his own academic literature discussing this model and how he  
10 uses it. So he cited that this is my model and then he cites  
11 to the data, which we provided them. So they have the data,  
12 they have the model, they could run and test it.

13 MR. PANOFF: Your Honor, again, Mr. Panoff. That  
14 actually misses the point. We understand his literature. His  
15 literature hasn't changed since 1991. We get that. But what  
16 we don't have is the actual variables that he used in, for  
17 example, his R -- it's a common practice as part of experts who  
18 run regression that you produce your R-tables and the  
19 underlying data for that to show it so that our experts can  
20 test that. That has not been produced. All that he cited to  
21 was 1991 article where he talked about this methodology, but  
22 that's just, you know, methodology in general. It's not unique  
23 to this case. So, you know, that would be like saying, you  
24 know, Dr. Lichtman drove this kind of car in 1991 and he's  
25 still driving a car. But we don't know, you know, what's



1 changed, what's going on, and we don't have it as it's applied  
2 to this case. And without that case, we're left, you know, to  
3 use one of Dr. Lichtman's favorite phrases, it's a black box.  
4 We really don't know what he did to get to the result that he's  
5 trying to use throughout his report and to have our experts  
6 test that.

7 It is really quite remarkable, your Honor. This is  
8 really not usually an issue of dispute. You have this all of  
9 the time in anti-trust cases and security cases, and even in  
10 voting rights cases, where the R-tables are just kind of common  
11 core documents -- or data that's produced. And that just  
12 hasn't occurred here. All we have is essentially a trust me  
13 from Dr. Lichtman.

14 THE COURT: So when is Dr. Lichtman sitting for his  
15 deposition?

16 MR. PANOFF: It's on Saturday, and potentially Sunday  
17 if Saturday goes over. This is Mr. Panoff.

18 THE COURT: Here is --

19 MR. BERKOWITZ: And I think they misunderstand it, and  
20 I think getting clarification from him, he is not holding  
21 anything back. They have all of the data that he has used and  
22 the map. And so I think they can get that from him in his  
23 deposition and understand that he's not sitting on these  
24 commonly produced items that they are talking about, Judge.

25 MR. PANOFF: Your Honor, this is Mr. Panoff. The

1 issue we have, though, is we want to ask Dr. Lichtman about  
2 this during his deposition. And if he's going to spring this  
3 on us then, he sat on it for a week and we haven't been able to  
4 look at that and prepare for his deposition to ask him  
5 questions about this. We would want to confer with our own  
6 experts about this to test his regression models. For  
7 Mr. Berkowitz to assume that, you know, I'm going to run the  
8 regression analysis during a deposition as a lawyer and then  
9 ask questions about it shows that Mr. Berkowitz doesn't  
10 understand what's going on here.

11 THE COURT: All right. Let's take the temperature  
12 down, and here's where I come out on it. I am going to have  
13 the parties continue to talk about this. And it may need  
14 to -- and I do the same thing, too, right? We're lawyers,  
15 we're not experts, right? Sometimes it's matter of checking  
16 with our experts. We do this to make sure that, you know,  
17 there's nothing lost in translation, so I want the parties to  
18 continue talking about this.

19 Here's what I would say, a couple of things. One,  
20 certainly if there's something that Dr. Lichtman used or relied  
21 upon, that seems to me -- I would need more granular detail,  
22 right? It's hard for me to understand this without more  
23 context. No one's fault, but just, you know, you can  
24 understand that. So without ruling, because I would want to  
25 know more, if Dr. Lichtman used or relied on something that

1 seems to me to be fair game, and so if something comes out in  
2 his deposition that wasn't properly turned over, he's going to  
3 maybe have to sit for a continued deposition at a very  
4 uncomfortable, you know, like Sunday night at 8 o'clock. No  
5 one wants to do that.

6 Everyone's going to have my cell phone number. I'm  
7 sure judicious use will be made of that or not. The panel is  
8 not going to want to hear, "Hey, we can't go forward because  
9 this critical expert, there was a problem with turning stuff  
10 over." Or not. I don't know what the answer is. But I hear  
11 what the plaintiffs are saying, and if not everything has been  
12 turned over, then we'll deal with it, and that may not have a  
13 good ending.

14 So I want the parties to continue to talk about this,  
15 maybe everything has been turned over and that's fine, too. Is  
16 that sort of clear to both sides or any questions on where I  
17 come in on this?

18 MR. PANOFF: Your Honor, this is Mr. Panoff. We're  
19 happy to keep talking with defense counsel on this. We've  
20 continued that. We started it on Monday and we're happy to  
21 continue that dialogue.

22 THE COURT: Okay. Anything further from defendants?

23 MR. BERKOWITZ: We understand, Judge. This is Sean  
24 Berkowitz.

25 THE COURT: Okay. Got it. Okay. Very good.

1           Anything further -- I think we were on the Contreras  
2 plaintiffs there. Anything further from the Contreras  
3 plaintiffs?

4           MR. HERRERA: No, your Honor. Those are all the  
5 concerns right now. This is Mr. Herrera.

6           THE COURT: Okay. Very good. How about anything from  
7 the NAACP plaintiff?

8           MR. GREENBAUM: Jon Greenbaum, your Honor, no, nothing  
9 further from us.

10          THE COURT: Okay. Anything from Illinois State Board  
11 of Elections?

12          MS. JOHNSTON: No, your Honor. Nothing from the  
13 board. This is Mary Johnston.

14          THE COURT: Okay. And anything further from the  
15 legislative defendants?

16          MR. BERKOWITZ: This is Sean Berkowitz. Judge, what I  
17 would say is that we earlier today received obviously three  
18 lengthy replies with, frankly, some new proposed remedial maps  
19 and new analyses and reports, and we don't have some of the  
20 underlying data such as shapefiles. I don't think that this  
21 call would be the appropriate time for me to specifically ask  
22 for those from the plaintiffs, but we will be meeting and  
23 conferring with them. And what ought we to do if we have  
24 issues with respect to getting some of that information that  
25 we're going to need to analyze the material, Judge?

1           MR. GREENBAUM: Your Honor, just really quickly, this  
2 is Jon Greenbaum on behalf of the NAACP and UCRO plaintiff. We  
3 did submit some new maps in response to particular issues that  
4 the legislative defendants have raised and we will -- we'll get  
5 those shapefiles to all counsel in the next hour.

6           THE COURT REPORTER: Excuse me. This is the court  
7 reporter. Could I ask, are you saying shape as in s-h-a-p-e or  
8 shake, s-h-a-k-e?

9           MR. BERKOWITZ: This is Sean Berkowitz. It's shape.

10          MR. GREENBAUM: It's shape, s-h-a-p-e.

11          THE COURT REPORTER: Okay. Thank you. I have it  
12 correct. Sorry to interrupt, your Honor.

13          THE COURT: No problem. Hopefully, that will take  
14 care of that one, but I think to Mr. Berkowitz's perhaps larger  
15 point, if the parties have issues over the next couple of days,  
16 what should they do? So, you know, it goes back to something  
17 that Judge Dow said early on, which is we all have limited time  
18 on this, and I know the parties themselves certainly have their  
19 hands full and so I would encourage everyone to meet and confer  
20 in the first instance. You know, the technical argument about  
21 what the local rules apply to, you just have to talk first  
22 because to the extent that you can work this stuff out, that's  
23 going to be a whole lot better than bringing it up with me or  
24 the panel as we get closer to this hearing.

25                 So talk first, as I know you will do, and, you know,

1 prioritize what you think is going to be worthwhile of my time  
2 or the panel's time because we're running out of time before  
3 whatever format of hearing takes place.

4 And I'll certainly try to turn things around for you  
5 as quickly as I can. As I said, I am on criminal duty, so the  
6 good news is I'm looking at my phone all weekend. Bad news is  
7 you're not the only thing in the queue, so, you know, we're  
8 here, reach out if you need us and we'll do the best we can.  
9 But I would encourage people to talk first, prioritize. You  
10 know, ultimately, this panel wants to get this as right as can  
11 be, right, so the default should be, if it's fair game, turn it  
12 over because I think that's going to be the best way to go  
13 here.

14 Okay. Anything else from the legislative defendants?

15 MR. BERKOWITZ: Nothing further from me. This is  
16 Mr. Berkowitz, your Honor.

17 THE COURT: Okay. All right. Thanks, folks. A very  
18 long hearing, I know you have a lot to do, so thanks for the  
19 time and I'll -- you'll have your hearing with the panel on  
20 Friday.

21 UNIDENTIFIED ATTORNEY: Thank you, your Honor.

22 MS. JOHNSTON: Thanks, your Honor.

23 (Proceedings concluded at 2:00 p.m.)  
24  
25

\* \* \* \* \*

C E R T I F I C A T E

I certify that the foregoing is a correct transcript from  
the record of proceedings before Magistrate Judge Beth W. Jantz  
in the above-entitled matter.

<u>/s/Kristin M. Ashenhurst, CSR, RDR, CRR</u>	<u>December 2, 2021</u>
Kristin M. Ashenhurst, CSR, RDR, CRR	Date
Federal Official Court Reporter	

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# Exhibit B

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IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

JULIE CONTRERAS, IRVIN FUENTES,  
ABRAHAM MARTINEZ, IRENE PADILLA and  
ROSE TORRES

Plaintiffs.

vs.

Case No.

ILLINOIS STATE BOARD OF ELECTIONS, 1:21-CV-3139

CHARLES W. SCHOLZ, IAN K. LINNABARY,  
WILLIAM J. CADIGAN, LAURA K. DONAHUE,  
WILLIAM R. HAINE, WILLIAM M. MCGUFFAGE,  
KATHERINE S. O'BRIEN and CASANDRA B.  
WATSON, in their official capacities as  
members of the Illinois State Board of  
Elections, DON HARMON, in his official  
capacity as President of the Illinois  
Senate and THE OFFICE OF THE PRESIDENT  
OF THE ILLINOIS SENATE, EMANUEL  
CHRISTOPHER WELCH, in his official  
capacity as Speaker of the Illinois  
House of Representatives, and the  
OFFICE OF THE SPEAKER OF THE ILLINOIS  
HOUSE OF REPRESENTATIVES,

Defendants.

---

DEPOSITION OF JACOB M. GRUMBACH, Ph.D.

Taken on behalf of the Defendants

December 2, 2021

Reported by:

Suzanne Benoist, RPR, CCR-MO, CCR-KS, CSR-IL, CSR-IA

JOB No. 4969979

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1 THE DEPOSITION OF WITNESS, JACOB M.  
2 GRUMBACH, Ph.D., produced, sworn and examined on  
3 December 2, 2021, between the hours of 8:00 in the  
4 forenoon and 5:00 in the afternoon of that day via  
5 Zoom, before Suzanne Benoist, a Certified Court  
6 Reporter within and for the States of Missouri,  
7 Kansas, Iowa and Illinois, in a certain cause now  
8 pending In The United States District Court,  
9 Northern District of Illinois, Eastern Division,  
10 wherein JULIE CONTRERAS, et al. are Plaintiffs and  
11 ILLINOIS STATE BOARD OF ELECTIONS, et al. are  
12 Defendants.

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7

Ms. Hulett

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INDEX OF EXHIBITS

(No exhibits marked)

1 APPEARANCES

2  
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6 registered Illinois House of  
7 Representatives and individually as a  
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9 La Torre, Dolores Diaz, Felipe Luna, Jr.,  
10 Salvador Tremillo, Christopher Romero,  
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1           IT IS HEREBY STIPULATED AND AGREED by and  
2           between Counsel for the Plaintiff and Counsel for  
3           the Defendant, that this deposition may be taken by  
4           Suzanne Benoist, a Certified Court Reporter and  
5           Notary Public, and thereafter transcribed into  
6           typewriting, with the signature of the witness  
7           being expressly reserved.

8                       JACOB M. GRUMBACH, Ph.D.,  
9           of lawful age, being produced, sworn and examined  
10          on the part of the Defendants testified as follows:

11                               EXAMINATION

12          QUESTIONS BY MR. KASPER:

13               (Whereupon, the deposition began at 9:05 a.m.)

14               Q.          Could you state your name Doctor?

15               A.          Yes, my name is Jacob Grumbach. Last  
16          name G-R-U-M-B-A-C-H.

17               Q.          If it's okay with you I'll just call  
18          you Dr. Grumbach throughout the testimony.

19               A.          That's fine. I'm okay with Jake or  
20          Jacob as well.

21               Q.          I notice from your CV you've been  
22          deposed before, you've been through this process,  
23          you understand the rules?

24               A.          That's correct.

25               Q.          You answer your questions verbally

1 was not an incumbent or appointed.

2 Q. Okay. Do you know which of the  
3 others, which ones you believe the Latino  
4 candidate, preferred candidate did not prevail?

5 A. I do not know off the top of my head.

6 Q. Okay. Could you provide that to us?

7 A. I can provide that, you know, after  
8 this deposition.

9 Q. I'm sorry, we just got these reports.

10 A. Sure thing.

11 Q. I haven't had a chance to figure out  
12 which ones we're talking about, so if you could let  
13 me know that would be great.

14 A. Sounds good.

15 Q. In your rebuttal report I notice that  
16 you didn't challenge any of the psychological  
17 regression results that Dr. Lichtman provided in  
18 his report, is that correct?

19 A. That's correct. I was not able to  
20 assess the quality of the ecological regression  
21 providers or results in this report.

22 Q. Okay. And you also made some  
23 corrections like the tables that we talked about  
24 earlier based on his report. Is that why you  
25 included those corrections?



1           A.           I did notice in Dr. Lichtman's report  
2           that he pointed out potential issues with those two  
3           election estimates so then I went back to those  
4           elections and indeed found an issue with the data  
5           formatting picked up by my statistical code that  
6           required correction in this case, yes.

7           Q.           So in the rebuttal report in your  
8           summary paragraph 1 you say in this rebuttal report  
9           I, one, correct minor statistical coding errors.

10                   Those are the errors that you're  
11           referring to that Dr. Lichtman found in your work?

12           A.           That's correct.

13           Q.           Okay.

14           A.           Although I would say I'm not sure  
15           that Dr. Lichtman found the coding errors but  
16           rather pointed to potential implausibility of those  
17           estimates.

18           Q.           Right. And he was correct in that  
19           regard.

20           A.           He was correct that those earlier  
21           estimates were implausible.

22           Q.           Okay. I'll give you an example,  
23           please go to page 54 of Dr. Lichtman's report up on  
24           your screen.

25           A.           Yes.

1           Q.       Just for clarification, so the bottom  
2       of the page says page 54, the top of the page says  
3       page 55, or are we talking about chart number 2,  
4       Hispanic and non-Hispanic coalition in the 19 state  
5       legislative election analyzed by Dr. Grumbach in  
6       table 3?

7           A.       Let me see here.

8           Q.       I believe this was the filing that  
9       the designation changed by one.

10          A.       Yes.

11          Q.       That is table 6, and that appears on,  
12       on my screen it's page 55.

13          A.       I see. Yes. Thanks. Table 6,  
14       revised compilation of 16 endogenous elections  
15       examined by Dr. Grumbach.

16          Q.       Right. Correct. Okay. So in that,  
17       in your initial report you reported that, let me  
18       turn your attention to number 13, entry number 13,  
19       2020 Democratic primary for Andrade?

20          A.       Right.

21          Q.       That's an example where your initial  
22       estimate for Latino voting strength of candidate  
23       Andrade in the 2020 Democratic primary, House  
24       District 40 was 32.9 percent. Correct?

25          A.       I would have to look at my initial

1 report, I believe that's likely accurate.

2 Q. Okay. And now on your rebuttal  
3 report, page 3 in table B2 you report for the same  
4 election, the same candidate received 72.7 percent,  
5 so roughly twice as much. More than twice as much.

6 A. If it's 39 then a bit below twice,  
7 but.

8 Q. Correct. Sorry about that.

9 A. No worries.

10 Q. Roughly twice as much, right? So  
11 your original estimate was off by 30 some points.

12 A. That's correct.

13 Q. Okay. And now it seems that Dr.  
14 Lichtman's report is 70 percent and now your report  
15 is 72 percent, so you are in agreement with Dr.  
16 Lichtman about that estimate now, correct?

17 A. Yeah, I'm in reasonable agreement  
18 with that estimate.

19 Q. Okay. In your report you talk about  
20 the ecological regression. You're familiar with  
21 that process?

22 A. I am.

23 Q. And like your methodology ecological  
24 regression is based on by preaching election  
25 returns and demographic data, is that correct?

1 Q. Is the fact, the phenomenon of Latino  
2 support for example not adding quite up to 100 in a  
3 race, is it correct to call that an error rate  
4 statistically?

5 A. No. An error rate would not be an  
6 optimal term to use and it's not necessarily an  
7 error, whether or not the totals add up to 100, but  
8 I would say in the conversation in the earlier  
9 deposition I understood it to mean deviations from  
10 100 but I do think it's not necessarily accurate to  
11 call it an error or an error rate.

12 Q. One of the things that I asked you to  
13 do in this case was to respond to Dr. Lichtman's  
14 report, correct?

15 A. Correct.

16 Q. Were you able to look at whether Dr.  
17 Lichtman's ecological regression estimates for  
18 support for candidates added up to more than 100  
19 percent for Latino estimates for each race?

20 A. I was not able given the report or  
21 the lack of data files available.

22 Q. And were you able to look at whether  
23 his ecological regression estimates of support for  
24 candidates added up to more than 100 percent for  
25 non-Latino voters?

1 A. I was not.

2 Q. And that's because you didn't have  
3 the estimates, correct?

4 A. That's correct. I did not have the  
5 complete array of estimates for the Latino  
6 candidates of choice and their opponents the way I  
7 provided for my sample of elections, and  
8 furthermore was not able to assess the underlying  
9 data or statistical analysis through the provided  
10 materials.

11 Q. Were you able to look at whether Dr.  
12 Lichtman coded his election data correctly for his  
13 ecological regression analysis?

14 A. No, I was not given any code of any  
15 form.

16 Q. And why is that important?

17 A. That's important because I cannot  
18 assess how the estimates were generated, whether  
19 statistical procedures were followed correctly or  
20 if statistical procedures were really done at all,  
21 that's just limited information for me to assess  
22 the quality of those estimates.

23 Q. Do you know what the standard errors  
24 were for his estimates?

25 A. I do not know any measures of

1       uncertainty on his estimates, whether standard  
2       errors, confidence intervals, basing credible  
3       intervals or any other uncertainty estimates.

4               Q.       And were you able to see whether Dr.  
5       Lichtman's estimate of Asian voter support for  
6       example in the election involving Candidate Mah,  
7       whether the estimates of Asian voter support in any  
8       race were accurate, including that race?

9               A.       Here we're referring to the  
10       ecological regression estimate.

11              Q.       Yes.

12              A.       Again, I'm not able to assess the  
13       veracity or accuracy, biasness, certainty of any of  
14       the estimates given the lack of, well, lack of  
15       completeness in reporting estimates but also the  
16       lack of underlying data files and code.

17              Q.       And at the risk of belaboring a point  
18       were you able to determine whether Dr. Lichtman's  
19       estimates of white or black voters scores were  
20       accurate?

21              A.       I was not.   I was not able to assess,  
22       you know, any of these previous questions we've  
23       talked about, whether any totals add up to 100 or  
24       deviate from 100, which again is relatively  
25       orthogonal to the, whether racially polarized

1 voting exists in the estimates or the accuracy of  
2 any given estimate for any racial group.

3 Q. And exactly what would you need in  
4 order to replicate Dr. Lichtman's ecological  
5 regression analysis in order to determine its  
6 accuracy?

7 A. Well, I think, so first this is not  
8 to replicate, but first to understand the full set  
9 of results on these questions I would need  
10 something more akin to the appendix table I  
11 provided that have full ethnic and uncertainty  
12 measures for every candidate and opponent within  
13 the elections under study, but then to replicate  
14 that's a specific term in quantitative social  
15 science, to replicate results is to obtain code and  
16 data or at least data, underlying data in a useable  
17 format in which I can produce similar or identical  
18 results or negligibly, you know, different results  
19 of the estimates in that report.

20 Q. And in the field of social science  
21 among your peers is the ability to replicate an  
22 analysis in that way considered important?

23 A. Yes. Top leading journals in  
24 political science when quantitative analysis is  
25 done in a research paper now mandate replication

1 data files for publishing the paper and code files  
2 for publishing those papers and also there's a, not  
3 as much in political science likely but there is in  
4 psychology there is what's called a replication  
5 crisis where many prominent studies, quantitative  
6 studies, do not replicate closely and the  
7 conclusions are then overturned when people look at  
8 the data with a new analysis or re-study the same  
9 phenomenon.

10 Q. And you, we see in your report that  
11 you produced your estimates and the standard errors  
12 around those estimates. Did you also produce code  
13 and electoral data?

14 A. Technically I provided a code script  
15 file and then the underlying electoral data, yes.

16 Q. Okay. I want to turn just for a  
17 moment, I just have a couple of more questions.  
18 This is about proportionality. In your initial  
19 report at page 17 you, the section I think is  
20 called Direct Descriptive Representation, or at  
21 least this is what the section was about,  
22 descriptive representation of the Illinois General  
23 Assembly and you comment regarding the percent of  
24 Latino current representation among legislators in  
25 the Illinois assembly currently.

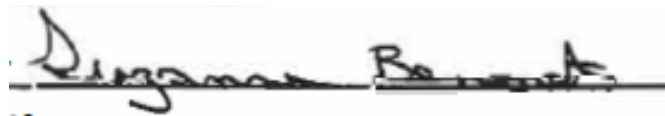


REPORTER CERTIFICATE

I, SUZANNE BENOIST, Certified Shorthand Reporter, do hereby certify that there came before me via Zoom, the above-referenced parties, that the proceeding was translated and proofread using computer-aided transcription, and the above transcript of proceedings is a true and accurate transcript of my notes as taken at the time of said event.

I further certify that I am neither attorney nor counsel for nor related nor employed by any of the parties to the action in which this examination is taken; further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in this action.

Dated this 3rd day of December, 2021.

A handwritten signature in black ink, appearing to read "Suzanne Benoist", is written over a horizontal line. The signature is cursive and somewhat stylized.

Ms. Suzanne Benoist, RPR,  
CCR-MO, CCR-KS, CSR-IL, CSR-IA  
Notary Public No. 07541281  
State of Missouri - Jefferson County  
My commission expires: 5/10/2024

# Exhibit C



## Transcript of **Allan J. Lichtman**

Saturday, December 4, 2021

*East St. Louis Branch NAACP, et al. v. Illinois State Board of Elections,  
et al.*

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Reference Number: 110909

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE EASTERN DISTRICT OF ILLINOIS  
3                   EASTERN DIVISION  
4   - - - - - X  
5   EAST ST. LOUIS BRANCH NAACP,       :  
6   et al.,                               :  
7       Plaintiffs,                       : Civil Action No.  
8               v.                       : 1:21-cv-05512  
9   ILLINOIS STATE BOARD OF           :  
10  ELECTIONS, et al.,               :  
11       Defendants.                     :  
12  - - - - - X

13                               Remote Deposition  
14                               Saturday, December 4, 2021  
15       Deposition via Zoom of ALLAN J. LICHTMAN,  
16   a witness herein, called for examination by counsel  
17   for Plaintiffs in the above-entitled matter, pursuant  
18   to notice, the witness being duly sworn by MARY GRACE  
19   CASTLEBERRY, a Notary Public in and for the State of  
20   Maryland, taken at 2:21 p.m. EST, Saturday, December  
21   4, 2021, and the proceedings being taken down by  
22   Stenotype by MARY GRACE CASTLEBERRY, RPR, and

1 transcribed under her direction.

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6 ERIC VAVRASEK, Videographer

7 JUAN VAZQUEZ

8 BRIAN VEGA, Legal Assistant

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1 C O N T E N T S

2 WITNESS EXAMINATION BY COUNSEL FOR

3 ALLAN J. LICHTMAN PLAINTIFFS

4 BY MR. GREENBAUM 13

5 BY MS. HULETT 115

6

7

8 E X H I B I T S

9 LICHTMAN EXHIBIT NO. PAGE

10 1 - Expert Report of Allan J. Lichtman 14

11 2 - January 5, 2002 transcript of Allan J.  
12 Lichtman 22

13 3 - Campuzano v. Illinois State Board of  
14 Elections, 200 F. Supp.2d 905 (2002) 29

15 4 - Expert Report of Dr. Loren Collingwood 33

16 5 - Amended Table 1 in Rebuttal Report of  
17 Dr. Loren Collingwood 39

18 6 - May 24, 2021 email from Justin Cox to  
19 Giovanni Randazzo, Michael Kasper and  
20 Allan Lichtman 49

21 7 - Expert Report of Dr. Ryan D. Weichelt 54

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1 E X H I B I T S (Continued):

2 LICHTMAN EXHIBIT NO. PAGE

3 8 - "A General Theory of Vote Dilution"

4 La Raza Law Journal, 1993 71

5 9 - Professional Services Agreement 89

6 10 - March 5, 2021 email from Michael Kasper

7 to Justin Cox and Giovanni Randazzo 90

8 11 - March 16, 2021 email from Allan Lichtman

9 to Randazzo Giovanni 92

10 12 - March 16, 2021 email from Giovanni

11 Randazzo to Allan Lichtman 93

12 13 - May 12, 2021 email from Allan Lichtman

13 to Randazzo Giovanni and Michael Kasper 95

14 14 - May 22, 2021 email from Michael Kasper

15 to Giovanni Randazzo and Justin Cox 99

16 15 - Transcript of Recorded Audio Proceedings

17 Joint Committee Redistricting Hearing

18 May 25, 2021 105

19 16 - June 21, 2021 email from Allan Lichtman

20 to Michael Kasper, Randazzo Giovanni and

21 Justin Cox 108

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1	E X H I B I T S (Continued):	
2	LICHTMAN EXHIBIT NO.	PAGE
3	17 - May 24, 2021 email from Justin Cox to	
4	Giovanni Randazzo	110
5	18 - Endogenous elections Analyzed by Dr.	
6	Grumbach, Contreras Expert	197
7	*19 - Unidentified document	226
8	*20 - Unidentified document	256

(Exhibits retained by counsel.)

- - -

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

2 THE VIDEOGRAPHER: We are now on the  
3 record in the matter of East St. Louis Branch NAACP,  
4 et al. v. Illinois State Board of Elections, et al.  
5 Today's date is December 4th, 2021. The time is 2:21  
6 p.m. Eastern Standard Time. This is the video  
7 recorded deposition of Allan Lichtman being taken  
8 remotely via Zoom videoconference.

9 I am the camera operator. My name is Joe  
10 Townsend in association with Trustpoint/Alderson  
11 Reporting. The court reporter is Mary Grace  
12 Castleberry also in association with  
13 Trustpoint/Alderson Reporting.

14 All attorneys present will be noted on the  
15 stenographic record. Will the court reporter please  
16 administer the oath.

17 Whereupon,

18 ALLAN J. LICHTMAN,  
19 was called as a witness by counsel for Plaintiffs,  
20 and having been duly sworn by the Notary Public, was  
21 examined and testified as follows:

22 EXAMINATION BY COUNSEL FOR PLAINTIFFS



1 report.

2 Q. Okay.

3 A. But there was no point in putting anything  
4 out or there was no dispute.

5 Q. But you relied on your estimates to  
6 determine whether you could verify his, correct?

7 A. An independent check using a  
8 well-established method that I've used, as I said,  
9 north of 50 times and has been blessed by the Supreme  
10 Court. I don't recall the Supreme Court ever  
11 blessing ecological inference.

12 Q. And you didn't print out your estimates,  
13 did you?

14 A. I did, when they differed. If they're --  
15 if they didn't differ, I didn't -- I didn't see the  
16 point.

17 Q. But we've determined that you did at least  
18 16 ecological regression -- I'm sorry, that you  
19 performed ecological regression on at least 16  
20 elections in order to compare your estimates with  
21 Dr. Grumbach's?

22 A. That's right. And I reported where we

1 differed and I --

2 Q. But you did not --

3 A. Let me finish.

4 Q. All right.

5 A. I reported where we differed. And, in  
6 fact, when Mr. Kasper was questioning Dr. Grumbach  
7 about his impossible estimates, he said, well, I have  
8 confidence in these because Dr. Lichtman verified  
9 them.

10 Q. And when you compared your estimates to  
11 verify them, you did that on the screen. You didn't  
12 print them out.

13 A. No. There was no need to print them out  
14 because there was no dispute.

15 Q. So you just relied on them on the screen  
16 and then what?

17 A. I did some calculations on a calculator,  
18 yeah. And then I said, okay, this is his candidate  
19 of choice. It's my -- what I find to be my candidate  
20 of choice. I'm not going to dispute him. And he  
21 seemed pretty grateful that I didn't.

22 Q. Did you save the estimates anywhere,

1 yours?

2 A. The ones where we differ are in my report.  
3 The ones where we didn't differ, I didn't. Why?

4 Q. Did you generate confidence intervals on  
5 your estimates?

6 A. Absolutely not. Because, as I said,  
7 confidence intervals can be very misleading because  
8 they're internal to the system. But leave that  
9 aside. I didn't need to because his selection of the  
10 candidate of choice was based upon what we call the  
11 point estimates. And point estimates are your best  
12 estimate of the vote of each racial group for each  
13 candidate. So all I did was compare my point  
14 estimate to his point estimate.

15 Q. Okay.

16 A. End of story.

17 Q. We just finally agreed on something. Did  
18 you test the reliability of your estimates?

19 A. No need to, except where we differed, and  
20 I certainly did, you saw me -- not so much with  
21 Dr. Grumbach because I thought what I had to say was  
22 definitive, but I talked a lot about reliability

1 tests when it came to some of my challenges to  
2 Dr. Chen. Ecological regression. You check and make  
3 sure it adds to 100 percent. It always does. You  
4 look at whether it actually replicates the actual  
5 results of the election. You look at heavily  
6 homogeneous, or not even sort of heavily minority,  
7 one race or white precincts. And there was no need  
8 to do that where there was no disagreement.

9 Q. Okay.

10 MS. HULETT: I'm about to change topic.

11 Is it time for a break for you or not?

12 THE WITNESS: It's a good time for a break  
13 for me. I just need five minutes.

14 MS. HULETT: Okay. Thank you.

15 THE VIDEOGRAPHER: Going off the record at  
16 6:29 p.m.

17 (Recess.)

18 THE VIDEOGRAPHER: Back on the record at  
19 6:41 p.m.

20 BY MS. HULETT:

21 Q. We might not need to look at the report  
22 from this because I think you've referred to it a

1 separately into the program the election --

2 A. I'm loading what? I'm sorry, I didn't  
3 hear that.

4 Q. You go about doing that using the SPSS  
5 program by loading separately each election -- data  
6 from each election file for each -- I'm sorry. Let  
7 me say that again.

8 You load separately the election files for  
9 each election into the program, is that true?

10 A. That's correct.

11 Q. And then for elections that are not  
12 uniformly formatted, you have to arrange them in the  
13 way that you need them to be arranged, is that  
14 correct?

15 A. That's incorrect. The data was given to  
16 me by the staff I think of the democratic caucus, and  
17 I told them how to arrange it. And this is nothing,  
18 again, arcane.

19 Q. Okay.

20 A. Let me explain how it's arranged.

21 Q. No --

22 A. You asked me the question.

1 Q. I'm going -- you know what I'm going to  
2 do, Dr. Lichtman? I'm going to show you what you  
3 asked for and I'm going to show you the sample that  
4 you gave them and I think we can make this move along  
5 very quickly.

6 A. Sure.

7 Q. Can we pull up Exhibit -- I think it's  
8 Exhibit 10 that Mr. Greenbaum was using.

9 A. I don't remember it, but that's fine.

10 Q. Yeah, we're going to pull that up right  
11 now.

12 A. I can only see a small piece of that.

13 Q. I know. I'm having difficulty. There we  
14 go. Let me scroll down.

15 I believe this is the email where you were  
16 asking them for what you need to run that ecological  
17 regression analysis.

18 A. I don't remember, but --

19 Q. And you said, "I have enclosed an example  
20 of what this election and demographic data would look  
21 like for each election." And then you gave them this  
22 example.

1           A.       I'm not sure I gave you that example, but  
2   it's not -- let me finish -- it's not a complete  
3   example.   It's just election data.   And you can see  
4   it's election data for the two candidates by  
5   precinct.   But I would also have, on each of these  
6   precincts, and when I put it into my computer, what I  
7   was given -- oh, there it is.

8           Q.       Yep.   See, I'm way ahead of you.   So you  
9   had -- this is an example of what statisticians refer  
10   to sometimes as cleaned data, correct?

11          A.       I don't know what necessarily cleaned data  
12   means.   This is a kind of data.   But usually it was  
13   CVAP, not VAP.

14          Q.       But it's complete --

15          A.       It doesn't matter.   The rows look the  
16   same, sure.

17          Q.       Right.   Because it -- it's complete  
18   because it has both election results, which I was  
19   showing you first, by precinct, by candidate, and it  
20   has racial data for each precinct?

21          A.       Correct.

22          Q.       And in this case, it was VAP, it looks

1     like data, that you had not CVAP, not registration  
2     but VAP, is that correct?

3           A.     I never used registration. I used CVAP.

4           Q.     Okay.

5           A.     I'm not sure why this example has -- but  
6     it's the same. It looks the same.

7           Q.     Right. So in your ecological regression,  
8     it's the same as this, but you used CVAP, correct?

9           A.     I believe that's right. I think that's  
10    right.

11          Q.     So there was a -- for each election that  
12    you analyzed, there was data that looked like this,  
13    that was this complete?

14          A.     Pretty much, yeah. And then always have  
15    registration, but I didn't use it for anything.

16          Q.     Did you give that data that you had for  
17    each election to your attorneys?

18          A.     The attorneys gave it to me. It was  
19    prepared by the staff of the democratic caucus. I  
20    didn't put it together. What I did have to do in a  
21    lot of cases is they would give me the election  
22    returns matched to precincts and they would give me



1 the precinct demographics and I would just put them  
2 together in a format like this.

3 Q. So the staff --

4 A. But I didn't -- I didn't do it.

5 Q. So the staff gave you the data that you  
6 needed for each election that you wanted to run an  
7 ecological regression on, correct?

8 A. That's correct. There may be one or two  
9 where I worked it off myself. I don't remember. But  
10 the vast majority was given to me by the staff,  
11 that's right.

12 Q. And after you ran the ecological  
13 regression, what did you do with that data?

14 A. What data? The data -- my results --

15 Q. The data that -- the data --

16 A. Every number that I found that was  
17 relevant -- remember, I'm not doing an independent  
18 analysis. I'm just doing a check. And every time I  
19 found a difference, I reported the number generated  
20 by my ecological regression.

21 Q. I get that.

22 A. And all of those numbers were accepted and

1 both Dr. Chen and Dr. Grumbach revised their analyses  
2 based on what I had found. It's done. It's over.  
3 It's complete.

4 Q. I understand that. I understand that it's  
5 done. For each election that you did an ecological  
6 regression on, you had a set of data that looks like  
7 Exhibit 10 that you loaded into the SPSS program,  
8 correct?

9 A. That is correct.

10 Q. What did you do with that election data  
11 for each election --

12 A. I ran --

13 Q. -- fed into the SPSS program?

14 A. I did something that is absolutely  
15 standard statistical analysis. I ran a regression.  
16 I did not redo the computations. That's why I have  
17 SPSS. SPSS does the regression analysis based upon  
18 whatever it is you've inputted in this kind of  
19 format.

20 Q. And you received this data from who?

21 A. I already told you. From the staff of the  
22 democratic caucus. I assume that's who they are.

1 Q. Do you still have --

2 A. Justin and Gio.

3 Q. Do you still have this data for each  
4 election?

5 A. I'm sure I do. I wouldn't have thrown it  
6 away. And by the way, you have the same data because  
7 you have to. This is the only data that -- by which  
8 you can do either EI or ER. And Dr. Grumbach said he  
9 had the data by which he could do EI or ER. So this  
10 isn't new to me.

11 And I believe -- let me finish -- and I  
12 believe -- again, I don't get involved in this. The  
13 attorneys do. But the attorneys -- my understanding  
14 was that the data that was given to me was shared  
15 with plaintiffs. But plaintiffs also worked up their  
16 own data in this same format. That's my  
17 understanding. I can't prove that.

18 Q. For the record, I have to say we don't  
19 have that data, Dr. Lichtman. I'm not faulting you.  
20 I'm saying we don't have it and I'm glad you still  
21 have it.

22 So now you've loaded it into --

1 anywhere from 41 percent, 20 percent, 14 percent  
2 impossible results. And he gave us four explanations  
3 for it in his depo, none of which are valid.

4 There were no write-in candidates in these  
5 elections. Under votes are not counted, over votes  
6 are not counted. And the ones with the biggest  
7 divergence, there was no Republican primary. So  
8 something went awry somewhere with what Dr. Grumbach  
9 did.

10 Q. All right. So you fed the data into the  
11 SPSS -- SPSS and what the SPSS does is allow you to  
12 run a linear regression where the --

13 A. Yes.

14 Q. -- X is the Latino share of precincts.  
15 Let's just -- for purposes of our conversation, let's  
16 say we're just doing Latino/nonLatino. X is the  
17 Latino share of precincts and Y -- the Y there is the  
18 percent support for each candidate, is that correct?

19 A. That's right.

20 Q. And then the program spits out a  
21 coefficient, which is the estimate of the percent of  
22 Latinos that voted for a particular candidate, is

1 that correct?

2 A. With a little bit of arithmetic.

3 Q. Okay.

4 A. It's a little bit more nuanced than that.

5 It gives you a slope and a coefficient. It's  $Y =$  equal

6  $A + BX$  where  $A$  is the slope and  $B$  is the

7 coefficient. And you've got to do a little bit of

8 arithmetic to get at the estimates. That's all. But

9 you're basically right.

10 Q. And then for each coefficient value, it

11 also spits out a standard error, is that correct?

12 A. Yes, it can do that.

13 Q. And then it also gives you a confidence

14 interval?

15 A. You have to compute that. And again,

16 that's just internal to the program. It's not real.

17 Q. And you can --

18 A. Let me finish. It was not relevant here

19 because I wasn't dealing with confidence intervals.

20 I was just checking point estimates.

21 Q. And you can see on the screen the

22 confidence interval, the standard error and the

1 estimates, correct?

2 A. You can see everything on the screen. But  
3 I didn't even look at the confidence intervals  
4 because all I was doing was computing point  
5 estimates, which was all that Dr. Grumbach and  
6 Dr. Chen were using to identify their Latino  
7 candidates of choice.

8 Q. And if you wanted to, you could print that  
9 out, correct?

10 A. I could what?

11 Q. Print out what you see on the screen, the  
12 estimates, the standard errors, the confidence  
13 intervals, you could print all that out if you wanted  
14 to?

15 A. I can print out anything I want, but  
16 there's no point. I'd just paper my house.

17 Q. And you didn't print it out?

18 A. No.

19 Q. Can you retrieve any of that now?

20 A. I mean, could I go back and rerun my  
21 ecological regressions?

22 Q. Yes. Or was there any way to --

1 A. Is there a dispute over them?

2 Q. -- save them? Was there any way to save  
3 it or --

4 A. I could re-input the data and rerun  
5 things.

6 Q. All right.

7 A. But I don't see the point of it since  
8 there's no dispute among the experts anymore, if  
9 there ever was.

10 Q. And the SPSS output -- I won't -- I'm not  
11 going to spend too much longer on this, but I wanted  
12 to ask you a couple more things. The SPSS output  
13 also contains R and R squared values, is that right?

14 A. That's correct.

15 Q. All right. I'd like you to look at page 6  
16 of your report. Way at the beginning.

17 A. Yeah.

18 Q. Under data and methods.

19 A. Yeah.

20 Q. Third line. And you are -- let me just  
21 read it, actually, the first three lines so I  
22 understand the verb involved here.

1                   So the racial precinct data -- I'm going  
2   to go back for a minute to the data that you feed  
3   into the SPSS.

4           A.       Sure.

5           Q.       You've got that from legislative staff.  
6   Do you know where they got that data?

7           A.       I know where they got the election returns  
8   that, you know, they reported by the state.

9           Q.       But what about the racial precinct data?

10          A.       I'm not sure where they got the racial  
11   precinct data. But this is consistent with what I've  
12   been doing in Illinois for 20 years. This is exactly  
13   the same thing. I got the election breakdowns, the  
14   demographic breakdowns from staff, people who know  
15   the state, know the stuff, and used them.

16          Q.       Sure, but you --

17          A.       Let me finish. It would have been a vast  
18   -- given how busy we are and how compressed the  
19   schedule is -- for me to try to work this up.

20          Q.       Right. But you understand that we might  
21   be interested in that since there's probably  
22   different ways of estimating what the racial



1 composition of each precinct is.

2 A. I pointed out, you know, and I think we  
3 asked this in the depo of Dr. Grumbach, you can do  
4 it. You have the data. You have your own data.  
5 That's fine. You know how to do ecological  
6 regression. You want to independently check what  
7 I've found, go right ahead. He didn't do it because  
8 he had no quarrel with what I found. So there's no  
9 secret here.

10 Q. In the footnote that we were just looking  
11 at, footnote 40 on page 48, I think you say you  
12 weighted by CVAP to adjust for differences in  
13 precinct population.

14 A. Yeah. It doesn't make much difference  
15 when you're dealing with precincts because there's  
16 not great variation in the, you know, precinct  
17 population, one in 10,000 and one in 100. But to be  
18 most accurate, I used the weighted procedure. But it  
19 wouldn't have made much difference.

20 Q. Can you explain how you did that?

21 A. SPSS has a weight variable. I just  
22 entered total CVAP into the weight variable.

1 inaccurate, believe me, they would have said so.

2 They would not have changed their reports based on my  
3 work.

4 MS. HULETT: All right. I have no further  
5 questions. So we're done for the evening.

6 THE WITNESS: So we're done for tonight  
7 and we're going to reconvene at 1:00 my time?

8 MR. KASPER: Yes. That's my  
9 understanding, everyone, right?

10 MR. PANOFF: 1:00 Eastern, noon Central  
11 tomorrow.

12 THE WITNESS: Thanks, good.

13 MR. KASPER: Thanks, everyone.

14 THE VIDEOGRAPHER: This concludes today's  
15 deposition given by Dr. Allan Lichtman. We are going  
16 off the record at 9:25 p.m.

17 (Whereupon, at 9:25 p.m. EST, the  
18 deposition adjourned, to reconvene at 1:00 p.m. EST  
19 on Sunday, December 5, 2021.)

20

21

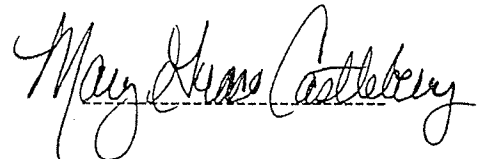
22

CERTIFICATE OF REPORTER

UNITED STATES OF AMERICA ) ss.:

STATE OF MARYLAND )

I, **MARY GRACE CASTLEBERRY, RPR**, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties for the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

A handwritten signature in cursive script, reading "Mary Grace Castleberry".

*Notary Public in and for*

*the State of Maryland*



## Transcript of **Allan J. Lichtman Vol. II**

Sunday, December 5, 2021

*East St. Louis Branch NAACP, et al. v. Illinois State Board of Elections,  
et al.*

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Reference Number: 111049

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE EASTERN DISTRICT OF ILLINOIS  
3                   EASTERN DIVISION  
4   - - - - - X  
5   EAST ST. LOUIS BRANCH NAACP,       :  
6   et al.,                               :  
7       Plaintiffs,                       : Civil Action No.  
8               v.                       : 1:21-cv-05512  
9   ILLINOIS STATE BOARD OF           :  
10  ELECTIONS, et al.,                 :  
11       Defendants.                     :  
12  - - - - - X

13                   Remote Deposition

14                   Sunday, December 5, 2021

15               Continued Deposition via Zoom of ALLAN J.  
16  LICHTMAN, a witness herein, called for examination by  
17  counsel for Plaintiffs in the above-entitled matter,  
18  pursuant to notice, the witness being duly sworn by  
19  MARY GRACE CASTLEBERRY, a Notary Public in and for  
20  the State of Maryland, taken at 1:21 p.m. EST,  
21  Sunday, December 5, 2021, and the proceedings being  
22  taken down by Stenotype by MARY GRACE CASTLEBERRY,

1 RPR, and transcribed under her direction.

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18 DEWEY NELSON, Videographer

19 JUAN VAZQUEZ

20 BRIAN VEGA, Legal Assistant

C O N T E N T S

WITNESS EXAMINATION BY COUNSEL FOR

ALLAN J. LICHTMAN PLAINTIFFS WITNESS

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22 - King v. State Board of Elections, 979

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23 - Final Report of Allan J. Lichtman: City  
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Consequences 305

24 - Barnett v. City of Chicago, 969 F.Supp.

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25 - Illinois Legislative Redistricting

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5	Elections	315
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14	Enodgenous Elections Examined by Dr. Chen	357
15	32 - Nipper v. Smith, 39 F.3d. 1494 (1994)	366
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18	34 - Johnson v. Mortham, 926 F.Supp. 1460 (1996)	377
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20	NAACP v. McCrory, 182 F.Supp.3d 320 (2016)	383
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22	Office, 842 F.3d 613 (2016)	389

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3 47 - Article entitled Illinois Democratic

4 Group's Post Compares Trump's Red Hats

5 to KKK Hoods 544

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

2 THE VIDEOGRAPHER: We are now on the  
3 record in the matter of East St. Louis Branch NAACP,  
4 et al. v. The Illinois State Board of Elections, et  
5 al. Today's date is December 5th, 2021. The time is  
6 1:07 p.m. This is the video recorded deposition of  
7 Allan Lichtman, volume 2, being taken remotely. The  
8 witness is located in Bethesda, Maryland.

9 I am the videographer. My name is Dewey  
10 Nelson in association with Trustpoint/Alderson  
11 Reporting. The court reporter is Mary Grace  
12 Castleberry also in association with  
13 Trustpoint/Alderson Reporting.

14 Will all attorneys please identify  
15 themselves and the parties they represent beginning  
16 with the party noticing this proceeding.

17 MR. PANOFF: This is Tom Panoff for the  
18 McConchie plaintiffs. I think what we did last time  
19 is stipulate to the appearances that are appearing on  
20 Zoom. So unless any counsel has any objection, why  
21 don't we just note that for the record.

22 MR. KASPER: No objection.



1 MR. PANOFF: Okay. Thanks, Mike.

2 EXAMINATION BY COUNSEL FOR McCONCHIE PLAINTIFFS

3 BY MR. PANOFF:

4 Q. Dr. Lichtman, good afternoon. How are you  
5 doing?

6 A. Good to see you again. It seems like we  
7 have these reunions every decade.

8 Q. Just a bit of housekeeping. As we were  
9 stating before we went on the record, just as a  
10 reminder, your testimony is under oath like it was  
11 yesterday.

12 Do you understand that?

13 A. Of course.

14 Q. Okay. And a little bit more housekeeping.  
15 As I said at the beginning, I am counsel for the  
16 McConchie set of plaintiffs.

17 Do you understand that?

18 A. I do.

19 Q. Dr. Lichtman, when we were talking  
20 yesterday, I think we started going back into -- I  
21 think Campuzano was probably your first Illinois  
22 testimony. I think that was early 2000s, correct?

1 choice in state legislative districts with Hispanic  
2 or black CVAP percentages at or above the lowest  
3 range of a MALDEF defined influence district. To the  
4 contrary, the analyses prove that white bloc voting  
5 almost never defeats Hispanic or black candidates of  
6 choice in such districts," and then the paragraph  
7 goes on.

8 Do you see that?

9 A. Yes.

10 Q. So are you testifying here that, in your  
11 opinion, the plaintiffs have not satisfied the third  
12 prong of Gingles?

13 A. The third prong?

14 Q. Yes.

15 A. Yes.

16 Q. That hasn't always been your testimony in  
17 Illinois restricting cases, has it?

18 A. I'm not sure. You'd have to refresh me.

19 Q. Okay. All right. Let's take a trip down  
20 memory lane for a little bit then. And -- but before  
21 we do that, let me introduce an exhibit.

22 (Lichtman Exhibit No. 21 was marked

1 Q. Correct.

2 A. And since I'm not assessing the  
3 statistical significance between Latino and white  
4 voting, those are unnecessary. Again, if Latinos and  
5 whites vote similarly, like they do in Illinois, you  
6 might not get a statistically significant difference  
7 between them. It doesn't matter. It's irrelevant.

8 Q. You agreed yesterday that whether you  
9 think it's relevant or not, SPSS would generate a  
10 table that would have the R squared and the P values  
11 for your regression analysis?

12 A. Any statistical --

13 MR. KASPER: Objection. That  
14 mischaracterizes his testimony.

15 BY MR. PANOFF:

16 Q. Did I mischaracterize your testimony?

17 A. I'm sorry, you need to repeat your  
18 question.

19 Q. Okay.

20 A. I've lost it in this --

21 Q. Let me ask it this way, Mike. When you  
22 ran SPSS, the regression analyses in SPSS, SPSS

1 automatically would generate a table that would have  
2 both the R squared and P value, correct?

3 A. Yes. It would have the R squared and P  
4 value, but not necessarily the R square that you  
5 would look at to establish the differences between --  
6 if that's what you're interested in, which I was  
7 not -- the differences between -- to show that there  
8 was a major difference between white and Hispanic  
9 voting -- because remember, I'm doing a double  
10 equation -- and therefore each separate R square  
11 would be for part of it. You have to do an  
12 additional analysis to generate an R square that puts  
13 it all together.

14 Q. And it's weighted, too. It's not just a  
15 double -- it's weighted as well, correct?

16 A. When you say "it," what do you mean by it?

17 Q. Your model that you run, your equation.  
18 Your standard double equation is weighted.

19 A. I thought we already discussed that.

20 Q. I'm just confirming that.

21 A. Yeah.

22 Q. And as I believe, again, we confirmed

1 Legal Studies?

2 A. I'm sorry, what's the question?

3 Q. Have you heard of the Journal of Legal  
4 Studies?

5 A. Yeah, I think I published some years ago  
6 an article in there.

7 Q. That's right. You did. I think you  
8 published in 2003 the article, "What really happened  
9 in Florida's 2000 Presidential election." Is that  
10 the article you're thinking of?

11 A. That sounds right.

12 Q. I'm going to share a document here in a  
13 second.

14 THE REPORTER: This will be Exhibit 27.

15 MR. PANOFF: Thank you.

16 (Lichtman Exhibit No. 27 was marked  
17 for identification.)

18 BY MR. PANOFF:

19 Q. Okay. Do you see this?

20 A. Yes.

21 Q. And this is the journal that you published  
22 in in 2003?

1 A. Yes.

2 Q. And do you see where it says "Instructions  
3 for authors"?

4 A. No. Oh, yeah.

5 Q. Right here?

6 A. Sorry. I was looking down. Yes.

7 Q. No worries.

8 A. Bear with me. I'm an old man.

9 Q. Okay. And in the instructions to authors,  
10 do you see that -- and I'll read it -- it says, "It  
11 is the policy of the JLS that authors of accepted  
12 papers that contain empirical work, simulations, or  
13 experimental work provide to the journal, prior to  
14 the publication, the data, programs, and other  
15 details of the computations sufficient to permit  
16 replication," and then it goes on?

17 A. I see it.

18 Q. And is this fairly typical for scholarly  
19 journals if you're going to publish empirical work?

20 A. Not necessarily at all. I don't recall  
21 giving them all this stuff. But your experts have  
22 all of this.

1 Q. They have all of this?

2 A. Yeah. They have data. They have the same  
3 data. They have the programs, and I gave the details  
4 of how I did it. We just went over it in footnote  
5 40.

6 Q. They have the details of the computations?  
7 They have the summary tables of your regression?

8 A. That's not what that says. That says the  
9 details sufficient to permit replication. And they  
10 have the details sufficient to produce -- to permit  
11 replication. Dr. Grumbach said he could do it. He  
12 just didn't. I describe in detail the two-equation  
13 method. I put in references to it.

14 So they have the details. They have the  
15 same data I did, precinct-by-precinct election  
16 returns, precinct-by-precinct demography and  
17 everybody has -- every university has SPSS or its  
18 equivalent.

19 Q. Are you familiar with Harvard Data  
20 Sciences Review?

21 A. Yeah. I think I published something in  
22 there more recently.

1 Q. Yeah, last --

2 A. This is a real trip down memory lane for  
3 me. Thank you.

4 Q. Last year.

5 A. Yeah. And then I gave a -- I was featured  
6 in one of their interviews after I gave them my  
7 article that correctly predicted the 2020 election.

8 (Lichtman Exhibit No. 28 was marked  
9 for identification.)

10 BY MR. PANOFF:

11 Q. Do you see this document?

12 A. Yep.

13 Q. Does this look familiar to you?

14 A. Nope.

15 Q. But you published there last year?

16 A. Yep. I didn't give them anything other  
17 than my results.

18 Q. Really? So where it says, "Full  
19 manuscript submissions" here and it says, "The  
20 following components should be included for all  
21 article submissions, in this order," and do you see  
22 that number 10 says, "Data repository/code"?



1           A.       I'm not sure what that means, but as I  
2       said, they have the data. There's no code. It's  
3       just a straightforward regression that's been around  
4       for 50 years. So if you're suggesting that somehow  
5       what they're requiring here, your experts don't have,  
6       that's incorrect. And frankly, you know, I don't --  
7       I didn't give them any computer outputs. I never  
8       have.

9           Q.       You certainly seem to be the exception. I  
10      think we agree there, Dr. Lichtman.

11                   Your main book on the topic of ecological  
12      regression was the Ecological Inference Book in 1978,  
13      correct?

14           A.       Oh, my God. Published in 1978? I guess  
15      so.

16           Q.       Well, that's the main book that you rely  
17      on. You talk about it in your report.

18           A.       Did I cite that book in my report? It's  
19      pretty old now. I'm not even sure I had developed  
20      the two-equation method back then. I doubt it.

21           Q.       Well, let's fast forward 13 years after  
22      that, you published, "Passing the test of ecological

1 The time is 6:59 p.m.

2 (Whereupon, at 6:59 p.m., the taking of  
3 the instant deposition ceased.)

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CERTIFICATE OF REPORTER

UNITED STATES OF AMERICA ) ss:

STATE OF MARYLAND )

I, MARY GRACE CASTLEBERRY, RPR, the officer  
before whom the foregoing proceedings were taken, do  
hereby certify that the foregoing transcript is a  
true and correct record of the proceedings; that said  
proceedings were taken by me stenographically to the  
best of my ability and thereafter reduced to  
typewriting under my supervision; and that I am  
neither counsel for, related to, nor employed by any  
parties to this case and have no interest, financial  
or otherwise, in its outcome.



Notary Public in and for  
The State of Maryland

My commission expires: 7/18/2023