

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF KANSAS

3 PARKER BEDNASEK,

4 Plaintiff,

5 v.

Docket No. 15-9300-JAR

6 KRIS W. KOBACH,

7 Defendant.

8 -----
9 STEVEN WAYNE FISH, et al.,

10 Plaintiffs,

11 v.

Docket No. 16-2105-JAR

12 KRIS W. KOBACH,

13 Defendant.

Kansas City, Kansas

Date: 03/06/2018

Day 1 (A.M. Session)
Pages 1-129

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16 TRANSCRIPT OF BENCH TRIAL
17 BEFORE THE HONORABLE JULIE A. ROBINSON
18 UNITED STATES DISTRICT JUDGE

19 APPEARANCES:

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(Continued)

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1 (9:06 a.m., proceedings commenced).

2 THE COURT: All right. You can be seated.
3 All right. We are here-- we are here in the case of
4 Parker Bednasek versus Kris Kobach. That case number is
5 15-9300. Your appearances in that case, please.

6 MR. JOHNSON: Your Honor, on behalf of the
7 plaintiff, Parker Bednasek, Mark Johnson and Curtis
8 Woods of the Dentons law firm and Mark Emert of the
9 Fagan, Emert & Davis law firm of Lawrence.

10 THE COURT: All right. Thank you. And then
11 in Case No. 16-2105 is Steven Wayne Fish, Donna Bucci,
12 Douglas Hutchinson, Thomas Boynton, Charles Stricker and
13 League of Women Voters of Kansas versus Kris Kobach.
14 Your appearances, please.

15 MR. HO: Good morning, Your Honor. Dale Ho
16 on behalf of the plaintiffs in the Fish matter.

17 MR. STEINER: Neal Steiner from Dechert on
18 behalf of the plaintiffs in the Fish matter.

19 MS. LIU: Angela Liu on behalf from Dechert
20 on behalf of the Fish plaintiffs.

21 MR. DANJUMA: Orion Danjuma on behalf of the
22 Fish plaintiffs.

23 MR. BONNEY: Doug Bonney on behalf of the
24 Fish plaintiffs.

25 MR. HO: We have a few more counsel who may

1 be appearing later this week, Your Honor. Would you
2 like them to enter their appearances now as well?

3 THE COURT: Please.

4 MS. LAKIN: Sophia Lakin with the ACLU on
5 behalf of Fish plaintiffs.

6 MS. WALDMAN: Rebecca Waldman of Dechert on
7 behalf of the Fish plaintiffs.

8 MS. HA: Daphne Ha from Dechert on behalf of
9 Fish plaintiffs.

10 THE COURT: All right. Mr. Kobach.

11 MR. KOBACH: Your Honor, on behalf of the
12 defendants, I am Kris Kobach and with me are Sue Becker
13 and Garrett Roe on behalf of the Secretary of State's
14 Office.

15 THE COURT: All right. Thank you. Are the
16 parties ready for trial?

17 MR. HO: Yes, Your Honor.

18 THE COURT: All right. That's probably an
19 unnecessary question. All right. There are-- you all
20 had indicated that you would like 15 minutes each for
21 opening statements, but there are some outstanding
22 motions that I thought I ought to rule on fairly
23 quickly.

24 We can do that now, we can do that after
25 opening statements, but-- and some outstanding motions I

1 think are worth waiting on. But here's what I think we
2 need to talk about. Let's start with the Bednasek case,
3 I don't think I've been saying his name right, have I,
4 Mr. Johnson.

5 MR. JOHNSON: Your Honor, it's Bednasek.

6 THE COURT: Bednasek.

7 MR. JOHNSON: Yes, Your Honor.

8 THE COURT: All right. In that case there
9 are no pending *limine* motions and the deposition
10 designations have all been rendered moot because the
11 witnesses are all live witnesses; is that correct?

12 MR. JOHNSON: That is correct, Your Honor.

13 THE COURT: All right. So that's the easier
14 one to talk about at this point. And then in the Fish
15 case, I want to talk to you about deposition
16 designations and pending *Daubert* motions and pending
17 *limine* motions.

18 The deposition designations. It appears
19 that you all agree that with respect to the witnesses
20 that people are calling live, the designations should be
21 withdrawn. One question I have, though, is about Marge
22 Ahrens. I'm not clear on whether that deposition is
23 withdrawn or not and/or whether she's testifying live.

24 MR. H0: She is testifying live, Your Honor.
25 The defendants have proffered some of her deposition

1 testimony through designations. I'll leave it to them
2 as to whether or not they intend to withdraw that or
3 not.

4 THE COURT: All right.

5 MS. BECKER: Your Honor, we would withdraw
6 our designations. We'll just do that through the cross
7 examination.

8 THE COURT: All right. So that's
9 essentially moot with respect to all the live witnesses.
10 And then there-- there's a category of witnesses where
11 we have designations for depositions, but they appear to
12 be available at least in the sense that they're within
13 the 100 miles or within the District of Kansas and
14 there's not been an unavailability showing. We can talk
15 about that later, but I-- I think I'd like to at least
16 put you on notice and-- and I think primarily that's the
17 Kansas Department of Revenue of employees that are in
18 that universe.

19 And before we do the work on those
20 deposition designations, I need to know whether you all
21 are going to make a showing of unavailability or not on
22 those. We can take that up now or just think about it
23 and we'll get to it after the openings or later on this
24 morning.

25 MS. BECKER: Your Honor, we can take it up

1 later on this morning.

2 THE COURT: All right. Thank you, Ms.
3 Becker. And then I don't want to take this up now but
4 just heads-up; on Brad Bryant, who's the former election
5 commissioner I think, there were a number of problems
6 with the designations, but I think we've worked through
7 most of that. But one problem I have in trying to rule
8 on those is that you each gave me your own transcripts
9 and the transcripts are in different formats and it's
10 hard for me to rule without having all of that in one
11 transcript.

12 So heads-up to everybody, I'd like you all
13 to merge those, to work on putting all of your
14 designations, counter-designations and objections
15 thereto in one transcript so I can clearly be able to
16 see what's at issue there. So just heads-up on that.

17 There are a number of pending *Daubert*
18 motions. I can rule upon those piecemeal or up front.
19 Be thinking about that, I'll come back around. I don't
20 imagine anyone is calling experts today; is that fair to
21 say?

22 MR. H0: There's one exception to that, Your
23 Honor. The plaintiffs are calling Michael McDonald
24 today.

25 THE COURT: All right. And I--

1 MR. HO: There was no pending *Daubert*
2 motion.

3 THE COURT: Okay. All right. So maybe this
4 is something we can take up at the close of the day to
5 prepare you all for tomorrow to the extent you're
6 calling experts tomorrow. Okay. So we'll come back
7 around to that.

8 And then there are *limine* motions. There's
9 a *limine* motion filed by Mr. Kobach regarding his
10 deposition testimony, and this is the deposition that
11 was taken kind of late in the game and particularly on
12 the NVRA documents. And Mr. Kobach has raised relevance
13 objections and I am prepared to rule on that. And then
14 there's also a motion to take judicial notice that's
15 opposed. I'm prepared to rule on that. And we can do
16 that later this morning, if you think it makes sense to
17 do those rulings this morning.

18 MR. HO: I think it would probably be
19 helpful for the parties for our trial prep to receive
20 Your Honor's rulings on those motions at some point
21 today.

22 THE COURT: Okay. So I'll plan on taking
23 those up. And I think that's it. Does anyone want to
24 invoke the rule on witness sequestration?

25 MR. HO: We would like to invoke that rule,

1 Your Honor.

2 THE COURT: All right. All it takes is one
3 party saying yes, so I will invoke the rule on witness
4 sequestration. Meaning after the opening statements--
5 the witnesses can stay in the courtroom. But after the
6 opening statements, the witnesses cannot be present for
7 other witnesses' testimony. The exceptions being, of
8 course, parties.

9 So the named parties in the lawsuit on both
10 sides can be present, but otherwise anyone that's called
11 as a witness cannot be present for other witness
12 testimony and witnesses who testify cannot share the
13 substance of their testimony with other witnesses. Of
14 course, this rule being designed to not have witnesses
15 be influenced by hearing the testimony of other
16 witnesses.

17 The other exception to that, of course, are
18 expert witnesses. You all have experts, your experts
19 can be here for everything because, of course,
20 oftentimes experts' opinions at trial are based in part
21 on the testimony they hear. So that's the other
22 exception.

23 All right. Any concerns about that? I will
24 expect you all to police your own witnesses and your--
25 to make sure that they are complying with the letter and

1 spirit of the sequestration rule.

2 Mr. Kobach, did you have a question?

3 MR. KOBACH: One clarification or question.
4 Would Mr. Caskey, the current Director of Elections,
5 since he is sort of the-- he is the 30(b)(6) witness for
6 the state, for the defendant, for the office, would he
7 be considered a-- sort of a party of sorts or would he
8 be prevented? I know that many of the witnesses'--
9 other witnesses' testimonies rely on his statistics.
10 Either way is fine.

11 THE COURT: I mean, generally I think it's
12 the named party, but he's designated as a 30(b)(6)
13 witness--

14 MR. KOBACH: Yes.

15 THE COURT: -- for those purposes? Does
16 anybody have any objection to Mr. Caskey's presence?

17 MR. HO: No objection to Mr. Caskey's
18 presence specifically, Your Honor. But my understanding
19 of the rules is that each party can have one
20 representative in the court. So if it's going to be Mr.
21 Caskey, then there can be no other-- my understanding of
22 the rule anyway is that there can be no other
23 representatives of the Secretary of State's Office who
24 are going to be fact witnesses in the case.

25 THE COURT: All right. Other than Mr.

1 Kobach, who's a named plaintiff. Do you agree?

2 MR. HO: He's also a witness in this case,
3 Your Honor.

4 THE COURT: Mr. Kobach.

5 MR. KOBACH: Well, I think this is a fairly
6 unusual case where I'm also serving as an attorney. So
7 I would argue that I'm wearing an attorney's hat pretty
8 much during this entire proceeding unless otherwise
9 mentioned.

10 MR. JOHNSON: Your Honor, it's fairly
11 unusual because that was the Secretary's choice. The
12 Secretary could've gotten counsel, chose not to. And so
13 to the extent there's an issue here, so it's the
14 Secretary's doing, I join with Mr. Ho on this point.

15 THE COURT: Okay. All right. Please talk
16 in your microphones, there's an overflow courtroom or
17 room downstairs and we want to make sure those folks can
18 hear everything. A number of members of the press have
19 chosen to use that room where they can have their
20 devices. So we all need to be careful to use the
21 microphones. Mr. Kobach.

22 MR. KOBACH: I would just point out, Your
23 Honor, that each party has its opportunity to choose its
24 counsel of preference and the counsel it believes is
25 most qualified. And also, I'm not serving as a witness

1 for the defendants. And I believe, if I heard Mr. Ho
2 correctly, he did not object in any event, so maybe if
3 there's no objection to Mr. Caskey, we can just go with
4 that.

5 THE COURT: All right. I'm going to allow
6 Mr. Caskey to be here as a 30(b)(6) representative. I
7 think plaintiffs are right, that strict invocation of
8 the rule would allow otherwise, but-- or would not allow
9 that. But given that Mr. Kobach is wearing two hats
10 here, he's entitled to be here as a lawyer. He's chosen
11 to be pro se. But I will allow Mr. Caskey to be present
12 as well.

13 All right. 15 minutes for opening
14 statements each. Before we get started, is there
15 anything else we need to talk about as a preliminary
16 matter?

17 MR. JOHNSON: Your Honor, we do have some
18 other preliminary issues that need to be hashed out.
19 First is the order of examination of the witnesses that
20 I think all three parties are going to have something to
21 say about. I also have two motions or two requests that
22 I would like to put before the Court--

23 THE COURT: Why don't you come to the
24 lectern. I'm afraid that the microphones aren't
25 capturing all of these things, but...

1 MR. JOHNSON: I'd be happy to, Your Honor.

2 THE COURT: Yeah.

3 MR. JOHNSON: Thank you, Your Honor. The
4 first is that on behalf of Mr. Bednasek, we request-- we
5 move that the Court take judicial notice of the
6 stipulations of fact that were entered into between the
7 parties in the Fish case. This is in their amended
8 pretrial order dated June 20th, 2017. We believe this
9 will greatly reduce the-- the evidence that needs to be
10 presented. These are stipulations that the other
11 parties in the case have already agreed to.

12 THE COURT: All right. I assume there's no
13 objection to that. The parties have stipulated to these
14 facts in the pretrial order and the pretrial order is
15 the governing document for purposes of trial. So I will
16 take judicial notice of the stipulated facts in the
17 June 20th, 2017 pretrial order.

18 MR. JOHNSON: Thank you, Your Honor. And
19 the second item is that the-- in the Bednasek case we
20 would like to adopt the expert testimony that's been
21 presented by the ACLU in the-- by the Fish plaintiffs.
22 Again, we believe that will greatly streamline the
23 presentation of evidence in this case.

24 It will eliminate the opportunity that the
25 Bednasek plaintiffs would have to engage in friendly

1 cross examination of the expert witnesses to give the
2 experts a second time to tell their story. So I believe
3 that this is something that would be of benefit to the--
4 to the running of this trial.

5 THE COURT: All right. You still I believe
6 have at least one expert of your own, or two.

7 MR. JOHNSON: We do.

8 THE COURT: All right. But you are wanting
9 to adopt and incorporate by reference in the Bednasek
10 case the plaintiffs' evidence--

11 MR. JOHNSON: Yes, Your Honor.

12 THE COURT: -- through their experts?

13 MR. JOHNSON: Yes.

14 THE COURT: All right. That's acceptable.

15 MR. JOHNSON: Thank you, Your Honor. That's
16 all I have.

17 THE COURT: So noted. All right. Mr. Ho,
18 anything from you?

19 MR. HO: Just one item briefly, Your Honor.
20 I'm sorry, I didn't have the microphone on. Just one
21 item briefly. Your Honor, at 10:45 last night we
22 received a demonstrative exhibit from the defendants
23 which purports to show new numbers as to the number of
24 voters who are currently suspended or cancelled as a
25 result of not providing documentary proof of

1 citizenship. I should say as of last Friday, not
2 current. And there are two issues with this I think,
3 Your Honor. The first-- one small and one a little bit
4 bigger.

5 The small one is Your Honor asked the
6 parties to share demonstratives with each other 24 hours
7 prior to use at trial. And unless we're planning on
8 being here at 10:45 p.m. tonight, I don't think that's--
9 what the defendants did comports with that. It doesn't
10 give us sufficient time under Your Honor's guidance to
11 examine that demonstrative.

12 But the second and most important issue
13 here, Your Honor, is that the underlying data which the
14 demonstrative refers to has never been produced to the
15 plaintiffs. It falls clearly within discovery requests
16 that we made to the defendants two years ago. And
17 there's no way for us to verify the accuracy of what is
18 represented in this one-page demonstrative, which I'm
19 not sure if they're planning on using on their opening
20 or through a witness like Mr. Caskey later today.

21 Now, obviously, I understand that the
22 numbers change every day, we're not asking the
23 defendants to disclose in real-time exactly how many
24 people are suspended or cancelled as a result of the
25 documentary proof-of-citizenship law, but we just have

1 no way of verifying the information that's being
2 presented in this demonstrative. And it's just the
3 latest example of the defendant's efforts of trial by
4 ambush in this case. We would move to exclude that
5 demonstrative.

6 THE COURT: Is there an exhibit number
7 attached to that demonstrative?

8 MR. HO: No, it was just a Word document
9 that was e-mailed to us last night at 10:45
10 approximately. And it's-- I have a copy of it and I can
11 provide the Court with a copy.

12 MR. JOHNSON: I verified that, it was
13 actually 10:43 p.m. That's when I received it, but I
14 think that's a difference without a distinction. And I
15 join Mr. Ho's motion.

16 THE COURT: All right. Mr. Kobach.

17 MR. KOBACH: Your Honor, the-- the
18 demonstrative exhibit is simply a collection of six
19 numbers reflecting the ELVIS database totals as of the
20 end of the day on Friday, March 2nd. As all the parties
21 are aware, ELVIS is a continuous database that is sort
22 of a living, breathing database and entries are going in
23 and out of it every day.

24 And it would be strange, indeed one might
25 even say foolish, for the Court to be relying on old

1 numbers when we have the new numbers. And so this was
2 merely an attempt to update the parties and the Court
3 with the latest numbers of people in suspense, the
4 latest total number of concluded registrations since the
5 law went into effect, et cetera.

6 As far as Mr. Ho's objection that he doesn't
7 have more time to examine the numbers, the-- it's simply
8 the latest numbers. You can examine them in less than a
9 minute. He says, well, he would like to have-- and he
10 gets to the greater problem, you know, he wants to know
11 that they're real.

12 Well, we have the testimony of Mr. Caskey,
13 the elections director, who is the custodian of the
14 database. It seems to me he's suggesting he wants to
15 get into-- at a keyboard and start going into the Kansas
16 voter registration database. There are very strict
17 protocols as to who has access to that database, it's
18 not something that even when Mr. Caskey is here he could
19 remotely look at from a computer. He has to be at a
20 specific terminal entering a specific access code to get
21 into that database.

22 So there's really no practical way for
23 opposing counsel to get into the ELVIS database and look
24 at all sorts of things on the database, such as last
25 four social and things that are not disclosed. So I

1 think as a practical matter, unless they are objecting
2 on the basis that they believe Mr. Caskey is falsifying
3 the readouts from the database that he is continuously
4 presenting in his declarations, I don't think there's--
5 there's certainly no merit to their objection and
6 there's certainly no way around it. They can't get into
7 the database themselves without having the required
8 secured protocols.

9 And, of course, the security of these
10 registration databases, as abundantly demonstrated in
11 the news, is that there have been efforts to hack into
12 to them. And so all states are maintaining-- are taking
13 heightened security measures to keep these databases
14 from simply being open and accessible.

15 THE COURT: The whole point of having
16 discovery and discovery deadlines and-- which typically
17 allow in this sort of scenario for some reasonable
18 attempt to supplement the record after the fact as long
19 as all parties have sufficient time to evaluate whatever
20 that supplemental evidence is, the whole point of that
21 is so that everybody knows what they're working with.
22 Everybody knows what the evidence is, everybody knows
23 what the numbers are. I understand that this database
24 may change from day-to-day.

25 I'm not going to allow the defendants to

1 submit evidence that the plaintiffs have not had a
2 chance to review and evaluate. And even if they don't
3 have direct access to the database, I think it's not
4 fair. It's prejudicial, it's a surprise to them to get
5 new numbers literally on the eve of trial. So I will
6 exclude this demonstrative exhibit at this point. I'm
7 imagining this isn't going to completely resolve this
8 matter, because I don't know when Mr. Caskey is going to
9 testify, but...

10 As I sit here now my view is that we're
11 going to live and die by the numbers that have already
12 been disclosed and discovered and that the parties have
13 worked with. Unless during the course of this trial you
14 can convince me that you've supplemented, plaintiffs
15 have had sufficient time to view the supplement and
16 can't stand up and say, this is a surprise to us, that's
17 going to be the way I'm going to treat this type of
18 evidence.

19 So I'm leaving the door if you, Mr. Kobach,
20 want to do some sort of formal supplemental and if I'm
21 convinced that it hasn't prejudiced the plaintiffs, then
22 I may allow it. But it just concerns me because, you
23 know, five days from now when we're still in trial Mr.
24 Caskey could take the stand and say, well, the numbers
25 today are different than they were on the first day of

1 the trial. And I don't think that's fair to plaintiffs.

2 So for now I'm going to exclude the
3 particular demonstrative. Did you attach an exhibit
4 number so that we can make a record what I'm talking
5 about?

6 MR. KOBACH: We don't have the latest
7 number.

8 THE COURT: Okay. All right.

9 MR. KOBACH: Your Honor, may I suggest or at
10 least ask so that they may have 24 hours to look at
11 these numbers, is the Court open to the possibility of
12 us presenting the numbers now and then moving for their
13 admission later in this week-long trial?

14 THE COURT: No. I mean, you did violate the
15 24-hour rule as well for the demonstrative exhibits and
16 that rule is designed, the 24-hour rule is, so that they
17 can look at it and make sure the numbers are correct
18 based on the discovery that they've had thus far. But
19 you're introducing another complication obviously in
20 giving them new numbers that you would-- everybody
21 admits are new numbers.

22 So the 24-hour rule would preclude me from
23 allowing you to present the demonstrative exhibit at
24 this point anyway. And then I'm just saying the
25 underlying data I'm not convinced at this point should

1 be admissible because it's new and it surprises
2 plaintiff. So for now, no, I won't allow the defendant
3 to submit this demonstrative exhibit.

4 All right. Anything else?

5 MR. HO: Nothing further from us, Your
6 Honor.

7 THE COURT: All right. Mr. Ho, are you
8 ready to present your opening?

9 MR. HO: Yes, Your Honor.

10 THE COURT: Proceed.

11 MR. HO: Thank you, Your Honor. This case
12 is about the most fundamental right in our democracy and
13 the law that has deprived thousands of United States
14 citizens in Kansas from exercising that right. The law
15 at issue in this case was passed in 2013. It was
16 implemented on January 1st of 2000-- it was passed in
17 2011 and it was implemented on January 1st of 2013. It
18 requires voter registration applicants to show a
19 citizenship document like a birth certificate, passport
20 or naturalization certificate in order to register to
21 vote.

22 If such a document is not submitted, the
23 applicant's voter registration application is placed in
24 suspense. And under an administrative rule promulgated
25 by the Kansas Secretary of State, if that document is

1 not presented within 90 days, that application is
2 cancelled.

3 Kansas is one of only two states in the
4 country that currently imposes such a requirement. The
5 other state is Arizona, which lets voter registration
6 applicants satisfy its proof-of-citizenship requirement
7 with simply a driver's license number, not a physical
8 document. That makes Kansas' law the strictest such law
9 in the country.

10 The documentary proof-of-citizenship law had
11 an immediate and dramatic effect on voter registration
12 in the state. The parties have stipulated that as of
13 March 2016, a little more than three years after this
14 law was in effect, more than 16,000 in-person
15 motor-voter applicants saw their applications cancelled
16 or were in suspense at that time.

17 But the situation is actually even worse
18 than that. You'll hear testimony from one of
19 plaintiffs' experts later today, Doctor Michael McDonald
20 from the University of Florida, one of the nation's
21 premier scholars on voter turnout. He will testify that
22 when you take into account people who conducted a
23 transaction with the DMV online, that the number of
24 motor-voter applicants affected by this law was actually
25 more than 22,000 as of March 2016.

1 He'll also testify that in part because this
2 law only affects new voter registration applicants, it
3 has a disproportionate effect on precisely those voters
4 who are disproportionately represented amongst new
5 applicants. That's voters under the age of 30 and
6 voters who are not affiliated with any political party.

7 Doctor McDonald will explain that those are
8 precisely the kinds of voters who are now most
9 susceptible to being deterred from voting as a result of
10 new barriers.

11 You'll also hear testimony from four of the
12 individual plaintiffs in this case, all of them are
13 United States citizens, all of them are qualified to
14 vote in the state of Kansas, all of them were
15 motor-voter applicants, all of them saw their
16 registration applications suspended and subsequently
17 cancelled.

18 Two of the plaintiffs will explain that they
19 didn't have citizenship documents in 2014 when they
20 applied to register to vote. Wayne Fish was born on an
21 Air Force base in Illinois which has since been
22 decommissioned. He couldn't locate his birth
23 certificate in 2014. Donna Bucci, who's with us in the
24 courtroom today, was born in Maryland and couldn't
25 afford the \$20 that her state requires in order to

1 obtain a birth certificate. Neither of them were able
2 to complete their voter registrations in 2014.

3 The other two plaintiffs who you'll hear
4 from today, Tad Stricker, who's also in the courtroom
5 right now, and T.J. Boynton, they'll explain that they
6 actually brought their citizenship documents with them
7 to DMV when they applied to register to vote but no one
8 asked them for those citizenship documents during their
9 voter registration application, no one told them that
10 those documents were required.

11 They left the DMV thinking that they were
12 registered to vote. And it wasn't until they showed up
13 at the polls in 2014 that they were told, sorry, you're
14 not on the list, did they realize that there was a
15 problem. They left that day knowing that their votes
16 wouldn't count.

17 And I understand that there will be some
18 testimony from the defense that the DMV systems has
19 improved since 2014, but no improvements to those
20 systems can ever restore the votes that were lost in
21 that election.

22 You'll hear testimony also from another one
23 of our clients, the League of Women Voters of Kansas,
24 and specifically from their former president, Marge
25 Ahrens. She'll explain how this law has been

1 devastating for the League's voter registration
2 activities. The main reason for that is Kansans don't
3 usually walk around with copies of their birth
4 certificates or passports. So voter registration drives
5 really have become impossible under this law.

6 She'll also testify that the League has had
7 to divert considerable resources away from other
8 activities in order to help voters complete the
9 application process.

10 In sum, the evidence that you'll hear from
11 our clients will prove correct Your Honor's preliminary
12 finding from 2016 that the documentary
13 proof-of-citizenship requirement at the DMV is
14 burdensome, confusing and inconsistently enforced and
15 has disenfranchised thousands of Kansans and should be
16 enjoined.

17 Now, that's, of course, not the end of the
18 story. As we all know, the Tenth Circuit has set forth
19 a ruling affirming Your Honor's preliminary injunction,
20 holding that the only way that Secretary Kobach can
21 enforce this documentary proof-of-citizenship
22 requirement is if he can satisfy a two-part test. First
23 he has to show that there's a substantial number of
24 non-citizens that have successfully registered to vote
25 in Kansas. And as the Secretary acknowledged last week,

1 the burden of proof on this issue lies with him.

2 Second, the Secretary will have to show that
3 even if there was a problem of non-citizen registration
4 in the state, that nothing less than a documentary
5 proof-of-citizenship requirement would be adequate to
6 address that problem.

7 So I'd like to talk a little bit about what
8 the evidence is going to show at trial this week with
9 respect to these two prongs, starting with the first,
10 whether there's a substantial number of non-citizens who
11 have registered.

12 I'll start with the stipulated facts, which
13 you won't hear from any witnesses this week. The
14 parties have stipulated that as of last year, Secretary
15 Kobach had identified a total of a possible 127
16 non-citizens who have registered or attempted to
17 register to vote since the year 2000. And that phrase
18 "have attempted to register to vote" is really critical.
19 Because of those 127 people, the vast-- the majority of
20 them did not successfully register to vote. Only 43 of
21 these supposed non-citizens successfully registered to
22 vote since the year 2000, which is fewer than about
23 three per year. Of those individuals, only 11 have
24 voted. So we're talking about an average of less than
25 one non-citizen voter in Kansas elections per year.

1 And the evidence will show that it's not
2 even clear that all 127 of these individuals remained
3 non-citizens at the time that they registered to vote.
4 But even if you credit everything, all of this evidence,
5 127 or so non-citizen registrants out of the 1.8 million
6 registered voters in the state of Kansas, we're talking
7 about 0.007 percent of registered voters in this state.

8 Now, you may hear some testimony from the
9 defendant's proffered expert, Mr. Hans von Spakovsky
10 from The Heritage Foundation. He may testify about
11 various anecdotes of non-citizen registration in the
12 state of Kansas and elsewhere.

13 Here are three simple things you need to
14 know about Mr. von Spakovsky: He's a long-time advocate
15 of restrictions on voting. He has no advanced degree in
16 public policy, any social science or history, and he's
17 never published a single peer-reviewed study on voter
18 fraud, voter registration or any subject whatsoever.

19 You will hear some testimony from
20 plaintiffs' proffered expert Doctor Lorraine Minnite of
21 the University of Rutgers. She's one of the nation's
22 foremost scholars on the issue of voter fraud. And she
23 will testify that there's no evidence of a systemic
24 problem of non-citizen voter fraud in the state. There
25 are, of course, isolated incidents of non-citizens who

1 happen to become registered to vote, but her testimony
2 will be that when you look at the records, they indicate
3 that these incidents are often the result of mistakes or
4 administrative errors.

5 We expect that you will also hear testimony
6 from defendant's proffered expert Jesse Richman from Old
7 Dominion University. He has produced various
8 statistical estimates of non-citizen registration in the
9 state of Kansas. Now, he doesn't give you a single best
10 estimate, his best guess as to the number of
11 non-citizens who are registered in the state. He
12 provides various estimates, sometimes he says there are
13 1,000 non-citizens registered in Kansas, sometimes he
14 says there are 32,000 non-citizens registered in Kansas,
15 with no way to discern which number is in his view
16 likely to be more accurate.

17 But here's what you need to know about
18 Professor Richman, his estimates are based on relatively
19 small samples, one of them as small as 14 respondents to
20 an Internet survey called the Cooperative Congressional
21 Election Study. His work has been widely rejected by
22 his peers, including in an open letter signed by 200
23 political scientists. And his report of this case did
24 not even live up to the same standards that he employs
25 in his heavily criticized academic work.

1 In rebuttal, assuming that Professor Richman
2 testifies, you'll hear from Doctor Stephen Ansolabehere
3 of Harvard University. He's the principal investigator
4 of the Cooperative Congressional Election Survey, the
5 CCES, he designed it, he implements it. And that's the
6 exact same study that Professor Richman relied on in his
7 academic work and relied on for one of his estimates of
8 non-citizen registration in this case.

9 And Doctor Ansolabehere will testify about
10 various data errors that Professor Richman failed to
11 take into account, various other methodological flaws in
12 his analysis. But most importantly, Doctor Ansolabehere
13 will testify that even if you assume that all of the
14 data that Professor Richmond uses is accurate, that
15 there are no methodological defects in his work, that
16 his sample of 14 Internet survey respondents are
17 representative of the non-citizen population of Kansas.
18 Even if you assume all of that, Richman's estimates are
19 statistically indistinguishable from zero. And that
20 doesn't mean that no non-citizens have ever gotten
21 registered to vote in this state, what it means is that
22 Professor Richman's work can't show anything other than
23 a nominal amount of those incidents happening.

24 Now, that wouldn't be the end of the story.
25 Obviously there's a second prong to this test. So even

1 if at the end of the evidence you don't believe anything
2 that I just said, the defendant still has to satisfy a
3 second prong, which is that there are no alternatives to
4 a documentary proof-of-citizenship requirement and the
5 evidence will as show that, in fact, there are many.

6 First, there could be better training of DMV
7 employees. You'll hear evidence that Kansas Secretary
8 of State officials have acknowledged internally in
9 e-mails that the DMV has offered voter registration to
10 people that they know are non-citizens, people who
11 identify themselves as non-citizens in the course of
12 applying for a driver's license. Now, that's not fraud.
13 All right? That's a mistake. It shouldn't happen. But
14 it's a mistake that can be corrected.

15 But the parties have stipulated to a number
16 of important facts here, which is that the Kansas
17 Secretary of State's Office has not provided new
18 training manuals to the DMV since at least 2015, that
19 they haven't offered a written instruction to DMV clerks
20 in that time to not offer voter registration to people
21 who are identifying themselves as ineligible and that
22 they offer no attempts to assess or evaluate DMV workers
23 in terms of their performance of voter registration
24 duties.

25 There are other things the Secretary of

1 State could be doing as well. There are administrative
2 records that they have access to that contain
3 information about whether or not people are citizens,
4 which could be compared to the voter rolls. The DMV,
5 for instance, for most driver's license applicants
6 requests information that identifies those people
7 clearly as citizens or not. And the Secretary of
8 State's Office could be making use of that resource.

9 There's something called the United States
10 Department of Homeland Security SAVE database, which a
11 number of states currently use to verify voter
12 registration information. There are juror
13 questionnaires which contain answers from respondents to
14 those questionnaires as to whether or not people are
15 citizens. All of this data could be used by the
16 Secretary of State's Office for further investigation
17 once someone is flagged as a potential non-citizen.

18 And after investigating, there is the
19 possibility of a criminal prosecution to deter unlawful
20 conduct. The Deputy Secretary of State Eric Rucker,
21 whose deposition testimony has been designated and who
22 is an experienced prosecutor, he testified that in his
23 experience, vigorous criminal prosecutions can deter
24 unlawful activity.

25 Now, the defendant in this case, Secretary

1 Kobach, is, as far as we know, the only Secretary of
2 State in the country with prosecutorial authority over
3 criminal election law violations. But as of June 2017,
4 he had obtained only a single conviction against a
5 non-citizen for voting, which begs the question if there
6 are, in fact, around 130 incidents of non-citizen
7 registration or attempted registration, why there
8 haven't, in fact, been more prosecutions?

9 Now, we expect that Secretary Kobach will
10 argue that none of these options are perfect. That's
11 obviously true. It's obviously also true of any kind of
12 security system designed to prevent unlawful activity.
13 What the evidence at trial will show is that he hasn't
14 even meaningful tried these options.

15 So in conclusion, Your Honor, the evidence
16 at trial will show three over-arching facts. This
17 documentary proof-of-citizenship law has disenfranchised
18 thousands of Kansans. There's no evidence of a systemic
19 problem of non-citizen registration in Kansas and there
20 are multiple alternatives to a documentary
21 proof-of-citizenship requirement.

22 Enforcing this law is like taking a bazooka
23 to a fly and the collateral damage in this case has been
24 thousands of Kansas voters. Thank you.

25 THE COURT: Mr. Johnson.

1 MR. JOHNSON: May it please the Court. It's
2 an honor to appear before you today in this trial, Judge
3 Robinson.

4 As noted before, I'm Mark Johnson, I'm here
5 today on behalf of Parker Bednasek. Appearing with me
6 are my law partner Curtis Woods, and Mark Emert of the
7 Fagan, Emert & Davis law firm in Lawrence. We are also
8 privileged to appear on behalf of Parker Bednasek, a
9 senior at the University of Kansas scheduled to graduate
10 in May.

11 Because of his commitment to prove the
12 fallacy of the law before the Court in this trial, Mr.
13 Bednasek has denied himself something that we all in
14 this courtroom take for granted, to vote. He has never
15 voted because when he attempted to register to vote, he
16 refused to produce the piece of paper required by the
17 Kansas Safe and Fair Elections Act, the proof of U.S.
18 citizenship.

19 Under the SAFE Act and the regulations
20 promulgated by the Secretary of State to implement the
21 SAFE Act, Mr. Bednasek's application to register to vote
22 was cancelled. A natural-born citizen of the United
23 States, he has never voted because of the SAFE Act's
24 so-called DPOC, documentary proof-of-citizenship
25 requirement. He will so testify.

1 The SAFE Act violates the Constitution of
2 the United States made applicable to the state of Kansas
3 by the Fourteenth Amendment to the Constitution. It
4 denies Mr. Bednasek and many other Kansans equal
5 protection under the law. You may hear that the SAFE
6 Act was passed by both houses of the Kansas Legislature.
7 That is true. In similar fashion, many legislatures in
8 the United States, including the U.S. Congress,
9 routinely pass anti-flag-burning laws. But every
10 student of constitutional law knows that the Supreme
11 Court has declared flag-burning laws to be
12 unconstitutional violations of the First Amendment. Yet
13 they are so politically popular that legislators live in
14 fear of having to defend votes against them.

15 However, just as flag-burning laws, the SAFE
16 Act is vulnerable to constitutional challenge. It is to
17 the courts we must turn for relief in these matters to
18 declare such laws to be unconstitutional. You are not
19 subject to electoral pressures so you can make the
20 correct decision without consequences at the ballot box.
21 That is why we are before you today.

22 Our case is different from the Fish case in
23 which the ACLU and the Dechert law firm are providing
24 such good representation to their clients because they
25 have a claim for statutory preemption under the National

1 Voter Registration Act. In addition to the
2 constitutional claim based on equal protection, we had
3 also asserted a preemption claim in our initial
4 pleadings, but Your Honor dismissed that claim for
5 procedural reasons. Although we respectfully disagree
6 with that conclusion, we are pleased that you will deal
7 with that argument in the Fish case.

8 Our goal is the same as that of the Fish
9 plaintiffs, a declaration that the DPOC requirement in
10 the SAFE Act is either preempted or unconstitutional,
11 preferably both.

12 We believe that the evidence will
13 demonstrate to you that the DPOC requirement of the SAFE
14 Act imposes a burden on the right to vote that is in no
15 way justified by any impact it may have on eliminating a
16 problem that does not exist, that of alien voting.

17 The Secretary will ask you to uphold the
18 SAFE Act even though its effect is to deprive thousands
19 of Kansans of their right to vote. It has already had
20 that effect on Kansans like Parker Bednasek. It will
21 continue to have that effect unless we are granted
22 relief.

23 We believe that you'll be impressed with Mr.
24 Bednasek. His testimony will show you a young person
25 who is politically aware and politically active. He

1 wanted to vote in 2015 when he attempted to register and
2 he wants to vote today. However, he is willing to
3 sacrifice that basic right in pursuit of a greater good.

4 He will soon graduate from college to embark
5 on a career of civil service to our country. We believe
6 that you will want to give him and all Kansans willing
7 to sign an oath that they are United States citizens the
8 right to vote. We believe that you will do so by
9 invalidating the DPOC requirement of the SAFE Act.

10 THE COURT: Thank you. Mr. Kobach.

11 MR. KOBACH: Thank you, Your Honor. May it
12 please the Court.

13 The Secure and Fair Elections Act was passed
14 in the spring of 2011 by the Kansas Legislature to
15 prevent voter fraud in multiple forms, including
16 registration voter fraud and voting by non-citizens.
17 The Legislature was presented with a number of cases
18 that illustrated that voter fraud had occurred in
19 multiple counties throughout the state of Kansas, more
20 than 200 specific instances presented by county clerks
21 from the relevant counties. And the instances included
22 cases of non-citizens who had successfully registered
23 under the old regime, the old system which is
24 attestation.

25 Under the attestation-only system, all you

1 had to do was check a box on the registration card that
2 says I'm over the age of 18, and another box, I'm a
3 citizen of the United States, and then sign at the
4 bottom, in addition to other information on the card.
5 But that was essentially it, it was a box you checked.
6 Or in some cases you didn't even check a box, it simply
7 had a bullet point, I affirm that I am over 18, I'm a
8 citizen of the United States, and then you sign at the
9 bottom. And the other information on this card is
10 accurate, and then you sign your name. That was it.

11 As Justice Scalia said before he passed in
12 the case of *Arizona versus Inter-Tribal Council*, he said
13 in oral argument: That's all? That statement? That's
14 nothing. And that's what we are arguing today. And
15 that's what the Kansas Legislature intuitively or
16 reasoned when they passed the law. Just having someone
17 sign something saying they're a United States citizen is
18 nothing.

19 During the-- deeming the system inadequate
20 to stop non-citizens from registering and seeing proof
21 that non-citizens had registered under the old
22 attestation-only system, the Legislature adopted the
23 proof-of-citizenship requirement, also sometimes called
24 POC, P-O-C, or DPOC, documentary proof of citizenship, I
25 imagine we'll be using those acronyms. That requirement

1 became effective on January 1st, 2013.

2 Now, the act passed by a large bipartisan
3 majority, I think it's worth noting, 111 to 11 in the
4 state legislature. This was not a partisan bill. That
5 was in the state House. And it was 36 to 3 in the state
6 Senate.

7 Virtually all of the Republicans voted in
8 favor and more than two-thirds of the Democrats voted in
9 favor in the House and more than three-quarters of the
10 Democrats voted in favor in the Senate. So it was a
11 bipartisan bill to address what was clearly a problem
12 proven by the fact that non-citizens were simply
13 signing, even though they were not, in fact, U.S.
14 citizens.

15 There are two remaining legal challenges
16 that remain in this case after the motions for summary
17 judgment have been adjudicated by yourself. And those
18 challenges are essentially; first, whether the
19 proof-of-citizenship requirement is preempted by the
20 National Voter Registration Act, or NVRA; and secondly,
21 in the Bednasek case, whether the proof-of-citizenship
22 requirement imposes an unconstitutional burden on the
23 right to vote.

24 The three principal factual inquiries in
25 this bench trial as we understand them that will be

1 addressed by this Court are, No. 1, whether a
2 substantial number of aliens have registered under the
3 attestation-only regime. No. 2, whether tools other
4 than proof of citizenship can suffice to adequately
5 prevent non-citizens from registering and, No. 3,
6 whether verifying the citizenship of new registrants
7 through the proof-of-citizenship system or the DPOC
8 system imposes a constitutionally significant burden on
9 the right to vote.

10 The number of citizens registered, the first
11 of the three factual inquiries. The evidence presented
12 will show that a substantial number of non-citizens have
13 indeed registered to vote or attempted to register to
14 vote. Now, that number was the 127 number that Mr. Ho
15 referred to. That number was 127 at the time of the
16 briefing of the motions for summary judgment. It has
17 increased to 129 today. And it indeed has continually
18 grown through the course of this trial.

19 Indeed, if you look at the number as known
20 at the start of this trial, it was a very small fraction
21 of what it is today. One could say that the number has
22 actually grown exponentially as we have updated the
23 numbers through the trial.

24 Now, Mr. Ho claims that we have to-- he
25 tried to make a big deal about the fact that some of

1 them have attempted to register and not successfully
2 registered. The reason that I would say most of the 84
3 that attempted to register did not register is because
4 they attempted after the documentary
5 proof-of-citizenship requirement went into effect. So
6 they filled out the card and said-- and signed, I am a
7 U.S. citizen. Under the old system they would have been
8 registered, but the documentary proof-of-citizenship
9 requirement stopped them. It succeeded. It caught
10 them.

11 And so we believe it is fair to count those
12 individuals, because those individuals would have been
13 registered if we didn't have the documentary
14 proof-of-citizenship system in place. But what happened
15 is they weren't able to provide proof of citizenship.
16 And then in each case we explained what happened, that,
17 you know, either someone called them and they admitted
18 that they were not a citizen or they never responded and
19 never provided proof of citizenship.

20 But the bottom line is, those 129 cases - or
21 127 if you use the number at the time of the motions for
22 summary judgment - are a significant number. And we
23 will show and the evidence will show that this is a
24 small subsection, a very small fraction of the total
25 number of non-citizens on the voter rolls because we

1 have no way of simply looking at the voter rolls,
2 examining the voter rolls and deducing this person is a
3 citizen, this person is a non-citizen. There's no thing
4 you can do looking based on the person's name, date of
5 birth, address, and other basic information, last four
6 social in some cases. There's nothing you can do to
7 deduce that that person is a citizen.

8 It's a common misperception, for example,
9 that if you have a Social Security number you are a
10 citizen. That is not correct. Lawful permanent
11 residents, that is green card holders, have Social
12 Security numbers.

13 And so the-- there's nothing you can do to
14 simply find out what the true number is. And the way
15 we've identified these 129 is through external sources.
16 So if, for example, the person registers-- rather, goes
17 to a naturalization ceremony, becomes a citizen today
18 and then fills out a registration form today saying I
19 would like to register to vote, and then the county
20 election commissioner goes back to the office tomorrow
21 and finds out that the person has already been
22 registered to vote for the past ten years, we know that
23 that person registered to vote as a non-citizen. That's
24 how we found approximately 38 of the 129 cases.

25 Another way we find out is if a person is

1 called to jury duty, something this Court is familiar
2 with. And one of the-- in the jury questionnaire form
3 that is filled out in the state courts of Kansas, one of
4 the questions that one can answer and that one would--
5 that would disclude one from jury duty is, are you a
6 citizen-- are you not a citizen of the United States?

7 And individuals who indicate on those forms
8 that they are not citizens of the United States are
9 periodically-- the names are periodically sent to the
10 Secretary of State's Office and we check to see if those
11 people are registered. That's how three of the cases
12 were discovered.

13 And so there are a number of ways to look at
14 external sources that basically identify the person as a
15 non-citizen and then check and see if the person is on
16 the voter rolls. And using those very limited external
17 sources we've only been able to-- we can see a pretty
18 large number, 129. But we can only see a tiny
19 percentage because a relatively small percentage of the
20 non-citizens in Kansas have or are about to naturalize
21 or have-- or are about to serve on a jury duty.

22 And so what is the true number? Well, the
23 evidence will show that using statistically reliable
24 methods we can estimate the total number of non-citizens
25 on the Kansas voter rolls, and that number is in the

1 thousands. Doctor Jesse Richman will provide expert
2 testimony on behalf of the defendants using several
3 statistical estimates. And by his own concession, some
4 of the estimates are stronger than others because they
5 have different sample sizes.

6 But at the low end of his estimates, where
7 you take a subsection of people who are registered to
8 vote and deduce whether-- what percentage of that people
9 are non-citizens, or you go the opposite way and take a
10 subsection of people who are not non-citizens and deduce
11 what percentage of those people are registered to vote.
12 At the low end his estimates are above 1,000, and at the
13 high end they are above 18,000. Indeed, there was even
14 one estimate that could go as high as 32,000, although
15 we are not relying on that one because it is such a
16 small sample size. So the point is that the number is
17 in the thousands.

18 Now, Mr. Ho vaguely said that Jesse
19 Richman's work has been rejected by his peers. That was
20 not work that is directly relevant to this case. That
21 was the CCES study, a study that is a massive survey of
22 more than 30,000 people. And Mr. Richman and other
23 academic colleagues wrote an article that said,
24 according to the numbers in that study, if you base it
25 on the respondents' own answers - because a large number

1 of non-citizens answered that study - approximately
2 11 percent of non-citizens living in the United States
3 indicated that they were registered in the 2008
4 election. Sorry, that they voted in the 2008 election.

5 And then the basis of the criticism-- of the
6 academic criticism of that study was, well, you didn't
7 actually go back and confirm that their answer was
8 correct, that they really did vote and that they really
9 were non-citizens-- or sorry, that they really did vote.
10 And then in a subsequent rebuttal report, not in this
11 case but in that larger issue, it was still 5.6 percent
12 not only said they were non-citizens and voted but were
13 confirmed to be non-citizens and voted.

14 So it was a very significant study that, of
15 course, attracted a lot of academic and political and
16 general-- and general public interest. Because if those
17 numbers are anywhere close to accurate, that is a very
18 large number of people voting nationally, a large
19 percentage, 5.6 verified as having voted in the 2008
20 election.

21 But we'll be looking at it-- not only
22 presenting Mr. Richman's estimates of the total number--
23 and you can think of it this way and we've used this
24 metaphor before. The 129 is the tip of the iceberg.
25 That's just the ones that we have identified, but we

1 know that the iceberg is much larger because that number
2 keeps growing and growing and because we have such
3 limited ways of seeing the total iceberg.

4 And so we'll be suggesting the iceberg is--
5 we know that it is in the thousands and we believe that
6 the best estimate is that is over 18,000 people
7 currently on the Kansas voter rolls.

8 Now, the attorney-- opposing attorney, Mr.
9 Ho, also talked about various experts we didn't realize
10 that he was going to be getting into in his opening
11 statement. There are things that are very specific
12 criticisms of experts, but I will say this as-- by way
13 of general statements about the plaintiffs' experts:
14 The plaintiffs brought forward a band of experts that
15 we've seen again and again in cases brought by the ACLU
16 and affiliated organizations across the country
17 challenging photo ID laws, challenging redistricting
18 cases. And these experts are used over and over again
19 in various cases and have developed a track record. And
20 it is not a good track record.

21 Indeed, in the case of Mr. McDonald, who we
22 will presumably hear from today, the District Court of
23 South Carolina found his expert opinion incomplete and
24 in-- unconvincing. His testimony in that case was
25 fraught with assumptions and failures to consider

1 relevant factors. The same is true here, as we will
2 show.

3 He will claim here, for example, that young
4 voters, 18 to 29 years of age, are disproportionately
5 affected by the proof-of-citizenship requirement. As
6 his basis for that conclusion, he will show that a-- a
7 high percentage or what looks like a high percentage,
8 approximately 41 percent, of the people on the suspense
9 list are-- are young, in that 18 to 29 age category.

10 But what he didn't look at and what we will
11 show is that of the total number of people who
12 registered during that same time period, approximately
13 41 percent were young. In other words, there's no
14 disproportionality. The number-- the percentage of
15 young people on the suspense list is exactly the same as
16 the percentage of young people who registered at that
17 time.

18 The same is true with his claim that there
19 are disproportionately unaffiliated voters versus voters
20 in the Republican or Democrat or other parties. The
21 same is true there. The percentage who ended up on the
22 suspense list who are unaffiliated is almost identical
23 to the percentage of all people who registered or
24 attempted to register during that same time period.
25 There's nothing disproportional in the effect of the

1 proof-of-citizenship law.

2 Another expert that they will present,
3 Lorraine Minnite, will present testimony, including her
4 own definition of voter fraud which she created out of
5 whole cloth, which labels a large number of things that
6 constitute crimes as not constituting voter fraud under
7 her definition.

8 She does not dispute, for example, that
9 non-citizens have registered to vote, including
10 non-citizens in this case. But according to her
11 definition, that would not constitute voter fraud.
12 There are multiple other problems with her testimony
13 that we will be going into further depth on later.

14 On the question of the number of
15 non-citizens who have registered to vote or attempt to
16 registered to vote, as the Court is well aware, the
17 Tenth Circuit has given us this test. And at the center
18 of the test is the word "substantial." A substantial
19 number of non-citizens. This definition of substantial,
20 as the Court has correctly recognized in one of your
21 prior orders, is a legal question. It's not a factual
22 question what the definition is, it's a legal question.

23 Unfortunately, the Tenth Circuit didn't lay
24 out for us what the legal definition is of the legal
25 word "substantial." But the definition is decisive

1 because depending on which definition you select, that
2 will almost certainly have a bearing on whether the
3 facts meet the substantial threshold that is defined in
4 that definition.

5 Now to be perfectly frank, the defendants
6 and the plaintiffs have each suggested definitions to
7 you that are helpful to our respective sides. And why
8 should we be surprised? That's what attorneys do. The
9 defendant has offered what I will call a consequential
10 definition. The consequential definition of substantial
11 as this: A substantial number is one that could have
12 the consequences of changing an election. So if it's
13 substantial enough to change an election, it's
14 substantial.

15 That, of course, is a defendant-- is one--
16 is a definition that serves the defense position well,
17 I'm very candid about that, because since we have so
18 many close elections decided by fewer than ten votes,
19 then if you have ten non-citizens on the rolls, that's
20 substantial because it's enough to change the outcome of
21 an election.

22 In contrast, the plaintiffs have offered a
23 different definition. They have offered a fractional
24 definition of the word "substantial." And by that I
25 mean, under their definition a substantial number is one

1 that is a large fraction of the total electorate. So
2 they take the number of non-citizens that we can find
3 and use that as the numerator then they use as the
4 denominator in the fraction the 1.8 million people,
5 total number of people registered to vote in Kansas,
6 give or take.

7 And the problem with that one is that when
8 you use 1.8 million as your denominator, no matter how
9 big your numerator is, it looks insubstantial. Even the
10 number 18,000 which this Court concluded would be a
11 substantial number if it is correct, that looks tiny
12 using their definition because you have 18,000 over
13 1.8 million, which is merely 1 percent.

14 So I want to suggest to the Court that
15 although these definitions are certainly valid and
16 considerable by the Court, there is a third definition
17 of substantial that the Court may wish to keep in mind
18 as we evaluate these facts. And that third possible
19 definition would be a functional failure definition of
20 substantial. A functional failure definition.

21 And by that I mean the number is substantial
22 if it indicates that the attestation-only system is
23 failing to perform the function of preventing
24 non-citizens from registering. If it is failing to
25 perform the function of preventing non-citizens from

1 registering.

2 Now, under this definition it's a little
3 harder for defendants. We would not be able to say that
4 one or two aliens is enough, one or two non-citizens
5 registering is enough, because any system can have human
6 error, can have some very strange or unusual occurrence
7 where the system fails.

8 But if there are hundreds or thousands of
9 people registering under a particular system who should
10 not be registering and they are slipping through the
11 system, then a reasonable person might say that the
12 under that definition, the system is failing in its
13 principal function. So one or two would not be enough
14 to satisfy the definition of substantial under that
15 definition, but if you could at some point reasonably
16 conclude that the system is failing to perform its
17 central function, then you would say the problem is
18 substantial.

19 I want to give a metaphor that illustrates
20 this third definition. And the metaphor is the roof of
21 a house. The central function of a roof of a house we
22 should say is to keep out the rain, to keep out the
23 precipitation. That's the principal function. Now, one
24 cheap and easy way to put up a roof, setting aside
25 building codes, one cheap and easy way is to simply put

1 plywood on top of the trusses of your house frame. That
2 constitutes a roof and it would keep a lot of rain out
3 of your house. But if only one or two drops find their
4 way through and the system was actually only keeping one
5 to two-- only one or two drops went through, we wouldn't
6 say that the system is failing.

7 But if hundreds of drops were coming
8 through, we would say that that plywood roof is failing
9 to perform its essential function. Hundreds or
10 thousands of drops slipping through.

11 But under the definition proffered by the
12 plaintiffs, the fractional definition, the-- the plywood
13 roof would always pass the definition because there are
14 millions of drops of rain every hour hitting that roof.
15 And the thousands that slip through are a tiny fraction
16 of the millions that fall.

17 So the point is that we might want to look
18 at this functional failure definition because it is a
19 definition that reasonable people would use when they
20 say is there a substantial problem with the system. I
21 present this third definition of substantial at the
22 opening statement not to argue the legal definition, of
23 which of these three definitions is correct, but simply
24 to put it on the table so that the Court may consider
25 this definition as the Court assesses the facts and

1 statistics that will be present in this bench trial and
2 so that we can at least have this third measuring stick
3 in our minds as we look at the facts.

4 The second factual inquiry: The other tools
5 did not work to prevent non-citizens from registering.
6 The evidence will show that the state of Kansas has
7 tried each of the other systems extensively that Mr. Ho
8 referred to and that each of them is completely
9 ineffective and, indeed, none of them are designed to
10 stop non-citizens from voting.

11 To go through each very briefly. Looking at
12 the issue of prosecuting crimes, the plaintiffs have
13 argued that if we just prosecute crimes of non-citizens
14 voting or registering that will deter people from voting
15 or registering. Well, that technique has been in place
16 for more than 70 years and it has proven completely
17 ineffective in preventing the non-citizens, even looking
18 at the 129 we have, from registering.

19 The crime of voting without being qualified
20 and election perjury; those two crimes have been on the
21 books in Kansas since 1974. They are found at 25-246 of
22 the Kansas Statutes Annotated and 25-2411 of the Kansas
23 Statutes Annotated.

24 The crime of false assertion of U.S.
25 citizenship, which is the crime one commits at the

1 federal level if one fills out a registration form and
2 attests to being a citizen, has been on the U.S. Code
3 since 1948, for 70 years. It's found at 18 U.S.C. 911.
4 So that threat of prosecution has been there for a very
5 long time.

6 And before the Secretary of State and the
7 Attorney Generals of the state of Kansas got the power
8 to prosecute voter fraud in 2015, all of the 105
9 counties of Kansas had the power to prosecute voter
10 fraud. Some did. And the-- the U.S. Attorney's Office
11 had the power to prosecute the federal crimes involving
12 voter fraud. It is empirically proven that that has not
13 sufficed to stop non-citizens from voting.

14 The evidence will also show, as far as their
15 second claim, that maybe a national database or some
16 database could be used to stop non-citizens from voting.
17 But that is-- is actually false, and we have tried
18 everything we can think of in that regard. First of
19 all, there is no national database of U.S. citizens. I
20 think many people assume that there is, but there is
21 not, that the federal government has.

22 And there is no national database of all
23 non-citizens residing in the United States either. The
24 Department of Homeland Security does know the people who
25 have been issued a temporary visa and it does know the

1 people who have been issued a lawful permanent residence
2 card or green card, but it does not know the people
3 residing in the United States illegally. And neither of
4 those existing databases are available to the states to
5 use.

6 The only system that is available to the
7 states to use in a completely different context is the
8 SAVE system, the Systematic Alien Verification for
9 Entitlements system, but that was never expected or
10 intended to be used for verifying citizenship. As its
11 name implies - alien, verifying, entitlements - the
12 purpose of the system was to ensure that only lawfully
13 present non-citizens got public benefits and
14 entitlements and that illegal non-citizens did not get
15 public benefits and entitlements.

16 It was not meant to look at the U.S.
17 citizens or people claiming to be U.S. citizens and
18 assess whether or not their claim of citizenship was
19 true. As a result, the evidence will show that the
20 state of Kansas, nevertheless, asked the Department of
21 Homeland Security, can we try using your SAVE system to
22 verify the citizenship or alien status of people
23 attempting to register to vote, and the state of Kansas
24 was denied unless we could provide for each person an
25 alien number and an alien document providing-- verifying

1 that alien number.

2 Well, of course, those are things that a
3 voter registration system doesn't have because a voter
4 registration presumes that the people are not aliens who
5 are registering to vote and certainly would never ask a
6 person, a United States citizen registering to vote,
7 could you please provide your alien documentation. So
8 the SAVE system does not work and has been denied on
9 terms that the Kansas-- the state of Kansas could
10 actually use.

11 The evidence will also show that the
12 Electronic Verification of Vital Events or EVVE system
13 fails to work because the state must know the date of
14 birth of the applicant and even if that hurdle were
15 overcome-- sorry, the state of birth. Even if that
16 hurdle were overcome, the system is cost prohibitive, as
17 the Court has already noted.

18 Another mechanism is the-- the third
19 possible alternative is comparing the state's voter
20 rolls to the temporary driver's license database. We're
21 already using that and have been using that for
22 approximately a decade. Periodically the state will
23 compare the temporary driver's license list, which is a
24 list of non-citizens who are here temporarily, not
25 permanent residents, but here temporarily and who get

1 these special licenses. And we'll see if any of the
2 names on that list also appear on our voter lists.

3 And we have done that and we have identified
4 some. And, indeed, some of the 129 were identified in
5 that manner. But the problem with that system is it is
6 grossly inadequate in preventing non-citizens from
7 registering for two reasons. No. 1, it only operates
8 after-- it only can be effectively used after the person
9 has already registered and then he's on the voter rolls
10 and then you compare it to the TDL list.

11 But, No. 2, and an even bigger problem, it
12 only covers a very small subsection of non-citizens
13 residing in Kansas. It-- it includes those who are on
14 temporary visas and who choose to obtain a Kansas
15 driver's license. It does not include any alien who
16 does not attempt to get a Kansas driver's license while
17 here and does not need to drive. It does not include
18 any of the many green card holders, the lawful permanent
19 residents in the state of Kansas, and it does not
20 include the unlawfully present non-citizens in the state
21 of Kansas.

22 So even if that were an effective method
23 that could be used before the person registers, it is a
24 very tiny percentage of the non-citizens residing in the
25 state of Kansas.

1 The fourth possible alternative suggested by
2 opposing counsel is, well, maybe we could just train
3 Department of Vehicles' employees better. If we could
4 just train them better, they would stop non-citizens
5 from registering at the DMV. But the defendant has
6 already shown that, No. 1, on numerous occasions the
7 Secretary of State's Office has provided abundant
8 written and verbal instruction to the Department of
9 Vehicles trainers.

10 No. 2, we've annually reviewed the annual
11 training content of the Department of Vehicle-- with
12 Department of Vehicle training staff, the content of
13 their training materials to ensure that it is accurate
14 and reflects any new statutes or regulations.

15 We have reviewed the training manuals
16 themselves and have suggested changes to them. And
17 we've provided multiple-- on multiple occasions advice
18 and input whenever necessary on Department of Vehicle
19 procedures and the content of Department of Vehicle
20 communications with people attempting to register at the
21 end of the driver's license transaction.

22 We have done everything possible to improve
23 the training of the Department of Vehicles. And it has
24 improved. But as their own expert will concede, the--
25 you can't eliminate human error and there will always be

1 some human error in the interactions between individuals
2 at the Department of Vehicles.

3 The I believe fourth or fifth possible
4 approach they suggest is non-citizens' responses on jury
5 questionnaires. As I've already mentioned, we've been
6 using that since 2013 but the problem again is it only
7 suffices to identify the very tiny percentage of
8 non-citizens who happen to get called for jury duty and
9 who happen to go ahead and admit on the form that they
10 are non-citizens in the first place.

11 The third factual inquiry of the day or of
12 the trial is that-- whether there's a significant burden
13 on those who are registered to vote and have to now
14 fulfill the proof-of-citizenship requirement. The
15 evidence will show that the SAFE Act provides for
16 multiple easy methods of transferring one's proof of
17 citizenship to the relevant county office. You can
18 bring it in in person, you can mail in a copy, you can
19 fax in a copy, you can e-mail in a copy, you can text in
20 a copy. There are multiple ways to bring in your proof
21 of citizenship or an image of the document.

22 The evidence will show that there are 13
23 different documents that suffice to prove citizenship.
24 The evidence will show that the counties of Kansas make
25 extensive efforts to inform registration applicants how

1 to complete their registration and that applicants
2 receive both mail and telephone calls from the relevant
3 counties if they remain on the suspense list long
4 enough, in an effort from the county to help the person
5 realize how many ways they can provide their citizenship
6 and how easy it can be done, the proof of citizenship.

7 The evidence will also show that the
8 informal hearing method, which is a fall-back safety net
9 for those rare cases in which the documents do not
10 exist, has proven easy to use and has been used remotely
11 by multiple people seeking to prove their citizenship.

12 The evidence will show that the state of
13 Kansas provides free birth certificates to anyone who
14 was born in Kansas and who needs one for the purpose of
15 registering to vote. The evidence will also show that
16 the state of Kansas verifies birth with the Kansas
17 Department of Vital Statistics for those people born in
18 the state and verifies other citizenship documents that
19 the person may have provided to the DOV when they were
20 getting the driver's license.

21 In other words, the state of Kansas makes
22 extensive efforts inter-agency to verify on that
23 person's behalf, to obtain from another state agency on
24 that person's behalf, the document that proves
25 citizenship so the person doesn't have to do it himself.

1 The evidence will show that with all of
2 these mechanisms, fully 95.4 percent of the applicants
3 who begin the process of getting a-- of registering to
4 vote and who may be on the suspense list for a temporary
5 period of time come off the temporary suspense list or
6 otherwise have their citizenship verified, their
7 registration completed and they are placed on the voter
8 rolls.

9 The evidence will show that the remaining
10 4.6 percent are either non-citizens or even more-- in
11 more instances people who move away, they simply change
12 residence, moving out of the county, either into a
13 different county in Kansas or to a different state
14 during the time after which they thought they sent in
15 their registration card.

16 The evidence will finally show that Kansas
17 has-- Kansans themselves do not report any significant
18 burden or any significant hardship in complying with the
19 proof-of-citizenship requirements when asked in a
20 survey. Now, of course, the plaintiffs in this case
21 will assert that it's very difficult for them to provide
22 their citizenship document. But when actually asked,
23 people who don't have a-- a motivation to lead the Court
24 to one conclusion or another, when asked, Kansans don't
25 state that they have any difficulty complying with this

1 law.

2 So for all of these reasons, the three
3 factual tasks, the three factual inquiries before this
4 Court all weigh strongly in favor of defendants and
5 plaintiffs will not be able to meet the legal hurdles
6 necessary to prevail either on their statutory
7 preemption claim or on their constitutional burden
8 claim. Thank you.

9 THE COURT: Thank you. All right. Mr. Ho,
10 are you ready with your first witness?

11 MR. HO: We are, Your Honor.

12 THE COURT: Would you like to take about a
13 ten-minute break?

14 MR. HO: Sure.

15 THE COURT: All right. Let's take a
16 ten-minute break and we'll reconvene at 10:30.

17 (Recess).

18 THE COURT: All right. You can be seated.
19 Mr. Ho.

20 MR. DANJUMA: Your Honor, plaintiffs would
21 like to-- the Fish plaintiffs would like to call their
22 first witness, Charles Stricker.

23 CHARLES WILLIAM STRICKER, III,
24 called as a witness on behalf of the Fish Plaintiffs,
25 having first been duly sworn, testified as follows:

1 DIRECT EXAMINATION

2 BY MR. DANJUMA:

3 Q. Good morning, Mr. Stricker. Could you please
4 state and spell your full name for the record?

5 A. Yes. Charles William Stricker III.

6 C-H-A-R-L-E-S. W-I-L-L-I-A-M. S-T-R-I-C-K-E-R. Roman
7 numeral III.

8 Q. Thank you. Is there any other name that you're
9 known by?

10 A. Yes. I've always gone by the nickname of Tad,
11 T-A-D.

12 Q. And how old are you?

13 A. I'm 39 years old.

14 Q. Can you tell the Court where you were born?

15 A. I was born in Joplin, Missouri.

16 Q. And where do you currently live?

17 A. I currently live in Wichita, Kansas.

18 Q. And can you tell us what county that's in?

19 A. Yes, it's in Sedgwick County.

20 Q. How long have you lived in Kansas?

21 A. I've lived in Kansas since late 2013, so about
22 four-and-a-half years now.

23 Q. And where did you live before that?

24 A. Prior to Kansas I lived in Chicago. I was there
25 for about five-and-a-half years.

1 Q. Okay. And why did you move back to Kansas in
2 2013?

3 A. Yeah, I originally was here in Kansas from 2006
4 to 2008 for a work assignment and met what would become
5 my wife eventually here in Kansas and-- in Wichita. And
6 we moved to Chicago, being young 20-something-year-olds
7 and explore life and live in the big city.

8 And as we started thinking about starting a
9 family, we couldn't think of a better place than to come
10 back to where she was from, from Kansas and where we
11 met. And that's really what-- what brought us back was
12 starting a family, had a great career opportunity.
13 Everything that Kansas has to offer with a good cost of
14 living.

15 Q. And you mentioned you want to start a family. Do
16 you have any children?

17 A. We do. We actually have a two-year-old son and
18 another small one on the way this year.

19 Q. Congratulations.

20 A. Thank you.

21 Q. Can I ask, are you currently employed?

22 A. Yes, I am.

23 Q. And can you tell the Court what your job is?

24 A. Yes. I'm a hotel manager for a very busy upscale
25 luxury hotel in Wichita.

1 Q. And how long have you worked at that job?

2 A. I've been there since late 2014. I've been in
3 the hotel business for much longer and been-- so I guess
4 I've been there about three-and-a-half years.

5 Q. Could you tell-- could you describe your typical
6 day at work?

7 A. Yeah, a typical day for me, I usually get up
8 around 5:30, 6:00 in the morning, try to get to the
9 hotel by 7:00 for our guests that are departing. So,
10 you know, I kind of have to be there before everybody
11 else is up and leaving. And work very long hours and,
12 you know, typically leave the hotel around 6:00 or 7:00.
13 So it's usually a ten, 12-hour workday.

14 Q. And could you tell us how many hours you worked
15 in the past week?

16 A. Somewhere between 60 to 65 hours.

17 Q. And are you taking any time off from work to be
18 with us today?

19 A. I am. I'm actually taking personal time off that
20 is used out of my vacation time to be here.

21 Q. All right. Now, I'd like to talk to you a bit
22 about your voting history. Have you ever voted in an
23 election?

24 A. Yes, I have.

25 Q. Do you remember what years you voted?

1 A. I do. The first time that I voted was the first
2 opportunity that I could, which was in 1996. And I also
3 voted in 2010, 2012. I attempted to vote in 2014. And
4 voted in 2016 as well.

5 Q. And did you understand that you needed to
6 register to vote before you went to the polls?

7 A. I did, yes.

8 Q. And, Mr. Stricker, I'd like to ask you about
9 where you lived when you were previously registered to
10 vote. When you voted in 1996, what state were you
11 living in?

12 A. It was actually where I grew up, which was in
13 Missouri, and registered to vote there.

14 Q. And did you have any problems registering to vote
15 in Missouri?

16 A. I didn't. It was actually a pretty uneventful
17 experience for registering the first time. I was 18
18 years old and a high school student. They had a group
19 that was there to help people register to vote and it
20 was pretty uneventful. I think being the average
21 18-year-old probably all I had was a driver's license,
22 if that.

23 Q. And is-- what state were you next registered to
24 vote in, if any?

25 A. I-- being in the hotel business, I-- or

1 especially earlier on in my career, I moved several
2 times. I was actually registered to vote in Kansas back
3 in 2006 or 2007. And I was also registered to vote in,
4 of course, the state of Illinois when I lived in
5 Chicago.

6 Q. And just to clarify the record. This-- when you
7 lived in Kansas in-- you lived in Kansas in 2016 to
8 2008, is that right, previously?

9 A. That is correct.

10 Q. And you registered to vote while you were living
11 in the state at that time, or no?

12 A. I did, yep.

13 Q. And did you have any problems registering to vote
14 in Kansas at that time?

15 A. Not that I recall. It was very easy. Went into
16 the DMV and got my driver's license and it was pretty
17 uneventful as well.

18 Q. And when you moved to Illinois, you registered to
19 vote again?

20 A. I did, uh-huh.

21 Q. And did you have any problems registering to vote
22 in Illinois?

23 A. I did not. It was a very easy process. Probably
24 the longest thing was just waiting in line.

25 Q. And so when-- I understand from your prior

1 testimony that you moved back to Kansas in 2013. Did
2 you have any problems trying to register to vote in
3 Kansas at that time?

4 A. When I went to get my driver's license in 2014, I
5 don't recall being asked for anything extra, so it-- it
6 seemed pretty uneventful.

7 Q. And, I'm sorry, can you-- when you-- when you
8 went to get your driver's license in 2014?

9 A. Yeah. Actually, when I went to get my driver's
10 license I did have actually issues. When I first walked
11 in, I stopped at the information counter that they have
12 at the front where I got a number as well. And they
13 looked over the documents that I had to try to get my
14 driver's license and they said, well, you don't have
15 enough information here.

16 And so they gave me a list of documents that I
17 needed to get. And I had taken off work actually that
18 day as well and it was the last day to register to vote.
19 And so it was really important for me to participate in
20 the-- the 2014 election. So I rushed home as quickly as
21 I could, literally grabbed every single document that I
22 could and started shoving them into a file folder to try
23 to get back before the DMV closed. And so I went back
24 for a second time to try to get my driver's license and
25 try to register to vote. So I made two trips in one

1 day.

2 Q. And what happened-- and I just want to back up
3 for a second. When you first went into the-- into the
4 DMV, they asked you-- they said you needed additional
5 documents, is that right, in order to get-- in order to
6 get your driver's license?

7 A. They did. Yeah, they wanted me-- I don't
8 remember the specific documents, but it was a pretty
9 long list of things that they needed. And so I went
10 back and-- and literally grabbed everything that I could
11 possibly get out of my house. I-- I went and I grabbed
12 tax documents, tax returns, W-2s. I grabbed my birth
13 certificate, I grabbed mortgage statements. Literally
14 everything I could find and just started putting it in
15 the folder to get back to the DMV as quickly as I could
16 because I-- I had to get it done, I couldn't take
17 another day off of work.

18 Q. And do you have any record of what you brought to
19 the DMV when you returned the second time?

20 A. I did leave all the documents just out of
21 convenience or not taking it apart, I just left that
22 folder together and just kind of threw it back into my
23 office. And so all those were still gathered together
24 for quite some time afterwards.

25 Q. And did you ever look inside it to see if it

1 contained a birth certificate or a passport?

2 A. I did. At some point later on I-- after I
3 discovered more about this proof of citizenship, I went
4 back and looked at the folder and I did have a birth
5 certificate in the folder. Mine was there.

6 Q. And when you returned to the DMV for the second
7 time, as you testified, what happened next?

8 A. So I checked in with the front counter again, the
9 information counter. And they said, okay, you know, go
10 ahead and grab a number. And I proceeded up to the
11 window, started talking to the DMV agent and said I was
12 there to get a driver's license, that I had moved from
13 the state of Illinois and that-- I went through the
14 process.

15 It seemed relatively easy at that point. I had
16 everything that I needed. At some point during the
17 process the agent said, would you like to register to
18 vote? And I said, yes, that's actually-- that's why I'm
19 here today, that's why I hurried back, I wanted to get
20 here before the deadline. I've been very busy and
21 absolutely I-- I'd like to register.

22 Q. Do you recall the DMV clerk ever telling you that
23 you'd have to provide any sort of document in order to
24 register to vote?

25 A. No, I do not recall them asking for anything else

1 or telling me about that.

2 Q. Did you-- did the DMV give you any papers or
3 documents when you left their offices?

4 A. Yeah. So I-- I was given what I thought at first
5 was a receipt. It looked like a-- a fast-food receipt
6 and it had my picture on it. And so I kind of-- I was
7 waiting there for the agent to hand me my driver's
8 license. And, you know, they were kind of looking at me
9 like, is there anything else you need?

10 And I-- I said, well, do I get the driver's
11 license from you or do I need to go to a different
12 window? And they explained that they don't actually
13 have the ability to print driver's licenses in the state
14 of Kansas onsite. And that this slip of paper that came
15 out that looked like a fast-food receipt was actually my
16 driver's license.

17 I was really skeptical because I've lived in a
18 lot of other states and normally I get a physical
19 driver's license when I leave. And I said, well, what
20 if I get stopped by an officer? And they said, no, no,
21 no, rest assured, it's really a driver's license.
22 You'll get the real one in the mail. It takes about 14
23 to 21 days I think is what they said.

24 And I said, okay, well, what else do I need? Is
25 there anything else? You know, what about, you know,

1 the voting, do I get a voting card? Do you print
2 everything out for that? No. Everything comes in the
3 mail. You'll get everything that you need, don't worry
4 about it.

5 Q. And when you left the DMV, what did you think
6 about your voter registration status at that time?

7 A. At that point I-- I thought I was registered to
8 vote and that I had done everything that I needed to,
9 that I accomplished why I went there that day.

10 Q. Now, Mr. Stricker, you testified earlier that you
11 tried to vote in the 2014 midterm elections; is that
12 right?

13 A. That is correct.

14 Q. Can you tell us what happened when you tried to
15 vote that-- in that election?

16 A. Yeah. So I woke up early that morning to try to
17 get there right when the voter poll opened. And I went
18 with my wife and we both waited in line, she was in
19 front of me. And as soon as I got up to the table I
20 gave them-- by that point I had my real driver's license
21 and presented that and stated who I was and that I was
22 there to vote.

23 And the agent that was behind the counter, she
24 started looking, she had a stack of documents and was
25 looking through and said, well, we don't have you

1 registered to vote. And I said, well, surely this has
2 to be a mistake, I mean, I-- I know I registered on the
3 last day and so maybe for some reason I'm-- you know,
4 that's why you don't have me on the list. I don't know
5 when that was printed. She said, no, this was printed
6 yesterday, you know, we don't have you registered to
7 vote.

8 Q. And what happened-- what was the next thing that
9 happened at the polls?

10 A. I asked to talk to the person that was in charge
11 of the polling station there and she said she wasn't
12 sure either why I wasn't registered to vote and she
13 ended up giving me a provisional ballot. At the time I
14 really didn't understand what a provisional ballot was
15 so I asked some more questions about that.

16 And then by that point, my wife had already
17 gotten her ballot and was headed off to a private booth.
18 Meanwhile, I was given this provisional ballot. And at
19 this time now there was a long line of-- of people that
20 were waiting to vote. And, you know, I'm talking to the
21 person in charge of the polling station so everybody is
22 kind of looking.

23 But I ended up-- once I got the provisional
24 ballot, there was just a white plastic table that was
25 over by the line. And there was another lady that was

1 sitting there filling out a provisional ballot as well
2 and I could see what she was filling out and I'm sure
3 she could see the same of me. But it was kind of like I
4 was put on display at this table.

5 Q. And what did it feel like to vote on-- with a
6 provisional ballot in that election?

7 A. It-- it was confusing, I didn't understand why.
8 I-- I felt embarrassed by having to sit there on-- on
9 public display. It was almost like I was the one that
10 did something wrong. And I just-- I left very confused
11 about the whole experience.

12 Q. Did anyone ever tell you at the polls why you
13 weren't registered to vote?

14 A. No. They didn't tell me any reason why other
15 than, sorry, we don't have you on the list.

16 Q. Did you later learn why you weren't registered to
17 vote?

18 A. I did. I had first heard about this documentary
19 proof of citizenship actually on the radio. I was
20 driving to work one day early in the morning, and I
21 started to think, well, you know, is this maybe why I
22 wasn't allowed to vote? And it was later that I learned
23 that-- that they were claiming that-- that I wasn't--
24 you know, I hadn't given any proof of citizenship or
25 that I hadn't proved who I was, so...

1 Q. Now, before the 2014 election, did you receive
2 any phone calls telling you that you weren't registered
3 to vote?

4 A. No, I did not.

5 Q. Do you remember receiving any notices in the mail
6 telling you you weren't registered to vote?

7 A. I don't recall receiving any.

8 Q. Okay.

9 MR. DANJUMA: Now, Your Honor, may I please
10 approach the witness?

11 THE COURT: Yes. And you don't have to ask
12 again.

13 MR. DANJUMA: And for the record, I have
14 just handed to Mr. Stricker a copy of an exhibit that
15 defendants have-- have marked for identification
16 purposes as Defendant's Exhibit 838, registration
17 detail, Stricker ELVIS file.

18 And, Your Honor, we would like to publish a
19 page of this document. The document has been marked as
20 confidential because some information in the document is
21 confidential, but the page that we would like to publish
22 is a letter from Sedgwick County which-- election
23 officials that does not have any confidential
24 information in it.

25 THE COURT: All right. So 838, are you

1 offering the entire exhibit?

2 MR. DANJUMA: No. We are not seeking to
3 introduce the exhibit, we're only seeking to ask the
4 witness about the exhibit.

5 THE COURT: Okay. So when you say publish,
6 you don't mean publish in court, you mean publish to the
7 witness.

8 MR. DANJUMA: I'm sorry. Publish to the
9 witness and display to the witness.

10 THE COURT: Okay. I understand. That's
11 fine.

12 Q. (BY MR. DANJUMA) Okay. And can you tell me on
13 the first page of this document - and I'll advise our
14 trial tech not to display the first page - but could you
15 just read the first line at the top of the first page?

16 A. Yes. It says, "Registrant detail for Stricker,
17 Charles William, 104 Sedgwick."

18 Q. And could you take a second to look through this
19 document.

20 A. (Witness complies).

21 Q. Have you had a moment to look through the
22 document?

23 A. I have, I've glanced through it.

24 Q. And apart from your deposition, have you ever
25 seen any document like this before?

1 A. No, I have not.

2 Q. To your knowledge, is this document anything
3 that-- something that you have access to?

4 A. Not that I know of.

5 Q. And do you know whether the information in the
6 document is accurate?

7 A. I do not. I mean, there are a lot of pages here,
8 so I-- I do not know.

9 MR. DANJUMA: Now, I'd like to ask our trial
10 tech to display on the screen for the witness and for
11 the Court Page 9 of this document.

12 THE COURT: All right. Before it's
13 admitted, you shouldn't publish it that way.

14 MR. DANJUMA: Oh.

15 THE COURT: Page 9 of Exhibit 838. Is it
16 admitted by stipulation? Is this something that's
17 stipulated?

18 MR. DANJUMA: I'm sorry, this exhibit has
19 been admitted by stipulation.

20 THE COURT: All right. 838 admitted by
21 stipulation. You can publish any of it, subject to the
22 redaction rules.

23 MR. DANJUMA: Understood.

24 Q. (BY MR. DANJUMA) And do you see the top of the
25 page of this-- and could we just zoom out for a moment

1 to the full letter. Can you read the date at the top of
2 this letter?

3 A. October 26th of 2016.

4 Q. And could you read for the record the first-- the
5 title of this letter?

6 A. It says "Notice of Voter Registration Status."

7 Q. And then I'd just like to direct you to the third
8 paragraph in the letter.

9 A. Okay.

10 Q. Could you just read the third paragraph into the
11 record?

12 A. Yes. It says, "Our records indicate that you've
13 submitted a voter registration application during the
14 above-mentioned time period but you did not provide
15 evidence of your U.S. citizenship. We have since
16 received information from the Kansas Department of
17 Health and Environmental Office of Vital Statistics
18 indicating that you have a Kansas birth certificate on
19 file. Based on that determination, your registration is
20 deemed complete, and we've granted you full voter
21 registration status."

22 Q. Mr. Stricker, were you born in Kansas?

23 A. No, I was not.

24 Q. Do you have a Kansas birth certificate?

25 A. No, I do not.

1 Q. Is this information in your voter file accurate?

2 A. It certainly does not seem to be if they're
3 saying I have a Kansas birth certificate, because mine
4 is from Missouri.

5 Q. All right. Mr. Stricker, have you followed the
6 legal developments in this case?

7 A. I have somewhat, yes.

8 Q. Do you know whether the judge has issued any
9 preliminary rulings in the case regarding whether you
10 could become registered to vote?

11 A. Yes. At some point the judge issued a
12 preliminary ruling that anybody that was on the
13 suspended list should be registered to vote and-- and
14 allowed to vote.

15 Q. And you testified earlier that you voted in the
16 2016 election. Did you take any steps to see if you
17 were registered to vote before the 2016 election?

18 A. I did. Certainly I didn't want to have the
19 embarrassing experience that I had again previously so I
20 actually called the Sedgwick County voter registration
21 office and had a long conversation and-- and asked if I
22 was registered to vote.

23 Q. And what were you told?

24 A. I was told, well, it's really complicated. They
25 said there are a lot of legal issues that are up in the

1 air and we're not sure if you're going to be allowed to
2 vote in the upcoming presidential election and, you
3 know, there's some things that just haven't been decided
4 and so we're-- we're really not sure if you're going to
5 be allowed to vote at this point.

6 Q. Did you check online to see if you were
7 registered to vote?

8 A. I did. So I-- I wanted to fact check that and
9 see if what the person was saying was true or maybe they
10 were mistaken. And so I went online and I was kind of
11 shocked and surprised that it said I was not-- we had--
12 I had no record and that I was not registered.

13 Q. And how did you-- what was your reaction-- what
14 did you understand about your registration status after
15 checking online and contacting the Sedgwick County
16 Election Office?

17 A. Well, I was extremely confused by that point,
18 because it was my understanding that I was supposed to
19 be registered. You know, I had been through the whole
20 process, the judge had ordered that. I talked to a
21 person from the voter registration office, they said, we
22 don't know. I look online, it says I'm not registered.
23 At that point I was really confused. I was-- I was
24 probably a little frustrated and upset about the whole
25 process too.

1 Q. Okay. Now, Mr. Stricker, I just want to check
2 again, do you have a birth certificate or passport now?

3 A. I do. I have both.

4 Q. Is there anything physically preventing you from
5 providing a birth certificate or passport to an official
6 in the state of Kansas?

7 A. No, there's not.

8 Q. So can you tell us why you are testifying as a
9 plaintiff in the case today?

10 A. Well, you know, for me it's-- it's really about
11 the principle of the matter. I don't think that the
12 average Kansan citizen should have to sue the Secretary
13 of State to get registered to vote. And it's a very
14 confusing, convoluted process.

15 And, you know, I just-- I think about all the
16 other people like, you know, in my family that may-- you
17 know, don't have birth certificates or can't get them
18 and they've worked at the same job for years and years.
19 And, you know, the people that don't have a voice and
20 I'm able to do something that's impactful, and that's
21 why I'm part of this case. And, you know, I-- I want to
22 make it easier for people to vote and, you know, I think
23 that's what we should be doing.

24 MR. DANJUMA: Thank you very much, Mr.
25 Stricker. No further questions at this time.

1 MR. JOHNSON: I have nothing.

2 CROSS EXAMINATION

3 BY MR. KOBACH:

4 Q. Hi, Mr. Stricker. We've spoken before, but just
5 to remind you, my name is Kris Kobach, I'm the defendant
6 in this case and also an attorney.

7 I have a few questions about the examination that
8 you just had and I want to expound on a few subjects.
9 Let's jump straight to the-- your trip to the DMV to get
10 your driver's license in 2014. Did you-- did you say
11 that you took two trips to the DMV in 2014?

12 A. That is correct, two.

13 Q. And were you asked to provide documents by the
14 DMV clerk that you interacted with?

15 A. Yes, I was.

16 Q. And did you say that you took a file of documents
17 with you to the DMV?

18 A. That is correct, yes.

19 Q. And did you also say that the-- inside that file
20 of documents was your birth certificate; is that
21 correct?

22 A. That is correct.

23 Q. Do you remember exactly which documents the DMV
24 clerk looked at?

25 A. I do not.

1 Q. Is it possible that the DMV clerk looked at your
2 birth certificate among the documents that he or she was
3 looking at?

4 A. That, I do not know.

5 Q. Did you have your passport in the folder or the
6 file of documents you took as well?

7 A. I do not recall having the passport.

8 Q. So just to make sure I understand. You think you
9 did not have the passport; is that correct?

10 A. Yeah, I do not recall having the passport.

11 Q. But you are sure you had the birth certificate;
12 is that correct?

13 A. That is correct.

14 Q. And did you have the birth certificate on both
15 occasions when you went to the DMV-- or DOV?

16 A. I don't know in the first one. I know in the
17 second one because that was the final file that I had
18 laying in my home office for quite some time.

19 Q. And is it your testimony that on-- the reason you
20 took a second visit to the Department of Vehicles was
21 because there were certain documents missing on your
22 first visit to get your license; is that correct?

23 A. That's correct. I think it had something to do
24 specifically with the Kansas residency, like utility
25 bills and things.

1 Q. Okay. So is it-- so is it possible that on
2 either of the first or the second visit you may-- the
3 clerk at the DOV may have looked at your birth
4 certificate?

5 A. I don't recall.

6 Q. Okay. You talked about a receipt you got from
7 the Department of Vehicles that I believe you said
8 looked like a fast-food receipt. Do you recall that?

9 A. Yes, which was what I found out was my temporary
10 driver's license.

11 Q. Did you read every word on that receipt in full?

12 A. I don't recall reading every word.

13 Q. I'm going to show you--

14 MR. KOBACH: May I approach the witness,
15 Your Honor?

16 THE COURT: Yes. And you don't need to ask
17 again.

18 MR. KOBACH: Okay.

19 Q. (BY MR. KOBACH) I'm going to show you an exhibit
20 which is labeled Defendant's Exhibit 1047. And, Mr.
21 Stricker, I'm going to represent to you that--

22 MR. DANJUMA: Could we have a copy of this
23 document?

24 THE COURT: All right. Don't publish it
25 yet. Is this admitted, 1047, by stipulation? You know,

1 when-- before we break for lunch or right afterwards,
2 let's go ahead and make a record of all the exhibits
3 admitted by stipulation so we don't have to fumble and
4 find out. But is this one-- anyone know? 1047.

5 MR. KOBACH: It is in.

6 MR. ROE: We do have one that's stipulated--

7 THE COURT: We can't hear you. Can't hear
8 you.

9 MR. ROE: We do have one that's basically
10 the same copy that's for a joint stipulation and I
11 think-- am I correct on that?

12 MS. LIU: Your Honor, we don't have a-- I
13 mean, Exhibit 1047 is not on the joint stipulation list.

14 THE COURT: All right. So it's not admitted
15 yet and so you need to make a record with this defendant
16 if you're going to offer it through him.

17 MR. KOBACH: Okay. Well, we may need to
18 offer it through a different witness. Your Honor, just
19 for the Court's information, this is a copy of the
20 receipt that is sent to people who are registering at
21 the DOV. However, I believe that I may need-- if you
22 want me to ask foundational questions, I may need to get
23 this in through a different witness, Mr. Caskey or
24 someone else.

25 THE COURT: All right. Well, you can try to

1 see if he can give you the foundation to admit it. If
2 not, you'll have to wait.

3 MR. DANJUMA: We need to have a copy of the
4 document before you-- okay.

5 MR. KOBACH: May I approach the witness then
6 and read on his copy? I'm sorry.

7 THE COURT: Right.

8 Q. (BY MR. KOBACH) Mr. Stricker, could you read
9 the-- the first large paragraph there beginning "unless
10 you already submitted"?

11 THE COURT: Not aloud. Right? All right.
12 So let's back up. 1047 is not admitted. Is there going
13 to be an objection to 1047 being admitted by plaintiff?

14 MR. DANJUMA: Yes.

15 THE COURT: All right. So you're going to
16 need to lay the foundation with this witness before he
17 can testify to any of the substance of it because you're
18 going to need to lay a foundation to get it admitted.
19 If he can't do it for you, then you're not going to be
20 able to ask him about-- to read into the record what the
21 document is. You can't do that until it's admitted.

22 MR. KOBACH: Right.

23 Q. (BY MR. KOBACH) Mr. Stricker, do you recall
24 anything of the text that was on the receipt that you
25 received from the Department of Vehicles?

1 MR. DANJUMA: Objection. Mischaracterizes
2 the witness' testimony.

3 THE COURT: Overruled. Answer it if you
4 can.

5 A. Really the only thing that I remember, I remember
6 it had a-- a grainy picture of myself, had my name, I
7 think it had my date of birth, but I don't recall
8 anything else on the small slip of paper that printed
9 out.

10 Q. (BY MR. KOBACH) I'm not going to ask you to read
11 it, but does-- is there anything in Exhibit 1047 that
12 you recall or is it your memory that you just don't
13 recall what else was on there besides your name and date
14 of birth?

15 In other words, do you remember seeing anything
16 like the text from Exhibit 1047 in front of you on that
17 receipt?

18 A. I-- I do not. And we may be referring about
19 something different, because what I was given was
20 strictly a small slip of paper. I was not given a full
21 page like this.

22 Q. Okay.

23 MR. KOBACH: Your Honor, we just have
24 obtained the joint exhibit, which is substantially
25 identical to what I just handed Mr. Stricker.

1 THE COURT: What's that number?

2 MR. KOBACH: This is Joint Exhibit No. 825,
3 presumably the plaintiff is not objecting to something
4 they've already allowed in.

5 THE COURT: All right. Just a minute.
6 Exhibit 825, Kansas DOV receipt is what it says. Is
7 that stipulated? Everybody agree to that?

8 MR. DANJUMA: Yes.

9 THE COURT: All right. Exhibit 825 is
10 admitted by stipulation. You can ask him-- you can
11 publish it, you can ask him to publish it by reading
12 aloud, et cetera.

13 MR. KOBACH: Is there a way to zoom out on
14 this?

15 Q. (BY MR. KOBACH) Mr. Stricker, this should look
16 very much like what was just in front of you. So this
17 is Exhibit No. 825, joint exhibit.

18 MR. KOBACH: Which I'm introducing into
19 evidence, Your Honor, I don't-- or is it already in?

20 THE COURT: It's admitted.

21 MR. KOBACH: It's already admitted, okay.

22 Q. (BY MR. KOBACH) So looking at the paragraph that
23 begins "unless you already submitted." That's the
24 paragraph where the word "unless" is partly obscured
25 there. Do you see that?

1 A. Yes.

2 Q. Okay. Could you read that paragraph?

3 A. Sure. "Unless you already submitted to the
4 Division of Vehicles a document proving U.S.
5 citizenship, you need to submit one to your county
6 election office before you will be added to the voter
7 registration list. Visit www.gotvoterid.com for a list
8 of acceptable documents. If you were a registered voter
9 in Kansas before 2013 and are still registered, you do
10 not need to provide a citizenship document."

11 Q. Now that you've read that, does that refresh your
12 recollection at all? Do you recall seeing those words
13 on the receipt that you received from the DOV?

14 A. No. And again, it was-- I didn't get a
15 eight-and-a-half-11 piece of paper, I got a-- it was
16 like a fast-food receipt size, but....

17 Q. Do you recall receiving any other mail from the
18 Sedgwick County Election Office after you started your
19 registration process at the Department of Vehicles?

20 A. Immediately after, no.

21 Q. Do you recall receiving any phone calls or
22 anything from the Department of Vehicles-- sorry, from
23 the Sedgwick County Election Office?

24 A. No, I do not.

25 Q. Mr. Stricker, you-- I believe you just testified

1 you do have a passport in addition to a birth
2 certificate; is that correct?

3 A. That is correct.

4 Q. Do you possess a Smartphone?

5 A. I do.

6 Q. Do you get e-mail on your phone?

7 A. I do.

8 Q. Do you send text messages on your phone?

9 A. I do.

10 Q. Do you sometimes take pictures with your phone
11 and either text or e-mail them?

12 A. I have on occasion.

13 Q. If you had wanted to, could you have taken a
14 picture of your birth certificate and e-mailed it into
15 the Sedgwick County Election Office?

16 A. Sure, I could've. I don't think that's a very
17 secure way of transferring sensitive personal
18 information by text message.

19 Q. Is-- so is it your testimony that you've never
20 transmitted anything by text message that might-- that
21 might be an identity document relating to you?

22 A. An identity document, yeah, I-- I don't recall
23 ever sending any of that. I-- I text pictures of my
24 son.

25 Q. But during your deposition, as you may recall,

1 you-- you acknowledged that the Sedgwick County Election
2 Office was approximately five-and-a-half blocks from
3 your place of work; is that correct?

4 A. That sounds about right.

5 Q. So what time do you normally get to work?

6 A. Usually between 7:00, 8:00.

7 Q. And what time do you usually leave work?

8 A. A lot of times it can be after 6:00, 6:30 p.m.

9 Q. Okay. Do you ever leave your place of work for
10 lunch?

11 A. It's pretty rare. I don't have a lot of time to
12 leave.

13 Q. Do you sometimes leave your place of work for
14 lunch?

15 A. Occasionally, yeah.

16 Q. And when you go out for lunch, not at work, how
17 long do you typically spend at lunch?

18 A. Usually five or ten minutes. There's a popup
19 park where I can go and grab a sandwich real quick and
20 then bring it back to my office.

21 Q. Would it have been possible at some point for you
22 to get in your car and drive five-and-a-half blocks to
23 the election office and drive back and provide your
24 proof of citizenship?

25 A. Really, it-- it got to the point where it became

1 a burden for me to take time off. I mean, I'm having to
2 take time off today, for instance. So, you know, and
3 I-- I thought when I left the DMV that I had done
4 everything that I needed to and walked in to vote in
5 2014. So at that point I didn't think it was really
6 necessary.

7 Q. So my question is, would you have been able to
8 take 15 minutes to drive five-and-a-half blocks, present
9 a document and drive back over your lunch hour?

10 A. At the time, no. I had just started the job and
11 I was especially busy in 2014.

12 Q. So is it your testimony that you had to remain at
13 your post, the desk where you work for the entirety of
14 the 12 hours that you were there from-- well, sorry, ten
15 hours that you would be there from 7:00 in the morning
16 until 5:00 in the evening?

17 A. Well, I manage a very large building so I don't
18 sit at a desk all day, but I'm throughout the building.

19 Q. So your testimony is that it's impossible for you
20 to leave during the day. Unless you take a day off, you
21 could not leave for 15 minutes?

22 A. It would've been very difficult. And I-- again,
23 I didn't think it was necessary. I thought I had
24 already done everything. I had no reason to believe
25 that I wasn't a citizen and that I took everything I

1 needed to to the DMV so I thought surely it was an
2 error.

3 Q. You stated that you work at an upscale hotel; is
4 that correct?

5 A. Yeah.

6 Q. Is it called the Ambassador Hotel?

7 A. That's correct.

8 Q. Is it owned by the Marriott Hotel chain?

9 A. No, it's not. It's affiliated.

10 Q. Affiliated with Marriott?

11 A. Uh-huh.

12 Q. Does the Ambassador-- is it the policy of the
13 Ambassador Hotel that its employees cannot take 15
14 minutes to complete their voter registration?

15 A. We don't have a policy regarding that.

16 Q. So do you supervise any employees?

17 A. I do.

18 Q. If one of those employees asked you, could I take
19 15 minutes to go complete my voter registration, would
20 you say, no, you cannot?

21 A. No. I probably wouldn't deny them that.

22 Q. Did you ever call the Sedgwick County Election
23 Office during this period after you received-- after
24 your second visit to the Department of Vehicles and then
25 election day of 2014?

1 A. I'm not sure I understand the question.

2 Q. Did you ever use a telephone and dial the number
3 to the Sedgwick County Election Office in order to speak
4 to them?

5 A. You mentioned 2014 or--

6 Q. From the time you got your-- your second-- the
7 second visit to the Department of Vehicles until the
8 time when you wanted to vote in that election.

9 A. So when I went to the Department of Motor
10 Vehicles but before the 2014 election?

11 Q. Yes.

12 A. No, I did not call them.

13 Q. Did you ever call them before the 2016 election
14 from the time you went to the Motor Vehicles until the
15 time of the 2016 elections, either August or November?

16 A. Yes. I did call, as I testified to earlier,
17 before the 2016.

18 Q. And that was to confirm that you were registered?

19 A. That's correct.

20 Q. Fully registered. And what was the answer that
21 you received?

22 A. It was, as I testified to earlier, it was very
23 ambiguous. They said, well, we don't know. There are a
24 lot of things that are up in the air, there's some
25 things that are going on with the Court and we're just

1 not sure if you're going to be able to vote in the 2016
2 election.

3 Q. You're testifying that someone from the Sedgwick
4 County Election Office said we are not sure if you're
5 going to be able to vote?

6 A. Absolutely.

7 Q. You testified that you were worried about your
8 family members being able to register. Do all of your
9 family members have a birth certificate?

10 A. That, I do not know.

11 Q. Are you aware of any member of your family who
12 does not have a birth certificate?

13 A. I'm-- actually helped my in-laws try to get a
14 passport for the first time. They're in their 50s and
15 went on vacation. I-- I helped them through that
16 process. And it-- yeah, he-- my father-in-law didn't
17 know where his passport was, so--

18 Q. To get that passport he had to present a birth
19 certificate, didn't he, or a prior passport?

20 A. Uh-huh.

21 Q. And he got the passport; is that correct?

22 A. Yeah, after-- yeah, I helped him through the
23 process to get a birth certificate and request it and
24 helped him through that process. But it was very
25 confusing for them and it was something that he really

1 didn't understand how to do.

2 Q. Mr. Stricker, is there a film crew or a camera
3 crew following you around here either yesterday or
4 today?

5 MR. DANJUMA: Objection, Your Honor,
6 relevance.

7 THE COURT: I don't know what the relevance
8 is.

9 MR. KOBACH: Your Honor--

10 THE COURT: I imagine there's lots of camera
11 crews following a lot of people around here.

12 MR. KOBACH: It goes to-- goes to bias and
13 motive to exaggerate.

14 THE COURT: I'll-- I'll sustain. I don't
15 think it's relevant.

16 MR. KOBACH: No further questions.

17 THE COURT: Redirect, any?

18 MR. DANJUMA: Nothing further from
19 plaintiffs.

20 THE COURT: All right. Mr. Stricker, you
21 can step down. Is he released from his subpoena so he
22 can stay and watch the trial if he wants to?

23 MR. DANJUMA: Yes.

24 THE COURT: All right. Call your next
25 witness.

1 MS. LIU: Good morning, Your Honor. I'm
2 Angela Liu on behalf of the Fish plaintiffs. And the
3 Fish plaintiffs would like to call Donna Bucci.

4 DONNA BUCCI,
5 called as a witness on behalf of the Fish Plaintiffs,
6 having first been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MS. LIU:

9 Q. Good morning, Ms. Bucci. I'm Angela Liu on
10 behalf of the Fish plaintiffs, as you know.

11 Could you please state and spell your full name
12 for the record?

13 A. Donna Jean Bucci. D-O-N-N-A. J-E-A-N.
14 B-U-C-C-I.

15 Q. And how old are you?

16 A. 59.

17 Q. And where were you born?

18 A. Baltimore, Maryland.

19 Q. And where do you currently live?

20 A. Sedgwick County, in Wichita.

21 Q. And how long have you lived in Kansas?

22 A. Approximately-- I'm not sure, six--

23 THE COURT: Can you pull the microphone
24 down, I'm having difficulty hearing you. Closer to you.

25 THE WITNESS: Close to me.

1 THE COURT: Yeah.

2 A. Six to eight years now.

3 Q. (BY MS. LIU) And are you currently working, Ms.
4 Bucci?

5 A. Yes, I am.

6 Q. And where do you work?

7 A. I work at the Kansas Department of Corrections.

8 Q. And how long have you been there?

9 A. Six years.

10 Q. And what do you do?

11 A. I work in the kitchen with the inmates preparing
12 food.

13 Q. Can you explain your day-to-day tasks?

14 A. I have to be there at 3:00 a.m. in the morning to
15 make sure breakfast is ready to serve online by 4:30.
16 And stay there and start working on lunch and making
17 sure all the product is pulled and once again put out
18 lunch and then usually get out around 12:00 p.m.

19 Q. Are you able to take time off of work for
20 personal reasons?

21 A. No.

22 Q. And are you taking time off work to be here today
23 in court?

24 A. Yes, with a two-week notice.

25 Q. Are you over the age of 18?

1 A. Yes.

2 Q. And are you a resident of Kansas?

3 A. Yes.

4 Q. Are you a United States citizen?

5 A. Yes.

6 Q. And when did you first decide you wanted to vote?

7 A. 2016 I believe it was.

8 Q. Did you decide anytime earlier than that?

9 A. No, I had never registered to vote. It was-- I
10 guess it was like-- it's when I went to have my license
11 renewed and he asked me if I wanted to register to vote.

12 Q. And did you understand that you had to be
13 registered as a voter first in order to cast a vote?

14 A. Yes, I did.

15 Q. And why did you go to the DMV?

16 A. To have my license renewed.

17 Q. And-- and that's where you went to become a
18 registered voter. Correct?

19 A. Yes, I believe that was 2014.

20 Q. And what document did you bring with you?

21 A. I had to bring my license and then a bill with my
22 name on it showing my address and my name.

23 Q. And did you have a conversation with someone at
24 the DMV about registering to vote?

25 A. They just asked me if I wanted to register to

1 vote and I filled out the paper and I just assumed I was
2 registered.

3 Q. Do you recall them telling you that you would
4 have to provide documentary proof of citizenship?

5 A. No.

6 Q. Did they tell you that you lacked any appropriate
7 documentation?

8 A. No.

9 Q. And when you left the DMV, did you believe that
10 you were registered to vote at that time?

11 A. Yes, I did.

12 Q. And did you believe you needed to provide any
13 additional documentation with respect to your
14 application then?

15 A. No, I did not.

16 Q. So was there any point in time-- or sorry, was
17 there a point in time later when you came to learn that
18 you were, in fact, not registered to vote?

19 A. I received a letter in the mail stating I had to
20 show a birth certificate or a passport.

21 Q. And were you ever previously informed of the
22 requirement to provide documentary proof of citizenship
23 prior to receiving that notice in the mail?

24 A. No, I was not.

25 Q. And did the notice mention any alternative

1 process to complete your registration without submitting
2 a copy of documentary proof of citizenship?

3 A. No, it did not.

4 Q. And outside of your deposition, did you ever
5 receive any information describing a way for you to
6 complete your registration application without providing
7 documentary proof of citizenship?

8 A. No.

9 Q. Did you have any further communications with
10 anyone at the election office about becoming registered
11 to vote?

12 A. Somebody had called me.

13 Q. And what happened then?

14 A. They told me I needed a birth certificate or a
15 passport.

16 Q. And did you come to understand that your
17 registration application was cancelled?

18 A. If I didn't provide that, yes.

19 Q. And you were then not a registered voter?

20 A. According to them I guess not.

21 Q. Did you ever find your birth certificate in your
22 belongings?

23 A. No, I did not.

24 Q. And to this day, have you ever found your birth
25 certificate?

1 A. No.

2 Q. Have you ever had a U.S. passport?

3 A. No.

4 Q. Why not?

5 A. I've never left the U.S.

6 Q. Have you ever had a U.S. naturalization document?

7 A. No.

8 Q. Have you ever served in the U.S. military?

9 A. No.

10 Q. Are you an American Indian?

11 A. No.

12 Q. Do you have any certificate of citizenship issued
13 by the United States Citizenship and Immigration
14 Services?

15 A. No.

16 Q. Do you have any other document or method of proof
17 of citizenship issued by the federal government?

18 A. No.

19 Q. Were you adopted?

20 A. No.

21 Q. Do you have any other hospital document showing
22 that you were born at a certain hospital at a certain
23 time?

24 A. No.

25 Q. Do you know where your birth certificate is, Ms.

1 Bucci?

2 A. I guess in Baltimore, Maryland.

3 Q. Have you ever made any effort to get a
4 replacement birth certificate?

5 A. No.

6 Q. And what have you done-- or you haven't. How--
7 do you know how much it costs to get a birth
8 certificate?

9 A. I-- I don't. I mean--

10 Q. Would you say approximately \$27?

11 A. Yeah, it was-- it was around that I guess. Only
12 through my son who got one.

13 Q. And how much is that in relation to your daily
14 expenses?

15 A. At that time it was a lot. I was only working
16 part-time.

17 Q. So can you tell me a little bit about your daily
18 expenses?

19 A. Well, you have your basics; your rent, your gas,
20 your insurance, just your regular bills.

21 Q. So how would the cost of the replacement birth
22 certificate affect your life then?

23 A. My share of the rent or no place to live, I
24 thought it was a lot.

25 Q. So you testified earlier that you learned your

1 voter registration application had been cancelled. How
2 did that make you feel, Ms. Bucci?

3 A. I was pretty mad.

4 Q. Anything else you'd like to add?

5 A. Yeah. There's just a lot of things that I see
6 going on in Kansas I would like to be able to be
7 involved in.

8 Q. So after the preliminary injunction was issued in
9 this case in 2016, did you vote in the presidential
10 election?

11 A. Yes, I did.

12 Q. So you voted in November, 2016?

13 A. Yes.

14 Q. And do you intend to vote in future elections?

15 A. I would like to.

16 MS. LIU: No further questions at this time.

17 MR. JOHNSON: Nothing, Your Honor.

18 THE COURT: All right.

19 CROSS EXAMINATION

20 BY MS. BECKER:

21 Q. Good morning, Ms. Bucci.

22 A. Good morning.

23 Q. Good morning. My name is Sue Becker, I don't
24 think I've met you, but I'm-- I'm glad that you're here
25 today to represent those that you feel are in a bad

1 situation. And I want to ask you about that.

2 Has anyone ever told you that you weren't allowed
3 to vote, quote, like other people?

4 A. I wouldn't say like other people, but I wasn't
5 allowed to vote unless I showed a birth certificate or a
6 U.S. passport.

7 Q. Is it true that everyone, to your knowledge, has
8 to show a birth certificate or a passport or a proof of
9 citizenship of-- in some manner?

10 MS. LIU: Objection. She's asking a legal
11 conclusion.

12 THE COURT: All right. Reframe the
13 question.

14 Q. (BY MS. BECKER) Ms. Bucci, are you aware of any
15 other Kansas residents that do not have to follow the
16 law and provide a proof of citizenship when they go to
17 register?

18 MS. LIU: Same objection, Your Honor.

19 THE COURT: I'll overrule. You can answer
20 it if you can.

21 MS. LIU: It's not the law, Your Honor.

22 THE COURT: All right. I-- I understand
23 what the law says in part based on my injunction order,
24 which is what the operative law is at this time. I
25 think the question is: Are you aware of anyone else

1 that hasn't before the injunction-- before the
2 injunction did not have to provide this type of evidence
3 of citizenship.

4 A. Other than-- I'm trying to think. There was this
5 older lady across the street that couldn't afford to go
6 get her birth certificate as well. I don't recall her
7 name. It's where I was renting at. You know, and it--
8 it's just not right. You just want to, you know, go and
9 vote. If they tell you you're allowed to vote and you
10 register to vote, that should be it.

11 Q. (BY MS. LIU) Ms. Bucci, do you feel like you're
12 in the same situation as far as all other Kansas
13 residents as far as being asked to provide proof of
14 citizenship?

15 A. Can you repeat that?

16 Q. Do you know what, that's okay. I want to ask you
17 about your-- your birth certificate.

18 A. Yes.

19 Q. You testified that as of today, you still don't
20 have a copy of it; is that correct?

21 A. Correct.

22 Q. Okay. Has anyone tried to help you get a copy of
23 it?

24 A. No.

25 Q. Okay. Have you looked-- well, first, do you have

1 access to a computer?

2 A. Yes.

3 Q. Okay. Have you ever gone to the Maryland state
4 health department website that-- that you could go to,
5 have you ever done that to look for how you could get a
6 copy of your birth certificate?

7 A. I started to and was-- it's-- just didn't get
8 very far with it.

9 Q. Okay. I would just like to show you something.

10 MS. BECKER: May I approach the witness,
11 Your Honor?

12 THE COURT: Yes. You don't have to keep
13 asking.

14 MS. LIU: Your Honor, can we get a copy of
15 it as well?

16 Q. (BY MS. BECKER) Ms. Bucci, does this appear to
17 be sort of like a website print-off for the--

18 MS. LIU: Your Honor--

19 THE COURT: All right. Is this marked by an
20 exhibit number?

21 MS. BECKER: It is not. And I'm actually
22 not going to offer it into evidence. I just wanted to
23 establish the cost of getting a birth certificate and
24 how easy it would be.

25 THE COURT: She's already testified that she

1 thinks it's \$27.

2 MS. BECKER: Right, and--

3 THE COURT: So, you know, unless you're
4 going to admit this document, you're not going to be
5 able to have her testify to something on the document
6 itself.

7 MS. BECKER: Okay.

8 MR. STEINER: Ms. Becker, out of politeness,
9 I think we'll tell you that you've given us a copy that
10 appears to have your notes on it. So you might want to
11 switch copies.

12 THE COURT: In any event, you know, it's
13 proper to show a witness a document or-- I always say
14 you can show them anything to refresh their
15 recollection, but she's testified that she has a
16 recollection. So if that's what you're trying to do
17 with an un-- an inadmissible document at this point,
18 that's not proper. And unless she can identify it and
19 unless it's marked with an exhibit, et cetera, I'm not
20 going to allow it to be admitted at this point and have
21 her testify to the contents of it.

22 MS. BECKER: Your Honor, I'd just like to
23 proffer the evidence that you-- you're now not asking me
24 to ask the witness about, to show that it's a \$10 cost.
25 That was merely the point of having her look at it.

1 THE COURT: You haven't laid any foundation.
2 I mean, this witness cannot admit this document I don't
3 think, but you can try to lay the foundation. You're
4 not at the proffer stage yet, you haven't even offered
5 it. You haven't laid any foundation. I'm not going to
6 allow anybody to testify to a document that's not in
7 evidence. Evidence 101. I'm not going to do it.

8 So if you want to try to lay the foundation
9 through this witness and then I determine that I think
10 the foundation is insufficient, then I might let you
11 make a proffer, but at this point you're not there yet.

12 MS. BECKER: Okay. Thank you, Your Honor.

13 Q. (BY MS. BECKER) Ms. Bucci, you can just ignore
14 that. Do you recall testifying in a deposition in May
15 of 2016?

16 A. Yes.

17 Q. Do you recall being asked about a document that
18 was called your ELVIS record and the record stated
19 something about you unpacking, that you hadn't unpacked
20 yet. And I was wondering if that sounds familiar to
21 you.

22 MS. LIU: Objection, Your Honor. This
23 isn't-- this is improper. It's not an impeachment. She
24 can't use her deposition testimony and then-- unless
25 it's impeachment.

1 THE COURT: Well, I don't understand what
2 you're doing with the deposition.

3 MS. BECKER: I was just going to refresh her
4 recollection and ask her questions about her testimony
5 with regard to her possession of-- of a birth
6 certificate at some time.

7 THE COURT: All right. But first you have
8 to establish she doesn't recall, that she needs her
9 recollection refreshed. I haven't heard that yet.

10 MS. BECKER: Well, that's what I asked and
11 they objected.

12 THE COURT: So ask her-- ask her and we'll
13 go from there.

14 Q. (BY MS. BECKER) Do you recall-- do you recall
15 discussing the fact-- or discussing and being asked
16 about comments in your ELVIS record that stated that the
17 registrant had not yet unpacked from moving and was
18 going to search boxes for documentary proof of
19 citizenship?

20 A. Yes.

21 MS. LIU: Objection, lack of foundation.

22 THE COURT: I'll overrule. You say you do
23 recall that?

24 THE WITNESS: I recall unpack-- telling them
25 I didn't know where my birth certificate was.

1 THE COURT: All right.

2 THE WITNESS: And I was unpacking.

3 THE COURT: All right. Then ask her about
4 that. You don't need to show her the document, she
5 recalls.

6 Q. (BY MS. BECKER) So, Ms. Bucci, I guess I'm
7 unclear. So is it your testimony that you do recall
8 telling them that you didn't know where your birth
9 certificate was because you had not yet unpacked?

10 A. No, I-- what it was is I had moved and I didn't
11 know where my birth certificate was, but I would look
12 through all my stuff as I unpacked to see if I had it.

13 Q. So did you at one point have a birth certificate
14 then that you were going to look for?

15 A. Years ago. I-- I don't know what happened to it.

16 Q. Okay. Thank you. Ms. Bucci, are you aware of
17 any other ways to provide information to the Secretary
18 of State's Office about your citizenship in order to
19 become fully registered to vote?

20 A. No.

21 Q. Are you aware of the fact-- are you aware of
22 possibly making a phone call and do you recall
23 discussing that in your deposition?

24 A. I recall them giving me a piece of paper. I
25 don't-- it's been two years, I don't recall what all it

1 was.

2 Q. Okay. Did you have a chance to review your
3 deposition prior to testifying today?

4 A. No, I didn't.

5 Q. Okay. And I would like to show you a portion of
6 your deposition just to refresh your recollection with
7 regard to the process of making a phone call. And I'm
8 just going to go ahead and--

9 THE COURT: All right. Go ahead. The
10 method is show her the deposition, point her to what
11 line number so plaintiffs can be following, knowing--
12 Ms. Bucci, don't read it aloud, just look at it.

13 MS. LIU: Ms. Becker, can you--

14 THE COURT: You have to tell her what you
15 want-- Ms. Becker, will you identify for her what it is,
16 have you tagged it or marked what you want her to look
17 at?

18 MS. BECKER: I have.

19 THE COURT: All right. Do the same for
20 plaintiff. Don't read it aloud, Ms. Bucci. After
21 you've read it to yourself, then the next question
22 should be does this refresh your recollection.

23 MS. LIU: Do you have a copy for us, Ms.
24 Becker?

25 MS. BECKER: No, you all have the

1 deposition.

2 THE COURT: All right. Go up there and look
3 it. Go up there and look at it.

4 THE WITNESS: (Reads document).

5 THE COURT: All right. You've read it.
6 Does it refresh your recollection, yes or no?

7 THE WITNESS: No, it don't.

8 THE COURT: All right. Do you know how to
9 do the next step, if that's what you're going to do?
10 We're going to follow the rules of evidence here.

11 MS. BECKER: Of course, Your Honor.
12 Appreciate it.

13 Q. (BY MS. BECKER) Ms. Bucci, just-- do you recall
14 learning at your deposition that the Secretary of
15 State's Office for those who do not have access to their
16 paperwork may call and have a telephonic hearing and
17 explain your circumstances to the election staff?

18 A. No, I don't recall that.

19 Q. Okay. Do you recall agreeing that that would be
20 much easier than having to produce a document that you
21 couldn't find?

22 A. That was two years ago, I do not recall that.

23 MS. LIU: Ms. Becker, what page are you on?

24 MS. BECKER: 115.

25 Q. (BY MS. BECKER) Ms. Bucci, and I apologize if I

1 forgot, do you own a cell phone or do you have access to
2 a telephone during the day?

3 A. No. I can't have it at work but I do have a cell
4 phone.

5 Q. Are you allowed to use it on a break?

6 A. Yes.

7 Q. Or do you have-- I understand you have like maybe
8 a short break for lunch?

9 A. Yep.

10 Q. Okay. Would a phone call to the Secretary of
11 State's Office to participate and explain why you don't
12 have documents, would that be something that you could
13 do on a break from work?

14 A. No.

15 Q. You can't use your cell phone on a break?

16 A. Not-- not unless I leave the building.

17 Q. Okay. And you're not allowed to leave the
18 building; is that right?

19 A. Well, I can, but it's just to run out to the car.

20 Q. Okay. But you-- if you really had to, Ms. Bucci,
21 if you were very interested in it, could you make a
22 phone call from your car on your cell phone during the
23 day?

24 A. No. You-- there's-- you have to be in there.

25 You--

1 Q. Okay. What I had shown you was a page from your
2 deposition and I have now taken it and I can show it
3 back to you, but-- (reporter interruption).

4 MS. BECKER: I'm pointing her to-- she is
5 just looking at a line and then I'll ask her a question.

6 MS. LIU: Ms. Becker, which line is that?

7 MS. BECKER: On Page 115.

8 MS. LIU: I'm sorry, I--

9 THE COURT: 115. What line, please? 115,
10 what line?

11 MS. BECKER: Line 9.

12 A. Yes, I-- I must've said it if it's in there, but
13 I-- if you don't have access to it, you just don't.

14 Q. (BY MS. BECKER) But just to confirm, you said
15 you would not have a problem with doing that, as far as
16 making the phone call; is that correct?

17 A. Yeah.

18 Q. Okay.

19 MS. BECKER: I believe that's all I have.

20 THE COURT: Any redirect?

21 REDIRECT EXAMINATION

22 BY MS. LIU:

23 Q. Ms. Bucci--

24 A. Yes.

25 Q. -- do you even know how to call the Secretary of

1 State's Office if you even could leave the lunchroom to
2 take a break?

3 A. Not really.

4 Q. And do you even know how long that would even
5 take?

6 A. No, I do not.

7 MS. LIU: No further questions, Your Honor.

8 THE COURT: Anything else? All right. May
9 Ms. Bucci-- are you finished with her? So, in other
10 words, she can stay in the courtroom if she chooses to?

11 MS. LIU: Yes, Your Honor.

12 THE COURT: All right. You can step down.
13 All right. You can call your next witness.

14 MR. DANJUMA: Your Honor, the plaintiffs
15 would like to call Michael McDonald as their next
16 witness.

17 Just a question. What time will we be
18 breaking for lunch just in terms of how much-- how far
19 we should go?

20 THE COURT: How long do you anticipate
21 having him on the stand?

22 MR. DANJUMA: I assume he would be about a
23 little over an hour, and I'm sure there may be some
24 cross. I don't know if it makes sense for us to do the
25 initial sort of qualifications portion of an expert, of

1 expert testimony and then plan to break. We just wanted
2 to check with the Court on this case.

3 THE COURT: I'm-- I'm happy with it either
4 way. Are you ready to proceed or we can break now and
5 come back at say 1:00.

6 MR. DANJUMA: Okay. Yeah, we'll proceed
7 with the initial portion now.

8 THE COURT: All right. And we can go 15
9 minutes, we can go 30 minutes, whatever, just let me
10 know a natural breaking point. All right. If you'll
11 raise your right hand.

12 MICHAEL McDONALD,
13 called as a witness on behalf of the Fish Plaintiffs,
14 having first been duly sworn, testified as follows:

15 THE COURT: And there-- there was no *Daubert*
16 motion for the record, so I don't need to rule on that.
17 All right. Let's proceed.

18 MR. DANJUMA: And, Your Honor, I'll be
19 offering the witness a binder of exhibits. Should I
20 distribute that to you now or-- or when I proffer it to
21 the-- to the witness?

22 THE COURT: Why don't you give it to Ms.
23 Seymour here.

24 MR. DANJUMA: Okay. Sure.

25 THE COURT: They're part of the larger

1 binder, but this is just for ease; is that correct?

2 MR. DANJUMA: I'm sorry?

3 THE COURT: These exhibits are in the larger
4 binder but this is just for the Court?

5 MR. DANJUMA: Yes, this is just for this
6 specific witness.

7 THE COURT: Okay. I understand.

8 DIRECT EXAMINATION

9 BY MR. DANJUMA:

10 Q. Good morning, Mr. McDonald. Could you please
11 state and spell your full name for the record?

12 A. Michael, M-I-C-H-A-E-L. McDonald,
13 M-C-D-O-N-A-L-D.

14 MR. DANJUMA: And, Your Honor, may I
15 approach the witness?

16 THE COURT: Yes.

17 MR. DANJUMA: And for the record, I just
18 handed the witness a binder of documents.

19 Q. (BY MR. DANJUMA) Doctor McDonald, could you
20 please take a moment to review the document in the first
21 tab of your binder.

22 THE COURT: What's the general range of
23 exhibit numbers you're going to be working from?

24 MR. DANJUMA: It's 1 to 8. Now, we've
25 included-- or do you mean the overall exhibit number?

1 I'm sorry, just to clarify. The-- there's nine-- there
2 are four exhibits that we're introducing. We put the
3 tabs for the overhead slides into this binder for
4 reference but those are not exhibits.

5 THE COURT: Okay. Go ahead.

6 Q. (BY MR. DANJUMA) And, Doctor McDonald, could you
7 review the first document in the-- in the first tab of
8 the binder that I provided?

9 A. Yes, I did.

10 Q. And do you know what this document is?

11 A. Yes. This is the updated CV that I provided last
12 week to counsel.

13 MR. DANJUMA: And for the record, this--
14 this document is Plaintiffs' Fish Exhibit 139, Doctor
15 McDonald's curriculum vitae. Your Honor, I'd like to
16 offer this exhibit into evidence.

17 THE COURT: Any objection?

18 MR. KOBACH: No objection.

19 THE COURT: 139 admitted.

20 Q. (BY MR. HO) Doctor McDonald, could you please
21 describe your educational background for the Court?

22 A. I received my bachelor's of science degree in
23 economics from the California Institute of Technology, a
24 Ph.D. in political science from the University of
25 California-San Diego, and I did a one-year post doc at

1 Harvard.

2 Q. And are you currently employed?

3 A. Yes, I am.

4 Q. Where are you employed?

5 A. I'm an associate professor of political science
6 at the University of Florida.

7 Q. And is that a tenured position?

8 A. Yes, it is.

9 Q. Where have you taught since receiving your Ph.D.?

10 A. After Harvard I taught one year at Vanderbilt and
11 then two years at the University of
12 Illinois-Springfield. That was a tenured track
13 position. The Vanderbilt position was a non-tenured
14 track position. And then ten years at George Mason
15 University in a tenured track position and then a
16 tenured-- I was tenured at George Mason. And I've spent
17 the last-- this is now my fourth year at the University
18 of Florida in a tenured position.

19 Q. And, Doctor McDonald, have you published
20 peer-reviewed academic research?

21 A. Yes, I have.

22 Q. And can you summarize approximately how many
23 articles or books you've published that are
24 peer-reviewed academic research?

25 A. Well, two books and roughly 30 peer-reviewed

1 articles, yeah.

2 Q. And have you ever served as a peer reviewer for
3 an academic journal?

4 A. Several. I've got reviews that I'm due right now
5 to do.

6 Q. Well, thank you for taking time out with us.
7 Doctor McDonald, could you briefly tell us some of the
8 primary subjects your research focuses on?

9 A. Well, I'm most-- best known for voter turnout.
10 Early in my career I published a piece in the top
11 journal in political science, *The American Political*
12 *Science Review*, which showed that voter turnout wasn't
13 declining, that the ineligible population was
14 increasing.

15 Since then I continue to publish the statistics
16 in voter turnout that are used widely in academia,
17 policymakers, in the public, by the media as well. So
18 after a particular election you'll see a turnout rate
19 that's published and the media will be talking about,
20 that will be produced usually by myself as a national
21 turnout rate. So turnout voting.

22 On behavior I've published several articles in
23 that genre. I've also published articles on
24 redistricting, which is another area in which I actively
25 engage in and-- and have various research projects and

1 do litigation work as well. And I've done other-- other
2 work in campaign finance. I've done international work
3 on different electoral systems. And I've-- more
4 specifically I'm-- in an area of methodology, I've done
5 work that's specific-- specific on serial methodology
6 and on just statistical methodology in particular.

7 Q. And how-- do you have any experience researching
8 voter registration?

9 A. Yes, I do. I have published on voter
10 registration in a couple of my articles that were
11 peer-reviewed. And I've done consulting work for
12 various entities that are research-oriented projects.
13 So I've twice consulted to the U.S. Election Assistance
14 Commission to assist in producing their-- what they now
15 call the Election Administration and Voting Survey,
16 which has as a component of it the NVRA, the National
17 Voter Registration Act, a required report to Congress.

18 And I've worked, consulted twice with the Federal
19 Voting Assistance Program to examine the voting behavior
20 and the experiences of our overseas military and
21 overseas civilians and try to improve their experience
22 and looked at the reliability of the data that was being
23 provided to the federal government on their experiences.

24 And I worked for the state of California early on
25 in my career doing voter registration work for the state

1 assembly. And right now I am currently working on
2 projects with the Secretary of State of Colorado.

3 Q. Have you received any professional awards or
4 grants for your research in your-- in your scholarship?

5 A. Yes. I've received a number of awards, they're
6 mostly related to the redistricting work that I do. One
7 of the things that I did with collaborators was create
8 open source web accessible re-districting software that
9 allows people to draw their own districts through their
10 web browsers. And that software has won numerous
11 awards. That was funded work primarily from the Sloan
12 Foundation. And I've received grants from other
13 charitable foundations and other entities as well,
14 totalling roughly about \$2.5 million.

15 Q. Have you ever served as an expert witness in
16 cases involving elections?

17 A. Yes, I have.

18 Q. Do you know approximately how many times you've
19 been retained as an expert witness?

20 A. It's quite a few. I'd have to count, but it's
21 roughly about 15 to 20 times.

22 Q. Okay. And more specifically, have you ever
23 served as an expert witness in cases involving voter
24 registration or the National Voter Registration Act?

25 A. Yes, I have.

1 Q. And are there any cases that you would identify
2 in that area?

3 A. Right. So the first case that I was involved
4 with that specifically involved voter registration was a
5 case in Florida, the *League of Women Voters versus*
6 *Florida*-- (reporter interruption). Oh, I'm sorry. The
7 first case that I was involved with was a case out of
8 Florida, *League of Women Voters of Florida versus*
9 *Browning*.

10 And the next case that I was involved with was
11 a-- well, that's actually out of order. The first case
12 that I was involved with was the *Washington Association*
13 *of Churches versus Reed*. That was a case that involved
14 matching procedures. There was another case out of
15 Georgia that also involved matching procedures, and that
16 was a more recent case that was litigated in 2016 to the
17 run-up to the 2016 election.

18 The *League of Women Voters* case involved a
19 penalty that the League of Women Voters had been
20 assessed for every voter registration application that
21 they had turned in late.

22 The-- and then I have also been involved with a
23 case out of Massachusetts which involved the-- this is
24 *Delgado versus Galvin* and this was a case that involved
25 the-- the use or the-- under NVRA states are required to

1 provide voter registration opportunities for individuals
2 not only at DMV offices but also at low-income
3 assistance offices. And the plaintiffs there in that
4 case alleged that the state of Massachusetts was not
5 providing those opportunities at low-income assistance
6 offices.

7 Q. Have you ever been retained by Democrats to offer
8 an expert opinion in a case?

9 A. Yes, I have.

10 Q. Can you give the Court a couple examples?

11 A. Well, recently I was involved in the Virginia
12 congressional re-districting case that's-- was litigated
13 on behalf of plaintiffs by essentially the lawyers who
14 were associated with the Democratic National Committee.
15 And in that case we made allegation-- the plaintiffs
16 were making allegations that the congressional districts
17 were a racial gerrymander.

18 The three-judge panel in that case agreed with my
19 testimony in that case and overturned the congressional
20 districts in Virginia as a racial gerrymander.

21 Q. And what was the name of that case?

22 A. This would be *Page versus State Board of*
23 *Elections*.

24 Q. And have you ever been retained by Republicans to
25 offer expert opinion in a case?

1 A. Yes, I have. A couple cases. So one that's
2 current is a case out of Maryland, *Benisek versus*
3 *Lamone*. And that case is ongoing. It will be heard--
4 this is a challenge by plaintiffs that the Maryland
5 congressional districts are a-- a partisan gerrymander.
6 And that case will be heard by the Supreme Court-- at
7 least an element of that will be heard by the Supreme
8 Court later this month.

9 And just last week, there-- a case, *Vesilind*
10 *versus Virginia State Board of Elections*, I was working
11 with a former Republican nominee for governor in the
12 state of Virginia, he was the lead counsel. And we were
13 funded by a-- a group that was primarily funded by
14 Republican businessmen in the state of Virginia
15 challenging both the Senate districts which were drawn
16 by the Democrats and the House of Delegates districts
17 which were drawn by the Republicans, both in violation
18 of the compactness standard in Virginia.

19 Q. Has any court ever found you unqualified to offer
20 an expert opinion?

21 A. No, they have not.

22 MR. DANJUMA: Your Honor, at this time
23 plaintiffs would like to offer Doctor McDonald as an
24 expert on political science, research and survey
25 methodology, election turnout, voter registration and

1 voter behavior.

2 THE COURT: All right. Doctor McDonald is
3 found by me to be qualified and I deem him to be an
4 expert in those areas.

5 Q. (BY MR. DANJUMA) Doctor McDonald, now I'd like
6 to ask you about your involvement in this case. Did you
7 prepare any expert reports in this case?

8 A. Yes, I did.

9 Q. And does the binder contain your expert reports
10 in this case? And I'd like to direct you to Tab 2 of
11 the binder. Can you tell me what that document is in
12 Tab 2 of the binder?

13 A. Tab 2 is my initial report in this case.

14 Q. And was that report dated February 25th, 2016?

15 A. I believe so, but I don't see the date on it.

16 Q. If you want to check Page 23.

17 A. Yes.

18 THE COURT: What's the exhibit number also?

19 MR. DANJUMA: Oh, I apologize. This is
20 marked for the record as Plaintiffs' Exhibit 72.

21 THE COURT: Thank you.

22 A. Yes, February 25th.

23 Q. (BY MR. DANJUMA) And under Tab 3, is that your
24 supplemental report dated April 11th, 2016, marked as
25 Plaintiffs' Exhibit 73?

1 A. Yes, it is.

2 Q. Did you sign each of these reports under oath?

3 A. Yes, I did.

4 Q. Do these reports accurately reflect your analysis
5 in this case?

6 A. Yes, they do.

7 MR. DANJUMA: Your Honor, I'd like to offer
8 Plaintiffs' Exhibit 72 and 73 into evidence.

9 THE COURT: Any objection?

10 MR. KOBACH: No objection.

11 THE COURT: Exhibit-- I'm sorry? Exhibit 72
12 and 73 admitted.

13 MR. DANJUMA: And, Your Honor, I think now
14 may be a natural breaking point for lunch, if that's all
15 right.

16 THE COURT: All right. Let's take a break
17 then until 1:15.

18 (Recess).

19 (11:58 a.m., proceedings recessed).

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C E R T I F I C A T E

I, Kelli Stewart, a Certified Shorthand Reporter and the regularly appointed, qualified and acting official reporter of the United States District Court for the District of Kansas, do hereby certify that as such official reporter, I was present at and reported in machine shorthand the above and foregoing proceedings.

I further certify that the foregoing transcript, consisting of 128 pages, is a full, true, and correct reproduction of my shorthand notes as reflected by this transcript.

SIGNED March 13, 2018.

/s/ Kelli Stewart

Kelli Stewart, CSR, RPR, CCR, RMR