

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: 03/08/2018

Day 3 - PM SESSION
(Pages 723-912)

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

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1 (1:15 p.m., proceedings commenced.)

2 MS. WALDMAN: Your Honor, the Fish
3 Plaintiffs call Mr. Bryan Caskey as their next witness.

4 THE COURT: All right. Let's make a record
5 how this is going to proceed to avoid any further
6 confusion. So, Mr. Kobach, you're going to direct him
7 as well?

8 MR. KOBACH: Mr. Roe.

9 THE COURT: Mr. Roe. Here's how we'll
10 proceed. Plaintiff will direct Mr. Caskey. Mr. Johnson
11 will direct Mr. Caskey. And then Mr. Roe, you will
12 cross-examine on whatever they've asked him plus do your
13 direct all in one fell swoop.

14 MR. ROE: Okay.

15 THE COURT: After that everybody is just
16 questioning about what the prior side has questioned
17 about. We're within that limited scope. Okay. All
18 right.

19 BRYAN CASKEY,
20 called as a witness on behalf of the Fish Plaintiffs,
21 having first been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MS. WALDMAN:

24 Q. Good afternoon, Mr. Caskey.

25 A. Good afternoon.

1 MS. WALDMAN: Your Honor, may I approach? I
2 have a binder of exhibits.

3 THE COURT: Yes.

4 MS. WALDMAN: You can just put that off to
5 the side for now.

6 THE WITNESS: Thank you.

7 BY MS. WALDMAN:

8 Q. Now, Mr. Caskey, you're currently the Director of
9 Elections in Kansas; is that correct?

10 A. That is correct.

11 Q. You were appointed to that position by
12 Mr. Kobach, the current Secretary of State; is that
13 correct?

14 A. That is correct.

15 Q. And you're also the Deputy Assistant Secretary of
16 State; correct?

17 A. That is correct.

18 Q. And you currently report to Mr. Kobach; correct?

19 A. He is one of my supervisors, yes.

20 Q. And your understanding is that Mr. Kobach is the
21 chief election officer of Kansas under the NVRA;
22 correct?

23 A. Yes, as well as -- Kansas law as well.

24 Q. Mr. Kobach has the rights and responsibilities of
25 chief election officer under federal law; correct?

1 MR. ROE: Objection. Calls for a legal
2 conclusion.

3 THE COURT: I'm sorry?

4 MR. ROE: Calls for a legal conclusion.

5 THE COURT: Overruled. Answer if you can.

6 THE WITNESS: Yes, that is correct.

7 BY MS. WALDMAN:

8 Q. You interact with the Secretary of State on a
9 regular basis; correct?

10 A. Yes, I do.

11 Q. And near daily; correct?

12 A. Near daily would be correct, yes.

13 Q. You've been the Director of Elections in Kansas
14 since February of 2015; correct?

15 A. Yes, that is correct.

16 Q. And prior to that you were the Assistant Director
17 of Elections in Kansas; correct?

18 A. Yes, that is also correct.

19 Q. In your current role you oversee Kansas election
20 voting policies and procedures; correct?

21 A. Yes, I do.

22 Q. And that includes the Election Voter Information
23 System; correct?

24 A. Yes.

25 Q. That is commonly referred to as ELVIS; correct?

1 A. Yes, it is.

2 Q. One of your primary responsibilities is to assist
3 the Secretary of State in revising the Kansas election
4 standards; correct?

5 A. Yes, that is correct.

6 Q. And another one of your primary responsibilities
7 is to assist the Secretary of State in drafting rules,
8 regulations, and statutes governing elections; correct?

9 A. Yes, that is correct.

10 Q. In your current role, you advise the 105 county
11 election officials regarding relevant procedures;
12 correct?

13 A. Yes, that is correct.

14 Q. To ensure that the policies of the Kansas
15 Secretary of State are implemented, you instruct the 105
16 county election officials; correct?

17 A. Yes, we provide instruction, training. Yes, all
18 of that is true.

19 Q. And you typically provide that guidance by
20 e-mail; correct?

21 A. We provide that in a variety of ways. E-mail is
22 one method. We provide in-person training. They have
23 regional meetings as well as statewide meetings. We
24 provide that via phone call, both one-off phone calls
25 and statewide conference calls on a regular basis.

1 That's just one method of several that we use.

2 Q. And to ensure that the policies of the Kansas
3 Secretary of State are implemented, you provide training
4 to the 105 county election officials; correct?

5 A. Yes, we did.

6 Q. And to ensure that the policies of the Secretary
7 of State's Office are implemented, you monitor the work
8 of the 105 county election officials?

9 A. To the extent practical. I have no legal
10 authority to force any county to do anything. And to
11 the extent practical, we do attempt to monitor, but
12 that's -- it's not practical for the state election
13 office to be inside all 105 county offices. It's just
14 not practical to -- monitor's kind of a strong word.

15 We provide training, and presumably they are
16 following their laws. They also have their own legal
17 counsel as well and we do not serve as a legal counsel
18 for the 105 counties. I want to be cautious in how
19 that's --

20 Q. But if you identified an instance in which a
21 county election official was not following the
22 procedures of the Kansas Secretary of State's Office,
23 you would notify that county election official that you
24 believe they were not in compliance; correct?

25 A. Absolutely. That is correct.

1 Q. And you would expect the county election
2 officials to comply with your instructions; correct?

3 A. Yes, I do expect them to do so.

4 Q. And you try to keep all county election officers
5 up to date on developments in the Secretary of State's
6 Office; correct?

7 A. Yes, we do.

8 Q. And when you send out guidance and instructions
9 to the county election officers, it is your expectation
10 that they would follow those instructions and trainings
11 that you provide; correct?

12 A. That is my expectation, yes.

13 Q. But the county election officials are not
14 employees of the Kansas Secretary of State's Office;
15 correct?

16 A. They are not. As I stated before, 101 of them
17 are elected officials in their own right and have their
18 own legal counsel. Although we provide training and
19 instruction, that does not necessarily equal -- I can't
20 force them to because they are not employees.

21 MR. ROE: I just want to register an
22 objection to the extent that she's calling for a legal
23 conclusion as to, you know...

24 THE COURT: All right. I'll overrule. So
25 far with respect to the questions that have been asked,

1 I think they're within Mr. Caskey's knowledge and
2 expertise.

3 BY MS. WALDMAN:

4 Q. You referred to the fact that 101 of the county
5 election officials are elected officials. Those are
6 referred to as county clerks; correct?

7 A. They are elected county clerks. We also refer to
8 them as county election officers. They serve dual
9 roles.

10 Q. And there are four county election officials
11 appointed by the Secretary of State; correct?

12 A. Yes and their sole job is to be an election
13 office. They do not have any county clerk duties like
14 the other 101 counties do.

15 Q. Those four elected -- those four appointed
16 elected officials are county election commissioners;
17 correct?

18 A. That is one word, yes.

19 Q. Mr. Caskey, one of the responsibilities of the
20 county election officials is to review voter
21 registrations applications; correct?

22 A. Yes, that's correct.

23 Q. And they're supposed to determine whether the
24 applications are complete; correct?

25 A. Yes, that is correct.

1 Q. The voter registration application contains a
2 question regarding whether an applicant is a United
3 States citizen; is that correct?

4 A. Yes, there's a question denoting that at the top
5 of the form. That question's required by the Help
6 America Vote Act of 2002. So the question is asked at
7 the top.

8 In addition to that question being asked,
9 every application has an oath at the bottom that also
10 requires the person to attest that they are a United
11 States citizen. So there's actually two references to
12 being a U.S. citizen on every Kansas voter registration
13 application.

14 Q. And you referred to there being kind of a
15 question on the top of the form?

16 A. Yes.

17 Q. If that question has not been completed, the
18 voter registration application is not complete; correct?

19 A. It depends. If it's a new application and the
20 person is not -- has never applied to register to vote
21 before, yes, we would deem that as incomplete.

22 However, if the person was currently a
23 registered voter and did not complete that, we would
24 assume that they've completed it before. Review the
25 record. And if they had met the statutory

1 qualifications or otherwise, we would not reject that
2 application on the basis of not completing that box.

3 Q. But if you received a voter registration
4 applicant -- application from a first-time applicant and
5 that question on the top of the form regarding
6 citizenship was not completed, that voter registration
7 application would be deemed incomplete; correct?

8 A. That is correct.

9 Q. And that individual should not be registered to
10 vote without further information from the individual;
11 correct?

12 A. Right. So we would process -- and by "we" I need
13 to rephrase that. The county would process that as an
14 incomplete registration and follow up with the voter and
15 contact them and alert them they have not yet complied
16 with state law and federal law as it relates to
17 completing the application in its entirety.

18 Q. But just to make sure we have an answer to my
19 specific question: If that question on an application
20 that was submitted by a first-time voter registration
21 applicant had not been completed, the voter registration
22 application would be deemed incomplete; correct?

23 A. Yes, that is correct.

24 Q. Now, Mr. Caskey, the Kansas Secretary of State's
25 Office has been engaged in extensive efforts to identify

1 all the instances of non-citizens attempting to register
2 to vote or purportedly registering to vote?

3 MR. ROE: Objection. Vague as the term
4 "extensive".

5 THE COURT: Overruled.

6 THE WITNESS: With the limited tools at our
7 disposal, I would say, yes, we are.

8 BY MS. WALDMAN:

9 Q. During the past year, the Kansas Secretary of
10 State's Office has done everything that it reasonably
11 can to detect instances of non-citizens registering to
12 vote and attempting to register to vote; correct?

13 A. With the tools that we are able to use, yes, we
14 have taken those efforts. Yes.

15 Q. And in total, the Secretary of State's Office has
16 identified 129 instances of non-citizens potentially
17 registering to vote or attempting to register to vote;
18 correct?

19 A. With the tools that we have at our disposal, I
20 have testified to that previously, yes.

21 Q. And in the past year, the Secretary of State's
22 Office has only identified four additional instances of
23 non-citizens potentially registering to vote or
24 attempting to register to vote; is that correct?

25 A. I would have to review the records to determine

1 the time frame.

2 Q. We'll get into that in a bit then.

3 During the course of this litigation, you
4 submitted a number of declarations; correct?

5 A. I believe that is correct, yes.

6 Q. Mr. Caskey, a declaration is a signed statement
7 under penalty of perjury; correct?

8 A. Yes, it is.

9 Q. And during the course of this litigation, your
10 declarations have sometimes contained mistakes; is that
11 correct?

12 A. Yes, that is correct.

13 Q. For example, you submitted a declaration
14 clarifying the number of citizens registering or
15 attempted to register to vote that had been identified
16 using the TDL matching process because your prior
17 declaration had identified too many instances of
18 non-citizens that were identified through that method;
19 correct?

20 A. I believe that (A) I would probably want to go
21 back and review, but I believe that the case in instance
22 where we had misidentified one person twice so there was
23 a duplicate entry on that spreadsheet. I do recall that
24 instance. I don't recall others at the moment.

25 Q. Okay. And in submitting the prior declaration

1 where there was the potentially double-counted
2 individual, you weren't trying to defraud the court;
3 correct?

4 A. No. It was an honest mistake where we -- mistake
5 where I mistakenly double-counted one person. There was
6 -- so we had a spreadsheet --

7 Q. I -- I just --

8 You weren't trying to defraud the court?

9 A. I was not trying to defraud the court. I had a
10 double entry in different parts of the spreadsheet.

11 Q. You were making a statement based on your
12 understanding of the relevant issues which turned out to
13 be inaccurate; correct?

14 A. When you say "inaccurate," I'm admitting there
15 were two entries for the same person on the spreadsheet.

16 Q. Right. But when you initially identified that
17 there were 80 instances of non-citizens voting
18 identified through the TDL matching, you revised that to
19 be 79. The declaration you said 80 people contained an
20 inaccuracy; correct?

21 A. Due to my double-counting a name on the
22 spreadsheet, yes.

23 Q. So there was an inaccuracy, yes?

24 A. Due to my double-counting the same person on
25 there, yes.

1 Q. And when you realized you made that mistake, you
2 alerted the court; correct?

3 A. Yes, we did. I did.

4 Q. So you would agree, Mr. Caskey, even when being
5 asked to make a sworn statement under penalty of
6 perjury, the individual can make a mistake without
7 intending to commit a crime; correct?

8 A. Yes, that is correct.

9 Q. Now, Mr. Caskey, prior to the SAFE Act being
10 enjoined, you had numerous instances where you heard
11 someone went to the Division of Vehicles with documents
12 that proved citizenship but were nonetheless placed in
13 suspense; correct?

14 A. Yes, that is correct.

15 Q. That happened regularly; correct?

16 A. I would like you to define the word "regularly".
17 And maybe you could go over that again. I want to make
18 sure I understand what you're asking me.

19 Q. Sure, I'll start again.

20 Prior to the SAFE Act being enjoined and the
21 preliminary injunction order going into effect, you had
22 experiences where you heard that someone went to the
23 Division of Vehicles with documentation that proved
24 citizenship but were nonetheless placed on suspense;
25 correct?

1 A. I would miss -- I don't believe the word
2 "regularly," I would use that word. I would hear
3 anecdotal evidence, yes. I -- the word "regularly"
4 would not be a word that I believe I've used.

5 Q. Okay. But -- but the word "regularly" wasn't
6 actually in that question.

7 Prior to the SAFE Act being enjoined, you
8 had experiences where you heard that someone went to the
9 Division of Vehicles with documents that proved
10 citizenship but that individual was nonetheless placed
11 in suspense; correct?

12 A. I have. It's -- however, many of those instances
13 that came to my attention, the Department of Motor
14 Vehicles, although the documentary proof of citizenship
15 was in the information that the driver's license
16 applicant brought with them, they did not need to
17 provide the documentary proof of citizenship to the
18 driver's license examiner. So the driver's license
19 office never received that piece of documentary proof of
20 citizenship, many of those instances that was the case.

21 It is not always clear to a lay person what
22 documentation you need when applying for our driver's
23 license or when renewing your driver's license. So
24 there are many instances where people over-bring
25 information and the driver's license office in many

1 cases does not scan every piece of information that's
2 brought to them.

3 So I'm aware of many cases where a person
4 brought a documentary proof of citizenship document and
5 it was not needed as part of their driver's license
6 application and was not scanned in the system and as
7 part of their voter registration record.

8 Q. Mr. Caskey, when your attorneys ask you in a few
9 moments, you can provide whatever clarification you'd
10 like. I'd just ask you to try and answer the questions
11 that I'm asking you.

12 A. I'm trying to answer your question in its
13 entirety.

14 Q. At times -- prior to the entry of the preliminary
15 injunction order in this case, your office received
16 calls from individuals complaining that their voter
17 registration applications had been placed in suspense;
18 correct?

19 A. Yes, we did receive calls like that.

20 Q. And at times you received calls from elected
21 officials who complained their constituents were not in
22 fact registered to vote; correct?

23 A. Yes, I have received those calls.

24 Q. And you took time to investigate those
25 complaints; correct?

1 A. Absolutely, yes.

2 Q. You also investigated complaints that you found
3 were being made on the Secretary of State's social media
4 accounts; correct?

5 A. Yes, that's correct.

6 Q. And you also investigated complaints that you
7 received through local media reports; correct?

8 A. Yes, that's correct.

9 Q. And in all of those investigations, you worked
10 with the Division of Vehicles to help people get
11 registered to vote; correct?

12 A. Yes, that's correct.

13 Q. And that was a routine part of your activities;
14 correct?

15 A. Yes, it is.

16 Q. I want to focus a little bit on the ELVIS system,
17 Mr. Caskey.

18 A. Sure.

19 Q. The ELVIS system contains records of every
20 registered voter in the state of Kansas; correct?

21 A. In addition to lots of other things, yes. It
22 contains records of everyone who's ever attempted to
23 apply to register to vote as well as everyone who at
24 some point was registered and subsequently had their
25 registration canceled. So it's not just a list of

1 current registered voters. It's people who have applied
2 and also people subsequently had their registration
3 canceled.

4 Q. You actually anticipated my next questions, but I
5 just want to make sure we have a clear record.

6 So the ELVIS system contains a record for
7 every registered voter in the state of Kansas; correct?

8 A. Yes, it does.

9 Q. And it has a record of every voter registration
10 application that has been submitted; correct?

11 A. Yes, that's correct.

12 Q. It also has a record for every voter that was
13 once registered but now has been canceled; correct?

14 A. For the most part, yes. There are -- the system
15 is now over 12 years old, so there have -- are a small
16 number of records that have been canceled for over a
17 decade that have been archived off the system. So
18 there's a few thousand records that have been canceled
19 for over a decade that have been removed off the system
20 for historical purposes.

21 Q. And those would all be records that had been
22 canceled prior to the enactment of the SAFE Act in 2013?

23 A. Yes, that is correct. These are at least
24 10 years old. They've been canceled for at least
25 10 years.

1 Q. Thank you. When information comes from the
2 Department of Motor Vehicles, it is batched out to the
3 relevant county election office so that the ELVIS record
4 can be created; correct?

5 A. Yes, that is correct.

6 Q. And the county election officers are responsible
7 for creating individual records in the ELVIS system;
8 correct?

9 A. Yes, that is correct.

10 Q. And if an individual's application is not
11 complete, that individual is notified by the county
12 election office; correct?

13 A. Yes, that is correct.

14 Q. Prior to the implementation of the preliminary
15 injunction order, an individual that has submitted a
16 voter registration action -- application but had not yet
17 provided documentary proof of citizenship, that
18 application was coded as "in suspense" in the ELVIS
19 system; correct?

20 A. That was the terminology that is hard coded into
21 the system. In layman's terms we would call that an
22 incomplete application.

23 Q. And prior to the implementation of the
24 preliminary injunction order, when an individual had not
25 provided documentary proof of citizenship, the ELVIS

1 field -- in the ELVIS field for voter registration, it
2 was typically coded as CITZ for proof of citizenship not
3 being submitted; correct?

4 A. The C-I-T-Z is a hard coded designation within
5 the system. It's not a public facing designation. So
6 we see it on the back end. It would never be on a front
7 facing part of the system. So on the back end C-I-T-Z
8 is correct. But within the system we use words for the
9 local election officers when using the system and it was
10 spelled out proof of citizenship not submitted.

11 Q. But when reports would be generated out of the
12 ELVIS system, the reports that were generated by
13 conducting searches of that citizen, the CITZ code would
14 indicate an application where proof of citizenship had
15 not been submitted; correct?

16 A. There are some reports that contain that
17 designation, yes, that is correct.

18 Q. Now, other records in the ELVIS system are also
19 marked as incomplete; correct?

20 A. Yes, that is true.

21 Q. If a voter registration application is
22 incomplete, the coding with an ELVIS reflects at least
23 one reason why the voter registration is not complete;
24 correct?

25 A. Yes. It is hard coded to require a reason any

1 time a application is submitted as incomplete.

2 Q. And it could be that the voter registration
3 application was not complete because it was not signed;
4 correct?

5 A. Yes, that is one possible explanation.

6 Q. And prior to the implementation of the
7 preliminary injunction order, there were instances when
8 -- when a voter registration application was marked
9 incomplete and the applicant had failed to provide
10 documentary proof of citizenship; correct?

11 A. Yes, that is correct.

12 Q. ELVIS records can be changed; correct?

13 A. Yes, they are changed all the time.

14 Q. And the system doesn't record all of the changes;
15 correct?

16 A. Yes, it does. Every key stroke made to every
17 record is logged within the system from the beginning of
18 the system implementation until today. Every change to
19 the system is logged within the record. So there is a
20 record within the system of every change made to the --
21 to each individual record.

22 Q. If an individual was once listed as being in
23 suspense but then completes a voter registration
24 application, the ELVIS record would not indicate that
25 the application was once in suspense; correct?

1 A. Within the record itself we -- there's an
2 activity tab within the record. The activity tab will
3 note every change to the record. But the public facing
4 information that comes out of it, there's no determined
5 -- there's not a way to track in public reports what
6 records have moved from suspense to active or active to
7 suspense.

8 We can run reports of those categories at
9 that time. And so I can't run a report that says this
10 record went from suspense to active or vice versa. But
11 each individual record within the activity tab, any time
12 there's a change it's satisfied within that activity
13 tab. So, yes, it's in there. It's extremely difficult
14 to pull that out in any sort of format for use by the
15 public.

16 Q. Now, Mr. Caskey, you're aware that defendants
17 produced documents in response to plaintiffs' request in
18 this matter; correct?

19 A. Yes, I'm aware of that.

20 Q. And you helped to prepare certain of those
21 responses; correct?

22 A. Yes, I did.

23 Q. You ran queries in the ELVIS database for
24 purposes of responding to those requests; correct?

25 A. Yes, I have.

1 Q. And you were able to export the results of those
2 queries into reports; correct?

3 A. Yes, I have.

4 Q. And during the period of discovery in this
5 matter, the reports were produced in this litigation;
6 correct?

7 A. Yes, there were.

8 Q. And those reports contained codes that are used
9 in the ELVIS system; correct?

10 A. Yes, that is correct.

11 Q. Mr. Caskey, if you could turn in your binder,
12 there's a tab exhibit -- Plaintiff Fish Exhibit 135. Do
13 you see that?

14 A. Yes, I have that in front of me.

15 Q. Is this a document that was prepared by the
16 Secretary of State's Office in the course of this
17 litigation?

18 And if it would help, Mr. Caskey, if I could
19 direct your attention to the first sentence of the
20 document.

21 A. Yes, thank you very much. And, yes, it does.

22 MS. WALDMAN: At this time, Your Honor, I'd
23 move for the admission of Plaintiff Fish Exhibit 135.

24 MR. ROE: Your Honor, I don't think this
25 exhibit was on the exhibit list. However, if I can have

1 a second to look at it, I can see if we object. Okay.

2 MS. WALDMAN: Okay.

3 THE COURT: Oh, sure.

4 MR. ROE: No objection.

5 THE COURT: 135 admitted.

6 MS. WALDMAN: If we could pull the document
7 up, please. Thank you.

8 BY MS. WALDMAN:

9 Q. If I could turn your attention to the second page
10 of the document. There's a heading Source of
11 Information description and a series of codes below
12 that. Do you see that?

13 A. Yes, I do.

14 Q. Those are codes that are used in the ELVIS
15 database; correct?

16 A. Yes, they are.

17 Q. And they're codes that corresponded to
18 information that can be exported from the ELVIS
19 database; correct?

20 A. Yes, that is true.

21 Q. Underneath the section there is a heading
22 Registrant Status and a list of codes. Do you see that?

23 A. Yes, I do.

24 Q. Those are codes that are used in the ELVIS
25 database; correct?

1 A. Yes, they are.

2 Q. And they're codes that corresponds to information
3 that can be exported from the ELVIS database; correct?

4 A. Yes, that is correct.

5 MS. WALDMAN: We can pull that document
6 down. Thank you.

7 BY MS. WALDMAN:

8 Q. Mr. Caskey, there are ways that citizenship can
9 be verified by the Secretary of State's Office even if
10 an individual does not provide documentary proof of
11 citizenship; correct?

12 A. Yes, that is correct.

13 Q. The Secretary of State's Office entered into a
14 memorandum of understanding with the Kansas Department
15 of Health and Environment regarding verification of
16 birth records; correct?

17 A. Yes, the Secretary of State's Office did.

18 Q. If I refer to that as the KDHE, will you know
19 what I'm talking about?

20 A. Yes, I would. Thank you.

21 Q. Pursuant to that agreement, the KDHE will check
22 to see if voter registration applications for
23 registrants who -- let me start again.

24 Pursuant to that agreement, the KDHE will
25 check to see if voter registration applicants that have

1 not yet provided documentary proof of citizenship have a
2 Kansas birth certificate on file; is that correct?

3 A. Yes, that is correct.

4 Q. And the KDHE only has birth certificates for
5 individuals who are born in Kansas; correct?

6 A. Yes, that is correct.

7 Q. The KDHE cannot access the records of an
8 individual who is born in a different state; correct?

9 A. I do not know what the capabilities are for KDHE
10 as it relates to other states. I know that in our
11 agreement we are just receiving information on persons
12 who were born in the state of Kansas.

13 Q. Okay. The Kansas Secretary of State's Office has
14 not entered into an agreement with other states to
15 access birth certificate records; correct?

16 A. We have not, that is correct.

17 Q. The Secretary of State's Office and the Kansas
18 Department of Revenue have established two interagency
19 practices for verifying whether voter registration
20 applicants have citizenship documents on file with the
21 Kansas Department of Revenue; correct?

22 A. Yes, that is correct.

23 Q. And if I refer to the Kansas Department of
24 Revenue as KDOR, will you know what I'm talking about?

25 A. Thank you, yes.

1 Q. The first interagency practice is that KDOR has
2 granted the Secretary of State's Office and each of the
3 county election offices access to a web portal that
4 allows the individual to -- with access to determine
5 whether a voter registration applicant has proof of
6 citizenship on file with the KDOR; correct?

7 A. Yes, that is correct.

8 Q. If the web portal does not return confirmation
9 that a citizenship document is on file, the other
10 interagency practice is that KDOR will manually run a
11 second search of its system to determine if citizenship
12 information is on file; correct?

13 A. Yes, that is correct.

14 Q. There are also ways that the Secretary of State's
15 Office can attempt to identify non-citizens on the voter
16 rolls; correct?

17 A. Would you repeat that question please.

18 Q. In addition to those interagency practices, there
19 are other ways that the Kansas Secretary of State's
20 Office can attempt to identify non-citizens on the voter
21 rolls; correct?

22 A. Well, the two practices -- the two practices that
23 you described just provide positive or affirmative proof
24 of citizenship. They do not provide the negative. So
25 if you're asking me now the negative what sources are

1 there to prove you are not a United States citizen,
2 there are various methods that we use and have
3 available. So I want to make sure you went from the
4 positive to the negative there. And so could you ask
5 the question again, please.

6 Q. I'll move on to my next question.

7 The Secretary of State's Office also
8 receives information from the Division on Vehicle -- of
9 Vehicles on non-citizens who have applied for temporary
10 driver's licenses; correct?

11 A. Yes, that is correct.

12 Q. And the temporary driver's license is also
13 referred to as a TDL; correct?

14 A. Yes, it is.

15 Q. TDLs are only granted to non-citizens who are
16 temporary -- temporarily legally present in Kansas;
17 correct?

18 A. Yes, that is my understanding.

19 Q. And at times the Secretary of State's Office has
20 compared a list of people who hold TDLs to a list of
21 registered voters; is that correct?

22 A. Yes, that's correct.

23 Q. And comparing the TDLs to the voter rolls, the
24 Secretary of State's Office has only identified 79
25 instances of individuals who once held a TDL and

1 registered to vote; correct?

2 A. Seventy-nine instances have been found comparing
3 the temporary driver's license holder with the applicant
4 in the statewide voter registration system, yes, that is
5 correct.

6 Q. Now, it's possible that an individual who obtains
7 a TDL can later naturalize; correct?

8 A. Yes, that is a possibility. Yes.

9 Q. The Secretary of State's Office also uses
10 information from jury questionnaires to identify
11 non-citizens who may have attempted to register to vote;
12 correct?

13 A. Yes, that is correct. There's a state law that
14 mandates that information.

15 Q. And the Secretary of State's Office is sent
16 copies of jury questionnaires in which an individual
17 self-identifies as a non-citizen; correct?

18 A. Yes, that is correct. Well, let me -- let me
19 back up. We receive information from the district
20 court. We do not receive the actual questionnaire where
21 they marked that they were a United States citizen. We
22 just receive information from the jury coordinator of
23 persons who marked that. We don't receive the actual
24 document itself.

25 Q. Okay. And it receives that information in

1 accordance with the statute that was passed in 2013;
2 correct?

3 A. I believe that was when the law passed, yes.

4 Q. And the Secretary of State's Office had a role in
5 having that legislation enacted; correct?

6 A. Yes, I believe the office did testify on that.

7 Q. And in addition to testifying on behalf of that
8 bill, they also lobbied in favor of the bill?

9 A. I would assume the office did. I was not
10 personally involved in those efforts. So I was not
11 personally involved but I believe a safe assumption is
12 that the office did lobby members of the legislature for
13 that law to pass.

14 Q. And since it began receiving data about jury
15 questionnaires in 2013, the Secretary of State's Office
16 has compared jury questionnaires to the voter rolls;
17 correct?

18 A. Yes, that is correct.

19 Q. And it has received information regarding those
20 questionnaires from the 31 judicial districts; correct?

21 A. Yes, that is correct.

22 Q. And after reviewing all the data that the
23 Secretary of State's Office has received from the 31
24 judicial districts since 2013, the Secretary of State's
25 Office has only identified three non-citizens who have

1 registered to vote; correct?

2 A. To date that is correct. What we have determined
3 is there are a large amount of people who do not tell
4 the truth when they answer the proof of citizenship --
5 when they answer the question "are you a U.S. citizen"
6 on the jury questionnaire. So we have found people are
7 not always truthful on their jury questionnaire
8 application.

9 Q. But as a result of your investigating, you've
10 only confirmed that there were three -- that there are
11 three non-citizens on the voter registration rolls;
12 correct?

13 A. As of today that is correct.

14 Q. Since July 1 of 2015, the Secretary of State's
15 Office has had the independent authority to prosecute
16 any person who has committed or attempted to commit any
17 act that constitutes a Kansas election crime; correct?

18 A. Yes, that is correct.

19 Q. And Secretary Kobach was involved in the drafting
20 of the bill that gave him the authority to prosecute
21 Kansas election crimes; correct?

22 A. Yes, he was.

23 Q. And he advocated in favor of the bill that gave
24 him authority to prosecute Kansas election crimes;
25 correct?

1 A. The office certainly was. I cannot speak to the
2 Secretary personally. I did not ask him. But I can
3 unequivocally say, yes, the office testified on that and
4 lobbied on that.

5 Q. As of June 20th of 2017, there had only been one
6 prosecution of a non-citizen for voting; correct?

7 A. I would want to defer to -- I don't have that
8 knowledge at my fingertips. We have an office -- a
9 division within our office comprised of attorneys who
10 are prosecutors. I'm not an attorney nor a prosecutor,
11 so I don't commit that information readily to the top of
12 my head. And, quite frankly, the number escapes me but
13 I'm sure I could find it out if I needed to.

14 MR. ROE: Your Honor, defense would be
15 willing to stipulate that there's been one prosecution.
16 There's currently one -- one -- there's two -- what?
17 I'm sorry, two total. We have one currently in Johnson
18 County I think.

19 THE COURT: There's been one prosecution and
20 there's a pending prosecution?

21 MR. ROE: Yes, one filed. There's one --
22 there's one been completed and one I think in Johnson
23 County currently.

24 THE COURT: All right. So noted as a
25 stipulation.

1 MS. WALDMAN: No objection to that
2 stipulation. Sorry.

3 BY MS. WALDMAN:

4 Q. I want to turn back for just a minute to the --
5 to the jury questionnaires. And I believe you gave some
6 -- some testimony clarifying what people write in on
7 their -- their jury questionnaires. Do you remember
8 that?

9 A. Yes, I do.

10 Q. And I believe what you were trying to explain was
11 that there are times when individuals write in on their
12 jury questionnaires that they are not citizens when, in
13 fact, those individuals are citizens; correct?

14 A. Yes, that is correct.

15 Q. So there are more people who identify as a
16 non-citizen on a jury questionnaire than are, in fact,
17 non-citizens; correct?

18 A. Say that again. I want to make sure -- I want --

19 Q. Let me state a better question.

20 So in your -- in reviewing the information
21 from the jury questionnaires, you've determined that
22 many of the individuals who identify as a non-citizen on
23 the jury questionnaire are, in fact, United States
24 citizens?

25 A. Yes.

1 MR. ROE: Objection. Calls for speculation.

2 THE COURT: Overruled.

3 THE WITNESS: Yes, that has been our
4 experience.

5 BY MS. WALDMAN:

6 Q. Okay. Now, the Kansas Secretary of State's
7 Office has considered use of the SAVE program
8 administered by the Department of Homeland Security;
9 correct?

10 A. Yes, that is correct.

11 Q. I'm going to show you -- if I could ask you to
12 take your binder out and turn to the tab that has been
13 marked Plaintiff Fish Exhibit 60, and this is a series
14 of e-mail communications between Ryan Krieghauser and
15 others. Do you see that?

16 A. Not yet. I do not have an exhibit called
17 Plaintiff Fish Exhibit 60, although there is one that is
18 Plaintiffs' Exhibit 60. Would that be the same?

19 Q. That would be the same document, yes. Thank you.

20 A. I do have that tab open, yes.

21 Q. And the top e-mail on this exhibit is from Ryan
22 Krieghauser and is dated July 15th, 2012. Do you see
23 that?

24 A. Yes, I do.

25 Q. And at the time of this e-mail, Mr. Krieghauser

1 was an employee of the Secretary of State's Office;
2 correct?

3 A. Yes, that is correct.

4 Q. And Mr. Krieghauser was responding to an e-mail
5 from Mr. Kobach; correct?

6 A. Yes, that's correct.

7 MS. WALDMAN: Your Honor, at this time I
8 would move to admit Plaintiff Fish Exhibit 60 into
9 evidence.

10 THE COURT: Any objection?

11 MR. ROE: No, Your Honor.

12 THE COURT: Exhibit 60 admitted.

13 MS. WALDMAN: Steve, if you could pull that
14 up, please.

15 BY MS. WALDMAN:

16 Q. Mr. Kobach's e-mail, the first in time e-mail in
17 the chain, addresses whether or not the driver's license
18 database contains "A" numbers for certain entries;
19 correct?

20 A. Yes, that is correct.

21 Q. In his response Mr. Krieghauser notes that the
22 Secretary of State's Office does not have access to that
23 information from the Division of Vehicles; correct?

24 A. Yes, that is correct.

25 Q. I'm now going to show you what's been marked as

1 Plaintiffs' Exhibit 50.

2 MS. WALDMAN: Your Honor, this joint exhibit
3 was previously admitted into evidence.

4 THE COURT: All right.

5 BY MS. WALDMAN:

6 Q. This exhibit contains correspondence between the
7 Secretary of State's Office and the Department of
8 Homeland Security concerning the SAVE database; correct?

9 A. One second while I review it real quick.

10 Q. And if you want to look through all the pages,
11 there should be a copy in your binder as well.

12 A. Bear with me just a minute.

13 Q. Sure.

14 A. I reviewed the letter. Would you, please, ask
15 the question again.

16 Q. Sure. So if you could turn to the last page of
17 the document.

18 A. The last page of the letter?

19 Q. Yes.

20 A. Yes.

21 Q. It's a letter dated February 4th, 2013; correct?

22 A. Okay. I'm not looking at the right letter then.

23 Q. All the way at the back of the document.

24 A. So we're not -- we're not talking about the first
25 letter in Exhibit 50; we're talking about the last.

1 Q. The final page of the exhibit.

2 A. Okay. Because there's multiple letters within
3 Exhibit 50, I want to make sure we're on the same
4 letter.

5 Q. Understood. We're looking at the last page of
6 the exhibit.

7 A. Okay. Yes, I have that.

8 Q. And this letter is dated February 4th of 2013;
9 correct?

10 A. Yes, I see that.

11 Q. You're not aware of whether the Secretary of
12 State's Office has had any conversations with the
13 Department of Homeland Security regarding use of the
14 SAVE database since 2013; correct?

15 A. I personally am not aware of any communications
16 directly with DHS since that time.

17 Q. And in 2013 the Secretary of State's Office
18 determined that use of the SAVE database was not
19 feasible because the office did not collect "A" numbers
20 with voter registration applications; correct?

21 A. Yes, that is a correct statement.

22 Q. Since 2013 you have not participated in any
23 conversations with the Department of Homeland Security
24 concerning the use of the SAVE database; correct?

25 A. I have not, that's correct.

1 Q. Now, you're aware several states use the SAVE
2 database in you connection with the voter registration
3 process; correct?

4 A. I am aware there are state election offices that
5 use the SAVE program. I'm not aware of the details on
6 what they use it for and how they use it.

7 Q. You're aware, for example, that the State of
8 Florida uses the SAVE database in connection with the
9 voter registration process?

10 A. I'm not aware of that. Again, I want to speak --
11 go back to what I previously said. I'm aware they have
12 an agreement. I'm not aware the particulars of what
13 information is exchanged between the state and DHS.

14 Q. But you're aware the State of Florida in some way
15 uses the SAVE database in connection with the voter
16 registration?

17 A. I have read the State of Florida, the Secretary
18 of State's Office, has an agreement with the DHS on the
19 SAVE program. That's the extent of -- I know of their
20 involvement.

21 Q. You have not had any conversations with someone
22 in Florida regarding how they're able to use that SAVE
23 database; correct?

24 A. I have not.

25 Q. And you're aware that the State of Virginia

1 utilizes the SAVE database in connection with its voter
2 registration activities; correct?

3 A. I'm going to say the same answer I had before:
4 I've seen the State of Virginia linked to DHS as regards
5 to the SAVE program. I have no information on
6 specifics.

7 Q. And you have not contacted any election officials
8 in Virginia regarding how they've been able to use the
9 SAVE database to verify the citizenship of individuals
10 on the voter rolls; correct?

11 A. I have not.

12 Q. You're aware that the State of Colorado uses the
13 SAVE database in connection with the voter registration
14 process; correct?

15 A. Same answer. I've seen Colorado on a list of
16 states that work with SAVE but I do not know the
17 specifics of that work.

18 Q. And you have not contacted anyone in Colorado
19 regarding how they use the SAVE database; correct?

20 A. I have not.

21 Q. It is your understanding that states using the
22 SAVE database have had access to "A" numbers; correct?

23 A. It is not my understanding. Again, I do not know
24 the particulars of any of those three state's agreements
25 with DHS and what information is being exchanged between

1 the state and DHS.

2 Q. Now, the Secretary of State's Office does not
3 have access to "A" numbers; correct?

4 A. It does not and it seems nonsensical we would
5 have access to "A" numbers. The state of Kansas --
6 Secretary of State's Office has a list of legally
7 registered voters who are United States citizens. If
8 you have a "A" number, you are not by definition a
9 United States citizen but are an alien and have been
10 given an alien number by DHS. It seems nonsensical to
11 me we would have "A" numbers in our voter registration
12 system.

13 Q. Apart from whether they're in the voter
14 registration system, the Secretary of State's Office
15 does not have access to "A" numbers; correct?

16 A. That is correct. I don't know where we would get
17 them. Again, we have a list of registered voters who
18 are supposed to be United States citizens. I don't know
19 why we would obtain "A" numbers for someone to apply to
20 be a registered voter which requires them to be a U.S.
21 citizen when in fact they're admitting to us they are
22 not a United States.

23 Q. The Secretary of State's Office hasn't taken any
24 steps to enable it to obtain access to "A" numbers;
25 correct?

1 A. It has not because I do not understand why the
2 Secretary of State's Office would try to obtain
3 information from someone where they would admit to us
4 that they are committing a crime.

5 Q. And the Secretary of State's Office hasn't had
6 conversations with other agencies in Kansas whether they
7 have access to "A" numbers; correct?

8 A. I have not. I -- I cannot speak to the entire
9 Secretary of State's Office on that.

10 Q. To your knowledge, no legislation has been
11 proposed that would require agencies who have gathered
12 "A" numbers to share that with the Secretary of State's
13 Office; correct?

14 A. During what period of time, because I -- my
15 memory of the legislative process is not exhaustive and
16 there are literally hundreds of bills introduced every
17 year. I cannot definitively say that in the history of
18 the Kansas legislature there's never been a bill that
19 states that. So if you could narrow the time frame --

20 Q. Sure.

21 A. -- maybe I could give a better answer.

22 Q. In the time that you've been the director of
23 elections, no legislation has been proposed that would
24 require agencies that have gathered "A" numbers to share
25 it with the Secretary of State's Office?

1 A. I'm not aware of any.

2 Q. You're aware that the Division of Vehicles
3 collects citizenship information for applications for a
4 temporary driver's license; correct?

5 A. I am aware that a person who obtains a temporary
6 driver's license by definition is in the United States
7 legally temporarily and their existence on the temporary
8 driver's license denotes that they are not a United
9 States citizen. They are here legally and they are here
10 on a temporary basis.

11 Q. But as the director of elections in Kansas,
12 you've had no conversations with the Division of
13 Vehicles regarding the information that was obtained
14 that -- the information that was provided to the
15 Division of Vehicles in connection with the temporary
16 driver's license application; correct?

17 A. We received the list from the Division of Motor
18 Vehicles of persons who have been issued a temporary
19 driver's license. Are you asking me have I seen the
20 documentation at DMV behind the creation of that list?
21 I'm not sure what question you're asking.

22 Q. Yes. Currently the Division of Vehicles provides
23 a list of the individuals that have received temporary
24 driver's license; correct?

25 A. Yes, that's correct.

1 Q. But there's no other information provided to the
2 Secretary of State's Office of the individuals on that
3 list; correct?

4 A. They provide us a list and -- and make statements
5 to the veracity of that list. If you're asking me have
6 we seen the documentation behind that list, the answer
7 is no. And I don't believe legally they can share that,
8 the actual documentation, with the Secretary of State's
9 Office.

10 Is that what you're asking me? I want to be
11 -- I want to make sure that I'm attempting to answer
12 your question, but it doesn't make perfect sense to me
13 what question you're asking.

14 Q. I think -- I think you've provided the answer to
15 my question. Thank you.

16 A. You bet.

17 Q. Now, Mr. Caskey, there have been times when the
18 Secretary of State's Office asked the Department of
19 Homeland Security to assist with the verification of an
20 individual's citizenship status; correct?

21 A. Yes, the office has done so.

22 Q. I'm going to show you what's been marked as Joint
23 Exhibit 55.

24 MS. WALDMAN: Your Honor, this document has
25 already been admitted into evidence by stipulation of

1 the parties.

2 THE COURT: All right. So noted.

3 BY MS. WALDMAN:

4 Q. And if I could direct your attention to the
5 e-mail from Craig McCullah dated March 20th, 2017 at
6 8:44 a.m. At the time --

7 A. Sorry, I have not found the 8:44 a.m. yet.

8 Q. It should be the first in time e-mail in the
9 chain.

10 A. There it is. I'm there now.

11 Q. At this time Mr. McCullah was employed by the
12 Secretary of State's Office; correct?

13 A. Yes, that is correct.

14 Q. He writes to Benjamin Gatrost at the Department
15 of Homeland Security. Do you see that?

16 A. Yes, I do.

17 Q. And Mr. McCullah writes, "Can I talk you into
18 checking the citizenship status of these individuals? I
19 appreciate your help." Do you see that?

20 A. Yes, I do.

21 Q. And it appears three individuals are listed. Do
22 you see that?

23 A. Yes, I do.

24 Q. And on that same day Mr. Gatrost responds and
25 provides information regarding the citizenship status of

1 those three individuals; correct?

2 A. I presume that to be the case. The information,
3 rightfully so, is redacted so I'm going to make an
4 assumption that that is the case. If I have -- it
5 should be redacted but I think it would be easier to
6 answer without it. But I'm going to assume that is the
7 case, yes.

8 Q. And this information that Mr. Gatrost provided
9 was used in determining whether there were non-citizens
10 on the voter rolls; correct?

11 A. Based on this e-mail thread, I can't say that
12 because I don't know the names of the people here, under
13 what circumstance Mr. McCullah contacted Mr. Gatrost. I
14 think that's an assumption that I'm not comfortable
15 making because I do not know the names of the people or
16 their relationship to appearing on the voter
17 registration list.

18 MR. ROE: We might be able to stipulate to
19 something on this if that's okay.

20 MS. WALDMAN: Would you be willing to
21 stipulate this information was used in --

22 MR. ROE: We believe it's -- I'm sorry, go
23 ahead.

24 MS. WALDMAN: It was used in verifying the
25 citizenship status of the three individuals identified

1 in the e-mail?

2 MR. KOBACH: Not for the purpose of -- you
3 said for the purpose of voter registration and that's
4 not correct. It was used -- we would be willing to
5 stipulate it was being used for the purposes of possible
6 prosecution of individuals.

7 MR. ROE: I think I honestly can't remember.
8 I think that's correct.

9 MR. KOBACH: I'm certain of it.

10 THE COURT: Do we have a stipulation or not?

11 MS. WALDMAN: Yes, we do.

12 THE COURT: So the stipulation is the
13 response from this Mr. --

14 MS. WALDMAN: Gatrost.

15 THE COURT: -- Gatrost from Department of
16 Homeland Security was -- in connection with the
17 Secretary of State was seeking verification for purposes
18 of prosecution not voter registration.

19 MR. KOBACH: That's correct.

20 MS. WALDMAN: Your Honor, just to clarify, I
21 believe that was for prosecution in connection with
22 improperly registering to vote.

23 MR. KOBACH: I -- I am not certain. That is
24 probably correct, but I would have to go back to check
25 what the potential charges were in each case.

1 MR. ROE: Your Honor, if we could keep this
2 point open, we could check, maybe get back with you
3 before the end of the trial.

4 THE COURT: Okay. That's fine.

5 MS. WALDMAN: Thank you.

6 BY MS. WALDMAN:

7 Q. Now, Mr. Caskey --

8 We can pull the document down. Thank you.

9 Now Mr. Caskey, prior to the enactment of
10 the SAFE Act, an individual to -- an individual
11 attempting to register to vote verified citizenship by
12 signing an attestation under the penalty of perjury;
13 correct?

14 A. Yes, that is correct.

15 Q. And upon implementation of the SAFE Act before an
16 individual's voter registration application could be
17 completed, that individual had to provide documentary
18 proof of citizenship; correct?

19 A. If they were applying for the first time in the
20 state of Kansas, yes, that is correct.

21 Q. And under the Kansas statute, an individual who
22 has submitted a voter registration application -- a
23 first-time voter registration application but does not
24 have documentary proof of citizenship can also attempt
25 to prove citizenship through a hearing; correct?

1 A. Yes, that is correct.

2 Q. There are specific procedures for that hearing;
3 correct?

4 A. Yes, there are.

5 Q. First an individual must submit a form to the
6 Secretary of State's Office; correct?

7 A. Yes.

8 Q. The Got Voter ID website is maintained by the
9 Secretary of State's Office; correct?

10 A. Yes, it is.

11 Q. And the information provided on that website is
12 accurate; correct?

13 A. Yes, it is.

14 Q. The form the individual must submit, if he or she
15 would like to have a hearing regarding proof of
16 citizenship, is available on that website; correct?

17 A. Yes, it is.

18 Q. I'd like to show you what has previously been
19 marked as Defendant Kobach's Exhibit 837. This is the
20 request for consideration of U.S. citizenship documents
21 -- sorry, it should be 837 in your binder.

22 A. Thank you.

23 THE COURT: 837 is what?

24 MS. WALDMAN: It's the request for
25 consideration of U.S. citizenship documents by the State

1 Election Board of Kansas.

2 MR. ROE: This is joint, Your Honor.

3 THE COURT: All right. It's already
4 admitted then if it's Joint --

5 MS. WALDMAN: Okay.

6 THE COURT: -- 837.

7 MS. WALDMAN: I don't think this has
8 previously been admitted into evidence --

9 THE COURT: Let me check.

10 MS. WALDMAN: -- but I'd like to move the
11 admission if there are no objections.

12 MR. ROE: It is.

13 THE COURT: It's in? It's in.

14 THE WITNESS: Did you say 837?

15 MS. WALDMAN: Yes.

16 THE WITNESS: I have not found 837.

17 MR. ROE: It's the RCD form.

18 THE COURT: Also you should be able to see
19 it on that screen once she publishes it right there in
20 front of you.

21 THE WITNESS: Thank you, Your Honor.

22 BY MS. WALDMAN:

23 Q. Now, this is the form that an individual must
24 submit if he or she would like to have a hearing
25 regarding proof of citizenship; correct?

1 A. Yes, that is correct.

2 Q. In the section labeled Introduction, the second
3 paragraph begins with "the applicant". Do you see that?

4 A. Yes, I do.

5 Q. It states, "The applicant may request a hearing
6 and an opportunity to present evidence of citizenship.
7 The Secretary of State will notify the applicant at
8 least five days in advance of the hearing." Do you see
9 that?

10 A. Yes, I do.

11 Q. Mr. Caskey, the first step in an individual's
12 effort to prove citizenship is to submit a document
13 requesting the hearing; correct?

14 A. Yes, that is correct.

15 Q. After that, the Secretary of State's Office
16 schedules the hearing; correct?

17 A. Yes, that is correct.

18 Q. Now, the document states -- the document states
19 that the Secretary of State's Office will schedule a
20 hearing and provide at least five days notice; correct?

21 A. Yes, that is correct.

22 Q. It does not state an individual can call at any
23 time to provide evidence of citizenship; correct?

24 A. This form just states that there will be a
25 hearing. It does not discuss what will take place at

1 the hearing.

2 Q. But an individual must submit the form to
3 schedule the hearing; it can't just make a phone call to
4 the Secretary of State's Office; correct?

5 A. That is correct.

6 Q. And if an individual called on a lunch break,
7 they would not necessarily be able to have their
8 citizenship verified at the exact instance they make
9 that call; correct?

10 A. If they have previously submitted this form, that
11 could be correct. If we're just talking about the
12 submission of the form, we have to have a form. So a
13 person on their lunch break could download the form,
14 sign it, scan it and e-mail it back over a lunch break;
15 yes, that is theoretically possible.

16 Q. But without submitting that form, they couldn't
17 just call up and have their citizenship verified;
18 correct?

19 A. No, but they could call, go over the procedure
20 and we could walk them through it.

21 Q. Understood.

22 The final sentence of the introduction
23 states, "In making an application, the applicant is
24 stating that he/she does not possess any of the
25 documents listed below." Is that correct?

1 A. Yes, that is what the form says.

2 Q. An individual can only submit a request for a
3 hearing if they do not have one of the permissible forms
4 of proof of citizenship; correct?

5 A. The statement says, "In making such an
6 application, the applicant is stating that he/she does
7 not possess any of the documents listed below." It does
8 not define what possess means.

9 Q. If I can direct your attention to Section 3,
10 signature of applicant. There's a note. It states,
11 "Note: False statement on this affirmation is a
12 Severity Level 9, non-person felony." Is that correct?

13 A. Yes, that is correct.

14 Q. This form is trying to scare an individual by
15 saying that a false statement on this form is a Severity
16 Level 9, non-person felony; correct?

17 A. No, it is not trying to scare anyone. Any
18 affidavit signed any --

19 Let me back up a little bit. Most
20 statements that are done within the election law that
21 are signed under the penalty of perjury are some level
22 felony. So all of our forms that are signed under
23 penalty of perjury have the exact same note, including
24 applications to obtain an advanced voting ballot. We
25 are certainly, on the application for an advanced voting

1 ballot, not trying to scare anyone but the same note
2 applies with whatever severity felony level it is.

3 So we put that on all our forms to let
4 everyone know any affidavit signed in the election code
5 is signed under penalty of perjury and there is a felony
6 attached. We are definitely not scaring anyone. We're
7 providing information.

8 Q. Mr. Caskey, do you know what a Severity Level 9,
9 non-person felony is?

10 A. I know what it means in layman's terms. I'm not
11 an attorney, nor a prosecutor, so I do not know the
12 prosecutorial details of a Severity Level 9, non-person
13 felony.

14 Q. And do you think an average person completing
15 this form would know what a Severity Level 9, non-person
16 felony is?

17 MR. ROE: Calls for speculation. Objection.

18 THE COURT: I'm sorry?

19 MR. ROE: Calls for speculation.

20 THE COURT: Overruled. Answer it if you
21 can.

22 THE WITNESS: I suspect they would know it's
23 a felony and it's serious and they should tell the
24 truth. But I suspect they wouldn't know what punishment
25 is attached to a Severity Level 9.

1 BY MS. WALDMAN:

2 Q. The form requires the applicant to make an
3 attestation under penalty of perjury; correct?

4 A. Yes, that is correct.

5 Q. And the statement they must attest to is, "I
6 hereby declare I do not possess any of the documents
7 listed below that may be used for proof of citizenship
8 according to Kansas law." Correct?

9 A. Yes, that is what it says.

10 Q. So a citizen can only request a hearing if they
11 can certify that they do not have any of the acceptable
12 forms of proof of citizenship; correct?

13 MR. ROE: Objection. Asked and answered.

14 THE COURT: Overruled. Answer it if you
15 can.

16 THE WITNESS: It says "possess" not "have,"
17 and it does not define what possess means. It says, "I
18 hereby declare that I do not possess any of the
19 documents listed below that may be used for proof of
20 citizenship according to Kansas law." That's what it
21 says. It doesn't say anything more than that.

22 BY MS. WALDMAN:

23 Q. I'll reframe my question.

24 A citizen can only request a hearing if they
25 certify they do not possess any of the acceptable forms

1 of proof of citizenship; correct?

2 A. That is what it says.

3 Q. And if an individual may have their birth
4 certificate but they can't make a final determination
5 about that, they can't sign that attestation; correct?

6 MR. ROE: Objection. Calls for speculation.

7 THE COURT: Overruled.

8 THE WITNESS: I'm not going to get into the
9 mind-set of someone else who may fill out this form. It
10 says I do not possess. It does not define possess, and
11 so I think it speaks for itself.

12 BY MS. WALDMAN:

13 Q. So if an individual doesn't know whether or not
14 they possess a document, they can't sign that
15 attestation; correct?

16 A. I believe that if you ask me if I possess
17 something or not, I would know the answer to that.

18 Q. That wasn't my question, Mr. Caskey.

19 An individual cannot sign this document if
20 they don't know whether or not they possess a document;
21 correct?

22 A. If you asked me if I possess something, I know
23 how I would answer it. I don't know how you would
24 answer it. So I suspect that every person can make a
25 determination itself if they possess something or not.

1 And if they have a question about it, I'd be happy to
2 answer their question. And they can call our office and
3 we would be happy to help them through it.

4 Q. So they would have to go through the additional
5 step of calling your office and asking how to determine
6 whether or not they possess a document; correct?

7 A. That's assuming they don't know the definition of
8 the word possess. If you ask me if I possess something,
9 I know the answer to that.

10 Q. Okay. Directing your attention to the second
11 page of the document, there's a section labeled
12 Procedure for Review of Applicant's U.S. Citizenship
13 Status. Do you see that?

14 A. Yes, I do.

15 Q. The first paragraph states, "If a person applies
16 for voter registration in Kansas but does not have any
17 of the documents to prove the applicant's U.S.
18 citizenship, the person may apply to the Kansas
19 Secretary of State's Office for review by the State
20 Election Board. The State Election Board is composed of
21 the lieutenant governor, the attorney general and
22 secretary of state." Do you see that?

23 A. Yes, I see that paragraph.

24 Q. In scheduling the hearing, all three required
25 individuals must be present; correct?

1 A. No, that is not correct. It says the person may
2 apply to our office for review by the board and it says
3 what the board is comprised of. It does not say what
4 the rules are, what a quorum of the board is, or who may
5 appear on behalf of the board. This form just says
6 reviewed by the State Election Board and who the board
7 is comprised of. It says nothing further in regards who
8 will be in attendance on behalf of the board.

9 Q. Now, the next bullet point -- or Item 3, "The
10 applicant will be given an opportunity to be present at
11 a hearing if desired to present any additional evidence
12 to the board." Correct?

13 A. Yes, that is what it says.

14 Q. And the board is comprised of the lieutenant
15 governor, the attorney general, and secretary of state;
16 correct?

17 MR. ROE: Objection. Asked and answered and
18 calls for a legal conclusion.

19 THE COURT: Overruled.

20 THE WITNESS: Yes, that is correct.

21 BY MS. WALDMAN:

22 Q. So in scheduling a hearing, Mr. Caskey, the
23 applicant's availability is not the only relevant
24 consideration; correct?

25 A. That is correct.

1 Q. And the members of the State Election Board are
2 three of the highest ranking officials in the state of
3 Kansas; correct?

4 A. Depends on what your definition of "highest
5 ranking" is. They are three statewide elected
6 officials, yes, that is a true statement.

7 Q. And the only official that is higher ranking in
8 the state of Kansas would be the governor; correct?

9 A. Depends on what your definition of "higher
10 ranking" is.

11 Q. Now, during the hearing the State Election Board
12 evaluates the evidence that is presented by an
13 individual regarding citizenship status; correct?

14 A. That is what this form says, yes.

15 Q. And the Secretary of State's Office does not
16 provide a complete list of the ways an individual can
17 prove citizenship, correct, during a hearing?

18 A. We provide whatever information the State
19 Election Board asks us to require.

20 Q. But there's an -- not an exhaustive list of the
21 ways an individual can provide proof of citizenship
22 during that hearing; correct?

23 A. I am not a member of the State Election Board, so
24 I cannot answer that question.

25 Q. Mr. Caskey, are you aware of any list that can be

1 provided to someone who is interested in having a
2 hearing that would describe the types of proof of
3 citizenship that would be sufficient for the hearing?

4 A. I am aware that our office has produced a list
5 taken out of the law of acceptable forms of citizenship
6 to satisfy the law. The State Election Board is not
7 bound by just that list. And I cannot speak for the
8 board on what is acceptable and what is not.

9 So, yes, the Secretary of State's Office can
10 provide a list and has provided a list of the 13
11 acceptable forms of citizenship, but I am not going to
12 answer on behalf of the State Election Board on what
13 they will accept.

14 Q. So you're not aware of any lists that could be
15 provided to a potential applicant that would alert them
16 what type of citizenship would be deemed acceptable at
17 that hearing; correct?

18 A. I am not a member of the board, so I'm not able
19 to answer that question.

20 Q. Mr. Caskey, do you recall being deposed in this
21 matter?

22 A. I've been deposed four times and over many hours.
23 I don't recall every question that was asked of me in
24 those four depositions.

25 Q. Okay. And do you -- and during each of those

1 depositions you were under oath; correct?

2 A. Yes, that is correct.

3 Q. And you swore to tell the truth; correct?

4 A. Yes, I did.

5 Q. Just like you did today; correct?

6 A. Yes, I did; and, yes, I am.

7 Q. Mr. Caskey, you were deposed by me on June 15th
8 of 2016 in this matter. Did I ask you these questions
9 and did you give this answer?

10 Question: "Are you aware of any list that
11 could be provided to someone who is interested in having
12 a hearing that would describe the types of proof of
13 citizenship that would be sufficient for the hearing?"

14 Answer: "I am not aware of a list."

15 Did you provide that testimony?

16 A. If you're reading from the deposition, then, yes,
17 I'm sure I said that.

18 MR. ROE: Rebecca, what deposition was that
19 again?

20 MS. WALDMAN: Sure. June 15, 2016,
21 deposition page 25, line 15 to 20.

22 THE COURT: All right. And before you --
23 before you impeach him with a deposition, point him
24 to --

25 MS. WALDMAN: Pull it up on the screen.

1 THE COURT: Point him -- make sure counsel
2 is aware too so counsel is on the same page. Point him
3 to what you're pointing to so he knows where you are in
4 the deposition.

5 BY MS. WALDMAN:

6 Q. Sure. If you could look at the screen, lines 15
7 through 20. Did I ask you that question and did you
8 give me that answer?

9 A. Could you put it in context to that question?

10 You asked me several questions lead up. I'm
11 not contradicting myself. The question you asked is
12 very important here.

13 In the world there exists a list of
14 acceptable forms of proof of citizenship. There are 13
15 in the law. Our website lists those 13. However, if
16 you ask what can the State Election Board provide to the
17 public, I am not a member of the board and I'm not going
18 to represent that list of 13 is the only answer that is
19 given by the State Election Board. Those are not the
20 same two things.

21 MR. ROE: Rebecca, we can probably stipulate
22 to -- I'm just trying to understand what your question
23 is is the problem.

24 MS. WALDMAN: My question is simply is there
25 any list that would alert an individual who is seeking a

1 hearing about what types of information might be
2 permissible to prove.

3 MR. ROE: Okay. You're not asking about the
4 13 documents? You're asking is there a list anywhere
5 that tells people you must present this or you must
6 present this?

7 MS. WALDMAN: Correct.

8 MR. ROE: We can stipulate to that. There's
9 no exhaustive list telling people what they can or
10 cannot produce to the board.

11 BY MS. WALDMAN:

12 Q. Now, prior to June 2016 when the preliminary
13 injunction went into effect, there had been three
14 hearings; correct?

15 A. If I said that in my deposition, that is correct.
16 There have been more hearings than that. But at that
17 particular point in time, I don't recall the exact
18 number at that point in time.

19 Q. And you understand that the -- that Secretary
20 Kobach has taken the position that the State Election
21 Board would accept an affidavit regarding citizenship as
22 sufficient evidence at a hearing; correct?

23 A. I don't have that in front of me. If he said it,
24 I don't have any reason to believe that it's not true.
25 Again, I'm not a member of the State Election Board, so

1 I'm not authorized to comment on what they will or will
2 not except.

3 Q. You were present during a State Election Board on
4 plaintiffs' motion for a preliminary injunction in this
5 matter; correct?

6 A. I believe so. You'll have to forgive me.
7 There's been lots of motions and hearings on this and I
8 have been at most of them but not every single one of
9 them. So I believe the answer to that is yes but I --
10 when I --

11 Q. In fact, you testified during that hearing;
12 correct?

13 A. Well, then, yes, I was. If I testified, yes, I
14 was there. Thank you for helping me.

15 Q. And you were present when Mr. Kobach made
16 arguments during that hearing; correct?

17 A. Well, if I testified, I was here. Whether or not
18 I was in the room when he gave those remarks, I honestly
19 I do not remember.

20 Q. During that hearing Mr. Kobach asserted that the
21 State Election Board would likely accept a declaration
22 as sufficient proof of citizenship arguing that, "I
23 would be willing to bet" -- "I would be willing to bet
24 that the State Election Board would take simply his own
25 declaration as sufficient. The State Election Board has

1 yet to tell anyone no. And that's perfectly fine if a
2 person is willing to make an attestation, a declaration
3 to the State Election Board: Here are my circumstances,
4 here's why I don't have any document."

5 Mr. Caskey, as a member of the State
6 Election Board, is Mr. Kobach in a position to say
7 what's adequate -- would be adequate proof at a State
8 Election Board hearing?

9 A. Yes, he would be.

10 Q. And in at least one of the hearings the State
11 Election Board accepted an affidavit from an individual
12 regarding his place of birth; correct?

13 A. I don't remember the details of all the hearings.
14 I just don't remember all of them. I can neither
15 confirm nor deny that. I just don't remember.

16 Q. Now, Mr. Caskey, if I showed you testimony
17 regarding this point, might that help refresh your
18 recollection?

19 A. It would be great. Thank you.

20 Q. And it would be the June 15th, 2016 deposition
21 transcript at page 201, line 23, to 202, line 4. And
22 this was actually on a redirect examination by
23 Mr. Kobach. And do you recall giving this testimony on
24 that day?

25 A. I remember being deposed that day. I don't

1 remember everything that was said that day,
2 unfortunately, but I can read -- I can read this in
3 front of me.

4 Q. And on that day you were testifying truthfully?

5 A. Yes, that's correct.

6 Q. Now, Mr. Caskey, an affidavit is a sworn
7 statement under penalty of perjury; correct?

8 A. Yes, it is.

9 MS. WALDMAN: I have no further questions at
10 this time.

11 DIRECT EXAMINATION

12 BY MR. JOHNSON:

13 Q. Mr. Caskey, here we are again.

14 A. Nice to see you again.

15 Q. Oh, thanks. It's good to see you. It's always
16 good to see you.

17 A. Yes, it is.

18 Q. Okay. Well, you'll be glad to know that
19 Miss Waldman asked many of the questions that I was
20 going to ask and so the streamlining of the process
21 seems to be working. But let me follow up and, well,
22 let me ask you a few questions though.

23 Now, is it correct that you've been involved
24 in election administration in Kansas since 1998?

25 A. Unfortunately, that is correct, yes.

1 Q. And that's when you went to work for the
2 Secretary of State's Office?

3 A. I actually went to work there previously. I
4 started as a three-year-old child in 1990. I'm lying.

5 I started in high school, 1990, under a
6 different secretary, but I was not in the Elections
7 Division, I was in college at the time. And then I did
8 something else and came back a -- full-time in the
9 mid-'90s under Secretary Thornburgh doing something
10 else. And then in 1998 I finally ended up in the
11 Elections Division.

12 Q. Since 1998 you've been in the Elections Division?

13 A. That is correct, yes.

14 Q. Okay. Thank you.

15 Is it correct from time to time, such as
16 yesterday, you testified before the Kansas legislature
17 on behalf of the Secretary's office?

18 A. That is correct. I've done that multiple times
19 just this week.

20 Q. Now, there were a number of questions from
21 Miss Waldman on the ELVIS database and I want to pursue
22 a couple of avenues there. Now, the entries in the
23 ELVIS database are made by the county election offices;
24 is that correct?

25 A. That is correct.

1 Q. Your office, in other words, the Election
2 Division of the Secretary of State's Office, does not
3 make entries in the ELVIS database?

4 A. That is correct. Although we own the database
5 and maintain the database --

6 Q. Right.

7 A. -- the actual data itself is maintained, entered
8 and owned, so to speak, by each of the 105 individual
9 counties.

10 Q. You have access to the information. You can
11 print it off. You can see what the county election
12 offices have entered, but your office itself cannot make
13 entries into the database?

14 A. That is correct.

15 Q. So if someone applied to vote in Douglas County,
16 for example, that individual would have an ELVIS -- an
17 entry in the ELVIS database input by the Douglas County
18 election officer?

19 A. Yes, that would be correct.

20 Q. Your office would have access to it but couldn't
21 change anything?

22 A. Yes, that is correct.

23 Q. Now, to state the obvious or to ask the obvious
24 question, it's your understanding that under the SAFE
25 Act since January of 2013, in order for a person to be

1 registered to vote, that person must produce a document
2 demonstrating his or her U.S. citizenship?

3 A. If they were applying to register to vote in
4 Kansas for the first time.

5 Q. For the first time. Anybody who was registered
6 before January 1, 2013 is grandfathered?

7 A. Yes, that is correct.

8 Q. And does not have to produce a document proving
9 citizenship?

10 A. Yes. And if you registered after that fact,
11 hypothetically you registered to vote in February of
12 2013, moved out of state, canceled and came back in
13 2016, you would not have to subsequently provide proof
14 of citizenship. You only have to do it once.

15 Q. Okay. That's a very good point. For new voters
16 who have to register for the first time, they have to
17 produce the documentary proof of citizenship once. And
18 then if, under certain circumstances, they have to
19 register again to vote, they don't have to provide it a
20 second time?

21 A. Yes, that is correct.

22 Q. Thank you. Now, is it your understanding that
23 the SAFE Act itself; in other words, the provision in
24 the law that deals with the documentary proof of
25 citizenship, doesn't address what happens when the

1 registrant fails to produce the documentary proof of
2 citizenship?

3 MR. ROE: Objection. Calls for a legal
4 conclusion.

5 THE COURT: Overruled.

6 THE WITNESS: Would you ask that again? I
7 want to make sure I understand what you're getting at.
8 BY MR. JOHNSON:

9 Q. I'd be happy to. Why don't I break it down.
10 I'll make it simpler. I should have done this in the
11 first place.

12 The statute -- and this is K.S.A.
13 25-2309(1) -- that is the portion of the statute, as I
14 hope you remember, that contains the list of documents
15 that one can produce in compliance with the documentary
16 proof of citizenship requirement; is that correct?

17 A. Yes, I believe that to be correct.

18 Q. Okay. But the statute, although it says you have
19 to produce one of these pieces of paper, doesn't say
20 what happens to the registration if the registrant fails
21 to do so; is that correct?

22 A. That is correct, which is consistent with the
23 rest of the voter registration statutes. I mean,
24 there's a law that requires you to sign the application
25 if you are physically able to do so. In that same law,

1 if you fail to sign it, it doesn't say this is what you
2 do. It just says this is a legal requirement.

3 Q. Understood. And so what the Secretary did, if --
4 and let me ask you if this is correct -- is address --
5 pardon me -- promulgate a rule that filled in that blank
6 in the statute, if you will, and that's 7-23-15, isn't
7 it?

8 A. I'm aware of 7-23-15. I'm not sure I agree with
9 your characterization of what that regulation does.

10 Q. Okay. Well, maybe I'll ask it this way. Isn't
11 it true that under K.A.R. 7-23-15 that if a -- an
12 applicant fails to produce the documentary proof of
13 citizenship within 90 days of applying to register to
14 vote, that individual's registration is canceled?

15 A. Yes, that is the gist of what that regulation
16 says. Yes.

17 Q. The statute doesn't say that that's in the rule;
18 is that right?

19 A. That is correct.

20 Q. Now, that rule, K.A.R. 7-23-15, went into effect
21 in October of 2015; is that correct?

22 A. The exact date escapes me, but I will take your
23 word for it.

24 Q. I want to hand you what is a copy of -- I would
25 represent to you is a copy of 7-23-15.

1 MR. JOHNSON: May I approach?

2 THE COURT: Yes.

3 BY MR. JOHNSON:

4 Q. Now, I have not marked this as an exhibit because
5 it's a portion of the statute. I'll give -- I have --
6 pardon me -- rule. Obviously counsel as well.

7 (Counsel conferring.)

8 MR. JOHNSON: It's a stipulation already.
9 I'll hand two copies to the court.

10 BY MR. JOHNSON:

11 Q. Now, I have here, in case counsel would like to
12 verify this, an actual copy of the regulation. It's
13 much longer because it has several other rules in it, if
14 you want to verify the text that I've just given you.

15 But from your recollection, is what I've
16 just given you a copy of 7-23-15?

17 A. It seems consistent with my recollection.

18 Q. Thank you. And it's in 7-23-15(c) where we find
19 the provision that's applicable to what happens to an
20 applicant's registration if they fail to produce the
21 DPOC within 90 days. Would you agree with me?

22 A. Yes, that is what Section C covers.

23 Q. And during that 90-day period, if the applicant
24 fails to produce the DPOC, that applicant's registration
25 is listed in ELVIS as "S" or in suspense?

1 A. That is the terminology within the system, yes,
2 that is correct.

3 Q. And would you agree with me that during that
4 period of time that a registration is in suspense, the
5 registrant is not considered to be a registered voter?

6 A. Absent the preliminary injunction that has been
7 issued in this case and in another part of this case, if
8 we take away the temporary injunctions that have been
9 issued, yes, that is correct.

10 Q. Okay. Thank you. And during that period of time
11 if the -- if there was an election and the person
12 presented himself or herself at the polling place to
13 vote, he or she would not be allowed to vote?

14 A. That's not a true statement. They would not
15 appear on the voter registration list or poll book. So
16 they would have been given a provisional ballot and the
17 reason they were provisional would be marked on the
18 ballot. In this case it would simply have been did not
19 appear on the poll book. So they would have been given
20 a ballot. They just would have been given a provisional
21 ballot for reason not appearing in the poll book.

22 Q. Would you agree with me that the Secretary of
23 State's Office position on that situation would be that
24 that vote should not be counted?

25 A. Our guidance to all 105 county election officers

1 on that specific instance, that ballot should not count
2 because the person was not a registered voter under the
3 laws of Kansas at the time they cast their ballot.

4 Q. Thank you. But if within this 90-day window the
5 registrant does provide the documentary proof of
6 citizenship, his or her ELVIS status should be converted
7 from suspended to active; is that correct?

8 A. Yes, that's correct. And I know this is
9 inadvertent, but there's a difference between suspended
10 and suspense. So I'm not trying to correct you but
11 there's a difference between suspense and suspended
12 within the system.

13 Q. Would you feel more comfortable if I said
14 suspense?

15 A. Yes, please.

16 Q. Or in suspense?

17 A. Yeah, either way.

18 Q. You hold us -- you hold us in suspense?

19 A. Either of those would work.

20 Q. Okay. Thank you. If the applicant failed to
21 provide the DPOC within the 90-day period, his or her
22 registration -- or pardon me, application would be
23 canceled; is that correct?

24 A. Absent the preliminary injunctions that have been
25 issued in this case.

1 Q. Absent -- absent all that?

2 A. That is correct.

3 Q. Okay. And that is the guidance of the Secretary
4 of State that the registration should be canceled?

5 A. On any application that is deemed incomplete for
6 any reason, including proof of citizenship, no
7 signature, no address, any of the reasons, that is the
8 guidance consistently across the board for any
9 incomplete application.

10 Q. Now, should the -- this applicant decide
11 subsequently that he or she wants to be a voter, they
12 would have to initiate the application process all over?

13 A. After the 90-day period and after the county
14 election offices change their status from suspense to
15 canceled, that is correct.

16 So hypothetically if a proof of citizenship
17 document appeared in the election office after the
18 record was canceled, we would maintain the proof of
19 citizenship document and contact the applicant and ask
20 them to complete a new application. We would not reject
21 -- I apologize. We would not reject the proof of
22 citizenship document. We would simply ask the applicant
23 to complete a new application and not both at the same
24 time.

25 Q. But let's say the applicant hasn't done that.

1 The 90-day period has expired and they don't send in the
2 DPOC after that time, so there's nothing new. If the
3 applicant wanted to be a voter, he or she would have to
4 fill out a new application with all the necessary
5 information, submit that to the appropriate election
6 office along with the documentary proof of citizenship?

7 A. Yes, that is correct.

8 Q. So from the -- from the potential voter's point
9 of view, it's starting all over again?

10 A. Yes, that is correct.

11 Q. And that would mean either a visit to the county
12 election office or the DMV or the Secretary of State's
13 Office, do it on-line or send it in through the mail; is
14 that fair?

15 A. Yes, or collected -- or in person; banks, grocery
16 stores. There's lots of places where that could occur;
17 but, yes.

18 Q. Great. Well, I want to hand you a copy of the
19 document that's been admitted into evidence as
20 Exhibit 303. I'll give two copies to the court and a
21 copy to each counsel. I'll represent to you,
22 Mr. Caskey, that this is a copy of the -- I'm not going
23 to publish it. So I -- for the moment we don't have to
24 worry about the inclusion of confidential information in
25 the document.

1 So, Mr. Caskey, I'll represent to you that
2 this is the application to register to vote filed by my
3 client, Parker Bednasek, in December of 2015. Have you
4 ever seen this document before?

5 A. I believe I have seen it, a scanned image of this
6 document before.

7 Q. Could you tell me from your experience in the
8 election office whether all of the necessary information
9 is -- is contained within the -- within the application?

10 A. The application itself is filled out correctly.
11 I -- I'm unable to determine if he is a first-time
12 applicant requiring also documentary proof of
13 citizenship just based on what's in front of me.

14 Q. Right. Let's assume for the sake of argument
15 that he was, as in fact he was.

16 A. Okay.

17 Q. He would, in order to become a registered voter,
18 have had to provide the -- a copy of his birth
19 certificate or passport or, in other words, the
20 documentary proof of citizenship --

21 A. Okay.

22 Q. -- in order to become a fully registered voter?

23 A. Yes.

24 Q. And absent that, and I believe the court will
25 acknowledge that he -- he has testified, Mr. Bednasek

1 has testified that he did not provide that
2 documentation, he would not become a registered voter?

3 A. That is correct.

4 Q. And if he failed to provide the documentary proof
5 of citizenship within 90 days after the date -- it's
6 dated December 3, 2015. I -- if he filed it that day or
7 the day later, whichever it is, 90 days after that, his
8 application would be canceled?

9 A. Roughly. We go based on the date the county
10 election officer adds them to the list. That's the --
11 not the date listed here. It's when -- the clock starts
12 the day the county processes the application within the
13 system.

14 Q. Very good.

15 A. That's day one.

16 Q. Now, just a couple of questions about the form
17 itself. There's a line in here that asks for party
18 affiliation. Does one of the boxes in that row have to
19 be checked?

20 A. Although the law requires it, it is a
21 long-standing policy of the Secretary of State's Office
22 dating at least through three Secretaries of State that
23 if that is left blank, the application is still
24 processed and the record is entered into the system with
25 no party affiliation attached to it.

1 Q. Have you verified whether Mr. Bednasek is
2 registered as a voter in Kansas; in other words, have
3 you accessed the ELVIS database to determine that?

4 A. I have looked at his record on multiple times
5 during the course of this litigation. Quite frankly,
6 off the top of my head, I don't know what it is today;
7 but, yes, I -- I readily acknowledge I've looked at it
8 previously.

9 Q. Nothing wrong with it. I was just curious.
10 Thank you.

11 A. Yes.

12 Q. Now, is it your understanding or have you heard
13 that Mr. Bednasek was at one time registered to vote in
14 Kansas -- Kansas -- Texas?

15 A. I have heard that before, yes.

16 Q. Is it your understanding that he canceled his
17 Texas voter registration?

18 A. That is my understanding, yes.

19 Q. Have you personally or do you know whether
20 somebody within your office has attempted to verify with
21 the Texas election authority whether Mr. Bednasek's
22 voter registration is canceled?

23 A. I believe there's been communication between the
24 Secretary of State's Office and the Texas Secretary of
25 State's Office concerning that. I personally have seen

1 a copy of his voter registration record. And from the
2 face of the record it appears that his Texas voter
3 registration application -- or his Texas voter
4 registration record has been canceled.

5 Q. Now, it's quite common that an individual would
6 register in one state and then after moving to another
7 state would then register to vote in the new state;
8 correct?

9 A. That is correct. We have an entire program that
10 deals with that exact issue.

11 Q. Interstate crosscheck?

12 A. Yes.

13 Q. Well, personally I grew up in Texas. Was
14 originally registered to vote in Texas. Went to school
15 in Connecticut, then Massachusetts, and then came out
16 here to, and I'm sorry to say it, I live in Missouri.

17 A. I apologize.

18 Q. I have registered to vote in all those states. I
19 have -- is it -- is it best practice for individuals who
20 are registered in a state and then move to another state
21 to cancel the registration in the state that they've
22 left?

23 A. It's not just best practice. The -- at least in
24 Kansas the law governing voter registration application
25 spells out the data elements on the application. And

1 Kansas law requires the field of previous name -- I
2 mean, name if previously registered or your previous
3 address. So there's a legal requirement that if you
4 were registered previously that you put that on the
5 application. However, if that is not completed, that is
6 not -- does not affect the eligibility of the
7 application.

8 Q. Would you agree with me, however, it is quite
9 common for people moving from one state to the next not
10 to cancel their registration in their previous state?

11 A. It is my experience it happens more often than it
12 does -- I mean, that it's left blank more often than
13 it's completed.

14 Q. Isn't that the purpose of interstate crosscheck?

15 A. Yes, it is.

16 Q. To your knowledge, is there anything illegal
17 about being registered to vote in more than one state?

18 A. The simple act of appearing on multiple state's
19 voter registration rolls from my chair is not a crime.
20 However, I'm going to state repeatedly that I'm not an
21 attorney, nor a prosecutor, so I'm just giving you my
22 administrative answer.

23 Q. I think that's about the 27th time I've heard you
24 say that.

25 A. Probably won't be the last.

1 Q. All right. Are you aware of anybody who has been
2 prosecuted by the Secretary of State, since he has had
3 the power to do so, has been prosecuted for being
4 registered in more than one state?

5 MR. ROE: Objection, Your Honor. I don't
6 see the relevance of this line of questioning.

7 THE COURT: Mr. Johnson.

8 MR. JOHNSON: Well, the relevance is that
9 the -- is the Secretary has made an issue of the fact
10 that my client was registered in Texas and now I've
11 established that he's not registered -- he's no longer
12 registered in Texas. And then he attempted to register
13 to vote in Kansas possibly raising the issue of some
14 sort of a multiple registration point and I'm simply
15 trying to --

16 THE COURT: I'll allow you to ask this
17 particular question.

18 BY MR. JOHNSON:

19 Q. Thank you.

20 A. I'm sorry, would you ask it again please.

21 Q. Are you aware of any situation in which the
22 Secretary, since he has had the power to prosecute
23 crimes of election fraud, has prosecuted someone for
24 being registered in more than one state?

25 A. I'm not aware of any, but I cannot recite chapter

1 and verse of every charge of every prosecution that's
2 taken place.

3 Q. Would you agree with me on the other hand that
4 voting in more than one state in the same election is at
5 least under Kansas law illegal?

6 A. Not just Kansas law but I believe in most states,
7 if not all, and federal law, yes, I believe that would
8 be a crime.

9 Q. And would you agree with me that the -- that the
10 majority of cases which the Secretary has prosecuted
11 since he's had the power to prosecute these cases have
12 involved double voting; in other words, voting in more
13 than one state in the same election?

14 A. I think to-date I can answer that affirmatively
15 that more cases than not have involved cases of double
16 voting.

17 Q. And would you agree with me that in all of those
18 cases the individuals prosecuted were American citizens?

19 A. I believe that to be the case; but, again, I am
20 not aware of every charge in every one of those cases.

21 Q. Okay. Now, if -- for those cases in which
22 American citizens were prosecuted for double voting,
23 that has nothing to do with the issue that we're here --
24 we're here in this courtroom today on, and that is the
25 documentary proof of citizenship, would you agree with

1 me?

2 A. I would agree with you on that.

3 Q. Have you checked to see whether Mr. Bednasek
4 voted in Kansas?

5 A. In the course of this litigation, I am positive I
6 looked at his voter registration record including that.
7 Off the top of my head, I do not know the answer to
8 that.

9 Q. And so if he testified he has not voted, you
10 would have nothing to contradict that?

11 A. I would have no opinion at all about that.

12 Q. Mr. Caskey, I'm going to hand you a document
13 which has been marked as Exhibit 302, and I'll hand two
14 copies to the court and a copy to both counsel. It's a
15 two-page document. Can you tell me what this is?

16 A. Yes. This is information on our website
17 containing the requirements for documentary proof of
18 citizenship was a valid document, what would not work
19 and how to -- what happens if you do not have documents,
20 roughly speaking --

21 Q. Very good.

22 A. -- quickly.

23 Q. And the first page shows three happy, young
24 registrants showing the types of documents they need to
25 provide to comply with the proof of citizenship

1 requirement?

2 A. Yes, that is correct.

3 Q. Now, the second page, that contains information
4 concerning what's necessary to do to comply with the
5 proof of citizenship requirement, would you agree with
6 me?

7 A. Yes, I would agree with you.

8 Q. And I believe you said this is a document that is
9 maintained by the Secretary of State's Office?

10 A. The Secretary of State's Office does maintain the
11 www.gotVoterID.com website. I don't know what time this
12 was produced, but I do acknowledge we do maintain that
13 website.

14 MR. JOHNSON: Your Honor, I offer
15 Exhibit 302 into evidence.

16 MR. ROE: No objection.

17 THE COURT: 302 admitted.

18 BY MR. JOHNSON:

19 Q. Thank you. Mr. Caskey, would you look at the
20 second page of the document?

21 A. Yes, I have it in front of me.

22 Q. If you look at the second full paragraph; in
23 other words, there's two columns, left-hand side, second
24 column. Do you see that there it begins with the words
25 "if a citizenship document"?

1 A. Yes, I do see that.

2 Q. And there are three sentences. The first
3 sentence reads, "If a citizenship document is not
4 provided at the time the person submits his or her voter
5 registration application, it may be submitted at a later
6 time." Do you see that?

7 A. Yes, I do.

8 Q. And do you agree that that's accurate?

9 A. Yes, that is true.

10 Q. Okay. The second sentence says, "Such person may
11 (1) mail or deliver the document to the county election
12 office by the close of business on the day before the
13 election, or (2) submit it electronically by midnight
14 the day before the election." Is that sentence
15 accurate?

16 A. Yes, it is.

17 Q. If I registered to vote today -- attempted to
18 register to vote today, March the 8th, but did not
19 provide proof of citizenship and failed to do so for the
20 next 90 days, would you agree with me that under the
21 guidance that you've provided to the county election
22 officers, my registration would be canceled?

23 A. Absent documentary proof of citizenship during
24 that time, yes, I would agree your application would be
25 canceled.

1 Q. All right. So the -- the upcoming primary takes
2 place the first Tuesday of August of 2018; is that
3 correct?

4 A. That is correct.

5 Q. What if I decided on July the 15th, which is more
6 than 90 days from today that I want to vote in that
7 primary -- actually, let me change that a little bit
8 because we run into the 20-day before the election
9 problem. Let's say on July 1, which is more than
10 20 days before the election --

11 And why is that 20-day period important?

12 A. The close of registration is on the 21st day
13 before the election, and 20th day before the election is
14 the first day that advanced ballots are mailed to voters
15 or the first possible day you could vote in person
16 across the state.

17 Q. So the bottom line is if I am not a fully
18 registered voter at least 21 days before the election, I
19 can't vote?

20 A. That's not a true statement. If you -- if your
21 application is incomplete, you may complete it after the
22 -- after the close of registration and still vote in
23 that election. So if you're -- if you've applied prior
24 to the deadline and you've started the process and if
25 you complete it prior to election day, then you are

1 allowed to vote in that election.

2 Q. So if I decided on July the -- on July the 15th
3 that I want to vote in the election in August, whatever
4 the first Tuesday of August is and let's assume it's
5 less than 20 days between July the 15th and the election
6 day, I can still register if I provide the documentary
7 proof of citizenship and fill out a new application?

8 A. No. Now, let's be careful we're saying the same
9 thing and I'm not sure that we are.

10 Q. All right.

11 A. So if you've applied to register to vote prior to
12 the deadline --

13 Q. Sorry.

14 A. -- and the application is incomplete, you may
15 complete it prior to casting your vote in that election.
16 You've started the process. You don't have to end the
17 process on election day.

18 This -- that the -- the reg says that you
19 can send me a proof of citizenship up until the day
20 before the election and up until midnight electronically
21 and still cast a valid vote on election day.

22 Q. But isn't it true that after 90 days my
23 application is not complete, it is not incomplete, it's
24 canceled?

25 A. That's a separate question. Yes, that is also

1 true.

2 Q. Okay. So if -- well, I hope you kind of figured
3 that into your calculations and let's make sure that you
4 did.

5 If my registration has been canceled under
6 the operation of 7-23-15, then you've told me that you
7 have to start the application process anew?

8 A. That is what the regulation requires, that's
9 correct.

10 Q. Is there anything in the direction that appears
11 here -- and this is intended to be -- to inform voters,
12 isn't it?

13 A. Yes, it is.

14 Q. Is there anything in here that talks about the
15 90-day cancellation period?

16 A. In the paragraph that you just read me, there is
17 not.

18 Q. So would you agree with me that a new voter who
19 follows the direction in this document and who submits
20 the documentary proof of citizenship literally on the
21 eve of the election will show up on election day and be
22 told you're not a registered voter?

23 A. It would be a new applicant; and, yes, I would
24 concede that.

25 THE COURT: Mr. Johnson, we probably need to

1 take a break. But if you're getting close to finishing
2 we'll wait.

3 MR. JOHNSON: I am -- all I have is a couple
4 of questions about the Kansas election board.

5 BY MR. JOHNSON:

6 Q. Miss Waldman asked a number of questions about
7 that. I just have a few questions about that. How many
8 voters in the -- since the SAFE Act documentary proof of
9 citizenship requirement has been in effect have been
10 registered pursuant to the proceedings of the Kansas
11 Election Board?

12 A. I believe it is six.

13 MR. JOHNSON: That's all I have. Thank you.
14 Thank you, Mr. Caskey. Thank you very much. Good to
15 see you again.

16 THE WITNESS: Thank you. Good to see you
17 again.

18 THE COURT: All right.

19 MR. JOHNSON: Sometimes when they say a few,
20 it's really a few.

21 THE COURT: I assume you have more questions
22 or not?

23 MR. ROE: I do, Your Honor, but I -- we
24 should probably take a break first.

25 THE COURT: All right. Let's take a break

1 for 15 minutes.

2 (Recess.)

3 CONSOLIDATED CROSS and DIRECT EXAMINATION

4 BY MR. ROE:

5 Q. Hi.

6 A. Good afternoon.

7 Q. We're going to start off by talking about some of
8 the things that counsel addressed with you earlier. All
9 right?

10 A. Great.

11 Q. First this was admitted, Bednasek Plaintiff
12 Exhibit 302. Do you recall earlier you were asked about
13 receiving citizenship documents from those -- from
14 people who had not completed their voter applications?

15 A. Yes, I remember that conversation.

16 Q. How can a county -- are there multiple ways a
17 county can accept proof of citizenship applications --
18 or proof of citizenship documents?

19 A. Yes. We -- counties may receive documents in
20 virtually any way possible from the applicant; by mail,
21 in person, by e-mail, text, fax. Whatever the applicant
22 is comfortable with, the county election officer will
23 make every reasonable effort to accommodate that.

24 Q. Okay. And is it correct that this form
25 identifies that they can accept it electronically those

1 sorts of ways?

2 A. It does say -- list fax, e-mail, and other
3 electronic means approved by the Secretary of State. I
4 feel confident that we will accept any means that the
5 applicant is comfortable with in transmitting that
6 information to the county or to the Secretary of State's
7 Office.

8 Q. Additionally, do you recall counsel asking you
9 about the State Election Board?

10 A. Yes, I remember those conversations.

11 Q. Do you remember a conversation about the RCD
12 form?

13 A. Yes, I do.

14 Q. Does this document indicate that applicants can
15 also appeal to the State Election Board for
16 consideration by submitting a form RCD?

17 A. Yes, that is correct.

18 Q. Do you recall counsel asking you about
19 applications being canceled after 90 days?

20 A. Yes, I recall that.

21 Q. Do you know whether applicants receive any kind
22 of notice from counties before their applications are
23 canceled?

24 A. Yes. Counties have been directed to contact each
25 applicant at least three times prior to the expiration

1 of the 90 days. I'm aware in some instances they
2 receive more communication from the counties than that.

3 Q. Are you familiar with any of the -- any of the
4 notices that counties have sent? Have you seen any of
5 those notices before?

6 A. I have seen replicas of those in the past. So,
7 yes, I have seen a handful of notices the counties have
8 done in the past.

9 MR. ROE: This is Joint Exhibit 860. Judge,
10 have you got one of these yet? Judge. I'm sorry, Judge
11 Robinson, do you have one of these notebooks yet?

12 THE COURT: I'm sorry?

13 MR. ROE: Do you have a notebook yet?

14 THE COURT: No, I have --

15 THE WITNESS: Thank you.

16 THE COURT: Thank you.

17 BY MR. ROE:

18 Q. It's Joint Exhibit 859.

19 A. Yes, I have that open.

20 Q. Okay. Have you ever seen this before, this
21 document --

22 A. Are you talking about the picture of the Douglas
23 County election courthouse --

24 Q. Yes.

25 A. -- or the Douglas County courthouse?

1 Q. Yes.

2 A. I have seen pictures of the Douglas County
3 courthouse. I'm not sure if I've seen this.

4 Q. Well, can you turn to the next page then. Does
5 that reference a 90-day deadline?

6 A. Can you ask that again please?

7 Q. Does that page reference a 90-day deadline?

8 A. Yes, it does.

9 Q. Also Joint Exhibit 862 --

10 MR. ROE: I'm sorry, I would like to admit
11 859 into evidence. I guess it's already admitted; it's
12 joint.

13 THE COURT: It's admitted if it's joint.

14 THE WITNESS: I'm sorry, did you say 862?

15 BY MR. ROE:

16 Q. Yes, Joint 862.

17 A. Yes, I have that page open.

18 Q. Have you seen this before?

19 A. I don't recall exactly, but it seems plausible
20 I've seen this in the last three years.

21 Q. Does that have the Douglas County clerk's name on
22 it?

23 A. Yes, Jamie Shew.

24 Q. Does it reference the 90-day deadline?

25 A. Yes, it does, right below the second paragraph in

1 bold.

2 Q. Okay. And it also references the various proof
3 of citizenship documents under 2309?

4 A. Yes, it does.

5 Q. Okay. Does it also state that you can send any
6 of these -- copies of the documents to the Douglas
7 County Clerk's Office to complete your voter
8 registration application?

9 A. Yes, it says that in the next to the last
10 paragraph.

11 Q. Okay. And also people -- individuals, if they do
12 have their application canceled, do they physically have
13 to go to the court -- to the election office to reapply?

14 A. No, they can do that on-line. They can print the
15 form off themselves and mail it in. They can fill out
16 any -- one that's offered to them in a door-to-door
17 drive. They can obtain one at most grocery stores,
18 banks, post offices, a variety of public buildings.

19 Q. Okay. Do you recall earlier discussing the RCD
20 form?

21 A. Yes, I do recall that.

22 Q. This is Exhibit 837. Do you have that?

23 A. Yes, I have it.

24 Q. Okay. You testified earlier that theoretically
25 somebody could fill out this form and then -- and then

1 complete their application over a lunch break. Do you
2 recall that?

3 A. Yes, I do recall that.

4 Q. Have you ever -- are you a witness in any of
5 these State Election Board hearings?

6 A. I've been in attendance in some of those
7 hearings. I've not been in attendance in all of them.

8 Q. Do you know whether the individual has always had
9 to show up to some place in Topeka to go through the
10 hearing?

11 A. No, personal attendance is not required of the
12 person who submitted the application.

13 Q. Do you know whether somebody has -- do you know
14 whether somebody has completed the State Election Board
15 hearing while sitting on the side of a road in a truck?

16 A. I believe that would be possible, yes.

17 Q. Okay.

18 MR. JOHNSON: Objection. Hearsay.

19 THE COURT: Sustained. I'll disregard.

20 BY MR. ROE:

21 Q. Do you know whether the State Election Board
22 would prohibit somebody from -- from completing their
23 hearing sitting on the side of the road in a truck?

24 A. To be consistent with previous answers, I am not
25 a member of the State Elections Board and I have no

1 opinion.

2 Q. Okay. Do you recall a question about the form
3 having a penalty of perjury statement on the form?

4 A. Yes, I do recall that.

5 Q. Do you know whether filings with the business --
6 with the Kansas business -- the Kansas Business
7 Division, if things are filed under penalty of perjury?

8 A. I truthfully do not know --

9 Q. Okay.

10 A. -- the answer to that.

11 Q. Okay. Do you recall testimony -- do you recall
12 being questioned earlier about the -- Florida using the
13 -- the Florida SAVE something --

14 A. Yes.

15 Q. -- something about Florida and the SAVE system?

16 A. Yes, I do remember a conversation about that
17 earlier today, yes.

18 Q. Okay. You know, actually, we're going to come
19 back to that later. Okay.

20 Has -- do you recall questions earlier from
21 counsel about seeking birth -- or entering into
22 agreements with -- for birth certificates from other
23 states?

24 A. Yes, I do recall that question.

25 Q. Do you know if our office has ever attempted to

1 enter into agreements or tried to obtain birth
2 certificates from other states or had conversations with
3 other -- with other states regarding getting proof of
4 citizenship documents?

5 A. We've had conversations with other states. We've
6 had conversations with our own Department of Vital
7 Statistics. We've had conversations with the EVVE
8 program. There's been multiple conversations on
9 multiple levels about finding birth certificates from
10 persons born in other states.

11 Q. Do you recall any of the reasons other states
12 would not allow us to -- allow the office to obtain
13 citizenship documents?

14 A. I wasn't involved in all those conversations.
15 And so the limited conversations that I personally had
16 participated in, as regards to one-off conversations
17 between Kansas and another state's Department of Vital
18 Statistics or equivalent, there were several legal
19 hurdles to jump through that, quite frankly, I'm not
20 privy to. I referred that to counsel.

21 In addition, there's a -- there was always
22 going to be a cost associated with that that was -- and
23 in some cases cost prohibitive.

24 Q. We'll come back to that. Earlier you talked
25 about -- you were asked about TDLs. Do you remember

1 that?

2 A. Yes, I remember that.

3 Q. Regarding the -- regarding TDLs, I believe
4 counsel asked you whether you know if an individual with
5 a TDL can naturalize. Do you recall that?

6 A. I -- yes, I remember a conversation about that
7 earlier today. Yes.

8 Q. Do you know how long -- do you know how long it
9 takes for somebody who is a --

10 Sorry, refresh your memory. A TDL, do you
11 remember who you said -- who you testified can get a TDL
12 license in Kansas?

13 A. A person who is lawfully present in the United
14 States who is a non-U.S. citizen and is -- and who is
15 here temporarily would be eligible to obtain a temporary
16 driver's license.

17 Q. Do you know what -- how long it takes for
18 somebody to go from a TDL -- from a temporary resident
19 to a naturalized citizen in the immigration process?

20 A. I do not know the answer to that.

21 Q. Are you an immigration attorney?

22 A. I am definitely not an attorney.

23 Q. Do you have experience in immigration law?

24 A. I do not have any experience in immigration law.

25 Q. Okay. Do you know whether -- do you know if

1 there are any -- any types of temporary residents who
2 can never obtain naturalization?

3 A. I do not know the answer to that.

4 Q. Okay. All right. Do you recall earlier being
5 asked about your TDL, the TDL match -- the TDL match
6 with the voter registration database?

7 A. I recall having a conversation.

8 Q. Do you recall being asked whether or not there
9 was a duplicate entry on the -- on the spreadsheet?

10 A. I -- I do remember that conversation, yes.

11 Q. Just to be clear, you corrected that; correct?

12 A. Yes, we did correct that.

13 Q. Okay.

14 A. I corrected that, yes.

15 Q. Okay. Do you recall earlier being asked about
16 the -- the ELVIS file regarding the activity tab versus
17 the -- you know, being able to verify -- run reports to
18 find different statuses of individuals and whether it's
19 possible to find people who have changed over the course
20 of time from suspense to active?

21 A. Yes, I do remember that conversation.

22 Q. Okay. Let's open up to joint -- just open up to
23 Joint Exhibit 829.

24 A. I am on that page.

25 Q. Do you see -- could you -- could you look at the

1 right side where it says "federal data".

2 A. So without revealing any information on here to
3 make sure I'm on the right --

4 MR. ROE: I'm sorry, for the record this has
5 confidential information. It should not be published.
6 I'm sorry. We can redact it.

7 THE COURT: This is Exhibit 829?

8 MR. ROE: Yes.

9 THE WITNESS: All right. So the registrant
10 ID number, which would be a public record, make sure I'm
11 on the right page, is 5706939?

12 THE COURT: All right. This is Mr. Boynton.
13 It is admitted --

14 MR. ROE: Yes, it is.

15 THE COURT: -- subject to later redaction by
16 the court.

17 MR. ROE: Yes.

18 THE WITNESS: Yes, this is -- okay, so I'm
19 on the right page.

20 BY MR. ROE:

21 Q. You see the box it says "federal data"?

22 A. Yes, I do.

23 Q. You see where it says "status" and "reason"?

24 A. Yes.

25 Q. As well as "source" and "how registered"?

1 A. Yes, I do.

2 Q. Okay. Is that the -- when you're discussing with
3 counsel earlier the ability for a county election office
4 to change statuses within the system and go back and
5 find out people who had previous statuses or later
6 statuses and run reports was that -- is this the -- if
7 they were to change status from let's say --

8 And you said earlier that the status "A" is
9 active; is that correct?

10 A. That is correct.

11 Q. And you said status "S" -- and there's other
12 reasons and stuff -- but generally suspense; correct?

13 A. That's the -- what it means within the context of
14 the system.

15 Q. Right.

16 A. The system, yes.

17 Q. So if you wanted -- for --

18 So if a county election officer wanted to
19 change a record from active to suspense, would that be
20 the drop down box they would use?

21 A. Yes, that is correct.

22 Q. If a county election officer wanted to go from
23 suspense to active, they would do the same thing?

24 A. Yes, that's the field that would take place. And
25 if you look in that same place, there's an activity tab

1 with a checkmark in it.

2 Q. Yes.

3 A. Whenever that's done and saved, then that action
4 would be reflected in the activity tab as well.

5 Q. Okay. And now can you turn over to I think it's
6 page 3. But correct me if I'm wrong because you're much
7 more familiar with this than I am. Is that the activity
8 tab -- activity log?

9 A. Yes, that's exactly what I was referring to.

10 Q. Okay. So when you're asked about finding
11 individuals as they change status between active and
12 suspense and whatever, is that where it would reflect
13 each key stroke?

14 A. Yes.

15 Q. Okay.

16 A. Any change to the record would appear in that
17 tab.

18 Q. So if our county election officer to go from
19 active to status or -- or sorry -- from active to
20 suspense status or from suspense to active status, that
21 is, for lack of a better term, essentially a mouse
22 click?

23 A. That's a drop down menu that you would select the
24 correct drop down and hit "save" yes.

25 Q. But to find somebody who's gone from active to

1 suspense or gone from suspense to active or gone from
2 active to suspense to active and in various other --
3 various other statuses within the system, they would
4 have to manually search in each record's activity box;
5 is that right?

6 A. That is my understanding. Currently we don't
7 have a preordained query or report that reflects change
8 of status. It's clearly in the database. This is a
9 massive database and so the data is in there. At this
10 point in time I don't have a preprogrammed report or
11 query that I can produce statistical information. It
12 requires a hand review of activity tab in the records.

13 Q. So if there are thousands of individuals who are
14 in suspense status, for instance, it would take -- and
15 those were all changed to active, do you know how long
16 it would take to search for all those individuals?

17 A. I currently don't have the ability to compute
18 that.

19 Q. Okay. Now, while we have Boynton open, let's
20 talk about him for a second. Okay. You -- go back to
21 the first page. You testified earlier that if somebody
22 has a -- a suspense indication, the status would say --
23 what would the status box read?

24 A. It would say "S" instead of "A".

25 Q. Is there a specific reason code that we have

1 tried to track and I'm --

2 MR. ROE: Before I go into this, Your Honor,
3 this also is -- I need to avoid addressing -- it's an
4 issue that will show up in the protective order. I have
5 questions right now about this exhibit that testimony
6 will affect the protective order in this case we can --

7 THE COURT: In what respect?

8 MR. ROE: Under the protective order the
9 reason code is not supposed to be revealed. It's part
10 of NVRA -- I'm sorry, reason code or is the -- oh,
11 that's source of registration. Apologize. Never mind,
12 Your Honor. I'm sorry, it's the source of registration
13 issue.

14 THE COURT: Okay.

15 BY MR. ROE:

16 Q. Is that correct, Bryan?

17 A. That is correct.

18 Q. Okay. So for a reason code, it would state why
19 somebody's in suspense, for instance, what their
20 category within the ELVIS system is?

21 A. Yes, there's a variety of reasons that are listed
22 there which can be attached to specific status.

23 Q. And there's a specific reason code that the ELVIS
24 system reflects to identify individuals who are covered
25 by the -- the injunction -- the temporary injunction in

1 this case; correct?

2 A. Yes, that is correct.

3 Q. Does Mr. Boynton have that reason code in his
4 ELVIS file now?

5 A. He does not.

6 Q. Okay. So what is Mr. Boynton's current status in
7 Kansas?

8 A. He is a legally registered voter who at some
9 point has had his proof of citizenship submitted.

10 Q. Okay. So going to -- going to page 8 of Joint
11 Exhibit 829.

12 MR. ROE: And, again, this is subject to
13 redaction as well, Your Honor.

14 BY MR. ROE:

15 Q. Is there any sort of --

16 A. Hang on.

17 Q. Sorry.

18 A. Sorry.

19 THE COURT: This is Exhibit 829 or
20 Exhibit 29? I'm sorry.

21 MR. ROE: I'm sorry, 829. Same exhibit.

22 MS. WALDMAN: What's on the page?

23 MR. ROE: I'm sorry, it's the voter check
24 box.

25 THE WITNESS: Okay.

1 BY MR. ROE:

2 Q. I may have counted wrong. It's possible.

3 A. It is page 8. I'm there now. Sorry.

4 Q. All right. What is this page?

5 A. This page is a printout of the web portal that we
6 have -- each county has with the Department of Motor
7 Vehicles to ascertain what proof of citizenship document
8 each person has within their system.

9 Q. Do you recall approximately when this office
10 obtained the web portal access?

11 A. I do not remember the exact date. I believe the
12 web portal went live in May of '16 I believe.

13 Q. Do you recall if -- if this office filed anything
14 with the court alerting the court of that web portal?

15 A. I truthfully do not know. I -- actually, I would
16 ask you that question. I -- I would assume so but I
17 don't remember.

18 Q. Okay. This is Exhibit 10 -- Joint Exhibit 1059,
19 I'm sorry, does this look familiar to you?

20 Well, I would say scroll down to the second
21 half of that document. Does that look familiar to you?

22 A. That would be an affidavit from me; so, yes, I
23 must have done that.

24 Q. Is this -- do you recall if this was the
25 affidavit -- the second affidavit filed with the court

1 in which you alerted the court of the new web portal
2 access?

3 A. I can't speak to the number of times I submitted
4 affidavits to the court, but this is -- something I've
5 done.

6 Q. Do you want to read for a second to clarify?

7 A. Well, it's my affidavit and I see on No. 3 that I
8 previously submitted a declaration to the court, so I
9 concede that.

10 Q. Okay. So do you recognize this as being what we
11 submitted to the court to alert them to the website of
12 the portal -- change to the portal?

13 A. Can you keep scrolling so I can see the rest of
14 it? If we could keep going.

15 Yes, that is correct. Thank you.

16 Q. Can you describe the web portal, how it works?

17 A. Essentially how the web portal works, the
18 Division of Motor Vehicles programmed a solution where
19 the Secretary of State's Office, or each of the 105
20 county election offices, can type in a driver's license
21 number or first name, last name, date of birth of anyone
22 who resides with -- who has a record within the
23 Department of Motor Vehicles database. And once that
24 information is entered into the system, the database
25 will return back the name of a documentary piece of -- a

1 documentary proof of citizenship document if the
2 Department of Motor Vehicles has one located anywhere
3 within their database.

4 Q. And if you could turn back to page 8 of
5 Exhibit 829.

6 A. Yes, I am there.

7 Q. And would that be the return you're talking
8 about?

9 A. Yes, that is correct.

10 Q. Okay.

11 A. So I misspoke. If you don't have the driver's
12 license number, you can also enter in first name, last
13 name, date of birth and last four social. I did not
14 remember all the fields required when looking up
15 information.

16 Q. And regarding Mr. Boynton, does he have a -- has
17 he -- has he had his citizenship confirmed?

18 A. Yes. On this document it says that certified
19 U.S. birth certificate is on file with the Division of
20 Motor Vehicles for Mr. Boynton.

21 Q. So regarding Mr. Boynton then -- sorry one last
22 question about Mr. Boynton -- couple more questions
23 about Mr. Boynton. If you could turn to page 13,
24 please. It's the Kansas voter registration application.
25 And again this also has redactable information.

1 A. Are you referring to the Kansas voter
2 registration application that Mr. Boynton filled out?

3 Q. Correct.

4 A. Yes, I have it in front of me.

5 Q. Oh, sorry. First page, one more time. I'm sorry
6 second page -- third page. The activity tab again. Do
7 you see anything in that activity tab which would lead
8 you to believe that Mr. Boynton submitted a voter
9 registration application from the DMV?

10 A. I'm sorry. Give me just a minute to look.

11 Q. There's also a second page. A lot of activity
12 apparently.

13 A. Would you ask your question again, please. I'm
14 sorry.

15 Q. Is there anything in that activity tab which
16 would indicate that Mr. Boynton submitted a voter
17 registration application -- I should say voter
18 registration application at the DMV?

19 A. No, there is not.

20 Q. Okay. So looking at the ELVIS file, you would
21 agree Mr. Boynton never submitted a voter registration
22 application at the DMV?

23 A. That is correct.

24 MS. WALDMAN: Objection, Your Honor.

25 THE COURT: I'm sorry?

1 MS. WALDMAN: He's been leading the witness.

2 THE COURT: Overruled but don't ask leading
3 questions. You're doing -- you're kind of on a mix of
4 direct and cross.

5 MR. ROE: Yeah, wasn't sure how to go on
6 that one, Your Honor. Sorry.

7 BY MR. ROE:

8 Q. Okay. So, speaking of Mr. Boynton, back to the
9 page we previously discussed, the Kansas voter
10 registration application page, page 13 --

11 A. Yes, I'm on that page.

12 Q. -- what is this page?

13 A. This is a scanned image of the voter registration
14 application Mr. Boynton completed and submitted to the
15 Sedgwick County Election Office.

16 Q. Okay. What is the date of the application?

17 A. The date listed on the application is 11/4 of
18 '14.

19 Q. Okay. So do you recall whether 11/4/14 was an
20 election day?

21 A. I -- I don't recall the date of the first
22 Tuesday -- or first Monday.

23 MR. ROE: We would ask the court to take
24 judicial notice November 4th, 2014 was the date of the
25 first general election.

1 THE COURT: November 4th, 2014, first
2 Tuesday in November. I'll judicially notice that.

3 MR. ROE: Okay.

4 BY MR. ROE:

5 Q. So now that you know that November 4th, 2014 was
6 the general election, looking at this application, what
7 would you deduce?

8 A. I want to clarify. The first Tuesday following
9 the first Monday.

10 Q. I'm just saying November 4th, 2014.

11 A. So we're assuming that's the election day?

12 Q. She just took judicial notice that it was.

13 A. What I would conclude was Mr. Boynton, based on
14 my experience as election administrator and the date of
15 this form, I would conclude that he attempted to vote on
16 election day and voted a provisional ballot and this
17 voter registration application was attached to his
18 provisional ballot on that day.

19 Q. In your experience as an election administrator,
20 would this lead you to believe -- what would this lead
21 you to believe beyond that?

22 How would he have been entered into the
23 ELVIS system?

24 Sorry let me rephrase.

25 A. Thank you.

1 Q. So now that you've deduced he filled out a
2 provisional ballot at the -- on the -- at the general
3 election, what is the next step typically at the
4 election office?

5 A. In regards to the application or in regards --

6 Q. Yes. Sorry. Is this treated as an application?

7 Let me back up.

8 When somebody votes provisionally and
9 they're not in the poll book and it turns out they're
10 not registered to vote, at that point what does the
11 county election officer do with the application?

12 A. So the -- the first thing is -- that is done by
13 the election office is ascertain whether or not this
14 person that had previously applied to register to vote
15 and verify the status of their provisional ballot prior
16 to the -- meeting of the county board of canvassers. So
17 most of their work initially is determining the
18 eligibility of the vote and making sure that the vote is
19 counted according to state law.

20 Once the canvass is done, then the county
21 election offices will go back to the voter registration
22 applications that were completed with the provisional
23 ballots and then enter those applications into the
24 system.

25 Q. So now going back to the activity tab, the third

1 page of the activity tab, is that the first entry you
2 see in the system?

3 A. The first -- the date of the first entry is
4 November 21, 2014.

5 Q. Uh-huh. And so that's approximately seven --
6 what, seven -- I got to do math -- 17 days after the --
7 the provisional ballot; is that correct?

8 A. That is correct. That would be consistent with
9 my knowledge of how elections are administered of
10 approximately when the county would begin processing
11 voter registration applications after the county board
12 of canvassers certifies the results of the election.

13 Q. So looking at his voter application, would you
14 deduce -- was Mr. Boynton, in your opinion, registered
15 to vote prior to the election on November 4th, 2014?

16 A. Based on the documentation in front of me, I
17 would say he was not -- he had not applied to register
18 to vote prior to election day 2014.

19 Q. Okay. Turn to page -- to Joint Exhibit 848.

20 A. I am on that page.

21 Q. Is this another -- do you recognize this?

22 A. It is a screenshot of a voter registration record
23 of -- am I allowed to say the name?

24 Q. Oh, yes.

25 A. -- Douglas Hutchinson.

1 Q. Okay. Now, regarding this exhibit, we had
2 discussed earlier about statuses; correct?

3 A. Yes, we did.

4 Q. What is Mr. Hutchinson's status currently?

5 A. On this page his status is active.

6 Q. Okay. Without revealing source, what does
7 "source" mean?

8 A. Where the person applied to register to vote.

9 Q. What does "how registered" mean?

10 A. It's an internal code that can be used by
11 counties in a variety of ways. Sometimes it reflects
12 the source. Sometimes it reflects other things.

13 Q. All right. Going to the -- all right. So when
14 somebody applies to register to vote at the Division of
15 Vehicles and they do not print --

16 Can you describe to me the process of when
17 someone applies to register to vote at the Division of
18 Vehicles?

19 A. So every person --

20 Q. I'm sorry, let me rephrase. The process of, yes,
21 the registration at the DMV and how we -- how this
22 office retain -- or receives information.

23 A. So a person who goes to the Division of Motor
24 Vehicles to conduct a transaction must be offered the
25 opportunity to register to vote in addition to their

1 driver's license transaction. So a person will go, you
2 know, apply for a driver's license, change their
3 address, whatever. They'll go through that.

4 And then at the end of that transaction,
5 they are required to be asked by the DMV clerk, Do you
6 also want to register to vote or do you also want to
7 change your voter registration? If the person answers
8 affirmatively, then the clerk at DMV will answer -- ask
9 a handful of additional questions that apply only to
10 voter registration and not as part of their driver's
11 license transaction.

12 Once that's completed, then the Division of
13 Motor Vehicles gathers that information electronically.
14 On a nightly batch base, transfers that information to
15 the election -- to the Secretary of State within the
16 ELVIS system. That information is then in a batch sent
17 to each of the individual counties.

18 If there's a document that's provided to DMV
19 as part of the driver's license transaction that
20 pertains to documentary proof of citizenship, that
21 document is scanned by the DMV clerk at the counter and
22 then that document -- then the type of document
23 information is also relayed to the Secretary of State's
24 Office. We do not get the original document itself but
25 we get the description; passport, certified birth

1 certificate, whatever the proof is.

2 Q. And if somebody does not submit proof of
3 citizenship document at the DMV, what does this office
4 get?

5 A. Then we get a notice from the Division of Motor
6 Vehicles saying no document was provided. I believe it
7 says no document was submitted I think is the exact
8 wording of the notice from DMV.

9 Q. Can you turn to page -- page 9.

10 A. Yes, I'm on that page and I was wrong about
11 submitting it. It says, "No citizen document found."

12 Q. Okay. Do you know whether that -- forget it.

13 Now turn to the next page, please. What is
14 that?

15 A. It appears to be a scanned image of a passport.

16 Q. Okay. Whose name is on that passport?

17 A. Douglas Ray Hutchinson.

18 Q. And the next page, does that appear to be a
19 closer scan?

20 A. It does appear to be a blow-up of the same image
21 from before of the passport.

22 Q. So is it correct -- so does Mr. Hutchinson
23 currently have citizenship -- has Mr. Hutchinson had his
24 citizenship confirmed?

25 A. Mr. Hutchinson submitted documentary proof of

1 citizenship and his voter registration record is active.

2 Q. Okay. So looking at this record, is -- is
3 Mr. Hutchinson a fully registered voter?

4 A. Yes, he is.

5 Q. And he has a proof of citizenship document on
6 file now with the Johnson County Election Office?

7 A. Yes, he does.

8 Q. Okay. And remind us again if -- if the -- well,
9 never mind. Strike that.

10 Now, this is Joint Exhibit 838. This is in
11 the laminated folder. Do you recognize this?

12 A. There is a screenshot of the -- of ELVIS of the
13 voter registration record for Charles William Stricker.

14 Q. Okay. And what is his status?

15 A. His status is active.

16 Q. So based on this ELVIS -- this ELVIS database
17 screenshots, what is -- is Mr. Stricker currently a
18 fully registered voter?

19 A. As of the date this was printed, yes, that's
20 correct.

21 Q. Okay. And Fish -- okay, exhibit -- Joint
22 Exhibit 861.

23 A. I have that open.

24 Q. What is this?

25 A. This is a screenshot of the voter registration

1 record for Steven Wayne Fish.

2 Q. And, now, in this one under "federal data" his
3 current -- what does the status reflect?

4 A. So the way the system is coded, his status is
5 listed as "suspense" with a reason of "DMV office
6 federal" and it cuts off. This is the designation
7 within the system to reflect that this person was
8 covered by the protective order. He's applied at DMV.
9 He has not provided proof of citizenship but he is
10 deemed a registered voter in every sense of the word.

11 Q. However, go to the -- what is this page? 6?
12 Sixth page, please.

13 A. Yes, I'm there.

14 Q. Under the -- under the second tab, the second
15 line -- I guess under the highlighted side, what does
16 that say?

17 A. I don't have a highlighted version.

18 Q. I'm sorry. The top line is not -- does not look
19 like it's highlight within the system as if like a --

20 A. I need to make sure we're on the same page.
21 Sorry.

22 Q. This page. This, yeah. Do you see where it says
23 the second line right below the highlight?

24 A. Yes, I do.

25 Q. What does that say?

1 A. So the line underneath the highlight where it
2 says "proof of citizenship"?

3 Q. Uh-huh.

4 A. Yes, I see that.

5 Q. Can you see the within -- right above it?

6 A. "DMV/COA."

7 Q. Correct. Go to -- we'll come back to this one.

8 Okay. Regarding Mr. Boynton, Mr. Hutchinson
9 and Mr. Stricker, looking from their files, it is -- you
10 said it's correct that each one of them is currently a
11 fully registered voter; correct?

12 A. As of the date these documents were printed, yes,
13 that is correct.

14 Q. And in any of these files, is there any
15 indication that they are currently under the -- the
16 status of the preliminary injunction?

17 A. Of the first three, no, none of them were covered
18 by the injunction.

19 Q. And --

20 MS. WALDMAN: Objection, Your Honor, to the
21 extent that status calls for a legal conclusion.

22 THE COURT: Overruled.

23 BY MR. ROE:

24 Q. So if defendants eventually won this case and the
25 ELVIS system was reflected to change statuses of

1 individuals from the suspense motor vehicle to, you
2 know, incomplete, for instance, in the suspense, would
3 Mr. -- Mr. Boynton's, Mr. Hutchinson's, or
4 Mr. Stricker's files be modified?

5 A. No. All three of them are legally registered to
6 vote under the laws of the State of Kansas.

7 Q. So there's nothing in this case at this point
8 that you can tell from the ELVIS records that would make
9 Mr. Stricker, Mr. Boynton or Mr. -- Mr. Boynton,
10 Mr. Stricker, Mr. Hutchinson no longer a registered
11 voter of Kansas?

12 MS. WALDMAN: Your Honor, objection to the
13 extent this calls for a legal conclusion.

14 THE COURT: Standing is a legal issue I'm
15 going to sustain. I've already ruled on it anyway, but
16 I know that you need to make an appellate record and I
17 know it's an issue that can be raised at any time, but
18 I'm not going to change my ruling.

19 MR. ROE: Okay, Your Honor, I understand
20 that. I'm -- there's also an issue of mootness. I want
21 to point that out as well; but, yeah, I understand.

22 THE COURT: I ruled on all of those. I
23 understand you need to make an appellate record; but,
24 yeah, I've already ruled.

25 MR. ROE: Okay. Hold on a second.

1 BY MR. ROE:

2 Q. Okay. Let's move on. Mr. Caskey, there are
3 multiple ways to register to vote in Kansas; right?

4 A. Yes, that is correct.

5 Q. Can you turn to the Joint Exhibit 801. Sorry,
6 it's the very first page. It does not have a tab. Very
7 first page after the --

8 A. Yes, I'm on the very first page -- or the second
9 page, yes.

10 Q. The second page I guess technically.

11 A. Yes, I'm there.

12 Q. What is this?

13 A. It's a copy of the Kansas voter registration
14 application.

15 Q. And the next exhibit, Joint Exhibit 802, do you
16 recognize that?

17 A. Yes. It's a copy of the federal voter
18 registration booklet that contains the federal voter
19 registration form as well as presumably all the states
20 -- state specific instructions to that federal voter
21 registration application.

22 Q. Okay. So when somebody applies to register, they
23 can also apply to register to vote at the DMV, correct,
24 you said that earlier?

25 A. Yes.

1 Q. If somebody applies to register to vote under
2 either method, what happens -- what happens at the
3 county election office?

4 A. Any time any application is received by the
5 county election office, the Kansas, through their normal
6 procedures, processes that application and creates an
7 ELVIS record or looks for an existing ELVIS record to
8 input the information into the system.

9 Q. And if somebody does not provide evidence of
10 citizenship for their application or don't sign, you
11 said earlier a file is still created; correct?

12 A. Yes, that is correct.

13 Q. At that point what is the -- let's say they
14 submit one without a proof of citizenship document.
15 What's the Kansas procedure next for the county election
16 office?

17 A. So assuming the person has not been previously
18 registered --

19 Q. Correct.

20 A. -- a record is created in the system. Depending
21 on which form the person filled out will determine how
22 the record is entered into the system. There's a
23 procedure -- if you complete the state form, there's a
24 different procedure if you register -- apply at DMV to
25 comply with the injunction, and there's a third

1 procedure if you come -- apply with the federal form to
2 comply with an injunction. So it -- there's procedures
3 for any type of application received to make sure that
4 we are complying with all judicial rulings in this case.

5 Q. Okay. And assuming that somebody has not
6 provided a proof of citizenship document, what is the
7 counties -- what do the counties in our office do? Are
8 there procedures through memorandums or anything?

9 A. Yes, there are procedures. When the application
10 is received and there's not documentary proof of
11 citizenship included with that application, in most
12 counties, if not all, the first thing the county does,
13 after the record's been processed and entered, is to use
14 the web portal hosted by the Division of Motor Vehicles
15 to see if proof of citizenship can be obtained through
16 the web portal.

17 Q. Okay. And Joint Exhibit 1052 -- sorry, before
18 you go to 1052, let's go to 933. Defense Exhibit 933
19 has not been admitted yet. I'm sorry, don't look -- I'm
20 sorry, don't look at it. Apologize.

21 When -- after approximately May of 2016,
22 when this office maintained the web portal, did you give
23 any instructions through you --

24 I think you testified earlier you instruct
25 counties through e-mails; is that right?

1 A. That's one of the methods.

2 Q. Do you recall whether you instructed the counties
3 anything involving or notified the counties regarding
4 the web portal at all?

5 A. Yes, we did. I personally notified the counties
6 on the use of the web portal.

7 Q. So when you send an e-mail -- strike that.

8 So could you, please, turn to -- to
9 Exhibit 933, please, Defense Exhibit?

10 A. Yes, I have it here in front of me.

11 Q. Do you recognize that?

12 A. Yes. It's an e-mail I sent to another person in
13 our office.

14 Q. I'm sorry?

15 A. You said 933; correct?

16 Q. Yes.

17 A. Yes, it's an e-mail that I sent to --

18 Q. Jamison Becker; correct?

19 A. That is correct.

20 THE COURT: 932 or 933?

21 MR. ROE: 933, Your Honor.

22 THE COURT: 933.

23 BY MR. ROE:

24 Q. Do you recall whether this e-mail was
25 subsequently sent or something substantially similar was

1 subsequently sent to the county offices?

2 A. It is my belief that almost this exact e-mail was
3 sent to the counties at some point in time. I don't
4 have it in front of me so I can't --

5 Q. Okay.

6 A. -- say off the top of my head; but, yes.

7 Q. This office did submit an e-mail to the county
8 election offices about the web portals?

9 A. Yes.

10 Q. And the -- and the counties, to your knowledge,
11 are using the web portal?

12 A. Yes, absolutely they are.

13 Q. Okay. You're aware -- do you know whether
14 individuals have come off the suspense list using that
15 web portal?

16 A. Yes. I -- there are many ELVIS records that I
17 personally viewed that have screenshots of the results
18 of the web portal. In fact, even in this documentation
19 that I've seen today there are screenshots of the
20 results of that web portal attached to ELVIS records.
21 So, yes, I know firsthand that is correct.

22 MR. ROE: I move to admit Defendant's
23 Exhibit 933.

24 MS. WALDMAN: No objection, Your Honor.

25 THE COURT: 933 admitted.

1 BY MR. ROE:

2 Q. Now, I think you also testified earlier about the
3 KDHE; correct?

4 A. Yes, I have.

5 Q. Can you describe that process?

6 A. The Secretary of State's Office has a memorandum
7 of understanding with KDHE where periodically we will
8 transmit a list of names to KDHE to verify the existence
9 of a Kansas birth certificate on file with KDHE.

10 Q. Can you, please, turn to Exhibit 1052. It's
11 Joint Exhibit 1052.

12 MR. ROE: I'm sorry, what? It's not in
13 there? Yes, here it is. Oh, that's the wrong thing.

14 MS. WALDMAN: I got it.

15 MR. ROE: I'm sorry, that's the wrong thing
16 anyway.

17 BY MR. ROE:

18 Q. Let's move on. We'll come back. So can you
19 describe the process of the KDHE -- KDHE process?

20 I'm sorry, you just did that, didn't you?
21 Our office has an MOU with the KDHE; is that correct?

22 A. Yes, that's correct.

23 Q. All right. We'll get back to that.

24 Can you please turn to Joint Exhibits --
25 well, this is just for --

1 MR. ROE: For the record, Joint
2 Exhibits 849, 850, 859, 860 and 862, let's start with
3 849 I guess.

4 THE COURT: 849?

5 MR. ROE: 849, I'm sorry, Your Honor.

6 THE COURT: These are all admitted; correct?

7 MR. ROE: Yes, they are.

8 BY MR. ROE:

9 Q. See 849?

10 A. Yes, I'm sorry. Yes.

11 Q. Whenever something -- if something is not
12 necessarily correct or the application -- or a ELVIS
13 file is not completed or whatever, do you know if the
14 county attempts to contact those individuals?

15 A. Any application that is incomplete for any
16 reason, the county -- every county contacts the voter
17 almost immediately to follow up and alert the voter of
18 the nature of the -- of the incompleteness of the
19 application.

20 Q. Can you just confirm that Joint Exhibits 849 and
21 850 -- whether you know Joint Exhibits 849, 850, 851,
22 853, 859, 860 and 862 are similar such notices unless
23 counsel would like to stipulate that they are.

24 MS. WALDMAN: Just give me one second.

25 MR. ROE: Okay. You can confirm then.

1 THE COURT: These are all admitted exhibits.

2 MR. ROE: They are all admitted. I'm just
3 doing it for purposes of identification.

4 MS. WALDMAN: We will stipulate these are
5 all versions of notices that are sent notifying
6 individuals that their voter registration applications
7 are not complete.

8 THE COURT: Okay.

9 MR. JOHNSON: We'll so stipulate.

10 MR. ROE: Thank you.

11 BY MR. ROE:

12 Q. Okay. You testified earlier about the SAFE Act.
13 After the passage of the SAFE Act, do you recall if
14 there was any kind of advertising campaign this office
15 put on?

16 A. Yes, there was.

17 Q. Did the office spend money to advertise the SAFE
18 Act?

19 A. Yes, there was. I forget the exact amount but
20 there was -- there was money allocated by the Secretary
21 of State to advertise the implementation of the SAFE
22 Act, both the voter ID provisions as well as separately
23 the proof of citizenship provisions.

24 Q. And did our office -- did the Secretary of
25 State's Office also create web advertisements or You

1 Tube videos about this or some kind of videos?

2 A. Yes, that type of advertising was produced in
3 conjunction with that effort.

4 Q. Okay. And the purpose -- do you recall the
5 purpose of that?

6 A. To inform the public of their requirements of the
7 new voter ID and proof of citizenship requirements.

8 Q. Okay. And the -- and the -- and the letters
9 identified earlier, do those letters indicate -- I
10 understand the versions are -- of other letters.

11 Do those -- do those include -- some of
12 those include the identification of documents that
13 individuals can submit to complete their voter
14 registration application?

15 A. Yes, at least some of those versions do.

16 Q. Okay. Regarding the State Election Board, do you
17 recall -- you testified -- you were asked earlier
18 questions about State Election Board and who's on the
19 board and things like that.

20 To -- to start the procedure, you testified
21 that they have to provide a form to our office; right?

22 A. Yes, that is correct.

23 Q. RCD form?

24 A. Yes.

25 Q. And that's, I think, Joint Exhibit 837.

1 Now, has our office -- and our office --
2 does our office have any problem coordinating with the
3 State Election Board --

4 A. No.

5 Q. -- to set up hearings?

6 A. No to my knowledge, no.

7 Q. It's required by statute that these -- the
8 election board hearings are held?

9 A. Yes.

10 Q. And it does not require the actual heads of each
11 agency to -- to come to the board?

12 MR. JOHNSON: Objection. Calls for a legal
13 conclusion.

14 THE COURT: Overruled. You can answer it if
15 you know.

16 THE WITNESS: It has been my experience that
17 in previous meetings of the board not every time has the
18 actual head of the agency attended in person.

19 BY MR. ROE:

20 Q. Do you know whether -- do you know whether a
21 hearing has been held by just two people present, for
22 instance?

23 A. Yes, that's correct.

24 Q. And it doesn't require the actual agency head.
25 It can be a designee; is that correct?

1 A. I have seen designees attend those hearings on
2 behalf of the head of the agency.

3 Q. An individual is not required -- I think you
4 answered this earlier. An individual is not required to
5 physically come to the Secretary of State's Office or
6 anywhere in Topeka; right?

7 A. In previous meetings of the board not everyone
8 has attended in person.

9 Q. Okay. And do you know whether an applicant has
10 ever not been approved by the board?

11 A. To date every person who has submitted an
12 application and a hearing conducted has been approved by
13 the State Election Board.

14 Q. Okay. Can you remind me again how long you've
15 worked in the Kansas Secretary of State's Office?

16 A. A long time.

17 Q. In your experience in the office --

18 A. For the record, 20 years in the election office
19 and more than that in the agency.

20 Q. And in your experience in the election office, I
21 think you testified earlier that this office has
22 identified 129 non-citizens who have registered or
23 attempted to register to vote; correct?

24 A. With the limited means available to us, that is
25 correct.

1 Q. Okay. And --

2 A. And let me -- let me caveat that. That's
3 identified with specific information of name and who
4 they are with their specific identity. There have been
5 many more reports.

6 Q. Correct, that's what I was getting at.

7 But this office has had other reports of
8 non-citizen registration; right?

9 A. Yes, that is correct.

10 Q. How have those come in?

11 A. A variety of ways. We've received information
12 from members of the public. We've received information
13 from county election offices.

14 Q. Public?

15 A. Yeah, members of the public spontaneously
16 reported allegations of --

17 Q. TDL -- just various things; right?

18 A. Yes.

19 Q. Has the -- has the Department of Homeland
20 Security ever on its own contacted our office?

21 A. Yes, they have less than a handful of times. We
22 have received a handful of reports from DHS about
23 persons who are not U.S. citizens that have been on the
24 Kansas voter registration list.

25 Q. Other than the instance in this case, has our

1 office been able to have the opposite sort of
2 communication with the -- with the DHS?

3 A. Well, I -- I've seen the communication between
4 Mr. McCullah and DHS, that is correct. I have not
5 personally had any interaction with DHS in regards to
6 giving them a name of someone and asking if they are a
7 U.S. citizen or not.

8 Q. You're also familiar in this case our office
9 submitted a list of our names to DHS, correct, for
10 verification?

11 A. I -- to --

12 Q. Raggsdale, do you remember that? Raggsdale as
13 part of the expert testimony, do you recall that?

14 A. Vaguely.

15 MS. WALDMAN: Your Honor, I object to the
16 extent he's leading his witness on topics that weren't
17 covered in my examination and therefore cannot possibly
18 be the subject of cross examination.

19 THE COURT: I think he's also directing.
20 That's the difficulty, we're doing this on a
21 consolidated basis. So I'll overrule.

22 MR. ROE: Okay. Okay.

23 THE COURT: I mean, this is your first --
24 this is his first time up. He's doing cross and direct.

25 BY MR. ROE:

1 Q. I'll try to move on from that for a second.

2 So were you surprised when we had a response
3 from DHS about non-citizen -- specific non-citizens?

4 MS. WALDMAN: Your Honor, I object to the
5 extent he hasn't established the foundation for some
6 response from DHS about non-citizens -- some unspecified
7 number of non-citizens may have been reported.

8 MR. ROE: I'm sorry, Your Honor, I'm
9 referencing the ones Miss Waldman raised in her opening.

10 THE COURT: What was your question again?

11 BY MR. ROE:

12 Q. Whether he was surprised when Mr. -- when he saw
13 the responses to Mr. McCullah -- sorry, I didn't
14 qualify -- response from DHS to Mr. McCullah, responses
15 involving non-citizens?

16 A. Yes, personally I was surprised. Over the course
17 of my history in the Secretary of State's Office, we
18 historically have had very little cooperation with the
19 Department of Homeland Security on any inquiry of
20 someone's citizenship status. So, yes, I, frankly, was
21 surprised to get an instantaneous response, practically
22 instantaneous.

23 Q. Based on your -- do you know whether -- do you
24 know whether this office is going to get any more --
25 strike that. That's leading.

1 So how -- so in 20 years -- okay. Okay.

2 Do you believe, based on your 20 years, that
3 those one-time verifications are going to be repeated in
4 the future?

5 MS. WALDMAN: Your Honor, objection to the
6 extent it calls for speculation by Mr. Caskey.

7 THE COURT: Just a minute.

8 THE WITNESS: Yeah.

9 THE COURT: You can answer it if you know
10 without speculating.

11 THE WITNESS: Would you ask that again to
12 make sure I'm on point here.

13 BY MR. ROE:

14 Q. Do you believe, based on your experience, whether
15 that one-time response --

16 MR. ROE: Can you read back the question?
17 I'm sorry.

18 (Requested question read back by the
19 reporter.)

20 THE WITNESS: It is my belief that there
21 will come occasion again when we will want to ascertain
22 whether or not a specific person is a U.S. citizen or
23 not with the Department of Homeland Security.
24 Historically that communication has not been fruitful.
25 Mr. McCullah's was extraordinarily fruitful. I expect

1 it was because that communication, from my view, was
2 through the lens of a criminal investigation whereas
3 anything that I do is administrative in nature. So I
4 would like to be hopeful but I'm not entirely.

5 BY MR. ROE:

6 Q. Okay. So has our office ever -- have there been
7 any counties that have told -- informed our office about
8 non-citizen registration?

9 A. Yes. In my history in the office, there's been a
10 handful of counties, if not more, that have alerted us
11 to instances of persons in the voting process who have
12 -- were not U.S. citizens.

13 Q. Would you say Sedgwick County has been the most?

14 A. I believe that Sedgwick County has the most
15 individual instances. I believe that Seward County
16 would have the most total instances based on testimony
17 from the Seward County election office.

18 MR. JOHNSON: Objection. Hearsay.

19 THE COURT: Do you have a basis for this?

20 THE WITNESS: Yes, I do. During the
21 testimony on the SAFE Act in the legislative record, the
22 Seward County Election Office at the time submitted
23 written testimony regarding --

24 THE COURT: Okay. It's hearsay. I'll
25 sustain.

1 THE WITNESS: Okay.

2 BY MR. ROE:

3 Q. Did this office present any testimony to the
4 legislature during the SAFE Act?

5 A. Yes, the Secretary of State's Office did.

6 Q. And that referenced non-citizen registration?

7 A. Yes.

8 Q. Flip to 1049, please. This is Defense
9 Exhibit 1049.

10 A. I don't have a 1049.

11 Q. I'm sorry, 1054.

12 A. I don't have it.

13 MS. WALDMAN: I don't have it.

14 THE WITNESS: 1054.

15 BY MR. ROE:

16 Q. Okay. We'll come back to that. How about
17 Defense Exhibit 880?

18 MR. JOHNSON: I'm sorry, Garrett, what
19 number?

20 MR. ROE: 880. It looks like it's not in
21 the book either.

22 MS. WALDMAN: Is that there?

23 MR. ROE: Does not appear to be.

24 BY MR. ROE:

25 Q. We'll come back to this line of testimony, Bryan,

1 okay?

2 A. Okay.

3 Q. Were you in the office during the *Kobach versus*
4 *the EAC* litigation? Are you familiar with that case?

5 A. Yes, I was employed in the office during that
6 litigation.

7 Q. What was your title in the office at that time?
8 Sorry. Was it around 2011?

9 A. I will take your word for it. That was the time
10 frame, yes. And so in 2011 I was the Assistant Director
11 of Elections.

12 Q. Do you recall whether our office presented
13 evidence at that time of non-citizens registering to
14 vote in Kansas in commission with the lawsuit?

15 A. Yes, I know the office did.

16 MS. WALDMAN: Your Honor, objection to the
17 extent this calls for hearsay and is irrelevant to this
18 litigation.

19 MR. JOHNSON: Agreed.

20 THE COURT: It sounds like you're getting
21 into hearsay; evidence in another case.

22 MR. JOHNSON: We don't even have an
23 out-of-court declarant identified, the "office".

24 MR. ROE: Haven't got to it yet.

25 THE COURT: Are you going to ask him about

1 testimony or evidence in another case?

2 MR. ROE: My understanding, if it was
3 something filed in court, it could be taken judicial
4 notice of by the court.

5 THE COURT: I can take notice that it was
6 filed. It doesn't mean I'm going to consider it, the
7 content, or I'm going to consider it as evidence.

8 MR. ROE: Okay. All right.

9 THE COURT: You have to present -- if you
10 want me to consider it as evidence, then it needs to be
11 offered in this case. I can judicially notice that you
12 presented evidence to another court but that does not
13 mean it's evidence for my purposes in this proceeding.

14 MR. ROE: Okay.

15 BY MR. ROE:

16 Q. Our office previously conducted a -- TDL
17 comparisons; right?

18 A. Yes, we have.

19 Q. How many times?

20 A. I can think of four I believe.

21 Q. Do you recall the dates?

22 A. 2010, 2011, 2017, 2016. I --

23 Q. Instead of 2011, could it be 2009?

24 A. Yes, it could be. Like -- yes.

25 Q. Do you recall whether there were any matches --

1 sorry. What --

2 Could you explain what TDL match is?

3 A. So on multiple occasions we receive from the
4 Division of Motor Vehicles a list of persons who held a
5 temporary driver's license. They provide the Secretary
6 of State's Office that list.

7 Then the office -- the Secretary of State's
8 Office took that list and compared it to persons who
9 were in the voter registration database either currently
10 active or who had applied at some point in time and
11 looked for potential matches.

12 Q. Do you recall how many individuals were
13 identified in those matches?

14 A. I believe the last time the check was done there
15 were 79 matches.

16 Q. Sorry, in 2009 and 2010 do you recall how many?

17 A. I haven't committed to memory the exact number of
18 matches of those two checks. I believe it was in the
19 range of 50 to 60.

20 MR. JOHNSON: Your Honor, this is hearsay.
21 He's obviously testifying about some document that we --
22 we've not seen.

23 MR. ROE: I'm sorry, Your Honor, I'm
24 testifying about the previous TDL match that our office
25 -- that our office performed.

1 THE COURT: All right. But it is hearsay if
2 he's just testifying about it and it's based on -- it's
3 based on a document that's not been discovered. I mean,
4 I'm not going to give it any weight, frankly, without it
5 -- it sounds like it's documentary evidence. It needs
6 to be presented.

7 MR. ROE: Okay. Okay.

8 THE COURT: My understanding was the TDL
9 matches began in 2013. I thought that's what another
10 witness said.

11 MR. ROE: There were -- there were some back
12 in -- it's in depositions and stuff. There was some in
13 2009. Anyway, I'm not trying to make a record, Your
14 Honor. I apologize.

15 BY MR. ROE:

16 Q. Okay. Now, talking about this case specifically
17 -- these two cases specifically, earlier -- earlier it
18 was testified that we -- that this office identified 129
19 individuals; right?

20 A. Yes, I believe so.

21 Q. Okay. And was that the first number that this
22 office presented in this case?

23 A. No, that number is evolving as we receive more
24 information.

25 Q. Okay. Do you recall the -- at the preliminary

1 injunction stage approximately how many this office
2 identified? If you go to Defense Exhibit 812, please --
3 I'm sorry, don't go to Defense Exhibit 812.

4 Do you recognize Defense Exhibit 812?

5 MS. WALDMAN: Do you have an extra copy of
6 that?

7 MR. ROE: It's in the book.

8 THE COURT: Exhibit 812?

9 MR. ROE: Defense Exhibit 812.

10 THE WITNESS: Yes, I have that page open.

11 BY MR. ROE:

12 Q. Does this document look familiar?

13 A. Yes, I have seen this document before.

14 Q. What is it?

15 A. It's a list of persons who the Sedgwick County
16 Election Office identified as not being United States
17 citizens and who had applied to register to vote.

18 MR. ROE: I'd move to admit this document
19 into evidence.

20 MS. WALDMAN: Your Honor, I object to the
21 admission of this document he hasn't laid a foundation
22 for. The information contained in this chart, how it
23 was generated or what Mr. Caskey's knowledge of how it
24 was generated is --

25 THE COURT: I'll sustain.

1 MR. ROE: Can I respond, Your Honor?

2 THE COURT: Well, try to lay some additional
3 foundation. You haven't laid sufficient foundation
4 through this witness.

5 MR. ROE: Okay.

6 BY MR. ROE:

7 Q. Do you know -- okay. You said you recognized
8 this document; right?

9 A. Yes, I do.

10 Q. Do you know how this document was generated?

11 A. This version of the document I believe was
12 produced by the Secretary of State's Office from
13 information submitted to our office by the Sedgwick
14 County Election Office.

15 Q. Do you -- do you see the first column in this --
16 in this document?

17 A. The first column, yes, I see that.

18 Q. Do you see -- sorry, the second column.

19 A. Yes, I see that as well.

20 Q. What do you know that column -- what do you
21 believe that column to represent?

22 A. That is the ELVIS voter registration ID number
23 for each of the records notified in this spreadsheet.

24 Q. The third column, do you recognize that?

25 A. It's a source of registration located within the

1 ELVIS system.

2 Q. Okay. So this entire -- so what do you interpret
3 -- what do you take this document to be?

4 A. This document is -- contains information that
5 we've received from the Sedgwick County Election Office
6 of persons who have applied to register to vote who are
7 not United States citizens discovered at naturalization
8 ceremonies by the Sedgwick County Election Office and
9 reported to the Secretary of State's Office.

10 MR. ROE: Okay. Move to admit this exhibit
11 as Defense Exhibit 812.

12 THE COURT: All right. So you received
13 information from Miss Lehman, I suppose, from Sedgwick
14 County?

15 THE WITNESS: Yes, that is correct.

16 THE COURT: And you all just used her
17 information and compiled this -- is this in a summary
18 form?

19 MR. ROE: Your Honor, this is essentially an
20 earlier version of the chart that was introduced this
21 morning. All the information in this chart is -- okay,
22 sorry, I apologize.

23 THE COURT: Okay. So the underlying
24 documents of this chart have been discovered. There's
25 no changes?

1 MS. WALDMAN: May I, Your Honor?

2 THE COURT: Yes.

3 MS. WALDMAN: That's exactly the problem
4 with this document. There have been multiple iterations
5 of this document. Entries have been added to it and
6 have been removed over time by people either in the
7 Secretary's Office or by -- in the Sedgwick County
8 office, and I don't think that Mr. Caskey is going to be
9 able to testify looking at this document what date it
10 was produced to us, who compiled the information, and
11 whether this one was the complete version as opposed to
12 other versions that have had entries removed from it.

13 THE COURT: With respect to the entries
14 them- -- I mean, is the same format as the other one --

15 MR. ROE: Your Honor --

16 THE COURT: -- the narrative column and all
17 of that?

18 MS. WALDMAN: Can I actually inquire some
19 questions of Mr. Caskey?

20 THE COURT: I don't have -- I don't have a
21 copy of it. So, I mean, are there just -- is this just
22 a part of the other one; in other words, there are more
23 entries in the other one than there are in this one, or
24 entries in this one that weren't in the other one?

25 MS. WALDMAN: Your Honor, without having

1 done the comparison, sitting here at the table it's
2 possible there could be entries in this one that were
3 not in the other one.

4 MR. ROE: Your Honor -- Your Honor -- Your
5 Honor, can I represent this document is the first
6 version of that later document?

7 THE COURT: Miss Lehman was the witness to
8 do this through, not -- you know, if there are changes,
9 she's the one. It's her data.

10 MR. ROE: Okay.

11 THE COURT: He's just -- well, okay. If
12 you're offering it as a summary, the first question is
13 have they discovered all the underlying data?

14 MR. ROE: Yes, Your Honor. Yes, Your Honor.
15 Because all of the underlying data in the document that
16 was already admitted is the records that this document
17 also reflects.

18 THE COURT: So, in other words, this
19 Document 812 doesn't include any entries that were --
20 were not on Exhibit 1193?

21 MR. ROE: Correct.

22 THE COURT: It's not as complete?

23 MR. ROE: Correct.

24 THE COURT: Are there any other differences
25 in the information?

1 MR. ROE: No, not -- not -- Your Honor, we
2 can come back to it, but, no, not to my knowledge.

3 THE COURT: Have you had a chance to
4 compare? Because you've been receiving these, it sounds
5 like you received some earlier versions and that was one
6 of the concerns you had when 1133 showed up that was
7 later in time and had some additional entries.

8 MS. WALDMAN: Correct, Your Honor. I can
9 agree with Mr. Roe we likely received all the underlying
10 ELVIS files. It will take us a few minutes to try and
11 parse through our own analysis of the records to
12 determine if this is the most complete version.

13 But if I can inquire a few questions of
14 Mr. Caskey, I can establish based on his prior
15 deposition testimony --

16 THE COURT: Okay. Go ahead and voir dire --
17 go ahead and voir dire.

18 MR. ROE: Your Honor, we can withdraw the
19 exhibit. It's not that important.

20 THE COURT: Okay.

21 MR. ROE: Okay.

22 BY MR. ROE:

23 Q. Mr. Caskey, it's correct that -- that's all
24 right.

25 THE COURT: Do you know how much longer your

1 -- your examination will be, Mr. --

2 MR. ROE: I'm skipping ahead now, Your
3 Honor, to get past some of these obvious objections that
4 I will be --

5 THE COURT: Do you think you're going to go
6 into tomorrow?

7 MR. ROE: I'm sorry, what time is it?

8 THE COURT: It's 4:35.

9 MR. ROE: I hope not, Your Honor.

10 THE COURT: You think you'll finish by this
11 evening?

12 MR. ROE: I hope so, Your Honor.

13 THE COURT: Okay.

14 BY MR. ROE:

15 Q. You testified earlier, correct, that you found
16 there was three on the jury list; is that right?

17 A. Yes.

18 Q. Jury questionnaires?

19 A. That is correct.

20 Q. And -- all right. Now, so despite finding 129
21 non-citizens registered to vote -- attempted or
22 registered in Kansas, there's -- there's a question of
23 whether or not there's any way for the Office to prevent
24 non-citizens from registering. Are there -- you
25 testified earlier our office does juror lists; correct?

1 A. Yes, that's correct.

2 Q. And do you know how district courts get the names
3 for jury pools in Kansas?

4 A. They get them from several sources. I note voter
5 registration lists is one of their primary sources. And
6 discussions I've had at least with the U.S. jury
7 coordinator for federal courts in Kansas, that's not the
8 only information. They do tax rolls. Basically any
9 government-owned database, they attempt to collect.
10 Federal registration lists are one of the primary
11 sources.

12 Q. So it's -- so it's correct that a juror list --
13 somebody who shows up for jury duty, many of those are
14 already on the Kansas voter registration list --

15 A. Yes, that's correct.

16 Q. -- or called for jury duty I guess?

17 So they're all -- so if a non-citizen is
18 identified through that process, they are already a
19 registered voter if they are on the registration list;
20 right?

21 MS. WALDMAN: Objection to the extent that
22 mischaracterizes what Mr. Caskey just said.

23 THE COURT: I don't understand the question.
24 Why don't you reframe it.

25 BY MR. ROE:

1 Q. All right. If somebody's called to jury duty via
2 the voter registration database and they are a
3 non-citizen, does that mean that they are already
4 registered to vote?

5 A. It's likely but it's not -- it's not impossible.
6 The voter registration list is a primary source for jury
7 lists but I know it is not the only database that is
8 used by jury coordinators.

9 Q. So it's correct if they're call -- the name is
10 obtained via the voter registration list that they're
11 already a registered voter?

12 A. I now understand. Yes, the list that we provide
13 to the jury list is only registered voters not any -- we
14 don't provide a list of canceled voters or incomplete
15 voters.

16 Q. Okay. Regarding any national databases, are you
17 aware of any national database that contains the names
18 of all United States citizens?

19 A. No, I have not.

20 Q. Have you heard of the SAVE database?

21 A. I have heard of that.

22 Q. Has our office contacted the federal government
23 about utilizing the SAVE system?

24 A. Yes. As I testified to earlier, yes, we have.

25 Q. Can you turn to Joint Exhibit 881, please.

1 A. Yes, I've seen that today.

2 Q. All right. And you discussed something similar,
3 I think, in Miss Waldman's testimony; correct?

4 A. Yes.

5 Q. What do you recognize these to be?

6 A. Well, the --

7 Q. The first page?

8 A. It's a letter addressed to the Secretary of
9 Homeland Security, Janet Napalitano, from the Secretary
10 of State.

11 Q. And what do you -- what is the next page starts
12 with memorandum?

13 A. I'm sorry?

14 Q. The next pages that start with memorandum?

15 THE COURT: You want to make sure that
16 exhibit number is correct, 881.

17 MR. ROE: 882.

18 THE COURT: Oh, I'm sorry. 882. Sorry.

19 THE WITNESS: It's a memorandum to file from
20 our legal counsel to Ryan Kriegshauser about his
21 communications with DHS about the SAVE program.

22 BY MR. ROE:

23 Q. And next few pages later starts -- which has
24 August 20th date?

25 A. Response -- a letter to the Secretary of State

1 from -- I'm going to mispronounce his name -- but from
2 the Director of USCIS.

3 Q. Is it Alejandro Mayorkas?

4 A. Yes, that's correct.

5 Q. And so regarding the SAVE database, from our
6 office's perspective when we've applied -- when we've
7 had communications with DHS regarding the SAVE database,
8 have those been fruitful?

9 A. They have not.

10 Q. Why not?

11 A. The SAVE program requires you to have a alien
12 verification number to effectively use the SAVE program.
13 As I mentioned earlier today, the voter registration
14 file does not contain alien verification numbers and nor
15 does it seem prudent to do so. Providing an alien
16 verification number is, on its face, evidence that you
17 are not a U.S. citizen. And why you would include that
18 with an application to apply to register to vote to
19 the -- both the administrative agency and to an agency
20 that has the ability to prosecute someone committing a
21 crime doesn't seem like a logical good answer to me.

22 Q. Was there any other reasons that the -- that
23 USCIS told our office we couldn't use the SAVE system?

24 A. I don't know. I mean, it's -- besides that?

25 Q. Do you see the second paragraph?

1 A. Which second paragraph? Still August 20th, two
2 thousand --

3 Q. Yes.

4 A. Oh, the -- in addition to the number, it also
5 requires a copy of the documentation in question to
6 complete the verification process. And, again, we would
7 not have documentation verifying their alien status.

8 Q. Okay. Are you aware -- are you aware of any
9 federal database that contains the names of every United
10 States citizen?

11 A. No, I'm not aware of such a database.

12 Q. Are you aware of whether the SAVE database
13 contains the -- contains the names of -- are you
14 familiar with a --

15 Are you familiar with the term illegal alien
16 or undocumented alien?

17 A. I -- yes, I'm familiar with those terms.

18 Q. Do you know whether the SAVE database has those
19 individuals?

20 A. I -- I'm not --

21 Q. Okay.

22 A. I'm not aware. But it seems incongruent they
23 would because the purpose of the SAVE program is to
24 verify alien registrations who are here legally and
25 would have documentation to prove so.

1 Q. Okay. We're going to the EVVE system. Are you
2 familiar with the EVVE system?

3 A. Yes, I am.

4 Q. Do you know what the EVVE stands for?

5 A. Electronic Verification of Vital Events, I
6 believe.

7 Q. Okay. Has our office ever attempted to use the
8 -- has our office contacted the individuals with the
9 EVVE system before?

10 A. Yes, we have.

11 Q. Did our office determine that we could use these
12 EVVE system?

13 A. No. After consulting with the representatives of
14 -- of that system, it was determined that Kansas does
15 not have the information needed to successfully
16 participate in that system to verify the information in
17 EVVE. You are required to have the state where you were
18 born as well as your mother's maiden name to effectively
19 match on information contained in the EVVE system.
20 Neither of those data elements are something that we
21 have in the voter registration database.

22 Q. Regarding prosecutions, do you know whether it's
23 illegal for a non-citizen to register to vote?

24 A. Yes, I know that that is not legal.

25 Q. Do you know how long that's been on the list?

1 A. It's been that way as long as during my entire
2 tenure in the Secretary of State's Office.

3 Q. Since that time have non-citizens still
4 registered to vote?

5 A. Yes, they have.

6 Q. Do you know -- has our office referred any of
7 these -- referred to other district attorneys
8 prosecutions?

9 A. Prior to the Secretary of State having
10 prosecutorial authority, the Secretary of State's Office
11 did routinely refer potential crimes to local law
12 enforcement and local prosecutors for investigation and
13 potential prosecution, yes.

14 Q. Okay. And but -- does our office have
15 prosecutorial discretion -- or does our office have
16 prosecutorial authority now?

17 A. Yes. In addition to the attorney general, both
18 of our offices have that ability.

19 Q. Do you know whether our office has brought some
20 cases -- any cases?

21 Do you know if our office has brought
22 criminal indictments?

23 A. Our office?

24 Q. Our office, the Secretary of State's Office?

25 A. Yes, the Secretary of State's Office has

1 conducted criminal investigations and prosecutions of
2 persons who have committed election crimes.

3 Q. Okay. Do you know what this office has to do
4 before it can file a case against a non-citizen for
5 registering to vote?

6 A. I -- as a layman, yes. But to repeat, I'm not an
7 attorney, nor a prosecutor, so I don't want to overstate
8 my ability to state what a prosecutor needs to file a
9 criminal case.

10 Q. I'm not asking about what a prosecutor can do.
11 I'm just saying do you know what our office does, the
12 steps our office might take initially?

13 MS. WALDMAN: Your Honor, I object to the
14 extent it calls for Mr. Caskey to speculate about what
15 others in the office might have to do.

16 THE WITNESS: Sustained.

17 BY MR. ROE:

18 Q. Do you do anything involving a -- for -- for
19 purposes of the beginning of a prosecution?

20 A. Any report that we receive, we will pull any
21 information that we may have in the voter registration
22 system and provide all that information to our
23 investigator and lead prosecutor -- lead prosecuting
24 attorney in our office.

25 Q. Okay. Mr. Caskey, are you familiar with the

1 training that Division of Vehicles does for the purposes
2 of voter registration?

3 MS. WALDMAN: Your Honor, I object to the
4 extent it calls for Mr. Caskey to speculate about the
5 practices that occur at the Division of Vehicles.

6 MR. ROE: Your Honor, I asked if he's
7 familiar with it.

8 THE COURT: All right. That's an opening
9 question, if he's familiar with it at all.

10 THE WITNESS: Yes, I am familiar with it.
11 BY MR. ROE:

12 Q. How are you familiar with it?

13 A. Our office routinely talks with the Division of
14 Motor Vehicles executive staff as well as their trainers
15 concerning requirements that the Division of Motor
16 Vehicles has to comply with the National Voter
17 Registration Act as it relates to offering the
18 opportunity to register to vote to anyone who conducts a
19 transaction at the Division of Motor Vehicles.

20 We also periodically review any changes in
21 the state and federal law regarding elections.
22 Previously we have reviewed the training materials that
23 their trainers use. DMV routinely uses kind of a
24 train-a-trainer approach where they have a group of
25 trainers who then train their individual field offices.

1 So we have provided -- in years past, we provided
2 posters and reviewed their training materials, you know,
3 over the last 10 to 15 years.

4 Q. Okay. Has -- have you ever suggested changes to
5 training -- to training to the DMV or procedures?

6 A. Yes. Over the last, you know, 10 to 15 years
7 periodically we will suggest changes and we do review
8 those changes with their executive staff on a regular
9 basis.

10 Q. Have you suggested any changes recently?

11 A. Not recently. We've met and discussed it but
12 there have been no recent changes to their procedures
13 required by state or federal law.

14 Q. Okay. And do you know whether the DMV trains not
15 to -- trains that non-citizens should not be offered the
16 opportunity to register to vote?

17 A. Yes.

18 MS. WALDMAN: Your Honor, I object to the
19 extent it calls for testimony regarding what occurs at
20 the DMV, which of course Mr. Caskey is not an employee
21 of.

22 MR. JOHNSON: Objection.

23 MR. ROE: Your Honor, I asked does he know
24 whether something occurs.

25 THE COURT: As I understand it, your office

1 puts together training manuals and provides training or
2 instruction or direction. So the questions need to
3 go to that rather than what actually happens at the DMV.

4 Presumably it's consistent with that, but
5 maybe not. I've heard evidence that doesn't always
6 happen at the DMV. But ask him -- I think it is
7 appropriate to ask him about what the DMV is instructed
8 and directed to do, unless he's been hanging out at the
9 DMV and working there sometimes and I don't know.

10 THE WITNESS: Sounds fun.

11 MR. ROE: Yeah. He finds time in his other
12 10 hours he doesn't work here.

13 BY MR. ROE:

14 Q. Based on your conversations with the DMV and
15 based on your review of DMV's training, do you have any
16 reason to believe that they're not instructing their
17 employees not to offer voter registration?

18 MR. JOHNSON: Objection. Hearsay and
19 compound.

20 THE COURT: I do think it calls for hearsay
21 because essentially you're asking him to tell -- tell
22 what he's been told by them.

23 MR. ROE: Sorry, I'm --

24 THE COURT: I mean, other than something
25 that someone has said to you, do you have any reason to

1 believe that they're not complying -- is that what the
2 question was, not complying with the instruction?

3 Was --

4 MR. ROE: No, Your Honor, that's not the
5 question.

6 THE COURT: Okay. I'm sorry.

7 MR. ROE: I'll start over.

8 BY MR. ROE:

9 Q. It is correct that our office's policy is that
10 non-citizens should not be offered the -- individuals --
11 non-citizens should not be offered the opportunity to
12 vote at the DMV; correct?

13 A. It is my belief that if you know that someone is
14 not eligible to register to vote that you should not be
15 offered the opportunity to register to vote --

16 Q. Okay. And --

17 A. -- through the Division of Motor Vehicles
18 practice.

19 So if I'm a temporary driver's license
20 holder or if I'm a permanent legal residence holder and
21 state to the DMV that I am not -- that I am not a United
22 States citizen, DMV should not go asking that person,
23 "Do you want to register to vote?"

24 Q. And do you have any reason to believe that --
25 strike that.

1 Do you know if that's the current practice?

2 A. It is my belief that they do not offer the
3 opportunity to register to vote to any person who tells
4 them they are not United States citizens.

5 Q. And do you know whether or not all non-citizens
6 are required to present a non-resident -- or sorry.

7 Do you know whether all non-citizens are
8 required to provide a -- a lawful presence document?

9 MS. WALDMAN: Your Honor, I would object to
10 this question to the extent that it calls for Mr. Caskey
11 to speculate about the practice at the Division of
12 Vehicles and also the prior question called for hearsay.

13 THE COURT: Well, I think he's being asked
14 about the -- I think he's being asked about the policies
15 and procedures, but I'm not clear in what context this
16 question is. Non-citizens not with respect to what?

17 MR. ROE: For voter registration, Your
18 Honor.

19 THE COURT: Because, I mean, driver's
20 licenses?

21 MR. ROE: I'm sorry. Well --

22 THE COURT: I don't know. I think you
23 should narrow your question to what you're talking
24 about.

25 BY MR. ROE:

1 Q. Okay. Do you know whether every non-citizen who
2 applies to register to vote at the Division of Vehicles
3 presents a non-citizen document?

4 MS. WALDMAN: Your Honor, I object to the
5 extent this question calls for what occurs at the
6 Division of Vehicles.

7 THE COURT: I'll overrule if you know the
8 answer to this.

9 THE WITNESS: Every person who goes into the
10 Division of Vehicles to go get a driver's license for
11 the first time must provide documentation relating to
12 their lawful presence, be it proof of the United States
13 citizenship, legal permanent residence status, or
14 temporary status. So to get a new driver's license you
15 must provide one of those pieces of information.

16 BY MR. ROE:

17 Q. Do you know whether that's required on renewals?

18 A. I'm sorry?

19 Q. Do you know whether that's required for renewals?

20 A. It is my belief that is not required currently on
21 persons who are renewing their driver's license. If
22 you're renewing your driver's license, you just have to
23 provide proof of location not proof of lawful presence
24 currently.

25 Q. Do you know whether that's on all renewals?

1 A. I don't know if that's on all renewals. But I
2 can state definitively that, when I renew my driver's
3 license, I don't have to provide proof of lawful
4 presence unless I am attempting to obtain a real ID
5 compliant driver's license.

6 Q. Okay.

7 A. If you are obtaining a real ID compliant driver's
8 license, you do have to provide proof of lawful
9 presence. If you are renewing your driver's license and
10 not getting a real ID license, you don't have to provide
11 proof of lawful presence.

12 Q. Okay. Finishing you up with DMV Joint
13 Exhibit 825, I don't know if this is --

14 When somebody leaves the DMV, are they
15 handed -- and they apply to register to vote, do you
16 know whether -- the procedure is they are handed any
17 kind of form?

18 A. They are given a receipt. If they apply to
19 register to vote as part of their driver's license
20 transaction and say, yes, I want to also register to
21 vote, they are given a receipt for them to contact the
22 county election office to follow up with that
23 application if needed.

24 Q. All right. Please turn to 1040 -- Defense
25 Exhibit 1045.

1 A. Yes, I have it in front of me.

2 Q. Okay. Do you recognize this?

3 A. Yes, I do.

4 Q. What is it?

5 A. It's a spreadsheet of elections in the last
6 probably from 2016 to 2000 of races that were close in
7 number by the number of votes between the winner and the
8 -- and the loser.

9 Q. Do you know where this information is located or
10 it's attainable?

11 A. All this information was collected from election
12 statistics -- election statistics summary information on
13 the Secretary of State's Office website.

14 Q. Okay. And so on the second page -- and I may use
15 a different exhibit just for clarity.

16 Are those -- are each of those the link to
17 that data?

18 A. To the specific documents where those races
19 occur, that appears to be the case, yes.

20 Q. So this is -- is it correct this is a summary of
21 various elections, the date of which are located on the
22 Secretary of State's Office website?

23 A. Yes, that is true.

24 Q. Okay. And Defense Exhibit 1068, what's the close
25 -- what's the more readable? Which do you think is more

1 readable to you, 1068 or --

2 A. I have 1068 in front of me, so that's fine.

3 Q. Is 1068 or 1045 more readable to you?

4 A. 1068 is fine.

5 Q. Is 1068 the same -- the same information that's
6 found on 1045?

7 A. I believe it to be so. I haven't done a
8 line-by-line comparison, but the first and last entries
9 are duplicative.

10 MR. JOHNSON: Your Honor, may I voir dire
11 for a moment when he says "the same information" or is
12 the document identical?

13 BY MR. ROE:

14 Q. That's the information -- is the information
15 identical? The first document is two pages. So is this
16 the same information transmitted onto just one page?

17 A. I believe the information's identical based on
18 what's on the first line and last line, but I haven't
19 gone through line-by-line.

20 Q. Let's just talk about Defense Exhibit 1068. This
21 is -- this is -- correct me if I'm wrong, this is all
22 information that can be found on the Secretary of
23 State's Office website?

24 A. That is correct.

25 Q. Okay. This is -- I'm sorry, it's derived from

1 information found on the Secretary of State's Office
2 website?

3 A. Yes.

4 Q. It's a summary?

5 MR. ROE: Your Honor, I would like to admit
6 this into evidence as Exhibit 10 -- Defense
7 Exhibit 1068, please.

8 MS. WALDMAN: No objections, Your Honor.

9 MR. JOHNSON: No objection.

10 THE COURT: 1068 admitted.

11 BY MR. ROE:

12 Q. How many entries are on this spreadsheet?

13 A. If my math is correct, it appears to be 33.

14 Q. Okay. I'll take that number for now. And what
15 do you understand the column where it says "difference"
16 to mean?

17 A. The difference between the candidate receiving
18 the most votes and the candidate receiving the second
19 most votes.

20 Q. So what do you -- what do you believe this
21 spreadsheet to be generally?

22 A. Results of close elections in the last -- between
23 2016 and 2000.

24 Q. Okay. So it's correct that under the difference
25 it would be -- those would be the difference between the

1 one -- one individual and another individual in an
2 election?

3 A. Yes, that's correct.

4 Q. Okay. Are under "difference" are there -- how
5 many -- are there any that are under 100 on the
6 difference?

7 A. All 33 of those are under a hundred.

8 Q. Are there any that are under 50?

9 A. There's quite a few under 50.

10 Q. Are there any that are under 10?

11 A. I believe there's at least eight under 10.

12 Q. Are there any under one?

13 A. There's at least one that was tied.

14 Q. Okay. Okay. So let's go to the ELVIS database
15 for a second. You testified earlier and to opposing
16 counsel that you utilized the ELVIS database; correct?

17 A. Yes. I'm in it almost every single day.

18 Q. Okay. And the Secretary of State's Office is the
19 custodian of the ELVIS database?

20 A. Yes, that's correct, we are the custodian and
21 "owner" of the database. The counties own the data
22 within the database, if that makes sense. But, yes,
23 that's correct.

24 Q. And when you look in the ELVIS database on a
25 almost daily basis, what do you do?

1 A. I look up individual records in response to voter
2 inquiries. I run statistical information. I run
3 reports. I run queries, lots of information like that.

4 Q. Have you ever given any third-party groups any
5 reports or queries?

6 A. All the time, yes.

7 Q. Have you ever done it for any plaintiffs in this
8 case?

9 A. Yes, that is correct, I've done that.

10 Q. When was the most recent query you ran?

11 A. I actually ran one over the weekend. I had seen
12 some information that I didn't believe was correct. So
13 I ran several queries in the system over the weekend and
14 -- and one of which was -- I was looking for the number
15 of persons who have applied at the Division of Motor
16 Vehicles and not yet provided proof of citizenship.
17 That number is actually 11,718.

18 I looked at the number of records that were
19 canceled in total because of the proof of citizenship
20 law and have not yet provided proof of citizenship
21 within 90 days and were not part of the injunction, and
22 I believe that number was 6,530.

23 I looked at the total number of people who
24 were in suspense --

25 MS. WALDMAN: Your Honor, I'm going to

1 object. Mr. Roe's question was when was the most recent
2 query you ran, and so I did not object to that question.

3 But Mr. Caskey is actually now improperly
4 giving testimony about the very statistics that you
5 excluded on day one of this trial because the defendants
6 have run queries in the database and not provided us
7 with the updated information through discovery.

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

9 MS. WALDMAN: We ask all that testimony be
10 stricken out of the record.

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

12 MR. ROE: Your Honor, can I respond real
13 quick?

14 THE COURT: Yes.

15 MR. ROE: Your Honor, you said in opening
16 you would exclude the demonstrative at the time and rule
17 later on the issue of whether we could use the data
18 itself.

19 What I'm trying to do is lay the foundation
20 for the fact that he uses the database on a routine
21 basis, that he checks it routinely, that he did it this
22 week and this was the result. He's testifying about
23 what he did and what he saw.

24 MS. WALDMAN: Your Honor, there have been
25 outstanding discovery requests for reports out of the

1 database. The reports generated early on in discovery,
2 I believe they've been admitted as Exhibits 41 through
3 44 through joint stipulation.

4 Now, it is true that Mr. Caskey runs queries
5 of the database regularly. It is also true that he can
6 export the results of those queries. And if Mr. Caskey
7 and the defendants had wanted to provide additional
8 testimony regarding additional statistics, then they
9 should have exported the information out of the
10 database, provided it to us properly through the process
11 of discovery and allowed us to review that data for
12 accuracy. They haven't done so.

13 In fact, after you excluded their
14 demonstrative on Monday, they didn't even bother to
15 rerun the number and give us the reports then. So I
16 think this testimony should be excluded because they've
17 never given us the backup when they clearly could have
18 because they've done so before.

19 THE COURT: Yeah, I don't think the time to
20 do this is in the midst of testimony, I mean, if you
21 were going to rely on new data and new reports. And, I
22 mean, we had this whole discussion at the outset about,
23 you know, there are discovery rules, there are rules
24 about how to supplement. At some point you have to cut
25 things off because at trial I'm not going to allow

1 people to just start coming up with updated data and new
2 data and queries and all of that because the other side
3 hasn't had a chance to look at it.

4 And so what seems to be going on here now,
5 you're asking Mr. Caskey about new data. And not only
6 have they not discovered it, you haven't shared it with
7 them even before this examination. So I think that's
8 improper. So I'll sustain the objection.

9 MS. WALDMAN: Your Honor, all the testimony
10 regarding those numbers will be stricken; correct?

11 THE COURT: Yes.

12 MR. ROE: Your Honor, can I make a proffer
13 please?

14 THE COURT: Yes, you can make a proffer.

15 MR. KOBACH: Proffer the numbers.

16 MR. ROE: Mr. Caskey --

17 THE COURT: How long is the proffer going to
18 be? Can you not just state what the proffer is and not
19 doing it during the course of examination?

20 MS. WALDMAN: Your Honor, I believe Mr. Roe
21 is about to attempt to proffer the same numbers into
22 evidence and I would raise all the same objections.

23 THE COURT: No, he's proffering for purposes
24 of the appellate record. I'm not considering these.
25 I've sustained the objection.

1 BY MR. ROE:

2 Q. Okay. Mr. Caskey, can you tell us what the query
3 shown?

4 A. In addition to the numbers I've already stated,
5 the total number of records which are currently
6 incomplete for proof of citizenship regardless of the
7 form completed is 15,970.

8 And then the final number is the total
9 number of persons who have applied successfully to
10 register to vote from January 1, 2013, through Friday,
11 March 2nd, 2018, it was 467,121.

12 MS. WALDMAN: Your Honor, if I may --

13 THE COURT: To be clear -- to be clear, I'm
14 not considering this evidence. I'm allowing him to do a
15 proffer because they're going to -- I suppose on appeal,
16 unless they don't appeal because, you know, they win it
17 all or whatever, everybody has to preserve their records
18 for appeal. The purpose of the proffer is so if the
19 appellate court thinks my evidentiary ruling was wrong,
20 they know what the evidence would have been. That's
21 all.

22 MS. WALDMAN: I would just ask, Your Honor,
23 is Mr. Caskey looking at these numbers on a document
24 or --

25 MR. ROE: He's saying everything from

1 memory, Your Honor, based on what he observed.

2 MR. KOBACH: Your Honor, can I have --

3 THE COURT: All right. Let's proceed.

4 MR. KOBACH: Your Honor, can I ask one
5 question? So right now the -- all of the parties and
6 the court are relying on numbers that are stale. The
7 numbers --

8 THE COURT: We are not going to have a
9 dynamic trial here. When do we close the door,
10 Mr. Kobach?

11 We have -- this come up in cases all the
12 time. Damages run, although sometimes that's -- that's,
13 you know, worthy of reasonable calculation as it goes
14 forward, et cetera. But the bottom line is you have to
15 cut off the evidence at some point.

16 We're not going to have trial by ambush or
17 surprise here on either side. I'm not going to allow
18 people to continue to generate more and more reports as
19 the -- as the data change. Now, the data probably don't
20 change all that much anyway but you're stuck with what
21 you provided to them before trial by the deadlines.
22 That's what we're going to try.

23 I understand the numbers may be somewhat
24 different today. I understand that you have -- you
25 know, throughout the course of this litigation you've

1 tried to register people. You've made arguments about
2 mootness with respect to these particular plaintiffs.
3 You've changed practices. You've invoked new rules.
4 Some of them I heard for the first time, frankly, during
5 the trial.

6 But, no, you're not going to -- you're not
7 going to, through a witness during this trial, produce
8 new evidence that the plaintiffs have never heard before
9 about numbers. That's not fair. That's surprise.
10 That's ambush. Conversely they're not going to do the
11 same.

12 Same with the expert reports. That's why we
13 have this whole process of, you know, you have this
14 expert report. And then if something changes, you can
15 supplement by a particular deadline. But at some point,
16 that's it. That's the trial record.

17 MR. KOBACH: But if the record before the
18 trier of fact has substantially changed now so that the
19 arguments about the burden on people and the number of
20 people in suspense are drastically different and other
21 numbers are drastically different so the trier of fact
22 is not looking at the evidence that can change the
23 outcome of the case, is there not a basis to look at the
24 numbers of the date of trial rather than numbers that
25 are many months or even close to a year --

1 THE COURT: And how are they supposed to
2 defend against those numbers?

3 MR. KOBACH: We can provide the whole ELVIS
4 database --

5 THE COURT: And tomorrow the numbers may be
6 different and next week, if we don't finish, which it
7 looks like we're not, the numbers may be different and
8 you'll be standing up again in five or six days and
9 saying, oh, the numbers have changed again. No, no,
10 that's not how trials are conducted and they haven't
11 substantially changed based on this proffer.

12 MR. ROE: Can I finish the proffer, Your
13 Honor, please?

14 THE COURT: Oh, we're not done?

15 MR. ROE: I had one more question.

16 THE COURT: Okay.

17 BY MR. ROE:

18 Q. So looking at the data, what is the percentage of
19 individuals who began the registration process and then
20 complete the registration process?

21 A. Approximately 95.4 percent.

22 MR. ROE: Thank you.

23 THE COURT: I'm not considering any of that.
24 All right.

25 MR. ROE: Your Honor, can we bring him back

1 tomorrow, Your Honor? Can we close --

2 THE COURT: You're not finished?

3 MR. ROE: Not quite, Your Honor.

4 THE COURT: How much longer do you think you
5 have?

6 MR. ROE: 10-15, 20 minutes. I don't know.

7 THE COURT: All right. We'll recess for
8 tomorrow.

9 MS. WALDMAN: Your Honor, if I may have --
10 at this point in time we only have three or four
11 questions of recross. So if Mr. Roe can finish in the
12 next 10 to 15 minutes, I think we would be done
13 hopefully, unless something drastic changes by 5:30.

14 THE COURT: That would be great. We're
15 getting further behind here. All right. Do you think
16 you can finish in 10 to 15?

17 MR. ROE: I can, Your Honor.

18 THE COURT: All right.

19 BY MR. ROE:

20 Q. Okay. So my -- Mr. Caskey, just to continue,
21 when it comes to the ELVIS database, it -- is that --
22 are the numbers in the ELVIS database static?

23 A. No. They're constantly changing. It's a
24 realtime database among 105 counties. Literally when
25 the county hits "save" on any change, it immediately

1 changes the --

2 THE COURT: Let me just say one more thing
3 about this proffer, okay. I understand that it's
4 dynamic and it changes but you've been asking him about
5 time periods. And when was the last time you
6 supplemented the record with new data?

7 MS. WALDMAN: Your Honor, we only received
8 one set of spreadsheets exported out of the ELVIS
9 database and I believe that was in March of 2016 --
10 there may have been updated supplements, but the full
11 set that was responsive to all of our document requests
12 was run in approximately March of 2016.

13 THE COURT: '16?

14 MS. WALDMAN: '16.

15 THE COURT: Two years ago is the last time
16 you supplemented?

17 MR. ROE: We supplemented last night as
18 well, Your Honor.

19 THE COURT: No, no, before last night two
20 years was the last time you supplemented?

21 MS. WALDMAN: Your Honor, there were no --

22 THE COURT: And you're going to stand here
23 and tell me I need to keep the record open. If this --
24 if these changes in these numbers are that important,
25 there was a process by which you could have supplemented

1 and hit all of the discovery deadlines. And if the
2 discovery deadline had run and there was a substantial
3 change, you could have moved for supplementation and I
4 would have taken it up, heard from both sides and ruled.

5 But you don't go for two years and don't
6 supplement and then on the eve of trial or during
7 Mr. Caskey's testimony the first time tell me, oh,
8 you've got to hear these new numbers; they're so
9 different. No.

10 All right. I just wanted the appellate
11 court to have that record.

12 MS. BECKER: Your Honor, I would like to
13 continue the record with regard to that issue and that
14 is, as we alluded to this morning, yesterday all 20 of
15 the ACLU lawyers stood up and said that we had not
16 provided the under underlying data. And they said that
17 for --

18 THE COURT: Miss Becker, you're out of line.
19 We're talking about a different issue.

20 MS. BECKER: No, I understand. This is the
21 same thing --

22 THE COURT: This is apples and oranges.
23 This is apples and oranges.

24 MS. BECKER: -- and we have supplemented the
25 record --

1 THE COURT: No, let me finish. That was
2 about the underlying documents for the summary. All of
3 those have been provided.

4 But he's now testifying to new things off
5 the Secretary of State's website that he's doing from
6 memory that have nothing to do with the underlying ELVIS
7 data. So do not confuse this record.

8 All right. Go forward.

9 BY MR. ROE:

10 Q. So going back, you said they're not static;
11 correct?

12 A. That is correct.

13 Q. Okay. So the way the ELVIS database works, if
14 you ran a number today or a number this second, you
15 would get one -- if you ran a query today, you would get
16 one number; correct?

17 A. That is correct.

18 Q. And if you ran another query five minutes later
19 and I asked the same question "what's the number," would
20 the answer necessarily be the same?

21 A. It would be different.

22 Q. Okay. And so if numbers were -- so let's say
23 we're talking about the suspense list, okay.

24 You do understand what I mean when I say the
25 "suspense list"?

1 A. Yes, I do.

2 Q. What do you take that to mean?

3 A. It's -- in our terminology, the suspense list
4 contains everyone who's not currently registered to
5 vote. It includes categories of people whose
6 registration is incomplete because of proof of
7 citizenship. It includes persons who are covered by the
8 injunctive order who are deemed registered to vote
9 because of the injunctive order, and includes persons
10 under the age of 18 and will turn 18 and be registered
11 to vote, a variety of records used within the database.

12 Q. So if somebody had a copy of the suspense list in
13 December of 2015, for instance, or sorry, December of
14 2016 -- December 2015, for instance --

15 MS. WALDMAN: Your Honor, which year are we
16 talking about? I'm confused by the question.

17 THE COURT: I'm sorry?

18 MS. WALDMAN: I would just like Mr. Roe to
19 clarify what you -- Your Honor, the parties entered
20 into a number of stipulations before trial and we did
21 stipulate to the number of --

22 MR. ROE: Of certain ones --

23 MS. WALDMAN: -- of certain facts --

24 MR. ROE: -- right.

25 MS. WALDMAN: -- that were discussed in your

1 prior opinion as well as the --

2 MR. ROE: So --

3 MR. JOHNSON: -- amended pretrial order.

4 THE COURT: This is a stipulation that's in
5 the pretrial order?

6 MR. ROE: Yes.

7 MS. WALDMAN: Yes.

8 THE COURT: All right. The other thing is,
9 before this case closes, I just want to make sure I have
10 all your stipulations in writing, okay. All right. The
11 pretrial order will suffice. But anything else?

12 MR. JOHNSON: Your Honor, just to be clear,
13 it's the amended pretrial order in the Fish case.

14 THE COURT: All right. Any stipulations in
15 the pretrial order, amended pretrial order, or otherwise
16 in writing, fine. If there's anything in addition to
17 that, that needs to be a part of the record before the
18 record closes.

19 BY MR. ROE:

20 Q. Okay. So if somebody ran a report on March 23rd,
21 2016 and got one number and they ran the same report two
22 years later, would they necessarily get the same -- same
23 result?

24 A. The result would not be the same.

25 Q. Is it possible the number could be higher?

1 A. It is possible.

2 Q. Is it possible the number could be lower?

3 A. Yes, it is also possible.

4 Q. So if we're talking about the suspense list, why
5 could it be lower?

6 A. Between 2016 and 2018 there are several reasons.

7 Q. Yeah, the reasons why the suspense list may
8 fluctuate up or down?

9 A. Well, specifically to that period of time there's
10 several reasons why the number would be lower. Persons
11 can spontaneously provide proof of citizenship on their
12 own. The state -- the Secretary of State's Office could
13 obtain proof of citizenship from KDHE from persons who
14 were born with Kansas birth certificate.

15 And the biggest reason why is because we
16 have developed a web portal with the Department of Motor
17 Vehicles during that period of time and we now have the
18 ability to find all proof of citizenship documentation
19 within the Department of Motor Vehicles that we did not
20 have prior to March of 2016.

21 Q. So same question regarding December -- December
22 2016 -- I'm sorry, December of 2015, could the number be
23 higher or lower for similar reasons?

24 A. Yes. It is my belief the number would be lower.

25 Q. Okay.

1 MS. WALDMAN: Your Honor, the number of what
2 would be higher or lower?

3 BY MR. ROE:

4 Q. Sorry, the number of individuals on the suspense
5 list could be lower?

6 A. Yes, it is my belief the number would be lower.

7 Q. The number of individuals who have registered to
8 vote could be higher or lower?

9 A. Okay. So the question is the number of persons
10 who are actively considered registered to vote could be
11 higher or lower during the comparison between those two
12 points in time.

13 Q. Do you know whether there are more individuals
14 registered to vote today than there were in December of
15 2015?

16 MS. WALDMAN: Your Honor, again, I object to
17 their attempt to update statistics.

18 THE COURT: Sustained.

19 MR. ROE: Your Honor, this stuff's on our
20 website.

21 THE COURT: Sustained. It's not evidence.
22 It's not evidence that was disclosed before trial.

23 MR. ROE: Can I take -- will Your Honor take
24 judicial notice of all the voter registration
25 information on our website?

1 THE COURT: What do you mean "all the voter
2 registration information"?

3 MR. ROE: Sorry, the voter registration data
4 from --

5 BY MR. ROE:

6 Q. Bryan, do you know the last time the voter
7 registration data was put up on the website?

8 A. We certify voter registration numbers prior to
9 even year elections and once in odd year elections.

10 Q. 2016 --

11 THE COURT: What kind of information are you
12 talking about?

13 MR. ROE: The numbers our office generates
14 on our website, official data -- official turnout data.

15 MS. WALDMAN: Your Honor --

16 THE COURT: You were asking about numbers on
17 the suspense list.

18 MR. ROE: You're right, Your Honor.

19 THE COURT: That's on your website.

20 MR. ROE: No, then I went to the registered
21 voters, Your Honor.

22 MS. WALDMAN: Your Honor, if they'd like us
23 to consider a stipulation regarding the number of -- the
24 voter data that's identified on the website, we would be
25 happy to consider that stipulation as long as they send

1 us a draft to review.

2 MR. JOHNSON: I --

3 THE COURT: I already indicated I would
4 judicially notice certain things that are on the
5 website. I don't have a problem with that. You're
6 asking him this whole brouhaha and proffer has to do
7 with updated information on the suspense list. That's
8 not on your website.

9 MR. ROE: I was asking if the number of
10 registered voters increased, Your Honor.

11 THE COURT: All right. Get with him tonight
12 -- get with him overnight and, you know, come to me
13 tomorrow morning and say we agree you can judicially
14 notice and here's what the numbers are. Because I'm not
15 going to go look at the website, okay.

16 If you want me to judicially notice numbers,
17 present those to me. Let the plaintiffs know what those
18 numbers are that are actually on the website and, you
19 know, they'll have the opportunity to say, yes, those
20 numbers are correct, whatever, no problem with that.
21 We've done that with respect to other numbers, but
22 you're -- what you're trying to do with him was
23 something completely different.

24 Again, I don't want the record confused
25 about what you're doing before you're now on a new

1 subject. Okay.

2 BY MR. ROE:

3 Q. Do you know whether our office gets updated
4 numbers from KDHE -- updated matches from KDHE every
5 day?

6 Does your office update -- does our office
7 do batch -- batch matches with KDHE every day?

8 Do you know what I'm asking?

9 A. We do not do daily interactions with KDHE. We
10 send it on a periodic basis, mostly monthly until we get
11 significantly closer to election day, and then we do it
12 on a much more frequent basis prior to election. But we
13 do not do it daily.

14 MR. ROE: Okay. I don't -- I don't know if
15 this one is objectionable. I hope it's not.

16 MS. WALDMAN: I'll let you know.

17 MR. ROE: This is -- okay. You know what,
18 I'm not even worried about it, not a number, just about
19 clarification.

20 BY MR. ROE:

21 Q. In your experience, have you known individuals
22 who have registered to vote but never voted?

23 A. Yes, I do.

24 Q. In your experience, do you know individuals who
25 have registered to vote and moved to another state?

1 A. Yes, that happens frequently.

2 Q. In your experience, do you know persons who
3 registered to vote and moved to another county?

4 A. Yes, it happens frequently.

5 Q. In your experience, have non-citizens provided
6 any citizenship documents to complete the registration?

7 A. No, they have not.

8 THE COURT: Mr. Roe, I think we should
9 break. It sounds like you're getting close unless
10 you're really not. Maybe having an overnight break --

11 MR. ROE: Okay.

12 THE COURT: -- will help you finish up --

13 MR. ROE: Yeah. Thank you.

14 THE COURT: -- have some time to review.

15 MR. ROE: Yeah.

16 MS. WALDMAN: Your Honor, I believe
17 Mr. Caskey was in cross and direct. I would ask him not
18 to converse with defense counsel.

19 MR. ROE: That's fine, Your Honor. He's
20 probably going to go home.

21 THE COURT: I'm sorry?

22 MR. ROE: He's probably going to go back to
23 Topeka.

24 THE COURT: Let's recess. Nine o'clock
25 then.

1 (Proceedings adjourned to the following day,
2 March 9, 2018 at 9:00 a.m..)

3 CERTIFICATE

4 I certify that the foregoing is a correct
5 transcript from the record of proceedings in the
6 above-entitled matter.

7 DATE: March 14, 2018

8
9 /s/Kimberly R. Greiner
10 KIMBERLY R. GREINER, RMR, CRR, CRC, RDR
11 United States Court Reporter
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