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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

PARKER BEDNASEK,
Plaintiff,

v.

Docket No. 15-9300-JAR

KRIS W. KOBACH,
Defendant.

STEVEN WAYNE FISH, et al.,
Plaintiffs,

v.

Docket No. 16-2105-JAR

KRIS W. KOBACH,
Defendant.

Kansas City, Kansas
Date: 03/12/2018

Day 5 (P.M. Session)
Pages 1349-1501
.....

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

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(Appearances continued on next page)

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1 (1:23 p.m., proceedings commenced.)

2 THE COURT: Mr. Johnson.

3 MR. JOHNSON: Thank you, Your Honor.

4 CROSS EXAMINATION

5 BY MR. JOHNSON:

6 Q. Dr. Camarota, my name is Mark Johnson. I'm a
7 partner with the Dentons law firm and I'm here on behalf
8 of Parker Bednasek who is also a plaintiff in this case.

9 First I want to get a few things clear with
10 you. Is it correct that in your report the distinction,
11 if any, between the 2010 and the 2014 Kansas off-year
12 elections is crucial?

13 A. Distinction? The report compares those two
14 election years, is that --

15 Q. I'm sorry?

16 A. That's what the report does.

17 Q. Right.

18 A. If that's what you're asking me, that's what it
19 does, yes.

20 Q. And that comparison is crucial to the conclusions
21 drawn in your report; is that correct?

22 A. The conclusions with regard to the Kansas
23 comparisons?

24 Q. Yes.

25 A. The Kansas -- yes, those two years are the two

1 years, and they are what I base my conclusions on, if
2 that's what you're asking.

3 Q. Fine. Thank you. Now, as I understand it,
4 you're drawing a distinction between presidential
5 election years and non-presidential election years; is
6 that true?

7 A. Both years are non-presidential elections.

8 Q. So, for example, just so we're clear on the
9 record -- here I go again -- 2008 and 2012, those are
10 presidential election years?

11 A. Yes, they are.

12 Q. That's when President Obama was elected and then
13 reelected; is that correct?

14 A. Yes, that's correct.

15 Q. And would you agree with me that the statistics
16 indicate that in presidential election years there tends
17 to be higher -- more people vote?

18 A. Yes, that's -- that's a reasonable assertion.

19 Q. Okay. And then conversely for the
20 non-presidential election years, or the off-years, fewer
21 people vote?

22 A. Yes, that's a fair statement.

23 Q. And it's your testimony that in order to compare
24 apples to apples one must compare either presidential
25 election years or off-years but not mix them up; is that

1 correct?

2 A. Well, I didn't have, you know, the 2016 data to
3 do that comparison. So when I did the comparison, it
4 was only the first election after the law went into
5 effect was a non-presidential year with a federal
6 election.

7 Q. Right. And so in this case, the reason we're
8 looking at 2010 and 2014 in your testimony is that the
9 2010 election was the election immediately preceding the
10 effective --

11 Let me -- I was going in the wrong -- I --
12 let me clarify that.

13 2010 was the off-year election that preceded
14 the effective date of the SAFE Act; is that correct?

15 A. Yes. That is the most recent one that we had
16 data for, yes.

17 Q. Right. And then the reason you compare it with
18 2014 is that 2014 is the first off-year election that
19 occurred after the SAFE Act went into effect?

20 A. That is the first year, yes. That makes sense,
21 yes.

22 Q. And so that's why, in your opinion, 2010 and 2014
23 are -- constitute an apples to apples comparison?

24 A. Right. Well, they are both off-year federal
25 elections, yes, that's correct.

1 Q. And but -- they're off-year federal elections.
2 But isn't it true in Kansas there were statewide
3 elections for -- for state offices?

4 A. In 2010 and 2014, is that what you're asking?

5 Q. Yes.

6 A. Yes, the governor, for example.

7 Q. Exactly. And the goal from your -- from your
8 research was to find if there was somehow a measurable
9 distinction between 2010 and 2014 with respect to
10 registration and voting; is that correct?

11 A. Based on the Current Population Survey, yes.

12 Q. And is it correct that, in your opinion, the --
13 the factor differentiating the registration and the
14 voting numbers in the 2010 and 2014 elections was the
15 SAFE Act?

16 A. Could you restate that? I'm not sure I
17 understand "the factor differentiating them". I'm not
18 sure -- could you tell me what you mean?

19 Q. I'd be happy to.

20 A. Okay.

21 Q. The reason you want to take -- compare the 2010
22 registration and voting numbers with the 2014
23 registration and voting numbers --

24 A. Yeah.

25 Q. -- is that the distinction between those two

1 elections was in the first, 2010, the SAFE Act was not
2 in effect and in the second, 2014, it was?

3 A. Yes, that -- that statement is certainly true.

4 Q. And you would -- and you wanted to see what
5 change might be found, whether positive, negative or
6 neutral; right?

7 A. I was looking to see what changes occurred in
8 Kansas, yes.

9 Q. And in -- as I understand your conclusion, you
10 found no appreciable change; is that a fair way to put
11 it?

12 A. Yes. Overall there was no appreciable change in
13 both registering and voting.

14 Q. Got it. And because of that, because of the
15 absence of appreciable change, it's your conclusion that
16 the documentary proof of citizenship did not result in
17 an adverse -- did not adversely effect registration and
18 voting?

19 A. My conclusion is I could find no evidence of it.

20 Q. Okay.

21 A. Okay.

22 Q. That's fine. I want to ask you some questions
23 about the 2014 election. How many times have you been
24 to Kansas?

25 A. I'm not sure. I think this is my third or fourth

1 time here.

2 Q. Before today -- or, well, I'm sorry, last week --

3 A. Yes.

4 Q. -- when was the last time you've been in Kansas?

5 A. Gosh, I don't know. I -- maybe five years ago I
6 think.

7 Q. Okay. So before the 2014 election?

8 A. Yes, it would have been before the '14 election.

9 Q. Okay. Thank you. Now, you would agree with me,
10 because you've argued talked about it, there was a
11 gubernatorial election in Kansas in 2014; is that
12 correct?

13 A. Yes.

14 Q. As there had been in 2010?

15 A. That's correct.

16 Q. Do you know who the candidates were?

17 A. I can't recall all the candidates. Sam Brownback
18 was one. I'd have to look it up. I don't have that
19 information on the top of my head.

20 Q. Do you have any recollection as to who was
21 favored before the election occurred?

22 A. As I recall, I mean, I would -- no, I don't know.
23 I don't know the answer.

24 Q. So you wouldn't question if I told you that there
25 was a significant number of people in Kansas who thought

1 that the Democratic candidate was going to win?

2 A. If you say that that's the case, I certainly have
3 no basis for arguing against you.

4 Q. And would you agree with me that the -- there was
5 also a U.S. --

6 MR. KOBACH: I just want to register an
7 objection it's assuming a fact not in evidence.

8 THE COURT: I understand. Proceed.

9 BY MR. JOHNSON:

10 Q. Would you agree with me there was a U.S. senate
11 election as well in 2014 in Kansas?

12 A. Yes, there were, both times.

13 Q. In 2010?

14 A. 2010 and in 2014.

15 Q. And in 2014. Different candidates --

16 A. Yes.

17 Q. -- but there were senate elections?

18 Do you know who the senate -- the incumbent
19 senator running for re-election was in 2014?

20 A. I did know. I can't recall right now who it was.
21 Was it -- was it Robert. Pat Roberts I think.

22 Q. It was.

23 A. It was. Okay.

24 Q. Senator Roberts was running for re-election.

25 Who was the Democratic candidate?

1 A. I don't know the name. I'm sorry, I can't
2 remember. I'm sure I did at one point but --

3 Q. Do you know if there was a Democratic candidate?

4 A. I believe there was but I can't tell you for
5 sure.

6 Q. Okay. Do you know if there was another major
7 candidate in the race?

8 A. Was there a third party, you're asking me? I'm
9 sure there was a third party but I don't know the
10 person's name.

11 Q. Do you know anything about the litigation that
12 occurred as -- arising out of the senatorial candidate
13 issues in 2014?

14 A. In 2014? No, I have not studied the litigation
15 issues.

16 Q. Do you know that the Kansas Supreme Court
17 actually issued a decision as to whether the Democratic
18 candidate had to stay on the ballot?

19 A. I -- maybe I heard that but I -- I couldn't speak
20 to it with any authority.

21 Q. Do you know if there was any controversy over
22 whether the Democratic party had to replace its
23 candidate?

24 A. Yeah, it sounds familiar but I can't speak to it
25 with any...

1 Q. And do you know what happened? Did they have to
2 replace the candidate?

3 A. I can't -- I can't -- I don't recall.

4 Q. Okay. Do you know what the Missouri plan is for
5 judicial retention?

6 A. Missouri plan?

7 MR. KOBACH: Objection. Relevance.

8 THE WITNESS: That's not an area --

9 MR. JOHNSON: I'll tie this up very quickly,
10 Your Honor.

11 THE COURT: Overruled. Proceed.

12 BY MR. JOHNSON:

13 Q. Have you ever heard of the Missouri plan?

14 A. For?

15 Q. Judicial elections?

16 A. Not in American history, but just the -- no, the
17 Missouri Compromise. You're asking me for the Missouri
18 plan for judicial. I don't know about it, I'm sorry.

19 Q. Do you know that -- do you know whether judges in
20 Kansas have to stand for retention every few years in
21 order to stay in office?

22 MR. KOBACH: I'm also going to object is
23 beyond the scope of the direct.

24 THE COURT: No, I think this is relevant to
25 voter turnout issues. Proceed.

1 THE WITNESS: I -- I'm no expert on Kansas'
2 judicial.

3 BY MR. JOHNSON:

4 Q. Okay. So you don't know whether there was an
5 election that occurred in Kansas in 2014 concerning the
6 retention of two Supreme Court judges?

7 A. No, I have no information on that.

8 Q. And you don't know whether there was a concerted
9 effort to non-retain those judges; in other words, to
10 have them defeated?

11 A. I have not looked at that election.

12 Q. Okay.

13 A. I mean, I should -- I mean, obviously, I looked
14 at the election data but I can't speak to that with any
15 authority.

16 Q. Do you know whether those two judges were
17 retained by the smallest margin ever in Kansas history?

18 A. I -- I have no information on that.

19 Q. And the three elections I've talked about; the
20 gubernatorial election, the senate election, and the
21 judicial retention elections have nothing to do with
22 documentary proof of citizenship, do they?

23 A. No, I assume not.

24 Q. Okay. Will you agree with me that popular
25 interests in specific races can spark higher

1 registration in voting than one might normally see?

2 A. Not necessarily. Talked about this before, not
3 necessarily the case.

4 Q. So you're saying, no, you don't agree with me?

5 A. You're saying is this -- there's this one way
6 direction.

7 The way I interpret your question is that if
8 there's a closer race, or popular interest will spike
9 and increase in voter turnout, that's how I'm
10 interpreting your question. And I'm saying that's not
11 necessarily true. There's lots of cases that's not.

12 Q. That wasn't my question, sir, my question was --
13 I'll read it again.

14 Would you agree with me that popular
15 interest in specific races can spark higher registration
16 and voting than one might normally see?

17 A. It can.

18 Q. And that would be true for off-year elections as
19 well as presidential election years, wouldn't it?

20 A. That -- that -- that it can.

21 Q. Yes.

22 A. It's possible. Uh-huh.

23 Q. Okay. And you would agree with me, wouldn't you,
24 that local issues can result in higher voter interest
25 than one might normally see?

1 A. It can.

2 Q. And would you agree with me that interest in the
3 2014 Kansas races I just mentioned to you is a possible
4 explanation for the registration and voting numbers that
5 you note in your report?

6 A. I'm not sure I follow. The numbers represent --
7 you know, like say, for example, the registration
8 numbers represent long-standing registration. So could
9 you just narrow it a little bit more and tell me exactly
10 what you're asking?

11 The registration numbers are people who
12 might have registered 25 years ago and are still
13 registered. So they wouldn't reflect the situation in
14 Kansas at a particular moment. So I'm not sure I
15 understand.

16 Q. But isn't it true the registration numbers also
17 reflect recent registration?

18 A. They do.

19 Q. Okay. So then you would -- you would agree with
20 me that interest in the Kansas races I just mentioned to
21 you is a possible explanation for the registration in
22 voting numbers that you note in your report?

23 A. Now, I guess what I'm trying to understand is
24 you're saying the overall number. Are you asking me for
25 the trend? I'm not -- there's a lot of numbers in the

1 report that deal with Kansas. So I just wanted you to
2 narrow it down a little bit for -- more for me.

3 Q. I'm sticking with my question. Please answer it.

4 A. You -- the -- the numbers in my report, for
5 example, for registration can reflect both recent
6 conditions and past conditions. Does that help answer?

7 Q. But isn't it correct that the only factor that
8 you considered in reaching the conclusions in your
9 report was that in 2014 there was a DPOC requirement and
10 in 2010 there wasn't?

11 A. Only -- but the comparison with the change in
12 other places is what I'm basing my report on as well.
13 When I would compare other places to themselves, Kansas
14 appears to be unaffected by the law.

15 Q. We'll get to these other places.

16 MR. JOHNSON: I'm sorry, could you read my
17 last question back.

18 (Requested question read by the reporter.)

19 THE WITNESS: How can I answer that clearly?

20 BY MR. JOHNSON:

21 Q. Your conclusion that there was no appreciable
22 change in registration and voting.

23 A. I approve (sic) at that conclusion based on what
24 the numbers showed. That's what I'm stating here: That
25 after the law went into effect, it doesn't appear to be

1 a change based on this data in voting registration or
2 voting. That's my conclusion.

3 Q. And not just after the law went into effect but
4 because of the law you found no -- that even though the
5 law was in place --

6 A. There was no --

7 Q. -- you found no appreciable change?

8 A. There is no appreciable change, that is my
9 conclusion, after the law went into effect.

10 Q. Now, as I understand it, you compared
11 registration numbers in October of 2010 with
12 registration numbers in October of 2014; is that right?

13 A. That is not part of the census analysis; right?
14 You mean the early part of my report, right, that's what
15 you're asking about?

16 Remember the census takes place in November,
17 so I looked at October data when I was looking at
18 administrative data.

19 Q. But you --

20 A. Just so we're clear.

21 Q. You looked at -- you looked at registration data
22 from October 2010 and October 2014; is that correct?

23 A. The information Mr. Caskey provided is from those
24 months, yes.

25 Q. And it was October because of the Kansas law that

1 requires that registration be completed within 21 days
2 of election date?

3 A. Yes. And there was an election coming up, that's
4 why it was October.

5 Q. And similarly you compared turnout numbers in the
6 2010 election with turnout numbers in the 2014 election;
7 is that correct?

8 A. Yes, that's correct, as I recall, yes.

9 Q. Would you agree with me that high interest in the
10 2014 elections could account for the higher registration
11 and turnout numbers in 2014 over 2010?

12 A. I -- you're asking me could it?

13 Q. Yes.

14 A. You're saying hypothetically? Hypothetically it
15 could.

16 Q. Will you agree with me that registration and
17 turnout numbers could have been higher in 2014 in the
18 absence of the documentary proof of citizenship
19 requirement?

20 A. Hypothetically you're saying could they have gone
21 up higher, is that what you're --

22 Q. Yes.

23 A. -- the numbers could have been different? Sure,
24 they could have been different.

25 Q. Okay. Isn't it possible that the documentary

1 proof of citizenship requirement actually retarded
2 registration and voting?

3 A. What I conclude is that I can find no evidence of
4 that. But if you're asking me could it have?
5 Hypothetically I think it could have. That's what I was
6 looking for. Didn't find it but that's what I was
7 looking for.

8 Q. Okay. And you were only looking for something
9 that the documentary proof of citizenship requirement
10 would affect. You weren't looking at other factors that
11 might have affected registration and turnout, were you?

12 A. I only looked at registration and turnout.
13 That's all I looked at.

14 Q. And in your analysis, you took no other factor,
15 no other possible cause into -- into account?

16 A. As I indicated at the outset, this is a -- a -- a
17 quasiexperimental design. I'm looking at two points in
18 time for the same state. So that -- that's the thing
19 that occurred between those two times and that's what I
20 looked at and that's what I reported. I didn't adjust
21 the numbers for any possibility, if that's what you're
22 asking.

23 Q. Now, you -- you also have testimony concerning
24 elections in neighboring states, Nebraska and Oklahoma;
25 is that right?

1 A. Yes.

2 Q. All right. And that's because you consider those
3 states to be comparable to Kansas?

4 A. Well, they border on Kansas and might provide
5 some insight. So that's why I -- you know, broadly
6 comparable to Kansas. That's why I included them and
7 they also had statewide races at the time.

8 Q. They also had gubernatorial elections in 2014; is
9 that right?

10 A. That's what I recall, yes.

11 Q. Do you know what the results of those elections
12 were?

13 A. I can't say off the top of my head.

14 Q. Okay. Would you have any reason to question that
15 in Nebraska Governor Foley, the Republican, received
16 57 percent of the vote and his opponent, Raybould, a
17 Democrat, received 39 percent of the vote?

18 A. If you represent that to me, I wouldn't have any
19 basis for disagreeing with you.

20 Q. And in Oklahoma the Republican candidate won by a
21 margin of 56 percent to 41 percent. Do you have any
22 reason to question that -- those numbers?

23 A. I have no reason to question what you're
24 asserting.

25 Q. Do you know what the result of the 2014

1 gubernatorial election in Kansas was?

2 A. As I recall the Republican won.

3 Q. The Republican. And that would be Governor
4 Brownback?

5 A. Yes.

6 Q. Do you know what the margin of victory was?

7 A. It was several percentage points.

8 Q. Several percentage points. Two? Ten? What do
9 you think it was?

10 A. I don't recall exactly.

11 Q. Would you -- would you be surprised to know it
12 was less than 4 percent?

13 A. Yes, that sounds right.

14 Q. So you're not surprised by that?

15 A. I think it was something like that, that's what
16 I'm saying.

17 Q. And would you agree with me that winning by less
18 than 4 percent is a much smaller margin than the
19 Republican candidates in Nebraska and Oklahoma won by?

20 A. 4 percent is less than the figures you have just
21 given me, yes, it is.

22 Q. What about the senate election, who won that, if
23 you know?

24 A. Senate election where?

25 Q. Oh, I'm sorry, in Kansas.

1 A. Which year we talking about?

2 Q. 2014.

3 A. Pat Roberts, is that who you're talking about?

4 Q. Right. Do you know who won that election?

5 A. Roberts won the election.

6 Q. Roberts won. Do you know what the margin of
7 victory was?

8 A. I don't recall.

9 Q. Do you have any idea what the polling indicated
10 the separation between the two candidates was before the
11 election occurred?

12 A. I did not follow that race closely. I don't know
13 what the --

14 Q. Okay.

15 A. -- expectation was.

16 Q. Now, in the conclusion of your report -- I just
17 want to read something --

18 A. Uh-huh.

19 Q. -- to you. This is actually in the conclusion.

20 A. Should I get the document out?

21 Q. If you want to, just so you can make sure that
22 I'm reading it correctly.

23 A. Okay.

24 Q. Do you have it in front of you now?

25 A. I do. I do.

1 Q. And the second sentence reads, "A comparison of
2 comparable elections before and after the law was
3 implemented indicates that the share of U.S. citizens
4 registering and voting in Kansas has not changed
5 significantly, while nationally the shared registering
6 and voting shows a marked decline." Did I read that
7 correctly?

8 A. It seems -- yes, correct.

9 Q. Would you agree that a key assumption on which
10 you relied in reaching your conclusions is that the 2010
11 and 2014 elections in Kansas were comparable?

12 A. Comparable in the sense they're both off-year
13 elections with national -- with statewide offices going
14 on?

15 Q. No.

16 A. But if you're asking me were the races closer in
17 one year than the other, they weren't. We just went
18 over that.

19 Q. I'm just saying that in order for you to reach
20 the conclusions that you did, you had to assume that the
21 2010 and 2014 elections were comparable; is that
22 correct?

23 A. Comparable as I'm defining it, that they're both
24 elections -- off-year federal elections.

25 Q. Sir, I just read a sentence from your report --

1 A. Uh-huh.

2 Q. -- which says "a comparison of comparable
3 elections before and after the law was implemented."
4 And so what you're telling us in your report is that you
5 compared the 2010 and 2014 elections and they were in
6 your opinion comparable?

7 A. They're comparable in the way that I'm talking
8 about them here, which is they're both off-year
9 elections taken, you know, four years apart.

10 I'm not arguing that they were exactly
11 reproduce -- you know, the same as each other. There
12 were different people running, for example.

13 Q. So, in your opinion, comparable means off-year
14 elections, period?

15 A. Off-year elections with national -- with
16 statewide offices running at the same time. That makes
17 them broadly comparable or comparable in this case.

18 MR. JOHNSON: That's all I have. Thank you.

19 REDIRECT EXAMINATION

20 BY MR. KOBACH:

21 Q. Dr. Camarota, do you recall before lunch you were
22 asked by opposing counsel about the *Snipes* case where
23 you were qualified as an expert?

24 A. Yes, I do recall that.

25 Q. And is it your testimony that you were qualified

1 to testify as an expert on the topics that you wrote
2 about in your expert report?

3 A. That's my recollection, and I did testify in
4 court.

5 Q. And so you were permitted to testify as an expert
6 by the court?

7 A. By the judge, yes.

8 Q. And is it your recollection that there was --
9 there was one area that you were not qualified to
10 testify, but that that area -- and is it your statement
11 that was not part of your report?

12 A. No, I -- as I recall, there was one area that I
13 was not -- it was not -- I can't remember exactly what
14 the area was, but it was not my -- it was not the focus.
15 I was able to tell the court about the numbers and
16 percentages that I found.

17 Q. You do regard yourself as an expert in the
18 subjects that you address in your report; correct?

19 A. I do.

20 Q. Have you published multiple peer-reviewed
21 articles analyzing census data?

22 A. I have analyzed census data in the peer-reviewed
23 pieces that I've done.

24 Q. So you have -- again, I ask: Have you published
25 multiple peer-reviewed articles concerning census data?

1 A. I have.

2 Q. In Tab 3 of this black binder, you'll look at a
3 -- you'll recall -- you may recall opposing counsel
4 asking you about an e-mail exchange with Bryan Caskey of
5 the Secretary of State's Office.

6 A. Uh-huh.

7 Q. Do you recall that?

8 A. I do.

9 Q. And do you recall that opposing counsel went to
10 great lengths to get you to concede that it was not
11 perfect data? Do you recall that?

12 A. I do.

13 Q. Now, if you look down at what Mr. Caskey says in
14 his response to you in the lower e-mail.

15 A. Uh-huh.

16 Q. He talks about -- read the sentence that begins
17 "of that total".

18 A. Of -- I'm sorry. "Of that total, 107,116 persons
19 were aged 18 to 29. This number is not perfect because
20 it is based on today's age. But I took it, today's age,
21 and tried to run a report that would have estimated
22 their age during that time -- period of time."

23 Q. So if you were in Mr. Caskey's shoes and you ran
24 the report, would you imagine that he would just look at
25 people born between a certain date of birth and another

1 date of birth to calculate who would have been 18 to 29
2 at that time?

3 A. Yes, I think that's a -- that's the assumption.

4 Q. So do you think that would give you a pretty
5 reliable subset of registrants?

6 A. I would think it would, yes. I have no reason to
7 doubt Mr. Caskey.

8 Q. Okay. Now, let's look at the two sentences
9 before that. Could you read those two sentences?

10 A. "Currently there are 331,199 persons who
11 registered to vote between January 1st, 2013 and May
12 24th, 2016. Of that total, 136,863 persons are 18 to
13 29 years of age." And then the next sentence is, "From
14 January 1, 2011 through December 31st, 2012, there were
15 254,043 persons who registered to vote."

16 Q. Okay. So is it your understanding, as you read
17 that e-mail, that the first sentence refers to current
18 numbers in the ELVIS database of which there is no
19 uncertainty; correct?

20 A. I -- again, I have no reason to doubt anything
21 Mr. Caskey said. It's what -- I assumed they were the
22 current numbers.

23 Q. And so starting from the second sentence, is it
24 your impression from the second sentence he had to
25 calculate using birth dates who was of the right age

1 during that period?

2 A. Well, he says that at the end. So I'm assuming
3 that's sort of how he got there.

4 Q. And do you have any reason to believe using birth
5 dates to figure out how old somebody was at a time in
6 the past was somehow inherently unreliable?

7 A. No, I have no reason to think that. Birth dates
8 is how you calculate age, unfortunately.

9 Q. You were asked a -- a question about Figure
10 No. 1. Let's look at that in your report. And there
11 was considerable back and forth between you and opposing
12 counsel about this. I just want to make clear that you
13 have the opportunity to get your response.

14 Is it your statement that these numbers are
15 the total number of people who were registered in the
16 respective years regardless of when they registered; is
17 that correct?

18 A. Yes, that's correct. It's not total number.
19 Remember, it's a percentage of people, percentage of --
20 percentage of 18 and older American citizens.

21 Q. I think opposing counsel was trying to get you to
22 -- I don't know if she was trying to get you to admit
23 it, but she was suggesting that these numbers might not
24 be an overall number of people -- percentages of
25 eligible population registered but that it was a number

1 reflecting people registered at certain times.

2 And so I want to just be clear is it these
3 -- is it your testimony these are total number
4 registered at that particular snapshot at time?

5 A. Yes, the total number of citizens registered at
6 that time were 18 and over.

7 Q. Okay. Thank you. So both opposing counsel asked
8 you why -- or I guess the first opposing counsel asked
9 you why, second opposing counsel perhaps suggested why
10 not look at 2012 versus 2016. Do you recall?

11 A. I do remember that.

12 Q. And what were the reasons that you didn't do
13 that?

14 A. I didn't have the 2016 data. It was not
15 available when I -- when I wrote this report, the most
16 recent federal election. Which means that the current
17 -- the census data that was available was 2014. So
18 that's why I used 2010 and 2014.

19 Q. If you had attempted to do a supplementary report
20 that looked at 2016, would the preliminary injunction
21 effected in this court have affected the 2016 numbers?

22 A. Well, that's a good point. The law is no longer
23 fully implemented, as I understand it. And so now we
24 have a confounding factor that would not allow us to
25 evaluate the likely impact of the law. So probably is

1 the case that only '10 and '14 are the only off-year
2 federal elections that we would be able to look at.

3 Q. Opposing counsel then asked you why you didn't
4 control for education in comparing 2010 to 2014, and you
5 said you needed to clarify further when she insisted
6 that you give a yes or no answer. Could you clarify,
7 please?

8 A. Right. So this gets to the point, but I think
9 Your Honor summarized the methodology very clearly. I'm
10 comparing the same state to itself. So I'm not trying
11 to figure out why people voted or why they don't vote or
12 why an individual votes. I'm just comparing Kansas to
13 itself.

14 And states change very little with -- just
15 in a four-year period. So that's why I'm looking at --
16 that's why I -- that's all I was trying to say, that
17 education is -- is -- it's something that affects
18 individual turnout but I'm just trying to compare Kansas
19 to itself.

20 Q. If I can understand, I think I get what you're
21 saying. You're saying -- correct me if I'm wrong. Are
22 you saying that the percentage of people who have a
23 college education in Kansas in 2010 versus had a college
24 education in Kansas in 2014 is not something that's
25 likely to change a lot from one cycle to the next; is

1 that correct?

2 A. Yeah. Specifically with the current population
3 survey, it's not very clear whether you would see a
4 statistical difference. It changes so little from year
5 to year.

6 Q. If you were comparing one state to another and
7 you were just saying what state has the higher turnout
8 out of the blue, you might want to look at education?

9 A. Right, that was exactly the point. That if
10 you're comparing differences across states in their
11 turnout, not their trend, not their change in these
12 elections, then you would want to know a lot more about
13 the individual composition of the state. When you're
14 comparing the state to itself, that's a different
15 question.

16 Q. She asked a similar question, opposing counsel
17 did, with respect to whether you controlled for age, and
18 you also insisted that you wanted to clarify your answer
19 there. Could you do so.

20 A. Yes. So as we recalled, in Table 1 I do an
21 analysis of young people. So I specifically take
22 everyone else out and focus all on young to see what
23 happened in Kansas based on these data. And, again, we
24 don't see a statistically significant change in the
25 state of Kansas.

1 Nationally there was. There was generally
2 less interest in the election among young people in
3 terms of voting in 2014 but that -- what we don't see
4 that same -- quite that same trend in Kansas.

5 Q. So does that mean that, with respect to young
6 voters, turnout held steady in Kansas and any -- any
7 change you saw was not statistically significant. But
8 versus the entire country, turnout dropped among young
9 voters?

10 A. That's correct.

11 Q. Now, when she says you did not control for age,
12 how would you -- how do you control for age when you're
13 actually looking specifically at age? I'm not quite
14 sure I understand.

15 A. Yeah, I'm not quite sure I understood the
16 question either. But when I looked specifically at age,
17 I didn't find a statistically significant change in
18 Kansas. That's the results.

19 Q. So it wouldn't make sense to say you control for
20 something you're specifically looking at?

21 A. Or you could say you're controlling for it by
22 looking only at it.

23 Q. Okay.

24 A. So --

25 Q. So in a sense you would say you were controlling

1 for age in that sense?

2 A. In the sense I'm only looking at age and I'm
3 trying to see whether just young people had a change in
4 their -- in their vote or their registration.

5 Q. Opposing counsel then asked why -- if you were
6 not controlling for Get Out the Vote efforts and you
7 said you wanted to clarify in response to her question
8 there.

9 A. Well, the thing of it is is that -- the
10 assumption here is that Get Out the Vote has some sort
11 of predictable outcome, it's going to raise voter
12 turnout. And the evidence is mixed for that just in the
13 same way that evidence is mixed on the closeness of a
14 race and its impact on turnout.

15 Turnout is not necessarily affected by Get
16 Out the Vote drives even though the people who do it
17 feel strongly about it, and it's the same with
18 closeness.

19 Q. And I think you said in your direct examination
20 that the fact that there was a statewide gubernatorial
21 race in all three states in both years would have some
22 similar effect. Could you, please, explain that?

23 A. Yeah, yeah. So there is a statewide race in all
24 three of the states that are in this area. So that
25 makes them more similar. As I say, it's a

1 quasiexperimental design. So you might point to some
2 other difference between the states, the weather or any
3 other number of things.

4 But the point here is that these are both
5 off-year federal elections and both have statewide
6 gubernatorial races. And so when we look at Kansas, we
7 don't see a statistically significant change.

8 Q. And then she also asked the same question with
9 respect to competitiveness asking why you didn't control
10 for -- or asking if you did control for competitiveness
11 and you said you'd want to explain. Competitiveness of
12 the race, I believe she was referring to.

13 A. Right. So what I said was that --

14 The implicit question was that it -- that --
15 that that has a clear impact on a race. And
16 competitiveness does not necessarily increase turnout.

17 Q. Okay. And then let's look at an exhibit that was
18 introduced into evidence and that was your Center For
19 Immigration Study's piece dated January 10, 2018. Do
20 you see that, Non-Citizens Committed a Disproportionate
21 Share of Federal Crimes?

22 Can you clarify your findings? I believe
23 you said there was additional information you wanted to
24 present in response to your questioning by opposing
25 counsel.

1 A. Right. So when she originally asked me the
2 question, it sounded like she was asking me -- and I may
3 have misunderstood her -- was that -- that I was saying
4 that a majority or that most of the crime committed
5 by -- at the federal level was done by non-citizens or
6 illegal immigrants. And that's certainly not what I
7 report here.

8 What I report is 21 percent of those
9 convicted of non-immigration crimes were non-citizens.
10 Since non-citizens are about 7 percent of the adult
11 population in the United States, they're about 2. --
12 they're -- I'm sorry, they're about 9 percent. So let
13 me get the percentages here. I can't remember off the
14 top of my head. They're about 2 point times higher than
15 their share of the total population.

16 Q. You mean -- you just said they're about two point
17 times?

18 A. 2.5 times. I'm sorry.

19 Q. Okay.

20 A. So that -- that's -- that's the purpose of this.
21 That is the only purpose of this.

22 And then, of course, the article goes on to
23 say that the federal system is not necessarily
24 indicative of the -- of the local law where most law
25 enforcement occurs, and you can't just take the federal

1 numbers and extrapolate to -- to the local level, but
2 that in the one place where we have good statistics on
3 non-citizens is at the federal level. And here we see
4 that they say commit a disparate share of crimes or
5 convicted of a sentence in a share of crimes out of
6 proportion to their share of the population.

7 And it's not my research. I'm just stating,
8 you know, what the sentencing -- I believe the source
9 was -- I think it's down here. Where is it here? It's
10 the Sentencing Commission. Yes, the U.S. Sentencing
11 Commission. So this is their -- their data.

12 Q. Now, I want to go to a line of questioning that
13 opposing counsel asked to try to impeach, I guess,
14 somebody else's credibility, but a person affected in
15 the formation of the Center for Immigration Studies.

16 Do you recall opposing counsel asked you
17 about a certain Mr. Tanton, of one of several people who
18 may have been involved in the founding of CIS?

19 A. Yes, I do recall.

20 Q. I believe you testified you didn't know what
21 effect he had at that time?

22 A. I did. I was not part of the center at that
23 time.

24 Q. Who is on the -- who is part of the board of
25 directors of CIS now?

1 A. Yes. Well, the chairman of the board is Peter
2 Nunez. He was the first Hispanic American who served as
3 U.S. Attorney in San Diego. Also on our board is
4 Mr. T. Willard Fair, who is the president of the Miami
5 Urban League. In addition to that, on our board is
6 Professor Jan Ting, the first Asian American to run for
7 the U.S. senate in the state of Delaware.

8 We have a number of people of color on our
9 board. It's a very diverse board. So even the
10 suggestion that somehow, you know, the center is
11 motivated by some kind of racial or ethnic animus is
12 outrageous.

13 Q. And the gentleman you mentioned who is the former
14 president of the Miami Urban League, is he
15 African-American?

16 A. He is.

17 Q. So you have a -- multiple individuals on the
18 board who are non-white?

19 A. Yes. I didn't mention Dr. Frank Morris, who
20 heads the Congressional Caucus Research Foundation as
21 well, who is African-American.

22 Q. In your entire career at CIS, has the
23 organization ever taken a view or a -- a position that
24 you regarded to be based on race?

25 A. No, absolutely not. I've testified before the

1 U.S. Commission on Civil Rights and they published a
2 chapter in a book that they put out that I wrote for
3 them on -- on some issues. So --

4 Q. That you wrote --

5 A. That I wrote for the U.S. Commission on Civil
6 Rights and they published it. I would never be part of
7 an organization that is motivated by racial or ethnic
8 animus.

9 Q. And then opposing counsel presented you with
10 something written by an organization with the acronym
11 SPLC. Under your -- in your understanding, is that
12 organization opposed to the enforcement of immigration
13 laws generally?

14 A. Yes, I would say that probably does categorize
15 them.

16 Q. Would you say that that organization is opposed
17 to voter security laws, like photo ID or proof of
18 citizenship?

19 A. I -- I am not sure. I can't say. I would guess.
20 I don't know. I'm sorry.

21 Q. Does that organization frequently attempt to
22 smear people with whom they disagree?

23 A. Yes, they --

24 MS. LIU: Objection.

25 THE WITNESS: -- they do.

1 MS. LIU: It's argumentive. He's letting --
2 and he's leading his witness.

3 THE COURT: Overruled. You can answer if
4 you can.

5 THE WITNESS: Yes, the Southern Poverty Law
6 Center routinely takes people that they disagree with
7 and tries to taint them with some kind of racist brush.

8 BY MR. KOBACH:

9 Q. What effect did the -- did Miss Barbara Jordan
10 have on the mission of CIS?

11 A. Yes. Barbara Jordan, as we pointed out in our
12 publications, headed a commission in the 1990s. She was
13 appointed by President Clinton. She was the first
14 African-American woman elected from the south and she
15 had a series of policy recommendations and it would be
16 about where immigration policies should go and about
17 enforcement priorities and things like that. And in
18 many ways our organization tends to adhere to the vision
19 that she had about U.S. immigration.

20 Q. You were also asked later in the cross
21 examination of opposing counsel whether you controlled
22 for photo ID laws enacted in a few states between the
23 2010-cycle and the 2014-cycle, which I -- I assume they
24 are claiming pushed turnout down. Is that your
25 understanding of what they're saying?

1 A. I -- I guess so. I'm not sure.

2 Q. Were there also states between those two years
3 that adopted all vote by mail election laws such as
4 Washington and Colorado?

5 A. Yes, that is my understanding. Some states have
6 made it much more easy and have more permissive laws
7 during that time period.

8 Q. So given the fact that there are laws going both
9 ways, is there any real way to try to control for that
10 when you look at the nationwide statistics?

11 A. Not if you're looking at the nationwide
12 statistics that I reported here.

13 Q. The opposing counsel, she also asked if
14 administrative data is perfect, or she may have asked
15 the specific administrative data in this case is
16 perfect. Do you recall?

17 A. I do recall that, yes.

18 Q. Do the opposing experts also rely on
19 administrative data?

20 A. Yes, that's correct, particularly those people on
21 the suspense list for Professor McDonald's paper.

22 Q. Opposing counsel, Mr. Johnson, then asked you a
23 number of questions and -- okay.

24 So he asked you a question about the
25 statistical -- the -- we were talking -- your assertion

1 that there was no statistical significant change in
2 participation in Kansas from 2010 to 2014.

3 So comparing that again to nationally, is
4 your -- is your point the -- when you say there's no
5 statistically significant change, you're saying that
6 there was change but it was so minor that it can't be
7 regarded as a statistically significant one; is that
8 correct?

9 MR. JOHNSON: Objection.

10 THE WITNESS: Yes.

11 MR. JOHNSON: Leading and suggestive.

12 BY MR. KOBACH:

13 Q. Can you characterize what that means?

14 MR. JOHNSON: Now that he's already told him
15 what to say.

16 THE COURT: All right. So noted.

17 THE WITNESS: That -- that the change in
18 Kansas in registration and voting that we see was not
19 large enough to be statistically significant. It was
20 too small.

21 BY MR. KOBACH:

22 Q. I wish I knew enough about this topic to try to
23 coach you what to say. I can barely even keep up with
24 you.

25 Mr. Johnson also talked about the 2014 races

1 suggesting that they were especially important. Do you
2 remember that?

3 A. I do.

4 Q. But he didn't ask you about the 2010 races to see
5 if there was -- if they were important as well, did he?

6 A. I don't recall he did.

7 Q. Do -- to the extent that a close race can
8 hypothetically push turnout upward, can an open seat, a
9 race for an open seat also hypothetically push turnout
10 upward?

11 A. It could. It could hypothetically.

12 Q. Are you aware that Kansas had an open governor's
13 seat in 2010?

14 A. I think that sounds right to me, yes.

15 Q. Did Kansas have an open U.S. senate race in 2010?

16 A. I believe that's correct, yes.

17 Q. Were three of Kansas' four congressional U.S.
18 house races open in 2010?

19 A. I believe that's correct, yes.

20 Q. So speaking hypothetically, could those have been
21 very powerful pushes for turnout being higher in 2010
22 that weren't present in 2014?

23 A. Hypothetically, sure, they could have had that
24 effect.

25 Q. And on that same topic of open races

1 hypothetically pushing up turnout, look at one of the
2 two comparison states, Oklahoma. Do you recall if
3 Oklahoma had a open senate race because of a -- open
4 senate seat because of Coburn's resignation?

5 A. That sounds right, yes, there was an open seat
6 there too.

7 Q. So if an open seat has any effect -- increasing
8 effect on turnout, would it be fair to say Oklahoma
9 would have had that too?

10 A. Hypothetically, sure, that's a possible impact.

11 MR. KOBACH: No further questions. Thank
12 you.

13 MS. LIU: A brief recross, Your Honor.

14 THE COURT: Proceed.

15 RECCROSS EXAMINATION

16 BY MS. LIU:

17 Q. Dr. Camarota, you haven't personally analyzed
18 whether competitiveness or Get Out the Vote impact voter
19 registration or voter turnout; correct?

20 A. I have not personally analyzed that.

21 Q. And you don't cite in your report any research or
22 academic literature to support your view competitiveness
23 or Get Out the Vote efforts may not increase voter
24 registration or turnout; correct?

25 A. In my deposition I gave you an example.

1 Q. In your report, Dr. Camarota?

2 A. I don't say anything in the report.

3 MS. LIU: No further questions.

4 MR. JOHNSON: Your Honor, I think I just
5 have one.

6 RE CROSS EXAMINATION

7 BY MR. JOHNSON:

8 Q. Dr. Camarota, on redirect examination by counsel
9 for the defendant, you were asked whether an Oklahoma
10 senate race could have impacted your conclusions; is
11 that correct? Do you remember that?

12 A. Is it whether an Oklahoma senate race could have
13 increased voters?

14 Q. Yes.

15 A. And I said hypothetically could have.

16 Q. But you didn't take any of that into account, did
17 you? You only look at Kansas -- the Kansas numbers
18 between 2010 and 2014; is that right?

19 A. I looked at the Kansas numbers 2010 and 2014.

20 MR. JOHNSON: Thank you. That was two
21 questions, sorry.

22 THE COURT: All right. May Dr. Camarota be
23 excused?

24 MR. KOBACH: Yes.

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

1 THE WITNESS: Thank you, ma'am.

2 THE COURT: His testimony remains under
3 advisement. All right. Are you going to call
4 Miss French now?

5 MR. KOBACH: Yeah. Yes, Your Honor.

6 THE COURT: I'll note a continuing objection
7 by plaintiffs to this testimony? Continuing objection?

8 MR. STEINER: Your Honor, I think we are
9 perfectly prepared to abide by the court's rulings from
10 this morning. So --

11 THE COURT: No, I was just asking if you
12 want the record to reflect a continuing objection.

13 MR. STEINER: We're happy to have
14 Miss French testify.

15 THE COURT: Okay.

16 MR. JOHNSON: And I have no objection to her
17 testimony either.

18 THE COURT: All right.

19 COURTROOM DEPUTY: Ms. French, if you could
20 just raise your right hand for me, please.

21 JO CAROLYN FRENCH
22 called as a witness on behalf of the Defendant, having
23 first been duly sworn, testified as follows:

24 THE WITNESS: You may have to help me get up
25 here. This is a high step.

1 THE COURT: The other side. The other side.
2 Miss French, when you leave the stand, go on the other
3 side. The step is not as high on the -- your right
4 side.

5 MR. KOBACH: There's a step over here,
6 ma'am.

7 THE WITNESS: Okay. Thank you. I didn't
8 see that side. I didn't have any glasses on.

9 MR. KOBACH: Do you have your glasses with
10 you.

11 THE WITNESS: I do have my glasses with me.

12 THE COURT: Proceed.

13 DIRECT EXAMINATION

14 BY MR. KOBACH:

15 Q. Ms. French, thank you very much for coming in on
16 short notice from Osage City. We appreciate you being
17 willing to do that. Can you spell your name for the
18 court?

19 A. J-0 -- my whole name?

20 Q. Yes.

21 A. C-A-R-O-L-Y-N, French, F R-E-N-C-H.

22 Q. Your full name is Jo Carolyn French?

23 A. Correct.

24 Q. What is your address?

25 A. 110 --

1 THE COURT: No, no, stop. No home addresses
2 in the record.

3 MR. KOBACH: Sorry, Your Honor.

4 BY MR. KOBACH:

5 Q. What year were you born, Miss French?

6 A. 19 and 41.

7 Q. And where were you born, Ms. French?

8 A. Where?

9 Q. Where?

10 A. In Leonard, Arkansas, a little farming community.

11 Q. Okay. And I'm going to show you a series of
12 documents. I think you've seen a few of these.

13 (Reporter asked witness to use microphone.)

14 THE WITNESS: You mean you can't hear? I
15 have a teacher's voice and you can't hear? Okay. I
16 will talk louder and into the mic. I only use a mic
17 when I sing.

18 MR. KOBACH: Your Honor, I believe this
19 exhibit was introduced into evidence in -- when we
20 talked about it at the beginning of the day.

21 THE COURT: It's part of Exhibit 150; is
22 that correct?

23 MR. KOBACH: That's correct.

24 THE COURT: All right.

25 MR. KOBACH: This is the portion that deals

1 with Miss French.

2 MR. STEINER: Your Honor, just for the
3 record, I think this is an unredacted portion of parts
4 of 150. What we put into the record, including
5 Miss French's records in 150, is appropriately redacted
6 documents.

7 MR. KOBACH: And I won't put anything up on
8 the screen that is sensitive.

9 BY MR. KOBACH:

10 Q. Miss French, can you look at just --

11 MR. STEINER: Mr. Kobach, the ELVIS records,
12 I think, are not part of Exhibit 150.

13 MR. KOBACH: Were they not?

14 Then, Your Honor, I'd like to move the
15 admission of this exhibit which is the same as 150 but I
16 guess it includes the ELVIS records, the two pages of
17 ELVIS records on the front.

18 MR. JOHNSON: No objection.

19 THE COURT: All right. We'll need to mark
20 this as exhibit -- why don't we mark it as Exhibit 150A.
21 And it's unredacted, so it is going to need to be
22 redacted.

23 MR. KOBACH: Yes, Your Honor.

24 THE COURT: And it is Miss French's file,
25 including ELVIS records, two pages of ELVIS records.

1 All right.

2 MR. KOBACH: Yes, Your Honor.

3 THE COURT: All right. Admitted.

4 BY MR. KOBACH:

5 Q. Miss French, can you -- do you have your reading
6 glasses on? Can you look at this, please, and just look
7 at the address. Don't read it aloud, but see if the
8 address on this first page comes right below the name
9 section, if that looks like your address?

10 A. Well, yes, it is.

11 Q. Okay. So we're going to return to this in just a
12 minute.

13 But so you were saying you were born in
14 Arkansas. Where did you go -- tell us about your work
15 life and where you lived, if you moved anywhere after?

16 A. My work life?

17 Q. Well, just tell me where -- tell us where you
18 lived over the course of your life.

19 A. Well, I started out on the farm. We raised
20 cotton, so guess who picked cotton up until I was a
21 junior and ready to go into the college? And I picked
22 300 pounds a day. So if you can imagine just a little
23 dab of the cotton that you can pick in a bag, you add
24 another 299 pounds to that, okay. And that's what I did
25 to help with the family. I helped to pay my -- for my

1 clothing, my schooling, and from then on I went to
2 college.

3 Graduated from Arkansas State University and
4 got started teaching school and I loved it. But then it
5 became a job, and I left it after 13 and a half years.
6 It took somebody more special than me to tolerate and I
7 -- I went home to mom for a while.

8 So she started telling me that I need to go
9 to work. And so I just got on the phone and called my
10 -- my cousin in Denver and I said, "I need to come see
11 you. I need a job. Do you have any out there?"

12 "Yes."

13 "Can I live with you?"

14 "Yes."

15 And I lived there for 35 years. I loved it.
16 I was a -- assistant manager for one of the stores
17 there, a chain store. And I even learned automotive in
18 one of the stores. I found out that Volkswagens don't
19 have a radiator. Didn't know that, did you?

20 Okay. So, anyway, I worked with -- with
21 that for five years until I got worn out with that too.
22 We had different supervisors that would come in. One
23 would say, "I want the Levis over there where they
24 were." Well, then here -- we do that and then here
25 comes another one in that says, "I wanted those Levis

1 moved over here." I said, "Why don't you all get
2 together and decide what you want because this is all we
3 do all day is change the Levis."

4 So anyway --

5 THE COURT: What was the question?

6 MR. KOBACH: I was asking about --

7 BY MR. KOBACH:

8 Q. The question, Your Honor, I was asking about her
9 work history and where she lived.

10 A. From then on I became a Sears employee. And
11 believe it or not, I became a technician. And that
12 meant I had to go to people's homes and I did not like
13 it. I got bit by a dog and they'd have spiders and
14 stuff in their windows and it would scare me and but I
15 had to do what I had to do. And they put me back in the
16 -- in the main --

17 Q. Well, let me -- let me jump ahead a little bit
18 then. When did you move to Kansas and why?

19 A. I moved to Kansas after I retired from working
20 with T Mobile.

21 Q. And when was that approximately?

22 A. I was 63 years old. That's all I can tell you.

23 Q. Well, can you tell us the month and year that you
24 moved back to Kansas -- or you moved to Kansas, I should
25 say?

1 A. When I moved to Kansas, it was November the 29th,
2 2015.

3 Q. And why --

4 A. So --

5 Q. -- why did you move to Kansas in particular?

6 A. Well, I was living by myself. My roommate had
7 metastasized cancer and she passed away. To live in
8 Denver was over a thousand dollars a month. Now that
9 didn't cover a whole lot but not -- not enough food
10 anyway.

11 So I had friends here that I lived with in
12 Denver that moved here because of their grandkids. I
13 had no idea that I would be in a culture shock, but I
14 was and it's been quite different.

15 Q. Okay. So do you live now with friends in Osage
16 City, Kansas?

17 A. Yes.

18 Q. Do you own a car?

19 A. Yes, I do. It's --

20 Q. Do you drive?

21 A. -- 13 years old and doesn't even have
22 50,000 miles on it yet.

23 Q. That ought to have pretty good resale then.

24 A. Yeah.

25 Q. Do you sometimes drive your car?

1 A. Oh, yes, I do.

2 Q. Did you at -- let's now get to the specific issue
3 of this case. After you came to Kansas in November of
4 2015, did you at one -- at some point determine that you
5 wanted to get a driver's license and register to vote?

6 A. I needed -- I needed the driver's license because
7 I was driving. And it was strange because I couldn't
8 get my driver's license because I didn't have a birth
9 certificate. I lost it through all the years of moving.

10 But I could get my car tags. Now, what's
11 wrong with this picture, folks? I've got Kansas tags
12 and Colorado driver's license. Now, what officer that's
13 going to stop me going to take care of that issue? So
14 my concern then, once I had one thing done, I needed --
15 I needed to get my driver's license in order to be a
16 citizen with a picture.

17 Q. And were you also seeking to register to vote in
18 addition --

19 A. Yes, I was --

20 Q. -- to getting your license?

21 A. -- but see I -- states are different. I was used
22 to just walking into any of the -- of the places, turn
23 in your license and they would give you a new state
24 license.

25 Q. So where did you go to get your new driver's

1 license for Kansas and to register to vote in Kansas?

2 A. I went to the -- I think it was the county seat.
3 It was Lyndon. I'm not really -- see, I'm not familiar
4 that well with -- with the state yet. So I just went
5 where people told me to go. And that's where I went and
6 these folks told me -- I put my license down there and
7 they said, "We're sorry, we can't take your license. We
8 need your birth certificate."

9 I said, "I don't have a birth certificate
10 because I've lost it through all the moving."

11 So then the procedure started and that's
12 when we started working to get the information that I
13 needed to get what I needed to drive.

14 Q. Did someone at the Lyndon county seat office
15 you're talking about, did someone there tell you to call
16 the Secretary of State's Office?

17 A. They informed me that this is where I had to go
18 to get registered and my license.

19 Q. And did you call the Secretary of State's Office?

20 A. No, I don't think I did. That was a long --
21 well, maybe I did. I had a phone number.

22 Q. Did someone from the Secretary of State's Office
23 call you?

24 A. Once I got started with it.

25 Q. Okay. And do you remember the name of that

1 person who called you?

2 A. Eric.

3 Q. Was that Eric --

4 A. Eric.

5 Q. Would that be Eric Rucker, if you know?

6 A. Yes, it is.

7 Q. And so did Mr. Rucker explain to you what you
8 would need to do to prove your citizenship?

9 A. Yes.

10 MS. HA: Objection. Leading.

11 THE COURT: What did Mr. Rucker tell you?

12 THE WITNESS: He informed me that we could
13 -- they could use the family Bible that had the listing
14 of my name in there and birth date and my -- my parents,
15 that I could have my baptism report, and I could have my
16 high school certificate.

17 BY MR. KOBACH:

18 Q. And did you have the family Bible in your
19 possession when you spoke to Mr. Rucker --

20 A. Yes --

21 Q. -- on the phone?

22 A. -- because a copy was made.

23 Q. A copy?

24 A. And all -- and this is sent to -- I would not
25 give up my Bible.

1 Q. So are you saying you made a copy to give to
2 Mr. Rucker?

3 A. Yes.

4 Q. Okay. And -- and the baptism document, did you
5 have it in your possession at the time?

6 A. I mailed it to him.

7 Q. Did you -- did you have to get it from anywhere?

8 A. Yes.

9 Q. And where did you get it from?

10 A. I got that from a lady that had our baptismal
11 information, because our church out in the country
12 closed and all the records were moved to the town
13 church.

14 Q. Okay. And --

15 A. And so --

16 Q. Sorry, go ahead.

17 A. So all of this that I asked, she had to or she --
18 she knew where it was because she was in charge of all
19 that stuff, you know.

20 Q. And how long did it take her to send a copy to
21 you?

22 A. About a week. You know, the mail, it's slow. It
23 -- to me it wasn't any big deal that it took five days
24 or three days. It's the fact that I got it.

25 Q. And I think you said, if I recall, you got a

1 school document too; is that right?

2 A. My transcript.

3 Q. And how did you get that?

4 A. I called the school and asked the secretary.

5 Q. And about how week -- how long did it take for
6 them to send that to you?

7 A. Not long because they had all that information on
8 file and all she had to do was go into the file and pull
9 it out. She didn't have to go through a hundred boxes
10 of information. And it was just done and I got it very
11 quickly. I didn't -- I didn't suffer at all getting
12 this.

13 Q. Roughly how long did it take you to get that
14 school document sent to you?

15 A. Three days, four. I don't know. It -- she just
16 sent it the day that I asked for it.

17 Q. Okay. Ms. French, could you take a quick look at
18 this packet of papers I've given you and look about
19 halfway through there's a -- a document. It's got
20 "confidential" marked on it. It's got a little black
21 box that says RCD in the right-hand corner. It's about
22 halfway through. Here let me help you.

23 A. Oh, okay.

24 Q. This document right here.

25 A. Okay. All right.

1 Q. Ma'am, is that your signature on the document?

2 A. Yes, sir, it is.

3 Q. But is it your handwriting that filled out the
4 information --

5 A. No.

6 Q. -- right above your signature?

7 A. No.

8 Q. Do you know who filled that out for you?

9 A. It could have been Susan because it has her name
10 and the e-mail -- her e-mail.

11 Q. And who is Susan?

12 A. That's the family that I live with --

13 Q. Okay. And --

14 A. -- and she was with me. She was with me through
15 all of this procedure.

16 Q. Okay. And it has a date next to your signature
17 of 2/12/16, so February 12, '16?

18 A. Correct.

19 Q. Does that sound like the date you signed this?

20 A. You know, it's a long time, sir, and I really
21 can't remember all of this because I had so many things.
22 Moving here with the issues that I had with my health, I
23 had doctor's appointments and paperwork and everything
24 that I had to fill out for them. You know, I have no
25 idea, sir.

1 Q. Okay. Well, let's then look at another document.
2 If you go to the third page of the packet, it's a
3 document -- it's a document that has the Secretary of
4 State's letterhead on it. Third page from the front?

5 A. Third from the front.

6 Q. Yeah.

7 A. All right. Okay.

8 Q. And do you see the -- not the date of the letter
9 but the -- the date it says in the -- in the text it
10 says "an election meeting held on" date. Do you see the
11 date there?

12 A. July 25?

13 Q. Yes.

14 A. Yes.

15 Q. It looks like there's a typo. It says the year
16 206. I don't think Kansas was in existence then. But
17 you understand that to be 2016?

18 A. Right.

19 Q. And if we go to -- the next page do you see where
20 it says on July 25th, 2016 the State Election Board? Do
21 you see that?

22 A. Yes.

23 Q. Does that sound about the date that you came to
24 the Secretary of State's Office?

25 A. It could have very well been.

1 Q. Okay. And just to recap, is it correct you sent
2 three documents to the Secretary of State's Office?

3 A. Yes, I did.

4 Q. And what were those documents again?

5 A. The Bible, my baptismal, and my transcript.

6 Q. Okay. And if you flip the page over, you'll see
7 that there's a long paragraph that starts with the
8 number three and it talks about some other documents
9 there too, including your driver's license --

10 A. Yes.

11 Q. -- a document from ancestry and 1940 federal
12 census form, I guess. Did -- did anyone from the
13 Secretary of State's Office help you get some other
14 documents or how did -- do any of these ring a bell for
15 you?

16 A. The only one I wasn't familiar with was the
17 census of 19 and 40.

18 Q. Is that one on there?

19 A. It is on that list, yes. I wasn't familiar with
20 that one. I figure they had to have that to prove my
21 parents were citizens.

22 Q. Did -- did Eric, the person you spoke to on the
23 phone, Eric Rucker, did he say he was going to get some
24 other documents for you?

25 A. No.

1 Q. So you don't know who got those other documents?

2 A. No.

3 Q. You didn't bring them?

4 A. I didn't bring the -- the one on the census.

5 Q. Okay. So let's talk about that hearing.

6 Well, first of all, the April -- the -- the
7 date there of the hearing, July 25th, did you, in your
8 discussions with someone from the Secretary of State's
9 Office, did you pick a date that was convenient for you
10 to come to Topeka?

11 A. I believe Eric called and asked me what would be
12 convenient, because I had lots of doctors' appointments.
13 And it was worked out that I could come on a day that I
14 was free. There was never any issue about any date
15 because I would have not interfered with that.

16 Q. And was it your intention to get elected before
17 -- sorry. Get registered before a certain election or
18 by a certain date?

19 A. Oh, yes. Yes.

20 Q. You could explain if you want.

21 A. Well, I'll tell you what, I am a voter. I
22 started out in one party and changed to the other one,
23 and that is my privilege as being a citizen of the
24 United States. And it's my privilege to be that and I
25 -- I just can't imagine not having that right. And I

1 worked very hard to get that privilege because I -- I --
2 most -- I voted on most of the -- of the issues or most
3 of the presidential elections because they're the people
4 who are representing me.

5 Q. So just to make sure I understand, were you
6 wanting to make sure you were registered before the 2016
7 election?

8 A. Yes, I was. And I worked very hard to get this
9 done and your -- the Office of the Secretary of State
10 worked with me to get this done ASAP because I was so
11 eager to get it done. I just -- I couldn't wait. I
12 wanted it to be done now, you know. And it wasn't that
13 anybody wasn't doing their part. I just wanted it.

14 Q. So how did the citizenship hearing go when you
15 went to the Secretary of State's Office?

16 A. It was very relaxed. We got to know each other
17 and it was about a 30- to 35-minute meeting and I
18 enjoyed it and we -- we discussed what I was looking for
19 and wanted to do and everybody agreed to that. No one
20 had a problem with it and it just went well.

21 Q. Was it difficult?

22 A. No.

23 Q. Was it difficult to find the three documents
24 you'd brought to the meeting --

25 A. No because --

1 Q. -- or sent to the Secretary?

2 A. -- I knew -- Eric told me what I needed and I
3 knew exactly where I had to go to get the information.

4 Q. Do you think it was good that you had to prove
5 your citizenship?

6 A. Well, I lived here all my life. It was kind of
7 funny that I wasn't a citizen. But since I didn't have
8 the proper documentation, then I had to do what had to
9 be done to prove that I was a legal citizen in order to
10 vote. Voting was my thing on the -- the 2016.

11 Q. So in retrospect, as you look at that hearing, do
12 you think that Kansas requiring proof of citizenship is
13 something that the states should do?

14 A. Now please repeat.

15 Q. Do you -- looking back, do you think it's good
16 that Kansas requires proof of citizenship?

17 A. Yes, I do. I think --

18 MS. HA: Objection, Your Honor. Not
19 relevant.

20 THE COURT: Overruled.

21 BY MR. KOBACH:

22 Q. You can go ahead and answer.

23 A. I think every state in the union in the United
24 States should have this type of documentation to
25 eliminate fraud.

1 Q. And then I think this is my final question.
2 Obviously you went out of your way to be here today. Do
3 you think it was important for you to testify about this
4 issue in court?

5 A. Yes, I do, sir.

6 Q. And why is that?

7 A. Why?

8 Q. Yes.

9 A. Because it is my privilege and it is my right to
10 defend me and my country and our laws.

11 Q. Thank you.

12 MR. KOBACH: No further questions.

13 CROSS EXAMINATION

14 BY MS. HA:

15 Q. Hi, Miss French. It's nice to see you again.
16 You -- you said you moved from Denver to Kansas in
17 November 2015; right?

18 A. Correct.

19 Q. And you -- in February 2016, that's when you went
20 to register to vote?

21 A. In that process, yes.

22 Q. And you were a registered voter when you were in
23 Colorado?

24 A. Yes.

25 Q. Were you also a registered voter when you were in

1 Arkansas?

2 A. Yes.

3 Q. In those states, did you encounter any issues
4 when you went to go register to vote?

5 A. No. In Arkansas you had to pay poll tax. Now, I
6 don't know if they still do that or not, but you had to
7 pay the poll tax in order to vote.

8 Q. But to register to vote in those states, you can
9 go with your driver's license; right?

10 A. That's correct.

11 Q. So let's talk about your attempt to register in
12 February 2016 in Kansas. You weren't able to get your
13 registration done in February; right?

14 A. Correct.

15 Q. And -- and you testified earlier about how you
16 spoke to Eric Rucker from the Secretary of State's
17 Office?

18 A. Yes.

19 Q. And he told you that you had to provide documents
20 to prove your citizenship; right?

21 A. Correct. They had to have some documentation in
22 order for it to be legal.

23 Q. And you were born in Arkansas; right?

24 A. Correct.

25 Q. And you were born at home?

1 A. Yes.

2 Q. So you had a -- did you have a birth certificate?

3 A. Yes, I did. But back then, being born at home,
4 you didn't go to the hospital. So, therefore, my
5 grandmother was the midwife.

6 Q. And was your birth certificate registered with
7 the State of Arkansas?

8 A. No.

9 Q. And at some point you lost your birth
10 certificate?

11 A. Well, when you moved as often as I did, then you
12 lose stuff and I didn't know I had -- I didn't even look
13 for it, to tell you the truth, because I had to have it
14 when I started teaching to get my Social Security
15 number. And then after that point, I have no idea where
16 it went other than it went in the trash and it got
17 burned. So the State of Arkansas, it was never recorded
18 in the capitol.

19 Q. And when you tried to get your voter registration
20 done in Kansas, Mr. Rucker told you to try to get a copy
21 of your birth certificate; right?

22 A. He asked me to do that. And I says, "I've done
23 that twice, but I will do it again."

24 Q. Okay.

25 A. I did that because he requested it and I didn't

1 want anybody to say I didn't do what you asked me to do.

2 Q. And so how did you do that? Did you call the
3 State of Arkansas?

4 A. I called the State of Arkansas in their
5 information on the -- oh, I don't know what department.

6 Q. All right.

7 A. But, anyway, yes, I called them and told them to
8 check on it and then they sent me a letter. After I
9 paid them \$8, after -- after that, then they sent me the
10 letter that said we don't have a record of your birth
11 certificate.

12 Q. And it was because you didn't have -- they didn't
13 have a copy of your birth certificate that you had to do
14 the citizenship hearing at the Secretary of State's
15 Office; right?

16 A. Yes.

17 Q. And -- and you testified about collecting
18 documents to prove your citizenship. So I'm going to
19 try not to have you repeat that, but I'm just going to
20 ask a couple of clarifying questions to make sure we had
21 it. And just going back to when you contacted the State
22 of Arkansas, why did you have to pay \$8?

23 A. That's their fee for checking into the citizens
24 or the persons file, whatever it is they do.

25 Q. Okay. Even though they ultimately didn't have a

1 copy of it?

2 A. They did not have a copy. And that was the third
3 attempt, and only one was for the State of Kansas. The
4 other two were for other issues.

5 Q. Okay. And -- and so, in preparing for the
6 hearing at the Secretary of State's Office, you were
7 helped by Mr. Rucker who walked you through the process;
8 right?

9 A. Oh, walked me through the process of what?

10 Q. Of what you had to do, what you had to collect?

11 A. I had already done that.

12 Q. Okay. So you -- before --

13 When you testified about collecting
14 documents, such as your family Bible and -- and the
15 record, you submitted some of those documents before
16 July when you went to the hearing; right?

17 A. I don't recall anymore.

18 Q. Okay.

19 A. I don't really know because I -- I did have the
20 three documents. I made copies and I sent them to -- to
21 the Secretary of State's Office.

22 Q. Okay. And the record of your baptism, you were
23 able -- you had to get that from Arkansas?

24 A. Correct.

25 Q. Okay. And you got that from your friend

1 Miss Kaye Huggins (ph)?

2 A. Yes, who was in charge of all of the paperwork
3 that came from our church in the country.

4 Q. So you called her and then she sent you that
5 document?

6 A. Yes. And I asked her -- or I asked -- I think I
7 asked Eric to call her and just talk to her. I wanted
8 him to know the kind of people that were helping me and
9 know that it was all -- I mean, it's -- there wasn't any
10 goofy stuff going on or whatever. I just wanted him to
11 talk to her because she was such a loving person.

12 Q. And you also contacted the Rector's School
13 District in Arkansas to prove that you went to school
14 there; correct?

15 A. Right.

16 Q. And you spoke to the school secretary there?

17 A. Yes.

18 Q. Did you know her at the time --

19 A. No.

20 Q. -- you reached out?

21 And she sent you a record showing you went
22 to school in Arkansas?

23 A. Yes.

24 Q. And it took some time to get that record?

25 A. Three days. I mean, she said that -- that she

1 had all of that on file.

2 Q. Okay.

3 A. So she didn't have to go any -- looking but other
4 than in the computer. So, therefore, what she got out
5 of the computer, made the copy and sent it to me, and I
6 had it within three days.

7 Q. And you also spoke to your cousin, Miss Sherry
8 Doles (ph), who is in Arkansas?

9 A. I wanted him to know I had relatives there.

10 Q. And he helped you gather documents?

11 A. She had nothing to do with that.

12 Q. Okay.

13 A. It was just to let him know that I was who I was
14 and who I said I was.

15 Q. So you provided her information to Mr. Rucker at
16 the Secretary of State's Office?

17 A. I just asked her or had asked him to call her.

18 Q. And you testified that the Secretary of State's
19 Office also helped to pull some records such as the
20 census document; right?

21 A. See, I'm not familiar with that. It has to be to
22 verify the fact that my parents were American citizens.
23 That's the only thing I can figure out, because I didn't
24 do -- I wouldn't even know where to go to get that.

25 Q. Okay. And there was also a reference to a

1 handwritten letter from Miss Kaye Huggins --

2 A. Yes.

3 Q. -- to Mr. Eric. Did you provide that letter?

4 A. No. She wrote that and she sent that to him.

5 Q. And there's also a reference to your Colorado
6 driver's license. Did you provide that to the Secretary
7 of State's Office?

8 A. I don't see any reason why I had to do it,
9 because it wasn't legal in the state of Kansas.

10 Q. And so let's talk about the hearing in the
11 Secretary of State's Office in July 2016. Was it your
12 friend, Miss Susan, who brought you there?

13 A. Yes.

14 Q. You said it's about a 40-minute drive from your
15 home?

16 A. Yeah, just about.

17 Q. It was raining that day; right?

18 A. Yeah.

19 Q. And you said it's hard for you to travel when the
20 weather's bad?

21 A. Yeah. It's kind of hard on my artificial knees
22 and bones.

23 Q. And so Secretary Kobach, the lieutenant governor
24 and a female representative from the attorney general's
25 office were there at the hearing that day; right?

1 A. There were three people. And I know Mr. Kobach
2 and I can't remember the other two people that were
3 sitting up in front of him, because I was concerned
4 about what I was going to say and how I was going to
5 present myself to be a presentable American citizen.

6 Q. And do you remember if Mr. Rucker was also there?

7 A. He was behind me.

8 Q. And Miss Des Taliaferro from the Secretary of
9 State's Office?

10 A. Who?

11 Q. Miss Des who we met --

12 A. Yes, she was there.

13 Q. And there were reporters there also; right?

14 A. There was a paper reporter with his camera.

15 Q. Did you know that he was going to be at the
16 hearing?

17 A. (Witness shakes head.)

18 Q. Do you know how that got arranged?

19 A. No. I just was there with these people. So I
20 was -- I don't -- I was introduced to them. But, you
21 know, I was there for one reason and that was to get
22 permission to be a citizen, okay.

23 And, of course, after the meeting was over,
24 then this gentleman met me outside and says, "May I
25 interview you?"

1 And I said, "By all means."

2 Q. And when you said "this gentleman," are you
3 talking about the reporter?

4 A. Yeah. He was -- he was asking me questions. I
5 can't tell you what they were. But Mr. Rucker was out
6 there with me, so he knew the things that were said.
7 And I didn't say anything that I shouldn't have said.
8 And that's the way it was. I enjoyed it. I -- I could
9 be an actress I think.

10 Q. Was the reporter using the camera that you
11 mentioned?

12 A. Yeah. He had that right with him. I was on TV.
13 You didn't see it? Why all -- they began to recognize
14 me in Osage. My postmaster came out and says, "I know
15 you," and I had never met him a day in my life.

16 Q. And you were also in multiple newspapers; right?

17 A. Yeah, I was in the newspaper and the Topeka
18 newspaper, the Osage. I -- wherever there was a fish
19 floating, there must have been a paper.

20 Q. And do you remember saying to the reporter that
21 you thought it was -- "I just thought it was strange
22 that I had to go through this procedure to be able to
23 vote. And any other state, you go in, throw down your
24 driver's license and that gives you the right to vote.
25 So this was totally off the wall for me"?

1 A. Doing what I did to get -- to get voted -- I
2 mean, registered? Yeah. Because all the states I had
3 been in, you take in your driver's license and they gave
4 you a new license from that state.

5 Q. And -- and you told the reporter -- or reporters,
6 you said, "I don't look funny. I don't talk funny.
7 I've been here all my life," and you just couldn't
8 imagine having to go through so much to prove you can
9 vote; right?

10 A. Right.

11 Q. You --

12 A. But I was being funny. But, you know, yes, I did
13 say that.

14 Q. And a few weeks ago you reached out to Eric
15 Rucker from the Secretary of State's Office; right?

16 A. Yes.

17 Q. And he told you that Secretary Kobach would reach
18 out to you about potentially appearing at this trial?

19 A. Possibly.

20 Q. And you said, sure, you'd help Kris with this
21 issue because you think it's important that citizens be
22 able to vote; right?

23 A. Now do what?

24 Q. When Mr. Rucker said that Secretary Kobach would
25 reach out to you about appearing at this trial, you

1 said, "Sure, I'd do anything to help Kris with this
2 issue because it's important for citizens to vote."
3 Right?

4 A. They have to be a citizen, yes.

5 Q. And then you spoke to Secretary Kobach last week
6 about coming here?

7 A. He called, I think, two days after -- in fact, I
8 was a little disappointed that he just wasn't on the
9 phone right after Eric talked to me. But that's okay.
10 He's a busy man. And then when he called and asked me,
11 I was -- I was okay with that. I wanted to help. I
12 wanted him to look good. I want the State of Colorado
13 to look good. And I can't -- I can't -- I just don't
14 want the fraud going on that happens and we've got --
15 it's got to stop.

16 Q. Okay.

17 A. You know, there's nothing like being an American
18 citizen and able to vote. This is how you get laws
19 done. This is how you get things done that you don't
20 normally get done. You take the problem in to someone
21 and say, "I want to discuss this. Let's get it -- let's
22 go to court if we have to, but let's get this done now.
23 Don't wait 15 years down the road after it's already
24 obsolete. We want to do it now."

25 MS. HA: Thank you, Miss French. That's all

1 the questions I have.

2 THE WITNESS: Thank you.

3 THE COURT: Any questions?

4 MR. JOHNSON: I have nothing.

5 THE COURT: Any questions?

6 MR. KOBACH: Very brief. Just five quick
7 questions.

8 REDIRECT EXAMINATION

9 BY MR. KOBACH:

10 Q. Just to clarify, right at the end you were asked
11 about when -- when Eric called and I think you said he
12 called you two days before I did. Is that what you
13 said?

14 A. Yes. But, see, I called him earlier.

15 Q. Why did you call him?

16 A. Eric and I are friends.

17 Q. Did you become friends when you did this process?

18 A. Yes. And I know that I just like to talk to him
19 every once in a while. He wants to get together and
20 sing. That's fine with me because I get to play my
21 guitar. And I -- I'm concerned about his health and I
22 wanted to know.

23 I hadn't talked to him in a long while and I
24 wanted to hear from him. All he did was to call back
25 and let me know that he got my phone call and heard the

1 message. And he says, "By the way --"

2 "Yes."

3 "-- Kris may be calling you to serve as a
4 representative for the State of Kansas on the -- I'm
5 glad to be an American citizen.

6 Q. So just -- we went through this in a -- that
7 brief interview/deposition we had this morning. But did
8 I call you on Thursday last week to possibly come here?

9 A. It was -- that was about the time, yeah.

10 Q. Okay. And then I just want to ask you a quick
11 question about your driver's license. It's in this
12 packet of papers. It's right in the middle. It's --

13 A. I saw it. Doesn't look good, does it?

14 Q. Looks awfully blurry. I can't -- I can barely
15 see the picture.

16 A. Well, they couldn't use that to take me to jail.

17 Q. Can you take a look at that page? I'll try to
18 get it for you quickly.

19 A. I did see it as I was looking through it.

20 Q. Okay.

21 A. Now, I don't know why it looks like that. I look
22 better than that, don't you think?

23 Q. To be honest, I can barely make out the picture
24 at all. Can you make out the expiration date over on
25 the right side?

1 A. 5/21/2017.

2 Q. What was that again?

3 A. 5/21/2017.

4 Q. Okay. So were you seeking to get a driver's
5 license also -- seeking to get a birth certificate so
6 you could also get a new driver's license?

7 A. Well, see, it was a Colorado license. I had to
8 get a renewal.

9 Q. And were you also told that you needed to have a
10 birth certificate to get your Kansas license to replace
11 this one?

12 A. That was -- that was the -- the best requirement
13 that they had. It was the easiest and simplest thing to
14 do, one thing, but I didn't have that one thing.

15 Q. So -- go ahead.

16 A. So I had to do what I had to do to be -- it
17 needed to be done in order for me to get my license and
18 to vote.

19 Q. So did the proof of citizenship hearing make it
20 possible for you to get a driver's license in addition
21 to making it possible to vote?

22 A. Correct.

23 Q. And is it your -- is it correct that you have
24 driven your car since you got the Kansas driver's
25 license?

1 A. Have I what?

2 Q. Have you driven your car since you have gotten
3 your Kansas driver's license?

4 A. Oh, I drive my car a lot. I turn the windows
5 down, turn on -- the stereo on, listening to Rod Stewart
6 and my hair flowing and look like I'm riding in my
7 convertible, and it's a little Ford Focus.

8 Q. You said -- you were asked by opposing counsel
9 you said to a reporter that it was "off the wall" the
10 way the procedure was in Kansas -- because you said --
11 and you followed up by saying because in other states
12 you just got a driver's license when you showed the old
13 license; is that right?

14 A. Yeah.

15 Q. So when you said "off the wall" --

16 A. If I said "off the wall," it was one of those
17 statements that just come to my head and I said it.

18 Q. Were you referring --

19 A. It's kind of like it's a thought I had.

20 Q. Okay. Were you --

21 A. No, I was -- I was hurt that no one believed me
22 that I was an American citizen. I had to bring
23 information. But that is the one thing that Kansas has
24 that everybody -- other states should have. You've got
25 to have proof that you belong here to vote.

1 Q. Was it any burden to you to get this proof of
2 citizenship?

3 A. No.

4 Q. Were you intimidated at all?

5 A. Nope.

6 Q. I have no further questions.

7 A. In fact, I think I intimidated you folks a little
8 bit. Didn't I?

9 Q. You may have.

10 MR. KOBACH: I have no further questions,
11 Your Honor.

12 THE COURT: I have a couple of questions.
13 You've now become friends with Eric Rucker?

14 THE WITNESS: Pardon me?

15 THE COURT: I said you've now become friends
16 with Eric Rucker?

17 THE WITNESS: Yes.

18 THE COURT: Okay. So the two of you talked
19 about how this voter fraud worked?

20 THE WITNESS: I just know that if you don't
21 have your proper -- proper information, documentation,
22 you don't vote. He didn't -- he didn't tell me about
23 any of the procedure or anything like that.

24 THE COURT: Well, how did you learn about
25 voter fraud?

1 THE WITNESS: It's all on TV.

2 THE COURT: Statements that Secretary Kobach
3 and others have made about it?

4 THE WITNESS: No, no. It's national.

5 THE COURT: Give me an example.

6 THE WITNESS: It's coming from -- it's
7 coming from Washington, D.C.

8 THE COURT: So what is your opinion about
9 that?

10 THE WITNESS: We need to know about it.

11 THE COURT: So you come here to testify that
12 you think that without proof of citizenship, there is
13 voter fraud?

14 THE WITNESS: It can be voter fraud, yeah.
15 Voter fraud, yes, ma'am, it can be. Because if they're
16 voting without the legal documentation, that's fraud.

17 THE COURT: And that's something you and
18 Eric Rucker talked about as well?

19 THE WITNESS: No.

20 THE COURT: You and Secretary Kobach?

21 THE WITNESS: Nope.

22 THE COURT: So what did you mean when you
23 said that you wanted to come here as a representative of
24 the United States and to make Mr. Kobach look good?

25 THE WITNESS: Well, because I knew that he

1 was -- I knew his job. I knew what he was working on
2 through the news, but we never discussed anything like
3 that.

4 THE COURT: Okay. Thank you. Any other
5 questions?

6 MS. HA: Very briefly, Your Honor.

7 RECROSS EXAMINATION

8 BY MS. HA:

9 Q. Miss French, when did Mr. Rucker have that
10 conversation with you when he told you to expect a call
11 from Secretary Kobach?

12 A. It was last -- what's today? Monday. I didn't
13 sleep last night. I sat up all night talking to myself
14 what I was going to say today.

15 But, anyway, I -- we didn't discuss anything
16 other than Mr. Kobach asked me if I could make it today.
17 And I said, "Yes, I can."

18 Q. I -- let me just ask my question again. When did
19 Mr. Rucker tell you to expect a call from Secretary --

20 A. Days before he called. It was odd that I -- I
21 think -- I don't have my phone. I think it was the
22 8th --

23 Q. Okay.

24 A. -- that either Eric -- or I didn't have Eric's
25 phone -- it was Mr. Kobach's was November -- March the

1 8th.

2 Q. Mr. Kobach talked to you on the 8th and you said
3 -- you said Mr. Rucker told you --

4 A. Two days -- two days prior. He says I think
5 that, "Kris is going to call you to see if you will
6 appear in court."

7 And I said, "Okay."

8 MS. HA: Okay. Thank you, Miss French.

9 THE WITNESS: Thank you.

10 THE COURT: All right. Any other questions?

11 MR. KOBACH: I just have one more question.

12 FURTHER REDIRECT EXAMINATION

13 BY MR. KOBACH:

14 Q. Sorry to keep asking questions about these dates.
15 Is it possible that Mr. Rucker called you one day before
16 I called you?

17 A. It could be.

18 Q. Okay. Thank you.

19 A. I'm just not really -- you know, I -- I just sit
20 and wait. So it could have been the day after.

21 Q. Okay. Thank you very much.

22 A. You're welcome.

23 MR. KOBACH: No further questions.

24 THE COURT: All right. May Miss French be
25 excused?

1 MR. KOBACH: Yes.

2 THE COURT: You're excused. All right.
3 Let's take a 15-minute recess.

4 (Recess.)

5 THE COURT: Call your next witness.

6 MR. STEINER: Your Honor, prior to
7 defendant's calling their next witness, I did think --
8 and certainly happy to have Miss French's testimony into
9 the record. I think it demonstrates this process is not
10 easy or non-burdensome for everyone, even with the
11 assistance of the attorney general's office.

12 But the testimony about her conversations
13 and the number of conversations with Mr. Rucker,
14 including conversations some period of days prior to her
15 conversation with Mr. Kobach on Thursday in which he
16 appears to have told her that Mr. Kobach may be calling
17 her to talk to her about coming to testify, certainly
18 suggests and calls into question the accuracy of the
19 representations made by defendants on Friday afternoon
20 about Miss French being in response to their surprise
21 over Miss Ahrens' testimony in this trial on Wednesday.

22 Because I believe that Miss French's
23 testimony puts her conversations with Mr. Rucker about
24 the potential issue called by the Secretary of State's
25 Office as a witness at least Monday or Tuesday of last

1 week, if not some time prior to that. I don't know if
2 whether that is, in fact, the case or not, in fact, the
3 case. But I think it is a significant enough issue that
4 there are two potential remedies to address that.

5 I think either we should be permitted, apart
6 from the issues in the trial, to take discovery of
7 Mr. Rucker and make any appropriate application with
8 respect to the proceedings on Friday that we might make
9 or, to the extent it's a question that's better left to
10 the discretion of the court, we're happy to leave that
11 to the discretion of the court.

12 But the testimony that we all just heard
13 sure sounded to me, assuming its accuracy as to the
14 timing of those conversations, like there is a
15 significant issue with respect to the accuracy of the
16 Friday afternoon request to call Miss French as an
17 additional witness.

18 MR. KOBACH: Your Honor, we can produce text
19 message and cell phone records to demonstrate exactly
20 what I'm about to tell you. On the day Miss Ahrens
21 testified on Wednesday, Mr. Rucker called Ms. French and
22 notified her that I might be calling. Then on Thursday
23 after we were done, I called Ms. French to see if she
24 would be available to testify. And when it sound like
25 she was, on Friday we notified opposing counsel that she

1 would be available and we would be happy to provide
2 relevant cell phone records.

3 It appeared that she wasn't quite sure what
4 day it was, but we have the cell phone calls that we can
5 show and other text messages between us and Mr. Rucker
6 asking her to get in touch with Ms. French. So we
7 absolutely are certain it was Wednesday we reached out
8 -- asked him to reach out to her.

9 THE COURT: All right. I think we haven't
10 talked about this, but there is this pending motion for
11 contempt concerning another matter. Given our trial
12 schedule, I don't think we're going to get to it. My
13 preference had been that we'd get to it while
14 everybody's here. But let's just say the evidence
15 closes tomorrow, I don't know if it will, we can talk
16 later about whether to take that up that following week
17 and perhaps that can be folded in. But we'll see how
18 far we get tomorrow.

19 MR. STEINER: Thank you, Your Honor.

20 THE COURT: All right. Call your next
21 witness.

22 MR. KOBACH: Your Honor, I call Dr. Jesse
23 Richman.

24 JESSE T. RICHMAN, Ph.D.,
25 called as a witness on behalf of the Defendant, having

1 first been duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. KOBACH:

4 Q. Dr. Richman, could you, please, state and spell
5 your name for the court.

6 A. Yes. My name is Jesse Travis Richman, J-E-S-S-E,
7 T-R-A-V-I-S, R-I-C-H-M-A-N.

8 Q. Mr. Richman, I'm handing you a document marked as
9 Defendant's Exhibit 953. Dr. Richman, does this look
10 like your curriculum vitae?

11 A. It does.

12 MR. KOBACH: Your Honor, I offer into
13 evidence the CV of Dr. Jesse Richman, Exhibit 953 of
14 defendants.

15 MR. HO: No objection.

16 THE COURT: Exhibit 953 admitted.

17 BY MR. KOBACH:

18 Q. Dr. Richman, could you, please, summarize your
19 educational background?

20 A. Certainly, I'd be happy to. I have a B.Phil. in
21 history and political science from the University of
22 Pittsburgh. I have a MA degree in political science
23 from Carnegie Mellon University and Ph.D. in political
24 science also from Carnegie Mellon University dated
25 August 2005.

1 Q. And, Dr. Richman, what is your occupation?

2 A. I am a college professor at Old Dominion
3 University. My current rank is associate professor. I
4 have been at Old Dominion University since 2006. I've
5 held my current rank since 2012.

6 I have also served while at Old Dominion
7 University in a variety of capacities, including Faculty
8 Director of University Social Science Research Center
9 from 2012 to 2015.

10 Q. And did you hold a position at Vanderbilt before
11 Old Dominion?

12 A. That is correct. I was at Vanderbilt for a year
13 from 2005 to 2006.

14 Q. And what subjects do you teach at Old Dominion
15 University?

16 A. I teach a range of courses. I teach courses in
17 American politics, including the American Government
18 introductory course, Congress, Electoral Politics. I
19 have taught public opinion as well but that was at
20 Vanderbilt University. I have taught -- I regularly
21 teach Game Theory. I regularly teach methods courses at
22 the graduate and undergraduate level, including courses
23 I have listed here, Research Methods, Quantitative
24 Methods, Advanced Statistics and Research Design.

25 Q. And do the courses in research methods involve

1 statistical analysis?

2 A. Absolutely. That's a major focus of those
3 courses. Especially the more advanced courses, the
4 quantitative methods course and the advanced statistics
5 course, are almost entirely courses on -- applied
6 statistical methods.

7 Q. And what are the principal topics of your
8 academic research?

9 A. My academic research spans a number of different
10 areas. I have a research agenda, research interest in
11 voting and participation. I have a research agenda and
12 research interest in public opinion of various kinds. I
13 have done a number of papers and have an active research
14 agenda on legislative politics as well and also have
15 done some research on public policy issues, especially
16 trade policy.

17 Q. Approximately how many peer-reviewed articles
18 have you published in the field of political science?

19 A. It's -- it's approximately 12 or 13. Let me
20 count. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 are
21 listed currently on my CV.

22 Q. And how many of those have been regarding
23 elections or voting?

24 A. Several of them have had -- been about elections
25 and voting, at least in part. The paper in the *Journal*

1 *of Politics* is about the intersection between elections
2 and the policy and agenda setting strategies of
3 legislators.

4 The paper on whether non-citizens vote in
5 elections in *Electoral Studies* is on participation and
6 voting and registration.

7 The paper with Joshua Behr on Cross-Pressure
8 and the Propensity to Vote is determined on the
9 political participation.

10 My paper on Can the College Vote Turn Out
11 with Andrew Pate is an investigation of political
12 participation.

13 And, in a more tangential way, my paper on
14 the consequences and the results of the 2018
15 congressional election deals with voting and
16 participation but to a less substantial degree.

17 Q. And now to look even more specifically at the
18 topic, have you published peer-reviewed research on the
19 subject of non-citizens voting?

20 A. Yes, I have. As I mentioned, one of my papers is
21 a paper published in 2014 in the journal *Electoral*
22 *Studies* with Gulshan Chattha and David Earnest. The
23 title of the paper is Do Non-Citizens Vote in U.S.
24 Elections.

25 Q. And have you received any fellowships from the

1 American Political Science Association?

2 A. Yes. I was an American Political Science
3 Association Congressional Fellow from 2011 to 2012.

4 Q. And do you have experience in survey research?

5 A. Yes. As I noted previously, I served as faculty
6 director of the Old Dominion University Social Science
7 Research Center from 2012 to 2015. During that time the
8 center conducted many surveys.

9 Prior to that time, I was also the principal
10 investigator for a series of surveys which Old Dominion
11 University conducted, and so I have been involved with
12 the construction and the design as well as the
13 implementation and collection of data and analysis of
14 results for a number of surveys.

15 Q. And how many surveys have you personally
16 designed?

17 A. I would say the number is about 9 or 10 surveys
18 altogether.

19 Q. And in connection with this case, did you design
20 any survey questions to measure citizenship rates?

21 A. In connection with this case, I worked to design
22 questions aimed at measuring citizenship. And I was
23 building in part on suggestions which I had previously
24 made to the authors of the Cooperative Congressional
25 Election Study about ways to further explore the

1 robustness of their measure of citizenship status.

2 I designed questions which asked whether
3 individuals were citizens and then followed up to deal
4 with the concerns which some critics of the paper I
5 mentioned previously had raised about response error.

6 Q. Have you ever compared survey responses to
7 government records in order to assess whether or not the
8 survey responses were adequate?

9 A. I have done that in the context of this case and
10 I have performed a variety of other kinds of matching
11 previously. I'm having trouble recalling at the moment
12 whether there are any instances in which I did exactly
13 that sort of comparison previously. I'm -- I can't
14 remember any at this -- at this moment.

15 Q. Have you published peer-reviewed research on a
16 survey you designed?

17 A. Yes, I have. And this is a place where I want to
18 correct something that I missed in the deposition. I
19 was asked a similar question and it slipped my mind that
20 the paper with Krista Andrews on Climate Change
21 Skepticism in the Flood Zone Risk Perception Among
22 Virginia Coastal Residents, published in *Virginia Social*
23 *Science Journal*, which is a peer-reviewed academic
24 journal, included a number of different surveys as part
25 of its evidence.

1 Some of those surveys were ones that were
2 designed by my predecessor as Director of the Social
3 Science Research Center, but others were ones which I
4 had designed and overseen the implementation of.

5 Q. Have you published peer-reviewed research
6 involving database matching?

7 A. Yes. As I mentioned in my deposition, this is
8 something that I think is a very important skill. I
9 encourage all of the graduate students I work with to
10 learn how to do this. Because most of the time, if
11 you're trying to do original work, you're going to need
12 to put together data from multiple sources. And to do
13 that you have to know how to match.

14 And many of the papers I have published
15 include matching, include -- an utilize that, including,
16 for instance, my paper published in the *American*
17 *Political Science Review* titled Parties, Pivots and
18 Policy: The Status Quo Test, where I matched a survey
19 of members of Congress with voting records and other
20 data from -- about those members of Congress in order to
21 estimate the location of policy status quos to test
22 theories of how legislative politics operates.

23 Q. Are you experienced in margin of error
24 calculations and confidence interval calculations?

25 A. Yes. This is one of the things that I teach in

1 the methods courses that I mentioned previously.

2 Q. Are confidence intervals and margins of error the
3 same thing?

4 A. They're more or less the same thing, but
5 sometimes one can draw some distinctions between them.
6 Both of them are putting a boundary on our uncertainty
7 around our estimate. Most estimates, especially
8 estimates which are drawn from some kind of sample, are
9 subject to sampling error for instance. And so we draw
10 confidence intervals to put bounds on that uncertainty
11 to try to understand what is -- what is the range within
12 which plausibly the -- the true value is.

13 And so at 95 percent confidence interval,
14 for instance, this is the range within we're 95 percent
15 confident based on the data we have in the sample that
16 the true population value is -- is within that range.
17 So that is -- that's the basic concept.

18 Sometimes the margin of error term maybe is
19 used more in some context than others but the -- and
20 margin of error is often thinking about the length of
21 one side of a confidence interval. So in a poll they
22 say plus or minus so many percent. That is talking
23 about the margin of error for the worst case in the poll
24 typically. If we have 50 percent for one candidate,
25 50 percent for the other, that kind of thing, the margin

1 error around a 50 percent estimate, that is what's
2 usually reported from a poll.

3 A confidence interval, we're looking at both
4 sides. We're looking at from the low end to the high
5 end within this interval. We think 95 percent of the --
6 there's a 95 percent probability that the true value
7 will fall. There are different precise ways of
8 conceiving of that. There's a Bayesian interpretation
9 of what this means, more or less, and a frequentist's
10 interpretation, but that's the basic intuition behind
11 the concept.

12 Q. Have you published peer-reviewed research that
13 involves margins of error calculations or confidence
14 interval calculations?

15 A. Yes. Most of the research I've published has, in
16 one way or another, included calculations of margins of
17 error or confidence intervals.

18 Q. Have you served as an expert witness in any other
19 case?

20 A. Yes. I have served as an expert witness in one
21 case previously, which was *Lee versus Virginia State*
22 *Board of Elections*.

23 Q. And what was your testimony regarding in that
24 case?

25 A. In that case my testimony was regarding the

1 incidence of non-citizen registration and voting, and so
2 it was a similar subject to the focus here.

3 Q. And were you admitted by the court as an expert
4 witness in that case?

5 A. The -- I gave a deposition. The lawyers for the
6 state had planned to call me. Ultimately, this was a
7 case brought before what is known colloquially the
8 "rocket docket" in Richmond. They found themselves
9 running out of time. And they told me in an e-mail,
10 which I provided to your office at one point, that they
11 were out of time and they thought, correctly as it
12 turned out, that they had won the case already and so
13 they were not going to call me to the stand as a
14 witness.

15 MR. KOBACH: Your Honor, I move for the
16 admission of Dr. Richman as an expert witness in the
17 areas of elections, voter registrations, survey
18 construction and analysis and political methodology.

19 MR. HO: Your Honor, just for the record, we
20 note our objection under *Daubert*.

21 THE COURT: All right. Consistent with my
22 ruling before, I find this witness to be qualified as an
23 expert in the areas of elections, voter registrations,
24 survey construction and analysis and political
25 methodology.

1 BY MR. KOBACH:

2 Q. Dr. Richman, I've just given you a copy of your
3 original expert report. Does this look to be your
4 expert report?

5 A. It does.

6 Q. Now, I'm also going to give you a copy of -- and
7 that is marked as Exhibit 952. I'm also going to give
8 you a copy of Exhibit 958. Does this appear to be your
9 supplemental expert report?

10 A. This does.

11 MR. KOBACH: Your Honor, I move for the
12 introduction of Dr. Richman's original report and
13 supplemental report into evidence, Exhibits 952 and 958.

14 MR. HO: Your Honor, we object to a portion
15 of Dr. Richman's initial report, Exhibit 952. Page 4 of
16 the report contains a section that is titled Defining a
17 Substantial Number which I believe Your Honor has
18 precluded the experts from testifying upon.

19 I know, with respect to Mr. von Spakovsky's
20 report, Your Honor determined there were too many
21 scattered references too substantial to redact that.
22 But, with respect to Dr. Richman's report, there's a
23 section that's clearly devoted to that question which
24 Your Honor has determined is a legal one. And I think
25 the appropriate thing here to do would be to simply

1 redact that before this can be admitted.

2 MR. KOBACH: Your Honor, I'd just answer it
3 appears that the only paragraph in that three-paragraph
4 section where he talks about substantiality is that
5 first paragraph. So we would have no objection to
6 redacting that first paragraph. But, frankly, we think
7 it goes to the weight. You can determine whether he's
8 asking you to make a legal conclusion anyway.

9 THE COURT: All right. The section on
10 page 4 of Exhibit 952, Defining a Substantial Number, I
11 will take under advisement the objection and disregard
12 anything that goes to the ultimate legal question here
13 or the definition of substantial. I'm not going to take
14 the time to try and parse and read it now, but I will
15 grant that part of the objection.

16 Exhibit 952 is otherwise admitted other than
17 what you find to be excluded by my *limine* ruling.

18 And Exhibit 958, is there an objection?

19 MR. HO: No objection to that one, Your
20 Honor.

21 THE COURT: All right. 958 admitted.

22 BY MR. KOBACH:

23 Q. Dr. Richman, what was the purpose of your
24 reports -- or purposes of your reports?

25 A. My reports were, as I wrote at the beginning of

1 my initial report, I saw my task -- the focus of the
2 report as being an analysis of data related to the
3 question of whether a substantial number of non-citizens
4 in Kansas registered to vote prior to the implementation
5 of the state's proof of citizenship requirement or are
6 attempting to register to vote after the implementation
7 of the requirement.

8 More broadly I discussed how the level of
9 non-citizen registration in Kansas could be estimated
10 and the issues associated with the way the law was being
11 applied and the effects and consequences thereof.

12 Q. So issues and effects, would those be things like
13 the suspense list, et cetera?

14 A. Yes, exactly.

15 Q. And does the subject of your supplemental report
16 go a little bit broader than that in response to what
17 rebuttal experts provided in this case?

18 A. In some ways it goes -- both reports are about
19 understanding the effects of the -- of non-citizen
20 involvement and how that -- how prevalent that is. But
21 both go somewhat beyond that.

22 One of the areas where I go beyond has been
23 -- is the issue of how citizens are interacting with
24 these rules as well. And so I don't confine myself
25 entirely to focusing on non-citizen registration but

1 somewhat more broadly looking at the -- the evidence
2 that was made -- that was available to me to understand
3 the situation in Kansas.

4 Q. So right at the outset let's go ahead and talk
5 about what's being referred to as the CCES and then
6 we'll get into the specifics. What is the CCES?

7 A. The CCES is the Cooperative Congressional
8 Election Study. It is a large study conducted
9 principally in congressional election years, though
10 small samples are taken in off years.

11 The survey is matched to a representative
12 nationwide sample and is used in a wide range of studies
13 in the field of political science to understand voting
14 behavior and other aspects of public opinion.

15 Q. Is the CCES survey a particularly large one?

16 A. It is. So the -- the CCES has gradually
17 increased its sample size. I think the most recent
18 versions have samples well in excess of 60,000
19 individuals and so we have a -- a large sample that's
20 been particularly useful for congressional researchers
21 because, for people interested in studying congressional
22 elections, the American National Election Study sample
23 of -- of very few thousand provides only a few cases per
24 congressional district.

25 Because the CCES is so much larger a sample

1 size, it has allowed scholars to explore a wide range of
2 questions that previously were difficult to get
3 sufficient data in order to be able to really explore,
4 develop, and test theories.

5 Q. What organization funds and actually administers
6 the CCES?

7 A. So the CCES has received a number of grants from
8 the National Science Foundation. So it has been
9 partially funded by the United States government through
10 the National Science Foundation. It is also partly
11 supported by scholars at a range of institutions across
12 the country, many political science departments but also
13 some think tanks and other institutions contribute to
14 the resources that pay for the implementation of the
15 survey.

16 In return, they get a sub-sample where they
17 ask specific questions that aren't asked of the entire
18 sample and they get access to the overall sample as
19 well.

20 Q. In your report, your expert report for this case,
21 you discuss a 2014 study that you and two colleagues,
22 Chattha and Earnest, published concerning non-citizens
23 voting looking at the entire country. Could you,
24 please, summarize the findings of that study?

25 A. I -- I will attempt to. It's a journal article

1 of some pages, so I don't want to -- or the -- the --
2 bore everybody here by going into every detail.

3 Q. But the salient points?

4 A. The salient points. So the -- as I noted, the
5 Cooperative Congressional Election Study, or CCES, has a
6 very large sample. What this means is that potentially
7 you can do analyses of groups in the population that
8 were too small to explore in any detail with earlier
9 smaller surveys.

10 I mentioned the case of congressional
11 districts already. This is one of the purposes. You
12 have a larger sample. You can look at the subgroup of
13 the people in congressional districts and do something
14 with that where, with the American National Election
15 Study, that really wasn't feasible in a number of cases.

16 In this study we looked at a particular
17 subset of the respondents. These were individuals who
18 identified on the survey that they were not citizens of
19 the United States, and so they answered a question
20 indicating they were non-citizens.

21 And we -- and the study looked at a variety
22 of things. We did a number of analyses aimed at
23 validating that indeed these individuals who said they
24 were not citizens were, in fact, not citizens. And then
25 we looked at a sequence of steps in terms of political

1 participation. We looked at registration rates. We
2 looked at identification issues. We looked at voting.

3 And another aspect of the Cooperative
4 Congressional Election Study that make it valuable in
5 this context is that the study aims to -- attempts to
6 validate the registration status and the voting of
7 certain respondents.

8 The efforts are incomplete and partial, not
9 every respondent gets a match, in terms of being able to
10 identify this person in databases as either someone who
11 is or isn't registered to vote. But for those for whom
12 a match is found, this provides a mechanism whereby one
13 can become even more confident about reports individuals
14 make about whether they voted or not or whether they
15 registered to vote or not.

16 And so we looked at both -- various
17 combinations of reports about voting in the survey:
18 People saying they've registered. People saying they
19 voted, and reports about -- and the matches as a way of
20 looking at registration and voting.

21 If you look at -- let me talk a bit -- our
22 focus here is on registration rates. Let me talk about
23 some of the numbers that we found in terms of
24 registration rates as well as perhaps I'll mention it in
25 terms of voting.

1 In 2008, which was the -- one of the years
2 we looked at in that study, among people who identified
3 themselves as non-citizens, 19.8 percent had either a
4 voter file match or said they were registered to vote or
5 both. So they had, at least in one category, identified
6 that they were a -- they were a registered voter.

7 That's looking at everybody who have given
8 some -- we have some indication that they're registered
9 to vote. It includes people who said they were
10 registered to vote but had a vote -- a file match would
11 suggest they're not. And it includes people who said
12 they were registered to vote for whom there is no file
13 match. It includes people who have a file match but
14 said they weren't registered to vote.

15 We also looked at a much more conservative
16 estimate, which is individuals who said that they were
17 registered to vote and had a voter file match. So these
18 are people for whom one can have a quite high degree of
19 confidence that, in fact, they were registered to vote.
20 We have two different indicators. One based on the
21 survey response, another based on the file match, which
22 both indicates that they were registered to vote.

23 Q. And what was the --

24 A. In that category, we found our estimate was that
25 3.3 percent of non-citizens fell into that category.

1 Q. So 3.3 percent of non-citizens living in the
2 United States you estimated were in that very high
3 confidence interval registered to vote, confirmed by the
4 data of the relevant state, and they said they were
5 registered to vote?

6 A. So they -- right. These are individuals for whom
7 we have a high degree of confidence that they are
8 registered to vote, they said they were non-citizens,
9 and they have a voter file match. Plus they said they
10 were registered to vote.

11 Q. Okay. Let's now look at some visuals. Let's
12 look at Slide 3 of the set of demonstrative exhibits
13 that were sent to opposing counsel.

14 A. Not that one, I don't think.

15 MR. KOBACH: Let's see, is this the original
16 set of demonstratives? Should be the original set they
17 sent. I think the number is 3,800. That's Slide 4.

18 BY MR. KOBACH:

19 Q. There it is. There it is.

20 A. There it is. The slides got reordered, I guess,
21 so we'll have a little bit of...

22 Q. Explain for us --

23 MR. HO: Your Honor, we'd object to this
24 demonstrative. It features a number of an estimate of
25 non-citizen registration in Kansas of 3,813. That

1 number does not appear in any of Dr. Richman's reports.
2 I raised this with the defendants yesterday. And what I
3 was told is that it's derived from a percentage
4 calculation in Dr. Richman's initial report, multiplied
5 by a number which is not in the report, the total number
6 of non-citizens registered to vote -- I'm sorry, the
7 total number of adult non-citizens in Kansas, to arrive
8 at this number of 3,813 which is also not in the report.

9 So while it's based on a fraction which is
10 found somewhere in his report, the calculations and the
11 final product are in none of Dr. Richman's reports.

12 MR. KOBACH: Your Honor, this fraction is in
13 his report and he's simply, in this demonstrative,
14 multiplying the fraction times the non-citizen
15 population which is in his report. It's a fraction in
16 his report times the total number in his report to yield
17 a visual of what the number is you get. You multiply --

18 THE COURT: Okay. Point me to where it is
19 in the report.

20 BY MR. KOBACH:

21 Q. Dr. Richman, you may need to help us. I believe
22 3.3 --

23 A. Yeah, so this is the number I just read to you.
24 This is 3.3 percent. This is on page 3, the second
25 paragraph. In 2008, we have a sentence there about the

1 larger number. Then we have the smaller number.
2 3.3 percent of non-citizens had both a voter file match
3 and self-reported registration status. What this
4 demonstrative aims to do is to visualize what that means
5 in terms of the size of the non-citizen population --

6 THE COURT: All right. So what was --

7 THE WITNESS: -- in the state of Kansas.

8 THE COURT: What was the number you used for
9 the non-citizen population and on what basis? Where did
10 you get that number from?

11 THE WITNESS: So the number that I used for
12 this visual was the number that I used in the -- in my
13 supplemental report. The difference was that this
14 initial report came out just before the source I was
15 getting that number from updated. And so in the
16 supplemental report, partly in response to the prompting
17 of one of the experts for the plaintiffs, I updated the
18 number to the more current census estimate of the number
19 of adult non-citizens in the state of Kansas.

20 THE COURT: Where is that?

21 MR. KOBACH: Can you show the court where
22 that number is?

23 THE WITNESS: Yeah. So that number is in
24 many places in this report. Let me point you to the
25 first one I flipped open to. The first page I opened,

1 page 28, for instance, it is the estimate here in the
2 center which is the middle of the confidence interval
3 from the census estimate of the size of the non-citizen
4 population.

5 BY MR. KOBACH:

6 Q. Is the number you used the 115,550?

7 A. Exactly, that is the number I used.

8 Q. And so did you multiply 3.3 percent times 115,550
9 to create this visual?

10 A. Exactly that's -- that what I did to create the
11 visual.

12 THE COURT: The 115,550 is based -- is your
13 estimate of what the non-citizen population is in the
14 state of Kansas based on an extrapolation of the --

15 THE WITNESS: No, no, that is the --

16 THE COURT: -- non-citizen population in
17 Sedgwick County?

18 THE WITNESS: Oh, I'm sorry, Your Honor. I
19 fear that perhaps my choice of the first page that I
20 opened to was confusing.

21 As it states just above this on page 28, the
22 numbers used for the population come from the Citizen
23 Voting Age Population, CVAP, special tabulation from the
24 2011 to 2015 five-year American Community Survey, ACS.
25 This is a U.S. census estimate. This is the U.S. census

1 most robust, I would argue, estimate of the number of
2 non-citizens because it's based on their largest survey,
3 the American -- the American Community Survey, the ACS.

4 MR. HO: So if I may, Your Honor, what we
5 have here is a fraction from a national survey which
6 Dr. Richman mentions in his initial report, multiplied
7 by a total population of non-citizens adults in Kansas
8 found in his supplemental report to perform a
9 calculation and arrive at an estimate which does not
10 appear in any of his reports.

11 And I understand it's not a particularly
12 difficult calculation but it's not -- something anyone
13 with a calculator could do, I suppose, but it's not an
14 analysis that he performed in any of his reports.

15 THE COURT: All right.

16 MR. HO: I don't know why he doesn't just
17 stick to his reports.

18 THE COURT: How many -- so you gave these
19 slides to plaintiff last night?

20 MR. KOBACH: No. We gave these slides to
21 plaintiffs several days ago. And it's similar to the
22 McDonald report which had the 70.9 percent calculation.
23 Same thing. He was trying to take numbers from two
24 different reports, which is fine because they're two
25 different times. Your Honor, we just --

1 THE COURT: The reason I ask is I just want
2 to make sure the plaintiffs are on fair notice. They
3 got the slides. This particular slide, it's not evident
4 from the face of the slide where the number comes from.
5 So are there any other slides in this demonstrative
6 series, Mr. Ho, that similarly you don't know what the
7 basis for the calculations are?

8 MR. HO: Well, I know the basis for the
9 calculations. It took a few e-mails back and forth with
10 the defendants to get some answers to some questions
11 that I had.

12 But there are multiple slides in here, Your
13 Honor. I think there were at least four last night --
14 although I understand from Mr. Kobach I think two of
15 those have been withdrawn and are not going to be used
16 today -- that have numbers that Dr. Richman never
17 propounded in any of his reports as an estimate of the
18 total number of non-citizens registered to vote in the
19 state of Kansas.

20 And I understand he's at this point now kind
21 of taking one number from one of his reports and taking
22 another number from one of his reports and multiplying
23 them together, but that analysis is just not in his
24 reports.

25 And, you know, he's got two, you know,

1 pretty long reports here. One of them is over, I think,
2 30 or 40 pages. I don't understand why they can't just
3 stick to the estimates that Dr. Richman actually
4 provided in his disclosures.

5 MR. KOBACH: Your Honor, I would just say,
6 the objective that the Tenth Circuit gave us is to give
7 whether there's a substantial number. So rather than
8 just dealing in percentages, it's helpful -- he gave all
9 of these percentages in both of his reports -- or most
10 of them were repeated in the supplemental report as
11 well, and so we just need to multiply the percentage
12 times a number. All the percentages are -- most of them
13 are percentages of aliens residing in Kansas. And so
14 you have to use some number and he just chose the most
15 recent number for his supplemental report.

16 If Mr. Ho wants, we can use the old number,
17 which I think was 114,000. It doesn't really matter
18 that much. But to give the court a picture of what the
19 actual number is that's what these demonstratives do;
20 otherwise, I'll have to go through each one and say
21 could you multiply 3.3 percent times 115,000.

22 MR. HO: That's not what I'm asking
23 Mr. Kobach to do. I'm asking Mr. Kobach to stick to the
24 about six or seven actual estimates of non-citizen
25 registration that appear in Dr. Richman's initial and

1 supplemental reports.

2 This is a new estimate of non-citizen
3 registration which I understand come -- is derived from
4 different numbers scattered throughout his different
5 reports but it's not one of the estimates of non-citizen
6 registration that Dr. Richman propounded in his
7 disclosures to us.

8 There's plenty of material here for
9 Mr. Kobach to go through six or seven at least different
10 estimates of non-citizen registration, many of which are
11 inconsistent with each other which Dr. Richman will tell
12 you all about. But I don't understand why he doesn't
13 just stick to what's in the disclosures instead of
14 trying to create new estimates on the eve of trial.

15 THE COURT: My recollection of Dr. Richman's
16 report is that he gives a whole range, a whole --
17 different numbers of estimations based on different data
18 points. And so I'm troubled by now him testifying to
19 something that's even beyond the numbers that he --
20 because he's analyzed various data sources in the report
21 and now he's doing something different that's not
22 spelled out in either the supplemental or the original
23 report. I think that's problematic.

24 I understand this is a simple thing. I did
25 the calculation. It comes out to 3,811, but he needs to

1 stick to the opinions that he rendered in these two
2 reports and that plaintiff relied upon and their experts
3 have relied upon in offering their own opinions rather
4 than coming up with some new way of getting to a
5 different number or similar number or whatever.

6 So I'll sustain as to this particular slide.

7 MR. KOBACH: Okay. Your Honor, so just to
8 make clear, his estimate, the 3.3 percent of the alien
9 -- or non-citizen population in Kansas is the correct
10 number is in his report. So am I forbidden from
11 multiplying it?

12 MR. HO: That's a misstatement of what's
13 actually in Dr. Richman's report. It's a 3.3 percent
14 estimate based on, as it says at the top of this
15 demonstrative, a national survey result, not an estimate
16 for Kansas. We're trying to apply that national
17 estimate to Kansas which is not done in any of
18 Dr. Richman's reports.

19 MR. KOBACH: On the contrary, he says very
20 clearly in his report that he is trying to apply the CCS
21 national numbers to arrive at a conclusion regarding
22 Kansas.

23 THE COURT: Tell me that page number again.
24 It was 28.

25 MR. KOBACH: I think that was just one.

1 THE WITNESS: That was merely the American
2 Community Survey.

3 THE COURT: That just says what the total
4 non-citizen population is estimated to be based on the
5 American Community Survey. And then in the supplement,
6 page 3 I think, it says that --

7 THE WITNESS: If --

8 THE COURT: I'm looking. In 2008,
9 19.8 percent had either a file match, a self-reported
10 registration, or both. 3.3 percent of non-citizens had
11 both a voter file match and self-reported registration
12 status.

13 I'm just concerned because there have been
14 so many estimates and so many different data points that
15 have been measured by this expert. And if he's now
16 going to start calculating those based on perhaps
17 varying numbers that appear from varying data sources as
18 well, it's going to be very confusing. I think he needs
19 to stick with the numbers that he analyzed in both of
20 these reports.

21 The 3.3 percent number obviously is in there
22 but I'll disregard what that means in terms of a raw
23 number. Let's just stick with what the disclosures are
24 in the reports. I'll sustain the objection.

25 MR. HO: Thank you, Your Honor.

1 BY MR. KOBACH:

2 Q. So, Dr. Richman, it's your estimate that --
3 correct me if I'm wrong -- that the 3. --

4 MR. KOBACH: Before I continue, Your Honor,
5 I'll just go ahead and proffer the 3,813 number derived
6 from the 3.3 percent times the alien population in
7 Kansas of 115,550.

8 THE COURT: All right. Proffer's noted.

9 BY MR. KOBACH:

10 Q. So just looking at the percentage then, for the
11 purposes of this particular calculation, is it your view
12 that the 3.3 percent from the CCES national analysis
13 could be applied to Kansas as one way of determining the
14 non-citizen registered population in Kansas?

15 MR. HO: Objection, Your Honor.

16 THE COURT: If it is a way, I'm not going to
17 consider it, is what I've already held or ruled.

18 MR. HO: Sorry. Thank you, Your Honor.

19 BY MR. KOBACH:

20 Q. You can answer. Is that -- is that what you're
21 saying here?

22 A. So --

23 THE COURT: Can I -- for the record, how
24 many different data sources have you provided estimates?
25 You provide a range of, like, zero to 18,000 or more.

1 But in that range I think your two reports talk about --
2 how many -- I can't recall. How many data sources are
3 you talking about in your reports?

4 THE WITNESS: Your Honor, I did --

5 THE COURT: How many different surveys or
6 sources are you using?

7 THE WITNESS: Thank you. I'm sorry, that I
8 kind of -- I sense the frustration.

9 THE COURT: No, no, no, just --

10 THE WITNESS: I'm sorry.

11 THE COURT: -- no, no, just answer my
12 question.

13 THE WITNESS: Absolutely.

14 THE COURT: Just answer my question.

15 Because I recall reviewing this and I can't recall --
16 I'm not being critical. I just want to know how many
17 data sources have you used? Because you've used a whole
18 number of them in your reports.

19 THE WITNESS: So let me summarize the range
20 of data sources that I've used. And the reason I have
21 used so many different data sources is that I'm trying
22 to bring all of the evidence that is available to me to
23 bear on understanding this question of how many
24 non-citizens are registered.

25 THE COURT: Okay. I understand that.

1 THE WITNESS: Let me summarize this.

2 THE COURT: No, Dr. Richman, I understand
3 that. I don't want to take over Mr. Kobach's
4 examination. He probably wants to get into all of that.
5 All I was asking simply is how many data sources are
6 there in your report if you can just give me a number --

7 THE WITNESS: So let me -- let me --

8 THE COURT: -- or estimate.

9 THE WITNESS: -- go through them. So -- so
10 I look at the 2008 Cooperative Congressional Election
11 Study, the 2012 Cooperative Congressional Election
12 Study. I look at the and 2006 Cooperative Congressional
13 Election Study. I reference an analysis that
14 Professor Ansolabehere did that also included the 2014
15 Cooperative Congressional Election Study. And the 2010
16 Cooperative Congressional Election Study was another one
17 that I looked at. So those -- there's that universe of
18 different studies.

19 You are safe from having to look at even
20 more estimates for the 2016 by the delay in -- I did not
21 -- I did not realize that there was going to be even --
22 I wasn't -- didn't know whether this was going to trial
23 until January and I wasn't told that additional analysis
24 were wanted, unfortunately, until it was too late. So
25 you didn't get to see those. Maybe that's a good thing

1 in terms of simplicity.

2 THE COURT: All right. Were there any
3 others other than the ones you just mentioned from the
4 CCES, any other data sources?

5 THE WITNESS: From 2006 to 2014 you have
6 CCES data involved.

7 THE COURT: Okay.

8 THE WITNESS: Now, there are other sources
9 obviously.

10 THE COURT: Maybe we need to stop here. My
11 point is you used a lot of different data sources. I'm
12 not being critical. I'm ruling on whether it's
13 appropriate to -- for example, with that one slide you
14 use something in one report and calculate it against a
15 number that came from an estimate of non-citizens from
16 another report. And my point is there's lots of
17 different data sources here --

18 THE WITNESS: Yeah.

19 THE COURT: -- and you've rendered lots of
20 opinions within the context of these reports. And
21 plaintiff isn't on notice that now perhaps you're going
22 to use this number from this report and that number from
23 that report and make calculations based on that.
24 They've been relying on what's in these reports.

25 THE WITNESS: Your Honor --

1 THE COURT: That's the way it generally
2 works. So that's the way it's going to be. I'm not
3 going to change my ruling.

4 THE WITNESS: Your Honor, let me finish
5 answering your question.

6 THE COURT: No, no, I'm done.

7 THE WITNESS: I'll go ahead --

8 THE COURT: No, Dr. Richman, I'm done. I
9 wanted to know -- I wanted to establish that there are a
10 number of data sources.

11 THE WITNESS: Okay. The --

12 THE COURT: You -- Mr. Kobach, I'm sure, is
13 going to go through all of that because you rendered
14 opinions based on all of those things. I'm not here to
15 examine you. That's his job.

16 I'm trying to rule on their objection. And
17 one of the concerns I had was there is a whole host of
18 data sources here. You haven't given me all of them,
19 but you've given me enough that convinces me, yes, I was
20 right, there's a whole host of data sources here that
21 are addressed in your two expert reports. We're going
22 to hear about all of those I'm sure in great detail with
23 Mr. Kobach's examination and cross.

24 Mr. Kobach, go ahead. I don't have any
25 other questions of Dr. Richman at this time.

1 MR. KOBACH: On that proffer, Your Honor, I
2 also want to note plaintiffs' expert McDonald did
3 exactly what we just did here; used one number from one
4 report and another number from another report and then
5 produced I believe it was their 70 percent calculation.

6 THE COURT: Did you object for lack of
7 notice?

8 MR. KOBACH: We did object. I can't
9 remember the precise grounds we did but we did object to
10 it.

11 MR. DANJUMA: Your Honor, just a quick
12 response on that. That's incorrect. It's an incorrect
13 representation of Dr. McDonald's report. And in
14 addition, the slides were excluded in their entirety
15 because of the e-mail issue. So it didn't become an
16 issue in the -- in Dr. McDonald's examination.

17 THE COURT: All right. That's consistent
18 with my recollection. Please proceed.

19 BY MR. KOBACH:

20 Q. Okay. Let's -- let's move on to Slide 4, the
21 next slide here.

22 MR. HO: Well, I'm sorry to say, Your Honor,
23 we got the same objection here. This is --

24 MR. KOBACH: The one above that --

25 THE WITNESS: I think this number -- I don't

1 think it can be the same, this number. That is the --
2 that is the slide we were just talking about.

3 MR. KOBACH: Above this. There you go.

4 MR. HO: Right. So, Your Honor, here again
5 we have another issue. We have a fraction that appears
6 in Dr. Richman's supplemental report that was not
7 applied to the total adult non-citizen population of
8 Kansas to arrive at this numerical estimate of 2,719.

9 MR. KOBACH: Your Honor, I believe the
10 specific source for this number is paragraph 35 of the
11 supplemental report. So it's all consistent within that
12 report and I'll let Dr. Richman --

13 THE COURT: Now, isn't it fair to say that
14 Dr. Richman has given us a number of numbers in these
15 reports --

16 MR. KOBACH: That is true.

17 THE COURT: -- where he estimates the
18 non-citizen voting and registration in Kansas?

19 MR. KOBACH: Absolutely.

20 THE COURT: Those are the numbers we're
21 going to hear about, the ones in his reports, not new
22 ones the two of you have come up with through additional
23 calculation that plaintiff has not been placed on notice
24 of. If that means none of these demonstrative exhibit
25 slides are going to be used, then so be it. That's my

1 ruling. We don't need to go through it slide by slide.

2 THE WITNESS: I don't know whether -- is it
3 -- is there a question pending for me?

4 THE COURT: No, there's not.

5 BY MR. KOBACH:

6 Q. I guess my question is: Did you calculate this
7 number by using the 2.4 percent in paragraph 35 and
8 multiplying it by the 115,000 found at -- throughout
9 this -- this entire report?

10 A. Indeed I did. And I would note I have the other
11 estimate we were just talking about in my report on
12 page 6, the one that was just objected to.

13 THE COURT: Which report?

14 THE WITNESS: That report appeared in my
15 supplemental as well. This claim that it wasn't there
16 is ridiculous. The -- I -- this does not make any
17 sense. It's an attempt to distort what is in my report.

18 I discussed in particular detail the
19 confidence interval for that estimate in Table 1 of my
20 supplemental report, which is the same one that had the
21 estimate of the non-citizen population for the state of
22 Kansas from the American Community Survey from the years
23 I was applying in the demonstrative.

24 MR. HO: Your Honor, I have a pretty hard
25 time following Dr. Richman there. But unless I'm

1 mistaken, I still don't see that 3,813 number from the
2 previous --

3 MR. KOBACH: We're not talking about that.
4 We're talking about 2,719.

5 THE COURT: Okay. How many of these slides
6 are --

7 MR. HO: There is 2,719 --

8 THE COURT: Okay. How many of these slides
9 are --

10 MR. HO: 2,719 --

11 THE COURT: How many of these slides are
12 there in this demonstrative?

13 MR. HO: 2,719 is definitely not there.

14 MR. KOBACH: I think we're talking -- we're
15 going to use a total of --

16 THE WITNESS: I --

17 THE COURT: Wait, wait, wait, especially
18 you. You don't say anything unless there's a question
19 posed to you. You're not here as an advocate. You're
20 not here to trash plaintiffs. You're not here to argue
21 with me. All right.

22 How many of these demonstrative slides are
23 there?

24 MR. KOBACH: Your Honor, we intend to use a
25 total of nine, Your Honor.

1 THE COURT: How many of them are you
2 objecting to?

3 MR. HO: Beyond the one that's up on the
4 screen right now -- the previous one, the one that's up
5 on the screen right now, Your Honor, and one other one.

6 THE COURT: All right. You discovered these
7 when?

8 MR. HO: They were sent to us over the
9 weekend. I can't remember precisely which day, Your
10 Honor.

11 MR. KOBACH: Thursday, Your Honor.

12 THE COURT: And when they were sent to you,
13 was there an explanation as to how -- where these
14 numbers came from? Because what I'm going to suggest
15 now is take a break -- we're going to take a break.
16 Mr. Kobach is going to confer with Mr. Ho on these
17 slides. He's going to spell out to you, Mr. Ho, where,
18 what page number so you can confirm these numbers did,
19 in fact, come from the report.

20 To the extent it's a new extrapolation or a
21 new calculation, I'm not going to allow that. But if,
22 in fact, it is something that's in one of these reports
23 and it's just not that ascertainable right now until the
24 two of you confer, I will allow it if it's in the
25 report.

1 But it sounds to me like you all need to
2 confer about this. And rather than sit here and spin
3 our wheels, let's take a break for 15 minutes or subject
4 to call. All right.

5 (Recess.)

6 MR. HO: Your Honor, if I may, I think our
7 conversation at the break confirmed my understanding of
8 where these numbers are from. You know, we maintain our
9 objection to Slide No. 3, which we've already discussed.

10 Slide No. 4 contains a numerical estimate
11 that's derived from a percentage that is in paragraph 35
12 of Dr. Richman's supplemental report, which there's a
13 percentage in the report. And then to arrive at the
14 number in the slide, 2,719, he takes that percentage and
15 multiplies it by 115,000 or so, the number of adult
16 non-citizens in Kansas. But that calculation doesn't
17 appear anywhere in his report, as far as I know, and the
18 2,719 doesn't either.

19 And then if we look at Slide 11, there's a
20 figure there which --

21 MR. KOBACH: We agreed to not use Slide 11.

22 MR. HO: Okay. So I guess they're
23 withdrawing Slide 11. Maybe we -- I don't know if we
24 still have a dispute about Slide 4 or not.

25 MR. KOBACH: I think we do still have a

1 dispute about Slide 4, Your Honor, the one that's up
2 right now. The Slide 4 is referenced in 35,
3 paragraph 35 of the supplemental report by Dr. Richman.
4 Uses the 2.4 percent calculation. And then, of course,
5 the 115,550 is just the population. That's found at
6 paragraph 67 of the report. And so we just say -- he's
7 just multiplying 2.5 times -- or sorry 2.4 percent times
8 the population number and they are both found in the
9 same report.

10 And we believe that Federal Rules of
11 Evidence 705 allows an expert to testify -- to render
12 opinions regarding the underlying facts that are in his
13 report.

14 THE COURT: All right. So Slides 3 and 4
15 are in the same posture. The number that's multiplied
16 comes from the supplemental report. The percentage
17 comes from the initial report. That calculation doesn't
18 appear in either report. Are you -- is this -- is this
19 witness going to base an opinion on these new numbers?

20 MR. KOBACH: Just a quick correction, Your
21 Honor. These are two numbers from the same report,
22 paragraph 35 of the supplemental and paragraph 58 of the
23 supplement -- or 67.

24 THE COURT: These particular numbers aren't
25 in the report. 2,719 is not in the report and the

1 other. My question is: Is this witness now basing an
2 opinion on these particular numbers?

3 MR. KOBACH: He's rendering an opinion that
4 2.4 percent times 115,550 yields 2,719.

5 THE COURT: No, no, no --

6 MR. HO: I think Your Honor needs an expert
7 for that.

8 THE COURT: -- no, no. As I said, he relies
9 on a number of data sources to come up with estimates of
10 non-citizen registrations in Kansas.

11 These calculations, although simple enough
12 to figure out what he did now that we know now that's
13 it's been revealed, are two additional numbers that
14 aren't in the report themselves.

15 And my question is: In this host of
16 estimates that he comes up with, is he going to opine
17 these two belong in the group? Because as you'll
18 recall, he did a meta-analysis of all these varying
19 estimates. Is he now adding to his analysis with these
20 two numbers that we're talking about?

21 MR. KOBACH: Actually, on the meta-analysis,
22 Dr. Ansolabehere offered his meta-analysis and then he
23 offered his counter meta-analysis.

24 But, yes, he is offering this 2.4 percent on
25 paragraph 35 of his supplemental expert report as one of

1 the appropriate analyses of the --

2 THE COURT: No, the 2.4 percent and
3 3.3 percent, no problem. Those percentages are in the
4 report.

5 My question is: When he then calculates
6 that against the 115,500 and comes up with an actual
7 number of 2,719 in one instance and -- what was the
8 other one?

9 MR. KOBACH: Three thousand --

10 MR. HO: 3,813 in another.

11 THE COURT: -- 3,813 in another, is he using
12 those numbers now? Is that what he's using to base his
13 opinions on now?

14 MR. KOBACH: He's offering those two numbers
15 as well as the other numbers you get.

16 THE COURT: Sustain the objection. These
17 two numbers cannot form the basis of his opinion because
18 they're not in his report. All right. So I'm
19 sustaining the objection on those.

20 MR. KOBACH: And just to clarify, Your
21 Honor, the percentages though, he may offer those?

22 THE COURT: The percentages are in the
23 report. That's fine. That's fine. I'm just saying he
24 can't use these numbers because plaintiff -- they were
25 on notice of the percentages. They were not on notice

1 that he was going to use those percentages and multiply
2 them against 115,500. There's nowhere in his report he
3 reveals he's going to make that calculation and rely on
4 that as well. That should have been in his report.

5 If that was then going to become still
6 another source of an estimate of many other estimates
7 that he uses to come up with non-citizen registrations
8 in Kansas, they are not on notice of those until this
9 weekend so I'm -- I'm excluding that. These -- this is
10 a new calculation. These are two new calculations.
11 They're not on notice.

12 Please read Rule 26 and Rule 37. We've
13 reached these issues time and time and time again and,
14 you know, ad nauseam. You can't, you know, sit down
15 with your expert on the eve of trial and come up with
16 new numbers, come up with new estimates that are going
17 to form the basis of a new opinion.

18 Everybody's hired experts. Plaintiffs have
19 hired an expert. They've hired rebuttal experts. And
20 people are relying with -- on people to stick with what
21 they said they were going to testify to, and that's the
22 unfairness in now coming in and adding additional
23 calculations. So I'm excluding those two.

24 MR. KOBACH: Okay, Your Honor, we would like
25 to make a proffer of this one as well then.

1 THE COURT: You've already proffered. We
2 already know what it's going to be. So proceed with the
3 things that are in his report and that plaintiffs are on
4 notice of and his opinions. And there are many -- he
5 has many opinions. Let's proceed with that.

6 BY MR. KOBACH:

7 Q. Okay. So not looking at that number we were just
8 discussing, but looking at the 2.4 percent, in your
9 report, in your supplemental report you bring up that
10 percent in response to plaintiffs expert
11 Professor Ansolabehere.

12 Could you, please, summarize his criticism
13 and your response as to why you believe 2.4 percent is a
14 correct percent to apply in this case.

15 A. Certainly. The analysis of national estimates in
16 my report is on -- the basis of the view which I
17 articulate on page 2 of my report, that the question of
18 non-citizen involvement in elections across the United
19 States is relevant because, in the absence of
20 distinctive rules requirements or enforcement efforts in
21 Kansas, one might well expect that the rate of
22 non-citizen registration in voting would be broadly
23 similar in Kansas to that in other states.

24 In this case, in the case of this particular
25 analysis, this analysis is in part in response to -- as

1 I began discussing some time ago, we had the paper
2 published in 2014 looking at 2008 data that we just
3 talked about the 3.3 percent estimate from page --
4 covered, among other places, on page 3 of my initial
5 report.

6 Ansolabehere and co-authors made an
7 argument -- and here they were perhaps drawing on a
8 piece that another person published as well -- made an
9 argument that the -- a level of non-citizen voting that
10 was observed in the CCES survey might be the result
11 simply of citizens lying or misstating or making
12 mistakes and saying that they are non-citizens.

13 And so all of these -- all individuals for
14 whom we have a voter file match and they said they were
15 registered to vote, for instance, this would imply are
16 actually people who are citizens. They titled their
17 piece they referenced The Perils of Cherry Picking, and
18 yet in their analysis they -- they cherry-picked rather
19 heavily themselves. They focused on 2010, which is an
20 off-year election. And non-citizens don't appear to
21 participate as much in off-year as on-year elections.
22 And they focused on voting -- validated voting.

23 And so the question then is -- well, what
24 they argued is: Let's look at a group where we can be
25 much more confident that people are, in fact,

1 non-citizens. Let's look at the group of people who are
2 saying that they're non-citizens once in a panel study
3 that was done where about 20,000 individuals overall
4 were asked twice to respond to the CCES, first in 2010
5 and then they responded again in 2012. So in those two
6 surveys they were asked twice about their citizenship,
7 and so we have individuals who have responded twice.

8 The people we can be most confident about
9 being citizens, in fact, are people who responded twice
10 that they are citizens. I'm sure we'll get into later
11 issues about who -- the relative reliability of citizens
12 versus non-citizens report status.

13 Q. Let me interrupt so I understand. You're saying
14 Ansolabehere's criticism was that there might be people
15 who twice mistakenly stated that they were non-citizens
16 when, in fact, they were U.S. citizens?

17 A. His criticism was that the people who responded
18 to the surveys were citizens -- who had evidence of
19 voting or registration are citizens who said that they
20 were non-citizens.

21 Q. In your expert opinion, do U.S. citizens
22 frequently report that they are non-citizens?

23 A. I think that in -- I think that this is something
24 that is very rare. And I've looked at various evidence
25 aimed at trying to assess how often this happens. The

1 -- there was a further survey of the same individuals in
2 2014. And the pattern we observed is that it's much
3 more common, in percentage terms, for people to be
4 inconsistent about their statements about their
5 citizenship status when the preponderance of the
6 evidence suggests they're non-citizens than the other
7 way around.

8 So we have more evidence that non-citizens
9 are inconsistent in the statements they made about
10 citizenship status than citizens. Stronger evidence
11 that citizens are consistent in the way they report
12 their citizenship status.

13 And so this implies that the error rates
14 that Ansolabehere and colleagues calculated in their
15 paper are substantially biased because they're combining
16 errors made by citizens and non-citizens when a much
17 higher portion of non-citizens are inconsistent in their
18 statements about citizenship status than one observes
19 with citizens.

20 Q. Okay. And so just to make sure I understand, the
21 2.4 percent is the -- is the number that
22 Professor Ansolabehere criticizes because it -- he
23 thinks there might be people who twice reported
24 non-citizen status when they were, in fact, U.S.
25 citizens?

1 A. Not quite. In fact, Professor Ansolabehere
2 asserts in trying to -- in their critique of my earlier
3 co-authored article, in their critique of that article
4 they say let's look at people who twice said they were
5 citizens. And they argued, well, in 2010 we don't see
6 much evidence of these people casting votes. If you
7 look at 2012, you do see evidence of a validated vote in
8 terms of the number of people who said they voted. But
9 the relevant focus here is on registration, not voting,
10 which they don't discuss in the paper at all.

11 Q. I see.

12 A. So here we're looking at a number which is the
13 kind of number they say is the most reliable way to get
14 a sense of how real non-citizens are behaving because
15 these are people who repeatedly told us they're
16 non-citizens.

17 Q. So does Ansolabehere challenge your 2.4 percent
18 number?

19 A. I can't remember exactly what he said in his
20 deposition and his report concerning this, but the --
21 this is a number which is in response to their
22 criticism. This is looking at a quite robustly assessed
23 measure of non-citizens and looking at a quite robust
24 measure of the electoral participation. You have people
25 who said they were non-citizens twice. We have people

1 who said they were registered to vote and have a voter
2 file match. So we can be pretty confident on both ends
3 that we have a valid measure and so that's the base --
4 that's the reason to do this calculation. That's the --
5 that's why the percentage calculation is relevant in
6 thinking about the rate of non-citizen participation in
7 U.S. elections, including elections in the state of
8 Kansas.

9 Q. And just before I forget, in your colloquy with
10 the judge earlier, she had suggested that perhaps some
11 of your estimates were as low as zero. Are any of your
12 estimates as low as zero?

13 A. None of the estimates that are derived from
14 samples of non-citizens are zero.

15 Q. Okay. Let's go to the next estimate, that's
16 Slide No. 5, okay. So, Dr. Richman, this slide is
17 entitled Extrapolation from Sedgwick County election --
18 Sedgwick County Naturalization Ceremony Prior
19 Registration Rate. Can you explain how you used the
20 Sedgwick County election data to arrive at this
21 conclusion, which is the number 1,169?

22 A. Certainly. Sedgwick County provided me with
23 information on the prior registration rate of
24 individuals who naturalized to become U.S. citizens in
25 the county. This is based on data for 2016. And what I

1 was told by the county is that the Sedgwick County
2 Election Office had staff attend 62 naturalization
3 ceremonies and they had 791 individuals who had
4 naturalized at the ceremonies, register to vote at the
5 ceremonies, and provide their naturalization document as
6 documentary proof of citizenship.

7 Q. And so is this the -- to get this number, are you
8 -- is 791 the denominator and I think it was is 8 the
9 numerator?

10 A. That's right, 8 is the numerator here. So what
11 we're looking at here is a numerator that is the number
12 of individuals from this group of 791 who had already
13 applied -- were already registered to vote in some form,
14 had already applied to register to vote prior to
15 naturalizing.

16 Q. Is it correct the 8 out of 791 newly naturalized
17 citizens, that was a single calendar year?

18 A. Yes, that was during 2016. The e-mail said --
19 message said since January 1st, 2016. And so this
20 didn't probably go quite to the end of the calendar year
21 because I received the data right around -- near the end
22 of the year --

23 Q. Okay.

24 A. -- but there might be a couple of ceremonies
25 missed.

1 Q. How reliable is this estimate?

2 A. So with all of these estimates -- let me bring
3 your attention to there's an error bar noted on the
4 graph. So this is a way of characterizing -- we talked
5 briefly about confidence intervals before. This is a
6 way of characterizing the uncertainty around an
7 estimate.

8 Q. So is the error bar the small line in the middle?

9 A. It's the small line through the middle. So how
10 -- so the -- in terms of thinking about the reliability
11 of the estimate, there's several criteria I'd like to
12 touch on.

13 Of course first, in terms of the error bar,
14 we're 95 percent confident based on this sample that the
15 true rate in Sedgwick County is between the percentages
16 that, when extrapolated here to the population of
17 non-citizens in Kansas, would yield between just a bit
18 under 600 up to about 2,200 or so.

19 So that's the confidence interval. We're
20 quite confident these are individuals who were
21 non-citizens because they just naturalized and they
22 provided their naturalization documents as documentary
23 proof of citizenship. So we're quite confident in those
24 eight I think. And the overall count is -- 791 is again
25 derived from the provision of this kind of proof at the

1 ceremony.

2 Q. So would there be any possible reporting error
3 with a sample like this one?

4 A. I think it's very unlikely.

5 Q. And is the 791 a fairly large sample size for
6 surveys --

7 A. It's a fairly large sample size.

8 Q. -- not surveys?

9 A. Some surveys are larger and some are smaller.
10 This is a sample size that allows us to -- as you can
11 see, it's not a totally precise estimate. We have a
12 confidence interval that includes several different
13 values. I think we can be quite confident that the
14 percentage is within the bounds indicated by this
15 confidence interval.

16 Q. You say in your report this estimate probably
17 undercounts the number of non-citizens who are
18 registered. Why is that?

19 A. There are reasons why one would think it would
20 undercount. One reason that I raised is that if I was a
21 non- -- think about it if you're a non-citizen and you
22 have just naturalized and you know you're registered to
23 vote, you might not want to reregister. You're already
24 registered. You don't need to.

25 And so people in that position I think would

1 be less likely. Maybe these people needed to correct
2 something in their registration or I'm not sure exactly
3 what their reasons were for filling out the
4 applications, but -- and some of them may have been
5 people who reregistered -- were canceled because they
6 were not citizens and then re-registered but these were
7 people who were registered or attempted to register, at
8 least, and then they registered upon naturalizing. And
9 I think people who are registered would probably be less
10 likely than people who are not registered to use the
11 naturalization ceremony as a place to register.

12 Q. While we're on this particular estimate, did you
13 read Professor Minnite's critique?

14 A. Yes.

15 Q. And without taking the time to go to her page
16 number, but do you recall her criticism of this that the
17 registered -- I believe it was registered natural --
18 well, I'll let you, if you remember what her criticisms
19 were.

20 A. So Minnite offered several criticisms of this
21 estimate. Ultimately, I -- I thought that these
22 criticisms had no merit and so I can go through several
23 of these -- several of these issues.

24 One is she -- she did not like the divisor
25 that we're dividing by a number of people who

1 naturalized and registered. She -- she had a different
2 theory than the one I just offered. She thought that it
3 went the other way, in terms of, well, maybe people who
4 -- she thought it would be the people who were less
5 likely to be previously registered who would be showing
6 up. The -- she asked about the attendance of the
7 ceremonies by Sedgwick County. I confirmed they did.
8 She had other issues like that.

9 She also argued that there were issues with
10 the degree to which Sedgwick County was representative
11 of the broader state of Kansas. So this speaks to the
12 question of whether one can extrapolate to the state of
13 Kansas. And she said I -- "that Dr. Richman improperly
14 assumes that behavior of all naturalized citizens in
15 Sedgwick County is the same as for citizens who
16 naturalized throughout the rest of the state of Kansas,"
17 but she doesn't offer any evidence that they're unique.

18 She says Sedgwick County is not
19 representative of the state of Kansas. But the point is
20 actually are Sedgwick County non-citizens representative
21 of the state of Kansas. She provides no evidence of
22 that, as I pointed out here. And I think she provided
23 no evidence because it would be very difficult to come
24 up with such evidence.

25 If you look at racial demographics, for

1 example, Sedgwick County and the state of Kansas are
2 almost identical in terms of the percentage of
3 Hispanics, in terms of the percentage of Asians, and so
4 forth.

5 If you look at age categories, they're
6 almost identical in the percentage of people in the 25
7 to 44 age group and the two -- both are slightly above
8 50 percent.

9 It looks to me, if you look at that actual
10 population, which she didn't bother to do perhaps
11 because it would be hard to find evidence that would be
12 effective in that context, that she claims it's not
13 representative. As far as I can tell, the non-citizen
14 population in Sedgwick County looks quite similar.

15 If you look at the measures of registration
16 rates by non-citizens in Sedgwick County from other --
17 other sources, it looks like it's quite similar to the
18 rate in other parts of Kansas.

19 So across a range of measures, as far as I
20 can tell, Sedgwick County is not distinct. It is very
21 similar to the state of Kansas, in terms of relevant
22 measures for the non-citizen population.

23 Q. Okay. I'm just going to take a quick tangent. I
24 think she also criticized you in one other respect in
25 her report. She said she -- I believe criticized the --

1 you mentioned that in the North Carolina study they
2 calculated roughly 1 percent of a population of known
3 non-citizens had registered and I think she said you
4 overstated it. Can you respond to that briefly?

5 A. Yeah, so this was -- I referenced in my initial
6 report I -- and part of -- as part of looking at
7 evidence from other parts of the country, about the rate
8 of non-citizen registration.

9 The state of North Carolina did a match of
10 individuals who the state knew were on the DACA list --
11 I believe they got information they were on the DACA
12 from the Department of Motor Vehicles -- there with the
13 voter file and they found that over a hundred -- I think
14 it was 109 of those individuals were, in fact, on the
15 voter file.

16 And so when you divide that by the total
17 number of non-citizens, DACA people that the state knew
18 about, from that list, so their denominator here is
19 about 15,000, divide that out, you get about .75 percent
20 registration rate for the DACA recipients that were
21 matched by the state of North Carolina.

22 And her criticism focused on other aspects
23 of what North Carolina had done and dealt almost not at
24 all with the DACA issue. She was talking about concerns
25 she had with other sorts of matches they had done and so

1 forth. And that really -- and how many voted.

2 Ultimately, my focus was on how many were registered and
3 she did not address that and -- in a substantive way.

4 Q. Just to make sure I understand, you were talking
5 about the estimate -- or the finding in that state that
6 was it of the 15,000 DACA recipients with driver's
7 license 145 had registered to vote?

8 A. Well, that was the number in a news report. As
9 you -- as I later did, I dug into the reports from the
10 state. It was more of the 109 figure I mentioned to you
11 a moment ago.

12 Q. Okay. All right. Let's return back to the
13 slides dealing with Kansas. So I think we're done with
14 Minnite's criticisms. Let's go now to slide --

15 A. I think we have one more Minnite actually.

16 Q. Okay. If you'd like to go ahead.

17 A. That's the next slide. Maybe it's not. I don't
18 know.

19 Q. Slide 9 I believe.

20 A. Yeah. So --

21 Q. Yeah, Slide 9.

22 A. So, as I mentioned, another of Minnite's
23 criticisms involved this denominator. Maybe we got some
24 bias from who's registering and who isn't. And so what
25 I looked at here was other data from Sedgwick County for

1 2014 and 2015, how many non-citizens registered and
2 provided DPOC and had a prior registration status in
3 Sedgwick County in prior years. The county had been
4 attending -- staff had been attending the ceremony for
5 -- since the middle of 2013. So here the divisor is the
6 total number of people who naturalized in the Wichita
7 CSA, which includes Sedgwick County and several
8 surrounding counties.

9 And so this was -- this was a way to address
10 those concerns about maybe the people registering are
11 different. Well, here we're looking at everybody who
12 naturalized and taking a ratio of the people who
13 naturalized and had prior registration status to the
14 whole group of people who naturalized in the Wichita
15 CSA.

16 Q. So to make sure I understand, the past slide to
17 the other changes from 1,169 to 1,067 and that's because
18 you changed the denominator to account for Minnite's
19 criticism?

20 A. That's right. It drops just a tiny bit but it's
21 a very similar estimate. Both are near 1 percent. You
22 can see here this extrapolation, the number is slightly
23 under 1 percent. So we end up with 1,067, a slightly
24 lower extrapolation to the non-citizen population in
25 Kansas.

1 Q. Okay. Another method you use to help calculate
2 or estimate the number of non-citizens registered in
3 calculation was using temporary driver's license as a
4 data point. How did you use the temporary driver's
5 license data to estimate the number of non-citizens
6 registered in Kansas?

7 A. So what we -- what I did with the temporary
8 driver's license number is I relied -- temporary
9 driver's license, I relied on a survey which was
10 conducted by the national polling firm, Issues and
11 Answers, for the state of Kansas.

12 Numbers of individuals from the temporary
13 driver's license file that was provided did not have
14 phone numbers. So first there was a matching process by
15 another national polling firm to identify phone numbers
16 and then those numbers were called. We then matched on
17 names and ages to assess whether we had the right
18 individuals.

19 The survey ultimately contacted 38 people
20 from the temporary driver's license list. Of those we
21 eventually -- we focused on 37. Another aspect of this
22 was verifying the non-citizenship status of these
23 individuals. The Kansas Secretary of State's Office
24 sent information about these individuals to ICE and got
25 assessments of the citizenship status. Those

1 assessments identify one individual as a probable
2 citizen. The ultimate analysis is based on 37
3 individuals from that -- that survey.

4 Q. So of those individuals, what percent were
5 registered to vote?

6 A. Of those individuals, we found that six indicated
7 that they were registered to vote or had attempted to
8 register to vote in the state of Kansas. So that
9 percentage is about 16 and a half percent of the
10 respondents who said that they were registered to vote
11 or had attempted to register to vote, which is broadly
12 similar to the estimate that we talked about earlier
13 from the national Cooperative Congressional Election
14 Study in terms of the percentage of non-citizens who say
15 they're registered to vote.

16 Q. Now, we didn't produce a variable for this
17 particular estimate. Is this the one you discuss on
18 page 10 of your original report?

19 A. Probably is but I don't know. Let me check.
20 This estimate is discussed on page 10 of my initial
21 report. It is also discussed in the supplemental report
22 in response to some analyses that Professor Ansolabehere
23 had done. There's a table on page 9, for example, that
24 provides confidence intervals for this estimate by using
25 a range of different ways of calculating those

1 confidence intervals.

2 Q. Now, if I'm not mistaken, you actually do the
3 multiplication here that was subject of some dispute
4 earlier and you multiply -- you apply your percentage
5 times the population of non-citizens in Kansas. And
6 what does the number yield?

7 A. The number yield is more than 18,000.

8 Q. And so the individuals in the TDL estimate, those
9 individuals have all been verified to be non-citizens;
10 is that correct?

11 A. That's right. So we -- we have the -- the
12 verification from ICE that these individuals were indeed
13 non-citizens as well as their status on the TDL list.
14 So we have multiple measures that confirmed that they
15 were indeed non-citizens.

16 Q. Okay. So when you said as well in addition to
17 the DHS confirmation, you're saying the document the
18 alien presented to get the TDL in the first place?

19 A. Exactly. And it takes some time to move
20 typically from a temporary presence, which is what
21 people on the TDL have, to citizenship.

22 Because people are -- with the TDL, I've
23 learned --

24 I want to correct a -- a confusion that was
25 on page 10 of my report. At that point my impression

1 was that this could include legal permanent residents.
2 I now understand, in fact, this only includes
3 individuals who are present on a temporary basis.

4 And so to become a citizen from the TDL
5 category, in most cases you have to become a legal
6 permanent resident and then there are a number of years
7 typically. I believe the typical number is five one has
8 to be a legal permanent resident before one can
9 naturalize as a citizen.

10 Q. So on this one we didn't do a visual. I suppose
11 we probably should have. But can you give us an
12 estimate of the confidence interval here what the lower
13 end would be, what the higher end would be? I've got a
14 calculator if you need it.

15 A. Certainly. So the confidence interval for this
16 estimate is on page 9 of my supplemental report. And
17 using the Wilson Score method we have a confidence of
18 7.7 percent to 31.1 percent.

19 Q. And what would 7.7 percent to 31.1 percent be in
20 terms of population numbers?

21 A. Well, so roughly 7.7 percent is going to be a bit
22 over 8,000, and 31.1 percent will be about thirty-two or
23 thirty-three thousand I think at the top end of that
24 confidence interval. I'd have to use a calculator to
25 give you precise figures. I'm happy to do that if you

1 wish. Okay. So at the low end it would be 8,897 or so,
2 and then at the upper end it would be -- sorry, having a
3 moment. Put my decimal point in the wrong place. It
4 would be 35,936.

5 THE COURT: Mr. Kobach, if that completes on
6 this particular --

7 MR. KOBACH: Yes, it does.

8 THE COURT: This is probably a good time to
9 break for the day. Are you done with the TDL?

10 MR. KOBACH: Yeah, actually, it is a good
11 place to break.

12 THE COURT: All right. Let's reconvene at
13 nine o'clock in the morning. Mr. Ho.

14 MR. HO: Your Honor, if I might raise one
15 scheduling issue. I have obviously not done a very good
16 job of predicting how long things would take during this
17 trial. We have two rebuttal witnesses for Dr. Richman's
18 testimony. He has some matching analysis and some
19 survey analysis. So we have one on each of those forms
20 of analysis.

21 The one on the matching probably is about a
22 20-minute -- 20-25-minute direct examination. The one
23 on the surveys is probably about an hour. Neither of
24 them can come back next week. One of them's already
25 been here and back. And I don't know how much longer

1 Secretary Kobach has. I have quite an extensive cross
2 examination for Dr. Richman. But I'm not sure how we're
3 going to do this given that I think they have at least
4 one more witness that they'd like to call.

5 What I would request is if we could, you
6 know, put our rebuttal witnesses to Dr. Richman on
7 immediately after he's finished just to make sure that
8 they get to testify. We can stay a little late if
9 that's what's necessary. We'll keep the examinations as
10 tight and short as possible.

11 But one of them has a deposition next
12 Monday. The other one is missing a class that he has to
13 teach today to be here and he'll -- he can't miss two
14 weeks in a row.

15 THE COURT: All right. I guess the first
16 thing I'd like to know, Mr. Kobach, do you know how much
17 longer you'll be on direct with Dr. Richman
18 approximately?

19 MR. KOBACH: I'm halfway through, Your
20 Honor. So I guess I've been going for an hour and a
21 bit. So probably another hour or so.

22 THE COURT: Okay. So are you asking to put
23 your rebuttal witnesses on before you even cross-examine
24 Dr. Richman or after you finish?

25 MR. HO: After my cross examination, Your

1 Honor. I think we ought to be able to --

2 THE COURT: These are just two of your
3 three?

4 MR. HO: Correct. We have a third who is a
5 rebuttal for, I believe, their other expert witness,
6 assuming he's being called. And maybe what we could do
7 is just, you know, put the witnesses who respond to each
8 other back to back. Maybe do those other ones on the
9 following Monday if it comes to that. I apologize, Your
10 Honor, for the scheduling issues.

11 THE COURT: So the two that would -- you're
12 offering to rebut Dr. Richman are together about an hour
13 and a half?

14 MR. HO: For direct, yes, Your Honor.

15 THE COURT: Okay. So, yeah, let's try doing
16 that to get them. Otherwise, I mean, we'll have to
17 completely reschedule, it sounds like, their testimony
18 if they've been here. I mean, I think we all thought
19 you would get your rebuttal case on tomorrow and maybe
20 that otherwise wouldn't be the case. This is not your
21 last witness.

22 MR. KOBACH: We have one more after this
23 witness, Your Honor.

24 THE COURT: Do you have any Department of
25 Revenue witnesses?

1 MR. KOBACH: I think we were going to try to
2 work with plaintiffs.

3 MR. HO: We were pretty close on the
4 stipulations.

5 THE COURT: Let's try to get those witnesses
6 on and off. We've tried to accommodate everybody when
7 we needed to. Hopefully early afternoon right after
8 lunch. If we run -- if Dr. Richman goes longer than we
9 anticipated in the morning, we can revisit and figure
10 out where to go from there.

11 MR. JOHNSON: Your Honor, I have something
12 of a scheduling issue as well. Like one of Mr. Ho's
13 rebuttal witnesses, I have -- I have classes to teach.
14 I missed last week. I can't miss tomorrow. I will be
15 -- I will not be here in the morning. Probably won't be
16 here until maybe 3:30 in the afternoon if I -- if I can
17 pull that off.

18 I understand that there's the possibility
19 that we can go into next Monday. If, for example,
20 Mr. McFerron can go next Monday, that would make things,
21 I think, go more smoothly. That's my only suggestion.

22 MR. KOBACH: It appears that's what we're
23 going toward.

24 MR. JOHNSON: We're going anyway.

25 MR. KOBACH: Dale, could you identify who

1 you're bringing tomorrow?

2 MR. HO: Sure. Professors Hersh and
3 Ansolabehere.

4 MR. KOBACH: Do you have a rebuttal witness?

5 MR. HO: Matt Barreto.

6 MR. KOBACH: He will be testifying to?

7 MR. HO: Yeah, if Pat McFerron testifies.

8 MR. JOHNSON: If Mr. Kobach could assure us
9 that Mr. McFerron won't testify until Monday, that would
10 make things go more smoothly, I think, for all of us.

11 THE COURT: It sounds unlikely that he will.

12 MR. JOHNSON: I think it's unlikely.

13 THE COURT: If we finish up Dr. Richman, put
14 on those two rebuttal witnesses, and it looks like
15 Dr. Richman will be on the stand most of tomorrow
16 morning, then get to your rebuttal witnesses and then
17 McFerron will be your last witness.

18 MR. KOBACH: I believe so provided we can
19 get all the other sort of state information and
20 processes done through stipulations and deposition.

21 THE COURT: Okay. Well, maybe we can just
22 plan on taking up McFerron and the McFerron rebuttal
23 witness on Monday then, even if we have to break a
24 little early tomorrow.

25 COURTROOM DEPUTY: We do have status

1 conferences Monday morning but we could be done by 9:30.

2 THE COURT: Monday we would start around
3 9:30 rather than 9:00. Okay. We'll see how we're going
4 tomorrow, figure it out from there, but I think it can
5 still work out.

6 (Proceedings adjourned to the following day,
7 March 13, 2018 at 9:00 a.m..)

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CERTIFICATE

10 I certify that the foregoing is a correct
11 transcript from the record of proceedings in the
12 above-entitled matter.

13 DATE: March 16, 2018

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/s/Kimberly R. Greiner
KIMBERLY R. GREINER, RMR, CRR, CRC, RDR
United States Court Reporter

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