

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: 03/12/2018

Day 5 (A.M. Session)
Pages 1213-1348

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

18 APPEARANCES:

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25 (Appearances continued on next page)

1 APPEARANCES:

2 (Continued)

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1 (9:07 a.m., proceedings commenced).

2 THE COURT: All right. You can be seated.
3 All right. Mr. Ho.

4 MR. HO: Good morning, Your Honor. One
5 preliminary matter before we get into other preliminary
6 matters. It's come to our attention that one of the
7 exhibits that was discussed on Friday and authenticated
8 by one of the witnesses we neglected to formally move
9 into evidence, so I just wanted to make the record clear
10 on that and move it in.

11 It's Plaintiffs' Exhibit 146, which was the
12 transcript of Mr. von Spakovsky after a hearing of the
13 Presidential Commission on Election Integrity speaking
14 with two journalists about an e-mail which I believe was
15 Plaintiffs' Exhibit 145. We authenticated that it was
16 his voice, and we just move that into evidence.

17 THE COURT: Any objection?

18 MR. JOHNSON: No objection.

19 MS. BECKER: Yes, Your Honor. Defendants
20 object to that on the grounds that the transcript, I
21 believe, although he authenticated that it was his
22 voice, plaintiffs offered it into evidence in an attempt
23 to show a prior inconsistent statement, which would be
24 allowable.

25 However, Mr. von Spakovsky testified that

1 he-- because Mr. Ho did not play the entire portion of
2 the audiotape or of the conversation, that what Mr. von
3 Spakovsky had previously described was exactly
4 consistent with what they played. And so it-- it cannot
5 go in as a record of prior inconsistent statements
6 because it was not inconsistent. So defendant objects
7 to that.

8 Defendant further objects to the fact that
9 it was made to appear as if it was some sort of a formal
10 transcript. It had a case caption on the first page of
11 the exhibit of *Fish versus Kobach*. And what it was was
12 a secretly-recorded telephone conversation from
13 ProPublica journalists, who ProPublica is founded and
14 actually receives funding from the ACLU and they've
15 received from the Sandler Foundation, same sources,
16 which is tangential.

17 MR. HO: Your Honor, I just want to--

18 MS. BECKER: It was not telephone, I'm
19 sorry, it was just on their cell phones is what it was.
20 So I just would object to, first of all, that it was not
21 a prior inconsistent statement so it should not go into
22 evidence.

23 MR. HO: Just a few quick points and to
24 correct some of Ms. Becker's misstatements. We did play
25 the entire-- we did play the entire audio-recording. We

1 put the entire transcript of the entire recording into
2 the record. There's no missing pieces of it whatsoever.
3 That's the first.

4 The second is, as Ms. Becker acknowledged,
5 it was an in-person interview, not one that was recorded
6 on the phone, of Mr. von Spakovsky right after a hearing
7 of the Presidential Commission on Election Integrity.

8 And then the third misstatement is Ms.
9 Becker's-- I don't know where this representation came
10 from that the ACLU somehow funds the media organization
11 that employs one of the journalists on that transcript.
12 That's simply false and there's no basis for that
13 statement.

14 She's free to argue whatever she wants about
15 whether or not the statement was consistent or not with
16 what Mr. von Spakovsky said on the stand. We will argue
17 that it clearly was not. But Ms. Becker's
18 interpretation of it is not a basis for excluding it
19 from the record.

20 THE COURT: All right. I think whether or
21 not it is a prior inconsistent statement depends on the
22 context of several exhibits. I think that objection
23 goes to the weight rather than the admissibility of the
24 exhibit. I'll be able to determine whether it was
25 inconsistent or not from the entire context. So I think

1 it should be admitted, along with exhibit-- well, the
2 other exhibits that are in, including Exhibit 145.

3 The transcript-- and you're right, it wasn't
4 a certified transcript, but the transcript matched
5 perfectly, as I recall, with the-- the audio-recording.
6 I mean, it was a-- it was an accurate rendition of what
7 was said on the audio. And it was-- it did appear to me
8 to be an interview.

9 In fact, it was very brief. It sounded like
10 they were walking, it sounded like they probably put a
11 microphone or something near his face and attempted to
12 ask him some quick questions. And that's all they got.

13 So I will admit Exhibit 146 for those
14 reasons.

15 MR. HO: Thank you, Your Honor.

16 THE COURT: All right. Is there anything
17 more?

18 MR. STEINER: Yes, Your Honor. There are
19 two other preliminary matters or administrative matters.
20 The first is, as Your Honor will recall, on Friday
21 morning there was discussion about our request for
22 judicial notice and turning the numbers from the
23 Secretary's website into a stipulation both with the
24 statewide total of reported votes, I think with the one
25 change that the state had wanted to-- to say that it was

1 votes reported rather than votes cast.

2 And then similarly, that we had filed a
3 request for judicial notice with respect to Sedgwick
4 County. But in order to have those numbers as evidence,
5 all of which were taken from the Secretary's website,
6 rather than having Mr. Caskey return - and I'm happy to
7 see him in court this morning - but rather than have him
8 return to take the stand to authenticate and put in the
9 numbers that were just pulled from the Secretary's
10 website, that he would review those over the weekend.
11 We provided them, where we pulled them from the website.
12 We turned that into a stipulation.

13 It was of yesterday's rough-- or Friday
14 morning's rough transcript, there was a discussion on
15 Pages 33 and 34 of the morning session of the rough
16 transcript. And we know Mr. Roe isn't in the courtroom,
17 but Your Honor confirmed with him that that was the
18 state's understanding as well.

19 We drafted that stipulation, we presented it
20 to the state yesterday morning. We heard from Ms.
21 Becker last night or yesterday evening that the state
22 was no longer willing to stipulate to those numbers.
23 And so it appears that we will need to put Mr. Caskey
24 back on the stand, which we're more than happy to do. I
25 apologize to Mr. Caskey if we're going to have to take

1 time to do that.

2 But I do think that that's something-- aside
3 from being inconsistent with what the Secretary's office
4 represented to the Court on Friday, I do think it's also
5 a waste of this Court's time and, in that sense, comes
6 very close if not over the line to violating Rule 3.2 of
7 the Rules of Professional Conduct, which has to do with
8 efficiency of trial proceedings and avoiding undue
9 delay.

10 I think that that rule says a lawyer shall
11 make reasonable efforts to expedite litigation
12 consistent with the interests of the court. Sorry,
13 consistent with interests of the client. And among
14 that, the issue is-- the question is whether a competent
15 lawyer acting in good faith would regard the course of
16 action as having some substantial purpose other than
17 delay.

18 And, frankly, numbers that are from the
19 Secretary's website, it seems there's no purpose other
20 than delay and wasting the parties' and more importantly
21 the Court's resources to require Mr. Caskey to retake
22 the stand. And I would certainly encourage Your Honor
23 to ask the Secretary to re-think that position. But if
24 we need to recall Mr. Caskey, we're certainly prepared
25 to do so. So that's the first of the two other matters.

1 MR. KOBACH: Your Honor, I don't think the
2 impasse is as grave as opposing counsel represents.
3 We're still willing to consider a stipulation. We're
4 also looking at other undisputed numbers that we also
5 may need to put in and we'd like to do it all in one
6 stipulation.

7 I wasn't party to all the conversations so I
8 don't know all the words that other attorneys said, but
9 I think we can get a stipulation done. I think it's
10 undoubted that we're going to be here tomorrow, so if we
11 could just continue to work on it, we hopefully won't
12 have to put Mr. Caskey back on the stand.

13 MR. STEINER: Your Honor, just so we're
14 clear--

15 THE COURT: Plaintiff wants these numbers
16 presented in their case and they're about to close their
17 case. So if you all can't reach a stipulation now, then
18 I think you ought to put Mr. Caskey on so that you can
19 complete the evidence you want to present in your case.
20 Then we can move on to defendant's case.

21 If you can reach a stipulation with any
22 numbers that Mr. Kobach wants, asks for a stipulation, I
23 mean, you can take that up later. But I don't want to
24 delay the closing of plaintiffs' case while you all try
25 to sort this out.

1 MR. STEINER: And, Your Honor, just so it's
2 clear, I'd like to be able to hand up a copy of Ms.
3 Becker's e-mail from 8:35 last night that says, "As your
4 proposed stipulations do nothing to curtail evidence
5 that has to be admitted, nor do they shorten the length
6 of trial, we will not agree to these." And I'd like to
7 be able to pass that up to make it part of the record.

8 THE COURT: All right. Why don't you plan
9 on calling Mr. Caskey and then you can I guess close
10 your case sometime this morning. Did you want that
11 marked as an exhibit?

12 MR. STEINER: Please, Your Honor. I guess
13 that's 149.

14 THE COURT: All right. Exhibit 149 is
15 admitted not as evidence but just for the appellate
16 record.

17 All right. So you're going to call Mr.--
18 recall Mr. Caskey and then is there another
19 administrative matter to bring up?

20 MR. STEINER: It's-- it sounds like we may
21 be making progress on the stipulations. I would, Your
22 Honor, like-- I know that there was discussion Friday
23 evening, and I apologize that I was no longer in court,
24 but I would like to-- I understand Your Honor ruled that
25 the Secretary could call one of these witnesses who went

1 through the hearing.

2 I understand that that's the ruling, I
3 understand that that's not likely to be reconsidered.
4 And, frankly, having had the opportunity this morning
5 before court to interview Ms. French and to receive
6 other documents from the Secretary that had not
7 previously been produced, I, frankly, think that this
8 further shows the burdens of this law and the handful of
9 people who managed to make it through this process - to
10 use one of Mr. Kobach's favorite phrases - are just the
11 tip of the iceberg. But I think that there should be a
12 further record as to why this evidence was on the
13 defendants to disclose, and I'd like to just briefly
14 make that record if that's okay.

15 As Your Honor and as the defendants I'm sure
16 are well aware, Rule 26(a) is the requirement of making
17 initial disclosures in the case. The-- the allegations
18 in this case include that this law is a burden on people
19 who are not registered to vote in Kansas and burden
20 their right-- their ability to register and their right
21 to vote.

22 One of the Secretary's defenses to that
23 claim, well, there's this process that's a fail-safe for
24 people who don't have documentary proof of citizenship,
25 and that is a defense to the claim of burden. And Rule

1 26(a), as we all know, requires a party without awaiting
2 a discovery request to provide to the other parties,
3 one, the name and, if known, the address and telephone
4 number of each individual likely to have discoverable
5 information, along with the subjects of that information
6 that the disclosing party may use to support its claims
7 or defenses unless the use would be solely for
8 impeachment.

9 And I think the names of these witnesses
10 that we got Friday night clearly fall within the ambit
11 of Rule 26(a) because this is, of course, part of Mr.
12 Kobach's defense to the claims in this case.

13 On top of that, unlike the Secretary, we
14 served a number of document requests. And plaintiffs'
15 third request for documents requested Request 1--
16 Request 1 requested, "All correspondence between
17 Defendant Kobach and any other person concerning the
18 purpose or implementation of the DPOC." It went on to
19 further specify, "This Request 1 is not intended to
20 include uniform letters sent to individual registration
21 applicants regarding their voter registration
22 applications."

23 And so clearly that request also sought
24 specifically documents concerning the implementation
25 other than the uniform requests. So when people went

1 through the hearings, those documentations, Mr. Kobach
2 or his office's communications to those people of the
3 official determinations of the review board. No
4 response to those requests. There was not even an
5 objection to those requests.

6 Instead, the Secretary responded by saying
7 "attached to the documents." Of course, none of these
8 files of people who went through the process or the
9 other people that we learned on Friday night, and we
10 still don't have records for who applied to go through
11 the process in the Secretary's office and in the process
12 found, in fact, somewhere in Kansas records that they
13 were citizens without the need for a hearing, none of
14 that was ever produced to us. And I think that that's
15 another discovery violation.

16 And then on top of that, I think the
17 suggestion was that this is rebuttal evidence to
18 something that Ms. Ahrens said that was a surprise. But
19 the fact of the matter is that Mr. Kobach took Ms.
20 Ahrens' deposition in this case. And while he did not
21 ask her questions to elicit the testimony that he
22 elicited from her when she was on the stand testifying
23 in this court, he did ask her specifically about the
24 request form that is in evidence in this case. It was
25 Exhibit 25 to Ms. Ahrens' deposition.

1 But she-- he specifically asked her about
2 her familiarity with the alternative process of having a
3 hearing, the League's efforts to publicize or not to
4 publicize the hearing, a report that was put together
5 for the League by two professors that included
6 references to the process. And Mr. Kobach asked Ms.
7 Ahrens all of that in her deposition in this case on
8 June 8th of 2016.

9 And so the notion that they were somehow
10 surprised by her testimony about the process, you know,
11 just-- just rings hollow, it makes no sense, having
12 deposed her, inquiring into the topics, asking her
13 questions on cross examination about those topics
14 somehow surprised their team to the extent that they
15 need undisclosed witnesses. And, of course, neither Ms.
16 French nor anyone else who went through this process was
17 on the Secretary's pretrial witness list in this case.

18 Now, like I said, we've now gotten-- we
19 actually don't have, I don't believe, all six of the
20 people who went through the process. We've gotten
21 information on five of those people. I think as of last
22 night at least the Secretary's office was unable to
23 locate records of the sixth woman who went through the
24 process.

25 And, frankly, I understand Your Honor's

1 ruling from Friday. I think in light of all of this,
2 none of this testimony should be allowed. But, frankly,
3 these include files, for example, of a woman who was
4 born in the Philippines illegitimately, came to the
5 United States as a young girl with her mother as a green
6 card holder, who then her mother naturalized when she
7 was under the age of 18 and that automatically made her
8 a U.S. citizen as well. And she got up-- got caught up
9 in this process and had to go through and meet-- and I
10 don't remember whether that was in person or by
11 telephone with Mr. Kobach with the-- with the
12 lieutenant-- then lieutenant governor, now governor of
13 the state. And I think that one was with a designee of
14 the Attorney General's Office.

15 And you can only imagine the difficulty of
16 someone in that situation knowing that they're in the
17 U.S. legally but without papers to prove it, having to
18 go through that process with three high-ranking
19 government officials, and the number of people who are
20 in that exact situation who would say it's just not
21 worth that risk and that danger to me.

22 There's another woman who moved around from
23 foster home to foster home and ultimately-- and then
24 moved to-- and couldn't find therefore-- I think had
25 never had contact with her birth mother, didn't have her

1 birth certificate. She was born yet in the United
2 States, not in Kansas, ultimately-- ultimately came to
3 Kansas. She hired a lawyer to help her through this
4 process.

5 And I think-- and, therefore, I think that
6 those records certainly had they been produced or
7 identified in response to initial disclosures or
8 produced, you know, years ago in response to our
9 discovery requests, this would've led to substantial
10 additional evidence. I'm not sure that any is really
11 needed, but it certainly would've led to substantial
12 additional evidence that would've bolstered the
13 plaintiffs' claims in this case.

14 And I think that there should be some
15 consequence for the failure, the delay and the
16 during-trial surprise of let's have yet another new
17 witness. And so, like I said, I think the appropriate
18 thing to do is to exclude it.

19 I understand that Ms. French came in this
20 morning and was interviewed just before some members of
21 the team walked over to court. I understand your ruling
22 from Friday, but I do think that in these circumstances,
23 whether it's exclusion of her testimony or some other
24 consequence of this unnecessary delay mid-trial is
25 warranted.

1 MR. KOBACH: Your Honor, I'm not quite sure
2 why opposing counsel is re-arguing this entire thing
3 over again. I'm not going to re-argue it all over
4 again. I'm just going to point out that there was
5 nothing in the declaration from Ms. Ahrens about the--
6 the process at all, the alternative process of proving
7 citizenship. There was nothing in the pretrial order
8 that she was going to testify to that fact. And
9 contrary to counsel's statement, all she mentioned at
10 the deposition was that she was aware there was such a
11 process. That was basically it as far as I recall.

12 And their claim just now, which is the first
13 time I've heard it, but somehow they were asking for
14 these records from the citizenship hearings, that's not
15 correct. They only had a generic request for
16 information regarding implementation of the DPOC
17 requirement. They never specifically requested any of
18 this stuff.

19 And we're bringing it on rebuttal, in fact
20 we would like to have it introduced into evidence so
21 that the Court may have the full record of all of these
22 hearings. And so I'll stop here and just say I don't
23 think we need to re-litigate this all over again before
24 going on to the next issue.

25 THE COURT: Well, that-- I don't-- that

1 request-- discovery requests are usually stated very
2 broadly for obvious reasons, because when you're in the
3 process of discovering the other side's evidence, you
4 don't know what you don't know.

5 So in my mind to ask for documents other
6 than individual-- I don't know the exact language, but
7 the way plaintiff framed it here for me this morning is
8 individual documents concerning-- or individual letters
9 or correspondence regarding implementation of DPOC,
10 other than uniform requests. I think these forms that
11 people filled out would fit that definition and
12 should've been produced and were not.

13 At the same time when I ruled last week, I
14 was under the impression that that part of Ms. Ahrens'
15 testimony where she went into some detail about how the
16 hearing process works and that it didn't work and that
17 it was burdensome was something that was not evident
18 that she would testify to in terms of the scope of her
19 testimony and that it was a surprise.

20 It sounds like Mr. Kobach did depose her
21 about whether she was aware of the process, but my
22 recollection of her testimony in trial was she went
23 further than that. And so that's why I-- I looked at
24 this as more along the lines of impeachment or rebuttal
25 evidence that might take this outside of Rule 26.

1 To be sure, I think that Rule 26 was
2 violated in the sense that this broad request for
3 documents concerning implementation of DPOC, it would've
4 fallen within that. I didn't have that information in
5 front of me when I ruled last week.

6 I still think, though, that Ms. Ahrens'
7 testimony went beyond what probably the defendants could
8 anticipate in terms of the detail she provided about the
9 burdens of this particular process. At the same time,
10 because the Rule 26 requirements were not met by
11 defendant, plaintiffs are now standing here telling me
12 that there are other people that were within this group
13 of five or six and that they're prejudiced by not being
14 able to present that evidence, because their
15 understanding I guess in talking to these folks is that,
16 in fact, these people would testify to something that
17 does sound quite burdensome; to hire a lawyer, to do
18 whatever you have to do to prove that your-- your mother
19 was naturalized when you were under the age of 18, et
20 cetera.

21 So I-- I will ask plaintiffs this: You have
22 this information from these other people, did you
23 interview them this weekend?

24 MR. STEINER: No, Your Honor. And, in
25 fact--

1 THE COURT: You're getting this from the
2 forms themselves?

3 MR. STEINER: It's not from the forms, it's
4 from the hearing determinations from the panel that in
5 every case consisted of Mr. Kobach and then Lieutenant
6 Governor Colyer and sometimes it was the Attorney
7 General and sometimes it was one of his designees. So
8 we've been produced five of the six hearing
9 determinations as well as the files that were either
10 submitted by the applicant or collected by the Secretary
11 of State's Office. And so it's evident from those.

12 And so which-- which is why, Your Honor, I
13 think at the end of the day, you know, given the ruling
14 on Friday and given the late production of these
15 documents, I think our view is if Ms. French is going to
16 testify, you know, these records clearly are-- whether
17 they're an admission from Secretary Kobach because he
18 signed the determinations or whether they fall into some
19 public record, the rest of them in redacted form so the
20 individual identities can be preserved should also come
21 in.

22 I do think that we've been prejudiced but,
23 frankly, I think because the evidence, even in the state
24 that we have it, is far more helpful to us than any
25 notion that it supports that the process is easy, I

1 think that the rest of those records should also come
2 in. I don't think that the defendant disputes that, but
3 I do think that there should be some remedy for the
4 failure to-- the failure to comply with Rule 26(a), the
5 failure to comply with the discovery requests and the
6 mid-trial production of an additional witness.

7 THE COURT: Well, that's where I was headed
8 in asking you that question. There was a failure to
9 comply with Rule 26. As we know, without going into it
10 again, typically the remedy is you don't get to submit
11 the evidence. And that's why I didn't allow the
12 defendants to submit late-breaking numbers of who's on
13 the suspense and cancellation lists because they had a
14 duty to disclose, they had a duty to update under
15 Rule 26. And it was unfair, it was a surprise, it was
16 prejudicial.

17 But I'm going to impose a lesser remedy in
18 this case. I will allow the defendant to call Ms.
19 French, if that's her name, but only if all of these
20 records are submitted, the records of the other
21 determinations, so that I have a more complete picture
22 of what's going on and-- because plaintiffs have been
23 precluded from putting on this evidence themselves
24 because defendant failed to comply with Rule 26.

25 So do you have those marked as an exhibit?

1 We can-- the determinations for the other four people I
2 guess it is or all five I guess, Ms. French plus four?

3 MR. KOBACH: That's correct, Your Honor.

4 MR. STEINER: We do, and I believe we have
5 them appropriately redacted. But it's probably worth
6 someone confirming that nothing was missed because the
7 names appear throughout a lot of the documents.

8 THE COURT: All right. Would these be
9 Exhibit 140--

10 MR. STEINER: 150 I believe.

11 THE COURT: 150.

12 MR. JOHNSON: Your Honor, assuming I
13 received the same documents, there are only five orders.

14 MR. KOBACH: That is correct.

15 MR. JOHNSON: There's apparently one file
16 that consists of one piece of paper, nothing else. So
17 that's--

18 THE COURT: So there were six people, as I
19 understand it, and the defendant produced five and said
20 they couldn't find the sixth?

21 MR. STEINER: Correct. The attorney who
22 handled the sixth apparently they either haven't been
23 able to contact or that attorney didn't keep records in
24 a way that they've-- that they haven't been able to
25 locate the sixth file. So they've told us that this

1 other woman went through the process and had her
2 citizenship approved, but they haven't been able to find
3 the records to support that determination.

4 THE COURT: All right. And one of those
5 five that are being submitted, Mr. Johnson, you say
6 consists of just one piece of paper in that particular
7 file?

8 MR. JOHNSON: I think that's right.

9 THE COURT: Okay. I understand. I'm going
10 to admit Exhibit 150.

11 MR. JOHNSON: Mr. Hall--

12 THE COURT: I'm going to admit Exhibit 150
13 for whatever weight I can give it.

14 MR. KOBACH: Your Honor, can I speak to what
15 the records are? So we do have the full set of records,
16 the document requesting the hearing and then the-- the
17 docketing-- the order from the Board reaching its
18 conclusion and describing the documents that were
19 presented and also the documents themselves in many
20 cases.

21 We thought-- we weren't sure how many the
22 total was off the top of our heads last week, we thought
23 five or six. We think that the sixth one is a person
24 who didn't end up needing to have a hearing, because
25 sometimes people will call in and say, I think I have to

1 prove my citizenship this way, and then someone at our
2 office will be able to help them get the citizenship
3 document either by calling Vital Statistics or by
4 calling the Department of Vehicles.

5 And so there have been other cases where
6 people have called and we didn't go through the hearing
7 because someone in our office was able to get the
8 citizenship document for them. So we think that's what
9 the sixth case was, but--

10 MR. JOHNSON: Your Honor, I'm sorry. I-- I
11 have to object to this. The Secretary is-- is
12 testifying as a party here.

13 MR. KOBACH: I'm just trying to explain what
14 the document is that doesn't have anything attached to
15 it. That's why we presented that. We weren't certain,
16 but we believe that she was in that category of someone
17 who just called and we were able to find the documents
18 for her.

19 THE COURT: All right. Exhibit 150, which
20 is five of the six determinations or five of the six
21 people at least that had initially requested hearings,
22 files on five of them will be admitted as Exhibit 150.

23 MR. STEINER: And, Your Honor, that goes
24 back exactly to the point on our third request for
25 production and what I understood over the weekend even

1 wasn't squarely addressed by the Friday discussion, that
2 the Secretary's office would be producing, which is
3 there are all these other people who we now hear, oh,
4 well, there are a bunch more people who called their
5 office, maybe submitted a form, maybe just called the
6 office and going through that process and people having
7 to call and follow-up say, I can't find my records, that
8 members of the Secretary's staff took time to go and--
9 while the formal hearing process never occurred, they
10 went and found the records on their own, which I think,
11 again, falls within our request.

12 It goes to the burden of the law. I think
13 in the Secretary's view it goes to his defense of the
14 burden of the law. And that's some, you know, unknown
15 number of additional documents and additional evidence
16 that we still don't have.

17 THE COURT: Mr. Kobach, do you all have
18 records about people that called in and ultimately they
19 didn't have a hearing for one reason or another?

20 MR. KOBACH: My understanding, Your Honor,
21 is that oftentimes people will call. They will not have
22 filled out the form and not have produced a record. And
23 so in those cases, we wouldn't have any record at all,
24 it was just a phone call, someone from our office helped
25 them and said, okay, we have this document, we've

1 obtained a document from Department of Vehicles, we can
2 go ahead and complete your registration for you.

3 So we produced the sixth document because
4 we-- she did fill out the RCD, the request for
5 documentation-- the request to have her citizenship
6 confirmed. We're going to try to verify that she was
7 indeed someone who was just-- we found her document or
8 someone found her document and so she didn't have to
9 have the hearing because we don't have any other records
10 of a hearing and so I think it was just five at this
11 point.

12 THE COURT: Well, on this record I'm going
13 to not be able to find that anybody else called the
14 office because there's no record of that, there's no
15 evidence of that. And so with respect to whether or not
16 this alternative hearing process was burdensome, my
17 finding will be that six people sought it, no more than
18 six. Five of them at least had a hearing, absent other
19 evidence that other people sought a hearing or sought--
20 sought advice and counsel in the process because there's
21 not going to be any evidence. If Mr. Kobach is the one
22 making that statement, that's not evidence any more than
23 your argument is evidence. All right?

24 MR. KOBACH: Your Honor, can I raise one
25 more issue? Just to give you the timing of this. So we

1 reached Ms. French on Thursday and determined that she
2 would be able available to come to trial. We provided
3 her phone number to opposing counsel on Friday, as you
4 requested at the end of Friday's hearing.

5 On Saturday we provided the contact
6 information and all these other documents that are now
7 being admitted into evidence concerning all five
8 hearings. On Saturday we finally also managed to reach
9 one of the other people who went through this hearing
10 process, Mr. Dale Weber. He is the one that's sometimes
11 been referred to as a-- the person who drove a truck.
12 He is a long-haul truck driver and so his hearing was
13 actually by telephone.

14 We asked him if he would be able to testify
15 before the Court telephonically today, he said he would.
16 We informed opposing counsel that he would be available
17 too and we would like to have his testimony before the
18 Court today. And we offered them 7:00 last night as a
19 time to do a telephonic deposition because he is on the
20 road. They declined. We would like to have him testify
21 telephonically today too, but they have declined and
22 objected to this. So we're willing to have--

23 THE COURT: I don't think that would be
24 proper. They haven't been able to discover-- I mean,
25 they-- well, I don't think that would be proper because,

1 one, they haven't been able to depose him; two, he can't
2 testify telephonically unless he's with a court reporter
3 who is going to swear his testimony in on that end. I
4 can't swear him in from this end, I can't see him, I
5 don't know who I'm talking to. None of us do. So that
6 wouldn't work.

7 All right. Anything more about this issue?

8 MR. STEINER: No. Well, the only additional
9 point I would make, Your Honor, on these untold numbers
10 of additional people who went through the process, I
11 think-- I think two things-- or who started the process
12 but then someone from the Secretary of State's Office
13 specifically helped them and they ultimately didn't need
14 a hearing is, one-- and, like I said, I think the Court
15 probably at this point doesn't need additional evidence
16 of the burdens of the law, but I think that those
17 requests which would've led us to additional people who
18 didn't just have the easy time of, you know, filling out
19 the form and didn't just go away unregistered or
20 suspended but spent time calling the Secretary of
21 State's Office and talking to people and trying to
22 figure things out, that's additional evidence that we
23 should've been able to pursue through discovery.

24 And, frankly, I think the-- while I don't
25 think additional evidence is necessary, I think the

1 appropriate remedy for that is foreclosing whatever
2 defense Mr. Kobach is trying to put up of the law is not
3 burdensome. You can't not produce those records either
4 under Rule 26(a) or in response to a proper request.
5 The sanction for that under Rule 37 is to preclude the
6 defense. And I think, you know, that, frankly, is the
7 appropriate remedy here the more we hear about it.

8 And then the-- I think I'll just stop there.

9 THE COURT: Well, as I said, I'm not going
10 to consider-- I'm the trier of fact. And as far as I'm
11 concerned, there is no evidence that other people called
12 in and sought advice and counsel and help, sought a
13 hearing and didn't need a hearing. That's all based on
14 attorney argument. There's absolutely no evidence of
15 that one way or the other.

16 I will consider that there were six people,
17 or five I guess, that actually had a hearing out of the
18 universe of thousands of people that were on the
19 suspension list. And I'll consider whatever is in these
20 documents, these redacted documents that are in.

21 The request to preclude the defense that
22 it-- that this particular provision was not burdensome,
23 I'll deny. I will allow the defendant to continue to
24 pursue that defense.

25 MR. STEINER: Thank you, Your Honor.

1 THE COURT: All right. Is there anything
2 else?

3 MR. HO: With respect to the stipulations on
4 election returns and whether Mr. Caskey will have to
5 testify again, Mr. Kobach has informed me that the
6 defendants will agree to stipulate to those numbers. So
7 I think we can close conditional-- conditionally, Your
8 Honor, upon those stipulations being entered into the
9 record later today.

10 THE COURT: All right. Those are in written
11 form?

12 MR. HO: We've already provided them in
13 written form to the defendants. And my understanding
14 from Secretary Kobach, I don't want to misrepresent his
15 position, but is that he will stipulate to those numbers
16 so that we don't have to put Mr. Caskey back on the
17 stand.

18 THE COURT: Correct, Mr. Kobach?

19 MR. KOBACH: Yes, that's right. And we just
20 need to again re-establish what the elections were that
21 they wanted the numbers for, but I think we have the
22 documents so it shouldn't be a problem.

23 THE COURT: Oh, okay. With that
24 understanding, plaintiff closes its record, it rests
25 with the additional stipulations that will be filed with

1 the Court today. And just to remind the parties,
2 particularly the plaintiffs because you've offered
3 deposition testimony, those depositions need to be filed
4 of record, the transcripts because, you know, we went
5 through the whole designation process, so we need-- we
6 need a record of that.

7 But, again, it's-- it's-- yeah, all of the
8 deposition transcripts. So that would include the video
9 deposition of Mr. Kobach. It's his transcript that gets
10 filed, not the video itself, because for the appellate
11 record they're going to be operating off the paper
12 needless to say. They can look at the video if they
13 want, but it's the transcript that actually gets folded
14 into our written court reporter transcript for all of
15 these-- all of these testimonies that came in by
16 deposition, whether it's audio or video. All right.
17 Mr. Ho.

18 MR. HO: And just as a point of
19 clarification, Your Honor, would you like the full
20 transcripts with the designations highlighted or simply
21 the excerpts? I believe we handed up for at least
22 Secretary Kobach's deposition a full transcript with the
23 highlighted portions, but we're happy to do whatever
24 Your Honor prefers at this point.

25 (The Court and law clerk confer).

1 THE COURT: Okay. I think the full
2 transcripts but marked up that shows the-- so then
3 there's a record of what the objections were, et cetera.
4 And the counter-designations, et cetera. And it needs
5 to be filed in CM/ECF. We have received those obviously
6 by e-mail, but they need to be in CM/ECF itself.

7 MR. HO: Yes, of course, Your Honor. Thank
8 you.

9 THE COURT: Excuse me. Okay. Anything else
10 before plaintiff rests?

11 MR. STEINER: No, Your Honor.

12 THE COURT: All right. Plaintiff rests.
13 All right. Anything further from defendant at this
14 point? Oh, I'm sorry.

15 MR. JOHNSON: Plaintiff Bednasek rests as
16 well.

17 THE COURT: Sorry. All plaintiffs rest in
18 both cases. All right. Ms. Becker.

19 MS. BECKER: Your Honor, defendant would
20 just like to-- since the plaintiff has just rested,
21 defendants would for the record re-assert their motion
22 for summary judgment in both Fish and Bednasek for the
23 purposes and for the bases previously stated and
24 addressed by the Court in our briefing.

25 We'd also like to re-assert the motion to

1 dismiss Plaintiff Bednasek for lack of standing because
2 he was not a Kansas resident and was ineligible to vote,
3 as was established by his testimony about going home to
4 Texas, as well as everything in our briefing.

5 And I believe that was all. Thank you.

6 THE COURT: All right. Those motions for
7 the reasons stated before are denied. All right. Are
8 you ready to proceed?

9 MR. KOBACH: Yes, Your Honor. We would like
10 to call as our first witness Ms. Jo French.

11 MR. STEINER: Your Honor, having had members
12 of our team interview her finally before court this
13 morning, after originally arranging yesterday afternoon
14 and then being told by Ms. Becker that rather than in
15 her home in Osage City, that she would come to Kansas
16 City last night for a 6:00 interview and then yesterday
17 afternoon re-scheduling that and saying she couldn't be
18 here last night, it would be this morning before court,
19 I think it's only appropriate to give our team an
20 opportunity to go from that interview of which Mr.
21 Kobach was present to be prepared for her examination
22 that she not be able to-- that she not be permitted to
23 testify until this afternoon.

24 I mean, they shouldn't-- we interviewed her
25 from 7:30 or 7:45 this morning until 8:45. They

1 shouldn't be able to now roughly an hour later put her
2 on the stand before we're able to go back through our
3 notes and be prepared for cross examination. That's not
4 fair.

5 THE COURT: All right. I-- I agree. Call
6 someone else first. How-- you're going to be-- you're
7 going to have people on the stand I assume most of the
8 day or into tomorrow?

9 MR. KOBACH: Yes, Your Honor. We anticipate
10 calling two expert witnesses plus Ms. French today and--

11 THE COURT: Okay. I think it would be best
12 if the plaintiffs had over the lunch hour to talk to Ms.
13 French, so it would be better if you wait until this
14 afternoon.

15 MR. KOBACH: Just to be clear, they did a
16 pseudo-deposition of her with a-- with a court reporter
17 this morning for an hour. So they've already-- we've
18 already had a long discussion. I think they're just
19 saying they want some time, if I'm not misunderstanding,
20 they just want some time before we put her on the stand.
21 If it's okay, we'd like to put her on the stand second
22 so she doesn't have to sit in Kansas City all day before
23 returning to Osage City.

24 THE COURT: All right. Well, you're going
25 to start with an expert?

1 MR. KOBACH: Yeah, we're going to start with
2 an expert then.

3 MR. STEINER: I assume it's Camarota first,
4 is that--

5 MR. KOBACH: That's correct.

6 MR. STEINER: So my request, Your Honor, is
7 that she be permitted to testify even if we're in the
8 middle of an expert. And depending on their order, I
9 don't know whether it would be between or in the middle
10 of, that we have the lunch break. It was-- it was under
11 Mr. Bonney's supervision, it was two of my associates
12 who met with her and interviewed her this morning. And
13 I think for them to be able to go back through their
14 notes so that one of them can then examine her, it's
15 appropriate for me to have the lunch break to be able to
16 talk to them.

17 And so I'd like her to be able to testify
18 right after lunch. We wouldn't oppose if one of the
19 experts, given that it's a bench trial, if one of the
20 experts is in the middle of testifying or between direct
21 and cross that she come in then. But I do think it's
22 only fair that we have the lunch break to be able to
23 talk to the team about that.

24 THE COURT: I agree. I mean, it's going
25 on-- that-- that clock is wrong?

1 MR. STEINER: It's about ten 'til 10:00,
2 Your Honor.

3 THE COURT: About 10 'til 10:00, that clock
4 is right. So, I mean, we're only talking a couple of
5 hours from now before a lunch break. So I think it's
6 appropriate that we call here, even if it's in the
7 middle of Mr. Camarota's or somebody else's testimony,
8 call her after lunch after you've had the chance to
9 review the notes you just took a couple of hours ago.

10 All right. Let's proceed with Mr. Camarota.

11 MR. KOBACH: Yes, Your Honor. We'll call
12 Doctor Steven Camarota.

13 STEVEN CAMAROTA,
14 called as a witness on behalf of the Defendant, having
15 first been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. KOBACH:

18 Q. Good morning.

19 A. Good morning.

20 Q. Could you please state your name for the Court?

21 A. Yes. I am Steven Camarota.

22 Q. And, Doctor Camarota, could you please state--
23 well, let me-- before we do that, let me hand you this.

24 MR. KOBACH: This is Doctor Camarota's CV,
25 Defense Exhibit 1139. And, Your Honor, I would move for

1 the admission into evidence of 1139, Mr. Camarota's CV.

2 THE COURT: Any objection?

3 MS. LIU: No objection, Your Honor.

4 MR. JOHNSON: Your Honor, I want to find out
5 is it the most-- is it the updated CV that we received a
6 day or two ago?

7 MR. KOBACH: I think this is-- it's
8 June 2016, so I think this is the original one.

9 MR. JOHNSON: The original?

10 MR. KOBACH: Do we have a copy of his
11 updated CV? I think we do. We'll also introduce his
12 updated CV.

13 THE COURT: All right. Exhibit--

14 MR. JOHNSON: I will have to say I prepared
15 my cross examination based on his most recent CV. So
16 I-- I trust this isn't much different.

17 THE COURT: All right. Exhibit 1139, which
18 is a June 2016 CV is admitted.

19 MR. KOBACH: And we'd also like to introduce
20 the March 2018 CV, which we will call Exhibit No. 1204.

21 THE COURT: All right. Exhibit 1204
22 admitted.

23 MR. KOBACH: Thank you. Does the Court have
24 a copy? This is the 1204.

25 Q. (BY MR. KOBACH) Okay, Doctor Camarota, I'd like

1 to ask you a few questions dealing with your CV. Could
2 you summarize your educational background?

3 A. Yes. I have an undergraduate degree from Juniata
4 College. Then I have a master's degree in political
5 science from the University of Pennsylvania and I have a
6 Ph.D. in American government with a focus on policy
7 analysis from the University of Virginia. And then I
8 also received additional statistical training at the
9 University of Michigan in part of their summer
10 statistics program there, Inter-University Consortium
11 for Political and Social Research.

12 Q. Doctor Camarota, what is your occupation?

13 A. I'm currently the Director of Research at the
14 Center of Immigration Studies.

15 Q. In that profession do you analyze demographic
16 data?

17 A. Yes, I do, a great deal. That's a primary focus
18 of my job.

19 Q. In that profession do you analyze voter
20 registration and election data?

21 A. Sometimes, when I use Census Bureau voter
22 registration and election data, particularly the
23 November supplement. I've-- I've also done it in other
24 capacities, not so much in my job, but as an expert
25 witness as well.

1 Q. You just used the phrase "November supplement."
2 For the information of the Court, what are you referring
3 to when you say the "November supplement"?

4 A. Yes, the Current Population Survey is a Census
5 Bureau survey. Every other year during when there's a
6 federal election, the survey-- they conduct an extensive
7 survey of the public, asking them if they are registered
8 and whether they voted in the previous federal election.

9 Q. And are those questions asked in every Current
10 Population Survey or only in the November supplement?

11 A. In the November supplement every other year.

12 Q. And have you analyzed November supplements as
13 part of your career?

14 A. I have.

15 Q. And for how many years have you held this
16 position?

17 A. The current position I have held for I believe
18 it's 19 or 18 years. And before that I was a resident
19 fellow at the Center and then I became Director of
20 Research.

21 Q. A resident fellow at the same--

22 A. Center for Immigration Studies, that's right.

23 Q. Have you done analysis for the United States
24 Census Bureau?

25 A. I have. For a number of years I was the lead

1 researcher looking at Census Bureau data and evaluating
2 its quality. I co-authored a number of reports and we
3 were employed by the Bureau and paid by the Bureau to do
4 so.

5 Q. When you say "paid by the Bureau," are you
6 referring to the U.S. Census Bureau?

7 A. U.S. Census Bureau, right. That's correct.

8 Q. And you-- you just said to evaluate the quality
9 of-- is it Census Bureau data?

10 A. Yes, Census Bureau data.

11 Q. Can you elaborate on what you mean?

12 A. Sure. The Census Bureau was implementing a new
13 survey at the time called the American Community Survey.
14 That survey is now fully implemented. But when they
15 were first implementing it, they were particularly
16 concerned of its ability to gather accurate data on
17 immigrants and also other harder-to-reach populations.

18 So we evaluated that data a whole variety of
19 ways, looking for internal consistency checks. Also we
20 compared it to other Census Bureau data, such as the
21 Current Population Survey and-- to see if the American
22 Community Survey was measuring up. And then we
23 evaluated it, told them what we found and they would
24 review it and get back to us. And so that was a-- kind
25 of an iterative process. And then we made a series of

1 recommendations to them, some of which they implemented.

2 Q. And did you serve as a lead contractor for the
3 U.S. Census Bureau?

4 A. Yes, I directed that project.

5 Q. And you just referred to the American Community
6 Survey. Just for the information of all in the court,
7 what is the American Community Survey?

8 A. The American Community Survey is a large survey
9 conducted by the Census Bureau. It's an annual survey
10 where it provides annual estimates of the United States.
11 It was substituted in lieu of the census long form.
12 Prior to 2010 when they dropped the long form, they had
13 the Census-- they used the American Community-- they had
14 created the American Community Survey and phased out the
15 census long form.

16 Questions like citizenship and income, a lot of
17 the detailed questions that-- that we used to collect
18 from about 15 percent of the population at the time of
19 each decennial census has now gone over to this annual
20 census-- or this annual survey I should say, to try to
21 give us a more accurate picture of the United States
22 each year, rather than waiting every ten years.

23 So it's been an invaluable source of information,
24 and I was there when they were trying to implement it
25 fully and we-- hopefully we helped them.

1 Q. So to make sure I understand; did the Census
2 Bureau seek your expertise in constructing the American
3 Community Survey?

4 A. Yes. They contacted me and asked me if I would
5 like to evaluate it.

6 Q. Has the U.S. Census Bureau ever found your
7 analytical work for them to be inadequate?

8 A. They certainly never expressed that. We did it
9 for a number of years for them and they were-- they
10 seemed pleased.

11 Q. Has your work for the Census Bureau included
12 citizenship data?

13 A. We compared citizenship data in the American
14 Community Survey at times and the foreign-born
15 population at times to the Current Population Survey.
16 And also the decennial census as well.

17 Q. And does the Current Population Survey contain
18 voting or voter registration data?

19 A. Yes. As I indicated, in November of each year
20 when there was a federal election, the survey does ask
21 respondents if they are registered to vote and if they
22 voted in the November election.

23 Q. Approximately how many people receive the Current
24 Population Survey?

25 A. Well, it's about 50,000 households. In my expert

1 testimony, I discuss the sample sizes. You know, it's
2 well over 70,000 people receive or take part in that
3 survey.

4 Q. Have you ever published peer-reviewed articles or
5 book chapters concerning census data?

6 A. I have. Yes, I have.

7 Q. Could you summarize what those articles are
8 about?

9 A. Yes, sure. They're on my vitae. I-- for
10 example, I have a forthcoming article being published
11 in-- by Cambridge University Press, Carol Swain is the
12 editor. And it looks at the-- the growth in employment
13 relative to the growth in the immigrant population and
14 what fraction of employment growth is going to
15 immigrants. And it's based entirely on Census Bureau
16 data.

17 Q. And have you published any-- was that an article?

18 A. That was a book chapter.

19 Q. And have you published any articles?

20 A. Yes. So I've also published for *Social Science*
21 *Quarterly*, and that was also based on Census Bureau
22 data.

23 Q. I just asked you about work you wrote which was
24 peer-reviewed, now I'm going to ask you the flip side of
25 that. Have you ever served as a peer-reviewer in your

1 field of research?

2 A. Yes, I have served as a peer-reviewer for a
3 number of peer-reviewed journals; *The Demography*, *The*
4 *American Journal of Sociology*, *The Quarterly Review of*
5 *Economics and Statistics*, *International Labor Relations*
6 *Review* and *International Social Science Review*.

7 So what that means is that they sent me articles
8 and asked my opinion about whether they should publish
9 it or not and then I critique the article and told them
10 whether they should publish it, you know, what changes
11 and also made suggestions to the author about how to
12 improve it. So I was part of that process at those-- at
13 those peer-reviewed journals. And I was the outside
14 reviewer.

15 Q. Have you ever served as a peer reviewer for the
16 National Academy of Sciences?

17 A. I have. Recently the National Academy of Science
18 released a very extensive study based largely on Census
19 Bureau data, though not entirely, looking at immigration
20 to the United States. And I was an outside reviewer for
21 that as well. I made suggestions, I told them what I
22 thought of it and that sort of thing.

23 And then the-- that was the draft copy. And then
24 when the final copy came out, they incorporated some of
25 the suggestions I had made.

1 Q. Have you authored reports for the Census Bureau?

2 A. I have. A number of reports I have been a
3 co-author on, evaluating again the quality of Census
4 Bureau data.

5 Q. Could you estimate how many such reports you have
6 co-authored?

7 A. Yeah. I think we wrote a-- a total of four final
8 reports or four reports for the Bureau. But some of
9 those reports have multiple parts to them, so-- but at
10 least four.

11 Q. Have you ever published any conference papers
12 concerning census data?

13 A. Well, I've presented conference papers I think
14 would be the right way to describe it, yes.

15 Q. Roughly how many?

16 A. Let's see. I-- to be honest, I can't recall.
17 But I would say three or four, maybe five conference
18 papers over the years using Census Bureau data.

19 Q. Have you written any other analytical reports
20 using survey data?

21 A. Yes. Much of my focus at the Center for
22 Immigration Studies has involved a data analysis, very
23 often Census Bureau data. So I have published, you
24 know, literally dozens and dozens of reports for the
25 Center using Census Bureau data. Some that are very

1 long and extensive and detailed and some that are, you
2 know, previous analyses of various sources.

3 Very often the Current Population Survey, the one
4 I used in my expert testimony, but also other Census
5 Bureau surveys as well.

6 Q. Have you written reports or articles analyzing
7 registration or voting using census data?

8 A. I have for the Center for Immigration Studies,
9 yes, using the November supplement.

10 Q. Have you testified before Congress?

11 A. I have testified before Congress, many times.

12 Q. How many times if you can remember?

13 A. I believe it's 26 times that I have-- I have
14 testified before House or Senate committees. Those
15 testimonies typically, but not always, focused on
16 analysis of Census Bureau data.

17 Q. Have any of those instances of congressional
18 testimony involved elections?

19 A. Yes. I have-- we've talked about issues of
20 apportionment and congressional-- in congressional
21 elections.

22 Q. So was that apportionment?

23 A. Apportionment, yes.

24 Q. Have you served as an expert witness in other
25 cases?

1 A. I have, yes.

2 Q. How many times?

3 A. Well, in terms of when I have been deposed and
4 actually went to trial, there's a case, you know, a
5 pending case, so I'm not-- so I'm not sure the outcome.
6 But I testified in the case in Hazleton and was an
7 expert witness there, was deposed and testified. I
8 testified in Maricopa County, Arizona. I was deposed
9 and testified.

10 And I also testified-- in addition to this case,
11 I testified in a case in-- in Broward County, Florida.
12 I was deposed and-- you know, submitted expert
13 testimony, was deposed and testified. And that was over
14 this past summer. So that was the most recent one until
15 this one.

16 Q. Okay. So just to make sure I am getting all of
17 these correctly. So you-- when you said in Hazleton,
18 was that the case of *Lozano versus the City of*
19 *Hazleton* in the U.S.--

20 A. Yes, it was.

21 Q. -- in the U.S. District Court for the Middle
22 District of Pennsylvania?

23 A. Yes.

24 Q. And when you said-- I think you said either
25 Arpaio or Arizona. Was that *Melendres versus Arpaio*,

1 U.S. District Court for the District of Arizona?

2 A. Yes, it was.

3 Q. And then you just-- did you say Broward County,
4 Florida? Which case was that?

5 A. Yes, let's see here. Gosh.

6 Q. I think I see it. *ACRU versus*--

7 A. Yes, there it is. I'm sorry. Yes. *ACRU versus*
8 *Election Administrator John Rodriguez*. No, no, no,
9 wait. Oh, *ACRU versus Snipes*, I'm sorry. That's a case
10 that has not yet come to trial. Thank you.

11 Q. You said--

12 A. *ACR versus Snipes*. That is the case dealing with
13 Broward County, Florida.

14 Q. And does that case involve voter registration?

15 A. It does.

16 Q. And so then you have a number of other cases
17 listed where you were an expert witness. I see
18 Rodriguez-- no, *ACR versus Rodriguez and Pablos*. Did
19 that case involve registration, voter registration?

20 A. Let me find that one, I'm-- that was--

21 Q. I'm looking at the--

22 A. -- Zavala County?

23 Q. I'm looking at the first case where you list
24 under expert witnesses on your CV.

25 A. Yes, that case has-- now, I have not yet been

1 deposed in that case. We had scheduled it and then--
2 and then the plaintiffs pushed it back. So I haven't
3 been deposed, I've only submitted my testimony on that
4 one.

5 Q. So have you done an expert report in that case?

6 A. I did, yes.

7 Q. Okay. And then the last one on your first page,
8 you receive [sic] a ACRU-- it looks like you don't-- I
9 don't have a case title there, but can you describe that
10 one?

11 A. Civil action case 2.14CV?

12 Q. There it is.

13 A. That one-- yes, here I just submitted an expert
14 testimony and I was never deposed. I don't know how--
15 the ultimate disposition of that case.

16 Q. And was that also involving voter registration
17 and voting data?

18 A. Yes, it was involving voter registration rates.

19 Q. And then I see the next one is United States
20 versus North Carolina State Board of Elections, Middle
21 District of North Carolina. Could you explain the-- did
22 that one go to court or what did you do there?

23 A. There I think it was just an Amicus brief. The
24 Judicial Watch asked me to submit a report and-- on
25 voting trends in North Carolina and I did so. So I

1 don't know the disposition of that case, I don't know
2 how that was decided. I think it was-- I was never
3 deposed, I did not testify.

4 Q. And was one of these cases just recently in the
5 last two months?

6 A. Well, the Broward County case was the one that I
7 testified over the summer, but the most recent one for
8 Starr County, Texas, is one that I recently submitted a
9 revised report for. I believe that was in February or
10 January I submitted that report, but nothing has come of
11 that yet. I have not been deposed.

12 Q. And is that the one that's the last one on Page 1
13 or is that one--

14 A. No, that's the first one, remember Starr County.

15 Q. Okay. First one, Page 1, got it.

16 A. Election administrator John Rodriguez and Texas
17 state-- Texas Secretary of State.

18 Q. Okay. In any of these cases has any court ever
19 found you not qualified to give expert testimony?

20 A. I have not been found not qualified to give
21 expert testimony.

22 Q. Has any court ever found your testimony not to be
23 credible?

24 A. That-- they have not found my testimony not to be
25 credible.

1 Q. Has any court ever found your testimony to be
2 unreliable?

3 A. I've never been told that my testimony was
4 unreliable, they never told me that.

5 MR. KOBACH: Your Honor, I move for the
6 admission of-- as an expert of Doctor Camarota in the
7 fields of demography, census data, voter registration
8 statistics, and voter participation statistics.

9 MS. LIU: Your Honor?

10 THE COURT: Yes.

11 MS. LIU: As you know, we have an
12 outstanding *Daubert* motion. And given your prior
13 rulings, we'll hold on voir-diring the witness as part
14 of-- and incorporate it as part of our cross.

15 MR. JOHNSON: Your Honor, I agree with that
16 and it sounds like the defendant is trying to qualify
17 Doctor Camarota in areas that I don't believe in his
18 direct testimony he's addressed.

19 THE COURT: All right. I'll take this under
20 advisement. As I discussed before, there's this pending
21 *Daubert* motion. I felt like I needed to hear the
22 entirety of Doctor Camarota's testimony. So everyone
23 should treat this as just trial testimony in the sense
24 of full cross examination and testing of it. But
25 ultimately I'll make a decision on the admissibility of

1 all of this.

2 So in terms of qualifying him as an expert,
3 that obviously will be part of my ultimate determination
4 as well. So I'll take that under advisement.

5 MR. KOBACH: Thank you, Your Honor. And I
6 was just making the motion to make sure that we had the
7 motion on the record for the purposes of your future
8 ruling.

9 THE COURT: Sure.

10 Q. (BY MR. KOBACH) Doctor Camarota, I'm going to
11 hand you what's been marked as Defendant's Exhibit 1140,
12 which is your expert report, although-- yeah, it starts
13 with your background and qualifications, but it is not
14 the same as your CV, I believe.

15 Okay. Doctor Camarota, do you recognize this
16 document?

17 A. Yes, this looks like my expert report.

18 Q. Did you write it?

19 A. I did.

20 MR. KOBACH: Your Honor, I'd move for the
21 admission of Doctor Camarota's expert report.

22 THE COURT: Under advisement. Proceed.

23 Q. (BY MR. KOBACH) Doctor Camarota, are there any
24 typos before we begin that you'd like to correct in your
25 report at this time?

1 A. Yes, I would. And this was covered at the
2 deposition, but I wanted to just clarify again that in
3 the Figures 2 through 5, 2 through 5, it does say at the
4 bottom 2010 and 2012 data. However, it's 2010 and 2014
5 data. I wanted to make that clear.

6 Q. So to make sure I understand, 2012 should be
7 2014?

8 A. '14, yes.

9 Q. And is this in the footnote at the bottom of each
10 one?

11 A. Yes. The first one is correct in Figure 1. But
12 Figure 2, 3, 4, and 5, the footnote is incorrect.

13 Q. Okay. And is there any correction you wish to
14 make on Figure 3?

15 A. Yes, yes. So another typo is that in Figure 3
16 there is an asterisk next to Nebraska and Oklahoma
17 indicating 95 percent statistical significance, actually
18 that asterisk should not be there. It doesn't quite--
19 it's kind of a rounding error, but it doesn't quite meet
20 95. It meets 90 but not 95 percent statistical
21 significance.

22 Q. So would the correction be to change 95 to 90 in
23 the footnote?

24 A. Or-- well, you could. But just remove the
25 asterisk would be just the same. That is not a

1 95 percent statistically significant change. It is a
2 90 percent change but not 95. And then in-- this same
3 issue comes up--

4 Q. Let me just make sure we're clear. So that if we
5 did that, if we changed the asterisk for Nebraska and
6 Oklahoma to 90 percent-- there's also an asterisk by
7 Kansas.

8 A. Right.

9 Q. Is that one at 95 percent?

10 A. That is at 95 percent, there's no change there.

11 Q. Okay. All right. Go ahead.

12 A. And then finally in the table at the end, again,
13 the-- the asterisk next to Nebraska and Oklahoma for
14 whites shows a statistically significant change with the
15 asterisk. But that change is only significant at the
16 90 percent, it's not-- doesn't quite reach 95 percent.

17 Q. Okay. So for Nebraska and Oklahoma-- just make
18 sure I understand this. Nebraska and Oklahoma--

19 A. In Table 1, yes.

20 Q. Table 1, fourth column under-- or fourth row
21 under "voting" where it says Nebraska and Oklahoma
22 whites, the asterisk should refer to 90 percent; is that
23 what you said?

24 A. Yes. That-- that is not a statistically
25 significant-- that change is not 90 percent.

1 Q. And then there are two other asterisks below it,
2 both referring to Kansas. Are those at 95 percent or
3 what is the statistical significance there?

4 A. Yes, these other ones should be there. It's just
5 the one for Nebraska, whites.

6 Q. Okay. Doctor Camarota, do voter registration
7 numbers fluctuate from year to year?

8 A. They do.

9 Q. Could voter participation numbers fluctuate from
10 year to year?

11 A. They do.

12 Q. Are there significant differences in the
13 registration and participation rates of a
14 presidential-year election versus a mid-term year
15 election?

16 A. They are, yes. Typically they peak in
17 presidential elections.

18 Q. Do these differences affect how you analyze voter
19 registration rates?

20 A. Yes. You would want to look at elections that
21 are not-- are either presidential elections or off-year
22 elections, so as you're making more of an
23 apples-to-apples comparison.

24 Q. So to make sure I understand; you would compare a
25 presidential election to a presidential election are you

1 saying?

2 A. Yes, or an off-year election to an off-year
3 election.

4 Q. And same question with regard to voter
5 participation rates. Would you compare-- explain how
6 you would do that. Would you compare the same election
7 cycles?

8 A. Yes. Again, you would want to compare off-year
9 elections to off-year elections because of this
10 fluctuation that you often see. So you would want to
11 compare an off-year election to an off-year election or
12 a presidential election year to a presidential election
13 year.

14 Q. Are you familiar with the Kansas
15 proof-of-citizenship law?

16 A. I am familiar with it.

17 Q. Do you know the effective date of the law?

18 A. January 2013 I believe.

19 Q. So given that it went into effect on the first of
20 January in 2013, what are the most relevant years to
21 analyze it when you analyze the effect of that law?

22 A. Well, particularly with Census Bureau data, you
23 would want to analyze an off-year election that occurred
24 before the law went into effect - so that would be 2010
25 - and then the next available off-year election after

1 the law went into effect, so that would be 2014.

2 Q. And just to summarize before we get into the
3 specifics; what did you see when you-- well, actually
4 maybe we can just go ahead-- why don't you give us a
5 summary. What did you see when you compared 2010 to
6 2014?

7 A. In the state of Kansas, we see that the-- that
8 there was-- does not seem to have been a statistically
9 significant change in both the number of people-- I say
10 the share of people who are 18 and older who are
11 registered and the share of people who voted in the
12 election. So there was not a statistically significant
13 change.

14 Q. Is it analytically meaningful to compare Kansas
15 registration and voting rates to national registration
16 and voting rates?

17 A. Well, my analysis compares changes in-- in voting
18 and registration rates. So what I'm looking at here is
19 is Kansas a standout, does Kansas exhibit some change?
20 This is a-- my analysis is essentially a
21 quasi-experimental approach; that is, there was a change
22 in Kansas, a new policy, a treatment, if you will. A
23 change.

24 Did that change in the-- in comparing the
25 election before and an election after, both off-year

1 elections with governor's races, did-- was there a
2 statistically significant change? And how does that
3 change compare to two, you know, broadly comparable
4 states that are neighboring, in this case Oklahoma and
5 Nebraska, and how does that change compare to what
6 happened nationally?

7 And what I find is that there was no
8 statistically significant change and Kansas does not
9 seem to buck any national trend or any trend in the
10 adjacent states.

11 Q. When you say "no statistically significant
12 change," what do you mean, to be more precise?

13 A. Right. So if we go to Figure 1 in my expert
14 testimony--

15 MR. KOBACH: Let's go ahead and put that up,
16 Dez. Can we get that on the screen?

17 A. So in the state of Kansas we see that the number
18 of people who reported to the Census Bureau that they
19 were registered - this again is-- the analysis is
20 confined to only citizens 18 and over - that
21 68.4 percent of citizens were registered they reported.
22 And then in 2014, it was 69.7.

23 My original testimony was in color, so maybe it's
24 a little harder to see here.

25 MR. KOBACH: Do we have the color version

1 somewhere?

2 A. But in any event-- and-- and what you can see is
3 the share of people who voted in Kansas, it-- it follows
4 the same pattern. So anyway, the 47.3 percent is the
5 number of people who reported that they voted in Kansas.
6 Again, citizens 18 and over. And the 48.3 is for 2014.
7 So the 47.3 is 2010.

8 Q. So just to clarify since we don't have the color
9 version--

10 A. Yeah.

11 Q. -- so in each sets of columns, the column on
12 the--

13 A. Left.

14 Q. -- left is 2010 and the column on the right is
15 2014?

16 A. 2014, yes.

17 Q. Okay. And I think you-- you may have switched
18 your numbers. You described the 2014 number for
19 registration rates as 69.7, did you mean 67.9?

20 A. Yes, I'm sorry. Correct.

21 Q. Go ahead, I interrupted.

22 A. No, that's okay. So what we see here is small
23 changes, but none of those changes are statistically
24 significant. So in a sense, the Census Bureau data
25 indicates that the registration rate and voting rate in

1 Kansas was unchanged between 2010 and 2014.

2 Q. And those are percentages of what, to-- just to
3 clarify?

4 A. Again, these are percentages of people 18 and
5 over who report that they're U.S. citizens.

6 Q. And so when it-- sometimes we have different-- we
7 see different participation numbers. One is a
8 participation number of the total registered voters and
9 the other is the participation number of the total
10 eligible, you know, electorate of age that could be
11 registered. Which is this in your chart?

12 A. This is the total eligible population; that is,
13 people who are voting age and-- and report that they're
14 U.S. citizens.

15 Q. And is this information based on the Census
16 Bureau's Current Population Survey?

17 A. It is.

18 Q. Is Current Population Survey data reliable?

19 A. I think-- I think it is often considered a kind
20 of gold standard for looking at many of these measures
21 across the country. It's a large sample. And people
22 who have tried to look at it have generally concluded
23 that it lines up pretty well with registration numbers.

24 I believe that plaintiffs' expert, Michael
25 McDonald, has said that scholars can have confidence and

1 that this is good news that-- in an article in the
2 *Public Opinion Quarterly*, looking at this data, he said
3 that-- that the data generally lines up with
4 registration data and that scholars can have confidence
5 in it and this, he said, quote, is good news.

6 Q. Is Current Population Survey data regularly used
7 by experts in your field?

8 A. Certainly. The United States Census Bureau puts
9 out a whole, you know, press kit with tables and a
10 report every year or every other year when this data
11 becomes available. The Pew Research Center also puts
12 out a report every year, an analysis of who voted and
13 how things have changed and so forth. And so they've
14 done it.

15 Q. Can I interrupt?

16 A. Yeah.

17 Q. Does the Pew report base it on the Current
18 Population Survey numbers?

19 A. Yes. Yes, that's right. So the Census Bureau
20 puts out a report on this, Pew puts out a report on it.
21 My organization sometimes puts out reports on it I've
22 indicated, and others.

23 Plaintiffs' expert, Michael McDonald, has a paper
24 up on the web with Schoen and Smith using the Current
25 Population Survey looking at voter registration trends.

1 Q. Does the U.S. Census Bureau employ expert
2 statisticians and demographers to do the Current
3 Population Survey?

4 A. They do. Having worked with those people, they
5 have extremely talented people. Some of the best out
6 there, some of the best survey research people and some
7 of the best statisticians. They also have excellent
8 staff that actually go out and-- and collect the data.

9 I was-- when I was evaluating data for the Census
10 Bureau, one of the most impressive things was the
11 quality of the professional Census takers, the people
12 who went out. These were people-- not people they hired
13 temporarily at the time of the decennial Census but the
14 people who collected the American Community Survey.
15 They also collected at the Current Population Survey.
16 And I was-- we were-- my colleague and I who did that
17 work, we were very impressed by them.

18 Q. Do you believe it's analytically meaningful to
19 compare Kansas to neighboring states that do not have
20 proof-of-citizenship requirements?

21 A. Well, it's comparing a state that had a change in
22 policy with states that are different and also the
23 country as a whole. Since at the time I did this
24 comparison for the country as a whole, only one other
25 state had implemented a proof-of-citizenship law, and I

1 believe that is Arizona. And Arizona's law doesn't
2 really work like Kansas and it's long-standing, it
3 wasn't just put into effect, as I understand it.

4 Q. So--

5 A. So anyway, I think-- I think the comparisons,
6 looking for change in Canada-- in Kansas and looking for
7 change in other states is analytically meaningful.

8 Q. What neighboring states are most comparable to
9 Kansas for this purpose?

10 A. Well, Nebraska and Oklahoma are two neighboring
11 states to Kansas that don't have a proof-of-citizenship
12 law. They both had governor's races in 2010 and 2014,
13 so they both had statewide races. And they are both
14 rural states in which agriculture plays a significant
15 part of the economy. So they make for a reasonable
16 comparison to see if there was any change there.

17 But remember, the comparisons here are not
18 between the voter registration rates of Canada-- of
19 Kansas versus those other states or the nation, it's
20 looking for a change in them. So the states are being
21 compared with themselves, not across states.

22 Q. Okay. And then you said both of them had
23 gubernatorial elections, referring to Nebraska and
24 Oklahoma?

25 A. Yes, that's correct.

1 Q. Both had gubernatorial elections in 2010. Did
2 they both have gubernatorial elections in 2014?

3 A. Yes.

4 Q. So looking at those states and the nation, what
5 would you expect to find if the plaintiffs were correct
6 in asserting that the proof-of-citizenship law impeded
7 voter registration or voter participation?

8 A. Right. So we would expect that people would find
9 it harder to register and we would expect that people
10 would find it harder to vote, and then that should show
11 up in reported registration rates and reported voting
12 rates.

13 But we don't see that with Kansas. It looks like
14 actually the-- that there was no meaningful change in
15 Kansas. And it doesn't look-- the national numbers show
16 a little bit of a statistically significant decline. So
17 if anything, Kansas - relative to the nation - bucked
18 the trend. But the important thing when you look at
19 Kansas is that we don't see evidence based on this data
20 that the new law which had been in effect for almost two
21 years by the time of the November election impeded
22 people from registering and voting.

23 Q. You used the phrase "Kansas bucked the trend."
24 Just to make sure that we have a little more precision,
25 what did you mean when you say "Kansas bucked the

1 national trend?"

2 A. Right. So if we go to the other figures, can we
3 do that?

4 Q. Let's go to Figure 2 now.

5 A. Bring it up a little more. So here we see that
6 the-- again, very tiny changes both in Nebraska and
7 Oklahoma. But when we go to-- and this is for
8 registration in Figure 2. So there wasn't-- you know,
9 if you could bring that up a little bit.

10 So what we see here is that in terms of
11 registration, there wasn't any difference between Kansas
12 and Nebraska and Oklahoma, and Kansas and the rest of
13 the country. But if we go to registration [sic], we do
14 see some differences. In the nation there was a
15 statistically significant change, for example, in voter
16 turnout, and Kansas doesn't see-- does not exhibit that
17 here.

18 Q. Are you looking at-- are you looking Figure 2?

19 A. So here we see that Kansas looks the same as the
20 rest of the country. There doesn't seem to be any kind
21 of statistically significant change.

22 Q. Okay. Now, can we go to Figure 3?

23 A. Right.

24 Q. What is Figure 3?

25 A. Yeah, so Figure 3 shows us that nationally there

1 was a fall-off that can be measured with the Current
2 Population Survey in the share of eligible people who
3 voted in this off-year election. In Kansas, it actually
4 went up as you can see from 47.3 to 48.3, but that
5 change is not statistically significant.

6 So statistically, Kansas was basically unchanged
7 in the share of people who voted who are eligible to
8 vote in Kansas; that is, people 18 and older who are
9 citizens. But in the nation there was a small fall-off.
10 And I think that's-- that's what I meant by it kind of
11 bucked the national trend of less voting-- less voter
12 turnout rate in-- in the nation versus Kansas.

13 Q. So just to make sure I understand; when you say
14 in the nation there was a small drop or--

15 A. Uh-huh.

16 Q. -- a fall-off, are you referring to the voter
17 participation rate going from 45.5 to 41.9 percent
18 nationally?

19 A. Yes.

20 Q. Okay. And you said that is statistically
21 significant?

22 A. It is at the 95 percent. As I indicated at the
23 outset, the change for Nebraska and Oklahoma together is
24 statistically significant but at the 90 percent. So
25 it's a slightly less robust measure. So that-- that

1 change could be said to be statistically significant.
2 But here, I'm only-- I was using 95 percent, the more
3 robust measure, to see if it was different.

4 And-- and the change in Nebraska and Oklahoma is
5 not statistically significant at the 95 but it is at the
6 90 percent, so-- which means - if you want to say it
7 this way - which means we can be 95 percent certain in
8 the case of the country as a whole, excluding Kansas
9 shown on the right, that we can be 95 percent certain
10 that the change nationally represented a real change.
11 It wasn't just, you know, sampling error.

12 In Kansas, that change from 47.3 to 48.3 in
13 voting rates is not statistically significant. So we
14 can't be certain if that increase was actually a real
15 increase. But the decline or-- but the decline
16 nationally does seem to have been real with a 95 percent
17 certainty.

18 Q. And then looking at Nebraska and Oklahoma, the
19 neighboring states, is it correct they went from 40.7
20 percent to 37.5 percent, and that's significant at the
21 90 percent level?

22 A. 90 percent. So we can say that that change was
23 90 percent. We're 90 percent certain of it, that it was
24 statistically significant, but not 95.

25 Q. Now, some people might argue that a closely

1 contested election in one state, you know, might have
2 influenced Kansas' numbers. How do you answer that
3 critique?

4 A. Well, the closeness does not necessarily equal
5 turnout or-- so, for example, we actually have lots of
6 examples that all of us are familiar with. So, for
7 example, in the 2000 election, extremely close, we all
8 had to wait days to find out who won that. It was one
9 of the closest elections in American history in 2000,
10 the presidential race.

11 MS. LIU: Objection, Your Honor. This is
12 not in his report.

13 THE COURT: All right. I'll disregard. Go
14 ahead.

15 Q. (BY MR. KOBACH) If you want to just speak
16 generally about close--

17 A. Okay. We have presidential elections that are
18 close that--

19 MS. LIU: Objection, Your Honor. This is
20 not in his report.

21 THE WITNESS: It was in the deposition.

22 MR. KOBACH: He was deposed on this subject
23 about other things affecting turnout, Your Honor.

24 THE COURT: All right. Proceed. Proceed.

25 A. Yeah, and the example I gave-- should I just give

1 the example I gave at the deposition and we went over
2 that?

3 Okay. So, for example, in the 2008 presidential
4 election, that was an election with-- that was not very
5 close. Barack Obama won dramatically, by over 7 million
6 votes as I just recall. And yet turnout was extremely
7 high, one of the highest we've seen since the '60s.

8 But in the following election, Mitt Romney did
9 much better than John McCain, although Barack Obama won,
10 but-- so the race was much closer than it had been in
11 2008 and yet turnout was actually less.

12 So the closer race in 2012 was the race with the
13 lower turnout. The higher turnout in 2008 was the race
14 with the higher-- the blowout race was the race with the
15 higher share of people who voted.

16 Q. And so when you looked at Nebraska and Oklahoma,
17 did they have races of importance the same years that
18 Kansas did?

19 A. They did. They had statewide races as well.

20 Q. Why do statewide races matter?

21 A. Well, generally there are lots of things that go
22 along with a statewide race. There's a voter
23 registration and get-out-the-vote drive by the relevant
24 political parties. And so that-- that would tend you'd
25 think to up, you know, efforts. And so-- but as I say,

1 in Nebraska, Oklahoma and Kansas, all had statewide
2 races in these two years. And, of course, they were all
3 participating in the federal election.

4 Q. Okay. Let's now look at figure-- yeah, Figure 4.
5 Okay. So tell us what Figure 4 illustrates.

6 A. Right. So Figure 4 here looks at citizens 18 to
7 29, what we might call youth population, in Kansas, in
8 Nebraska and Oklahoma, and in the nation as a whole
9 without Kansas. And we're looking to see what happened
10 to registration rates, the share of people who are 18
11 years old and are citizens who said that they were
12 registered to vote.

13 And those numbers in Kansas show a slight
14 decline, but it's not statistically significant.
15 There's also a slightly larger decline in Nebraska and
16 Oklahoma in the share of young people who are
17 registered, but that's also not statistically
18 significant. And then there is a statistically
19 significant decline nationally.

20 Young people in the country in states other than
21 Kansas did register at somewhat lower rates in 2014 and
22 2013. So Kansas did not experience a statistically
23 significant change; however, states other than Kansas
24 did. And this is Figure 4.

25 Q. I think you-- you just said 2014 compared to

1 2013. Did you mean 2010?

2 A. '10 to 2014.

3 Q. Okay. And so when you say that there's a
4 statistically significant national decline, are you
5 referring to 49.3 percent dropping down to 46.7 percent?

6 A. Yes.

7 Q. Okay. So let's go to Figure 5, which is the same
8 population regarding voter participation rates. So can
9 you explain what you found there?

10 A. Yes. So this is the same idea as the previous
11 figure, except here I'm looking at the share of people
12 who said that they actually voted. So the way you would
13 read this is that there was a decline in Kansas from
14 20.5 to 18.4 percent of young people, again 18 to
15 29-year-old citizens, between 2010 and 2014 who said
16 that they voted. But the change is not statistically
17 significant.

18 In Nebraska and Oklahoma, there was also a change
19 that was not statistically significant. But nationally
20 there was a change that was statistically significant.
21 So between 2010 and 2014, nationally the share of people
22 who are young who said that they were-- voted went down
23 from 24 percent to slightly below 20 percent. And that
24 was a statistically significant change in the survey.
25 Whereas in Kansas, there was a decline, a smaller

1 decline, much smaller decline and it was not
2 statistically significant.

3 Q. Okay. And now let's look at Table 1.

4 A. Uh-huh.

5 Q. Which I believe goes to registration rates based
6 on race.

7 A. Yes.

8 Q. What did you find there?

9 A. Yeah. So here what I did was-- and there's also
10 information-- well-- so here I'm looking-- at the top
11 section I'm looking at registration rates for whites and
12 non-whites. Again in Kansas, in the neighboring states
13 and in the nation as a whole minus Kansas. And in
14 general, we don't see any statistically significant
15 change among non-whites. So-- in Kansas.

16 So, for example, what it shows is that for
17 non-whites; that is, people who, you know, report-- as I
18 say at the bottom, people who report a single race of
19 white and they're not Hispanic, the fraction of those
20 people who are registered went up in Kansas, but it's
21 not a statistically significant change.

22 Among whites it went down a little bit, but again
23 not statistically significant. None of these changes
24 are statistically significant.

25 So it looks like throughout the country, the

1 share of non-whites who were registered between 2010 and
2 2014 didn't change in a way that-- that looks
3 statistically significant. In fact, you can see in
4 states other than Kansas, the changes-- the numbers are
5 virtually identical; 68.2 and 68.1 for the nation as a
6 whole, and that's not statistically significant.

7 So in that sense, Kansas is the same as the rest
8 of the country. It did not experience a statistically
9 significant decline based on the survey in the share of
10 non-whites who are-- who are-- who are registered to
11 vote.

12 Q. So just looking at Kansas whites, focusing on
13 Kansas. You said that the-- is it correct that the
14 number went from-- the registration rate number went
15 from 70.5 percent to 70.0 percent?

16 A. Yes.

17 Q. But that is not statistically significant?

18 A. It is not a statistically significant change.

19 Q. And Kansas non-whites over the same period went
20 from 55.1 percent up to 56.9 percent, but that is not
21 statistically significant?

22 A. That is not a statistically significant change.
23 All we can say is this survey shows that there was no
24 statistically significant change in the share of whites
25 or non-whites in Kansas who were registered to vote.

1 Q. Okay. Now, let's look at voting. What-- what
2 did you find there?

3 A. Yeah. There, again, we see this slight increase
4 in the share-- actually it's a large increase in the
5 share of non-whites in Kansas who voted, but it doesn't
6 reach statistically significance. And the share of
7 whites in Kansas, they remained virtually unchanged in
8 the share of those who vote. So they didn't increase,
9 but they-- but it wasn't a statistically significant
10 change either.

11 So like registration in Kansas, we don't see a
12 statistically significant change in the share of whites
13 or non-whites registering and voting between 2010 and
14 2014.

15 Q. So just to clarify; so you just said that Kansas
16 non-white voting went from 33.3 percent to 38.6 percent,
17 which on some of these others charts you said-- you
18 know, that's a 5 percent increase but you said it wasn't
19 statistically significant?

20 A. It is not, no.

21 Q. Is the reason it's not statistically significant
22 because of the small sample size in that particular one?

23 A. Yes. The sample size helps determine the
24 standard error and the standard error helps determine
25 the statistical significance.

1 Q. Okay. So if we had seen the same change of an
2 increase of 5.3 percent but the sample size was over
3 2,000, would it likely be statistically significant?

4 A. Yes, it probably almost certainly would be. If
5 we had a larger sample--

6 MS. LIU: Objection, Your Honor. These are
7 facts not in the expert report.

8 MR. KOBACH: I'm not introducing a fact.
9 I'm asking him what statistical significance has on
10 those numbers.

11 THE COURT: All right. I won't take those
12 number as fact, but it's more along the lines of a
13 hypothetical.

14 Q. (BY MR. KOBACH) So I'm just asking if the-- we
15 see here a 5.3 percent increase in your chart. And I'm
16 simply asking if the sample size had been
17 substantially-- quite a bit larger, maybe over 2,000,
18 would a 5 percent increase then be considered
19 statistically significant?

20 A. Depending on how much larger. The sample size--
21 a larger sample size would allow for a smaller
22 difference to be statistically significant. So it would
23 be significant then if the sample size were larger.

24 Q. Okay. So, for example, we do see a larger sample
25 size-- if you go down in that same section to Nebraska

1 and Oklahoma whites voting, you see a-- a drop from 43.3
2 to 40.0. So that's--

3 A. Yeah.

4 Q. -- only a change of 3.4 percent. And why is that
5 one statistically significant?

6 A. But remember, it's statistically significant but
7 only at the 90 percent level, as we discussed earlier.
8 It doesn't quite make 95. So it is a statistically
9 significant change if you use a 90 percent confidence
10 level, well, because the sample size is much larger when
11 you're looking at whites in those two states combined.

12 Q. Okay. And then looking at the-- the national,
13 all states other than Kansas, looking at non-white and
14 white, you do have asterisks there.

15 A. Yes.

16 Q. Are those last two rows statistically significant
17 at the 95 percent level?

18 A. They are, yes. It does appear that-- well, the
19 data show that in the case of non-whites and whites,
20 the-- the share who voted in the 2010 versus the 2012
21 off-year election was-- that decline was statistically
22 significant.

23 Q. And you just said 2010 compared to 2012.

24 A. 2014. 2014. I'm sorry. 2010 versus 2014.

25 Q. Okay. So to summarize, did the effect asserted

1 by plaintiffs of a reduction of registration rates
2 materialize?

3 A. Well, we certainly do not see that in this data.
4 Whether we look at all people in Kansas, whether we look
5 at young people in Kansas, whether we look at whites or
6 non-whites separately, we don't find evidence based on
7 the Census Bureau's Current Population Survey that
8 either in the case of registration or voting that there
9 was a statistically significant change in the state.

10 Q. And did the effect claimed by plaintiffs of a
11 reduction in participation rates materialize?

12 A. No in both cases, registration or voting. We
13 don't see a statistically significant change in Kansas.

14 Q. Is the analysis you have done an analysis of
15 direct evidence of impact on voter registration and
16 participation?

17 A. Well, we're directly measuring what the survey
18 tells us about the-- the state. So we are trying to get
19 at-- or I'm trying to get at a direct measure of both
20 registration and voting in the state based on the
21 Current Population Survey.

22 Q. I'm going to hand you an expert report from
23 Michael McDonald which is already in evidence,
24 Plaintiffs' Exhibit 72. Have you reviewed the expert
25 report of Michael McDonald?

1 A. I have read his report, yes.

2 Q. I'm going to represent to you that-- and I'm not
3 sure if you were in the courtroom when he said it, that
4 Mr. McDonald said your analysis is indirect evidence and
5 he claims his analysis is direct evidence. How would
6 you respond to that?

7 A. Well, I'm trying to directly measure what the
8 survey is telling us about what's going on in Kansas in
9 terms of registration with consistent numerators and
10 denominators collected at the same time by the United
11 States Government.

12 So I would say that this is direct evidence of
13 what's happening in Kansas. I'm not saying that his is
14 not-- he is not calculating or not telling us what-- the
15 voter registration rates, as I recall, in his testimony.
16 I'm-- in terms of registration rates and voting, I'm
17 trying to directly report what happened in Kansas.

18 Q. So do you believe that your method of analysis is
19 better than that that Mr. McDonald used?

20 A. Well, I'm-- I don't recall him doing the same
21 thing that I did in mine. So if we want to know-- I
22 feel that this is a-- my analysis is a way of getting at
23 using U.S. Government statistics of what happened in
24 Kansas in terms of registration and voting. So I feel
25 it's a very good of way of getting at that question.

1 That's how I'll answer it.

2 Q. Okay. Now, in your report, you referred to a
3 problem I believe in the McDonald report regarding
4 Professor McDonald's claim that the proof-of-citizenship
5 law had a disproportionate impact on young voters. Do
6 you recall that?

7 A. Yes.

8 Q. And in your report, you disagree with that.
9 Could you explain your position?

10 A. Well, he bases the argument-- he says that-- he
11 uses the word "disproportional" and he says out of
12 proportion to their share of voters in the population.
13 So about 40 percent, as I recall-- he has one report
14 where I think he says 40 percent almost or 39, and then
15 another one where he says 44 percent.

16 Q. Let's just use the numbers in your report. So
17 let's look on Page 5 of your report where I think you
18 address this subject.

19 A. Yeah. Let's see if we can find that.

20 Q. Can we put that up on the screen?

21 A. Page 5. As I recall-- let's see here.

22 Q. It's the last full paragraph.

23 A. Okay. So he uses the phrase-- he says,
24 "Individuals ages 18 to 29 are approximately three times
25 more likely to be on the suspense list in comparison to

1 their proportion of the active and inactive voters."
2 And he concludes that this disproportionately harms the
3 young.

4 Then let's see if we can find the statistics,
5 they're somewhere here. There are-- okay. So he says,
6 "This means that 41.3 percent of--" I'm sorry, let's
7 see, what does he say here? Okay. I'm trying to find
8 his numbers here.

9 Yes, on Table 3, Page 12 of his initial analysis,
10 Professor McDonald says three-- "39.8 percent of those
11 on the suspense list for failure to provide proof of
12 citizenship are ages 18 to 29." And then in Table 6,
13 Page 15, he says-- and this is-- I think it's his second
14 report, he says 44.6 percent are.

15 So he's saying that about 40 percent, a little
16 less than 40 percent in one and about 45 percent in the
17 other. So he's saying that this is out of proportion to
18 their share of voters in Kansas. And that is how he
19 concludes that this disproportionately harms the young.

20 Q. And can you explain why you disagree with that?
21 Which I think is your second to last paragraph.

22 A. Right. So what I point out is that the young
23 tend to be the new registrants, and that turning 18 is
24 something that prompts people to register to vote for
25 the first time. So his comparison when he wants to say

1 that this is disproportionately harming them, he's
2 comparing them to the total population of people, not
3 the new registrants. And new registrants are going to
4 be disproportionately young because that's who
5 registers. Of course new people move into the state.

6 So according to statistics I received from Bryan
7 Caskey, about 40 percent of new people who've registered
8 since the law went into effect, and that was at the
9 time-- it was from the time the law went into effect and
10 the time I wrote this report, which would've been in May
11 of 2016, in that time period about 40 percent of the new
12 people who registered were young. So it makes absolute
13 sense that they'll make up about 40 percent of the
14 people who end up on the-- on the suspense list.

15 It's not that the young as a whole, it's that
16 they just happen to be the people who are registering.
17 And that makes sense because turning 18 is something
18 that you-- that you do-- when you turn 18, you register.

19 Q. When you say about 40 percent, are those the
20 numbers you're referring to on-- in the fifth and sixth
21 lines of that paragraph?

22 A. Let's see here. Yes, I think on my sheet it
23 says-- so it's 41.3 percent of new registrants are young
24 based on what I was advised by Mr. Caskey of the new
25 registrants between January 1st, 2013 when the law went

1 into effect and May 24th, 2016. So 41.3 percent. And
2 that's very similar to the percentages that he reports.

3 So what he's picking up is simply the fact that
4 the young are the new people who are registering. It's
5 not that they're out of proportion to their share of the
6 population ending up on the suspense list. They're
7 ending up on the suspense list at exactly or roughly
8 their share of the new registrants.

9 Q. And to make sure I understand; the 41.3 percent,
10 is that 136,863 divided by 331,199?

11 A. Yes, I believe so, yes. Yes.

12 Q. Okay. Okay. So to summarize then, are you
13 indicating that McDonald was looking at the wrong
14 numerator I guess or that he's comparing the wrong
15 populations?

16 A. Well, I'm saying that his conclusion that it
17 disproportionately harms the young because it-- it is in
18 comparison - and these are his words - in comparison to
19 their proportion of active and inactive voters, is not a
20 reasonable comparison. He has to compare this to the
21 number of new people who-- who are young, who are
22 registering to vote. And he wants to compare it to the
23 total population. But people over 18, most of those
24 people have been registered for years, so they're--
25 they're not going to enter into this.

1 You want-- if the argument-- his argument would
2 be persuasive to me if about 40 percent of the people
3 who are young, about 40 percent of the new registrants
4 were young and 80 percent of the people who are on the
5 suspense list were young, then that would show that they
6 were disproportionately ending up on the suspense list
7 relative to their share of new registrants.

8 But they're ending up on the suspense list in
9 rough proportion to their share of new registrants,
10 which means that it's not out of proportion to their--
11 it's not-- he can't make the comparison, in my opinion,
12 that he wants to make with the whole population.

13 Q. Does the same problem exist with Doctor
14 McDonald's conclusion regarding the proof-of-citizenship
15 requirement's effect on unaffiliated voters?

16 A. Well, unaffiliated voters are disproportionately
17 young. Party ID has declined in the United States. So
18 yes, the same problem would show up.

19 Q. Now, you described a second problem with Doctor
20 McDonald's report regarding citizens stating that
21 they're citizens. Could you explain that-- or
22 non-citizens stating that they're citizens.

23 A. Well, as I recall, one of the issues that I found
24 with Doctor McDonald's report - is that what you're
25 referring to - was the idea that he says there are these

1 people on this list, but he never tells us what share of
2 those people are actually citizens. We have some hints
3 at that, but we don't know.

4 So if a person is on the list and can't get off,
5 what share of those people are shown subsequent to be
6 citizens? His analysis doesn't answer that question for
7 us.

8 Q. And then I think he-- so this-- this-- I think
9 that's a different question.

10 A. Okay.

11 Q. I think did you also say something about-- let me
12 just look at your report.

13 A. Oh, I see, right. So I understand. I think
14 you're referring to the question that I have in my
15 report about evidence on government surveys of some
16 immigrant groups reporting incorrectly that they're
17 citizens when they're not.

18 So that-- this was into the context of why would
19 someone who's not a citizen mistakenly claim to be a
20 citizen, or wrongly, right? Does that happen? Do we
21 have evidence, systematic evidence that-- people who are
22 not citizens?

23 So this is in my report, Line 3 on Page 6. And I
24 cite two studies looking at that question, one with-- by
25 Van Hook and the other by Passel and Clark in which they

1 have looked at responses on census surveys. And some
2 people who-- particularly those from Mexico, but also
3 Clark and Passel argue it's broader, but Van Hook says
4 it's mainly just Mexico. But the point here is that
5 people when asked by the government say-- are you a
6 citizen? And they say yes.

7 But if you go back and look at how many people
8 have actually naturalized, it can't be that many people.
9 And what-- what Van Hook and her co-author estimate is
10 that about 25 to 38 percent of people in-- from Mexico
11 who say that they're citizens are not. They can't be.
12 We haven't naturalized that many people.

13 So a person says they're born in Mexico and says
14 they're a naturalized citizen on a survey. But then
15 when we go back and look at how many people have
16 actually naturalized from Mexico, it can't be that many.
17 And they have a methodology taking into account deaths
18 and out-migration how many it might be. And they point
19 out there's just way more people saying they're
20 citizens.

21 So it's clear that for some countries, at least
22 when asked by the government on a survey are you a
23 citizen, people from Mexico in particular overstate it.

24 Q. Do these studies theorize that they may be
25 mistaking citizenship for legal status in the country?

1 A. Yeah, Jenny Van Hook thinks that, and that seems
2 like a plausible explanation to me. It's legal
3 immigrants who confuse their legal status with-- with
4 citizenship.

5 Q. So would this tendency of non-citizens to think
6 that they are citizens affect non-citizens' approach to
7 a voter registration drive?

8 A. It could. They could-- if they're telling the
9 government on an official census form or in that
10 context, it could be an example of what would happen, is
11 they tell the government here that they are a citizen,
12 they might make-- easily make the same mistake when
13 asked in other documentation.

14 Q. So would this tendency to think they are citizens
15 affect non-citizens getting a driver's license at the
16 Department of Vehicles?

17 A. Right. They might put down that they're a
18 citizen and then continue the process and register to
19 vote under the mistaken belief that their legal status
20 makes them citizens.

21 Q. And would it also affect non-citizens asked in a
22 political mailing to please register and vote?

23 A. If the-- as we say, we do have evidence that they
24 mistakenly think of themselves as citizens and so that
25 may be what's happening here.

1 Q. And what is the number of non-citizens residing
2 in Kansas that you use in your research?

3 A. Yeah, so let me tell you how many that is.
4 According to the American Community Survey in 2014, that
5 was the most recent survey that I had, there were
6 142,000 voting age-- 114,124, I'm sorry. 1,114-- let me
7 start again. 114,124 voting age non-citizens in Kansas
8 who are-- according to the American Community Survey.

9 Q. And that's-- so that-- that's an official Census
10 Bureau number then?

11 A. Well, yeah, that's the number in the survey.

12 Q. Okay. Does the combination of non-citizens
13 frequently mistaking their citizenship status, plus the
14 relatively large number of non-citizens residing in
15 Kansas mean that the risk of non-citizens registering is
16 high?

17 A. It certainly does, partly because Kansas'
18 non-citizen population--

19 MS. LIU: Objection, Your Honor. That's not
20 in his report.

21 MR. KOBACH: Your Honor, it's-- it's exactly
22 found in the paragraphs we're going over right now.

23 THE COURT: Point it to me. Point me to it.

24 MR. KOBACH: The paragraph-- second full
25 paragraph on Page-- is it 6, 7?

1 THE WITNESS: It's Page 6 I thought we were
2 on.

3 THE COURT: Is that what's on the screen
4 or--

5 MR. KOBACH: Yes, yes. And then the next
6 paragraph after that, the large number of non-citizens
7 in Kansas.

8 THE COURT: Wait a minute. The second-- so
9 it's on the screen, it's the second full paragraph?

10 MR. KOBACH: Those two paragraphs, yeah.
11 The one beginning in 2014 and the large number of
12 non-citizens.

13 MS. LIU: Your Honor, he never says that the
14 risk of non-citizens registering is high.

15 THE WITNESS: I say--

16 THE COURT: Just a minute.

17 THE WITNESS: I'm sorry.

18 THE COURT: Yeah, there's no-- there's no
19 opinion that the risk is high, so I'll disregard that.

20 MR. KOBACH: Your Honor, it's our
21 understanding of the relevant case law under Rule 703
22 and Rule 705 is that the expert may testify to various
23 opinions that can be drawn from the facts he analyzes.
24 So if it's-- if you're going to disregard that, we would
25 offer as a proffer or if you-- when you say disregard,

1 is it-- what are you ruling?

2 THE COURT: Well, I mean, he-- as a matter
3 of-- of notice, these experts prepare these reports and
4 they're supposed to outline their opinions, their
5 material opinions. And that's a very material opinion
6 and it's not in the report that I can see.

7 So I'm not going to consider it. I don't
8 think the other side has been given a fair notice
9 through this report that he was going to opine about the
10 risk of non-citizen voting or registration. He was
11 going to-- he's-- you know, a lot of data-driven
12 information here. You could argue that. But I don't
13 think he's given notice in this report that he was-- is
14 rendering an opinion that there's a high risk of-- of
15 non-citizen registration.

16 MR. KOBACH: Then in that case, Your Honor,
17 we'll just for the record offer it as a proffer that he
18 has testified that there is a high risk.

19 THE COURT: All right.

20 Q. (BY MR. KOBACH) Doctor Camarota, are you aware
21 of one of defendant's other experts in this case using
22 data from non-citizens registered in Sedgwick County to
23 draw conclusions about non-citizens registered
24 statewide?

25 A. I am aware of that, yes.

1 Q. Have you looked at-- in your-- in your capacity
2 as a census-- an expert in the census and this
3 demographic data, have you looked at the demographic
4 profile of Sedgwick County versus the demographic
5 profile of the entire state of Kansas?

6 MS. LIU: Objection, Your Honor. This isn't
7 in his report. He doesn't-- he doesn't cross-reference
8 Hans von Spakovsky at all.

9 THE COURT: Is this Jesse Richman?

10 MR. KOBACH: Richman, yeah.

11 MS. LIU: He doesn't reference him either.

12 THE COURT: All right. Does he give-- I'm
13 sorry, where are you going with this line of
14 questioning?

15 MR. KOBACH: I'm just going to ask him if
16 he's analyzing the demographic data in regards to
17 Sedgwick County to be disproportionate from the rest of
18 Kansas.

19 MR. JOHNSON: Your Honor, I object. This is
20 an attempt to corroborate testimony that's not been
21 presented.

22 MR. KOBACH: Well, he's-- the Richman report
23 is--

24 MS. LIU: But he didn't evaluate this in his
25 report.

1 THE COURT: All right. So I don't think
2 there's a fair notice if he has not rendered opinions
3 that corroborate or validate the demographics or the
4 other data that Mr. Richman has used. So I'll sustain
5 the objection to that.

6 MR. KOBACH: No further questions.

7 THE COURT: Okay. Let's take a 15-minute
8 recess.

9 (Recess).

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

11 CROSS EXAMINATION

12 BY MS. LIU:

13 Q. Good morning, Doctor Camarota. I'm Angela Liu--

14 A. Good morning.

15 Q. -- counsel for plaintiffs. And it's nice to see
16 you again.

17 A. Yes, nice to see you.

18 Q. Sir, you testified on direct that your opinion
19 has never been excluded. Correct?

20 A. My opinion has not been excluded, to the best of
21 my knowledge.

22 Q. And you further testified that your testimony
23 hasn't been found to be not credible. Correct?

24 A. That's right. I testified exactly to that.

25 Q. And those were the responses you gave Mr. Kobach.

1 Correct?

2 A. Yes, ma'am.

3 Q. Now, that's not true, is it, Doctor Camarota?

4 A. I think what I've stated to you is most certainly
5 true.

6 Q. You remember testifying in *ACRU versus Snipes*.

7 Correct?

8 A. Yes. I'm sure I would-- that is the Broward
9 County case.

10 Q. That is *Bellitto versus Snipes*, the Broward
11 County case, correct.

12 A. Yes, uh-huh, just so we're on the same page.

13 Q. And do you remember when the Court stated that,
14 "He is not qualified to offer testimony as to the degree
15 of accuracy of those rates - a statistical inquiry."

16 Correct?

17 A. I-- as I recall, the judge said I was not to
18 speak about the size of the standard errors in that
19 case.

20 Q. So-- but that information was not something that
21 you decided to think was important to tell the Court
22 today?

23 A. I testified in that case and I testified to my
24 numbers in that case, and the judge let me do that the
25 whole time. There was one aspect of my testimony-- now,

1 I'm not an attorney, but there was one aspect which she
2 said don't testify about. And I-- it never came up,
3 so--

4 Q. And that was the testimony that had to do with
5 the fact that you are not qualified to offer testimony
6 as to the degree of accuracy of your rates. Correct?

7 MR. KOBACH: Objection, asked and answered.

8 THE COURT: Overruled.

9 A. I testified to what I found and the numbers and
10 the rates that I found. She--

11 Q. (BY MS. LIU) Doctor Camarota, it's just a yes or
12 no question?

13 MR. KOBACH: Objection. She's interrupting.

14 THE COURT: On cross examination most of the
15 questions should be yes or no questions. And if you
16 need to clarify, then Mr. Kobach can do that on
17 redirect.

18 Q. (BY MS. LIU) Doctor Camarota, I will put the
19 case *Bellitto versus Snipes* up on the screen. It is
20 2017 Westlaw 2972837. And let's turn to Page 9. On the
21 top paragraph it says, "He is not qualified to offer
22 testimony as to the degree of accuracy of those rates -
23 a statistical inquiry." Do you see that?

24 A. Do you see where it says "Doctor Camarota is
25 qualified--"

1 Q. Doctor Camarota, do you see the--

2 A. Well, now I do, now that you've highlighted it,
3 okay.

4 Q. -- the case that says-- the words that say in
5 this opinion, "He is not qualified to offer testimony as
6 to the degree of accuracy of those rates - a statistical
7 inquiry"?

8 A. I see that, yes.

9 Q. And in your response to Mr. Kobach's question,
10 you decided not to tell the Court that. Correct?

11 A. Ma'am, I told him as accurately as I knew. The
12 judge allowed me to testify and testified that I was
13 qualified to report on what I had found. So I--

14 Q. So no. Correct?

15 A. Ma'am, I testified to what I thought was the
16 case, which was that I had never been disqualified to
17 testify. I testified in that case and-- and that's what
18 I said.

19 Q. Okay. Let's move on. You have a Ph.D. in policy
20 analysis. Correct?

21 A. Yes, from the Department of Government at the
22 University of Virginia.

23 Q. And the subject of your dissertation was "The
24 Consequences of Immigration For America's Poor."
25 Correct?

1 A. Yes, ma'am.

2 Q. And your dissertation was not about voter
3 registration. Correct?

4 A. It was not about voter registration.

5 Q. And your dissertation was not about voter
6 turnout. Correct?

7 A. It was not.

8 Q. Your dissertation was not about voting. Correct?

9 A. It was not about voting.

10 Q. And you testified that you work at the Center for
11 Immigration Studies. Correct?

12 A. I do.

13 Q. And can we agree today that CIS stands for the
14 Center for Immigration Studies?

15 A. Yes, it does.

16 Q. And you've worked there since 1996 I believe?

17 A. Yes, ma'am.

18 Q. And you've been the Director of Research at the
19 Center for Immigration Studies since 2000. Correct?

20 A. That sounds right. Yes.

21 Q. And as the Director of Research, you pulled
22 together reports based on administrative data, public
23 opinion data and Census Bureau data. Correct?

24 A. Yes.

25 Q. And the review process at CIS before publishing

1 these reports is not the same as the academic
2 peer-review process. Correct?

3 A. We don't use an academic peer review. We have
4 outside reviewers.

5 Q. These reports that you produce for CIS are not
6 peer-reviewed. Correct?

7 A. They're not a peer-reviewed publication.

8 Q. And you're holding yourself out as an expert on
9 voter and voter registration trends in Kansas and the
10 effect of the proof-of-citizenship requirements today.
11 Correct?

12 A. I'm an expert on Census Bureau data that I
13 analyzed.

14 Q. So that's no then. Correct?

15 A. I am-- no, I-- I don't follow your question.
16 Could you restate it then?

17 Q. Sure. You are holding yourself out as an expert
18 on voting and voter registration trends in Kansas and
19 the effect of the proof-of-citizenship requirements?

20 A. Based on Census Bureau data which I'm intimately
21 familiar with.

22 Q. So you are or are you not holding yourself out to
23 be an expert on voting and voter registration trends in
24 Kansas and the effect of proof-of-citizenship
25 requirements?

1 A. I'm saying I'm an expert in Census Bureau data,
2 the November supplement.

3 Q. So that's no then. Correct?

4 MR. KOBACH: Objection. She interrupted the
5 witness' answer and mischaracterizes it.

6 A. Yeah, I'm saying that I am an expert on this data
7 source and that's what I analyzed.

8 THE COURT: All right. You still haven't
9 answered the question. So you said that you-- your
10 opinion-- you consider yourself an expert on Census
11 Bureau data that you've testified to.

12 THE WITNESS: Yes.

13 THE COURT: The question, though, is based
14 on that data that you testify you have an expertise in
15 or some other source, are you holding yourself out as an
16 expert in this trial on voting, voter registration
17 trends in Kansas, and the effect of the DPOC requirement
18 on those?

19 THE WITNESS: In Census Bureau data.

20 THE COURT: What do you mean? Wait, wait,
21 wait. No. No. So I guess your answer is yes? I'm not
22 understanding either.

23 THE WITNESS: I'm saying I'm an expert in
24 that data source, and that's what I reported in my
25 expert report. That's what I am holding myself as an

1 expert in.

2 THE COURT: That doesn't answer the
3 question. The question is: Based on your expertise in
4 that data source, are you here to offer an opinion and
5 are you holding yourself out as an expert in the-- based
6 on that data source, voting, voter registration trends
7 in Kansas, and the effect of DPOC? Because you did
8 testify to those subject matters.

9 THE WITNESS: Yes.

10 THE COURT: Are you telling us that you're
11 an expert when you testify in those subject matters?

12 THE WITNESS: Yes, absolutely. Based on
13 that data, absolutely, yes, ma'am. An expert in those
14 subject matters based on that data.

15 Q. (BY MS. LIU) And, Doctor Camarota, you have not
16 published a single peer-reviewed publication about the
17 effect of voter registration requirements on voter
18 participation rates. Correct?

19 A. I have not.

20 Q. And you have not published a single peer-reviewed
21 publication about voter registration requirements
22 generally. Correct?

23 A. I have not.

24 Q. And you have not published a single peer-reviewed
25 publication about voter registration or turnout.

1 Correct?

2 A. I have not.

3 Q. And you have not published a single peer-reviewed
4 publication about anything related to voting. Correct?

5 A. I have not published a peer-reviewed article on
6 voting.

7 Q. So that's correct?

8 A. I have not, yes. Correct.

9 Q. And you have not been a peer reviewer for any
10 elections-related journals. Correct?

11 A. Well, some of the journals like the *American*
12 *Journal of Sociology* does look at issues--

13 Q. It's just a yes or no question.

14 A. Well, ma'am, I don't think it is.

15 Q. Just answer the question.

16 A. Ma'am, you asked me so is it-- is it in a journal
17 that sometimes deals with issues surrounding those
18 questions? Sure. I was not asked to review a voting
19 registration article, though.

20 Q. And in preparing your report, you reviewed
21 administrative data and Census data. Correct?

22 A. Yes.

23 Q. And you received the administrative data from
24 Bryan Caskey at the Office of the Secretary of State.
25 Correct?

1 A. I did receive information from him, yes.

2 Q. And you don't know how Mr. Caskey maintains this
3 data. Correct?

4 A. I do not.

5 Q. And you agree that administrative data can have
6 errors and inconsistencies. Correct?

7 A. It can have inconsistencies, yes.

8 Q. And you agree that the more data, the better.
9 Correct?

10 A. Well, it depends on the level of inconsistencies.
11 You'd want better data is the most important thing.

12 Q. So let me ask the question again. You agree that
13 the more data the better. Correct?

14 A. Not if that more data is no good, right, you'd
15 want--

16 Q. So yes or no?

17 MR. KOBACH: Objection--

18 A. It depends--

19 MR. KOBACH: -- he's trying to explain.

20 THE COURT: Wait, wait. She can only take
21 down one voice at a time or we're going to kill her and
22 then I'm going to kill everybody else if you kill her.
23 All right. So let's start over.

24 Q. (BY MS. LIU) So you'd agree that the more data
25 the better. Correct?

1 A. Depending on the data quality, ma'am. That's
2 what I'm trying to explain to you. If you have more
3 data but then the data isn't of good quality. So it
4 depends, it's not necessarily.

5 Q. So one of the factors in having a good quality
6 data is having more data. Correct?

7 A. I'm not sure I understand that question. You're
8 saying that having more data regardless of its quality
9 is better? I mean, the data quality matters a whole lot
10 here. And so saying have more of it, if it's not good
11 quality? So I think that "not necessarily" is my
12 answer. It can be, but not necessarily.

13 Q. And you asked Mr. Caskey for whatever data he
14 had. Correct?

15 A. I don't remember the exact-- I don't remember the
16 exact words I used, but I asked him for data that was
17 from before the law went into effect and after the law
18 went into effect.

19 Q. Would it help to--

20 MS. LIU: Well, Your Honor, may I approach?

21 THE COURT: Yes.

22 Q. (BY MS. LIU) I'm handing you a binder of
23 exhibits and your deposition testimony.

24 A. Okay.

25 MS. LIU: And I'm handing opposing counsel a

1 binder of exhibits and deposition testimony as well.

2 Q. (BY MS. LIU) Could you please turn to Page 3 of
3 the binder?

4 A. Uh-huh.

5 Q. And this is a-- an e-mail from you to Bryan
6 Caskey on May 25th, 2016. Correct?

7 A. I don't see it-- in this binder? Or no, it's
8 this one you want.

9 Q. The binder.

10 A. Sorry.

11 Q. Yes.

12 A. Hold on for a second. Page 3?

13 Q. No, Tab 3.

14 A. Tab 3.

15 Q. And in that e-mail--

16 A. Uh-huh.

17 Q. -- it says, "What I need from you is first a few
18 years of data. Monthly, yearly, or whatever you have."
19 Correct?

20 A. Okay. That's what it says, yes, ma'am.

21 Q. And Mr. Caskey sent you voter registration
22 statistics then and voter turnout statistics from three
23 years' worth of elections; 2010, 2012 and 2014?

24 A. I believe so. That sounds right, yes.

25 Q. And you-- you had very little time left to

1 complete your analysis. Correct?

2 A. There-- time was of the essence, that's for sure.

3 Q. So you knew that the numbers that you received
4 from Mr. Caskey regarding 18 to 29-year-olds was not
5 perfect. Correct?

6 A. As we discussed, no administrative data is
7 perfect.

8 Q. So that's yes. Correct?

9 A. Yes. Data is not-- I mean, data is not perfect.

10 Q. So you used this data anyway because you had very
11 little time. Correct?

12 A. No, I used it because I assumed that he was
13 giving me accurate data. And that's-- that's why I used
14 it.

15 Q. So you used the numbers that were not perfect.
16 Correct?

17 A. They were the best numbers that I had available
18 that he gave me. If you're asking me do I think this
19 data is perfect, I don't think it's perfect.

20 Q. And, sir, you didn't look at any individual level
21 data, did you?

22 A. I did not.

23 Q. And you just looked at the aggregate level
24 numbers and survey data. Correct?

25 A. Wait, wait. Are you saying the aggregate numbers

1 of the administrative data, is that what you're asking
2 me?

3 Q. Yes.

4 A. Yes. I looked at the aggregate numbers that he
5 provided, yes.

6 Q. And you also looked at the survey data. Correct?

7 A. I did look at survey data, yes.

8 Q. And even with aggregate level data, you only
9 considered data from two elections in your report.
10 Correct?

11 A. Yes, two elections, 2010, 2014.

12 Q. Even though you just said that-- you just agreed
13 with me that more data is better. Correct?

14 A. Well, I said it mattered about the quality of the
15 data, but I looked at two-- two elections, that's
16 correct.

17 Q. And by the way, you used the conventional method
18 for calculating statistical significance. Correct?

19 A. No, I took account of the-- for statistical
20 significance. The standard errors here reflect the
21 complex survey design of the Census Bureau. So I used
22 the parameter estimates and I also incorporated the
23 state deflation factors that the Census Bureau provides
24 in their source and accuracy statements.

25 You can't just take a standard error in-- in CPS

1 data because the standard error would give you a-- a
2 standard form, or using the traditional form of
3 calculating the standard error would give you a biased
4 statistic. So I'm using the parameter estimates that
5 the Census Bureau provided.

6 Q. And just going back to your updated CV.

7 A. Uh-huh.

8 Q. You mentioned that you worked on the *Melendres*
9 case. Correct?

10 A. *Melendres* case, the one in Arizona?

11 Q. Yes.

12 A. Uh-huh.

13 Q. That's yes. Correct?

14 A. Yes. Yes, ma'am.

15 Q. And that dealt with an immigration issue, not a
16 voting issue. Correct?

17 A. Well, it was a traffic stop issue. It wasn't--
18 it wasn't an immigration issue, no. It was-- it's not--
19 do you mean it was not an immigration issue? The issue
20 had to do with was the state-- or was the county
21 stopping Hispanic people at a rate out of proportion to
22 their population. Immigration didn't come up that much
23 in that case.

24 Q. But that wasn't a voting issue. Correct?

25 A. It was not a voting issue case.

1 Q. And looking at the *Hazleton* case as well, that
2 was also not a voting issue. Correct?

3 A. It was not.

4 Q. Let's go to your report.

5 A. Uh-huh.

6 Q. I'd like to now talk to you about your report,
7 which is Defendant's Exhibit 1140.

8 A. Okay.

9 Q. And just moving to Figure 2.

10 A. Okay.

11 MS. LIU: Steven, if you could blow up the
12 bottom caption there.

13 Q. (BY MS. LIU) Figure 2 in your report identifies
14 the data as being from 2010 and 2012. Correct?

15 A. Yes, it does.

16 Q. And this was a mistake. Correct?

17 A. This was a mistake. We said that at the
18 deposition as well.

19 Q. Figure 3 of your report. And the bottom caption
20 also identifies the data as being from 2010 and 2012.
21 Correct?

22 A. Yes, we went over this, yes.

23 Q. This too was a mistake. Correct?

24 A. Uh-huh.

25 Q. Figure 4 of your report also originally

1 identifies the data as being from 2010 and 2012.

2 Correct?

3 A. Yes.

4 Q. And this was a mistake also. Correct?

5 A. Yes.

6 Q. And Figure 5 of your report identifies the data
7 as being from 2010 and 2012 as well. Correct?

8 A. Yes.

9 Q. So there are four places where you incorrectly
10 identified 2014 data as being from 2012. Correct?

11 A. Yes.

12 Q. Let's turn back to Figure 1. And just looking at
13 the first registration rate numbers, the registration
14 rate went down. Correct?

15 A. Yes, the registration rate is lower in 2014 than
16 2010.

17 Q. And, sir, you referred to the CPS survey that
18 this information was based off of. Correct?

19 A. Yes, that's correct.

20 Q. And can you explain the numerator and the
21 denominator to me?

22 A. Yes. So here we're looking at-- I'm looking at
23 the share of people who reported that they were U.S.
24 citizens age 18 years of age and over who also reported
25 that they voted.

1 Q. So, Doctor Camarota, why didn't you just check
2 the Secretary of State's website to see how many people
3 on the-- were on the rolls in Kansas and compared that
4 to the number of people who lived in Kansas as well?

5 A. I assumed that that would be part of the record,
6 that the official number of people voting in Kansas
7 would all have been admitted. And so what I was
8 attempting to do here is take this data source and see
9 what it shows in terms of people who voted.

10 In addition, remember, if you're going to take
11 administrative data and combine it with Census Bureau
12 data, which is what you're suggesting, you still have
13 other issues because it depends on what the population
14 control data is for the Census Bureau data. The Census
15 Bureau data, of course, will have an error rounded and
16 so forth.

17 So here, the advantage is and this is the reason
18 I use it, is that it's collected at the same time. And,
19 as I said in my report, with a consistent numerator and
20 denominator to give us a picture of what might be
21 happening in-- in the state of Kansas.

22 Q. So the numerator that you use is a number that
23 includes anyone who was registered between November 2010
24 and November 2014. Correct?

25 A. No, I'm sorry, I-- could you restate that

1 question? That's not correct. The numerator in 2010 is
2 the number of people in November who said that they were
3 registered. And in 2014 it's the number of people who--
4 the share of people who said that they were registered.

5 Q. So the 2014 number then includes anyone who
6 registered between November 2010 and 2014. Correct?

7 A. It's all the people who reported that they were
8 registered, yes.

9 Q. So the change in the numerator in 2010 and 2014
10 includes anyone, again, who registered between November
11 2010 and 2014. Correct?

12 A. Yes. All the people who drop off-- remember,
13 it's a net number, right. It's all the people who drop
14 off, it's everybody who says that at the time of the
15 survey they were registered to vote.

16 Q. So you don't know who was registered to vote
17 before January 2013. Correct?

18 A. The survey didn't ask when did you register.

19 Q. And you don't know who was registered to vote
20 before-- or excuse me, or after January 2013. Correct?

21 A. Wait. Could you say that one more time?

22 Q. And you don't know who was registered to vote
23 after 2013. Correct?

24 A. After 2013. Well, I know who was registered to
25 vote at the time of the survey in 2014, in

1 November 2014. So if you registered in 2013 and
2 reported that you were registered to vote at the time of
3 the survey, then-- then I would know that you
4 registered. That's how I-- it's a snapshot at each
5 point of data.

6 Q. So you don't know then who was registered to vote
7 after January 2013 and before November 2014. Correct?

8 A. Well, everybody who was registered to vote
9 between January of 2013 and the time of the survey in
10 November of 2014 is included. So all those people who
11 registered are here. Is that what you're asking me?
12 I'm not following.

13 THE COURT: In other words, there's not a
14 breakdown between the people that registered to vote
15 before DPOC became effective on January 1, 2013 and
16 after?

17 THE WITNESS: Okay. I see what you're
18 saying.

19 THE COURT: No breakdown. Correct?

20 A. Yeah, this is just who was registered at each
21 point in time.

22 Q. (BY MS. LIU) And, sir, you didn't compare 2012
23 presidential data before the DPOC law went into effect
24 and 2016 presidential data after the law went into
25 effect. Correct?

1 A. Data wasn't available. Couldn't be done when I
2 wrote this report.

3 Q. So you decided not to supplement your report?

4 A. I have not supplemented this report.

5 Q. And Secretary Kobach asked you some hypotheticals
6 regarding whether a non-statistically significant
7 finding in a sample of 200 would be statistically
8 significant with a sample of 20,000. Correct?

9 A. I can't recall the numbers he used, but he asked
10 me would a larger sample make it more likely that you
11 would receive-- that you would obtain statistical
12 significance given the changes that we've seen. And
13 that's certainly true. Sample size helps determine
14 standard errors and, thus, statistical significance.

15 Q. So almost by definition that's correct, because
16 the margin of error is dependent on sample size.
17 Correct?

18 A. Yes, margin of error is dependent on sample size.
19 Amongst other things, but yes.

20 Q. And, of course, the reason it is not
21 statistically significant in a sample of 200 is because
22 that is not a large enough sample to make a prediction
23 on whether the observed difference is a real difference
24 or due to chance. Correct?

25 A. A sample size of 200 can produce statistically

1 significant changes, if that's what you're asking me.
2 This one didn't, but it certainly can. It depends on
3 the size of the change and the distribution of the
4 values and-- and of the properties of the survey. In
5 this case it did not, however.

6 Q. And in your report you wrote that there's always
7 churn in the number of people who are registered to
8 vote. Correct?

9 A. Yes, ma'am.

10 Q. And a number of factors affect voter registration
11 rates in a particular state during a particular
12 election. Correct?

13 A. There are factors, yes, a number of factors, yes.

14 Q. And a number of factors affect voter turnout
15 rates in a particular state during a particular
16 election. Correct?

17 A. Yes, there could be other-- there could be
18 factors, sure.

19 Q. And the competitiveness of elections can be a
20 factor that affects voter turnout rates. Correct?

21 A. Not necessarily. We talked about this before.
22 Not necessarily. There are elections in which high
23 rates of-- of closeness, very competitive and even
24 perceived competitiveness does not produce a
25 particularly high turnout rate, and I could give you

1 examples.

2 Q. But they can be. Correct? Competitiveness of
3 elections can be a factor that affects voter turnout.
4 Correct?

5 A. Competitive elections can be a factor that can
6 affect it maybe up or down but, you know, you'd have to
7 know the story of that particular election.

8 Q. So the particular tactics that various campaigns
9 use can be a factor that affects voter turnout.
10 Correct?

11 A. Particular factors? Could you restate that?

12 Q. So, for example, like get-out-the-vote efforts,
13 it can-- they can be a factor that affects voter turnout
14 rates. Correct?

15 A. A get-out-the-vote effort may or it may not. You
16 know, people have been frustrated by their impact. But
17 sure, it could.

18 Q. And turnout is higher among non-Hispanic whites
19 than among Hispanics. Correct?

20 A. Yes. That's certainly a long-term finding.

21 Q. And turnout also varies by age. Correct?

22 A. Turnout can vary by age, yes.

23 Q. And turnout varies by educational attainment.
24 Correct?

25 A. Yes, it can.

1 Q. And you didn't control for these confounding
2 factors when analyzing the Census Bureau data. Correct?

3 A. Well, what I did in my analysis--

4 Q. Yes or no?

5 A. I'm comparing the same--

6 Q. Just answer my question.

7 THE COURT: Just a minute.

8 MR. KOBACH: He's attempting to answer the
9 question and she continues to interrupt him when she
10 doesn't-- he doesn't give her the answer she likes.

11 THE COURT: All right. The way it goes is
12 you ask your question. If it's framed as a yes or a no
13 answer, give a yes or no. I know that everyone in that
14 position if they feel like a yes or no answer isn't
15 going to be a-- is going to be misleading in some sense
16 wants to give a complete answer. But the way cross
17 examination works, you really just answer the question
18 and Mr. Kobach can come back and provide clarity on
19 redirect.

20 THE WITNESS: Okay. Okay. Yes, ma'am.

21 THE COURT: I don't have a problem with you
22 saying no, but I need-- there needs to be further
23 clarification. But I think things will go quicker for
24 all witnesses if-- rather than you try to give a
25 narrative explanation and knowing it's going to create a

1 round of objections, just say, you know, yes or no, but
2 it needs further clarification. And then Mr. Kobach
3 will be on notice to come back and ask you about that
4 for that clarification.

5 THE WITNESS: Okay.

6 THE COURT: Do you understand what I'm
7 saying?

8 THE WITNESS: I do understand what you're
9 saying.

10 THE COURT: Okay. All right.

11 Q. (BY MS. LIU) So you didn't control for these
12 confounding factors when analyzing Census Bureau data.
13 Correct?

14 A. I did not control for education, is that what you
15 were asking before? So-- but it needs further
16 clarification, my answer.

17 Q. You didn't control for age when analyzing Census
18 Bureau data. Correct?

19 A. Well, as you may recall, in Table 4-- yes, there
20 is an age control. You can see that I looked at young
21 people specifically and see how their patterns change.
22 So that is a form of control, to look at the same
23 population over time.

24 Q. But you didn't control for it in Figures 1, 2, 3,
25 4 and 5. Correct?

1 A. There was no age component in those figures.

2 Correct.

3 Q. And you didn't control for particular tactics
4 that various campaigns use. Correct?

5 A. Do you mean like that get-out-the-vote issue?
6 That-- okay, the answer is no. I'd like to have further
7 chance to explain that.

8 Q. And you didn't control for the competitiveness of
9 elections when looking at your turnout rates. Correct?

10 A. I did not. I'd like further a chance to explain
11 that later.

12 Q. And you didn't control for the difference in
13 competitiveness when comparing voter registration and
14 turnout rates in Kansas between 2010 and 2014, did you?

15 A. Could you say that one more time?

16 Q. You didn't control for differences in
17 competitiveness when comparing voter registration and
18 turnout rates in Kansas between 2010 and 2014, did you?

19 A. I did not, but I'd like further a chance to
20 explain that.

21 Q. And you didn't control for the differences in
22 competitiveness of elections in Kansas as compared to
23 the competitiveness of elections in Nebraska and
24 Oklahoma. Correct?

25 A. I'm not comparing-- I'd like a little chance to

1 just explain this. I'm not comparing the turnout rates
2 in Oklahoma and Nebraska to Kansas turnout rates. I'm
3 comparing each state to itself. So the state doesn't
4 change. And I'm seeing if the changes between those
5 states look to be different.

6 Q. So, Doctor Camarota, just yes or no, you did not
7 control for the difference in competitiveness of
8 elections in Kansas as compared to Nebraska and
9 Oklahoma?

10 A. Like I said, the answer is no, I'd like more
11 chance to explain.

12 Q. And as of July 1st, 2015, 86.7 percent of Kansas
13 was white alone. Correct?

14 A. I have not reviewed that statistic. Is that the
15 most recent Census data?

16 Q. Would it help to refresh your recollection to
17 review the census data at your deposition?

18 A. Okay. I mean, sure.

19 Q. If you could please turn to Tab 8, which is
20 Plaintiffs' Exhibit 123 marked for identification. And
21 please move down to about halfway through that page.

22 THE COURT: This is the Kansas census data,
23 or Nebraska?

24 MS. LIU: It's Nebraska, Oklahoma and
25 Kansas.

1 Q. (BY MS. LIU) So I'll ask the question again. As
2 of July 1st, 2015, 86.7 percent of Kansas was white
3 alone. Correct?

4 A. I'm having a little trouble reading that number.
5 It looks-- is that an-- if it's 86, I guess it's 86.7
6 for Kansas, right? Is that what you're asking me? It
7 looks right, yes, sounds right.

8 Q. Yes, yes.

9 MR. ROE: I'm sorry to bother you--

10 MS. LIU: There's three columns.

11 Q. (BY MS. LIU) And as of July 1st, 2015,
12 74.8 percent of Oklahoma was white alone. Correct?

13 A. White alone. Yes, that-- that looks right. I
14 don't know if they're excluding Hispanics here, so I'm
15 not sure. Let's see, I'd have to read the chart, but--

16 Q. It says white alone, 74.8 percent. Correct?

17 A. Where is the end note here? At least by race,
18 not taking into account Hispanic, it looks like 74 point
19 something. I can't-- is it 74.8? Okay. If you
20 represent that to me, I believe you.

21 Q. So I'll ask the question just so the record is
22 clear. As of July 1st, 2015, 74.8 percent of Oklahoma
23 was white alone. Correct?

24 A. I believe so, yes, it looks like an "8" to me, so
25 yes.

1 Q. And as of July 1st, 2015, 89.1 percent of
2 Nebraska was white alone. Correct?

3 A. Yes.

4 Q. And you stated earlier that turnout is higher
5 among non-Hispanic whites than among Hispanics.
6 Correct?

7 A. Yes, it is.

8 Q. Yet you did not control for these differences
9 among Kansas, Nebraska and Oklahoma when making your
10 conclusions in Figures 1, 2, 3, 4 and 5. Correct?

11 A. Well, now you've asked me about my conclusions,
12 so I feel like I can elaborate. I did not compare the
13 voter turnout rates, ma'am. I'm comparing changes or
14 the differences in the two. The states are not being
15 compared to each other, and so that's what makes these
16 statistics relevant.

17 What I'm comparing is the state to itself in
18 these two elections. So I'm not-- when you say I'm not
19 controlling for it, I'm not doing the comparison I think
20 that you think I am. I think there's a misunderstanding
21 here.

22 MR. KOBACH: Your Honor, I'd also like to
23 register an objection for the record. These are
24 assuming facts that were not in evidence and these are
25 not the-- this is not within the scope of direct.

1 THE COURT: Is Exhibit 123 in evidence? I
2 don't think it is.

3 COURTROOM DEPUTY: It's not.

4 MS. LIU: It's not, Your Honor.

5 THE COURT: All right. I'll sustain the
6 objection at this point.

7 Q. (BY MS. LIU) But you did not control for the
8 difference-- or you did not run a test to control for
9 these demographic differences in Figures 1, 2, 3, 4 and
10 5 among Kansas, Nebraska and Oklahoma when making your
11 conclusions. Correct?

12 A. As I say, I'm not comparing those differences.
13 I'm trying to look at the state with itself. That's my
14 answer. That is the reality. I'm not-- your question
15 assumes I'm comparing Kansas voting rates with Nebraska
16 voting rates or the nation as a whole. That's not what
17 I'm doing. I'm looking to see if the trends are
18 different, the change is different. That's what's the
19 meaningful comparison here.

20 MR. KOBACH: And I'm also--

21 THE COURT: I understand the distinction.
22 So with respect to each one of these sovereignties -
23 Kansas, Nebraska, U.S. - you're looking at what happened
24 between 2010 and 2014 in terms of registration rates, in
25 terms of voting rates. You didn't control for any

1 factors because you're just comparing each state or each
2 sovereign within itself?

3 THE WITNESS: To itself, yes.

4 THE COURT: All right. But you've answered
5 you didn't-- you didn't control for any other factors as
6 well. So to the extent there are differences within a
7 state-- or that a state is distinct in some way, whether
8 that's having a higher youth population or a more
9 competitive race in 2010 than 2014, et cetera, you did
10 not control for those factors?

11 THE WITNESS: In itself, right, so that the
12 state might've changed, that's what you're asking me.

13 THE COURT: I understand.

14 MR. KOBACH: And, Your Honor, I just want to
15 register an objection for the record again. She said
16 you did not control for these differences in her latest
17 question, again referring to the facts not in evidence.

18 THE COURT: All right. I understand. I'll
19 sustain.

20 Q. (BY MS. LIU) And you compared the differences in
21 voter registration and turnout rates between 2010 and
22 2014 in Kansas with those in all other states than
23 Kansas. Correct?

24 A. The change is what I'm comparing, right. Is
25 Kansas different in terms of its change, not is the

1 voter rate different in those two places. Do you
2 understand the distinction? I think we've covered it.
3 Your Honor I think summed it up nicely.

4 Q. So you didn't take into account, for example,
5 that Arizona had a documentary proof-of-citizenship law
6 in effect at the time. Correct?

7 A. Arizona is included with the states other than
8 Kansas. So there's no-- there's-- it's in there.
9 There's no-- I didn't exclude Arizona. Is that what
10 you're asking me? I didn't. It's in there as it is.

11 Q. And heading back to Page 6 of your report.

12 A. My report, ma'am, or--

13 Q. Yes, your report.

14 A. Oh, okay. So you're going to show it to me,
15 right?

16 Q. It's-- you should have an exhibit up there from
17 Mr. Kobach, but it's also Tab 2.

18 A. I can read it right here I think. I have my
19 glasses on thank goodness.

20 Q. So apart from the two cites that you cited, you
21 didn't cite any evidence-- any other evidence of
22 non-citizens in Kansas mistakenly thinking that they are
23 American citizens. Correct?

24 A. I did not, no. I just had those two reports.

25 Q. And those cites didn't deal with voter

1 registration. Correct?

2 A. They dealt with Census Bureau data, not voter
3 registration.

4 Q. And you haven't published any peer-reviewed
5 research of non-citizens misreporting. Correct?

6 A. I have not.

7 Q. And in your report you write that you were asked
8 by the defendant in this case to look at voting and
9 registration trends in Kansas, the proof-of-citizenship
10 requirements. Correct?

11 A. Yes, ma'am.

12 Q. And as the Director of Research at CIS, you
13 pulled together reports that generally concern
14 immigration and citizenship topics. Correct?

15 A. Yes, ma'am. That's correct.

16 Q. And it's your belief that it's almost certain
17 that a majority of non-citizens convicted of federal
18 crimes are illegal immigrants. Correct?

19 A. No, that doesn't sound right. It is certain
20 that-- no, no, I actually have a blog on that. And I
21 can't remember, I think it's around 38 percent of people
22 in federal jurisdiction or in the sentencing are
23 non-citizens. Not illegal immigrants. It's not exactly
24 the same thing. Now, a very large fraction of the
25 non-citizens should-- are illegal immigrants, but it's

1 not a majority I don't think.

2 MR. KOBACH: Objection.

3 A. I don't have any--

4 MR. KOBACH: Objection on relevance. This
5 entire question--

6 MS. LIU: Your Honor, an expert's biases go
7 to the weight of his opinion. We've heard a lot of
8 testimony over the past week and today about alleged
9 non-citizens voting. I think this bias certainly goes
10 to-- and should absolutely be taken into consideration.

11 THE COURT: All right. I'll overrule. I do
12 think if an expert has opinions on the-- that touch on
13 the subject matter on which they're expressing expertise
14 and that those opinions could be perceived to be biased
15 or prejudiced, that's something the Court should take
16 into account. Overrule the objection.

17 Q. (BY MS. LIU) Doctor Camarota, you sent your
18 updated CV again to defense counsel on Thursday night.
19 Correct?

20 A. I-- I sent them a new CV, yes.

21 Q. And on Page 5 of that CV, it notes, "All my other
22 publications, including numerous opinion pieces and
23 blogs, can be found here, <https://cis.org/camarota>.
24 Correct?

25 A. Yes, ma'am, that sounds right. I can't be sure

1 of the address, but that sounds right.

2 Q. I'm going to hand you what has been marked as
3 Exhibit 151 into evidence-- just I'm going to hand it to
4 you. And we're handing opposing counsel Plaintiffs'
5 Exhibit 151.

6 And if you go to the second paragraph, the
7 second-- and this is a blog post that you posted on
8 January 10th, 2018 entitled "Non-Citizens Committed a
9 Disproportionate Share of Federal Crimes 2011 to 2016."
10 Correct?

11 A. Yes, this is a blog from my website. From our
12 website, uh-huh.

13 Q. And you see on the second paragraph the second
14 sentence, it says, "It is almost certain that a majority
15 of the non-citizens convicted of federal crimes are
16 illegal immigrants." You wrote that. Correct?

17 A. Yes, I thought you had-- I misunderstood your
18 question. Ma'am, I thought you asked me, did I say that
19 a majority of people who commit federal crimes are
20 illegal immigrants.

21 But are you asking me do I think that a majority
22 of non-citizens-- so of that 21 percent, do I think a
23 majority is, as I said here, absolutely, yes. Do you
24 see the-- I thought you were asking me-- so I must've
25 misunderstood your question.

1 So it's certainly not true that a majority of
2 people who commit federal crimes are illegal immigrants,
3 only 21 percent are non-citizens. So that's what I
4 wrote here from-- this is from the U.S. sentencing--

5 Q. Doctor Camarota, it's also your belief that at
6 least at the federal level non-citizens are more likely
7 to commit crimes than citizens. Correct?

8 A. It's about 2.5 times more likely relative to our
9 best estimates of their share of the population, yes.
10 That's what the data show.

11 Q. And it's your belief that English is one of the
12 glues that holds this country together and it's not
13 clear that the country can withstand this level of
14 immigration. Correct?

15 MR. KOBACH: Objection, relevance.

16 THE COURT: Overruled.

17 A. I certainly think English-- the English language
18 is one of the things that holds the country together.
19 And I certainly have said that the level of immigration
20 constrained that glue that holds the country together,
21 yes, ma'am.

22 Q. (BY MS. LIU) And you've used the term
23 "professional ethnic." Correct?

24 A. I think I have used that once, yes, ma'am.

25 Q. And you would use that term "professional

1 ethnics" again. Correct?

2 A. I think I might, yes, depending on the person.

3 Q. And John Tanton is the founder of CIS. Correct?

4 A. Well, I have to tell you, I don't know that
5 that's true. I mean, I'm giving you the answer that I
6 know.

7 Q. Doctor Camarota, you testified earlier that
8 you've worked at the Center for-- or you've worked at
9 the Center for Immigration Studies since 1996. Correct?

10 A. That's correct.

11 Q. And you've worked there for more than 21 years
12 then. Correct?

13 A. Yes, 21 years.

14 Q. And you have been the Director of Research at the
15 Center for Immigration Studies since 2000. Correct?

16 A. Yes, that's correct.

17 Q. So I'm going to ask you the question again. Is
18 John Tanton the founder of CIS?

19 A. He certainly played a role in its founding,
20 ma'am. I mean, I can give you more of an answer. I
21 don't know, I was not there, I was in high school or a
22 freshman in college. And I don't know. I read a book
23 on-- that included information on the founding of CIS.
24 It appeared to me that Otis Graham was the founder,
25 Professor Graham. But I don't know the answer to the

1 question, I'm sorry. It seems like several people were
2 involved in its outset.

3 Q. And, Doctor Camarota, are you aware that Tanton
4 has been called the racist architect of the modern
5 anti-immigration movement by the Southern Poverty Law
6 Center?

7 MR. KOBACH: Objection. There's no
8 good-faith basis for that statement.

9 MS. LIU: Your Honor, it's the same--

10 MR. KOBACH: She just said "has been
11 called."

12 THE COURT: Is that in a published journal?

13 MR. KOBACH: It's also hearsay.

14 MS. LIU: It has been. And I'm not offering
15 it for the truth of the matter.

16 THE COURT: You're asking him if he's aware
17 of that, so I'll allow that question if there's a
18 reasonable basis for it.

19 A. Yes. I don't know that I know that that phrase--
20 I can't testify that that sentence you just read is
21 something I'm necessarily aware of. But they-- but they
22 certainly have published things very critical of him.

23 MR. KOBACH: Your Honor, I'm objecting to
24 the relevance of this. I don't think Mr. Tanton is on
25 trial here. I think the credibility of Mr. Camarota is

1 the issue and they may certainly try to impeach that,
2 but I don't see how this has anything to do with his
3 credibility.

4 THE COURT: Well, to whatever degree it has
5 some relevance, it has to do with the fact that he's
6 been the director of this center for many, many years
7 and a member of it for many, many years. And I think
8 the plaintiffs should be able to point out if there's
9 some sort of advocacy or admission piece or some sort of
10 purpose of this particular organization that could be
11 perceived to be biased or prejudiced on the subject on
12 which we are here for.

13 So I think your objection goes to weight
14 rather than admissibility. It's proper impeachment of
15 an expert who holds himself out as someone who's here to
16 testify objectively to data and his evaluation of the
17 data based on his expertise.

18 Q. (BY MS. LIU) Doctor Camarota, I'm handing you
19 what's been marked as Plaintiffs' Exhibit 152.

20 A. Okay.

21 MS. LIU: I'm showing a copy to opposing
22 counsel as well.

23 Q. (BY MS. LIU) And do you see here that this was
24 an exhibit in your deposition. Correct?

25 A. I-- I don't recall, but I-- if you represent that

1 to me, I'm sure it's true.

2 Q. And you see in this article it says, "John Tanton
3 is the racist architect of the modern anti-immigration
4 movement." Do you see that?

5 A. I don't, ma'am, I'm sorry.

6 Q. The first line of the--

7 A. Oh, up here, okay, sure. It does-- this
8 organization does say that.

9 Q. And going back to the turnout rates.

10 THE COURT: All right. Just to be clear,
11 I'm not considering-- this article, Exhibit 152, is not
12 in evidence. The other exhibit, 151, I think also not
13 in evidence. Both of these apparently used to impeach
14 the testimony of Mr. Camarota, but I'm not considering
15 these matters as truth of the matters asserted because
16 they are out-of-court statements.

17 So, in other words, I'm not considering the
18 Southern Poverty Law Center's views or whoever is
19 offering views in exhibit-- well, I guess it's this--
20 this witness in 151, it's his own views. But in any
21 event, not being considered for the truth of the matter
22 asserted. That matter being that Mr. Tanton is a racist
23 architect of the modern anti-immigration movement. I'm
24 not considering that because that would be hearsay.

25 MS. LIU: Thank you, Your Honor. 151, I'd

1 like to request to admit Plaintiffs' Exhibit 151, which
2 is his-- Doctor Camarota's post.

3 THE COURT: Any objection?

4 MR. KOBACH: No objection.

5 THE COURT: 151 is admitted. 152 I won't
6 admit if you're offering it because it is hearsay.

7 Q. (BY MS. LIU) So in looking at the change in
8 turnout in all other states between 2010 and 2014--

9 A. Yes, the change in turnout, let me get that out
10 for a second. So what-- what figure are we looking at?

11 Q. The one that talks about all other states.

12 A. Well, several of them have that comparison.

13 Let's find that for you.

14 Q. So 2--

15 A. Figure 2.

16 Q. -- 3, 4, and 5.

17 A. Uh-huh.

18 Q. Between 2010 and 2014, you didn't control for the
19 fact that Texas had a voter ID law in place for the 2014
20 election. Correct?

21 MR. KOBACH: Objection, relevance.

22 THE COURT: Overruled.

23 A. So...

24 Q. (BY MS. LIU) And you didn't control for the fact
25 that Texas had a voter ID law in place in the 2014

1 election but it didn't have it in place in 2010.

2 Correct?

3 A. Texas is included. I don't have any-- didn't
4 treat Texas different than any other place.

5 MR. KOBACH: And, Your Honor, I object
6 she's--

7 Q. So that's no. Correct?

8 MR. KOBACH: -- her question assumes a fact
9 not in evidence. Other than her say so, we're-- that's
10 all we're going on, what she says about Texas.

11 THE COURT: I understand, but she's-- she
12 can cross examine him to the extent he has knowledge of
13 whether these factors are true or not. I'm sure he
14 can-- he can say whether there's some validity or
15 they're not valid anyway.

16 Q. (BY MS. LIU) So assuming that Texas didn't have
17 a voter ID in 2010-- law in 2010 and it did have one in
18 2014, you didn't control for that. Correct?

19 A. I-- no, I did not.

20 Q. And you didn't control for other states that
21 enacted voter ID laws. Correct?

22 A. All the states are treated equally here.

23 Q. So you did not control for other states that
24 enacted voter ID laws. Correct?

25 A. There's no-- there's no distinction made between

1 the states, so no.

2 MS. LIU: No further questions.

3 THE COURT: Mr. Johnson.

4 MR. JOHNSON: Your Honor, if you'd like to
5 take a break now, that would be fine with me. It's up
6 to you.

7 THE COURT: Do you have a very lengthy
8 examination?

9 MR. JOHNSON: 15, 20 minutes, maybe 30.

10 THE COURT: All right. Let's take a lunch
11 break. I didn't realize it was that late. All right.
12 Let's be in recess until 1:15.

13 MR. JOHNSON: And, Your Honor, if I
14 understand the rules, the counsel is not allowed to
15 speak to the witness.

16 THE COURT: That's true, you're on cross
17 examination, Mr. Camarota, so--

18 THE WITNESS: I see, okay.

19 THE COURT: -- no conferring with counsel at
20 this point.

21 MR. KOBACH: And, Your Honor, just to
22 clarify. Remember this morning we talked about possibly
23 bringing Ms. French up in the middle of this right after
24 lunch. Is that what our plan is?

25 THE COURT: Yes.

1 MR. STEINER: Given that there's not a lot
2 for Doctor Camarota, would it make more sense to finish
3 him, which is probably a half an hour and let her go on
4 at 2:00 or 2:15, whatever it is? She'll still get home
5 at a reasonable time tonight.

6 THE COURT: Any objection to that?

7 MR. KOBACH: If-- Mark, are you-- how much
8 time are you going to take?

9 MR. JOHNSON: 15, 20 minutes, depending on
10 whether he confines himself to yes or no.

11 MR. KOBACH: Okay. We'll go ahead and try
12 to wrap this up quickly before Ms. French.

13 MR. JOHNSON: Thanks.

14 THE COURT: All right. 1:15 it is.

15 (Recess).

16 (12:03 p.m., proceedings recessed).

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C E R T I F I C A T E

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

I further certify that the foregoing transcript, consisting of 135 pages, is a full, true, and correct reproduction of my shorthand notes as reflected by this transcript.

SIGNED March 15, 2018.

/s/ Kelli Stewart

Kelli Stewart, CSR, RPR, CCR, RMR