

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: 03/07/2018

Day 2 (P.M. Session)
Pages 438-617

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15

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

18 APPEARANCES:

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24
25 (Appearances continued on next page)

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1 (1:32 p.m., proceedings commenced).

2 THE COURT: All right. You can be seated.
3 All right. As I understand it, plaintiffs intend to
4 read their designations of Bradley Bryant this
5 afternoon; is that correct?

6 MS. HA: Your Honor, if time permits.

7 THE COURT: Okay. So with respect to that
8 part of Mr. Bryant's deposition that plaintiffs have
9 designated, there are I think only a couple of
10 objections, and those are plaintiffs' objections to
11 defendant's counter-designations of that deposition.

12 But now the defendants have also designated
13 Mr. Bryant. And I think I misunderstood, but I now
14 understand that plaintiffs are objecting to defendants
15 designating Mr. Bryant, absent a showing of
16 unavailability of Mr. Bryant for live testimony in
17 defendant's case; is that correct?

18 MS. HA: That's correct, Your Honor.
19 Defendant did not object to plaintiffs' designations of
20 Mr. Bryant. They submitted their counter-designations
21 and, as you said, we objected to certain of the
22 counter-designations.

23 Plaintiffs do object to defendant's
24 designation of Mr. Bryant in full because he's available
25 in Kansas. He's within the 100-mile rule. And they

1 haven't made any showing of why his testimony should be
2 allowed--

3 THE COURT: All right.

4 MS. HA: -- through a deposition.

5 THE COURT: All right. So that's what I
6 wanted to hear from you both about. So plaintiff has
7 designated part of Mr. Bryant. The availability rule
8 doesn't apply to plaintiff because Mr. Bryant is a
9 30(b)(6) person, he's a party opponent, and so they--

10 MR. ROE: No, he is not.

11 THE COURT: -- plaintiff-- any party has a
12 right to use the deposition of a party opponent. But
13 it's a different rule. He's not a party opponent
14 obviously with respect to defendant. So it's a
15 different showing that has to be made to use his
16 deposition testimony in lieu of live testimony in
17 defendant's case and that showing is whether he's
18 unavailable or not.

19 MS. BECKER: Your Honor, Mr. Bryant is a
20 former employee and he's not a party-- not a 30(b)(6).

21 THE COURT: He was at the time of his
22 deposition, was he not?

23 MS. BECKER: No, he was not.

24 THE COURT: But you didn't object to
25 plaintiff designating--

1 MS. BECKER: Well, we only-- we didn't-- we
2 did not affirmatively designate any of Mr. Bryant's
3 testimony at all. And the only reason we did so was as
4 counters to theirs.

5 MS. HA: That's not true, Your Honor. They
6 did affirmatively designate.

7 THE COURT: Well, in looking at-- I mean,
8 counter-designations are usually contextual
9 designations. It's not complete, whatever parts
10 plaintiff designated, you counter with, you need to read
11 this part around it to get the full picture.

12 But in looking at the transcript, it looks
13 like you've gone on to designate other portions that
14 plaintiff-- that aren't, you know, part of what
15 plaintiff has designated.

16 MS. BECKER: Well, you know, I may have been
17 in error, but we expected the plaintiffs to subpoena
18 Mr. Bryant if they wanted him here, and we have no
19 problem not having the deposition testimony read at all,
20 but whatever-- whatever Your Honor wants to do.

21 THE COURT: But I mean--

22 MS. BECKER: We don't-- we don't have a
23 showing of unavailability. We did not intend to bring
24 him here, and we didn't-- if we affirmatively designated
25 testimony, we can withdraw it.

1 THE COURT: From Mr. Bryant?

2 MS. BECKER: As long as-- if they're not
3 going to have any, yes.

4 MS. HA: Your Honor, we think that there's
5 no reason for defendant to affirmatively designate.
6 They have done so. We don't think that's permissible.
7 Plaintiffs' designations-- while Mr. Bryant was not a
8 30(b)(6) witness when he testified, it's not hearsay.
9 It's permissible under the rules. It's statements being
10 offered against Secretary Kobach, who had not objected
11 to any of the statements he-- and by his lack of
12 objection, I think they're admissible, non-hearsay under
13 801(d)(2).

14 MS. BECKER: No.

15 THE COURT: So you're arguing that he is a
16 party opponent or he's not?

17 MS. HA: He's a party opponent and, in
18 addition, the rules say it's not hearsay if Secretary
19 Kobach has adopted and believed the statements to be
20 true, if-- if Mr. Bryant was authorized to make
21 statements in regards to his time as the former
22 elections director.

23 THE COURT: Right. That's the party
24 opponent rule. And so he wasn't in that capacity when
25 he gave this deposition, but he was testifying about

1 that capacity. I mean, his testimony concerns when he
2 was a party opponent, when he was in the capacity of
3 director or whatever he was--

4 MS. BECKER: Your Honor--

5 THE COURT: -- of elections.

6 MS. BECKER: -- we've never been opponents
7 with our own election director.

8 THE COURT: No. See, I'm making-- I have to
9 make two different determinations here because you're
10 both wanting to designate and not call him as a live
11 witness, except you're now saying you don't want to
12 designate him. You don't-- so let me just show you.

13 You all have given me separate transcripts.
14 This is the one that plaintiff gave me with their
15 designations, your counters, and I need to rule.
16 There's some objections, a couple. And then this is the
17 one that you gave me which I thought was your
18 designations of what you-- what parts of the deposition
19 you wanted read in your case for Mr. Bryant.

20 MS. BECKER: (Shakes head from side to
21 side).

22 THE COURT: No?

23 MS. BECKER: No. It was only if theirs were
24 going to be read. That's what--

25 THE COURT: Well, theirs are going to be

1 read because there's no objection. And I think they--

2 MS. BECKER: But they didn't subpoena him,
3 though.

4 MS. HA: Your Honor, if it's helpful, I want
5 to be clear. We're-- to the extent we didn't object to
6 their counter-designations, we're reading those. It's--
7 we're just talking about your affirmative designations
8 that we are saying should not be allowed.

9 THE COURT: So going back to the smaller
10 subset of the transcript, plaintiffs' designations of
11 parts of Mr. Bryant's testimony which are being
12 designated under the party opponent rule because Mr.
13 Bryant at the time-- he was testifying about-- and I
14 haven't read his deposition, but he's testifying about
15 policy and the law or whatever, within the-- the
16 parameters of the job he used to have for the state of
17 Kansas in the Department of Elections.

18 Defendant has counter-designated. Plaintiff
19 objects to a couple of those counter-designations. I
20 need to rule on that. Once I rule on that, this is how
21 plaintiff is going to submit testimony of Mr. Bryant,
22 through this deposition. Okay?

23 So that will be settled once I rule on
24 plaintiffs' objections to your counter-designations.

25 MS. BECKER: Okay.

1 THE COURT: But then in your submission, Ms.
2 Becker, much-- much bigger subset of the transcript, it
3 looked like what you were wanting to do was designate
4 other portions of Mr. Bryant's testimony in your case.

5 MS. BECKER: Your Honor, what happened was
6 plaintiffs listed Mr. Bryant by deposition testimony
7 only. And then they filed an amendment I think the next
8 day and listed him live. And so-- or, I'm sorry. It
9 was the opposite. They listed him live and then
10 deposition? Deposition only and then live.

11 And that is why we ended up doing counters
12 because we didn't-- we were going to wait to see if they
13 could even subpoena him because they were the ones-- I'm
14 not making sense here, but...

15 THE COURT: All right. So as we sit here
16 now, are you wanting to in your case submit those
17 portions of the transcript that you countered with for
18 Mr. Bryant?

19 MS. BECKER: Only for an effort of
20 completeness, if theirs are allowed to be-- to be read
21 and they have a showing of unavailability for him.

22 THE COURT: They don't have to show
23 unavailability because they've satisfied the party
24 opponent rule to read, but they-- and they-- they have a
25 much more limited--

1 MS. BECKER: He did not work for us at the
2 time this lawsuit started. He was just a fact witness
3 testifying as a former employee. So I actually don't
4 think--

5 THE COURT: That was my first question. I
6 thought he was in that capacity.

7 MS. BECKER: No.

8 THE COURT: But even if he wasn't, if he's
9 testifying about what he did and what he knew at the
10 time he was a party opponent, then it would still meet
11 the party opponent exception.

12 Because the whole point of the party
13 opponent exception is that when someone works for a
14 party as an agent for a party, is authorized by that
15 party to speak, it's the same thing as the party
16 speaking. And so if he was testifying-- if the scope of
17 his testimony has to do with what he did in his official
18 capacity back when he did it, then he-- he's testifying
19 in the status of a party opponent, even though he may
20 have already left.

21 In other words, he's not testifying about
22 things that he's doing now that he's in retirement or
23 something, I assume. Right? He's testifying about what
24 he did when he worked for the state of Kansas?

25 MS. BECKER: Right. But that was before

1 Secretary Kobach-- before the lawsuit took effect,
2 before the lawsuit was filed. So I-- but I guess that
3 doesn't matter.

4 THE COURT: I don't know that that matters
5 if he's testifying about matters that are otherwise
6 relevant in this lawsuit.

7 MS. BECKER: Well--

8 THE COURT: So I guess what I'm trying to
9 figure out, do I need to make a determination-- all
10 right. I know what I need to do in terms of what
11 plaintiff has designated. I think that they are proper
12 in seeking to introduce him by deposition because I
13 think that, given the nature and substance of Mr.
14 Bryant's deposition testimony, it meets the party
15 opponent rule, even though by then he had left his
16 employ.

17 So now I turn to-- for your purposes,
18 obviously he can't be a party opponent because he was
19 part of the state-- he was part of your employ, even
20 though he no longer is. So that rule is not what we
21 operate under. What we operate under is if he's
22 available for live testimony in your case, then his
23 deposition testimony would be admissible under the rule.
24 So I thought we were going to have a hearing at this
25 point. Tell me, is he unavailable?

1 MS. BECKER: Your Honor, the plaintiffs
2 listed him as a live witness, and we did not. I-- I
3 feel like they are the ones that should have to prove
4 that he's unavailable.

5 MS. HA: Your Honor, I don't know what that
6 means. We submitted our deposition designations. We
7 said we're having him testify by deposition.

8 THE COURT: All right. I'm going to rule.
9 I'm going to rule on plaintiffs' designations. I-- you
10 still need to make an unavailability showing if you want
11 to go beyond the testimony that plaintiff has
12 designated.

13 I am not quite understanding-- I mean, I
14 don't know when plaintiff first said they were going to
15 call him live, but for at least-- when were these
16 deposition designations first due? 21 days before trial
17 and then 14 days before trial, counters and objections.
18 So you all have been on notice at least 21 days that
19 plaintiff wanted to submit Mr. Bryant by deposition and
20 not live, just like--

21 MS. BECKER: Your Honor, they amended--

22 THE COURT: -- they have been on notice for
23 a number of days that you have a list of your employees
24 that you would like to submit by deposition and not
25 live. And we need to, by the way, have a hearing on

1 that because they're objecting on the unavailability
2 rule on those as well, so...

3 MS. BECKER: I understand, Your Honor. But
4 at this point they amended their list and they
5 designated him as a live witness. That's where it
6 stands. At first he was by deposition only, which is
7 why we did counters, and then they changed it. What's
8 the date of that? It's Document No. 446, January 31st.
9 They amended their list and said they were calling him
10 live. I-- I don't-- so--

11 THE COURT: And when did you submit this
12 deposition designation?

13 MS. HA: Our-- our deposition designations,
14 I don't have the original date, but the objections and
15 counter-designations on each side were filed
16 February 13th. And then the objections to
17 counter-designations by each side was February 20th. So
18 it's been clear since the 13th and 20th of last month
19 that we would be submitting his deposition designations.

20 MS. BECKER: You had him listed as a live
21 witness, and so we did not want to-- we didn't feel like
22 we needed to designate depositions because we could just
23 cross-examine him.

24 MS. HA: Your Honor, I just want to--

25 THE COURT: But you did. You did counter.

1 You did-- do you see all these orange tabs? I mean,
2 this is all of the outstanding counter-designations and
3 objections that you submitted, but you're telling me you
4 thought he was going to be a live witness. I'm not
5 buying that because you wouldn't have gone through this
6 exercise, and they wouldn't have gone through the
7 exercise of submitting a deposition.

8 For example, you-- all right. You'll recall
9 that a few days before trial from both sides I got a
10 number of depositions. And it's a lot of work for me to
11 figure out when there are counters and objections, a lot
12 of work for me to figure out what is the core of the
13 testimony that's going to be admissible at trial.

14 So we have this whole procedure of
15 highlighting, and I have to go through and determine,
16 you know, there's hearsay objections, et cetera, et
17 cetera. I have to do that. So one of my staff, I think
18 it was Ms. Seymour, reached out to you and said, tell me
19 who your live witnesses are before I go through all of
20 this. And that was just a few days before trial.

21 And, in fact, we talked about it yesterday
22 at the beginning of this proceeding, and we winnowed
23 down and we understood that if they were live witnesses,
24 there wasn't going to be any deposition. That was
25 yesterday.

1 But before that, everybody knew that
2 plaintiff was going to be designating Mr. Bryant by
3 deposition, you were going to be designating people by
4 your-- so I mean, there's no confusion here. You were
5 on notice that this was the way that plaintiff wanted to
6 proceed.

7 So I still don't quite understand your
8 argument that you thought it was live and, therefore,
9 you designated-- you countered and you objected to
10 designations, but you still don't-- you still don't
11 think you should-- you still know think you should be
12 able to rely on that, is that what you're saying, on
13 your designations?

14 MS. BECKER: Your Honor, I'm sorry for the
15 confusion. It think it was just really much more
16 simpler than that, and that was that they listed him as
17 a live witness, and we were waiting for them to subpoena
18 him, and we designated cross testimony in the event that
19 they could show unavailability, and then we would want
20 to have something to read to-- for completeness.

21 THE COURT: All right. Plaintiffs don't
22 have to show unavailability for the reasons I've already
23 stated.

24 There are two objections to your
25 counter-designations that are the contextual

1 counter-designations. I'll rule on those at this time
2 on Mr. Bryant's deposition, understanding he may be--
3 you may read his deposition, plaintiffs, this evening or
4 tomorrow morning or something.

5 All right. So plaintiff objected to
6 defendant's counter-designation on Page 55, Line 8,
7 through 55, Line 25, as incomplete without adding in
8 Lines 56-- I'm sorry, Page 56, Line 1 through Line 7.
9 I'll sustain that objection. I'll also read what
10 plaintiff wants as part of the context. So we'll add in
11 Page 56, Lines 1 through 7.

12 And then the other objection is on Page 97,
13 Line 5 through 97, Line 7. Plaintiff objects that it's
14 incomplete. I'm overruling that, so we won't read those
15 two lines.

16 Okay. And then there's another one. It's
17 on Page 58, Line 6 through Page 60, Line 11. Let's see.
18 Plaintiff objects that it's speculative and incomplete
19 without adding in Pages 58, Line 6 through Pages 60,
20 Line 11. And this is to defendant's
21 counter-designations starting at Page 57, Line 23 until
22 58, Line 5.

23 Do you see why we don't want to do this
24 real-time, by the way, for those of you that are just
25 sitting there wondering what in the world is this.

1 Okay.

2 All right. I'm going to sustain this
3 objection and add in the additional lines because they
4 go to the additional. It does provide context for the
5 additional lines defendant counter-designates which has
6 to do with a process by which they-- they matched up a
7 TDL list against a VR file and an e-mail that said there
8 were 37 matches discovered.

9 The rest of that as proposed by plaintiff
10 explains more about that process. So I will sustain
11 that objection and allow those additional lines,
12 Pages 58, Line 6 through Pages 60, Line 11.

13 All right. So that, I think, resolves the
14 issues about those portions of Mr. Bryant's deposition
15 that plaintiff has designated. It includes defendant's
16 counter-designations, subject to the rulings I've just
17 given. All right. So we'll go from there.

18 If we need to return to this issue about the
19 rest of Mr. Bryant's deposition, we can take that up
20 at-- at whatever time in the defendant's case. But
21 again, it will be subject to a showing of
22 unavailability.

23 MS. HA: Thank you, Your Honor.

24 THE COURT: All right. Are you ready for
25 your next witness? Mr. Johnson, your witness.

1 MR. JOHNSON: Thank you, Your Honor. I
2 apologize for standing off to the side. Plaintiffs call
3 Parker Bednasek.

4 PARKER BEDNASEK,
5 called as a witness on behalf of the Bednasek Plaintiff,
6 having first been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. JOHNSON:

9 Q. Could you tell us your name, please?

10 A. Parker Bednasek.

11 Q. Could you spell your name for us?

12 A. Parker, P-A-R-K-E-R. Bednasek, B-E-D-N-A-S-E-K.

13 Q. Mr. Bednasek, when were you born?

14 A. [REDACTED].

15 THE COURT: Let's strike the date of birth
16 from the record. Just what year.

17 Q. (BY MR. JOHNSON) What year were you born?

18 A. 1995.

19 Q. Where were you born?

20 A. Tulsa, Oklahoma.

21 Q. How long did you live in Tulsa?

22 A. I lived there about a year.

23 Q. What happened then?

24 A. My family moved to Charlotte, North Carolina.

25 Q. And you went with them?

1 A. Yes.

2 Q. How long did you live in Charlotte?

3 A. About 11 or 12 years.

4 Q. You started school there?

5 A. Yes.

6 Q. After Charlotte, did your family move again?

7 A. Yes, sir.

8 Q. Where did they move?

9 A. Back to Tulsa, Oklahoma.

10 Q. About how old were you when you moved back to
11 Tulsa, if you can remember?

12 A. I believe 13, sir.

13 Q. Okay. And did you attend school in Tulsa?

14 A. Yes, sir.

15 Q. Did you go to high school there?

16 A. Yes, sir.

17 Q. Did you graduate from high school?

18 A. Yes, sir.

19 Q. What high school did you go to?

20 A. Broken Arrow High School in Broken Arrow,
21 Oklahoma.

22 Q. After you finished high school, what did you do?

23 A. I enrolled at the University of Kansas.

24 Q. In Lawrence?

25 A. Yes, sir.

1 Q. When was that, if you can remember?

2 A. August of 2014.

3 Q. Okay. So about four years ago?

4 A. Correct.

5 Q. Have you been a student at KU since then?

6 A. Yes, sir.

7 Q. A-- have you been a full-time student?

8 A. Yes, sir.

9 Q. And that would include both fall and spring
10 semesters of each academic year?

11 A. Correct.

12 Q. What's your present status at KU?

13 A. I'm a senior right now.

14 Q. Going to be graduating?

15 A. Yes, sir.

16 Q. Can you tell us when?

17 A. In May of 2018.

18 Q. We all hope. Now, what happened to your family;
19 do they still live in Tulsa?

20 A. No, sir.

21 Q. What happened?

22 A. My family moved to Mansfield, Texas after my
23 freshman year of college.

24 Q. Where is Mansfield, Texas?

25 A. It is a suburb south of Dallas.

1 Q. Does your family still live there?

2 A. Yes, sir.

3 Q. Now, when you were in Oklahoma, did you ever
4 register to vote there?

5 A. No, sir.

6 Q. Did you have an Oklahoma driver's license?

7 A. Yes, sir.

8 Q. Do you remember when you got that? How old were
9 you when you got that?

10 A. I think I was 17.

11 Q. And after your family moved to Texas, did you get
12 a Texas driver's license?

13 A. Eventually, yes.

14 Q. Now, why did you do that? Was something
15 happening with your Oklahoma license?

16 A. Yes. I was home on winter break and my Oklahoma
17 license was expiring.

18 MR. JOHNSON: Okay. Your Honor, may I
19 approach?

20 THE COURT: Yes.

21 Q. (BY MR. JOHNSON) Mr. Bednasek, I'm going to hand
22 you a copy of a document that is marked as Exhibit 305.
23 I'm giving copies to counsel as well.

24 MR. JOHNSON: And is one fine? Do you want
25 two?

1 Q. (BY MR. JOHNSON) Mr. Bednasek, can you tell us
2 what this document is?

3 A. It is a copy of my Texas driver's license.

4 Q. And that's the one that you obtained after your
5 family had moved to Texas?

6 A. Yes, sir.

7 MR. JOHNSON: Okay. Your Honor, I move the
8 admission of Exhibit 305.

9 THE COURT: Any objection? It will have to
10 be redacted of his date of birth and probably a good
11 idea to redact his driver's license number since those
12 are identifiers. But any objection?

13 MR. ROE: No objection.

14 THE COURT: 305 admitted.

15 Q. (BY MR. JOHNSON) Did you register to vote in
16 Texas?

17 A. Yes, sir.

18 Q. When did you do that?

19 A. I believe it was the summer of 2015.

20 Q. Did you ever vote in Texas?

21 A. No, sir.

22 Q. Did you ever attempt to vote in Texas?

23 A. No, sir.

24 Q. And that would be in either a state or a federal
25 election?

1 A. That's correct.

2 Q. Why didn't you vote in Texas?

3 A. I never had the opportunity to do so.

4 Q. Now, what do you mean-- when you say you didn't
5 have the opportunity. So you registered in 2015, was
6 there an election?

7 A. No, sir.

8 Q. Okay. Did you cancel your Texas voter
9 registration?

10 A. Yes, sir.

11 Q. When did you do that?

12 A. I did that the fall of 2015.

13 Q. Why did you do that?

14 A. I considered myself to be a resident in Kansas,
15 and I wanted to vote in Kansas elections.

16 Q. How did you go about cancelling your Texas
17 registration?

18 A. I believe I sent a letter stating my intent to
19 cancel my Texas voters registration to the Tarrant
20 County, Texas clerk's office or something other.

21 Q. To your knowledge, are you still registered to
22 vote in Texas?

23 A. I am not.

24 Q. Thank you. Now, since you have been in Kansas,
25 have you lived at the same place the entire time or have

1 you moved?

2 A. I have moved.

3 Q. Tell us where you lived when you were a freshman
4 at KU.

5 A. I lived at Oliver Hall, and the address of that
6 is 1815 Naismith Drive.

7 Q. Did you live there for your entire freshman year?

8 A. Yes, sir.

9 Q. What about your sophomore year, where did you
10 live then?

11 A. I moved to Gertrude Sellards Pearson Hall, and
12 the address of that is 500 West 11th Street.

13 Q. Are both Oliver Hall and Gertrude-- I'm sorry, I
14 didn't get that full name.

15 A. Gertrude Sellards Pearson.

16 Q. That. Are they both on campus?

17 A. Yes, sir.

18 Q. In Lawrence?

19 A. Correct.

20 Q. What about your junior year, where-- where did
21 you live?

22 A. I was still at GSB, Gertrude Sellards Pearson,
23 yeah.

24 Q. And then what about this year, your senior year,
25 where are you living?

1 A. I am back at Oliver Hall.

2 Q. Okay. And that's the same address you gave us
3 here a moment ago?

4 A. Correct.

5 Q. Okay. Thank you. Have you had any
6 responsibilities in your residence halls while you've
7 been at KU?

8 A. Yes, sir. I hold the position of resident
9 assistant, which is kind of like a senior position in
10 the hall. And I make sure rules are enforced, behavior
11 is safe and-- among other things.

12 Q. Very good. Thank you. I'm going to hand you a
13 document which has been marked as Exhibit 309. I'll
14 give two copies to the Court - oops, sorry - and copies
15 to counsel.

16 Mr. Bednasek, can you tell us what this document
17 is?

18 A. Yes, it's my fall 2017-spring 2018 student
19 housing contract.

20 Q. Does your name appear on this document somewhere?

21 A. Yes, sir.

22 Q. Where?

23 A. Near the top of the first page.

24 Q. All right. And what, generally speaking, do you
25 understand this document to describe?

1 A. It's an agreement between me and the Department
2 of Student Housing at the University of Kansas, agreeing
3 that I'll live in their residence hall.

4 MR. JOHNSON: Your Honor, I move the
5 admission of Exhibit 309.

6 THE COURT: Any objection?

7 MR. ROE: No objection.

8 THE COURT: 309 admitted.

9 Q. (BY MR. JOHNSON) Now, Mr. Bednasek, I'm going to
10 hand you a copy of a document which has been marked as
11 Exhibit 308, two copies for the Court, and copies for
12 each counsel. Can you tell us what this document is?

13 A. It's a copy of my University of Kansas
14 transcript.

15 Q. When did you obtain it?

16 A. This transcript?

17 Q. Yes.

18 A. A few--

19 Q. I mean within the last month, within the last--

20 A. Yeah, within the past month.

21 Q. What does the document reflect? What information
22 does it contain?

23 A. It's the courses that I've taken and the grades
24 I've received semester-by-semester.

25 Q. So tell us, for example, when you say

1 semester-by-semester, what appears on the first page
2 that would reflect that?

3 A. My first semester when I enrolled, 2014, that has
4 my courses and grades. Second semester when I was
5 enrolled, 2015 of spring, has my courses and grades.
6 And then it also has a transfer credit that I had from
7 high school.

8 Q. And does it reflect information that indicates
9 that you are presently enrolled as a student at KU?

10 A. Yes, sir.

11 Q. Where does that appear?

12 A. I believe on the second page. It says 2018 of
13 spring, near the bottom.

14 Q. I don't see any grades there, do I?

15 A. No, sir.

16 Q. Because you haven't gotten any yet?

17 A. That is correct.

18 Q. Okay. Tell us how you sign up for courses at KU.
19 Do you do so in advance?

20 A. Yes, sir.

21 Q. When do you do that?

22 A. You usually-- if you intend to sign up for fall
23 classes, you do that in the spring. And then if you
24 intend to sign up for spring classes, you do that in the
25 fall.

1 Q. Did you go home during-- did you go back to Texas
2 during the summers?

3 A. I did.

4 Q. When you went to Texas-- and that was to be with
5 your family; is that fair?

6 A. Yes, to visit with my parents.

7 Q. All right. So you're spending time with your
8 family in Texas. But do you know you're going back to
9 KU?

10 A. Yes.

11 Q. And had-- and in each of the academic years when
12 you signed up for classes in the spring for the fall
13 semester, have you known that you would be returning to
14 KU, even though you would be spending time in Texas with
15 your family?

16 A. Yes, sir.

17 Q. And this-- would the same be true for spring
18 classes? When do you sign up for the spring classes?

19 A. You sign up for spring classes in fall-- yeah.

20 Q. Okay. Now, during your years at KU, have you
21 gone home or-- you know, gone to Texas for winter
22 breaks?

23 A. Yes, sir.

24 Q. But in each of those situations, did you know you
25 would be coming back to Lawrence for school?

1 A. Yes, sir.

2 Q. When you went to Texas during the summers-- this
3 would be after your freshman and sophomore and junior
4 years, how long did you spend there?

5 A. Roughly two months, two-and-a-half.

6 Q. Did you have a job?

7 A. Yes, sir.

8 Q. What did you do?

9 A. I worked at a gym.

10 Q. And when the summer was over, you returned to
11 Lawrence?

12 A. Yes, sir.

13 Q. What have you majored in at KU?

14 A. History and political science.

15 Q. Have you been active politically?

16 A. Yes, sir.

17 Q. Tell us what you've done.

18 A. I volunteered with the Kansas Democratic Party
19 over the course of four semesters.

20 Q. Which four semesters?

21 A. I think-- I believe it would be fall of 2015
22 through spring of 2017.

23 Q. Now, what-- while you were volunteering for the
24 Democratic Party, did the issue of voter registration
25 ever come up?

1 A. Yes, sir.

2 Q. Do you remember when that happened?

3 A. I believe it was the fall of 2015.

4 Q. How did it come up?

5 A. I was made aware of the law through the field and
6 political director at the Kansas Democratic Party.

7 Q. What law are you referring to?

8 A. The law that requires you to have proof of
9 citizenship when you're required to vote.

10 Q. Now, were you at that time when this topic came
11 up registered to vote in Texas?

12 A. Yes, sir.

13 Q. Tell us after this conversation what you did.

14 A. I did the necessary requirements to cancel my
15 Texas voter registration.

16 Q. And then-- and then what did you do?

17 A. I attempted to register to vote in Kansas.

18 Q. And as a consequence of that, did you become
19 registered to vote?

20 A. I did not.

21 Q. Mr. Bednasek, had you become registered to vote,
22 did you intend to vote?

23 A. Yes, sir.

24 Q. And this was in the fall of 2015 when these
25 events occurred?

1 A. Yes, sir.

2 Q. When in your-- you know, from your memory, was
3 the next election in Kansas that you would have been
4 eligible to vote in?

5 A. Probably the primaries for the 2016 election.

6 Q. Now, you were spending-- spent time in the
7 summers at home-- you know, in Texas. How could you
8 vote in the summer primary in 2016?

9 A. I would have voted by absentee ballot.

10 Q. And with the general election in November of
11 2016, how would you have voted at that point?

12 A. I would have voted in person.

13 Q. So did you attempt to register?

14 A. Yes, sir.

15 Q. I'm going to hand you a document which has been
16 marked as Exhibit 303.

17 MR. JOHNSON: And, Your Honor, I understand
18 that some information will have to be redacted from this
19 document. And I will hand copies of Exhibit 303 to
20 counsel as well.

21 Q. (BY MR. JOHNSON) Mr. Bednasek, can you tell us
22 what this document is?

23 A. It is the form I filled out to register to vote,
24 become a registered voter in Kansas.

25 Q. Did you fill this form out before you attempted

1 to register?

2 A. Yes, sir.

3 Q. Where did you go to attempt to register to vote?

4 A. I went to the Douglas County Elections Office.

5 Q. Do you remember-- do you know where that's
6 located?

7 A. 11th and Massachusetts Street in Lawrence,
8 Kansas.

9 Q. Very good. Thank you. Did you know when you
10 went to the election office that you would have to
11 submit a documentary proof of citizenship?

12 A. I did, yes.

13 Q. How did you know that?

14 A. I was made aware of the law that requires you to
15 provide that.

16 MR. JOHNSON: Okay. Your Honor-- oh, I move
17 the--

18 Q. (BY MR. JOHNSON) Let me ask you this: Is all of
19 the information contained within Exhibit 303 accurate,
20 to the best of your knowledge?

21 A. Yes, sir.

22 Q. And did you personally fill this document out?

23 A. Yes, sir.

24 MR. JOHNSON: Your Honor, I move the
25 admission of Exhibit 303.

1 THE COURT: Any objection?

2 MR. ROE: No objections.

3 THE COURT: 303 admitted.

4 MR. JOHNSON: Okay. Thank you.

5 Q. (BY MR. JOHNSON) So you filled the document out.
6 You went to the election office. Tell us what happened.

7 A. I was told that I would need to provide a
8 proof-of-citizenship document if I wanted to complete my
9 voter registration.

10 Q. Who told you that?

11 A. The clerk who was working at the election office.

12 Q. Were you surprised to hear that?

13 A. No, sir.

14 Q. Did you have a proof of citizenship with you?

15 A. I did not.

16 Q. Why not?

17 A. It was not on my person. Didn't have it on me.

18 Q. You didn't have it, but did you have a reason not
19 to have it? Why didn't you bring it with you?

20 A. It's in the state of Texas, sir.

21 Q. Had you had it with you, would you have submitted
22 it?

23 A. No, sir.

24 Q. Why not?

25 A. I do not agree with the law.

1 Q. Did you know that you would not be registered to
2 vote if you did not produce the document?

3 A. Yes, sir.

4 Q. But you went ahead and did it anyway. You
5 refused to produce it?

6 A. That is correct.

7 Q. Were you made aware that you could produce it at
8 a later time?

9 A. Yes, I believe I received two to three letters in
10 the mail saying I had been placed on a 90-day waiting
11 list.

12 Q. And during that 90 days, you did not send in a
13 copy of the-- your birth certificate?

14 A. That is correct, sir.

15 Q. Okay. Did you understand that your registration
16 would be cancelled?

17 A. Yes, sir.

18 Q. Do you know whether your registration was, in
19 fact, cancelled?

20 A. I believe it was.

21 Q. Have you ever attempted to vote in Kansas?

22 A. No, sir.

23 Q. In person or absentee?

24 A. No, sir.

25 Q. Have you ever, in fact, voted in Kansas?

1 A. I have not.

2 Q. Now, you said you're graduating in May; is that
3 correct?

4 A. That's correct, sir.

5 Q. Okay. What are your plans after graduation?

6 A. I recently received acceptance into officer
7 candidate school in the United States Navy, so I'll be
8 attending that in the fall 2018.

9 Q. Where are you going to be going?

10 A. Newport, Rhode Island.

11 Q. How long will you be there?

12 A. I'll be-- the course takes 13 weeks to complete.

13 Q. And then what's after that?

14 A. After that, I'll go on my first deployment.

15 Q. What does that mean? What's a deployment?

16 A. The Navy will assign you to an active duty ship
17 to serve on, and you'll be there six to eight months.

18 Q. Mr. Bednasek, if you are registered to vote this
19 year, do you intend to vote?

20 A. Yes, sir.

21 Q. Do you hope to vote?

22 A. Yes, sir.

23 Q. To date, have you ever voted anywhere at any
24 time?

25 A. I have not.

1 Q. When you were applying for your slot with the
2 Navy, did you have to produce some proof that you were a
3 U.S. citizen?

4 A. I provided them with a copy of my birth
5 certificate and Social Security card.

6 Q. So you have those. Why didn't you produce those
7 when you went to register to vote in 2015?

8 A. As I said before, I don't agree with the law
9 requirement.

10 MR. JOHNSON: Your Honor, that's all I have.
11 Thank you, Mr. Bednasek.

12 THE WITNESS: Thank you.

13 THE COURT: Any questions from the Fish
14 team?

15 MR. HO: No, Your Honor.

16 THE COURT: All right. Mr. Roe.

17 CROSS EXAMINATION

18 BY MR. ROE:

19 Q. You still have those exhibits that were handed to
20 you?

21 A. Yes, sir.

22 Q. All right. Earlier you said that you registered
23 in the fall of 2015 because you-- you decided you were a
24 resident; is that right? You decided to register to
25 vote in Kansas because you decided you were a resident;

1 is that correct?

2 A. Yes, sir.

3 Q. But isn't it actually true in your deposition
4 that you said the field-- that the field director for
5 the Kansas Democratic Party, Cheyenne Davis, was the
6 first person to approach you about being a plaintiff in
7 this case?

8 A. Yes, sir.

9 Q. And that was before you had went to register to
10 vote?

11 A. Yeah.

12 Q. Okay. And when you-- you also said in your
13 deposition that when you spoke to Cheyenne Davis, she
14 instructed you-- she instructed you you should-- when
15 you attempted to register to vote, you should just
16 attempt to register but not bring your proof of
17 citizenship. Correct?

18 MR. JOHNSON: Your Honor, may I object?
19 Rather than telling the witness what he testified to in
20 his deposition, I think it's proper to ask the questions
21 and if he gets an answer that's inconsistent with what
22 he testified to in the deposition, to attempt to impeach
23 him with the deposition.

24 THE COURT: I agree. So first you have to
25 establish--

1 MR. ROE: I'm sorry.

2 THE COURT: First you have to ask a
3 question--

4 MR. ROE: That's fine. I can do that, Your
5 Honor.

6 THE COURT: All right.

7 Q. (BY MR. ROE) All right. Did you say at your
8 deposition-- during your deposition--

9 THE COURT: No, no, no.

10 MR. ROE: I'm sorry.

11 THE COURT: I mean, the way it's supposed to
12 go-- I mean, because what we're talking about is
13 impeachment, whether it's by a document or--

14 MR. ROE: Right.

15 THE COURT: And you saw this play out with
16 Ms. Ahrens earlier this morning and Ms. Becker. So ask
17 him a question. If you think that he's testified
18 inconsistently before in a deposition or there's some
19 other document or evidence that would tend to show
20 inconsistency and you want to impeach him, then you--
21 then you turn to that document. So-- and I don't-- so
22 you have to sort of ask the setup question, if you will
23 - that's probably not the right word - before you go to
24 the deposition. All right?

25 Q. (BY MR. ROE) Did you speak to Cheyenne Davis

1 before registering to vote?

2 A. In Kansas?

3 Q. Yes.

4 A. Yes, sir.

5 Q. And is Cheyenne Davis the Kansas Democratic Party
6 chairman-- or director? I'm sorry.

7 A. I-- I believe she's the political and field
8 director--

9 Q. Okay.

10 A. -- of the Kansas Democratic Party.

11 Q. And you spoke to Ms. Davis before-- I'm sorry.
12 You spoke to Ms. Davis before you registered to vote.
13 Correct?

14 A. Yes, sir.

15 Q. And she instructed you that when you attempted to
16 register to vote, you should just attempt to register
17 but not bring your proof of citizenship?

18 A. She told me that if I tried to register to vote
19 without my proof of citizenship, then the-- what the
20 consequences would be.

21 Q. So is that-- do you believe that's the same thing
22 you testified at your deposition?

23 MR. JOHNSON: Your Honor, objection.

24 THE COURT: The way to--

25 MR. JOHNSON: If you recite testimony that's

1 inconsistent, have him do so rather than ask a roving
2 question as to whether the plaintiff-- the witness can
3 remember what he testified to in his deposition.

4 THE COURT: All right. So if you want to
5 impeach him with the deposition, show him the
6 deposition, that part of it. Point him to it and then
7 ask him. But at the same time, let them know what-- by
8 page number and line number. We give them time so they
9 can find it, so everybody is on the same page. So
10 that's the procedure.

11 MR. ROE: Page 11, Line 5 through Line 9.

12 THE COURT: Now, Mr. Bednasek, he's not
13 asking you to read it aloud, but he's going to point you
14 to part of your deposition and then, I imagine, ask you
15 if you testified inconsistently with what you just
16 testified to.

17 A. Yep.

18 Q. (BY MR. ROE) Is that inconsistent with what you
19 just testified?

20 A. Wait. I'm sorry. Could I see the document
21 again?

22 MR. JOHNSON: Objection. You don't ask the
23 witness whether the witness believes something is
24 inconsistent with what they've testified to. That's for
25 the Court to decide.

1 THE COURT: I understand. Go ahead and show
2 it to him, and I'll allow that particular question.

3 THE WITNESS: So this part right here?

4 MR. ROE: I'm sorry. Line 5.

5 THE COURT: And you can be more pointed. I
6 mean, in your cross examination say, didn't you testify
7 to such, such, and such. Go ahead.

8 Q. (BY MR. ROE) Have you read your testimony?

9 A. Yes.

10 MR. ROE: Do I read it in the record now,
11 Your Honor?

12 THE COURT: I'm sorry?

13 MR. ROE: Should I read it into the record
14 now, Your Honor? I'm sorry.

15 THE COURT: No. Just ask him, didn't you
16 testify to X, Y, and Z, now that he's seen it.

17 Q. (BY MR. ROE) Okay. Yeah, didn't you testify--
18 didn't you testify that she instructed that when you
19 attempted to register to vote you should just attempt to
20 register but not bring your proof of citizenship?

21 A. Yes.

22 Q. Okay. And she approached you, you said, on
23 approximately December 3rd, 2015?

24 A. I-- to the best of my knowledge, yes.

25 Q. Okay. And you had never heard about this case

1 prior to approaching you on December 3rd, 2015?

2 A. I-- I mean, I wasn't heavily knowledgeable about
3 the law, but I'm sure I heard of it in passing.

4 Q. So now you're saying that you did hear about this
5 case prior to her approaching you December 3rd, 2015?

6 A. I'm not-- it was two years ago. I can't really
7 remember for sure.

8 Q. If I showed you your deposition, would that help
9 you remember?

10 A. Yes.

11 Q. Okay.

12 THE COURT: And tell him the page and line
13 numbers so they can follow.

14 MR. ROE: Page 42, Line 3 through 5.

15 A. Okay.

16 Q. (BY MR. ROE) So had you-- you had never heard of
17 this case prior to her approaching you on December 3rd,
18 2015. Correct?

19 A. No, I've never heard of this case before that
20 date.

21 Q. Okay. And on November 17th, 2015, you had
22 never-- you had not spoken to anyone about this case.
23 Correct?

24 A. I don't think so.

25 Q. Okay. Is that-- is that a you did not, or you

1 just don't remember?

2 A. I-- it's a long time ago. I don't really
3 remember.

4 Q. If I showed you your transcript of your
5 deposition, would that help?

6 A. Yes.

7 Q. Line 47-- or Page 47, Lines 6 through 10.

8 A. Okay.

9 Q. So on November 17th, 2015, you had never spoken
10 to anyone about this case. Right?

11 A. No.

12 Q. Okay. And on November 17th, 2015, you had never
13 seen a-- a copy of the first amended complaint filed in
14 this case?

15 A. No, sir.

16 Q. And you also never saw that first amended
17 complaint before December 3rd, 2015. Right?

18 A. No, sir.

19 Q. And no one had ever spoken to you about being a
20 named class plaintiff in any case on or before November
21 17th, 2015. Correct?

22 A. No, sir.

23 Q. When you moved to Kansas your freshman year of
24 college, you registered-- you registered to vote in
25 Texas. Right?

1 A. Yes, sir.

2 Q. And when you-- when you registered to vote in
3 Texas but you were at a-- it was a dormitory in Kansas;
4 is that where you were at?

5 A. Residence hall, yes.

6 Q. Residence hall, okay.

7 A. Uh-huh.

8 Q. When you registered to vote in Kansas to vote in
9 Texas, nobody told you to do that at that time?

10 A. Sorry. Could you repeat that?

11 Q. Sorry. Nobody told you to register to vote in
12 Texas. Right?

13 A. No, sir.

14 Q. You just did that on your own?

15 A. Yes, sir.

16 Q. And when you registered to vote in Texas, you
17 filled out a form and mailed it to Texas. Right?

18 A. Yes, sir.

19 Q. Okay. Are you still at the same address as in
20 your deposition? Do you know if you've moved in the
21 last two years?

22 A. Could you repeat that address?

23 Q. Yeah.

24 THE COURT: Just the street maybe. We're
25 not supposed to have home addresses.

1 MR. ROE: Right. I know. I got to find it.

2 I'm sorry.

3 Q. (BY MR. ROE) Have you moved in the last two
4 years?

5 A. I have, sir, yes.

6 Q. Okay. But you're still at a residence hall, I
7 take it?

8 A. Yes, sir.

9 Q. Okay. And you still pay non-resident tuition?

10 A. Yes, sir.

11 Q. You still have a Texas driver's license?

12 A. Yes, sir.

13 Q. And you got that driver's license in January
14 2016?

15 A. That's correct.

16 Q. And that was after you applied to register to
17 vote in Kansas?

18 A. Yes, sir.

19 Q. Approximately a few weeks after you applied-- or
20 approximately a month after you applied to register to
21 vote in Kansas?

22 A. Yes, sir.

23 Q. And do you recall that you signed, under penalty
24 of perjury, that you had abandoned your former residence
25 in Texas when you applied to register to vote in Kansas?

1 MR. JOHNSON: Objection. Calls for a legal
2 conclusion. Also, if there's best evidence--

3 THE COURT: Okay. I'll sustain to the
4 question. Show him the document.

5 Q. (BY MR. ROE) Okay. I have here Plaintiffs'
6 Exhibit 303. You have a copy of it. Right?

7 A. Which one is that?

8 Q. This is your voter registration application.

9 A. Okay.

10 Q. That's your signature at the bottom?

11 A. Yes, sir.

12 Q. And you-- that's your date? You put the date
13 there?

14 A. Yes, sir.

15 Q. Okay. And so you-- you swore in that document
16 you signed that, "I swear or affirm that I'm a citizen
17 of the United States and a Kansas resident; that I will
18 be 18 years old before the next election," but if--
19 but-- not if-- "if convicted of a felony, I have had my
20 civil rights restored--" I misread that. Sorry. Let me
21 start over.

22 "I swear or affirm that I'm a citizen of the
23 United States and I'm a Kansas resident; that I'll be 18
24 years old before the next election; that if convicted of
25 a felony, I have had my rights restored; that I've

1 abandoned my former residence and/or other name; and
2 that I have told the truth on this application." Right?
3 You signed that?

4 A. Yes, sir.

5 MR. JOHNSON: Your Honor, if I might object
6 to this line of questioning. Your Honor has already
7 dealt with this issue in-- in her order of-- in your
8 order, excuse me, of July 29, 2016, which is Document
9 No. 107 in our case, Pages 9 through 15. This is a red
10 herring. They are attempting to-- to prove to--

11 THE COURT: What order is that? Because I
12 do recall-- and I don't remember which order it was, was
13 that on a summary judgment order? I don't remember.

14 MR. JOHNSON: They were trying to disqualify
15 Mr. Bednasek.

16 THE COURT: Yeah, I remember that. And I
17 remember I think ruling - I don't have it in front of me
18 - that particularly when somebody is a student and their
19 parents are in one state and a car that their parents
20 provide might be licensed in that state and insurance
21 may be in that state, their driver's license may be in
22 that state, but that does not mean they're not qualified
23 to register in Kansas to vote.

24 MR. JOHNSON: They're mixing three different
25 residency tests; for in-state tuition, for voting and

1 for a driver's license.

2 THE COURT: All right. I do recall ruling
3 on this issue, but proceed.

4 MR. ROE: Okay.

5 Q. (BY MR. ROE) So just to go back. So you signed
6 this document, and then one month later you-- you--
7 sorry.

8 So you signed this document, and then one month
9 later you went to Texas and you got a Texas driver's
10 license and used that Texas address. Correct?

11 A. Yes, sir.

12 Q. And you've lived in Kansas for how long?

13 A. For-- I've been at KU for four years, so...

14 Q. Okay. And have you gotten a Kansas driver's
15 license yet?

16 A. No, sir.

17 Q. And-- but you say you've lived in-- so you have
18 lived in Kansas for well over 90 days?

19 A. Yes, sir.

20 Q. Do you still live in the state?

21 A. Yes, sir.

22 Q. Do you still have a car?

23 A. Yes, sir.

24 Q. Is it still registered in Texas?

25 A. Yes, sir.

1 Q. Have you re-registered the car in Texas since
2 your deposition?

3 A. I have not-- or, yes, sir.

4 Q. Do you still have auto insurance on your truck in
5 Texas?

6 A. Yes, sir.

7 Q. And that's still registered at a Texas address?

8 A. Yes, sir.

9 Q. So you pay out-of-state tuition, your car is
10 registered in Texas, you bought insurance in Texas,
11 registered to a home in Texas, and you got your driver's
12 license after you were registered to vote in Kansas, but
13 you swear that you're a Kansas resident?

14 A. Yes, sir.

15 Q. Okay.

16 THE COURT: I have ruled on this issue. I
17 am trying to find it because I've ruled on so many
18 things.

19 MR. JOHNSON: Your Honor, I think--

20 THE COURT: What document number is it?

21 MR. JOHNSON: 107.

22 THE COURT: Yeah, all right. Here it is.

23 MR. ROE: Your Honor, I-- I do have to
24 create a record for the appeal.

25 THE COURT: All right. Go ahead. I told

1 you to proceed, but I just wanted to note that I had
2 ruled on this particular issue, whether he was qualified
3 to register to vote in Kansas and I ruled that he was.
4 But go ahead and make your record.

5 MS. BECKER: Your Honor, before my
6 co-counsel makes a record, I would just like the record
7 to reflect that before the witness answered, three of us
8 saw him look at his counsel and then he responded. And
9 I feel like the counsel was coaching the witness.

10 MR. JOHNSON: Oh, for crying out loud.

11 MS. BECKER: Well, we're sitting--

12 MR. JOHNSON: He was seeing probably if I
13 was going to object.

14 MS. BECKER: -- 15 feet in front of him.
15 I'm just making the record, but he should be instructed
16 not to--

17 THE COURT: I don't know-- I don't know why
18 he would need to be coached on where his car is
19 registered and where his insurance is. I've seen Mr.
20 Johnson stand up several times, and I've looked at him
21 because I think he was on the verge of objecting and
22 then decided not to. So I did not witness what I
23 perceived to be coaching, but you've made your record.

24 MS. BECKER: That's fine. The record was
25 just-- the question was: Are you swearing that you're

1 not a-- that you are a Kansas resident. That was the
2 question, to which he paused. So that's--

3 THE COURT: Is that still the open question?

4 MS. BECKER: I just wanted to make a record.
5 Thank you.

6 MR. JOHNSON: I suppose I should've objected
7 on the basis he was calling for a legal conclusion.

8 THE COURT: Is that-- is that a pending
9 objection? Is that a pending question? Because I do
10 think that's calling for a legal conclusion, so I'll
11 sustain to that.

12 As you said, there are multiple tests for
13 registration, out-of-state tuition, et cetera. But,
14 Mr. Roe, I understand you're making your record.
15 Proceed.

16 MR. ROE: Okay. Thank you, Your Honor. And
17 just to be clear, so that last objection which was made
18 after he answered has been stricken; is that correct?

19 THE COURT: I didn't-- I wasn't even sure
20 that question was on the floor. But to the extent that
21 question was on the floor, I'm sustaining the objection.

22 MR. ROE: Okay. Okay. Thank you.

23 THE COURT: Because it called for a legal
24 conclusion.

25 Q. (BY MR. ROE) Mr. Bednasek, you did not apply to

1 register to vote at the Division of Motor Vehicles.

2 Right?

3 A. No, sir.

4 Q. Okay. Do you know whether Kansas requires
5 individuals to present any documents when they get a new
6 driver's license?

7 MR. JOHNSON: Objection. Calls for a legal
8 conclusion.

9 MR. ROE: I'm not asking for his legal
10 opinion. I'm saying does he know whether there's any
11 documents that--

12 THE COURT: All right. I'll overrule. You
13 can answer that if you can.

14 A. I believe it does. I'm not 100 percent sure,
15 though.

16 Q. (BY MR. ROE) Okay. So do you know-- have you
17 ever heard of something-- have you ever heard of
18 something called a lawful presence document?

19 A. No, sir.

20 Q. Okay. Have you ever heard that people need to
21 present a passport to the Division of Vehicles when they
22 get a driver's license?

23 A. I have not heard of that, sir.

24 MR. ROE: Hold on a second.

25 Q. (BY MR. ROE) Your parents have a copy of your

1 birth certificate, right, or do you have it now?

2 A. My parents have it.

3 Q. Okay. So you have a copy of it?

4 A. I mean, at my parents' house in Texas there's a
5 copy of it, yes.

6 Q. Well, earlier you testified that you had to
7 submit it for purposes of your-- I think your-- you're
8 applying to the-- where were you--

9 A. United States Navy.

10 Q. Yeah. So your parents provided it to the-- to
11 the Navy for you?

12 A. No, I believe it was sent in the mail to me.

13 Q. Okay.

14 A. And I returned it when I visited them over winter
15 break.

16 Q. Okay. So your parents mailed you a copy of your
17 birth certificate, and then you returned it to them at
18 winter break; is that what you're saying?

19 A. Yes.

20 Q. Okay. So you're-- okay. And when you had your
21 birth certificate with you, you did not take it to a
22 Kansas-- you did not try to complete your registration?

23 A. I did not, sir.

24 Q. Okay. Do you have any reason to believe your
25 parents couldn't mail it to you again?

1 A. It takes some time and effort, but yes, I believe
2 they could.

3 Q. It takes time-- by time and effort, do you mean
4 it takes time for them to place it in an envelope and
5 address it and put a stamp on it?

6 A. Yeah, and drive to the post office and mail it,
7 find it, you know.

8 Q. They can't mail something from their house?

9 A. They can.

10 Q. Oh, okay.

11 A. Yeah.

12 Q. And do your parents have a Smartphone still?

13 A. Yes, sir.

14 Q. And there's no reason why they couldn't take a
15 picture of it and send it to you via text message or
16 e-mail; is that right?

17 A. Yeah, I suppose they could.

18 Q. Okay. Are you aware that a birth certificate
19 would constitute a-- an acceptable proof-of-citizenship
20 document in Kansas?

21 A. Yes, sir.

22 Q. Okay. And you said earlier you had some-- you
23 had received some correspondence from the Johnson County
24 Election Office; is that right?

25 A. Yes, sir. Douglas County I believe. Douglas

1 County.

2 Q. I'm sorry, you're right. Douglas County Election
3 Office. Do you recall if any of those-- if any of those
4 exhibits-- or, I'm sorry, any of those-- hold on.

5 MR. ROE: Hey, Mark, these have been marked
6 Joint Exhibit 849 in the Fish case.

7 MR. JOHNSON: What's "these"?

8 MR. ROE: These exhibits have been marked
9 Joint Exhibit 849 in the Fish case. I have a copy for
10 you.

11 MR. JOHNSON: Tell me what "these" is.
12 (Counsel confer).

13 THE COURT: This is stipulated so it's
14 admitted. It's Exhibit 849, correspondence from Johnson
15 County office with attachments, is what my table says.

16 MR. JOHNSON: I don't know what Johnson
17 County has to do with this, Your Honor. It was in
18 Douglas County.

19 THE COURT: But it's admitted. 849 is
20 admitted. Mr. Roe, you can ask the witness questions
21 about it. It's already admitted by stipulation.

22 MR. ROE: I'm sorry. I meant Exhibit 859,
23 Joint Exhibit 859 and Joint Exhibit 860.

24 THE COURT: Oh, okay. Wait a minute. 859
25 and 860 are also admitted by stipulation, which have to

1 do with Douglas County.

2 Q. (BY MR. ROE) Do either of those look like the
3 correspondence you received from the Douglas County
4 Election Office?

5 A. I believe the one from Jamie Shew. That looks
6 accurate.

7 Q. Okay. The-- this Document No. 859, Joint
8 Exhibit 859, this-- when you would've received this, it
9 potentially would've been in a postcard form. So this
10 essentially-- this exhibit is essentially four postcards
11 that would be split up. Do you recall receiving
12 something more postcard-sized as well?

13 A. I believe it was a letter.

14 Q. Okay.

15 A. I don't remember receiving any postcards.

16 Q. Okay. And the address that you have on here is
17 correct still you said on your voter registration
18 application, Exhibit No.--

19 MR. ROE: Was it 301, Mark? What was the
20 other exhibit number? Here it is. 303.

21 A. That was accurate at the time, yes, sir.

22 Q. (BY MR. ROE) Oh, it's not accurate now?

23 A. I've moved since then, so...

24 Q. Okay. And you've not updated that address with
25 us, is that correct, or with the Douglas County Election

1 Office?

2 A. No, sir.

3 Q. Okay. And if you-- do you know how to update
4 your address?

5 A. I don't, no, but...

6 Q. Well, I'm going to represent to you that you
7 could fill out one of these forms with a new address and
8 that would-- do you think you could fill out another one
9 of these forms?

10 A. I could fill out another one of those forms, yes.

11 Q. And put on your correct address?

12 A. Yes, sir.

13 Q. And if you did that, would you then produce your
14 birth certificate?

15 A. No, sir.

16 Q. Okay. And you're aware that if you did that, you
17 would become registered to vote?

18 A. Yes, sir.

19 Q. Okay. And you've never gone through a hearing
20 with the State Election Board; is that correct?

21 A. No, sir.

22 Q. And you've never filed-- filed any form to go
23 through a state election form-- a State Election Board
24 proceeding?

25 A. No, sir.

1 Q. Okay. You said you had a job when you-- when you
2 went back to Texas; is that correct?

3 A. Yes, sir.

4 Q. You worked at a gym?

5 A. Yeah.

6 Q. Do you pay taxes to your Kansas residence?

7 A. Yes, sir.

8 Q. Okay. So it's not-- so your parents don't claim
9 you on their taxes anymore?

10 A. I'm not 100 percent sure on that. My parents
11 help file my taxes, but I'm not sure if they count me.
12 I would assume they do. I don't know.

13 Q. Do you know when you pay taxes, are you paying
14 Kansas taxes or Texas taxes?

15 A. I believe I paid both, because I have a job in
16 Kansas as well as Texas.

17 Q. Okay. So what is your job in Kansas?

18 A. Resident assistant.

19 Q. Oh, okay.

20 A. Uh-huh.

21 Q. The last question I have is, why didn't you have
22 a birth certificate when you went to the Kansas Election
23 Office?

24 A. It was in the state of Texas.

25 Q. I'm sorry, no. Why didn't you have a birth

1 certificate when you went to the Kansas Election Office?

2 Oh, because it was in the state of Texas you said?

3 A. Yes, sir.

4 Q. Okay. But when you said it was in the state of
5 Kansas, you were told, correct, that-- by Cheyenne Davis
6 that you should not bring it with you to the Kansas
7 Election Office?

8 MR. JOHNSON: Objection, asked and answered.

9 MR. ROE: Okay.

10 THE COURT: Overruled. You can answer it if
11 you can.

12 A. She made me aware of the fact that if I
13 registered to vote without my birth certificate, then--
14 the consequences of what would happen.

15 Q. (BY MR. ROE) Would this help refresh your-- or
16 do you believe that's consistent with what you testified
17 previously?

18 A. Yeah. Can I see it, please?

19 Q. Page 11-5.

20 A. Yeah, I believe that's-- this one would be
21 accurate.

22 Q. Which-- when you say "this one"?

23 A. So as you say, she instructed me to not provide
24 my-- or proof of citizenship.

25 Q. Okay. So just-- and I'm finished. There's

1 nothing today physically that prevents you from
2 presenting your birth certificate to the county election
3 office if you chose to do so?

4 A. No, sir.

5 MR. ROE: Okay. Thank you.

6 MR. JOHNSON: No redirect, Your Honor. May
7 the witness be excused?

8 THE COURT: Anything more from you either?

9 MR. HO: No, Your Honor.

10 THE COURT: All right. May Mr. Bednasek be
11 excused? All right. You're excused. Okay. You can
12 call your next witness.

13 MR. BONNEY: Could I remove the exhibits
14 from the witness box, Your Honor?

15 THE COURT: Yes.

16 MR. BONNEY: I call Steven Wayne Fish, Your
17 Honor.

18 STEVEN WAYNE FISH,
19 called as a witness on behalf of the Fish Plaintiffs,
20 having first been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. BONNEY:

23 Q. Please tell the Court your name.

24 A. Steven Wayne Fish.

25 Q. How old are you?

1 A. 38.

2 Q. Where were you born?

3 A. I was born on Chanute Air Force Base in Champaign
4 County right outside of Rantoul, Illinois.

5 Q. Were you born in a hospital run by the Air Force?

6 A. I was born on the base. I think so, but I can't
7 say for sure.

8 Q. How did you happen to be born on an Air Force
9 base?

10 A. My mother was in the service.

11 Q. Does the Air Force base where you were born,
12 Chanute Air Force Base, still exist?

13 A. No. It was closed in the '90s during the Clinton
14 Administration.

15 Q. Where do you currently live?

16 A. Lawrence, Kansas.

17 Q. And is Lawrence in Douglas County?

18 A. Yes.

19 Q. How long have you lived in Kansas?

20 A. The entirety of my adult life.

21 Q. Are you a United States citizen?

22 A. Yes.

23 Q. Do you have a family?

24 A. Yes.

25 Q. Who makes up your family?

1 A. I've got my fiancée, Whitney, and our 4-year-old
2 son, [REDACTED].

3 Q. Are you currently working?

4 A. Yes.

5 Q. Where do you work?

6 A. American Eagle Distribution Center, so warehouse.

7 Q. What do you do there?

8 A. I'm an overnight employee, primarily stock the
9 freight that's going to the stores.

10 Q. What hours do you regularly work?

11 A. I work from 4:30 in the afternoon until 3:00 in
12 the morning.

13 Q. Since you work nights, when do you usually sleep?

14 A. I wake up usually at the earliest around 1:00
15 p.m.

16 Q. Are you taking time off today to be here in
17 court?

18 A. Yes, I am.

19 Q. And I'm going to ask you some questions about
20 your voter registration. When did you first decide that
21 you wanted to vote?

22 A. It was shortly after the-- the birth of my son.
23 I felt like I needed to get maybe a little more involved
24 in the way our country was working.

25 Q. And did you understand that you had to be

1 registered before you could vote?

2 A. Right, I knew I had to register.

3 Q. Where did you go to register to vote?

4 A. I went to the DMV in Lawrence.

5 Q. And when did you do that?

6 A. That would've been August of '14. I was going to
7 renew my driver's license and I figured I'd register to
8 vote at the same time.

9 Q. Did you take any documents with you when you went
10 to the DMV to get your driver's license and to register?

11 A. I mean, an old driver's license, utility bills, I
12 think, to provide my proof of residency.

13 Q. And did the subject of registering to vote come
14 up while you were at the DMV?

15 A. It did. I don't remember if the clerk asked or
16 if I just volunteered the information.

17 Q. Did the driver's license examiner mention that
18 you would have to provide documentary proof of
19 citizenship in order to complete your voter
20 registration?

21 A. Not that I recall.

22 Q. Did the driver's license examiner tell you that
23 you lacked any documentation required to register to
24 vote?

25 A. Not that I recall.

1 Q. When you left the DMV in August of 2014, did you
2 believe you had-- you needed to do anything else, to
3 provide any additional documentation in order to
4 complete your voter registration?

5 A. No.

6 Q. When you left the DMV in August of 2014, did you
7 believe you were registered to vote?

8 A. Yes.

9 Q. Was there a point sometime after you registered
10 to vote at the DMV in August of 2014 when you came to
11 learn that you were, in fact, not registered to vote?

12 A. It was a couple months later, I think I received
13 a postcard in the mail.

14 Q. And do you remember what the origination of that
15 postcard was, what office sent it to you?

16 A. It would have been the Douglas County Clerk's
17 Office.

18 Q. Was the-- was that mailing the first time you
19 learned that you needed to provide documentary proof of
20 citizenship in order to register to vote in Kansas?

21 A. I think so.

22 Q. After receiving that first mailing, did you have
23 any further written communication from the county
24 election office about becoming a registered voter?

25 A. I think there was a letter. It would have been

1 following that, but I think that was within 2015, early
2 2015 that a letter followed.

3 Q. Okay. When-- when did-- okay. So early 2015.

4 Did the written notices you received from the
5 county clerk's office mention any way you could complete
6 your voter registration without submitting documentary
7 proof of citizenship, such as requesting a hearing
8 before any state board?

9 A. Not that I recall.

10 Q. Based on the written notices you received from
11 the county election office, what did you understand
12 about your registration status in the late summer or
13 early fall of 2014?

14 A. That the registration was on hold until I could
15 provide documentation proving citizenship.

16 Q. Did you try to vote in the general election that
17 would've been held in November of 2014?

18 A. No.

19 Q. Why not?

20 A. I wasn't registered to vote.

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

22 A. No.

23 Q. Have you ever had any U.S. naturalization
24 documents?

25 A. No.

1 Q. Have you ever served in the United States
2 military?

3 A. No.

4 Q. Are you an American Indian?

5 A. No.

6 Q. Do you have a certificate of citizenship issued
7 by the U.S. Citizenship and Immigration Service?

8 A. No.

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

11 A. No.

12 Q. Do you have any hospital document, other than a
13 birth certificate, that would show you were born at a
14 certain hospital at a certain place?

15 A. No.

16 Q. At the time you went to the DMV office in August
17 of 2014, did you-- did you personally possess a copy of
18 your birth certificate?

19 A. No, I did not.

20 Q. At the time you went to the DMV office in
21 August 2014, did you know where your birth certificate
22 was?

23 A. Not exactly, no.

24 Q. Did you try to figure out how to obtain a copy of
25 your birth certificate from a government agency at that

1 time?

2 A. I mean, yeah, I went online. I asked Google.
3 The majority of the responses seemed to be ads, most of
4 them money-driven, pay us, we'll provide the documents.
5 I didn't know if I needed to go to-- the state
6 department in Illinois might have it, or even with being
7 born on the federal property of the base if the state
8 keeps those records or if that's a federal matter. So I
9 made an attempt, but I didn't get very far, no.

10 Q. Were you ever able to figure out how to order a
11 copy of your birth certificate from a government agency?

12 A. No.

13 Q. When the Douglas County Clerk's Office advised
14 you that you needed documentary proof of citizenship to
15 complete your voter registration, did you believe that
16 anyone in your family might've had a copy of your birth
17 certificate?

18 A. I knew there was a copy located at my
19 stepfather's house somewhere. My mother had had it, but
20 she had passed in 2013, October of 2013. And we didn't
21 really know if it was still contained out there with
22 some of the leftover items when I moved out or if it had
23 been given to me with some documents when she passed, or
24 originally given to me when I left the house. I mean, I
25 searched my belongings and was unable to locate it.

1 Q. What efforts did you make to find your birth
2 certificate?

3 A. Well, I-- I went through, you know, the folders
4 that I had been given when I moved, documents,
5 Tupperware, storage containers I had been given when she
6 passed. We also went through some storage sheds at my
7 stepfather's house, my old room, the basement, so forth.

8 Q. Okay. Did you eventually find your birth
9 certificate when you looked in 2014?

10 A. No. I didn't never-- I did not find it.

11 Q. Did you personally ever find your birth
12 certificate?

13 A. No, I-- I never actually located it.

14 Q. Did anyone else find your birth certificate?

15 A. Yes. My sister was able to locate the document
16 in a fire safe in what had been my mother's closet, and
17 gave that to my fiancée, who then gave it to me.

18 Q. Okay. Were you present when your birth
19 certificate was found?

20 A. No.

21 Q. Do you remember approximately when your fiancée
22 presented you with the birth certificate that your
23 sister had found?

24 A. No, I-- I don't have that date.

25 Q. Do you recall being subject to a deposition in

1 this case?

2 A. Yes.

3 Q. Do you remember when that deposition was?

4 A. I want to say spring of last year.

5 Q. If I-- I'll represent to you that your deposition
6 was in May 10th of 2016, does that help you remember in
7 relation to your deposition when you were presented with
8 a copy of your birth certificate?

9 A. I think it was a few weeks prior to the
10 deposition. Maybe two or three.

11 Q. Thank you. Okay. So to sum up today, at the
12 time you registered to vote at the DMV in August of
13 2014, you did not possess a copy of your birth
14 certificate; is that correct?

15 A. Correct.

16 Q. And at that time, in August of 2014, you did not
17 know where to find a copy of your birth certificate; is
18 that correct?

19 A. Correct.

20 Q. And at the time-- at that time you did not know
21 how to obtain a copy of your birth certificate because
22 you were born at a hospital on an Air Force base; is
23 that right?

24 A. Yes.

25 Q. And at that point, in August of 2014, when you

1 tried to register to vote, did you have any idea how you
2 could comply with Kansas' law requiring you to provide a
3 birth certificate to complete your voter registration?

4 A. Short of providing the birth certificate, no.

5 Q. Since the Court issued the preliminary injunction
6 in May of 2016, did you vote in the November 2016
7 presidential election?

8 A. Yes.

9 Q. And did you vote in any local elections in-- held
10 in Lawrence in 2017?

11 A. Yeah, I voted in the local elections, City
12 Council, so forth.

13 MR. BONNEY: No further questions, Your
14 Honor. Thank you.

15 THE COURT: Mr. Thompson-- Johnson. I'm
16 sorry. Mr. Johnson.

17 MR. JOHNSON: Nothing, Your Honor. Thank
18 you.

19 THE COURT: All right. Cross examination.

20 CROSS EXAMINATION

21 BY MR. ROE:

22 Q. Hello, Mr. Fish.

23 A. Hello.

24 Q. When you went to the DOV and applied to register
25 to vote, you were renewing your license; is that

1 correct?

2 A. Yes.

3 Q. And so you were able to obtain a renewed license
4 without providing like your birth certificate or
5 something?

6 A. Yes.

7 Q. Okay. I have here-- and you said you-- you said
8 you did apply to-- you said you did want to register to
9 vote when you went to the DOV; is that correct?

10 A. Yes.

11 Q. Okay. I have here a Joint Exhibit 825.

12 MR. BONNEY: Do you have a copy for me?

13 MR. ROE: No, I'm sorry.

14 MR. BONNEY: Did you say 805?

15 MR. ROE: 825, the registration receipt.

16 MR. BONNEY: Thank you.

17 Q. (BY MR. ROE) Do you-- have you seen that
18 document before?

19 A. I can't say for sure.

20 Q. Do you recall seeing a document that looks like
21 that at your deposition?

22 A. I'm sorry. I can't say for sure.

23 Q. That's fine. So you do not recall receiving one
24 of those when you left the Division of Vehicles; is that
25 correct?

1 A. That's correct.

2 Q. But do you know for sure-- I mean, do you-- could
3 you have-- is it possible you've lost it-- lost it when
4 you left, or that maybe you got one and you just
5 misplaced it? Is that possible?

6 MR. BONNEY: Objection, Your Honor. Calls
7 for speculation. He said he didn't recall receiving it.

8 THE COURT: Overruled. You can answer it if
9 you can.

10 A. I neither recall nor-- I don't remember getting
11 this one way or the other, sir. I'm sorry. I may have,
12 I may not.

13 Q. (BY MR. ROE) Do you recall if you said something
14 different at your deposition from that question?

15 A. If I received this or not?

16 Q. As to whether or not it was possible that you--
17 that you forgot it and-- sorry. Is it possible that you
18 received one and forgot?

19 A. That is a possibility.

20 Q. Okay.

21 A. As I stated, one way or the other I can't really
22 answer that question for you. If you want me to confirm
23 that I got this, I can't confirm or deny.

24 Q. Okay. Thank you.

25 A. This particular copy identifies gender as female,

1 so I doubt if it was given to me.

2 Q. That's probably accurate.

3 MR. ROE: Joint Exhibit 861, Your Honor.

4 Q. (BY MR. ROE) Do you recall seeing something like
5 this at your deposition?

6 A. Yes.

7 Q. Okay. I'll represent to you that this is a copy
8 of your ELVIS file in the Kansas State's-- Kansas-- in
9 the Kansas ELVIS file-- ELVIS database, which is the
10 Kansas voter registration database. Is that your name
11 at the top?

12 A. Yes.

13 Q. Okay. And is that still your address?

14 A. Yes.

15 Q. So you've moved back to Lawrence? I think at
16 your deposition you said you had moved to Tonganoxie; is
17 that correct?

18 A. Yes. We stayed in Tonganoxie briefly and we
19 moved back to Lawrence when housing was available.

20 Q. Okay. And you've not attempted to re-register to
21 vote since that date?

22 A. No. I would've registered to have voted in order
23 to be able to vote in primaries.

24 Q. I'm sorry. Could you repeat that?

25 A. I said I believe I would've had to have

1 registered to vote and for that to go through in order
2 to be able to vote in the primaries.

3 Q. I'm asking you, have you-- have you submitted
4 another Kansas voter registration application since you
5 applied to register to vote at the DMV?

6 A. I believe so. Upon moving back to Lawrence,
7 changing my address at the DMV, I would've filed
8 another-- registered again to vote, provided the
9 documentation required. And I did vote, so...

10 Q. It's your testimony today that you filed another
11 voter registration application in Kansas?

12 A. I think so.

13 Q. Do you know what date?

14 A. -- unless providing the first one--

15 Q. I'm sorry. Do you know what date that would've
16 been? I'm sorry. Did you-- did you apply-- did you
17 fill out a-- a voter registration application, or did
18 you change your name online-- or did you change your
19 address online with the DMV? Do you recall?

20 A. I changed my address at the DMV in person.

21 Q. Okay. And that was when you--

22 A. And I believe I registered to vote that-- when I
23 changed my address upon moving back to Lawrence.

24 Q. Uh-huh. And what date was that?

25 A. It would've been in either September or October

1 of 2016, I believe.

2 Q. So it's your testimony today that you submitted
3 another voter registration application in October 2016?

4 A. When I relocated from Tonganoxie to Lawrence, I
5 changed my address to the Lawrence address we were
6 moving to. And in doing so at the DMV, I would've
7 registered to vote.

8 Q. So is that a second time that you applied to
9 register to vote at the DMV? Are you sure you're not
10 thinking of August of 2014?

11 A. I'm not positive.

12 Q. Okay. You look at that-- that document in front
13 of you. Do you see where it says "federal data," the
14 right side? Is it possible that's the date you're
15 thinking of approximately? Let me put it this way--

16 A. 8-21 of '14?

17 Q. Yes.

18 A. That would've been the application that was
19 denied.

20 Q. Right. Let me put it this way: Have you
21 registered to vote since your deposition?

22 A. I believe so, as I have successfully voted, and
23 the first attempt to register to vote was denied.

24 Q. Are you aware of the current preliminary
25 injunction in this case?

1 A. I'm sorry, the what?

2 Q. You're aware of the current preliminary
3 injunction in this case?

4 A. No.

5 Q. Okay. It's fine. We'll talk to somebody else
6 about this.

7 Okay. Okay. And did you present proof of
8 citizenship when you did that, when you went back to the
9 DMV?

10 A. Yes.

11 Q. You--

12 A. The-- yes, the birth certificate had been
13 located. It had been located as of the time of giving
14 the deposition, and I was able to provide proof of
15 citizenship and I was able to vote in the primaries.

16 Q. It's your testimony today that you have provided
17 proof of citizenship to the DMV?

18 A. Upon the-- the second-- that I recall, the second
19 registration to vote, yes. I provided the birth
20 certificate at that time, was able to successfully
21 register to vote, and was able to vote in the primaries
22 that, you know, Trump versus Clinton--

23 Q. Okay.

24 A. -- primaries.

25 Q. I understand that you-- you voted. I'm not

1 disputing that you voted in the primaries. I just want
2 to make sure that you are claiming today that you have
3 provided a proof-of-citizenship document, a birth
4 certificate, to the Division of Vehicles.

5 A. Yes. Not on the August 2014 date. The birth
6 certificate was lost as of then, and then it was
7 located. Once it was located--

8 Q. I'm sorry. You said August of 2016 is what
9 you're telling me, or approximately?

10 A. I can't verify for the date approximately in 2016
11 that we moved. We didn't get to move on our time
12 schedule, there was a change of plans. So I may not
13 have it 100 percent correct in my head, but we moved in
14 2016.

15 When we moved, I changed my driver's license to
16 reflect the address. When I did change the driver's
17 license, I registered to vote at that time, if I recall
18 correctly, and provided my birth certificate at that
19 time and was able to successfully vote.

20 Q. Okay. You have produced a copy of your birth
21 certificate in this case. Right?

22 A. Yes.

23 Q. And you were-- do you recall that-- do you recall
24 a lot of questioning where you were offered the chance
25 to give the Secretary of State's Office a copy of that

1 birth certificate and get you to-- help you to complete
2 your registration at that time?

3 A. I'm not sure I understand the question. Could
4 you repeat that, please?

5 Q. Do you recall-- do you recall being offered by
6 the Secretary of State's Office during your deposition
7 to-- to help you register to vote by sending your birth
8 certificate-- a copy of your birth certificate to the
9 county election office and you declining?

10 A. And that would've taken place during the
11 deposition?

12 Q. Yes. Do you recall that?

13 A. No. The document had been located as of the time
14 of the deposition.

15 Q. That's correct, right.

16 THE COURT: Mr. Roe, if you need some time
17 to find it, we can take a break now. It's about time
18 anyway.

19 MR. ROE: Your Honor, I'm sorry. Just a
20 couple of minutes. Thank you.

21 THE COURT: All right. We'll be in recess
22 for 15 minutes.

23 (Recess).

24 THE COURT: All right. You can be seated.

25 Q. (BY MR. ROE) Do you recall we were-- we were

1 discussing, you know, the line of questioning where we
2 had offered to provide you-- or to help get you
3 registered to vote if you would, you know-- if you
4 wanted us to take your birth certificate, a copy of it
5 and send it to the election-- the Douglas County
6 Election Office and help you get registered to vote. Do
7 you recall that line of questioning from your
8 deposition?

9 A. No, I'm afraid I don't.

10 Q. If I showed you a copy of your deposition, would
11 that help refresh your memory?

12 A. Sure.

13 MR. ROE: Okay. It is Page 79, Line 12
14 through Page 80, Line 1.

15 Q. (BY MR. ROE) Is that your name?

16 A. Yes.

17 MR. BONNEY: Mr. Roe, would you tell me the
18 line number again? I could not hear you.

19 A. It starts at Line 12.

20 MR. ROE: Line 12.

21 MR. BONNEY: Thank you. To what?

22 A. 25 is I believe what you have highlighted here,
23 sir.

24 Q. (BY MR. ROE) Yeah. Do you recall that line of
25 questioning now?

1 A. Yeah.

2 Q. So do you remember that this office-- this office
3 offered to take your-- your copy of your birth
4 certificate and provide it to the Douglas County
5 Election Office previously. Correct?

6 A. Well, they asked in that statement there now that
7 the document has been found, you know, am I interested
8 in providing it or not. And I replied that, you know, I
9 was as long as it didn't endanger my standing with this
10 case.

11 Q. Right. So at the time you said no, you didn't
12 want us to do that? You said-- sorry, you said-- you
13 said you didn't have a desire to do that at the time.
14 Right?

15 A. I believe it reads that-- it states that now that
16 the document has been located, there's a question as to
17 whether or not I'm going to submit it. I don't believe
18 Mr. Kobach's office offered to directly take it and do
19 it for me in that statement there. And I respond with
20 that I do intend on registering, but I need to make sure
21 that it's not going to endanger my standing, my ability
22 to follow this through with the ACLU before I do so.
23 And I believe that's what I read on the document you
24 gave me.

25 Q. It's correct that this office offered to-- to

1 help you-- to register you to vote. Correct?

2 MR. BONNEY: Asked and answered, Your Honor,
3 object.

4 MR. ROE: That was a different question.

5 THE COURT: Proceed. Overruled.

6 Q. (BY MR. ROE) This office offered to-- to-- now
7 that you have a copy of your birth certificate, to--
8 that you would like to register to vote. Correct?

9 A. They asked-- I believe the way it reads is they
10 asked if I'm going to register to vote.

11 MR. ROE: Can I let him see it one more
12 time, Your Honor?

13 THE COURT: Go ahead.

14 MR. ROE: Page 79, Line 12 through Line 16.

15 A. Well, they asked, "Would you like to register to
16 vote and be registered?" There's no offer to do this
17 for me. They... and my response is, as I've stated,
18 that I would like to do so, but I wanted to make sure it
19 wouldn't endanger my standing, my ability to see this
20 through with the ACLU.

21 MR. ROE: Okay. Thank you very much.

22 MR. BONNEY: Are you done?

23 MR. ROE: Yes.

24 MR. BONNEY: Your Honor, I have two
25 questions I think on redirect.

1 REDIRECT EXAMINATION

2 BY MR. BONNEY:

3 Q. Mr. Fish, when you went to the DMV in October or
4 so of 2016 to change your address, is it possible that
5 you did not, in fact, take your birth certificate with
6 you?

7 A. It's possible. I mean, I'm-- it was-- it was a
8 while ago. I'm sorry, I don't remember exactly, but
9 it's possible.

10 Q. Okay. And now, do you still have Defendant's
11 Exhibit 861 in front of you?

12 A. Is that the voter report or the--

13 Q. Yes.

14 A. Okay.

15 Q. The voter report. It's a multi-page document.

16 A. Yes.

17 Q. Okay. Now, the pages are not numbered, but I'm
18 going to ask you to-- they're double-sided, so I'm going
19 to ask you to go to the-- the backside of the third page
20 of Defendant's Exhibit 861.

21 A. I'm sorry, mine is not double-sided.

22 Q. Oh, okay. Go to the-- well, let's see, the sixth
23 page then.

24 MR. BONNEY: Your Honor, may I approach the
25 witness just to see if I'm on the same page?

1 THE COURT: Yes. Sure.

2 A. Okay.

3 Q. (BY MR. BONNEY) And on the right-- or the left
4 side of the page on-- about midway down there's a box.
5 And at the top the headings are "jurisdiction,"
6 "description," "date modified" and "file type." Do you
7 see that?

8 A. Okay.

9 Q. And below that in "jurisdiction," it says
10 "Douglas" and there are six lines; is that correct?

11 A. I only see five lines. But yeah, it's Douglas
12 jurisdiction. I'm sorry, one is highlighted. I
13 apologize.

14 Q. One is highlighted. So including the highlighted
15 line, do you see six lines there?

16 A. Yes.

17 Q. And if you look under "date modified," the first
18 three lines say 8-18-2016. Did I read that correctly?

19 A. 10-18-2016?

20 Q. I'm sorry, 10-18. Yes, I did not read that
21 correctly. So 10-18-2016.

22 A. Yes.

23 Q. I read that correctly this time?

24 A. Yes.

25 Q. Okay. And the bottom three lines, the date is

1 8-21-2014. Did I read that correctly?

2 A. Yes.

3 Q. All right. If you look at the-- the second line
4 there and then the fifth line under the description, it
5 says "proof of citizenship." Do you see that?

6 A. Yes.

7 Q. Now, when you went to the DMV to get your new
8 license and when you registered to vote in August of
9 2014, did you take your driver-- I mean your birth
10 certificate with you at that time?

11 A. No.

12 Q. Why not?

13 A. I didn't have it in 2014.

14 Q. Thank you.

15 MR. BONNEY: Nothing further, Your Honor.

16 MR. ROE: Cross?

17 THE COURT: Anything more from the Fish--
18 or, I'm sorry, from Mr. Bednasek? Mr. Johnson, anything
19 from you?

20 MR. JOHNSON: Nothing, Your Honor. Thank
21 you.

22 THE COURT: Mr. Roe.

23 RECROSS EXAMINATION

24 BY MR. ROE:

25 Q. On that same box, same page, next to where it

1 says DMV COA, 10-18-2016, what time is that?

2 A. I'm sorry, which line?

3 Q. The first line and the second line, it looks to
4 me-- well, it's close to the same time.

5 A. I just-- make sure we're on the same page. So
6 the highlighted line and the one under it?

7 Q. Correct. What are the times?

8 A. Okay. Let's see. The highlighted one is a
9 little difficult, but it looks like 7:35 p.m.

10 Q. Okay.

11 A. And directly underneath that would be 7:35 p.m.
12 as well.

13 Q. Okay. And-- okay.

14 MR. ROE: That's all. Thank you.

15 MR. BONNEY: Nothing further, Your Honor.

16 THE COURT: All right. May Mr. Fish be
17 excused?

18 MR. BONNEY: He may.

19 THE COURT: All right. You're excused.

20 Thank you. Call your next witness.

21 MS. LIU: Fish plaintiffs call Ms. Tabitha
22 Lehman.

23 MR. ROE: Could we take five minutes to get
24 the witness?

25 TABITHA LEHMAN,

1 called as a witness on behalf of the Fish Plaintiffs,
2 having first been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. LUI:

5 Q. Good afternoon, Ms. Lehman.

6 A. Hi.

7 Q. I'm Angela Liu, counsel for Fish plaintiffs.

8 It's nice to see you again. Could you please state your
9 name and spell it for the court reporter?

10 A. Sure. It's Tabitha Lehman. That's
11 T-A-B-I-T-H-A. L-E-H-M-A-N.

12 Q. And, Ms. Lehman, you're currently the county
13 election commissioner for Sedgwick County. Correct?

14 A. Correct.

15 Q. And you were appointed to this role by Secretary
16 Kobach. Correct?

17 A. Correct, yes.

18 Q. You report directly to Secretary Kobach.
19 Correct?

20 A. Correct.

21 Q. He supervises you. Correct?

22 A. Correct.

23 Q. Secretary Kobach is the chief election office
24 official of the state. Correct?

25 A. Correct.

1 Q. He's serving as your counsel and his own counsel
2 today. Correct?

3 A. Correct.

4 Q. In your role as Sedgwick County election
5 commissioner you're responsible for conducting voter
6 registration. Correct?

7 A. Correct.

8 Q. Processing voter registrations you're also
9 responsible for. Correct?

10 A. Correct.

11 Q. You're also responsible for following up on
12 proof-of-citizenship documents as well. Correct?

13 A. Correct.

14 Q. You've held the position since-- as Sedgwick
15 County election commissioner since November of 2011.
16 Correct?

17 A. Yes.

18 Q. And Sedgwick County is the second largest county
19 in Kansas. Correct?

20 A. Yes.

21 Q. Sedgwick County has approximately a half million
22 people. Correct?

23 A. Yes.

24 Q. And part of your responsibilities as Sedgwick
25 County commissioner is attempting to identify instances

1 of non-citizen registration. Correct?

2 A. Yes.

3 Q. And you take that responsibility very seriously.
4 Correct?

5 A. As I do all of my responsibilities, yes.

6 Q. And you understand that Secretary Kobach takes
7 non-citizen registration seriously as well. Correct?

8 A. Yes.

9 Q. And you understand that among Secretary Kobach's
10 powers is the power to prosecute non-citizen voting.
11 Correct?

12 A. Correct.

13 Q. Because that's something he takes very seriously.
14 Correct?

15 A. Correct.

16 Q. You're not the only employee in the Sedgwick
17 County Election Office. Right?

18 A. Correct.

19 Q. You have a staff that works for you. Correct?

20 A. Yes, I do.

21 Q. You instruct your staff that non-citizen
22 registration and voting is serious for Secretary Kobach
23 and, therefore, it's serious for your office. Correct?

24 A. I would say that's a generalization. I instruct
25 them that every duty that we have is very serious and

1 there's not really a weight given to one over the other.
2 They're all very serious.

3 Q. But non-citizen registration is serious for your
4 office. Correct?

5 A. Correct, as is everything.

6 Q. You have approximately ten people who work for
7 you. Correct?

8 A. Correct.

9 Q. And they help process registration forms.
10 Correct?

11 A. Yes.

12 Q. And in that process they discover instances they
13 suspect of non-citizen registration. Correct?

14 A. They have, yes.

15 Q. And when staff members discover instances that
16 they suspect are non-citizens who are registering or
17 attempting to register, they report them to you.
18 Correct?

19 A. That is correct.

20 Q. And then you report those names to Secretary
21 Kobach. Correct?

22 A. Correct.

23 Q. Since you've been the Sedgwick County election
24 commissioner, there's only been one prosecution of any
25 of the names you've passed along. Correct?

1 A. I'm not entirely sure if that's the case. That
2 might be better directed to someone else. I believe
3 that's true, but that may not be.

4 Q. And you're the Sedgwick County election
5 commissioner. Correct?

6 A. Well, meaning-- can you define what type of
7 prosecution?

8 Q. Whether there's a prosecution of non-citizen
9 registration.

10 A. As of the time that I-- in the time that I have
11 been election commissioner, one case has been
12 prosecuted. One was prosecuted prior to me being
13 election commissioner.

14 Q. Before submitting the names to Secretary Kobach
15 then you examined the applicant's file. Correct?

16 A. That is correct.

17 Q. You look at the applicant's DMV records,
18 naturalization papers, and whatever else you have in the
19 applicant's file. Correct?

20 A. That is correct.

21 Q. Because you want to be careful before sending the
22 applicant's name over to Secretary Kobach. Correct?

23 A. Correct.

24 Q. Because you want to be sure before sending the
25 applicant's name over that it's an improper attempt to

1 register by a non-citizen. Correct?

2 A. Yes.

3 Q. Because you want to be sure that it's an instance
4 of impropriety or fraud. Correct?

5 A. Correct.

6 Q. So let's talk about a woman who in court we'll
7 refer to as E.E.

8 MS. LIU: Your Honor, may I approach?

9 THE COURT: Yes.

10 MS. LIU: Let the record reflect that I'm
11 handing opposing counsel a binder of exhibits.

12 Q. (BY MS. LIU) And, Ms. Lehman, if you could
13 please turn to Tab 9. That is Plaintiffs' Exhibit 8,
14 which has been admitted into evidence.

15 And this applicant lives in Sedgwick County.
16 Correct?

17 A. Correct.

18 Q. So E.E. is a woman who was asked if she wanted to
19 register and answered with "no" to the question, "Are
20 you a citizen of the United States?" Correct?

21 A. Correct.

22 Q. So notwithstanding that Ms. E.E. checked no,
23 she's not a citizen, your office received her form.
24 Correct?

25 A. Correct.

1 Q. And in your view, that is an instance of
2 non-citizen-- of a non-citizen who attempted to register
3 to vote. Correct?

4 A. I think because when you look at the oath above
5 the signature, it says, "I swear or affirm that I'm a
6 citizen of the United States and a resident of the state
7 of Kansas," and that E.E. signed that, then yes, that
8 would be.

9 Q. And you see where it says, "Are you a citizen of
10 the United States of America?" Correct?

11 A. Yes.

12 Q. And you see that she's checked "no." Correct?

13 A. Correct. But it would be a case where it would
14 be something anomalous to report up.

15 Q. So in your view, that's an instance of a
16 non-citizen who attempted to register to vote. Correct?

17 A. I think it's a dicey one so I send it on. I'm
18 not sure how to answer that. It's-- there is some
19 ambiguity there so I send it on.

20 Q. So you sent it on--

21 A. Correct.

22 Q. -- to Secretary Kobach.

23 So let me show you a note from Ms. A.S. If you
24 could please turn to Tab 7, Exhibit 99. It's also
25 already been admitted into evidence. And please turn to

1 Page 4. And in this note A.S. told you that she is not
2 a citizen. Correct?

3 A. Correct.

4 Q. And, in fact - and let's turn to the next page -
5 when you told Secretary Kobach and Brad Bryant about Ms.
6 A.S., Mr. Bryant, who's the former election director,
7 replied on March 28th, 2014 at 10:31 a.m., "I just wish
8 DMV would not register people who they know to be
9 non-citizens." And you agreed with that. Correct?

10 A. Correct.

11 Q. You agree with me that A.S. was not committing
12 fraud or attempting-- attempted fraud. Correct?

13 A. I would agree that I received a voter
14 registration application for A.S., and that is what I
15 would agree to. That I received a voter registration
16 application, that is why we sent the notification to
17 A.S. and that is why she returned it to our office.
18 That notification was a request for proof-of-citizenship
19 document and it was returned to our office with a note
20 saying they were not a citizen.

21 Q. So just a yes or no. You agree with me that A.S.
22 was not committing fraud or attempted fraud in this
23 situation. Correct?

24 A. I don't think I can give you a yes or no on that,
25 because I was not standing there at the DMV when she

1 completed this process so I cannot answer that.

2 MR. KOBACH: I want to register an
3 objection. It calls for a legal conclusion.

4 THE COURT: All right. I'll sustain.

5 Q. (BY MS. LIU) Do you agree with me that this
6 wasn't someone who was trying to cheat the system.
7 Correct?

8 A. As far as I know, correct.

9 Q. This is someone who told the DMV that she is not
10 a citizen. Correct?

11 A. As far as I know.

12 Q. And this was a mistake by the DMV. Correct?

13 A. It would appear to be.

14 Q. Thank you.

15 THE COURT: Mr. Johnson, do you have any
16 questions of this witness?

17 MR. JOHNSON: That was fast. Kind of caught
18 me unaware.

19 CROSS EXAMINATION

20 BY MR. JOHNSON:

21 Q. Ms. Lehman, my name is Mark Johnson. We haven't
22 met before. Pleasure to meet you. I'm here as you
23 probably know on behalf of Parker Bednasek in a case
24 separate from the Fish case.

25 Some of the questions that I had intended to ask

1 have already been asked of you. So I'm going to quickly
2 move through this thing, see if I can eliminate many of
3 the questions I had. Your position, that of Sedgwick
4 County election commissioner, is an appointive, not an
5 elective position; is that correct?

6 A. That is correct, and I already answered that,
7 yes.

8 Q. Yes. And you were first appointed in November of
9 2011?

10 A. Correct.

11 Q. And that was to fill an un-- two years of an
12 unexpired term; is that correct?

13 A. That is correct.

14 Q. And then in 2013, you were re-appointed for a
15 full four-year term; is that correct?

16 A. That is correct.

17 Q. And you were appointed by Secretary Kobach; is
18 that correct?

19 A. Correct.

20 Q. And then in 2017 you were re-appointed for
21 another four-year term; is that correct?

22 A. That is correct.

23 Q. Also you were-- at that time you were appointed
24 by Secretary Kobach--

25 A. That is correct.

1 Q. -- correct? Do you serve at Secretary Kobach's
2 pleasure? In other words, could he fire you if he
3 became dissatisfied with your performance?

4 A. I believe the statute says something about I have
5 to basically break the law for him to fire me, but he
6 can certainly not re-appoint me.

7 Q. Okay.

8 A. I'd have to go back and look at the statute for
9 sure, though.

10 Q. All right. And so if you finish your-- the term
11 that you now are in, you will-- you will have been
12 Sedgwick County election commissioner for ten years; is
13 that right?

14 A. Correct.

15 Q. Now, you're aware of a rule called Kansas
16 Annotated Regulation 7-23-15, aren't you?

17 A. Yes, I am.

18 Q. Is it correct, as you understand it, that 7-23-15
19 is the rule under which individuals who have not
20 supplied all the necessary information with their voter
21 registration have 90 days to do so?

22 A. Correct.

23 Q. And if they fail to provide that information
24 within 90 days, their registrations are cancelled?

25 A. Correct.

1 Q. And in that period, that 90-day period, their
2 registration is considered incomplete?

3 A. Correct.

4 Q. They are put on a suspense or a suspended list;
5 is that right?

6 A. Suspense, yes. Correct.

7 Q. Suspense list. And during that period of time if
8 an election were to occur, they would not be allowed to
9 vote, they would not be registered voters?

10 A. If they used the Kansas registration form, that
11 is correct.

12 Q. Okay. That's a good point. There's the
13 distinction between--

14 A. It's a very big distinction.

15 Q. It's an important distinction, at least at this
16 point.

17 A. Correct.

18 Q. Okay. Is it correct that you were-- your office
19 was instructed by the Secretary of State's Office to
20 move registrants from incomplete to cancelled if they
21 did not provide the necessary information within the
22 90-day period?

23 A. If they used the Kansas form. Well, I guess at
24 that point it was everyone.

25 Q. Right.

1 A. It was prior to the preliminary injunction--

2 Q. Right. Well, the instructions were issued--

3 THE COURT: Wait, you can't talk over.

4 MR. JOHNSON: I'm sorry. That's my fault.

5 Sorry, Your Honor.

6 Q. (BY MR. JOHNSON) So when the instructions were
7 issued by the Secretary of State, they applied to all
8 applicants?

9 A. That is correct.

10 Q. And included among the pieces of information that
11 an applicant has to provide is a documentary proof of
12 citizenship?

13 A. That is correct.

14 Q. And we've obviously spent a good deal of time
15 listing the numbers of-- the number of documents that
16 comply with that requirement, haven't we?

17 A. I haven't been in here, so I don't know.

18 Q. Well, would you agree that the documents that
19 comply with the DPOC requirement are listed in the
20 statute?

21 A. Yes.

22 Q. Okay. The guidance which the Secretary of
23 State's Office supplied on the conversion, if you will,
24 of registrants from incomplete to cancelled you were
25 expected to follow?

1 A. Correct.

2 Q. And in the time since that guidance was issued,
3 have you followed that instruction to the letter?

4 A. Barring any human error, yes.

5 Q. That's a good point.

6 A. I'm not going to guarantee it because we are
7 human.

8 Q. Okay. Now, there are, as I understand it, 105
9 county election officers in Kansas; is that right?

10 A. Correct.

11 Q. And you are one of four who are appointed by the
12 Secretary of State?

13 A. That is correct.

14 Q. The others being-- the other counties, other than
15 Sedgwick County of course, being - let me get this right
16 - Douglas, Johnson and Shawnee?

17 A. No.

18 Q. What did I miss?

19 A. Johnson, Wyandotte and Shawnee. Douglas is not.

20 Q. Thank you. Okay. And the information concerning
21 registrants is maintained in the so-called ELVIS system?

22 A. That is correct.

23 Q. And, as I understand it, is it true that only the
24 counties have access to make changes in the ELVIS
25 system?

1 A. That is my understanding, yes.

2 Q. And is it your understanding that the Secretary
3 of State's Office does not have access to make changes
4 in the ELVIS system?

5 A. That is correct. It-- to registrant files. They
6 can other things but not to a voter registration file is
7 my understanding.

8 Q. Right. So when a registrant's file designation
9 is changed from incomplete to cancelled, that's
10 something that the county election office has to do?

11 A. That's correct.

12 Q. That is not done by the Secretary of State's
13 Office?

14 A. Correct.

15 Q. And am I also correct in believing that the--
16 that the changes in the ELVIS system are not automatic,
17 they're manual?

18 A. That is correct.

19 Q. So if a registrant has failed to provide the DPOC
20 within the 90-day period specified under 7-23-15,
21 someone on your staff has to manually access that
22 registrant's file to make the change from incomplete to
23 cancelled?

24 A. That is correct.

25 Q. Now, I understand that you have had

1 representatives of your office at-- attend
2 naturalizations-- boy, naturalization ceremonies. This
3 was my water, so don't worry about it.

4 A. Yes, that is correct.

5 Q. Naturalization ceremonies in Sedgwick County?

6 A. That's correct.

7 Q. Would you agree with me that the individuals who
8 become naturalized citizens in those ceremonies in
9 Sedgwick County are not all residents of Sedgwick
10 County?

11 A. That is correct.

12 Q. They're-- in fact, people in naturalization
13 ceremonies are drawn from throughout the state?

14 A. Yes.

15 Q. Probably if for no other reason than many of them
16 live in counties or towns that are simply too small in
17 population terms to have their individual-- you know,
18 have individual ceremonies?

19 A. Probably.

20 Q. Okay. And you started, as I remember, sending
21 representatives to the naturalization ceremonies in
22 2013; is that right?

23 A. Correct. That's correct.

24 Q. And you have had representatives of your office
25 attend these ceremonies since that time?

1 A. Correct.

2 Q. So now for five years or so?

3 A. (Nods head up and down).

4 Q. Okay. And you send representatives of your
5 office to those ceremonies to attempt to register the
6 newly-naturalized citizens?

7 A. That is correct. And if I could expound for just
8 a moment, I'd like to give a little bit of background.
9 We did not first attend those immediately until we
10 started receiving calls with reports from--

11 Q. Why don't-- why don't you handle that on cross
12 examination--

13 A. Okay, that's fine.

14 Q. -- on redirect examination because that exceeds
15 the scope of my question.

16 A. Okay.

17 Q. I believe last year, would you agree, that at
18 least in April of 2017 there was as many as three
19 naturalization ceremonies in Sedgwick County every week?

20 A. There are some weeks where there are not, but
21 most weeks there are three a week, yes.

22 Q. Can you tell us, if you know, how many
23 naturalization ceremonies your office has covered since
24 it started doing so in 2013?

25 A. I can't off the top of my head, I'm sorry.

1 Q. Would it be dozens, would it be hundreds?

2 A. Well, I would say it might be a couple hundred,
3 probably be more than a couple hundred.

4 Q. Okay.

5 A. Because they did not start doing the weekly until
6 2016. So prior to that it was quarterly.

7 Q. Got it. And you received notice from the
8 immigration office as to when they are going to hold
9 immigration ceremonies?

10 A. Yes, we do.

11 Q. And-- and to the best of your ability, you have
12 attended-- pardon me, attempted to have representatives
13 of your-- of your office at every naturalization
14 ceremony in Sedgwick County since you started in 2013?

15 A. I believe we have if it has been in Sedgwick
16 County, yes.

17 Q. Now, these-- at these ceremonies, they don't
18 naturalize just one or two people, they naturalize
19 dozens or hundreds, would you agree with that?

20 A. The weekly ones might be ten or 20.

21 Q. Okay.

22 A. At each one.

23 Q. But there have been-- there are some where they
24 have dozens or hundreds of citizens to naturalize?

25 A. Absolutely.

1 Q. Very good. And are the people who come from your
2 office instructed to sort of affirmatively approach the
3 new citizens and ask if they wish to register?

4 A. I believe we just have a presence that has a big
5 sign that says "register to vote here" and they can come
6 over to us if they would like to.

7 Q. Okay. And the-- the spreadsheet, you have-- you
8 started to generate a spreadsheet of individuals that
9 you believed had registered before they became citizens;
10 is that right?

11 A. Correct.

12 Q. And at some point the Secretary of State's Office
13 took over maintenance of that spreadsheet; is that
14 correct?

15 A. Correct.

16 Q. You provided the information about individuals
17 that you believed had been registered incorrectly or
18 unlawfully, but it was up to the Secretary of State's
19 Office to enter that information into the spreadsheet.
20 Correct?

21 A. Correct.

22 Q. How long ago did the Secretary of State's Office
23 start taking responsibility for maintaining that
24 spreadsheet?

25 A. I don't know that I could give you a date at this

1 time.

2 Q. Last year, two years ago, three years ago?

3 A. I-- I will say I've been reporting the
4 information to them and they've been maintaining a
5 spreadsheet. I was also maintaining a spreadsheet, and
6 then it just kind of morphed into one. When that
7 happened, I cannot exactly give you a date.

8 Q. And is it correct that you have done your best to
9 provide information about every case of improper
10 registration or improper attempts to register to the
11 Secretary of State's Office?

12 A. Yes.

13 Q. And is it your testimony that the spreadsheet in
14 whatever iteration it is - and it's been updated a
15 number of times over the years - that the latest
16 iteration of the spreadsheet is cumulative, it contains
17 every incident that you have reported to the Secretary
18 of State's Office; is that correct?

19 A. Yes, every-- I-- every case that was felt to be
20 pertinent to this conversation, yes.

21 Q. Going back to the time you started assembling the
22 information? When I say it's cumulative, I mean that it
23 doesn't just contain the examples that you reported
24 let's say between July 1st of 2017 and December 31st of
25 2017. It contains every example you've reported going

1 back to the time that you started to-- that you first
2 prepared the spreadsheet?

3 A. Yes. I had-- I did have a couple of cases on my
4 original spreadsheet that were not put on the-- the
5 secondary one for various reasons of-- and I don't
6 remember off the top of my head what they were. But
7 there were a couple more that was not pertinent to this
8 conversation.

9 Q. I think I'm finished, let me just ask one
10 question.

11 (Counsel confer).

12 MR. JOHNSON: That's all I have. Thanks
13 very much. Thank you, Your Honor.

14 CONSOLIDATED EXAMINATION

15 BY MR. KOBACH:

16 Q. Hello, Ms. Lehman.

17 A. Hi.

18 Q. I'm going to ask you some additional background
19 information that the opposing counsel didn't get to.
20 What's your educational background?

21 A. I'm sorry, what?

22 Q. What is your educational background?

23 A. I have a high school diploma and some college.

24 Q. And where did you attend college?

25 A. Right now I'm attending Minnesota University

1 Humphrey School of Public Affairs.

2 Q. And what is your job experience? What jobs have
3 you held, if you could just quickly summarize them.

4 A. Well, prior to-- I worked at a financial service
5 early on in my teens and-- or teens or early adult. And
6 then I was a stay-at-home for years, worked the
7 elections as a poll worker for many, many years. And
8 then hired into the election office.

9 Q. So how many years did you work as a poll worker
10 before you were hired into the election office?

11 A. Oh, goodness, I'd say over ten.

12 Q. And then how many years did you work at the
13 Sedgwick County Election Office prior to becoming--
14 being appointed the Sedgwick County election
15 commissioner?

16 A. About two-and-a-half, maybe three.

17 Q. And I believe opposing counsel may have asked you
18 this, but what was the month and year of your being
19 appointed Commissioner?

20 A. November of 2011. November 2011

21 Q. So if you could do the math for me, how many
22 total years have you been working in the Sedgwick County
23 Election Office?

24 A. Over nine years.

25 Q. And how many total years have you been working in

1 election administration if you count the years as a poll
2 worker?

3 A. Close to 20. Do I have to admit that?

4 Q. That's okay. Do you have a-- any full-time
5 employees in the Sedgwick County Election Office?

6 A. Yes.

7 Q. How many do you have?

8 A. Full-time we have-- other than myself, we have
9 eight. And then we have two permanent part-time.

10 Q. And does that fluctuate during election times at
11 all?

12 A. Absolutely. We hire in a great deal of
13 additional help.

14 Q. And so how many additional employees would you
15 hire typically during a fall even-year election?

16 A. Well, obviously that's going to vary between
17 gubernatorial and presidential. In presidential we
18 would probably hire in at least 15 to 20 additional
19 staff who were on the actual side of processing voter
20 registration absentee ballot applications, but then
21 there would be over 1,000 people that we hired to work
22 the polls or do special boards of counting ballots and
23 that sort of thing.

24 Q. So you're referring to hiring of the poll workers
25 as well?

1 A. Correct.

2 Q. Are they paid?

3 A. Yes.

4 Q. Do you have a-- anyone on the full-time staff of
5 your office who handles voter registrations exclusively?

6 A. Yes.

7 Q. How many people do you have that do that?

8 A. One.

9 Q. Do others help with voter registration as well?

10 A. Yes. Pretty much we all help when necessary.

11 Q. And do-- does everyone on your staff at one time
12 or another enter voter registration information into the
13 voter registration database?

14 A. I would say maybe one person does not. But other
15 than that, everyone else would.

16 Q. And just for the sake of making it easier to say,
17 is that the ELVIS database?

18 A. That's correct.

19 Q. Have you-- has your office identified any
20 non-citizens residing in Sedgwick County who have become
21 registered to vote?

22 A. Yes.

23 Q. Has your-- has your office identified any
24 non-citizens who have attempted to become registered to
25 vote in Sedgwick County since the proof-of-citizenship

1 law went into effect?

2 A. Yes.

3 Q. I'm going to show the witness an exhibit from
4 plaintiffs' folder, Defense Exhibit 1133. You've got
5 it?

6 A. I've got it.

7 Q. It's Tab 4.

8 A. Tab 4. Thank you.

9 Q. Do you recognize this document?

10 A. Yes.

11 Q. Are you familiar with this document?

12 A. Yes.

13 Q. Did you provide the information that is in this
14 document?

15 A. Yes.

16 Q. Is the information in this document kept by your
17 office?

18 A. Correct, yes.

19 Q. Is the information in this document accurate?

20 A. Yes.

21 MR. KOBACH: Your Honor, I offer into
22 evidence Exhibit 1133.

23 MS. LIU: Objection, Your Honor.

24 THE COURT: Is this 1133?

25 MR. KOBACH: Yeah, Defense Exhibit 1133.

1 THE COURT: Okay. I had it struck off the
2 exhibit list for some reason, but-- but it-- also the
3 description on my exhibit list is different than what
4 you've just said. Oh, I'm sorry, I'm looking at the
5 wrong one, Exhibit 1133. Okay.

6 MS. LIU: Your Honor?

7 THE COURT: Yes.

8 MS. LIU: This exhibit is totally hearsay.
9 She didn't personally discover each one of these entries
10 and they're based on what other people told her. And on
11 top of that, we actually--

12 THE COURT: Why don't you voir dire her
13 about this. All right?

14 MS. LIU: Okay.

15 VOIR DIRE EXAMINATION

16 BY MS. LUI:

17 Q. Hello again, Ms. Lehman. I just want to ask you
18 a few questions about the spreadsheet that Defendant
19 Kobach just asked you about. This spreadsheet is a
20 compilation that you're in charge of that puts together
21 information that other people have collected. Correct?

22 A. Actually the-- my employees reported the
23 information to me and then I collected the data that was
24 then sent on to the Secretary of State's office.

25 Q. So your employees collect the data. Correct?

1 A. No. The employees report it to me and I collect
2 the data and send it on.

3 Can you give me a little bit of definition to
4 make sure I'm answering your question accurately. When
5 you say "collecting the data," what does that mean to
6 you?

7 Q. Let's--

8 A. If that's appropriate for me to ask.

9 Q. -- just go through your transcript. Do you
10 remember being asked questions under oath at your-- at a
11 preliminary injunction hearing on the 21st of September.
12 Correct?

13 A. Yes.

14 MS. LIU: Your Honor, may I approach?

15 THE COURT: Yes.

16 Q. (BY MS. LIU) And just for clarification
17 purposes, this is the preliminary hearing transcript in
18 the *Brown v. Kobach* state court case. If you could
19 please turn to Line 101-- or sorry, Page 101, Line 19 to
20 22.

21 A. Give me just a moment. You said Page 101?

22 Q. Yes.

23 A. Yes.

24 Q. And when you were asked by Mr. Ho, "So this is a
25 compilation that you're in charge of that puts together

1 information that other people have collected. Correct?"

2 Your answer was, "Correct. That is correct." And that
3 was your answer on-- at the preliminary hearing.

4 Correct?

5 A. It appears so, yes. I must not've understood the
6 question very well. I apologize.

7 Q. So you then send this data to Secretary Kobach.
8 Correct?

9 A. Correct.

10 Q. So before submitting this data to Secretary
11 Kobach, you examine-- strike that.

12 Your office provides all the information for the
13 spreadsheet, but you did not personally create the
14 spreadsheet. Correct?

15 A. Correct.

16 Q. Someone at the Secretary of State's Office
17 ultimately created this spreadsheet. Correct?

18 A. Correct.

19 Q. And you personally don't have a conversation with
20 each applicant on this chart. Correct?

21 A. Correct.

22 Q. When you supervised the collection of this data
23 to put in this spreadsheet, this isn't because there's
24 something in a manual that requires you to do this.

25 Correct?

1 A. Correct.

2 MS. LIU: Your Honor, I would like to renew
3 my objection that this spreadsheet is totally hearsay.
4 Again, she didn't personally discover each of these
5 entries, they're based on what other people have told
6 her.

7 And on top of that, Your Honor, we've
8 received so many versions of this spreadsheet and we've
9 repeatedly requested from defense counsel the underlying
10 documents for the additional-- for all the additions in
11 the spreadsheet and we haven't received all of them yet.
12 And I also can put on as a demonstrative, if you'd like,
13 that shows all the variations of the spreadsheet that we
14 have.

15 MR. JOHNSON: Your Honor, under Rule of
16 Evidence 1006, this is a summary. And the information--
17 the underlying information has not been provided, as--
18 as Ms. Liu just indicated. Plaintiffs have requested
19 the information, it's not been provided. So under
20 Rule 1006 it should be excluded.

21 MR. KOBACH: Your Honor, the witness has
22 testified that she provides the exact information that
23 is presented on this and that she, herself, created the
24 table and all of its earlier versions and that the
25 information is the information that she provided. She

1 stated that she collects the data and sends it on.

2 And I would also point out that this-- if
3 the hearsay is the objection they're attempting to stand
4 on right now, then they should look at Rule 803(6),
5 records of a regularly conducted activity. "Record of
6 an act, event, condition, opinion, diagnosis--"
7 (reporter interruption).

8 Oh, I'm sorry, which would constitute-- "a
9 record of a regularly conducted activity. A record of
10 an act, event, condition, opinion, or diagnosis if--"
11 and then I'll just skip to the relevant parts, (A), it
12 was made at or near the time; (B), the record was kept
13 in the course of regularly conducted activity of an
14 organization--

15 THE COURT: Slow down, she can't take it
16 down.

17 MR. KOBACH: I'm so sorry.

18 THE COURT: I'll look at 803(6).

19 MR. KOBACH: Okay.

20 MS. LIU: Your Honor, she also--

21 THE COURT: All right. Can I see this
22 exhibit to start with? I have binders up here of the
23 defendant's exhibits, but for some reason mine only go
24 to 1096. Am I missing a binder of exhibits? These only
25 go through-- in any event, let me look at this. Okay.

1 Okay. So this is a spreadsheet that has the
2 date of the original registration application submitted
3 and some sort of ID number, I guess it's a registration
4 ID number, the source of registration, meaning paper,
5 DMV paper address change, in office at DMV, et cetera.
6 Current citizenship status, date of naturalization,
7 whether the person voted and then a note that seems--
8 note section that seems to be based on somebody having a
9 conversation with the person.

10 Well, let me see. Maybe not. Yeah, it
11 relates to some conversations with the person. My
12 understanding of this witness' testimony is that she's
13 not the one that had the conversations with the persons
14 but people in her office did, and she compiled that
15 information into this document.

16 It's-- it seems to me that this is a summary
17 under Rule 1006. And the rule under 1006 is you can
18 admit a summary if it summarizes documents that are and
19 have been made available to the other side, the
20 documents that support this. And it's a common sense
21 rule so that they can, in fact, have time to review the
22 documents and make sure that this summary is, in fact,
23 accurate.

24 Another concern of the plaintiffs, however,
25 is I guess it goes to the accuracy of the summary

1 because they've received multiple versions of this
2 summary.

3 At this point I'm not going to admit the
4 summary for several reasons: One, it sounds like the
5 plaintiffs don't have all the underlying documents, and
6 perhaps never had; two, they need-- if-- you need to
7 produce the documents to them under Rule 1006, give--
8 give them a chance to review them and to confirm that
9 this-- this summary is correct; and then, three, there's
10 still an issue with respect to this third column to the
11 extent it's based on hearsay statements made by
12 individuals to people that interviewed them because
13 this-- unless this witness interviewed them herself,
14 it's really double hearsay. So there's several
15 problems. So at this point I-- I'm not going to admit
16 this.

17 Do you have the underlying documents here
18 available in the courtroom?

19 MR. KOBACH: We can get them. The
20 underlying documents-- we have many of them. The
21 underlying documents are just the ELVIS files. These
22 are summaries of information in the ELVIS files and
23 summaries of information collected by Ms. Lehman's
24 office and her staff on each of these individuals.

25 And I would note that these-- it is not a

1 changing-- it's not that anything is different. There
2 have been lines added as her staff has discovered more
3 cases. Everything [sic] has changed about each prior
4 case, it's just cumulative, so more have been added and
5 they have been attached to the motions for summary
6 judgment.

7 Opposing counsel has seen these all along
8 and this is the first time they have raised-- these were
9 attached to the depositions. They have been looking at
10 this document or the earlier versions that had fewer
11 names on it for more than two years now. And all of the
12 information can be substantiated by underlying files.
13 We'd be happy to provide them with all of the underlying
14 ELVIS files. It's just a lot--

15 THE COURT: So--

16 MR. KOBACH: -- less tedious than going
17 through each file.

18 THE COURT: All right. So in discovery did
19 the plaintiffs discover all the underlying ELVIS files?
20 I mean, aren't there like 36,000 ELVIS files as the big
21 universe of--

22 MR. KOBACH: No, no. The plaintiffs-- we
23 provided this information to the plaintiffs based on the
24 ELVIS file.

25 THE COURT: Okay.

1 MR. KOBACH: I don't know if-- I think some
2 of these may have been provided to plaintiffs because
3 they just--

4 MS. LIU: Your Honor--

5 THE COURT: So they-- unless they've
6 discovered the underlying data that is in ELVIS files
7 for all of these things that are part of this summary,
8 the summary is not admissible, because they're entitled
9 to be able to discover that and compare it to make sure
10 the summary is accurate.

11 So at this point it's not admissible unless
12 you're telling me they've discovered the underlying data
13 and that they've discovered it in a way that they can
14 match it up by-- I don't know if that would be--
15 probably by ID number.

16 MR. KOBACH: By registration number, yes.

17 THE COURT: Yeah.

18 MS. LIU: Your Honor, I'd also like to add
19 that this exhibit we received on February 28th and--

20 MR. KOBACH: That's incorrect.

21 February 12th was when you received it.

22 MS. LIU: No, February 28th for one of the
23 other exhibits that's exactly the same as this one,
24 but-- but we did receive it February-- in February.

25 MR. KOBACH: Yes.

1 MS. LIU: And we still don't have the
2 underlying documents. We've been asking for the
3 underlying documents, we don't have all of them. And,
4 quite frankly-- and Ms. Lehman just testified that she
5 has not prepared this-- this spreadsheet, someone at the
6 Secretary of State's Office has prepared it. It's just
7 not allowed.

8 THE COURT: All right. So I think under
9 Rule 1000-- well, she says that she compiled information
10 given to her by others, it might've been a group effort,
11 I don't know. But I do think there's a valid concern
12 about to the extent this is-- this summary is based on
13 conversations, interviews with people, because that
14 would be hearsay. But maybe we can resolve that by
15 redacting that from the exhibit, I don't know. But at
16 this point-- I'm not there yet.

17 At this point it's not admissible because
18 the plaintiffs have not seen the documents that underlie
19 this, and Rule 1006 requires that.

20 So, you know, maybe this can-- you can
21 recall Ms. Lehman or however you want to do this.
22 They're going to need-- I mean, I don't know how many
23 entries there are.

24 MR. KOBACH: 38.

25 THE COURT: 38. So probably the most

1 efficient way to do this would be to just give them the
2 ELVIS data on these 38 files so they're not trying to
3 cull through a volume of it, which is going to cost a
4 lot more time.

5 If you can do that tonight, then, you know,
6 we can revisit the admission of this or maybe you can
7 recall Ms. Lehman and try to admit it at that point.

8 MR. KOBACH: In the interim, may we use it
9 as a demonstrative since they've had this document for
10 almost a month and we--

11 THE COURT: No.

12 MR. KOBACH: -- they've had the underlying
13 versions for years?

14 THE COURT: No, because they haven't had the
15 underlying data for this.

16 MR. ROE: Your Honor--

17 THE COURT: And similar to the demonstrative
18 exhibit that the plaintiffs wanted to use during
19 opening, which I did not let them because you hadn't
20 seen the underlying data at that point or hadn't had
21 enough notice, I didn't let them use it. So, no, not at
22 this point.

23 Because even using it demonstratively,
24 plaintiffs are not in a position to challenge it on
25 cross examination even until they can see the underlying

1 data.

2 MR. KOBACH: So are you ruling on the
3 Rule 803 exception to hearsay or are you going to hold
4 that in--

5 THE COURT: I'm going to hold that, because
6 at this point it's just a matter of procedurally--
7 this-- this has to be offered under 1006. That's what
8 this is, it's a summary.

9 The 803 is a hearsay exception which might
10 go to content of this if there's part of the content of
11 this that would be inadmissible. It's a double layer
12 analysis.

13 But the document itself is a summary under
14 Rule 1006 and the rules are that the underlying data has
15 to be provided to the other parties in a way that's
16 accessible, common sense, so that they can make sure the
17 summary is, in fact, a summary and that it's accurate.

18 Okay. The-- the hearsay objections will be
19 pertinent if I decide, okay, you've satisfied that
20 requirement and then I've heard a hearsay objection and
21 then your response is it fits within a hearsay
22 exception, I'll consider that at that time. But we're
23 not there yet. You first got to give them the
24 underlying data so that--

25 MR. KOBACH: It will be--

1 THE COURT: -- we get past that hoop.

2 MR. KOBACH: This examination will take
3 approximately three times-- no, twice as long without--
4 if I do it without this summary and we go through each
5 of the files or I go through each case. So do we want
6 to-- well, we can start doing that.

7 THE COURT: All right. So are the ELVIS
8 files marked as exhibits? The underlying data, is it
9 marked as exhibits?

10 MR. KOBACH: I don't know which ones are and
11 which ones aren't. Some of them are, but I don't know
12 if all 38 are.

13 THE COURT: I'm confused. So have the
14 plaintiffs discovered the underlying data or not?
15 Because you're not going to be able to examine the
16 witness about the underlying data and they haven't seen
17 that either.

18 MS. LIU: Your Honor, we're still missing
19 three of the entries.

20 MR. ROE: Your Honor, can I speak for a
21 second? I'm sorry.

22 THE COURT: Yeah.

23 MR. ROE: My understanding was that they
24 received all the ELVIS files. If that's not correct, I
25 can-- I can work with them to find out which ones they

1 do not have. I thought that they received all the
2 underlying ELVIS files before.

3 MS. LIU: It's not correct.

4 MR. ROE: Okay. And I apologize for that.
5 I know that they've received a number of them. We can
6 work with them and get the ones that they don't have.

7 THE COURT: Okay. This is an overnight
8 project for everybody.

9 MR. ROE: That's fine.

10 THE COURT: Overnight-- so you have-- you
11 have received some ELVIS files but you don't think
12 you've seen all of the ones underlying this, you're
13 missing three?

14 MS. LIU: Yes. Correct.

15 THE COURT: Okay. So it's not as bad as it
16 sounded initially. Overnight I want you to figure out
17 what those three are, provide plaintiff with those.

18 Plaintiff, you'll have a chance to review
19 this overnight and then tomorrow you can tell me whether
20 you have any further objection to this being admitted as
21 a summary under Rule 1006. Okay.

22 MS. LIU: Thank you, Your Honor.

23 THE COURT: All right. I'll give this back
24 to whoever.

25 MR. KOBACH: I suppose it would make sense

1 so as not to waste time, Your Honor, to go ahead and try
2 to ask the witness about things I can without this
3 exhibit, although--

4 THE COURT: Okay.

5 MR. KOBACH: -- to be frank, this exhibit--

6 THE COURT: I don't know, I mean, it could
7 be that you won't be able to--

8 MR. KOBACH: And then I assume if we don't
9 finish, we'll just bring the witness back in the
10 morning?

11 THE COURT: Yeah. We could also let her go
12 and recall her and plaintiff could call their next
13 witness, recall her later in the case. Is that
14 acceptable?

15 MR. KOBACH: I think their next witness is
16 one that will go over-- will be more or less-- will be
17 more than 45 minutes as well, so it probably doesn't
18 matter.

19 THE COURT: Does anybody have an objection
20 to that? We release Ms. Lehman until we can resolve the
21 issue of the summary, recall her tomorrow sometime.

22 MR. KOBACH: I think we won't save any time
23 because theirs is going to be one of their experts,
24 which would certainly take more than 45 minutes. So we
25 may as well keep Ms. Lehman on the stand.

1 THE COURT: Okay. That's fine. I just-- I
2 thought what you were saying, Mr. Kobach, is that you
3 didn't have a lot of other questions anyway--

4 MR. KOBACH: Oh, I do have other questions.

5 THE COURT: -- you weren't going to be able
6 to go 'til 5:00. But if you can go 'til 5:00 with her
7 without the summary, then that's fine, let's just keep
8 going.

9 MR. STEINER: Right. That's certainly fine
10 with us. The other option is, if you think you need to
11 do this now and you want to recall her tomorrow, we can
12 do deposition designations. I don't think we want to
13 start with our expert and have two witnesses who are in
14 the middle.

15 THE COURT: Understood. All right. You can
16 call--

17 MR. STEINER: So we'll do either of those
18 things.

19 THE COURT: Would you rather continue with
20 your cross?

21 MR. KOBACH: We can do the deposition
22 designations now and we'll just start in the morning.

23 THE COURT: Okay. So what time should we
24 have Ms. Lehman return tomorrow?

25 MR. KOBACH: I assume first thing.

1 THE COURT: Okay. So will we finish the
2 deposition that you're going to read tonight? So we'll
3 have you return at 9:00, Ms. Lehman.

4 THE WITNESS: All right. Thank you.

5 THE COURT: Okay. Actually, come at 9:15.
6 We'll take up this hearing at 9:00 about the summary.
7 Okay.

8 MR. STEINER: Thank you, Your Honor.

9 THE COURT: All right. So call your next
10 witness. And it's a deposition. Correct?

11 MR. STEINER: Yes, Your Honor. We'll be
12 putting on two of the depositions. First we call Eric
13 Rucker by deposition.

14 THE COURT: Okay. The way we're going to
15 handle this, you're going to read it-- okay. So there
16 are some objections that I'm going to rule on
17 contemporaneously. Do you have the objections marked in
18 your transcript?

19 MS. HA: I do.

20 THE COURT: Okay. All right. Okay.

21 MS. HA: So starting on Page 9.

22 (The deposition of ERIC RUCKER was read as
23 follows:).

24 Q. What is your current employment?

25 A. I'm assistant secretary.

1 MS. HA: Page 13.

2 Q. Where did you work after you left your role as
3 commissioner?

4 A. I was Dickinson County Attorney in Abilene,
5 Kansas.

6 Q. What time frame was that?

7 A. From 1993 to January of '03.

8 Q. What were your responsibilities?

9 A. I was the chief prosecutor for the county and for
10 a time I was also county counselor for the county
11 commission.

12 Q. Did you deal with any election-related crimes?

13 A. Not that I recall.

14 Q. And based on your experience as a prosecutor, do
15 you believe that the enforcement of criminal laws deter
16 individuals from violating the law?

17 A. Yes.

18 Q. Why is that?

19 A. I believe that anytime that there is punishment
20 associated with a criminal proceeding, the potential
21 exists to deter bad acts.

22 Q. And as the Dickinson County Attorney, did you
23 encounter any concerns about non-citizens who were
24 registering to vote in Kansas?

25 A. Not that I recall.

1 MS. HA: Your Honor, there's an objection to
2 Page 16. I think we have a solution, which is just-- we
3 can add testimony from Page 16, Lines 3 to 6, which
4 explains what Mr. Rucker's next role was.

5 THE COURT: Does that cure the objection?
6 The objection was lacks foundation without-- yeah, 16-3
7 through 18, so you're going to add that back in?

8 MS. HA: Not 3 through 6, just to show what
9 the next position he had was. And then 18 to 22, which
10 we objected to just "during your time there," I think
11 we're fine with that testimony, there's just no context
12 for what "during your time there" refers to.

13 THE COURT: All right. So read Lines 16--
14 Page 16, Line 3 through Page 16, Line 22. That cures
15 the objection, does it not, Ms. Becker? Or I'm not
16 sure, who's doing this one?

17 MS. HA: It's Daphne Ha.

18 THE COURT: Ms. Ha.

19 MS. BECKER: That sounds fine, Your Honor,
20 to us if you're asking defendant.

21 THE COURT: Okay. Proceed by reading all of
22 this.

23 Q. Okay. Where did you go in 2007 when you left?

24 A. Became the chief deputy district attorney in
25 Johnson County, Kansas.

1 Q. And what were your responsibilities there?

2 A. I was the chief administrative officer in the
3 district attorney's office.

4 Q. Is that also a prosecutorial role?

5 A. It is. I also handled a caseload, did several
6 jury trials, general administrative responsibility and
7 oversight for the attorneys.

8 Q. Did you work on any election-related crimes?

9 A. Not that I recall.

10 Q. And during your time there did you also find that
11 prosecutions of criminal laws would deter violations of
12 the law?

13 A. Yes. I didn't change my mind about what it is
14 that I said earlier.

15 Q. Have you changed your mind about that at any
16 time?

17 A. Up to and including today's date, I still think
18 that criminal laws have a tendency to deter bad acts.

19 MS. HA: Okay. Page 32.

20 Q. And how would you have used the responses
21 retained by the courts to weed out non-citizens who
22 illegally vote?

23 A. Making a determination whether or not they're
24 registered to vote.

25 Q. How would you make that determination?

1 A. I believe I answered your question. I would
2 probably, but it's a probability, I would probably make
3 inquiry of the deputy of elections. But, again, the
4 information is also available for individual county
5 clerks as to whether or not a person is registered to
6 vote or not.

7 Q. Do you recall any instance where you received
8 information about a non-citizen who identified
9 themselves on a juror questionnaire?

10 A. I would rather have my memory refreshed so that I
11 could give you an accurate answer. I can tell you what
12 I suppose, but I would only be asking-- or pardon me,
13 answering something I do not know directly.

14 Q. That's fine. You can tell me what you suppose.

15 A. I think that it did occur on one or more
16 occasions.

17 Q. Right. And can you read the last sentence of
18 your e-mail for the record?

19 MS. HA: On 39.

20 A. Certainly. "If this bill is passed, our office
21 will identify those who are inappropriately on the voter
22 registration rolls in order that they may be removed."

23 Q. What did you mean by that sentence?

24 A. That if we found individuals that were not United
25 States citizens, the purpose of the legislation would be

1 that if they were inappropriately on the voter
2 registration rolls and not qualified to be on the voter
3 registration rolls, a process would begin in some way,
4 shape or form in order to correct that mistake.

5 Q. What process would this office use to identify
6 those who are inappropriately on the voter registration
7 rolls?

8 A. We didn't have legislative authority to prosecute
9 at that point in time, nor did we even two years after
10 that. And so it would've been by notifying the
11 appropriate officials in the state of Kansas that could
12 not-- that could do such a thing.

13 Q. And not focusing on the prosecution right now,
14 but you write that, "Our office will identify those who
15 are inappropriately on the rolls." How would the office
16 do that?

17 A. Through the information that was received by
18 the-- transmitted to our office by the OJA.

19 Q. And that information as to jury forms you're
20 asking about?

21 A. It would have been identifying individuals who
22 had answered their jury questionnaires in such a manner
23 as to indicate they were not United States citizens and
24 were yet found on our voter registration rolls.

25 Q. And after this bill was passed, has this office

1 moved forward with this process?

2 A. It's my recollection that we have on one or more
3 occasions.

4 Q. And on those occasions people were identified
5 from juror forms; is that correct?

6 A. That would be my recollection.

7 MS. HA: Page 69.

8 Q. Okay. Did this office play a role in drafting
9 the legislation?

10 A. We played a role.

11 Q. What was that role?

12 A. We assisted in the drafting of the legislation
13 along with others in the Legislature and with the
14 Revisor of Statutes. There are always a number of hands
15 that are in play in the drafting of legislation.

16 Q. Were you involved in the drafting process?

17 A. To the best of my recollection, in a cursory way,
18 yes.

19 Q. And what is that cursory way?

20 A. I was asked my opinion and I, when asked,
21 provided my opinion.

22 Q. Has the Secretary of State's Office brought
23 prosecutions against non-citizens who are registering to
24 vote besides the prosecution that's brought against Mr.
25 Garcia Babeck?

1 A. This is the sole case that currently we have on
2 file.

3 Q. Is that also the case where for prosecutions
4 against non-citizens who have voted?

5 A. I believe that this is the sole case at the
6 current time.

7 Q. So from 2015 to today, have there been any
8 prosecutions besides the one against Mr. Garcia Babeck
9 that has been brought by the Secretary of State's Office
10 against a non-citizen?

11 A. I believe that this is the sole case.

12 MS. HA: Your Honor, we had objections
13 generally and specific objections to the rest of the
14 testimony. They're essentially almost all from the
15 direct examination at the deposition. They're outside
16 the scope, they talk about the SAFE Act, the Sedgwick
17 County policies, SAVE programs and things that were in
18 the designations we originally-- we just read now.

19 THE COURT: Okay. Just a minute. Overrule
20 the objection to Page 105, Line 4 through Line 7.

21 And then with respect to Page 108, Lines 2
22 through Page 109-21, overrule. You can read that as
23 well.

24 And then on Page 112, Line 17 through
25 Page 113, Line 5, overrule. You can read that as well.

1 MS. HA: Okay.

2 Q. So starting on 104. Prior to the SAFE Act, were
3 non-citizens likely to get caught registering and
4 voting?

5 A. No. We don't have a great deal of evidence that
6 many were getting caught. No.

7 Q. And do you believe the threat of prosecution
8 serves as a deterrent to non-citizen registration
9 specifically?

10 A. Well, it hasn't or we would have more evidence of
11 it. And so the answer is no.

12 Q. Do you regard the juror questionnaire as a
13 satisfactory method of locating non-citizens on the
14 voter rolls?

15 A. No.

16 Q. Why not?

17 A. Because voter registration assumes that the
18 individuals being registered are citizens or otherwise
19 qualified to vote.

20 Q. Does the Sedgwick County policy of asking a
21 potential juror to document his non-citizen status
22 reflect the fact that potential jurors may lie when they
23 assert their citizenship status?

24 A. Yes.

25 Q. What has your experience been regarding the

1 willingness of county attorneys to prosecute individuals
2 for voting crimes?

3 A. Well, having been a prosecutor myself for a long
4 period of time, we just don't have much participation by
5 a county or district attorneys in the prosecution of
6 election crimes. And there's reasons for that.

7 I testified earlier today that I didn't have a
8 lot of exposure to, didn't have any that I recall, and I
9 still don't recall any election issues even being
10 presented to me for prosecution.

11 But, again, having been a long time member of the
12 Kansas County and District Attorneys Association, those
13 who have been confronted with elections-related
14 allegations of criminal conduct have oftentimes not
15 prosecuted these cases because of the mere press. And I
16 shouldn't say "mere," because of the press of criminal
17 litigation that is violent in nature or is-- deems to be
18 more serious by the criminal code by classification of
19 crime. And that's why we sought the ability to litigate
20 criminal elections conduct in Kansas.

21 Q. I'm going to take you back to Exhibit 9. This is
22 in regards to the SAVE program and the letter from the
23 director of U.S. Citizenship and Immigration Services.

24 A. Uh-huh, okay.

25 Q. In that letter in the middle paragraph do you see

1 where DHS demands both, one, a number on an
2 immigration-related documented possessed by an alien
3 and, two, a copy of the immigration and related
4 documents?

5 A. Yes.

6 Q. Does the Kansas Voter Registration Form require
7 this information and documentation?

8 A. No, it does not.

9 Q. Would it make any sense to do so?

10 A. Well, it certainly would be more burdensome to
11 the voter registration process if it was required. And,
12 no, it wouldn't make sense because voter registration is
13 required and you have to be a citizen to register to
14 vote.

15 Q. And therefore, it wouldn't be feasible for
16 someone to list an alien number on a voter registration
17 form?

18 A. Right. Yes. And a copy of the
19 immigration-related documentation and questions to
20 complete the verification process, again, it's not part
21 of-- neither of them are part of the voter registration
22 process and so, yeah, it wouldn't make sense that we
23 have that data.

24 Q. And could that be why Mr. Kriegshauser says the
25 SAVE program won't work and we will not have the

1 information requested in his e-mail on the first page?

2 MS. HA: And there's an objection on the
3 transcript calling for speculation.

4 THE COURT: Overruled.

5 A. Well, to the degree that this is required, you
6 know, by the SAFE Act or the SAVE program, yeah, I
7 believe if that's-- if that's required and Mr.
8 Kriegshauser is indicating that it is, the SAVE program
9 won't work and we will not have information requested.
10 I believe that's what-- what he may be striking at.

11 Q. I believe you said that in your response.

12 A. Okay. If I did, yeah. When you asked me earlier
13 whether punishment was a deterrent or I responded that
14 punishment was a deterrent, I certainly believed that
15 if, in fact, we're talking in a prosecutorial sense of
16 there being conviction and punishment and if there is
17 the reality of punishment, I believe it to be a
18 deterrent.

19 But as it relates to crimes that are not punished
20 because they're not prosecuted in the first place,
21 punishment is not a deterrent because there's no
22 punishment.

23 THE COURT: All right. Does that complete
24 the deposition?

25 MS. HA: Yes, it does. And we can read Mr.

1 Brad Bryant's deposition designations next.

2 THE COURT: All right. All right. Just to
3 be clear, we had a hearing on this earlier this
4 afternoon. Defendant had not objected to plaintiffs'
5 designation of its portions of this deposition.
6 Defendant had counter-designated to those portions that
7 plaintiff had designated. Defendant separately
8 designated other-- other portions, which I'll take up
9 that later if need be in defendant's case.

10 There are two objections in the course of
11 this deposition, and I'll get to those as you read them.
12 These are plaintiffs' objections actually to those
13 portions that defendant has counter-designated--
14 actually I've already ruled.

15 MS. HA: Yeah.

16 THE COURT: I've already ruled, I'm sorry.
17 So you can just read it consistent with my ruling.

18 MS. HA: Okay. Page 15.

19 (The deposition of BRAD BRYANT was read as
20 follows:)

21 A. The next title I had was deputy assistant
22 Secretary of State for elections and legislation
23 matters, which is an election director position that I
24 held then from February of 1993 to February of 2015.

25 Q. And when did you leave the Secretary of State's

1 Office?

2 A. The last day was February 13th, 2015.

3 Q. And when you left, you were the election
4 director?

5 A. Yes, ma'am.

6 Q. So you retired from the Secretary of State's
7 Office?

8 A. Uh-huh. Yes, I'm sorry.

9 Q. I'm going to hand you Exhibit 2 to your
10 deposition. This is a document marked Fish fifth RFP
11 022551. Have you had a chance to review this document?

12 A. I skimmed it.

13 Q. Can we go to the earliest in time e-mail, it
14 starts on the bottom of Page 3 and it's from Eric
15 Rucker.

16 A. Uh-huh.

17 THE COURT: Okay. Let me stop you. Is this
18 exhibit-- what-- this exhibit should be marked for the
19 trial record.

20 MS. HA: Oh. I'm not sure.

21 THE COURT: I mean, anything that the
22 witness in the deposition is testifying to in terms of
23 an exhibit needs to be marked for purposes of the trial
24 and married up.

25 MS. HA: Okay. There's a Bates stamp

1 number. It looks like it's 022551.

2 MR. STEINER: Your Honor, we should be able
3 with just a minute to be able to cross-reference what
4 Exhibit 2 to this deposition is in terms of the volume.

5 THE COURT: Great. Thank you.

6 MR. STEINER: Apologize for that.

7 (Plaintiffs' counsel confer).

8 MS. HA: Your Honor, it's-- it's exhibit--
9 Defendant's 934.

10 THE COURT: All right. Exhibit 934,
11 Defendant's Exhibit 934. So I need to admit it at this
12 time because the deposition witness is testifying to it.
13 Is there any objection by the defendant to admission of
14 Exhibit 934?

15 MS. BECKER: No. No, Your Honor.

16 THE COURT: I'm sorry?

17 MS. BECKER: No, Your Honor.

18 THE COURT: Okay. Exhibit 934 admitted.

19 Q. Have you had a chance to review this document?

20 A. I skimmed it.

21 Q. Can you go to the earliest in time e-mail, it
22 starts on the bottom of Page 3 and it's from Eric
23 Rucker.

24 A. Uh-huh.

25 Q. Who's Mr. Rucker?

1 A. He's the Assistant Secretary of State.

2 Q. Did you report to him while you were here?

3 A. Yes.

4 Q. And given your experience as election director,
5 do you agree with Mr. Rucker's statement in this e-mail
6 that receiving the responses the courts retain from
7 these non-citizens may be helpful to weed out
8 non-citizens who illegally vote?

9 A. I agree with that.

10 Q. And given your experience as election director,
11 do you agree with Mr. Rucker's statement in his e-mail
12 that the response of non-citizens received by the courts
13 may be evidence necessary to prove criminal conduct?

14 A. Yes.

15 Q. And was there a written policy in place in
16 regards to what the Secretary of State's Office should
17 do upon receipt of those juror lists?

18 A. I don't remember specifically whether there was a
19 policy, a written policy.

20 Q. And if this office, if the Secretary of State's
21 Office identified a potential non-citizen who had
22 registered to vote from the juror form, were there other
23 courses of action that were taken besides referring them
24 to the counties?

25 A. I'm not aware of any.

1 Q. Was there any way that the Secretary of State's
2 Office could independently verify citizenship status?

3 A. Regarding the jury questionnaires?

4 Q. Yes, when names are identified on the juror
5 forms.

6 A. No.

7 Q. And were you aware of any instances where the
8 Secretary of State's Office referred non-citizens
9 identified on the juror forms to law enforcement for
10 potential prosecution?

11 A. I can't say specifically, I don't know of any
12 cases like that.

13 MS. HA: Your Honor, there's another--
14 there's a Deposition Exhibit 3. And this is part of
15 defendant's counter-designations, so I'm not sure if
16 it's an exhibit.

17 THE COURT: Oh. It's an e-mail. The Bates
18 stamp number, fifth RFP 17. Do you know what that
19 exhibit is, Ms. Becker?

20 MS. BECKER: Yes, and I'm-- I am looking at
21 it, Your Honor, and it is an e-mail from another witness
22 and the current witness, Mr. Bryant, was copied on it.
23 So I would-- I would object to its admission on-- based
24 on hearsay.

25 MR. HO: It's the defendant's exhibit and

1 it's in their counter-designation.

2 THE COURT: Right.

3 MR. HO: We found it as-- identified it as
4 Defendant's Exhibit 935. We don't want it in the
5 record.

6 THE COURT: It's Exhibit 935 and you used it
7 during your examination-- or rather, you designated
8 this. So I don't think it's proper for you to object to
9 it at this point.

10 MS. HA: But, Your Honor, we don't have it
11 on our exhibit list and we do object to it.

12 THE COURT: You object to it.

13 MS. HA: We didn't designate this.

14 THE COURT: Oh, I see. So-- so defendant
15 has counter-designated this testimony that includes an
16 exhibit, it's 935. You're objecting to this exhibit?

17 MS. HA: Yes, Your Honor.

18 THE COURT: But you didn't object to the
19 counter-designation that included the discussion of the
20 exhibit.

21 MS. HA: Yes, but we didn't agree to the--
22 we didn't stipulate to the exhibit.

23 THE COURT: Well, you should've-- you
24 should've objected to this part of the testimony to
25 preserve an objection to the admission of this exhibit.

1 But separately, it needs to be moved for admission. So,
2 Ms. Becker, are you moving for admission of Exhibit 935?

3 MS. BECKER: Yes, Your Honor.

4 THE COURT: And what is your objection to
5 its admission?

6 MS. HA: We'll withdraw the objection.

7 THE COURT: All right. Exhibit 935 is
8 admitted.

9 Q. Okay. I'm handing you Defendant's Exhibit 935.
10 Have you had a chance to review this document?

11 A. Yes.

12 Q. The first sentence of the second paragraph says,
13 in about the middle of the line, "Our office has
14 discovered five individuals in Riley County who
15 indicated to the Riley County District Court that they
16 are not qualified to serve as jurors because they are
17 not U.S. citizens." Did I read that correctly?

18 A. Yes.

19 Q. Do you recall this Riley County incident?

20 A. Reading this now I have a vague recollection of
21 it. I was not directly involved.

22 Q. Do you know-- if you weren't directly involved,
23 do you know why you were cc'd on this e-mail?

24 A. As the election director I was involved in voter
25 registration and election administration and all

1 programs to keep voter legislation lists updated. I was
2 involved in communications with county election offices,
3 so it makes sense that I was copied on it.

4 Q. Do you recall if there was any follow-up done by
5 the Secretary of State's Office to-- to determine if
6 these five people were non-citizens?

7 A. I don't recall, no.

8 Q. Was there a standard practice in place for
9 instances like this when it came to the Secretary of
10 State's attention that non-citizens may have registered
11 to vote?

12 A. There were cases where a member of the office
13 would make a phone call to follow up with either the
14 prosecutor or an election officer to see if the matter
15 had been disposed of generally.

16 Q. Has the Secretary of State's Office in your
17 experience used information on the TDL list?

18 A. Yes.

19 Q. And how?

20 A. As the third paragraph here explains, I think
21 maybe twice we obtained the list from DMV and after that
22 we were unable to obtain it. But we compared it through
23 a computer program to the voter registration file to
24 determine if any of those non-citizen TDL holders were
25 registered to vote or had voted.

1 Q. Do you remember approximately when those two
2 comparisons were done?

3 A. Well, this says 2010. That makes sense. I wrote
4 that, so it must be true. I think that may be 2011
5 again or 2009 and 2010. Two consecutive years. Either
6 '09 and '10 or-- I think it was '09 and '10.

7 Q. Do you know why the Secretary of State's Office
8 was unable to obtain the lists subsequent to that?

9 A. I don't know the reason, but I do know that-- I
10 believe in the beginning, in 2011 or '12, I made a
11 request, as I had in the past, to the Director of
12 Vehicles who was a new person with the change of
13 gubernatorial administration, and they had a new
14 process. Frankly, a little bit more bureaucratic. They
15 had a form to fill out to ask for the records, which I
16 did, and sent it to her and it never came back.

17 Q. Do you recall follow-up with her after sending
18 the form?

19 A. I recall sending an e-mail at some point I
20 believe, just didn't really get a response.

21 Q. And did you try again in subsequent years?

22 A. I don't recall.

23 Q. Do you recall directing or do you recall if
24 anyone in the Secretary of State's Office had tried in
25 subsequent years?

1 A. I'm not aware.

2 Q. In those two years when you did receive the TDL
3 list, how was the comparison made against the VR file?
4 Can you walk me through the process?

5 A. A person in the Secretary of State's IT
6 department wrote a program to compare the two databases
7 or the two lists and then reported back to the election
8 division the results of potential matches.

9 Q. And what was done with the list of potential
10 matches?

11 A. We would review them line-by-line to determine,
12 gain some more certainty whether they were actual
13 matches, and then we would use the normal process under
14 Kansas law. As I said, county election officers
15 maintained the data. We would refer back to them.
16 There were cases-- there were cases where we may have
17 referred them. We did refer them to county prosecutors.

18 Q. And what was your role in the cross-check and
19 referral process?

20 A. My role? I was one of several people in the
21 election office who reviewed the records or obtained the
22 records, reviewed the results and communicated them to
23 election offices in the counties or to the legal
24 division here if there was a case of potential
25 prosecution.

1 Q. And do you recall approximately how many results
2 came up when the IT person ran the TDL list against the
3 VR file?

4 A. I don't. It may have been more than 37. This
5 e-mail says 37 matches were discovered. I don't know.
6 But we usually started with the computer program,
7 usually produced a longer list that would have to be--
8 that would've-- that would have to be winnowed.

9 Q. And what do you recall-- do you recall how many
10 people were on the list as potential non-citizens who
11 registered to vote after winnowing it down?

12 A. After winnowing it?

13 Q. Yes.

14 A. Yes.

15 Q. Yes.

16 THE COURT: I'm sorry, are you outside the
17 designation at this point?

18 MS. HA: I thought this was the objection
19 that was sustained, unless I have it wrong in my notes.

20 THE COURT: Let me look back at that. I-- I
21 allowed that additional testimony, so you can go ahead.
22 So, yeah, 56-1 through 7.

23 A. Okay. Based on this, I would say 37. I don't
24 recall that, but I was aware of it at the time I wrote
25 that.

1 Q. Here it says, "Of those 37, 15 were still on the
2 VR list at the time of the comparison. 22 have been
3 registered to vote but were in the cancelled file." Is
4 that correct?

5 A. Yes.

6 Q. What does it mean to be in the cancelled file?

7 A. There are various reasons listed in Kansas law
8 where a person who's registered to vote may have their
9 registration cancelled. Most often mean not with the
10 comparison of the TDL list?

11 MS. HA: I think you skipped a page.

12 MS. JAYARAMAN: I'm sorry.

13 A. It's because of the change of residence, so those
14 cancelled records are maintained. They're not deleted
15 forever.

16 Q. And so in terms of the matches that you would
17 continue to review and potentially refer to prosecution,
18 would you include in your review the 22 people
19 registered to vote but in the cancelled file?

20 A. I don't recall specifically. I don't recall.

21 Q. And after getting matches from checking the TDL
22 lists against the VR file, would you or anyone else at
23 the Secretary of State's Office make a request of the
24 DMV for the underlying documents for those matches?

25 A. I don't remember doing that, no.

1 Q. Do you remember getting the underlying documents
2 for those matches from the DMV?

3 A. Not in 2010, no.

4 Q. Or at any time based--

5 A. That goes back to the earlier discussion about
6 obtaining documents that were produced as a result of
7 the Real ID Act, but not with this.

8 Q. And when you say "not with this," do you mean not
9 with the comparison of the TDL lists?

10 A. Not with the 2010 TDL comparison.

11 Q. What about the subsequent TDL comparison that you
12 talked about?

13 A. I believe the other TDL was before this in '09, I
14 can't remember specifically. But no, I don't remember
15 getting documents from DMV in association with the TDL
16 comparison.

17 Q. And do you remember making a request from the DMV
18 for underlying documents?

19 A. I don't.

20 Q. Did you send other letters referring alleged
21 non-citizens for potential prosecution?

22 A. Yes.

23 Q. About how many letters did you send?

24 A. In all of the years?

25 Q. Yes.

1 A. A dozen or more.

2 Q. And do you remember approximately how many
3 non-citizens who were the subject of those dozen or so
4 letters?

5 A. I don't recall. The TDL program we discussed
6 produced some and the others were anecdotal, individual
7 ones here and there. This letter had three individuals.
8 So I don't remember with any specificity.

9 Q. Do you recall how these three individuals came to
10 your attention?

11 A. Without being certain, I think they came out of
12 the TDL program.

13 Q. In your role as the state election director when
14 you were here, did you interact with individuals from
15 the Department of Revenue or the DMV regarding training
16 of DMV employees?

17 A. Yes.

18 Q. Tell me about your role-- tell me what your role
19 was in regards to DMV training.

20 A. We produced guides and posters, things like that,
21 that they could use in training their driver's license
22 officials statewide. And I can remember two occasions
23 where I personally went to training programs that they
24 conduct and actually helped train driver's license
25 officials on their voter registration duties under the

1 NVRA and to some extent HAVA federal laws.

2 Q. When did those two occasions occur?

3 A. I can't remember the years. I think that one was
4 probably in 2010 and one program was a few years before
5 that. I don't remember specifically.

6 Q. How many people did you train during those two
7 instances?

8 A. Personally?

9 Q. Yes.

10 A. There were rooms-- there were rooms of-- there
11 were probably 150 people in the room, guess.

12 Q. And you said earlier that the Secretary of
13 State's Office provides guides to the DMV. Tell me
14 about those guides.

15 A. We would provide a little document that lays out
16 in simple terms what their duties are under the National
17 Voter Registration Act, federal law or any relevant
18 Kansas laws, try to boil it down to some bullet points
19 that are easy to digest and make it clear to them that
20 their duties are to offer registration to driver's
21 license applicants.

22 Q. And what exactly did those bullet points say that
23 you recall?

24 A. I can't recall exactly, but things like each
25 applicant for driver's license or renewal must be

1 offered the opportunity to register to vote. They would
2 have the words quoted from the federal law that are
3 supposed to be included in the process and information
4 about determining eligibility. And that's pretty much
5 it. That was just the application process at the
6 counter.

7 Q. And how long is that document?

8 A. Two or three pages.

9 Q. When was this provided to DMV?

10 A. Probably several times over the last 20 years.
11 The NVRA passed in 1993. We did various types of things
12 over the years after that. I can't specifically recall.

13 Q. By "several times," do you mean less than five
14 times?

15 A. I mean more than five times. Two instances that
16 I personally went that I can remember.

17 Q. I'm talking about the training manuals.

18 A. More than five times because we would update
19 things when things changed.

20 Q. So approximately how often were they updated and
21 provided to the DMV?

22 A. Two to three years. But there would be at least
23 annual discussion with DMV officials about whether there
24 was a need for an update, a new one.

25 Q. And the two instances of training that you

1 remember conducting, you said those were both around
2 2010. Do I recall that correctly?

3 A. I remember one was about 2010, I can't recall
4 when the other one was.

5 Q. Was it close in time?

6 A. Probably a few years apart before that.

7 Q. When, to your knowledge, was the last time that
8 someone at the Secretary of State's Office conducted a
9 training session of DMV employees?

10 A. I would say that if I'm accurate on the 2010,
11 that was probably the last one.

12 Q. And to your knowledge, when was the last time
13 that the Secretary of State's Office provided training,
14 written training materials to the DMV?

15 A. About 2013.

16 Q. Do you know--

17 A. Let me change that to 2012, because I know that
18 we did some as a part of the implementation of the SAFE
19 Act that was passed in 2011.

20 Q. Have you heard that DMV employees have given
21 voter registration forms to non-citizens?

22 A. Yes.

23 Q. Where have you heard that from?

24 A. If we would find someone through any of these
25 programs that we discussed, we would look at and see the

1 source of the registration. Sometimes it was a DMV
2 office and we can inquire with state level DMV officials
3 and they could discuss it with the locals. If somebody
4 registered at the DMV, that would come to light during
5 the review of it. We didn't do investigations, per se.

6 Q. And do you recall approximately how many
7 instances you came across where a DMV employee offered a
8 non-citizen a voter registration form?

9 A. I can't recall a number. For the first half of
10 the life of NVRA, citizenship wasn't really part of the
11 discussion. Only-- and only 2009 or '10 is when it
12 became part of the discussion with Real ID and other
13 factors.

14 But the NVRA simply said when somebody applies or
15 renews, they're offered the registration and it didn't
16 say unless they are not a citizen. And so it was much
17 easier and there was no one telling DMV officials that
18 at that time, say 1995 to late 1990s at least, or 2000s,
19 there was nobody telling them, be careful if somebody is
20 not a citizen. So it happened more often in those days.

21 Q. What level of involvement was there, if any,
22 between the Secretary of State's Office and the DMV?

23 A. Implementing programs, providing training
24 materials and researching instances where there was a
25 complaint because someone's registration hadn't gone

1 through or somebody was wrongly registered or wrongly
2 cancelled researching those things.

3 Q. Who created the training manuals that you were
4 talking about before?

5 A. I did.

6 Q. Did you have any help?

7 A. Yes. I never worked in a vacuum.

8 Q. Who else participated in that?

9 A. I would've had others in the election office. I
10 would've had an attorney help review things because we
11 provide copies of laws that they were carrying out at
12 DMV to show the importance of it. So we work with
13 attorneys and other officials in the election office.

14 Q. And did anyone have to approve the training
15 manuals before you sent them to the DMV?

16 A. Usually if the attorney agreed they were ready to
17 go, they would go. DMV, of course, could offer edits.

18 Q. Which attorneys do you recall working with in
19 terms of the training materials?

20 A. I recall work with Jenny Chaulk-Wentz, Melissa
21 Wangemann, John Wine, up to the era of Ryan
22 Kriegshauser. There was some in between there. I have
23 to think about it a while, but there are others.

24 Q. Do you recall having any discussions with anyone
25 at the DMV about non-citizens offering-- about, I'm

1 sorry, about DMV employees offering non-citizens voter
2 registration forms?

3 A. Yes.

4 Q. What were those discussions?

5 A. The ones I recall were in 2010. Secretary of
6 State Chris Biggs was aware that there were people who
7 had been offered registrations. He believed that the
8 MVRA language didn't require everyone to be offered an
9 opportunity to register to vote. Although I think you
10 could argue that it did.

11 So I helped coordinate a program under his
12 direction where we worked with DMV to produce some
13 posters that would be placed at each driver's license
14 site around the state, trying to clarify that for
15 applicants.

16 Q. And were those posters created and placed in
17 DMVs?

18 A. They were created and sent. I don't know if-- I
19 mean, I trust that they were deployed.

20 Q. And approximately when was that?

21 A. That was 2010.

22 Q. Did you send any additional posters after 2010?

23 A. I didn't.

24 Q. We've talked about different methods of trying to
25 identify or prevent non-citizens who have registered to

1 vote. Other than the methods we talked about this
2 morning, are there any that jump out at you right now
3 for where in your experience at the Secretary of State's
4 Office you've used to identify potential non-citizens?

5 A. No programs. I mean, the training materials and
6 things that we would-- that we talked about with the
7 DMV. We would also have meetings with other agencies
8 that were involved in voter registration because of the
9 Motor-Voter Act, NVRA, like Medicaid, WIC, AFDC, food
10 stamps. Most of those have new names now and I can't
11 remember them.

12 So we would meet with those agencies once every
13 or year or two to update them on things like the SAFE
14 Act. So I mean-- but that would be done with an
15 emphasis on citizenship after the SAFE Act was passed.
16 But we didn't really have anything other than programs
17 comparing records or anything.

18 Q. In your discussions with those agencies, did they
19 include discussions about non-citizens who registered to
20 vote?

21 A. No, they were applications agencies. The
22 discussion would be about preventing attempts, to
23 prevent non-citizens from registering to vote even
24 though they might be in the application process for
25 other things. Those programs. It would be like

1 preventing them from mistakenly being included in the
2 voter registration process.

3 Q. Moving on to the KDHE records, vital statistics
4 records. You were asked if the MOA between the
5 Secretary of State's Office and the KDHE allowed the
6 Secretary of State's Office to determine if an alleged
7 non-citizen was registered-- determine if a person
8 registered to vote was a non-citizen.

9 If a person's citizenship was in doubt, could the
10 Secretary of State's Office include that person's name
11 in the batch of names sent to KDHE in a given month to
12 see if a Kansas birth certificate existed?

13 A. Yes. Yeah, we could do that, yes.

14 Q. You were also asked about the DMV and training
15 materials. The subject of posters came up that were
16 sent to-- let me ask you about it. Who produced those
17 posters that were sent to the DMV? Were they produced
18 by the Secretary of State's Office or by the DMV?

19 A. We did. The posters were to inform driver's
20 license applicants who were also going to be given the
21 opportunity to register to vote pursuant to NVRA, to
22 inform them of the citizenship requirement and the fact
23 that you can't register to vote if you're not a citizen.

24 So, as I recall, I provided the content, worked
25 with our publications office here and had them approved

1 by DMV officials.

2 Q. And how many posters were produced, if you
3 remember?

4 A. A few hundred, enough to put two or more in each
5 local office, DMV office.

6 Q. And did the DMV training sessions also include a
7 direction to the DMV people that only citizens should be
8 permitted to register to vote?

9 A. As I recall, yes, they did.

10 Q. Okay. So we've got the poster, the training
11 materials and the written training materials. Were
12 there any other written communications or spoken
13 communications with the DMV, such as a supplemental
14 e-mail or a phone conversation telling DMV officials
15 make sure this happens? Were any other directions and
16 training given?

17 A. Yeah, there were several of us in this office who
18 could and often did make phone calls or send e-mails to
19 people at DMV saying, here's the situation we've come up
20 with, or we've had a rash of incorrect applications.
21 This doesn't always mean citizenship was involved but
22 just a problem in the application process.

23 So it was very common for us to contact them and
24 say the office in Johnson County or in Augusta needs to
25 be retrained in some way, they need to be-- have it

1 emphasized to them this is part of their duties, just to
2 clean it up.

3 Q. So looking at those types of communications, did
4 those occur via e-mail or via phone or both?

5 A. Both.

6 Q. In any given year, how many of those corrective
7 communications about a particular DMV office would
8 happen?

9 A. I would say communications involving a particular
10 office or a particular applicant would be probably in
11 the dozens in an election year, maybe fewer in a
12 non-election year.

13 Q. Do you recall any posters like the one you
14 described provided from the Secretary of State's Office
15 to the DMV after approximately 2012?

16 A. No. The only instance I can recall of that I
17 think-- the only instance I can recall of that was I
18 think in 2010.

19 Q. Do you recall any instances after 2010 of posters
20 being provided?

21 A. I don't recall any.

22 Q. And do you recall any instances where a training
23 session was given by the Secretary of State's Office to
24 the DMV after 2012?

25 A. To the state DMV office?

1 Q. Yes.

2 A. As I recall, we had at least one meeting with
3 them to discuss the SAFE Act and how it might change
4 things.

5 Q. And in that meeting, do you recall discussing
6 non-citizen voter registrations at the DMV?

7 A. I don't recall discussing that specifically, no.

8 Q. When was the last training session that you
9 recall where the Secretary of State trained DMV
10 employees about the provision of voter registration
11 forms to non-citizens?

12 A. You say the Secretary of State trained DMV
13 employees, that would have been the two that I recall.
14 I don't recall going to one of those personally after
15 2010 or so.

16 Q. And you testified that you would've been aware if
17 anyone else at the Secretary of State's Office went to a
18 training session or provided training to the DMV.
19 Correct?

20 A. Yes.

21 Q. And in terms of the corrective materials that you
22 were talking about earlier, was there anyone else at the
23 Secretary of State's Office who would've been involved
24 in making those phone calls or e-mails?

25 A. Yes.

1 Q. Who would they be?

2 A. Mostly it would've been Bryan Caskey other than
3 me.

4 MS. HA: That's all we have on designations.

5 THE COURT: Thank you. All right.

6 MR. STEINER: Your Honor, just one
7 administrative question I think really for Your Honor
8 before we break, which is: We're in a somewhat unique
9 situation with Ms. Lehman because we called her, so
10 she's on cross but she's their witness. And I think it
11 would just provide all of us clarity as to whether they
12 can or cannot consult with her overnight.

13 THE COURT: Mr. Kobach.

14 MR. KOBACH: I'd also add that we might be
15 able to resolve this. Did you guys get the thumb drive
16 yet?

17 MS. WALDMAN: We're still missing one, but
18 we trust we will get the ELVIS file tonight if you want
19 to address that.

20 MR. KOBACH: I mean, if we can-- if we want
21 to address the admissibility of it so we can know if
22 it's coming in or not, because it will change
23 dramatically how the examination occurs tomorrow if it's
24 not.

25 THE COURT: Okay. I don't have a copy of

1 that. I think I handed it back. I don't know,
2 somebody's-- am I missing a binder? I-- because my-- I
3 had defendant's exhibits that go up to 1086. This was
4 1133 I believe.

5 MR. KOBACH: Yeah, 1133.

6 MR. BONNEY: There should be a small binder
7 for Ms. Lehman's testimony. We thought we had it.

8 THE COURT: Okay. I just-- I think she had
9 it, not me, but-- okay. Okay. So it sounds like you're
10 close to providing the underlying documents.

11 Plaintiff, have you already reviewed them
12 and at least-- you're missing one, but have you reviewed
13 the ones that you received and are satisfied that it
14 matches with the summary or do you need to do that
15 tonight?

16 MR. HO: We need to do that tonight, Your
17 Honor. I mean, we don't have any reason to think that
18 they don't match, but the numbers look right, we just
19 want to take a-- have an opportunity to take a look at
20 it.

21 MR. KOBACH: Your Honor, I just want to
22 clarify. He's had 38-- 35 of the 38 for more than a
23 year. So there's only three persons in that, three.

24 THE COURT: But he hasn't had the summary,
25 has he?

1 MR. KOBACH: He's had the summary, the
2 versions of the summary all through this time. And the
3 latest summary was produced to them on the 12th of
4 February.

5 MS. LIU: Your Honor--

6 MR. KOBACH: It just has two additional
7 entries. It was the same as the summary they've had
8 months and months before that.

9 MS. LIU: Your Honor, that's not true. We
10 hadn't received all the different-- different entries at
11 all, the underlying records, apart from the three that
12 we're missing. And so--

13 MR. KOBACH: So you're saying you don't have
14 the other 35?

15 MS. LIU: We have them today.

16 MR. STEINER: We've been getting them
17 gradually over the course of the last couple of weeks--

18 MR. KOBACH: But you agree you've had--
19 you've had them for at least a month, the other 35?

20 THE COURT: Okay. I'm going to give you
21 tonight--

22 MS. LIU: Not--

23 THE COURT: I'm going to give you tonight to
24 review these.

25 MS. LIU: Thank you, Your Honor.

1 THE COURT: And so I will rule tomorrow
2 after I hear whether there's any further objection to
3 the admission of this as a summary. And my ruling will
4 be based on whether there's an objection to the accuracy
5 of this, which is curable of course.

6 If you review records and determine there's
7 something on here that doesn't seem to match with its
8 underlying data, talk to each other about it. It's
9 something that can be cured.

10 The other objection, though, I think was
11 that there's-- there's a hearsay objection. And tell me
12 what on the summary you contend is hearsay.

13 MS. LIU: It's actually hearsay within
14 hearsay, Your Honor. She just testified that she-- oh,
15 it's the "notes" column of the exhibit. She--

16 THE COURT: Okay. Because the other columns
17 are the data, the underlying records. Right?

18 MS. LIU: Correct.

19 THE COURT: Okay. And if those records are,
20 I mean, available to you and they're-- you know, they're
21 public records, you've used ELVIS records, you've
22 admitted some of them I think, I'm not so much concerned
23 about that.

24 So the first columns that show the
25 registration ID, the date of the application, the

1 source, I mean, where the application was done, their
2 current citizenship status, their date of
3 naturalization, if any, and whether or not they voted
4 are all based on the ELVIS database. Correct?

5 MS. LIU: That's correct, Your Honor.

6 THE COURT: Okay. So I think it's
7 appropriate for this witness who's testified that she
8 was involved in the compilation of this, although she
9 might not have done all of the underlying footwork, she
10 was the one that ensured that it was compiled and she's
11 the one that transmitted it. So those columns don't
12 concern me.

13 Now, the last thing, though, to talk about
14 is this final column, which I haven't read every one of
15 these entries, but it has things like they were
16 registered for over however many years prior to being a
17 citizen. That sounds like something that is not based
18 on an interview but is based on the records.

19 MR. KOBACH: Your Honor, I can explain that.

20 THE COURT: They were registered under a
21 different name, that sounds like perhaps something that
22 comes from-- I can't tell. But there are things in here
23 that look like-- I mean, I thought I saw something--
24 like she cancelled her registration and then
25 re-registered after being sworn in as a citizen sounds

1 like it's based on something that person said.

2 And then there are quotations from what some
3 of these folks said. Like, for example, this on the
4 bottom of Page 1 of the summary, it says, "Her statement
5 was that she, quote, was a permanent resident of the
6 U.S. and did not know she wasn't allowed to vote until
7 after 2008 when one of her friends told her she
8 couldn't. She then stopped voting, unquote." That's a
9 hearsay statement.

10 MR. KOBACH: Your Honor, could I--

11 THE COURT: So anyway--

12 MR. KOBACH: -- can I introduce that-- refer
13 to that? So each of the column seven entries was
14 drafted by Ms. Lehman herself. Those are-- those are
15 her drafts of what-- and each of the content of those
16 column seven entries is deducible, except for that one
17 you just mentioned where-- the quote of what she said,
18 although that one might even be in the notes field, I'm
19 not sure.

20 But each one of-- an expert or a person who
21 is experienced in looking at the ELVIS database could
22 deduce all of column seven by looking at the ELVIS
23 field. Okay. There might be one or two cases where
24 she-- where a conversation with the actual non-citizen
25 is referred in there which might not be in the ELVIS.

1 But the point is that Ms. Lehman herself is the author
2 of the content, so it's not hearsay.

3 And then, of course, we would argue that
4 even if somehow it could be considered hearsay, we have
5 the 803(6) records of regularly conducted activity
6 exception which it fits perfectly, as well as 803(8)
7 public records exception.

8 This would be a document that we would be
9 releasing on KORA if a person would seek an Open Records
10 Act access to this document. We regard it as a public
11 record contained by our office. So it fits both of
12 those exceptions to hearsay, but we don't think it even
13 comes close to hearsay itself.

14 MS. LIU: Your Honor, may I respond to that?

15 THE COURT: Are you finished, Mr. Kobach?

16 MR. KOBACH: Yes.

17 THE COURT: Okay.

18 MS. LIU: It is hearsay within hearsay.

19 First of all, she did not testify to what Mr. Kobach
20 just said. She testified to the fact that she did not
21 personally create the spreadsheet. Someone at the
22 Secretary of State's Office, not even her office,
23 ultimately created the spreadsheet. The notes
24 incorporated information received by Ms. Lehman from
25 others.

1 She also personally doesn't have a
2 conversation with each applicant. She also just
3 testified that in supervising the collection of the data
4 to put in the spreadsheet, she isn't doing it pursuant
5 to a manual. So it-- it's just plainly hearsay within
6 hearsay.

7 MR. KOBACH: Your Honor, can I respond to
8 that?

9 THE COURT: All right. Several things--
10 several things come to mind. The first is, there's some
11 confusion in my mind, because I recall that she
12 testified that for a period of time she created these
13 summaries and transmitted them to Secretary Kobach and
14 then at some point-- and then they were creating their
15 own summaries and at some point they merged. I'm a
16 little bit unclear on that. I can go back and look on
17 my notes.

18 But I do think she testified that she was
19 involved in compiling-- you know, people under her
20 direction, people in her office, were taking this data
21 and-- and working on this spreadsheet and that she was
22 sort of the final person that oversaw this and
23 transmitted it to the Secretary. So I think she is the
24 proper person to introduce this summary, given that she
25 was involved with it, she oversaw it. Again, assuming

1 that the underlying data match up with what's in here.
2 So that's the first six columns.

3 In Column No. 7, I agree with Mr. Kobach,
4 there are-- and I haven't gone through every one of
5 these entries, there's 35 or 38 you said. Some of the
6 information in here looks on its face to be deducible
7 from records. So, in other words, they're just a
8 reiteration of more information from records and
9 admissible. Some of it, though, seems to come from
10 out-of-court statements made by these particular
11 registrants. And I have not heard a foundation that--
12 that satisfies me that those hearsay statements are
13 admissible.

14 First of all, under the business records
15 exception, which is 803(6) - the summary may or may not
16 be a business record - but that business records, even
17 if they're admissible, if there's hearsay imbedded
18 within them I still have to find an independent basis to
19 admit the hearsay.

20 So I'm satisfied that it became a course of
21 action in the Sedgwick County office to compile this
22 information and send it to the Secretary of State and
23 that they did this in the regular course of their
24 business beginning at some point. So in that sense it
25 fits the business records exception, but that still

1 doesn't resolve the issue of these-- those parts of
2 column seven that come from out-of-court statements by
3 these registrants--

4 MR. KOBACH: Your Honor, if you--

5 THE COURT: -- because those in and of
6 themselves are hearsay. So the business records
7 exception does not-- does not make admissible those
8 particular statements.

9 The other section, public records, again,
10 doesn't-- I don't think applies to these-- these hearsay
11 statements of the registrants because the public records
12 exception is a record or statement of a public office.
13 And this is not a record or statement of a public
14 office. It's a record-- it's a statement of somebody
15 that was interviewed by somebody in a public office.

16 That-- this particular exception requires
17 that this record or statement of a public office set out
18 the office's activities or set out a matter observed
19 while under a legal duty to report, but not including,
20 in a criminal case, a matter observed by law enforcement
21 personnel.

22 Another way to do this under public records
23 is in a civil case or against the government in a
24 criminal case, factual findings from a
25 legally-authorized investigation. That doesn't apply.

1 So I don't think either one of these
2 exceptions really cures the hearsay nature of those
3 statements that come from the interviews.

4 So the way to handle this is, again, lay
5 your foundation with Ms. Lehman, get the summary in,
6 redact-- redact those hearsay statements. Only allow
7 into the summary those that are-- that information
8 that's deducible from the records that underlie this.

9 MR. KOBACH: And that's just what I was
10 going to suggest, Your Honor. We can redact-- I think
11 there's only two or three quoted statements from the
12 applicant themselves.

13 I just have a question though. If any of
14 those statements are on-- in some cases-- I believe in
15 one case the applicant wrote the statement on a card
16 that was received by the Sedgwick County Election
17 Office. Would you want that to come in or should we
18 redact that one as well?

19 THE COURT: Written or oral I think is a
20 problem because there's a reliability issue which, of
21 course, is what underlies all hearsay. So I think oral
22 or written statement. It's an out-of-court statement,
23 it's not a business record, it's not a public record.

24 MR. KOBACH: Just one thought, Your Honor.
25 If it-- if in a particular case it is a statement

1 against interest, would we-- would you still--

2 THE COURT: The statement-- no, because
3 it's-- that's a statement against the interest of a
4 declarant, but we don't even-- well, no. I mean, the
5 statement of interest rule really has to do with parties
6 that make a statement against their own interest. The
7 party is the declarant. So that doesn't apply because
8 these folks aren't the party to this litigation.

9 MR. KOBACH: We can just go ahead and redact
10 all of them then.

11 MR. JOHNSON: Your Honor, I hate to be--

12 THE COURT: Okay. All right. You all are
13 making me work triple time, I must say.

14 MR. JOHNSON: -- the tail that wags the dog
15 here.

16 THE COURT: I'm sorry?

17 MR. JOHNSON: I hate to be the tail that
18 wags the dog here. I haven't gotten any of this
19 information. I haven't gotten any of these ELVIS files.
20 I'm sorry, the defendant seems to forget that the Parker
21 Bednasek case is another case. They provide the
22 information to the Fish plaintiffs, they don't provide
23 it to us.

24 THE COURT: All right. So--

25 MR. JOHNSON: We have none of these 38 files

1 and now we're-- and if they can get them to us, we're
2 supposed to look at them tonight.

3 MR. KOBACH: It wasn't part of his request
4 for production, but we can certainly get him--

5 MR. JOHNSON: Your Honor, request for
6 production has nothing to do with it. It has to do with
7 the foundation for this document. Under Rule 1006, they
8 have to provide that information, they haven't, even if
9 we didn't ask for it.

10 THE COURT: I agree. So you're going to
11 have to provide it to Mr. Bednasek's counsel tonight so
12 he has an opportunity to compare it for accuracy as well
13 because he has a right to object to offered evidence as
14 well. So that needs to be accomplished tonight as well.

15 Okay. What other things can we handle
16 tonight that will hopefully make tomorrow go a little
17 more smoothly?

18 MR. STEINER: And in terms of consultation
19 between Ms. Lehman and her counsel in the current state
20 of affairs?

21 THE COURT: Right. Right. Since she is in
22 the middle of cross examination, I do think it would be
23 inappropriate for counsel to confer with her about her
24 cross examination because she's their witness at this
25 point. Okay?

1 MR. STEINER: Thank you, Your Honor.

2 THE COURT: All right. Anything else?

3 MR. KOBACH: I assume, Your Honor, we can
4 tell her just that she will be in in the morning and
5 that what-- not conferring about the content of her
6 testimony, just give her the details of when she has to
7 be here, what's going to happen?

8 THE COURT: Which I already did, I told her
9 to be here at 9:00.

10 MR. KOBACH: Okay. Great.

11 THE COURT: Or maybe I amended that to 9:15
12 because I wanted to take up things with you at 9:00
13 which we've now taken up. But we'll leave the time
14 between 9:00 and 9:15 if anything else comes up
15 overnight.

16 Actually, I'm going to have to finally rule
17 on this summary in the morning. So we'll meet at 9:00
18 and then we'll look for Ms. Lehman to start at 9:15.
19 Okay? Is there something else?

20 (The Court and courtroom deputy confer).

21 THE COURT: So I have another hearing at
22 8:30, but it shouldn't take more than 30 minutes
23 downstairs. I should be ready to go at 9:00 here.
24 Okay?

25 It's after 5:00. Another thing I should

1 caution you is the courthouse closes at 5:00 and so try
2 to leave as quickly as you can only because the
3 courthouse security is not supposed to staff after 5:00
4 unless they're paid overtime.

5 And given the state of the third branch of
6 the government, which our budget is less than a half
7 percent of-- less than one-half percent of the entire
8 federal budget, yet we're constantly harangued and
9 harassed to cost contain. We're supposed to stop trials
10 at 5:00 so that we don't have to pay overtime to
11 security. I'm not very happy about that. I think that
12 we should be able to have trials as late as we want to,
13 but that's kind of the world we live in these days,
14 so...

15 MR. STEINER: Thank you, Your Honor.

16 THE COURT: All right. Thank you. We'll
17 see you back at 9:00.

18 (5:16 p.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 179 pages, is a full, true, and correct reproduction of my shorthand notes as reflected by this transcript.

SIGNED March 14, 2018.

/s/ Kelli Stewart

Kelli Stewart, CSR, RPR, CCR, RMR