# EXPERT REPORT OF THOMAS BRUNELL, Ph.D.

I am a Professor of Political Science at the University of Texas at Dallas, and I am also the Senior Associate Dean for Graduate Education in the School of Economic, Political and Policy Sciences. I received my Ph.D. in political science from the University of California, Irvine in 1997. I have published dozens of peer-reviewed articles and a book on elections, redistricting, the Voting Rights Act, and political parties (CV is attached). I have served as an expert witness on numerous cases around the country, and have testified in both state and federal courts. My hourly rate for this is case $300.

In the past four years I have been involved as an expert witness in the following states and cases:

Colorado - *Moreno v. Gessler*
Nevada - *Dora Guy v. Ross Miller*
South Carolina - *Backus v. State of South Carolina*
North Carolina - *Dickson v. Rucho*
New Mexico - *Egolf v. Duran*
Florida - *Romo v. Detzner*

For the matter at hand, I was asked by counsel to review the report of Dr. Braunstein and offer my opinions on the validity of his results and conclusions. I read Dr. Braunstein's report, the complaint, several articles quoted in the report, statistics on turnout in South Dakota from the Secretary of State's website, and I was briefed by counsel on the nature of the complaint and the history of satellite voting in Shannon County. My report was due before I was able to receive a copy of the transcript of Dr. Braunstein's deposition, so I would like to reserve the right to add further comments on that at a later date if necessary.

EXHIBIT

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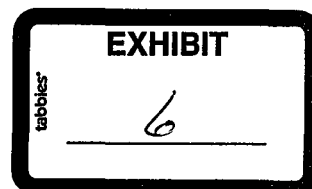
It is unclear to me why the *Gingles* case is implicated here. In my lay understanding of the law, the test outlined by the Supreme Court in the *Gingles* decision has to do with explicating the conditions under which a state is required to draw a legislative or congressional district designed to give minorities an equal opportunity to elect a candidate of their choice. This case is not about drawing majority-minority districts.

Moreover, the methods by Dr. Braunstein used to determine whether or not racial bloc voting is present in Shannon County are not among the handful used by experts and accepted by courts. Homogeneous precincts and bivariate ecological regression are two of the most common methods since they are cited in the Gingles decision. More recently, Professor Gary King of Harvard developed a method he calls ecological inference (EI) and there are related software packages that can implement this more complicated method. I am not opining whether racial bloc voting exists in Shannon County or not, but the evidence presented is not what one typically sees in an expert report, and since this case is not about redistricting, there is no particular reason to know if voting is polarized by race or not.

Given what I know about the case I would expect an expert to testify about how minorities in Shannon County are being discriminated against insofar as they have a larger burden to bear in terms of voting an absentee ballot in person. There is no data or evidence in the report that bears on this question.

Dr. Braunstein's survey is not useful for this case. It has fundamental design problems that doom it from the outset – namely it does not have a random sample

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and the sample size is too small. In order to generalize from a sample to the general population (i.e. Shannon County) a survey needs to have sufficient number of respondents, and each person in the population should have an equal chance of being included in the sample. This is the reason that random sampling is the technique favored by pollsters. While a convenience sample may be cheap and efficient, these benefits come with a cost – accuracy and generalizability.

Dr. Braunstein claims in his report that his convenience sample is designed to "create a representative sample of Shannon County residents" (page 7), though he admits that his method necessarily restricts the sample to "individuals in public spaces" (page 8). How were the locations picked for the "survey"? How were the days and times picked to interview people? People that were on vacation at this time or do not visit these public places are necessarily excluded from the sample. Dr. Braunstein further claims "selection bias was avoided by simply asking each person within the view of the interviewer at the time the survey was conducted." Is this statement to be taken literally? Every single person he saw that day was interviewed? What if he was in the middle of interviewing one respondent and another person walked by? Did he flag down cars on Main Street to speak to people? The important point here though is that even if he did talk to every person within his sight, the sample is too small and is not random. Thus, the results are not generalizable to the whole population (i.e. Shannon County).

In researching the phrase convenience sampling online one gets roughly the same answer regardless of the source – the gist of which is this is a quick and cheap

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way to sample, but in no way can it be used to generalize to a population. Here is an example:

> "A convenience sample is a sample of study subjects taken from a group which is conveniently accessible to a researcher. The advantage of a convenience sample is that it is easy to access, requiring little effort on the part of the researcher. The disadvantage is that it is not an accurate representation of the population, which can skew the results quite radically. In fact, convenience sampling is regarded as a form of sampling bias, meaning that the results from a study conducted with such a sample cannot be generalized to the population as a whole."[1]

Sample size is also important in being able to generalize from a sample to a population. The smaller the sample size, the higher is the margin of error. This makes perfect sense since if someone polls 10 people in a state they naturally should not be overly optimistic about how reflective their sample is of the whole population. There are simple mathematical equations that define the margin of error given the sample size relative to the population. Typically pollsters like to have the margin of error relatively small, say plus or minus five points. For instance, using an online tool, I calculated the number of respondents necessary, in a random sample, in order to achieve a plus or minus five percentage point confidence interval with a total population of 14,000 – the pollster needs 374 respondents.[2] Using the same tool, I calculated that Dr. Braunstein's confidence interval was on the order of plus or minus 11.14 points. Again, this is assuming a random sample, not a convenience sample, so we cannot really attribute a confidence interval to his survey.

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[1] http://www.wisegeek.com/what-is-convenience-sampling.htm
[2] http://www.surveysystem.com/sscalc.htm

Some of the results of the survey are cause for concern. For instance the first question asks "Did you vote in the last national/statewide election?" The question references "the last federal/state election" which would be the June 5, 2012 primary election. But it may also be the case that the respondent thought the question referenced the last general election November 2010. Thus, there is a problem with the clarity of the question. We compare the results of question one to both of these elections. Over 70 percent of the respondents reported voting in the last election (Braunstein report page 33), but in the 2012 primary Shannon County turnout was only 3.3% and in the 2010 general election turnout was just 34.9%. While it is a well-known problem that people tend to over-report participating in elections, this gap is quite large. This problem could be a result of the convenience sample or from the vagueness of the question.

The one research question that may be of interest to the court is the number 10 – "Is there a statistical relationship between early voting provisions and turnout in minority communities?' While one would prefer evidence specifically about Shannon County on this question, the court could still be informed about this broader question. However, Dr. Braunstein presents no data specific to Shannon County or even South Dakota. Instead Dr. Braunstein relies on some of the extant research. In my own reading of these same articles however, I cannot come to the same conclusion that Dr. Braunstein does.

For instance this is the final paragraph of the Gronke et. al. article[3]:

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[3] Paul Gronke, Eva Galanes-Rosenbaum, and Peter Miller. 2007. "Early Voting and Turnout." *PS: Political Science and Politics.* 40(4): 639-645.

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"In conclusion, we remain skeptical of those who advocate in favor of early voting reforms primarily on the basis of increased turnout. Both these results, and prior work in political science, simply do not support these claims. There may be good reasons to adopt early voting-more accurate ballot counting, reduced administrative costs and headaches, and increased voter satisfaction-but boosting turnout is not one of them."

Here is the conclusion from the Neely and Richardson article[4]:

"A basic question for any policy reform is whether or not the policy achieved the intended consequence. The main purpose of early voting is to facilitate the casting of a ballot. This may be accomplished in one of two ways: mobilizing those who would not have been likely to vote otherwise or providing a more convenient outlet of participation for likely voters. While mobilization and convenience may both be desirable goals, states have limited resources to use for increasing citizen participation. Mobilization of the electorate would help justify the higher costs of implementing early voting, but providing a convenience to those who would have voted anyway may not be an acceptable expenditure of precious resources for many governmental entities. If other states are to adopt electoral reforms, such as early voting or mail-in ballots, they may want to see some tangible evidence of increased turnout. **The results of the logistic analysis on individual voters provide no support for the mobilization effect. No discernible differences emerge among the demographic groups that were expected to benefit from early voting.** Low income voters, **minorities,** and senior **citizens were not significantly more likely to use early voting.** Likewise, voters with low political efficacy, little interest in the campaign, and no strong partisan attachment did not appear to take advantage of early voting. On the contrary, the attitudinal factors suggest more support for the convenience effect.

Although we are cautious about the limitations of a one county survey of registered voters, the results suggest that future research on alternative voting methods needs to address the absence of a mobilization effect on the target population. Combined with other studies showing no mobilization effects for either vote-by-mail in Oregon (Berinsky, Burns, & Traugott, 1998) or early voting in Texas (Stein, 1998), our results on the early voting experience in Tennessee reinforce the argument that institutional barriers to voting do not inhibit participation by registrants as much as previously argued" (emphasis added).

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[4] Grant W. Neeley and Lilliard E. Richardson, Jr. (2001) "Who is early voting? An individual level examination." The Social Science Journal, 38.

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Based on his reading of this research Dr. Braunstein concludes: "The story is quite clear from the voting behavior literature. The sum of this work has demonstrated that the capacity of voters to cast an early ballot increases turnout because of the convenience and increased access to the ballot." I do not understand how this conclusion is reached given the quotations above. Both of the above articles are unequivocal – early voting does **not** increase turnout. Moreover the Neely article is explicit that their finding demonstrates no discernible effect for minority voters.

Counsel provided me with some data on turnout, absentee voting turnout, and the number of days that the satellite office for voting was open in Shannon County. Table 1 represents these data. Since we have a mixture of primary and general election data, as well as presidential election years and midterm election years, the best comparisons are those within each group. This is because primary elections always have lower turnout that general elections, and midterm elections always have lower turnout than presidential elections. I have grouped the data into the relevant comparisons. In the first grouping we have three elections, each with a different number of satellite office days. Shannon County turnout is inversely related to the number of days the office is open with a total turnout rate in Shannon County of only 3.3 percent when the office was open for a total of 32 days. The absentee balloting rate was higher that year, though only 248 votes were cast, of which 46 were cast in the satellite office. That is an average of less than 1.5 votes per day that the office was open.

The next group includes the general election turnout rates for 2004 and 2008. Turnout is higher both statewide and in Shannon County in 2004. The satellite office was open longer in 2004 as well. Absentee voting was also higher in 2004.

The next group is not particularly useful to look at since the satellite office was not open at all for both elections and we have some missing data.

The last group includes the 2006 and 2010 general election. In 2006 there was no satellite office and in 2010 the office was open for 22 days. Turnout in Shannon County is higher in 2010 even though statewide turnout was lower. Absentee balloting is higher in percentage terms as well.

So the evidence here is mixed, some years longer satellite hours correlate with higher turnout and some years it does not.

Table 1. Data on Turnout at Satellite Office Days in Shannon County

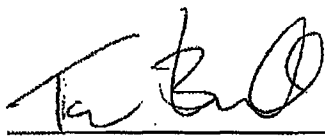| Year & Election	Shannon County Turnout %	Statewide Turnout %	Shannon County Absentee %	Number of Shannon County Satellite Office days
2004 Primary	32.8%	56.7%	2.8%	0
2008 Primary	21.8	37.1	1.4	2
2012 Primary	3.3	17.9	18.6	32
2004 General	57.0	78.6	36.8	16
2008 General	42.6	73.0	13.1	2
2006 Primary	4.1	19.0	?	0
2010 Primary	1.4	?	6.6	0
2006 General	31.3	67.3	2.8	0
2010 General	34.9	62.3	18.6	22

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Table 2 includes data provided to me by counsel for the named plaintiffs in this case. This can be useful to examine to what extent the satellite office is used and whether turnout is increased as a result. The 2012 primary had the most office days with 32 and the data indicate that three of the 25 plaintiffs voted. Low turnout is the hallmark of primary elections so this is not too surprising. However none of the plaintiffs that voted used the satellite office, rather they voted on Election Day at their local polling place. The 2008 primary had just two days of satellite days and turnout was higher, and two of the plaintiffs used the satellite office to cast an early ballot in this election. The 2004 primary had no satellite days at all and 9 of the 25 plaintiffs voted in that election, which is just two votes shy of the eleven that voted in the 2008 primary. There are actually only a total of four instances among the 25 people across 11 elections in which a ballot was cast in the satellite office, so this is not a heavily used convenience.

Table 2. Shannon County Election Plaintiffs Voting Records

Shannon County Election Records

Plaintiff	2002 Prim	2002 Gen	2004 Prim	2004 Gen	2006 Prim	2006 Gen	2008 Prim	2008 Gen	2010 Prim	2010 Gen	2012 Prim
Chris Brooks	No	Elect Day	No	Elect Day	No	Elect Day	Elect Day	Elect Day	No	Elect Day	No
Francis Rencountre	No	No	No	No	No	No	In Shannon	No	No	No	No
Gloria Red Eagle	No	No	Sp Elect	Elect Day	No	Elect Day	No	Elect Day	No	Elect Day	No
Sharon Conden	No	Elect Day	No	Elect Day	No	Elect Day	No	In Shannon	No	No	No
Jacqueline Garnier	No	Elect Day	Sp Elect	Elect Day	No	No	Elect Day	Elect Day	No	Elect Day	No
Jennifer Red Owl	No	No	No	No	No	Elect Day	No	Elect Day	No	Elect Day	No
Edwina Weston	Elect Day	Elect Day	Sp Elect	Elect Day	No	Elect Day	Elect Day	Elect Day	No	Elect Day	Elect Day
Michelle Weston	No	No	No	No	No	No	No	No	No	No	No
Monette Two Eagle	Elect Day	Elect Day	Sp Elect	Elect Day	Elect Day	Elect Day	Elect Day	Elect Day	No	Elect Day	No
Mark A. Mesteth	No	Elect Day	No	Elect Day	No	Elect Day	No	Elect Day	No	Elect Day	No
Stacie Two Lance	No	Elect Day	No	Elect Day	No	No	No	Elect Day	No	No	No
Harry Brown	No	No	No	No	No	No	No	No	No	No	No
Eleanor Weston	No	Elect Day	Sp Elect	In Shannon	No	No	No	No	No	No	No
Dawn Black Bull	Elect Day	Elect Day	No	Elect Day	No	Elect Day	Elect Day	Elect Day	No	Elect Day	No
Clarice Mesteth	Elect Day	Elect Day	Sp Elect	Elect Day	No	No	Elect Day	Elect Day	No	Elect Day	Elect Day
Donovan L. Steele	No	Elect Day	No	Elect Day	No	Elect Day	Elect Day	Elect Day	No	Elect Day	No
Eileen Janis	No	No	No	No	No	No	No	No	No	Elect Day	No
Leona Little Hawk	No	No	No	Elect Day	No	No	No	Elect Day	No	Elect Day	No
Evans Rencountre	No	Elect Day	Sp Elect	No	No	No	In Shannon	Elect Day	No	No	No
Cecil Little Hawk, Sr.	No	Elect Day	Sp Elect	Elect Day	No	Elect Day	Elect Day	Elect Day	No	Elect Day	No
Linda Red Cloud	No	No	No	In Shannon	No	No	Elect Day	Elect Day	No	Elect Day	No
Loretta Little Hawk	No	Elect Day	No	Elect Day	No	No	No	Elect Day	No	Elect Day	No
Faith Two Eagle	No	No	No	Elect Day	No	No	No	No	No	No	No
Edmond Mesteth	No	No	No	No	No	Elect Day	No	Elect Day	No	Elect Day	Elect Day
Elmer Kills Back, Jr.	No	No	Sp Elect	Elect Day	No	No	No	No	No	No	No

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In conclusion it is unclear to me that there is anything in Braunstein's report that bears consideration in answering the question at hand – are minority voters being discriminated against because they have less of an opportunity to vote than other races in the state? My own review of turnout statistics countywide and among the named plaintiffs does not demonstrate a clear correlation between more satellite hours and higher turnout.

31 Aug 2012

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Thomas Brunell

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