

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF KANSAS

3 PARKER BEDNASEK,

4 Plaintiff,

5 v.

Docket No. 15-9300-JAR

6 KRIS W. KOBACH,

7 Defendant.

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

10 Plaintiffs,

11 v.

Docket No. 16-2105-JAR

12 KRIS W. KOBACH,

13 Defendant.

Kansas City, Kansas
Date: 03/13/2018

Day 6 (A.M. Session)
Pages 1503-1649

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

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(Appearances continued on next page)

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I N D E X

Defendant's Witnesses:Page

JESSE T. RICHMAN, Ph.D. - (continued)

Direct Examination

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Cross Examination By Mr. Ho

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1 (9:03 a.m., proceedings commenced.)

2 THE COURT: All right. Let's get
3 Dr. Richman back on the stand.

4 Dr. Richman, you're still under oath to tell
5 the truth, the whole truth and nothing but the truth so
6 help you God.

7 THE WITNESS: Yes.

8 JESSE T. RICHMAN, Ph.D.,
9 resumed the stand, having first been reminded of the
10 oath, testified as follows:

11 DIRECT EXAMINATION - (continued)

12 BY MR. KOBACH:

13 Q. Good morning, Dr. Richman.

14 A. Good morning.

15 Q. Pick up where we left off. We were looking at a
16 number of estimates of the non-citizen population that
17 have registered to vote in the state of Kansas. And if
18 I recall correctly, we had just done one estimate, which
19 was approximately 18,000; is that correct?

20 A. I do recall discussing that estimate.

21 Q. Okay. Let's go to another analysis, and I
22 believe -- you can explain how you did this one. It's
23 Slide 12. Okay. So could you explain what the numbers
24 are in this one and how you did this calculation?

25 A. Certainly. This is based on several -- combining

1 several years of the Cooperative Congressional Election
2 Survey looking at only individuals who said they were
3 non-citizens and were Kansas residents.

4 Q. And what does the slide indicate?

5 A. The slide indicates that if we take the -- the
6 portion of those individuals who indicated that they
7 were registered to vote and multiply that by the size of
8 the non-citizen population in Kansas, the estimate is
9 33,000. The confidence intervals indicate a range of
10 uncertainty for this estimate. On the low end that
11 uncertainty is well above 10,000 and the high end it
12 goes up to above 60,000.

13 Q. So how confident can we be that the actual number
14 falls somewhere in that range of confidence interval?

15 A. The idea with the confidence interval is to
16 characterize a range of uncertainty within which, on the
17 basis of the estimate provided in the sample, we have a
18 95 percent confidence that the true value falls
19 somewhere in that range. So on the basis of this
20 estimate, we -- on this basis -- this evidence, we're
21 95 percent confident that the true value of
22 self-reported non-citizens who said they registered to
23 vote in Kansas is between -- between the bounds of that
24 confidence interval.

25 Q. Okay. Now, you also attempted to figure out not

1 the number of people in the entire state of Kansas but a
2 different question, how many people on the suspense list
3 for failure to provide proof of citizenship were
4 actually non-citizens.

5 Can you move to Slide 16, please.

6 Okay. How did you reach this calculation?

7 A. So this calculation is based on a match of the
8 suspense list file and the temporary driver's license
9 file. Both of these were files I was provided. And so
10 I -- I matched those. I identified 16 individuals who
11 were on both of the lists. Broadly this matching was
12 confirmed by Professor Hersh, who is an expert for the
13 plaintiffs. He also found 16 individuals who matched
14 between those lists. We disagreed about one individual.

15 This estimate gives a -- an -- this gives an
16 estimate, based on extrapolating from the TDL, which is
17 less than a fifth of the overall non-citizen population
18 in Kansas to the overall non-citizen population in
19 Kansas.

20 Q. And you just said that the TDL list is -- or
21 represents less than a fifth of the population of
22 Kansas. Can you explain that? Of the alien population.

23 A. It's approximate -- it's approximately 21,000
24 individuals on the list I was provided and we have
25 115,000 non-citizens --

1 Q. I see.

2 A. -- in Kansas according to census estimates.

3 Q. And so the extrapolation from the 16 matches up
4 to 88 is based on that, is that correct --

5 A. That's right.

6 Q. -- that you're looking at 21,000 population
7 versus based on the entire population of 115,000?

8 A. Exactly.

9 Q. And I believe you did another estimate to
10 determine the number of citizens on the suspense list.

11 Can we move to Slide 17.

12 Okay. Now, could you explain how you get
13 this number, which I believe is 125?

14 A. Yes.

15 THE COURT: Can I just ask something for
16 clarification real quick. So the number 88 is you
17 extrapolating that based on a total non-citizen
18 population of 115,500 or based on 21,000, the number of
19 88?

20 THE WITNESS: Certainly. Let me -- let me
21 try to explain, Your Honor. The 88 is based on the
22 overall non-citizen population.

23 THE COURT: 115,000 plus?

24 THE WITNESS: That's right.

25 THE COURT: Okay.

1 BY MR. KOBACH:

2 Q. Okay. Let's go ahead and move to Slide 17. So
3 now here we have a slightly larger estimate of
4 non-citizens who were on the suspense list.

5 Dr. Richman, before I ask how you reached
6 this number, do you recall if Dr. -- there were vary --
7 the suspense list fluctuates with time. Do you recall
8 roughly -- you said 22,000 on the list?

9 A. So the suspense list I was provided had 17,905 --

10 Q. Okay.

11 A. -- names on it, if I remember correctly.

12 Q. Okay. So this would be of -- of those?

13 A. Right.

14 Q. Okay. Go ahead.

15 A. So Issues and Answers did a poll -- a survey of
16 individuals on the suspense list and in that survey
17 questions were asked about citizenship status. This
18 estimate is based upon extrapolating from the percentage
19 of individuals in that sample, the sample was 1,380
20 individuals, if memory serves, extrapolating from that
21 sample to the broader suspense list.

22 Q. And --

23 A. I just recall -- I need to correct, Your Honor,
24 what I said previously in answer to your question on the
25 previous slide.

1 It was neither of the numbers you asked
2 about actually. What that -- this is estimating the
3 number of non-citizens on the suspense list. So that
4 number on the previous slide is based on extrapolating
5 from the number of matches with the suspense list to the
6 broader -- to -- from the -- based on the portion of all
7 non-citizens who are on the TDL to the suspense list.
8 So this is extrapolating to that 17,905 figure.

9 THE COURT: Not 21,000?

10 THE WITNESS: Not 21 -- not 21 --

11 THE COURT: Okay.

12 THE WITNESS: -- and not 115. It's to
13 seventeen-nine. So this is only looking at individuals
14 on the suspense list, that's what this is an estimate
15 of.

16 THE COURT: Got it.

17 BY MR. KOBACH:

18 Q. Okay. And on this Slide 17, where you have the
19 number 125, was there a typo in your original report in
20 this regard?

21 A. Yes, there was. I -- on the paragraph discussing
22 this, I initially gave the correct portion of .7 percent
23 and then I subsequently had a typo which I did math
24 wrong which was .9 percent. And we discussed this in
25 the deposition as well. This is -- this was a typo.

1 This number is based on taking the .7 and multiplying it
2 by the number on the suspense list.

3 Q. So the number in the original report that should
4 be 125 is where you say 161; is that correct?

5 A. That's right.

6 Q. Yes?

7 A. Yes, that's correct.

8 Q. Okay. Okay. In your supplementary report -- and
9 we're done with that slide -- you respond to criticisms
10 from plaintiffs' experts Ansolabehere, Minnite and
11 Hersh; correct?

12 A. Yes.

13 Q. And the -- the report -- your supplemental report
14 includes a meta-analysis, which was -- as I understand
15 it, a response to Ansolabehere. Could you walk us
16 through that?

17 A. Yes. So Professor Ansolabehere had made an
18 effort to combine several of my estimates. And this
19 wasn't combining all of my estimates but it was
20 combining several of the estimates that were in that
21 initial report. There are more estimates in my
22 supplemental report as well that were not part of this
23 meta-analysis. I was replicating what Professor
24 Ansolabehere had done.

25 What Professor Ansolabehere initially did

1 was an attempt to average the estimates. In the process
2 of doing that, Professor Ansolabehere did something that
3 I encounter sometimes among my undergraduate students
4 when they're just learning how to estimate proportion --
5 estimate the standard error of a mean. He averaged the
6 numbers and then he calculated the standard deviation of
7 those numbers in an effort to calculate the standard
8 error of that mean. The correct formula is the standard
9 deviation divided by the square root of the number of
10 observations.

11 So here he was treating it as if there were
12 five observations. So at minimum his number should have
13 been -- his estimate for the -- the standard error
14 should have been divided by the square root of five.

15 And you're -- when you correct that
16 analysis, unlike his assertion, which was that this
17 combined estimate was not significantly distinct from
18 zero, in fact, you have an estimate of several percent
19 which is significantly different from zero. So this was
20 arguably an error.

21 I then also demonstrated the application of
22 a more appropriate set of meta-analysis tools and looked
23 at the confidence intervals derived from those. These
24 put much more weight on the Sedgwick County estimate
25 because we have a much larger sample for that estimate.

1 And so based on the way those -- this meta-analysis tool
2 works, that gets much more weight in the combined
3 estimate.

4 In fact, as I've argued, the estimates are
5 distinct. I think that there's value in some of these
6 other estimates perhaps beyond what their number of
7 observations provides but this provides -- the
8 meta-analysis provides these estimates Professor
9 Ansolabehere was examining in a more methodologically
10 appropriate way.

11 Q. Okay. So a number of questions. We're going to
12 put -- just so we can kind of see what we're talking
13 about from your -- we're going to put up a chart from
14 your supplemental report, if we can get it on the
15 screen.

16 So tell us again how it works. So someone
17 who's not experienced in statistics said here are four
18 or five reports. I'm just going to average the result
19 of all five reports. And you're saying there's a
20 formula you do this. And what is the formula?

21 A. Yeah, there are a variety of formulas for doing
22 this here. I was using a routine in the statistical
23 package data to put those estimates together. So if
24 we're thinking about doing a meta-analysis
25 appropriately, this is a better way to do it.

1 Professor Ansolabehere had also incorrectly,
2 in my view, included a sample which was not a sample of
3 non-citizens in his estimate. That would require at
4 minimum some significant processing to get to the
5 appropriate equivalent. Using the four samples of
6 non-citizens, you can see here the pool effect size is
7 1.1 percent and the confidence boundaries range from .4
8 percent at the low end and 1.8 percent at the high end
9 when we use a meta-analysis to combine those estimates.

10 Q. So are you saying the second row, if you're going
11 to do a meta-analysis, the second row is more
12 appropriate because all samples are non-citizens?

13 A. Yes.

14 Q. And if you did it the way you believe is the
15 correct way, you would -- is 1.1 percent your estimate?

16 A. That's right, 1.1 percent.

17 Q. And 1.1 percent of what?

18 A. 1.1 percent of non-citizens registered to vote in
19 the state of Kansas.

20 Q. Non-citizens registered to vote or residing in
21 Kansas?

22 A. Non-citizens registered to vote in the state of
23 Kansas.

24 Q. So I thought this was for determining the number
25 of non-citizens registered to vote.

1 A. So there -- there were other contexts in which I
2 was critiquing Professor Ansolabehere. Perhaps we're --
3 we're thinking of different analyses. The -- and I'd be
4 happy to talk about other analyses as well. I spent
5 maybe two dozen pages discussing Professor
6 Ansolabehere's estimates and I'd be happy to talk about
7 others as well.

8 Q. So just to make sure I understand, the
9 1.1 percent, to calculate what that would yield in terms
10 of an actual number, what would you multiply it times?

11 A. I would multiply it times the non-citizen
12 population in Kansas.

13 Q. Okay.

14 A. So we would have an estimate of 1.1 percent
15 times, based on current census -- the census estimates I
16 relied upon in this report, of 115,050 people to get to
17 an estimate of the overall number of registered
18 non-citizens.

19 Q. Okay. And maybe I misunderstood a moment ago.
20 So you used known populations of non-citizens in your
21 samples to then generate this percent and then you would
22 apply this percent to the total population to get an
23 estimate; is that correct?

24 A. So I --

25 Q. He used it and you're correcting?

1 A. I'm correcting his meta-analysis --

2 Q. Right.

3 A. -- here. That's what this meta-analysis is.

4 Q. Okay. And another question about the
5 meta-analysis. You didn't do a meta-analysis to try to
6 combine for different samples and get a combined
7 estimate. Why not?

8 A. Well, I didn't do -- here I was replicating his.

9 I didn't because I think each of the samples
10 is -- is distinct in interesting ways. I think it's
11 relevant to -- I think, in weighing the evidence, what
12 one ought to do is to look at each of the samples in
13 terms of its strengths and weaknesses.

14 Beyond the meta-analysis is focused simply
15 on looking at the samples on the basis of their sample
16 size, which is an important characteristic, but I think
17 there are other characteristics as well that one should
18 think about as one weighs how to combine the estimates.

19 Also, this is a meta-analysis replicating
20 what Professor Ansolabehere had done. So I did not
21 include a number of other estimates that are in my
22 report in this meta-analysis. This focus is on only the
23 replication that Professor Ansolabehere did.

24 Q. And then let's just look at the next page of your
25 report. There's a table there. I want to make sure I

1 understand what's in that. So, please, explain what
2 this is, the Table 4.

3 A. So Table 4 is an examination of Professor
4 Ansolabehere's claims about some estimates I included in
5 my report of national level non-citizen voting. And we
6 have at the top of this table an estimate based on the
7 most restrictive measure. This is looking at
8 individuals who both said that they voted and had a
9 voter file match.

10 Q. Okay. And --

11 A. And Professor Ansolabehere had a confidence
12 interval which was much larger than the confidence
13 intervals that would be estimated using any of these
14 approaches for estimating the confidence interval which
15 I included in the report, and this was because of the
16 way Professor Ansolabehere was applying -- was
17 attempting to estimate confidence intervals is
18 inconsistent with any of the recommended methods for
19 calculating confidence intervals of a binomial
20 proportion.

21 Q. I want to get into that topic now. You offer --
22 this chart is a universal way of looking at it. Is it
23 correct that the Exact method, Wald method, Agresti
24 method, Jeffreys method and Wilson method are methods of
25 calculating confidence intervals or margins of error?

1 A. That's right. All these are methods of
2 calculating confidence intervals or margins of error.
3 Conventionally the field has utilized the Wald method
4 that has come under significant criticism in recent
5 years. There are a number of other methods of
6 calculating confidence intervals which have better
7 coverage.

8 But all of these are methods that are used
9 in the field to calculate confidence intervals by
10 binomial proportion. None of them produce a confidence
11 interval that is at all similar to the confidence
12 interval that Professor Ansolabehere provided in his
13 report.

14 Q. So is it your testimony that the Exact method,
15 Wald method, Agresti method, Jeffreys method, Wilson
16 method and Score method are all accepted in the field as
17 methods of calculating confidence intervals?

18 A. I would say, yes.

19 Q. Now, if you could walk us through what you
20 believe Professor Ansolabehere's method was of
21 calculating a confidence interval and explain your
22 disagreement with that.

23 A. Yes. So Professor Ansolabehere's method appears
24 to be a misapplication of the Wald method. The -- as is
25 noted in one of the papers I cited in explaining these

1 various methods of calculating confidence intervals, the
2 Wald method depends upon a ratio that is built on the P,
3 which is the observed probability of some outcome in the
4 sample and one minus P.

5 And so in this sample, for example, P is
6 .015, that would be the correct P to use based on the
7 conventional approach for calculating a confidence
8 interval in this case.

9 Professor Ansolabehere instead used P equals
10 .5. So that is he assumed that 50 percent of
11 non-citizens vote in calculating the confidence interval
12 and that assumption is an odd one since in other
13 contexts Professor Ansolabehere has asserted that in his
14 view zero or nearly zero non-citizens vote. At least
15 that seems to be what he is saying in various things
16 he's written. So it's an odd choice. It's not in line
17 with standard practice in calculating confidence
18 intervals.

19 Q. So in -- and this may be a bit elementary to you,
20 but to -- explain it to us. So you say, going into the
21 calculation of a confidence interval, you have to assign
22 P, which is that an assessment of where you think the
23 answer's going to be?

24 A. P is your -- conventionally P is the estimate
25 from the sample, right. We're estimating a confidence

1 interval for the sample. We use the information from
2 the sample to construct this confidence interval. And
3 so P is -- in this case in the top part of Table 4, P is
4 the portion of non-citizens who said they voted and had
5 a voter file match from the overall CCES sample.

6 Q. Okay. So to make sure I understand this, so when
7 you calculate a confidence interval --

8 Let's just assume you're sampling for
9 something and you've got -- of the 100 people you
10 called, 10 gave the affirmative answer. So would the P
11 -- if you're calculating your confidence interval, would
12 your P be .1 or 10 percent?

13 A. If you sampled a hundred people and 10 gave an
14 answer, then P would be 10 percent, .1 exactly. And so,
15 you know, that's -- that's the -- that's the right
16 approach to doing this.

17 Professor -- one of the odd things about
18 these confidence intervals that Professor Ansolabehere
19 calculated is that many of them seem to assert, and in
20 some cases they don't and he claimed they did, but a
21 number of them, including this one at the top of the
22 table, assert that a lower confidence bound is less than
23 zero. For a binomial proportion that's an odd thing to
24 assert that we think that less than zero non-citizens
25 vote.

1 If we have observed a number of individuals
2 who have given a particular response and we're
3 calculating a confidence interval for that, we know
4 something about that.

5 Let me try to give an intuition. Let's say
6 that -- that I have a -- a pot or an urn. Statisticians
7 love to talk about urns. I'm not sure why, but they do.
8 Let's say we have an urn with red and blue balls in it.
9 And so let's say -- let's say somebody set up this urn.
10 I don't know how many red and blue balls are in it.
11 They set it up. There are a thousand balls altogether
12 all stirred up. All right. Then we draw a sample out
13 of that urn. Let's say we draw a sample of a hundred
14 and in that sample of a 100 we have ten red balls.

15 In that context, asserting that there are no
16 red balls in the urn is a very odd thing to assert
17 because we've just seen ten of them. But that's what
18 Professor Ansolabehere seems to be asserting in a number
19 of his analyses. All right.

20 We know that at minimum, right, at the
21 farthest out most extreme low end there were at least 10
22 red balls in the urn because we can see those 10 red
23 balls.

24 Q. So to summarize this portion of the examination,
25 so is the reason that you can get, using his

1 methodology, a negative confidence bound, a negative end
2 of your estimate on the margin of error, because he set
3 P at .5?

4 A. That certainly contributes to it. Setting P at
5 .5 gives a confidence interval that's way too large.

6 It's not the only factor. It's also a
7 matter of the specific approach. This is one of the
8 problems with the Wald method of calculating confidence
9 intervals, as I mentioned, that has come under
10 substantial criticism in recent years.

11 Q. So would an appropriate time to set P at -- at .5
12 or 50 percent, would an appropriate instance be where
13 you just sampled a group of, say, non-citizens and half
14 of them were on the voter rolls?

15 A. That would be an appropriate time to set P at .5.

16 Q. Is it because you observed 50 percent in your
17 sample?

18 A. Exactly.

19 Q. If you were doing a -- well, as you did
20 calculate, which margin of error would you use? You
21 mention all of these methods statisticians use. Any one
22 of them; Exact, Wald, Agresti, Jeffreys, Wilson or
23 score, that you would regard as the most appropriate for
24 this analysis?

25 A. The most problematic Wald and Agresti, especially

1 for small proportions. The Exact method has the
2 advantage of not being an approximate method but its
3 coverage tends to be a little bit conservative in the
4 sense that the confidence intervals tend to be a little
5 bit larger than they ought to be according to
6 simulations that statisticians have run.

7 The Wilson score method is recommended by
8 both of the papers that I attached with this report as a
9 good method. Both papers also note other methods. So
10 clearly the Wilson score method is one of several
11 methods that one might appropriately use to calculate
12 confidence intervals for binomial proportions.

13 Q. I want to talk now about response rates and your
14 interchange with Professor Ansolabehere in that regard.
15 You referred to several surveys that were done as part
16 of this research by Issues and Answers targeting
17 different populations in Kansas. What was the response
18 rate for those surveys?

19 A. So the overall response rate for those surveys
20 calculated using the AAPOR one criteria, which gives you
21 the lowest response rate, is 16 percent.

22 Q. And AAPOR stands for what?

23 A. American Association for Public Opinion Research.

24 Q. And using their calculation of response rates you
25 get what?

1 A. Sixteen percent.

2 Q. And how -- was there some discrepancy, dispute
3 between -- and what was the -- what was the --

4 A. In the deposition, at that point I had not yet
5 calculated the response rate. And the effort was to get
6 a response rate calculated on the basis of a call log,
7 which, as I noted in the deposition, includes duplicate
8 responses. So the call log has more than 40,000 entries
9 in it but the total sample sent to Issues and Answers
10 was less than 20,000 overall. So that call log gives --
11 as I noted in the deposition, duplicates numbers. And
12 so calculating response rate on the basis of the call
13 log is not likely to give you an accurate measure of the
14 response rate.

15 Q. So when you say "duplicate," duplicates the
16 number, are you saying the call log may show the same
17 person's telephone number twice?

18 A. That's right. So if there's a call back, tried
19 to call a number once, you call that number back again,
20 and again, you end up with a -- a number of entries in
21 the call log for that same number.

22 Q. Okay. So recalling that deposition, I believe
23 the plaintiffs suggested that they thought the response
24 rate was 6 percent and you're saying it's 16?

25 A. It is 16 percent.

1 Q. The correct -- and it's -- go ahead.

2 A. At 16 percent, which is quite good compared to
3 where national polling numbers tend to be, the national
4 polling numbers are Pew estimates that about 9 percent
5 response rate is typical for the telephone surveys they
6 do. *Wired* had a piece during the 2016 election which
7 asserted that for some of the major national polls the
8 response rate was dropping down to the 1 percent level.
9 So this is quite -- quite good compared to where
10 national polling tends to end up.

11 Q. I'm going to get for us the copies of the
12 Ansolabehere report in a moment but we can continue
13 looking at some of these criticisms. I think it might
14 make more sense to have both of them in front of us.

15 So one of the other criticisms I think in
16 that report is his criticism that he thinks that there
17 might be citizens incorrectly stating that they're
18 non-citizens; is that correct?

19 A. Yes. This is one of the criticisms he makes. It
20 is also a primary criticism made in the Ansolabehere,
21 Luks and Schaffner paper. The argument is that citizens
22 are claiming to be non-citizens and this accounts for
23 people who say they're non-citizens and are registered
24 to vote or voted. There are a variety of reasons why I
25 think that is unlikely to be the case.

1 In the context of this case, one of the
2 estimates that we -- we did some efforts to validate
3 citizenship status reports for some of the individuals
4 who were surveyed. And what we observed was that there
5 were a number of instances in which individuals who, on
6 the basis of multiple lines of evidence, were, in fact,
7 non-citizens claiming to be citizens and there -- we did
8 not observe instances in the reverse.

9 Also, as I discussed last time briefly, when
10 you look at the Cooperative Congressional Election Study
11 three-way panel that asked people in 2010, 2012, and
12 2014 whether they were citizens, the people who said
13 they were non-citizens twice, so we're fairly confident
14 these are non-citizens, were much more likely to claim
15 to be citizens when asked a third time. And this is
16 ordered in such a way that naturalization could not
17 explain that. Then people who said they were citizens
18 twice and said they -- they were much less likely, much
19 lower probability of saying that they were non-citizens
20 when asked a third time.

21 So Professor Ansolabehere raises what I
22 think is a -- an important issue and this is something
23 that we addressed in the initial -- the initial 2014
24 paper in *Electoral Studies* and it's something that we
25 address in even more detail in the working paper that

1 was attached to my initial report. And referenced in
2 the report is one of the pieces of evidence. Everything
3 in there is evidence that I was relying on in forming my
4 opinions. That -- that working paper as well goes into
5 even more depth in looking at this issue of the response
6 patterns and understanding whether individuals who say
7 they are non-citizens are, in fact, non-citizens.

8 Across a range of hypothesis, taking
9 Professor Ansolabehere's theory that -- to be fair,
10 Ansolabehere, Luks and Schaffner's theory that the
11 citizen -- the non-citizen -- self-reported non-citizens
12 who said that they voted or registered are, in fact,
13 citizens, there are a lot of different hypothesis that
14 can be derived from that.

15 You would expect them -- these -- these
16 individuals, specifically these non-citizens who have
17 said that they registered or voted or had a validated
18 registration status or had a validated vote, you would
19 expect them to look much more like the citizen
20 population in terms of their survey responses or at
21 least maybe the naturalized citizen population if you
22 have some theories those are the most likely to make a
23 mistake. Those patterns simply don't appear. If
24 anything, on a variety of measures, non-citizens who
25 state that they are registered or voting are further out

1 on some of these measures rather than the other way
2 around.

3 So it's simply -- it -- as far as I can
4 tell, the assertion, this theory offered by
5 Ansolabehere, Luks and Schaffner -- and I think it's
6 worth further considering -- this is a theory that we
7 raised in the initial paper and attempted to address and
8 it's something that I think one continues to need to
9 address. This theory doesn't seem to hold up.

10 I talked with Ansolabehere, Luks and
11 Schaffner both at a conference -- at the Southern
12 Political Science Association conference in 2016 and
13 they were in the process -- it was a sub-meeting that
14 was focused on the CCES itself. So they were in the
15 process of constructing the survey for the 2016
16 election. They said, look, we've got a dispute here
17 about the -- this measure. Let's try to add additional
18 questions for the people who said they're non-citizens
19 to try to pin down is it that they clicked the wrong box
20 as you think or is it that these people are actually
21 non-citizens as I think.

22 And initially they seemed receptive to that.
23 I sent Professor Schaffner some suggestive following
24 questions that would have been very inexpensive to
25 include in the survey because it would only go to the

1 sub-sample of people who said they were non-citizens.
2 Unfortunately, that wasn't included and furthermore it
3 seems that there was no consultation with the broader
4 community of people involved with the CCES.

5 A friend of mine who -- who is part of that
6 group of institutions that provide money for the CCES
7 told me he was never asked about possible inclusion of
8 those questions. And in his deposition
9 Professor Ansolabehere asserted that there -- they did
10 not include such questions because there was no interest
11 in the survey community. I'm not sure how they assessed
12 that without asking the survey community about that
13 interest.

14 MR. H0: Your Honor, I'm going to object to
15 that last answer and move to strike it. There's nothing
16 in Professor Richman's reports about suggestions for
17 changing the questions for the CCES. Doesn't even seem
18 responsive to Secretary Kobach's question, which was
19 about something about whether he agreed with
20 Dr. Ansolabehere. The answer's also littered with
21 hearsay about representations about what funders of the
22 CCES have said or what some -- some people who designed
23 the CCES say. It's also irrelevant to the issues in the
24 case.

25 MR. KOBACH: It's covered in the deposition

1 of Dr. Richman, all of this was discussed.

2 MR. HO: Dr. Richman volunteered some of
3 this stuff in a completely non-responsive way to one of
4 the questions I asked in deposition. This just -- it's
5 -- it's a -- a detour, Your Honor.

6 THE COURT: All right. I'll take under
7 advisement this issue. I'll have to review his
8 deposition, I suppose.

9 BY MR. KOBACH:

10 Q. Just to summarize, Dr. Richman, so is it your
11 point, if I understand it, that you think there might be
12 a response error of people false -- incorrectly stating
13 their citizenship, but your view is it only goes one
14 way -- or more likely to go one way, you're more likely
15 to see non-citizens declaring themselves to be citizens
16 than citizens declaring themselves to be non-citizens?

17 A. Right. My view, based on a range of evidence
18 which I have discussed in my answer -- and this is an
19 opinion which I offered in both of my reports -- is that
20 the response error is much more likely to go in the
21 direction of non-citizens asserting that they are
22 citizens than the other way. And it -- because of that,
23 I think that some of Professor Ansolabehere's critique
24 does not go as far as Professor Ansolabehere asserts it
25 does.

1 Q. And what would be the implication if you are
2 correct that if there is response error, it goes the way
3 you say, what would be the implications for this case
4 and the estimates in this case?

5 A. The implications for this case would be that the
6 -- that the estimates are not biased as much as
7 Professor Ansolabehere asserts they are. There might be
8 some -- based on the estimates I've done, there -- there
9 would be some modest adjustment down based on the very,
10 very low rate of non-citizen error in responding. But
11 the bias is going to be modest.

12 Potentially they're also countervailing
13 biases because the -- the overall -- there are several
14 indicators from different data sets that I've looked at.
15 I discussed some of these in the deposition -- that
16 indicate that non--- and in my reports that non-citizens
17 are more likely to misstate their citizenship status in
18 the context of a survey in which they have also
19 indicated that they are registered to vote. And that
20 makes some sense because responding that one is a
21 non-citizen and registered to vote or non-citizen and
22 has voted is to indicate that one has violated election
23 law. And I think there are a variety of evidence across
24 various contexts that people tend to be somewhat
25 reluctant to admit, in the context of answering

1 questions, that they have violated the law.

2 Q. If there were response errors of the sort you
3 think are more likely that non-citizens incorrectly
4 state they are citizens, would that mean that the true
5 number of non-citizens based on your samplings would
6 actually be higher?

7 A. Yes, potentially higher and potentially the
8 estimates could be biased downward by a pattern of
9 individuals who have indicated that they are
10 non-citizens -- I'm sorry, individuals who have
11 indicated that they are registered to vote.

12 Q. So bias downward --

13 A. Saying they are citizens when, in fact, they are
14 non-citizens.

15 Q. When you use the term "biased downward," do you
16 mean the estimate could be low?

17 A. I mean, the estimate could be low.

18 Q. Okay. Just for the purposes of refreshing your
19 recollection, here's Professor Ansolabehere's report.
20 I'll allow opposing counsel to introduce it when they
21 bring him.

22 But just you also have a disagreement in
23 your supplementary report, page 37, where you say, in
24 response to Professor Ansolabehere -- no, sorry
25 paragraph 37, excuse me, that his use of 2.2 percent to

1 estimate the percentage of all Kansans who lack proof of
2 citizenship documents is too high. And you say, as part
3 of that, many more individuals have registered to vote
4 since the law went into effect than are on the suspense
5 list. And you get from that statement to your
6 conclusion that 2.2 percent is too high. Could you
7 explain all that?

8 A. Yes. So the 2.2 percent is an estimate of the
9 portion of citizens on the suspense list based on a
10 survey of 1,372, if I remember correctly, citizens, the
11 portion of those individuals who did not have any of a
12 series of different kinds of ways of demonstrating
13 documentary proof of citizenship. So in this survey of
14 the suspense list, 2.2 percent did not have any of those
15 ways of demonstrating documentary proof of citizenship.

16 We have to put that into an appropriate
17 context though. And what Professor Ansolabehere seemed
18 to be suggesting was that we should assume that the
19 overall Kansas population -- or the overall population
20 of people registering in Kansas looked the same way.
21 However, the suspense list is a small subset, as I
22 pointed out in my report, of the overall number of
23 Kansas individuals -- Kansas citizens who have
24 registered to vote during the time that it's been into
25 effect. It went into effect in January of 2013.

1 And if one combines the various categories
2 in the voter file of people who are affected by the
3 documentary proof of citizenship requirement, it comes
4 to about 5 percent of the overall group of individuals
5 who have a registration -- who have registered before
6 that.

7 You can do this various ways based on
8 information that's been disclosed, in this case data
9 sets that have been provided to the -- the plaintiffs,
10 disclosures and so forth. You can calculate it from
11 these various places. It comes to about 95 percent of
12 the new voters are not -- are not -- are not being
13 affected by this process involving the suspense list.

14 Q. When you say "not being affected," what do you
15 mean?

16 A. They're not on the suspense list. They have not
17 been removed with a CITZ code. They're not there.
18 They've registered successfully. And beyond the
19 documents in this case, if you look at, for example, the
20 Federal Election Assistance Commission survey data as
21 well, it comes to basically the same estimate.

22 So we have these 5 percent who are being
23 affected by the suspense list process. My estimate from
24 the survey is that only 2.2 percent of those individuals
25 are in a category where they don't have documents to

1 prove or related means to prove -- meet the documentary
2 proof of citizenship requirement.

3 So 2.2 percent of 5 percent gets us about a
4 10th of a percent of individuals who have registered to
5 vote in Kansas who are in a category where meeting the
6 documentary proof of citizenship requirement requires
7 more than simply making a copy of their -- their
8 identification or -- or relying on one of the matches
9 that the state does automatically to meet that
10 requirement.

11 MR. H0: Your Honor, I'm going to object and
12 move to strike that answer. The 5 percent number that
13 Dr. Richman is referring to does not -- of people who
14 supposedly are not affected by the suspense list process
15 does not appear in his report.

16 The calculation that, according to
17 Dr. Richman, a 10th of a percent of individuals who have
18 registered to vote in Kansas are in a category where
19 meeting the DPOC requirement requires more than simply
20 making a copy of their document, that's not in his
21 report.

22 I understand you want to take this under
23 advisement. We want to move things along, but neither
24 that 5 percent figure, nor that 10th of a percent figure
25 are in his report anywhere.

1 THE COURT: Yesterday, when these kind of
2 issues came up, I tried to get Dr. Richman to point me
3 to where in the report he was relying upon and that
4 wasn't particularly helpful. So I will take this under
5 advisement and read his reports again and more
6 thoroughly when I'm ruling on this particular objection.

7 BY MR. KOBACH:

8 Q. Okay. So just to put it in context for us,
9 Dr. Richman, so when -- in your last sentence of
10 paragraph 37, when you say, "Hence, 2.2 percent is much
11 too high as an estimate of the percentage of Kansas
12 citizens who lack proof of citizenship status," you're
13 saying -- are you saying that the correct estimate would
14 be .1 percent?

15 A. So what I -- what I just provided --

16 MR. HO: Objection to that too, Your Honor.

17 THE COURT: All right. Continuing objection
18 to this line of testimony. It's not clear whether
19 Dr. Richman has rendered these opinions before in the
20 context of his report or even deposition testimony, so
21 I'll take this under advisement.

22 THE WITNESS: What I provided in the
23 previous -- I'm sorry, am I allowed to speak now?

24 THE COURT: Go ahead.

25 THE WITNESS: What I provided in my answer

1 was the -- an analysis that lays out the numbers
2 associated with my statement that this estimate was too
3 high, way too high. So I laid out the numbers
4 underlying the opinion which I offered in my report.

5 BY MR. KOBACH:

6 Q. Okay. So .1 percent is one in a thousand people;
7 right?

8 A. That's right.

9 Q. And that's your best estimate as to how many
10 people lack citizenship documents easily available?

11 A. That's my estimate based on the analysis here.

12 THE COURT: Continuing objection.

13 MR. HO: Continue objection, Your Honor.

14 THE COURT: Noted.

15 BY MR. KOBACH:

16 Q. So to put this in additional context -- and this
17 is another subject that both you and Dr. Ansolabehere
18 wrestle with -- if you compare that number, the number
19 of non-citizens you and he -- or you or he estimate
20 might lack documents and compare that to the non-citizen
21 registration in Kansas, again, estimated, what do you --
22 what do you -- what's your conclusion?

23 A. So we discussed a variety of my estimates. And
24 there are even more estimates in the reports that we
25 haven't had time to get to. The estimates vary, but the

1 lowest estimates that we've talked about are in the
2 order of a thousand individuals. So that suggests that
3 there are probably more non-citizens registered to vote
4 in Kansas than there are citizens in this category of
5 individuals who do not have a capacity to meet the
6 documentary proof of citizenship requirement without
7 going to the hearing mechanism.

8 Q. Okay. And so you're saying all of your estimates
9 are above a thousand, in terms of guessing at the number
10 of non-citizens who are registered to vote. And you're
11 saying that the number that Ansolabehere -- well, the
12 number of citizens who would have difficult -- would
13 have to go through the hearing method to prove their
14 citizenship he says is 2.2 percent. You're saying is
15 .1 percent. And you're saying that number is lower than
16 the thousands -- thousand-plus non-citizens on the voter
17 roll?

18 A. That is right. I'm saying the point estimates
19 from the various analyses of how many non-citizens are
20 registered to vote in Kansas are higher than this
21 estimate of the number of citizens who have registered
22 who do not have the capacity to meet the documentary
23 proof of citizenship without going to the hearing
24 process.

25 Q. And just so that the court is clear, and if the

1 court wishes to look at this continuing objection, is
2 this -- this subject contained in your original report
3 on page 9?

4 A. This subject is contained in my original report
5 on page 9.

6 Q. And then we just reviewed it. Is it in your
7 supplementary report on page 17, paragraph 37?

8 A. Yes. It begins before that but then it continues
9 the -- the primary discussion is in paragraph 37.

10 Q. And is it a reply to Ansolabehere's report at
11 page 7?

12 A. Let me see. Yes, it is paragraph 12 on page 7,
13 my reply to Ansolabehere's report.

14 Q. Now, in your original report, there were a number
15 of estimates that you provided of the non-citizen
16 population registered to vote in Kansas. Are there any
17 that we haven't covered that you think we should quickly
18 review?

19 A. Well, so there are several others that are
20 mentioned and discussed in my reports. I mention at one
21 point another analysis that the State of Kansas has
22 done, which was discussed in Bryan Caskey's deposition,
23 matching another group of naturalized citizens with
24 voter rolls which identified five of about 500
25 naturalized citizens who had been on the voter roll

1 prior to their naturalization date. That's very similar
2 to the estimates I -- we've talked about already from
3 Sedgwick County which come to again around that
4 1 percent range.

5 Q. And just to be clear, when you say they "come to
6 the 1 percent range," does that mean you deduce from
7 that that 1 percent of non-citizens residing in the
8 state then would be likely to be registered?

9 A. Right. The point estimate is roughly -- and I
10 have two different Sedgwick County estimates which have
11 slightly different numbers but they are approximately.

12 Q. Can you direct us to that part of the report,
13 your original report?

14 A. So the discussion of that particular -- I'm
15 sorry, which part do you want me to --

16 Q. The one you just referred to, the Sedgwick County
17 numbers.

18 A. Oh, the Sedgwick County numbers are in my
19 original report and also discussed in the supplemental
20 report. They are discussed in my original report
21 beginning on page 5 and continuing to the top of page 6
22 primarily.

23 In my supplemental report, I discuss those
24 estimates for several pages beginning on page 19
25 continuing through 20, 21, 22, 23, 24, 25, 26, 27, 28,

1 29, so that range of pages in my -- my second report.

2 Q. And I note that many of those appear to be
3 responses to Dr. Minnite. Can you -- without going in
4 excruciating detail through all of the points of your
5 analysis, can you summarize what your response is in
6 those pages?

7 A. Yes. I don't -- I -- as I noted, these are the
8 long series of pages, and this is, I believe, available
9 for the court to examine without me reading it and so I
10 don't want to bore everybody with that.

11 We discussed some of the -- some of this
12 earlier. One of the demonstratives was a slide based on
13 one of the additional analyses I did to address
14 Dr. Minnite's objections. The Sedgwick County data was
15 -- was critiqued by Dr. Minnite in several ways and we
16 went over -- over some of that.

17 Let me think about whether -- if you'll give
18 me a moment -- think about what we haven't discussed
19 already because I don't think there's much point in
20 re- --

21 Q. I'm sure everyone agrees.

22 A. So we talked about this a little bit.
23 Dr. Minnite offered speculations concerning differences
24 between immigrants who naturalize and immigrants who
25 don't, and this is something that we talked about in the

1 deposition as well. And I discussed a couple of
2 different lines of evidence regarding this that
3 Dr. Minnite noted that naturalizing non-citizens may
4 tend to be somewhat older. I noted that my analysis,
5 which is in another point in my report, so I guess we
6 even need to pull in even more pages, part of my
7 response to Professor Ansolabehere discussed whether
8 there was evidence that non-citizen registration to vote
9 varies on the basis of age or education.

10 And the CCES data suggests that there is --
11 we do not observe the pattern that's observed among
12 other groups that register among non-citizens. We have
13 a pattern where higher levels of education and older
14 ages are associated with a higher rate of participation.
15 This is one of many instances in which we see the
16 non-citizen registered population not looking like the
17 citizen population.

18 And I think this makes some sense if we
19 think about the context here. We're talking -- when
20 we're talking about non-citizen registration, we're
21 talking about a situation in which somebody has
22 registered to vote in violation of the law. As people
23 get older, as they become more educated, I would expect
24 there to be more -- them to be more likely to understand
25 this context.

1 One of my colleagues at Old Dominion is a
2 non-citizen and we talk -- because I did the study, I
3 end up talking with people, sometimes non-citizens,
4 about registration issues. And she said, yeah, she had
5 -- she's had people come up to her and say "you should
6 register to vote" and not seem concerned about
7 citizenship issues as they're trying to get people to
8 fill out registration documents. And because she's
9 well-educated she knows she's not supposed to register
10 to vote as a non-citizen and so she said no. But one
11 can imagine someone with a lower level of education
12 might not be as astute in recognizing that they should
13 not be registering to vote while a non-citizen.

14 So I think that tends to flatten out these
15 patterns because, although people who are more educated
16 and older tend to be more politically engaged, we have
17 this converse pattern as well that they may also be more
18 aware of the law concerning non-citizen registration.

19 Q. I'm handing you a working paper that I think is
20 -- is an attachment to your supplementary report I
21 believe.

22 A. This is an attachment to my first report.

23 Q. Your first report. So it's already --

24 MR. KOBACH: Your Honor, I believe it's
25 already in evidence. If we can focus on this.

1 MR. HO: I don't believe it's in evidence,
2 Your Honor. They sent it in a zip file attached to his
3 supplemental -- his expert report but we don't --

4 MR. KOBACH: You don't consider --

5 MR. HO: We object to the entry of working
6 papers on Dr. Richman's website, which hasn't been
7 subjected to peer review, going into evidence. It's not
8 an expert report for this case.

9 THE COURT: Exhibit 958 is what is admitted
10 as Dr. Richman's report and that report ends at
11 page 41 --

12 MR. KOBACH: Okay.

13 THE COURT: -- with an index of a list of
14 attachments, but that's what's actually in evidence.

15 MR. KOBACH: Okay.

16 BY MR. KOBACH:

17 Q. Well, then, Dr. Richman, what is this, this thing
18 I just handed you?

19 MR. KOBACH: And this, for the court's
20 reference, is marked as Exhibit 22 on our -- I don't
21 know if that's a joint stamp or not.

22 THE COURT: That wouldn't be the exhibit
23 number in this.

24 MR. KOBACH: That would be from the
25 deposition, yeah.

1 BY MR. KOBACH:

2 Q. Could you just identify this for us?

3 A. This is a working paper co-authored by myself,
4 David Earnest and Gulshan Chattha titled A Valid
5 Analysis of a Small Subsample: The Case of Non-Citizen
6 Registration and Voting.

7 THE COURT: Is this something that is cited
8 to and addressed in the expert report?

9 THE WITNESS: Is this a question to me or
10 to --

11 THE COURT: Mr. Kobach.

12 MR. KOBACH: I believe it is. Could you
13 confirm this if --

14 MR. HO: It is, Your Honor.

15 MR. KOBACH: -- direct us to the pages where
16 it is.

17 THE WITNESS: This is cited in my report, on
18 page 3 of my initial report. The last paragraph I write
19 Richman, et al 2017, which is in reference to this
20 paper. And I have a footnote noting the full link and
21 everything comprehensively responded to this critique.
22 It began by noting that the focus --

23 THE COURT: Don't read it. All right.
24 Page 3 of your initial report is what you're saying it
25 was cited to? Okay.

1 MR. H0: Your Honor, I agree this was cited
2 in his initial report. There is no dispute about that.
3 But all of the experts have made footnotes in their
4 reports. I think Mr. von Spakovsky testified he had 59
5 in his. We're not going to admit every exhibit that's
6 cited in their reports, particularly an extra paper by
7 Dr. Richman that has not been subject to peer review
8 that he threw up on his website admitted into the record
9 as evidence. Your Honor, we object to that.

10 MR. KOBACH: It's on the exhibit list at
11 1035, Your Honor.

12 MR. H0: We objected to it.

13 MR. KOBACH: I'm going to lay a foundation.

14 THE COURT: What's the point of this
15 particular exhibit? What's the relevance?

16 MR. KOBACH: This goes to a dispute between
17 our expert, Dr. Richman, and their expert,
18 Dr. Ansolabehere, over the CCES data and the CCES data
19 is used for a couple of those estimates we've seen on
20 the slides. And so this is his answer to Ansolabehere's
21 criticisms.

22 MR. H0: Which he's already testified about
23 and he's free to testify about more if he wants. But
24 this additional analysis was not a part of his expert
25 disclosures. It was sent to us in a zip file along with

1 his expert report but it's not part of the report. It's
2 not been admitted into evidence. It's not been
3 subjected -- certainly has not been subjected to peer
4 review.

5 THE COURT: All right. I think your
6 concerns go to the weight of this evidence. It may have
7 -- may be accorded lesser weight for all the reasons you
8 talked about, Mr. Ho, but I think you're on notice of
9 this. I agree it's somewhat unusual to then start
10 offering underlying sources for the expert's opinion.
11 So I don't know how much weight I'll give it. What is
12 the exhibit number you reported?

13 MR. HO: Thank you, Your Honor.

14 MR. KOBACH: It's Defendant's Exhibit 1035,
15 Your Honor.

16 THE COURT: All right. Exhibit 1035 will be
17 admitted for whatever purpose I accord it.

18 BY MR. KOBACH:

19 Q. So I don't want to go too far down this rabbit
20 hole, Dr. Richman, but I just want to, in case this
21 subject matter is addressed by plaintiffs' expert, there
22 is a dispute -- is it correct there is a dispute between
23 Dr. Ansolabehere and his colleagues and you and your
24 colleagues in the 2014 paper about what conclusions can
25 be drawn from the CCES survey regarding non-citizen

1 registration and voting?

2 A. That is correct.

3 Q. And could you -- could you summarize for us what
4 -- what you are answering in this working paper?

5 A. Our answer in the working paper has several
6 elements and some of these we've already discussed
7 already. One that hasn't -- well, let me -- including
8 yesterday, we have discussed many of these in various
9 context. This report provides a more extensive
10 elaboration of my views in terms of those responses.

11 So if we look at, for example, the issue
12 they're focusing on, the single one of the various kinds
13 of indicators of registration and voting that one can
14 look at for the 2010 to 2012 study that provides the --
15 the lowest level of evidence of non-citizen voting, they
16 have a table for 2010 looking at validated voting. If
17 they had put in a table for 2012, there is the cell for
18 the number of validated votes cast by people who twice
19 in two different years said they were non-citizens.

20 That cell would not be zero as in the table they
21 published but it would be one. They don't look at all
22 at registration. They don't look at reports of voting.

23 And for that particular number this is our
24 very lowest estimate. This is the people we are most
25 confident about actually being voted, the ones -- having

1 voted, the ones they talk about.

2 And for the off-year 2010 election, the
3 estimate one gets, looking at the broader 2010 CCES
4 cross-sectional survey of the rate of non-citizen
5 voting, is very low. This is a mid-term election in
6 which turnout tended to be high for groups that tend to
7 support Republicans and not so high for groups
8 supporting Democrats. And non-citizens, based on the
9 evidence in the CCES, are one of those groups. As I
10 discussed in this paper and as we discuss using a
11 different election year in the paper published in the
12 *Electoral Studies*, 80 to 90 percent of non-citizens who
13 -- who voted seemed to be voting for Democratic
14 presidential candidates, for instance.

15 So their use -- the use of a base rate here
16 of non-citizen voting in 2010 was very low. So I
17 wouldn't expect to find very many such individuals in
18 any sample of 85 non-citizens in 2010. Therefore, the
19 fact that they don't find any is hardly surprising. If
20 we're talking about a voting rate, I don't remember the
21 exact number, but I think it was below 1 percent in
22 2010. You wouldn't expect to find very many such people
23 in a sample of 85 in any case.

24 So it's not a -- there are -- their analysis
25 provides some evidence that our estimates are not

1 really, really far too low because if they -- if the
2 true number was much, much higher, it would be
3 surprising to see zero out of those 85 in 2010. But,
4 otherwise, it doesn't provide much. So that's one.
5 Then we look at --

6 Q. Let me -- let me stop you right there. So the --
7 this dispute you have with -- you and your colleagues
8 with Ansolabehere and his colleagues is about
9 non-citizen voting, not non-citizen registration; is
10 that correct? He said this doesn't -- you said this
11 doesn't include registration?

12 A. His study does not include registration.

13 Q. In he and his colleagues' rebuttal to your 2014
14 article, do they dispute the registration -- non-citizen
15 registration numbers that you and your colleagues point
16 to?

17 A. They never dispute those numbers. Their focus,
18 to my memory, is entirely on the voting numbers.

19 Q. And for the purposes of this case, we're really
20 not focused on the voting numbers as much as we are the
21 registration numbers. So can you tell us what your
22 conclusions are, which apparently are not disputed by
23 Ansolabehere and colleagues, on non-citizen registration
24 in the CCES paper -- CCES-related paper that you wrote
25 in 2014 and in your working paper, to the extent it

1 addresses it?

2 A. We've looked at some of these already. So, for
3 example, we talked -- one of the things we talked about
4 last time was looking at estimates from my 2014 paper
5 for 2008 concerning registration, and we've discussed
6 those for voting as well. We have -- in this working
7 paper we also look at estimates for 2012 looking at
8 registration and voting rates. And so we have a number
9 of analyses looking at registration rates in this
10 context.

11 Let me just summarize a couple of those very
12 quickly. I don't want to take too much time. If we
13 look at the 2012 cross-section, we see registration by
14 -- self-reported registration by non-citizens at 14 and
15 a half percent. So 14 and a half percent of the people
16 who said they were non-citizens said they were
17 registered to vote. If we look at the --

18 Q. And what page are you looking at?

19 A. This is -- I'm sorry, this is on page 12 on
20 Table 4.

21 Q. Still of the working paper?

22 A. Page 12 of the working paper. In Table 4 of the
23 working paper. The title of the table is Estimated
24 Registration by Non-Citizens.

25 Q. Go ahead.

1 A. Okay. We also looked at self-reported
2 registration by individuals who twice said in two
3 different years that they were non-citizens. So this is
4 the subgroup that Ansolabehere, et al talk about in
5 terms of voting. There we see that 12 of the 85 said
6 that they were registered to vote. Five of the 85 had a
7 validated registration voter file match.

8 And I already discussed -- discussed an
9 estimate in one of the demonstratives if you put those
10 two together and look at just the people for whom we're
11 most confident they are, in fact, registered to vote in
12 terms of having both a -- a voter file match and having
13 said that they were registered, and I also include the
14 2014 panel.

15 Here we're even more confident these people
16 are non-citizens because they said in 2010, 2012 and
17 2014 that they were non-citizens. And of those 23
18 individuals in that group, three said that they were
19 registered and one indicated that -- I'm sorry, one had
20 a voter file match.

21 So across these various groups, if we look
22 at registration specifically and including looking at
23 people for whom we have a high level of confidence based
24 on even Ansolabehere and colleagues' estimates of the
25 probability that people misstate citizenship status --

1 and that's what these analyses are all doing. They're
2 assuming Professor Ansolabehere's response rate error
3 estimates, not mine, which I think the number's lower --
4 but taking his number we have statistically significant
5 evidence of non-citizen registration across both of
6 these measures.

7 So this is part of my response to the
8 Ansolabehere, et al critique if one focuses on voter
9 registration specifically.

10 Q. And just to summarize, these numbers in Table 4
11 of the -- the working paper, these are looking at
12 national -- nationwide non-citizen registration?

13 A. These are looking at nationwide. And as I
14 articulated in my initial report, nationwide numbers I
15 think are -- provide a useful baseline. One might
16 expect, particularly as -- or if the Kansas law
17 requiring documentary proof of citizenship goes into
18 full effect, my understanding is there are some -- it's
19 not fully implemented currently, one would expect this
20 rate might be lower in Kansas. But in the absence of
21 specific differences, one would expect something roughly
22 along the lines of the national rates in the state of
23 Kansas.

24 MR. KOBACH: Thank you. No further
25 questions.

1 CROSS EXAMINATION

2 BY MR. H0:

3 Q. Dr. Richman, I believe you testified that you
4 were an expert witness in one other case; correct?

5 A. That is correct.

6 Q. You mentioned your testimony specifically in the
7 *Lee versus Virginia Board of Elections* case; correct?

8 A. In that case I provided an expert report and gave
9 a deposition. As I mentioned previously, I did not
10 testify at trial. I was not asked to come to trial.

11 Q. So you never heard a court qualify you as an
12 expert witness in that case; correct?

13 A. That is correct.

14 Q. And to the best of your knowledge, the court did
15 not rely on your opinion and decision in that case;
16 correct?

17 A. As I said in my -- in our deposition, I don't
18 know.

19 MR. H0: Your Honor, plaintiffs request the
20 court to take judicial notice of *Lee versus Virginia*
21 *Board of Elections*, that's 188 F.Supp.3rd 577 in the
22 Eastern District of Virginia, 2016, and the fact it does
23 not mention the name Jesse Richman in any way, shape or
24 form.

25 THE COURT: All right. So noticed. It's a

1 published opinion.

2 BY MR. HO:

3 Q. Dr. Richman, you said that you had designed nine
4 to ten surveys in the past; correct?

5 A. That is what I said in the deposition.

6 Q. And you say that you published one peer-reviewed
7 paper based on a survey that you designed; correct?

8 A. Yes.

9 Q. And you testified with Mr. Kobach that that one
10 paper slipped your mind when we had a colloquy about
11 that during your deposition; correct?

12 A. Yes, that's right, that's what I mentioned there.

13 Q. Generally speaking, Dr. Richman, you would say
14 that the surveys you have designed are principally
15 targeted at a popular audience rather than for peer
16 review; correct?

17 A. As I discussed in the deposition, many of these
18 were surveys aimed at polling the State of Virginia or
19 subsets of the state to -- to assess characteristics of
20 -- and views, and so that -- that was the principal aim
21 at a number those studies. The --

22 Q. Dr. Richman, I don't think you answered my
23 question. My question was: The surveys that you have
24 been -- that you have designed are principally targeted
25 at more of a popular audience rather than peer review;

1 correct?

2 A. As director of the Social Science Research
3 Center, I was involved with a number of different
4 studies. One of the sets of studies I was involved with
5 was an annual quality of life survey. The way this was
6 organized, we began the process by soliciting questions
7 from faculty members across the university. These
8 questions were used --

9 Q. Dr. Richman, I'm sorry --

10 A. -- by faculty members --

11 Q. -- I didn't ask you a question about --

12 A. -- and a number of those were published by --

13 MR. HO: Your Honor --

14 THE WITNESS: -- by faculty members.

15 THE COURT: All right. Let's stop. The
16 question was of these nine to ten surveys that you
17 designed, were any of them submitted for peer review?
18 That's not the exact question, I realize, but maybe we
19 can cut to the chase.

20 MR. HO: Maybe I'll show him a copy of the
21 deposition.

22 THE WITNESS: Clarify if you may.

23 THE COURT: Were any submitted for peer
24 review? I think that's what he's getting at.

25 THE WITNESS: I'm not sure how to respond to

1 your question, Your Honor.

2 THE COURT: Do you not understand what the
3 peer review process is?

4 THE WITNESS: I understand the peer review
5 process, but typically journal articles based on studies
6 are submitted for peer review rather than the --

7 THE COURT: The survey itself.

8 THE WITNESS: -- the survey itself.

9 THE COURT: Okay. I understand. So the
10 answer is no because typically surveys are not submitted
11 for peer review. All right. You can ask your follow-up
12 questions or whatever.

13 BY MR. HO:

14 Q. Okay. Dr. Richman, do you remember your
15 deposition in this case?

16 A. I -- I -- I remember the deposition.

17 Q. Were you under oath during that deposition?

18 A. I was.

19 Q. Did you tell the truth during that deposition?

20 A. I made every effort to do so.

21 Q. Okay. I'm going to hand you a copy of your
22 deposition transcript. Specifically we're at page 19,
23 line 14.

24 My question for you was: "Have you
25 published peer-review research based on a survey that

1 you designed?"

2 Answer: "No, I have not. Principally the
3 surveys that I have designed have been targeted at more
4 of a popular audience. We did the Life in Hampton Roads
5 Local Quality of Life survey annually. We did a number
6 of political polls in the state of Virginia. So the
7 primary aim of those studies was more of a public
8 service than publication in peer-reviewed journals."

9 Was that my question and was that your
10 answer?

11 A. As we already discussed in the earlier
12 testimony --

13 THE COURT: No, just -- just --

14 BY MR. HO:

15 Q. Dr. Richman, that's a yes or no question.

16 THE COURT: -- start by acknowledging was
17 that your -- the question and answer in your deposition.
18 Do you acknowledge that was the exchange?

19 THE WITNESS: This was the exchange in the
20 deposition.

21 THE COURT: All right. Go from there.

22 BY MR. HO:

23 Q. Okay. Dr. Richman, you have never published any
24 peer-reviewed research addressing the accuracy of survey
25 responses for a survey that you have designed; correct?

1 Dr. Richman, I asked you a question. You
2 don't need your deposition for that.

3 A. I answered no.

4 Q. Okay. Dr. Richman, you have never published any
5 peer-reviewed research involving your own efforts to
6 compare survey responses to government records in order
7 to assess the validity of those survey responses;
8 correct?

9 A. No.

10 Q. No, you haven't?

11 A. That was my answer then.

12 Q. Okay. You haven't ever, Dr. Richman, other than
13 in this case, designed or implemented any survey to
14 measure citizenship rates of survey respondents;
15 correct?

16 A. I answered no and elaborated on surveys that I
17 had designed but not implemented.

18 Q. I'm not asking about what you said during your
19 deposition, Dr. Richman. I'm asking you a simple
20 question, which is, other than in this case, you have
21 not implemented any survey to measure citizenship rates
22 of survey respondents; correct?

23 A. That is correct.

24 Q. Okay. Now, you've done some database matching.
25 I believe you testified to that with Secretary Kobach.

1 Do you remember that?

2 A. Yes.

3 Q. Okay. But you've never published any
4 peer-reviewed research based on work that you've done
5 matching databases to a state's voter registration file;
6 correct?

7 A. Correct.

8 Q. Now, you talked a lot about the article that you
9 published on non-citizen registration and voting in the
10 journal *Electoral Studies* with Secretary Kobach. Do you
11 remember that?

12 A. Yes.

13 Q. *Electoral Studies* is a British journal; correct?

14 A. It is based in Britain. The editors are
15 international.

16 Q. Dr. Richman, the data used for that paper in
17 *Electoral Studies* was from the 2008 and 2010 Cooperative
18 Congressional Election Study, or CCES; correct?

19 A. Correct.

20 Q. Now, you testified at great length about the data
21 set that the CCES consists of. But to be clear, you
22 were not involved in the design or implementation of the
23 CCES; correct?

24 A. That's correct.

25 Q. Now, one of the principal investigators for the

1 CCES is Harvard Professor Steven Ansolabehere; is that
2 correct?

3 A. That is correct.

4 Q. You're aware Dr. Ansolabehere is serving as a
5 rebuttal witness for the plaintiffs in this case; right?

6 A. I am.

7 Q. On the whole, you consider Dr. Ansolabehere to be
8 knowledgeable about survey research; correct?

9 A. I am impressed by the efforts that Ansolabehere
10 and his team made to create the Cooperative
11 Congressional Election Study. I think -- as I discussed
12 already, I think this was a tremendous service to the
13 academic community and has allowed people to explore a
14 wide range of research questions that they were not able
15 to do as effectively previously.

16 Q. Dr. Richman, I don't think you answered my
17 question. You consider Dr. Ansolabehere to be
18 knowledgeable about survey research; correct?

19 Don't worry about your deposition
20 transcript. I asked you a question. You can answer it.

21 A. I did. I was surprised by the kinds of analyses
22 that he did in his expert report where there were so
23 many simple errors. I still remain, as I said, very
24 impressed by the efforts that -- and appreciative of the
25 efforts that Ansolabehere and others did to create the

1 Cooperative Congressional Election Study and I think
2 that that collaborative product has been a tremendous
3 service and I appreciate his role in creating that
4 product.

5 Q. Dr. Richman, can you turn to page 83 in your
6 deposition transcript, please. Specifically line 21.

7 Question: "Do you consider him to be
8 knowledgeable about survey research?"

9 Answer: "On the whole, I think he is
10 knowledgeable about survey research."

11 Was that my question and was that your
12 answer?

13 A. Yes.

14 Q. And "he" in that colloquy refers to Ansolabehere;
15 correct?

16 A. Yes.

17 Q. Your impression is that Dr. Ansolabehere has a
18 good reputation as a political scientist among other
19 political scientists; correct?

20 A. Yes.

21 Q. Let's talk about your *Electoral Studies* article
22 on non-citizen registration for a moment. Now,
23 Dr. Richman, in your *Electoral Studies* article, you did
24 not simply take the percentage of respondents to the
25 CCES who said they were non-citizens and whom you

1 believed were registered to vote and then multiply that
2 percentage by the total non-citizen population in the
3 United States; correct?

4 A. That is correct.

5 Q. Instead, in your *Electoral Studies* article, you
6 estimate -- when you estimated rates of non-citizen
7 registration based on the CCES, you weighted the CCES
8 data by race and ethnicity; correct?

9 A. We weighted it by not only race and ethnicity but
10 the set -- we adjusted the existing weights in the
11 survey by race and ethnicity and we looked at various
12 other indicators. For example, I discuss in the article
13 that education, which we weren't specifically
14 re-weighting on, moved to be very close to in line with
15 the national non-citizen education rates after we
16 adjusted the sample re-weighting on the basis of race.
17 Some groups --

18 MR. H0: Your Honor, I'm going to just ask
19 for an instruction to the witness to address my
20 questions and not go off on tangents. You're perfectly
21 welcome to talk about this with Mr. Kobach. But he's
22 talking about topics that are completely unrelated to
23 what I just asked him about and talking about
24 conversations he had with other people. We're going to
25 be here all day, Your Honor.

1 THE COURT: All right. I'll tell you the
2 same thing, Dr. Richman, I've told other witnesses, and
3 that is in cross examination typically the questions are
4 designed for a yes or no answer. I think we can short
5 circuit some of this if you would answer it yes or no.
6 But if you think your answer needs further
7 clarification, say that without saying what that
8 clarification is. That then signals to Mr. Kobach that
9 on redirect he should come back to that and give you a
10 chance to fully -- fully clarify and fully respond. All
11 right.

12 THE WITNESS: Thank you, Your Honor.

13 BY MR. HO:

14 Q. Dr. Richman, when you estimated rates of
15 non-citizen registration based on the CCES in your
16 *Electoral Studies* article, you weighted the data by race
17 and ethnicity; correct?

18 A. I cannot respond honestly yes or no to that
19 question because that was not the only thing we weighted
20 by. If you rephrase, I can answer.

21 Q. Among the other things that you weighted for,
22 when you calculated the -- when you calculated an
23 estimate of non-citizen registration in -- based on the
24 CCES for your *Electoral Studies* article, you weighted
25 for race and ethnicity; correct?

1 A. That is correct.

2 Q. And you did that to make sure that the
3 non-citizen CCES respondents matched up with the
4 non-citizen population as a whole in terms of race and
5 ethnicity; correct?

6 A. Yes.

7 Q. Now, you're familiar with the phenomenon of voter
8 registration over-reporting, right, Dr. Richman?

9 A. I am.

10 Q. And that phenomenon, registration over-reporting,
11 is when some people, when they respond to the survey
12 question say they are registered to vote when, in fact,
13 they are not; correct?

14 A. Correct.

15 Q. And you don't dispute the existence of
16 registration over-reporting; correct?

17 A. Correct.

18 Q. You're aware Dr. Ansolabehere, one of the
19 principal investigators of the CCES, has documented
20 registration over-reporting in the CCES; correct?

21 A. I am aware of that.

22 Q. And you have no reason to doubt Professor
23 Ansolabehere's conclusion that there are some people in
24 the CCES who say they are registered to vote but, in
25 fact, are not; right, Dr. Richman?

1 A. That is correct.

2 Q. Now, one of the ways you tried to account for
3 that in your *Electoral Studies* article is that you
4 didn't only report estimates based on people who said
5 they were registered to vote, you also reported
6 estimates based on people who had a validated -- a
7 validated voter registration record, people who said
8 they were registered to vote and could also be linked to
9 a voter file; correct?

10 A. We reported multiple estimates --

11 Q. And one of --

12 A. -- including that one.

13 Q. And you thought it was important to conduct that
14 validation analysis before you published your *Electoral*
15 *Studies* article; correct?

16 A. It would have been inappropriate to not analyze
17 all of the data available.

18 Q. Okay. Now, separate and apart from your
19 *Electoral Studies* article, you mentioned research that
20 you've done on voting and participation. Do you
21 remember that?

22 A. I'm not certain exactly what -- what you're
23 referring to.

24 Q. Well, let me just ask you this question,
25 Dr. Richman. As a political scientist, you would agree

1 with the statement that electoral rules that increase
2 the costs of voting are expected to diminish voter
3 participation; correct?

4 A. There is -- as I discussed in the deposition,
5 there's a long theoretical train of arguments in that
6 vain.

7 Q. And you would agree with that statement; correct,
8 Dr. Richman?

9 A. I would agree with the caveat as we discussed in
10 the deposition that a lot depend -- you have to look
11 empirically at the effects. Voter ID laws, for example,
12 were expected by a lot of people who brought suits
13 against them to decrease participation. Currently the
14 literature seems to be trying to explain why that hasn't
15 happened.

16 Q. Dr. Richman, I'm going to show you an article
17 that you discussed that you wrote during your -- that
18 you discussed with Mr. Kobach during your direct
19 examination. We've marked this as Plaintiffs'
20 Exhibit 153.

21 A. If I might refill my water cup, is that okay?
22 There's water right here.

23 Q. Sure.

24 A. Thanks so much.

25 Q. This is an article that you wrote called Can the

1 College Vote Turn Out; correct?

2 A. Correct.

3 Q. And it was published in a peer-reviewed journal;
4 correct?

5 A. Correct.

6 Q. When you publish an article in a peer-reviewed
7 journal, Dr. Richman, you don't include false statements
8 in it; correct?

9 A. One endeavors to tell the truth and to be clear
10 and explicit.

11 Q. Okay.

12 MR. H0: Your Honor, plaintiffs offer
13 Exhibit 153 into evidence.

14 THE COURT: Any objection?

15 MR. KOBACH: No objection.

16 MR. H0: Can we turn to the last --

17 THE COURT: 153 admitted, Your Honor.

18 MR. H0: I'm sorry, Your Honor.

19 Can we turn to the last page of the article
20 before the footnotes. Thank you. That's page -- sorry
21 the next page here. I'm sorry, I think I have the wrong
22 page. I apologize, Your Honor. Can we go to the first
23 page. I'm sorry. Okay.

24 BY MR. H0:

25 Q. So the first page of the article, not the last

1 page, and the last sentence on the first page you write,
2 "The electoral participation literature has studied
3 extensively the effect of other institutional variables
4 on voter turnout. Electoral rules that increase the
5 costs of voting are expected to diminish participation."
6 You wrote that; right?

7 A. Yes, and I'm referring, in fact, to a paper --
8 several papers there I -- including some specifically
9 looking at registration rules. Those, I think, do
10 increase the cost of voting to a degree. They're
11 nonetheless permitted based on other state interests.

12 Q. Okay. Let's talk about one of the analysis in
13 your expert report dealing with a matching of records.
14 So can we put Defendant's Exhibit 952 up on the screen.
15 This is your initial expert report, Dr. Richman, and
16 specifically let's look at page 7 and the first
17 paragraph there. In this paragraph you're describing a
18 match that you performed between the TDL list on the one
19 hand and the suspense list on the other; correct?

20 A. Yes.

21 Q. And when you perform that match, you identified
22 16 individuals whom you believed were on both lists;
23 correct?

24 A. Correct.

25 Q. Now, let's clarify what you mean by the suspense

1 list. Your understanding of the suspense list is that
2 it consists of people who have attempted to register to
3 vote but whose form is incomplete because they have not
4 provided documentary proof of citizenship; correct?

5 A. That's one of the categories on the suspense
6 list. Some of the individuals on the suspense list are
7 there because they aren't yet of age.

8 Seventeen-year-olds sometimes register ahead
9 of their birth date. Some people are there because of
10 other aspects of the form being incomplete.

11 Q. Okay. So some people might be on the suspense
12 list because their form is incomplete for reasons other
13 than documentary proof of citizenship; correct?

14 A. Correct.

15 Q. Okay. The suspense list, that's a subset of the
16 full voter registration file in Kansas; correct?

17 A. Correct.

18 Q. And your understanding is that everyone who
19 submits a voter registration form that is incomplete
20 because they did not submit documentary proof of
21 citizenship should not only be on the suspense list but
22 also in the larger Kansas voter file; correct?

23 A. That is correct.

24 Q. Now, Dr. Richman, you're aware that Kansas
25 elections director, Bryan Caskey, also performed his own

1 match involving the TDL list; correct?

2 A. Yes.

3 Q. And Mr. Caskey found what he thought were 79
4 people who were on the TDL list and in the larger vote
5 file; correct?

6 A. Correct.

7 Q. Because the suspense list that you used is a
8 subset of the complete voter file that Mr. Caskey used,
9 you would presume that the 16 individuals that you found
10 are included among Bryan Caskey's match list; correct?

11 A. Matching is an -- subject to judgment calls rely
12 on the margins. Eitan Hersh also did a match
13 replicating mine. We agreed on 15. One we've disagreed
14 with. I've looked at Caskey's list versus mine. There
15 are three individuals that Caskey and I disagreed about.

16 Q. You didn't describe any of that in your reports
17 in this case; correct, Dr. Richman?

18 A. That is correct. At deposition you asked me
19 about that. I said I had not done that match yet. I
20 have now done that match and I'm able to more fully
21 answer your question.

22 Q. Are the 16 individuals from your match list all
23 within Mr. Caskey's list?

24 A. As I just told you, there were three from my list
25 who were not within Caskey's list.

1 Q. Okay. Let's look at your demonstrative and
2 specifically page 16 of your demonstrative.

3 A. I'm --

4 Q. We'll bring it on the screen for you.

5 A. All right.

6 Q. Now, I believe you talked to Mr. Kobach about
7 this slide and said that this is your estimate of the
8 number of non-citizens on the suspense list extrapolated
9 from the TDL matching efforts; correct?

10 A. Yes.

11 Q. And so your estimate, based on the TDL matching
12 efforts, is that 88 people out of the about 18,000
13 people on the suspense list are non-citizens; correct?

14 A. That is correct.

15 Q. And that is less than one half of one percent of
16 people on the suspense list; correct?

17 A. I -- if you want to provide me a calculator, I
18 could do the calculation.

19 Q. If I told you --

20 A. It sounds approximately right.

21 Q. -- it was --

22 Okay. Let's talk about the TDL list. Now,
23 that's a list of people in Kansas who have temporary
24 visas and have obtained a temporary driver's license;
25 right?

1 A. Yes.

2 Q. And you don't believe, though, that everyone who
3 is on the TDL list is currently a non-citizen, do you,
4 Dr. Richman?

5 A. As we discussed in the deposition, it is possible
6 that some individuals on the TDL list have subsequently
7 naturalized, though there's a long process. As I think
8 I talked about earlier, there's -- you have to first
9 become a legal permanent resident and only then can you
10 naturalize.

11 Q. Dr. Richman, could you turn to page 304 in your
12 deposition, please. We'll bring that up on the screen,
13 specifically line 16. You can look at the screen if
14 it's easier.

15 A. Let me get the page.

16 Q. Let me know when you're ready.

17 Question: "And we established earlier that
18 you do not believe that everyone in the TDL was
19 currently a non-citizen; correct?"

20 Answer: "That's right."

21 Was that the question posed to you and was
22 that your answer?

23 A. Yes.

24 Q. Okay. So that means that for anyone who's on a
25 match list between the suspense list and the TDL list,

1 you don't know one way or the other whether that person
2 at the time that they registered to vote was, in fact, a
3 non-citizen; correct?

4 A. That was why we -- I've looked at two lines of
5 evidence to try to address this. One aspect we already
6 talked about was the contact between the Secretary of
7 State's Office and ICE. The other aspect --

8 Q. That wasn't for the TDL match list though,
9 Dr. Richman, was it?

10 A. That's correct.

11 Q. Okay. So let's --

12 A. The other aspect --

13 Q. -- try to stick with the question that I'm asking
14 rather than these things you'd like to volunteer. You
15 can talk about that on redirect with your client.

16 For the TDL match list, you do not know
17 whether or not anyone on that list was, in fact, a
18 non-citizen at the time that they registered to vote;
19 correct?

20 A. Based -- this requires a little bit of
21 elaboration if you could. I do know with a high degree
22 of confidence that -- some of the individuals on that
23 match were non-citizens based on the timelines in terms
24 of when they registered and when they provided the TDL.

25 Q. I think you're mixing that up with a different

1 match that we're going to talk about in a second,
2 Dr. Richman. You should turn to page 306 in your
3 deposition, please, and specifically line 13.

4 Question: "So for your match between the
5 suspense list and the TDL list, you don't know one way
6 or the other whether or not those individuals were
7 non-citizens at the time that they applied to register
8 to vote; correct?"

9 Answer: "That's right. I asked --
10 subsequently asked the Secretary of State if it might be
11 possible to get a second set of names to ICE, but I
12 don't think I got a reply to that request."

13 Was that the question posed to you and was
14 that your answer?

15 A. That was the question posed and answer. This was
16 a true response at the time.

17 Q. Now, you said that you asked the Secretary of
18 State if it might be possible to verify whether the
19 individuals from your TDL suspense list match were, in
20 fact, non-citizens at the time that they applied to
21 register to vote; right?

22 A. I did say that.

23 Q. But you did not get a response to that request by
24 the time that your reports went in in this case;
25 correct?

1 A. That is correct.

2 Q. Okay. Let's talk about that other match you
3 wanted to talk about earlier, Dr. Richman, the green
4 card matching which I do believe you did have some time
5 element for. Let's put your initial report up on the
6 screen, Defendant's Exhibit 952, specifically page 6.
7 Let's look at the table.

8 Now, this is where you describe some
9 matching efforts between records of green card holders,
10 not TDL holders, but regular driver's license holders
11 who used a green card at the DMV to get their driver's
12 license, a match between that information and the voter
13 file; correct?

14 A. That is correct.

15 Q. Okay. So if someone said to you, Dr. Richman,
16 that the DMV records in Kansas contain no information to
17 determine whether or not someone provided a green card
18 at the time that they obtained their driver's license,
19 that would be incorrect; right, Dr. Richman?

20 A. Based on the representations that were made to me
21 associated with the receipt of this table and the data
22 from the DOV, it appears that the DOV does, for quite a
23 number of individuals, know what kind of proof of legal
24 presence was provided to them.

25 Q. Now, this matching analysis you didn't perform

1 yourself; correct?

2 A. This was not performed by me.

3 Q. And you didn't request that this analysis be
4 performed. It was simply provided to you; correct?

5 A. This one was simply provided. In my supplemental
6 report, I discuss some analysis --

7 Q. I didn't ask about your supplemental report.
8 We'll get there in a second.

9 This analysis you didn't request. It was
10 simply provided to you; correct?

11 A. Correct.

12 Q. You were unsatisfied with this analysis though;
13 correct?

14 A. Correct.

15 Q. And the reason, Dr. Richman, you were unsatisfied
16 with this analysis is because the information you
17 received didn't indicate whether or not these people
18 registered to vote while they were still green card
19 holders; correct?

20 A. There was ambiguity.

21 Q. So you asked the Department of Revenue to conduct
22 an initial analysis which you discussed in your
23 supplemental report; correct?

24 A. Correct.

25 Q. Okay. Let's talk about your supplemental report,

1 Defendant's Exhibit 958, page 32.

2 A. Sorry, could I request a staple on this or new
3 clip. The clip fell off and I'm afraid this is going to
4 get very disorganized without something. The clip may
5 be on the floor somewhere.

6 Q. So this is the supplemental analysis that you
7 requested from KDOR and you described in your
8 supplemental report; correct?

9 A. I'm sorry, can you, please, describe what page
10 this is on?

11 Q. Sure. It's on page 30 -- page 32, Table 8.

12 A. Could you repeat your question now?

13 Q. Sure. This is a table breaking down the
14 supplemental analysis that you described; right?

15 A. This is the additional -- this is the table that
16 was provided to me by Kansas DOR. As I discussed in my
17 report, however, this table did not fully meet what I
18 wanted. However, they provided a spreadsheet which did
19 allow me to do analyses that addressed my -- my
20 questions.

21 Q. And when you performed that additional analysis
22 that you just described, you discovered that there were
23 12 people who registered to vote in Kansas on the same
24 day that they provided a green card at the Kansas DMV;
25 correct?

1 A. Yes.

2 Q. Now, given that these 12 individuals went to the
3 DMV and presented a green card on the same day that they
4 registered to vote, Dr. Richman, you would agree that
5 it's reasonable to suppose that these individuals
6 registered to vote at the DMV; correct?

7 A. It seems plausible.

8 Q. Okay. And if they registered to vote at the DMV
9 after presenting a green card at the DMV, these
10 individuals would have self-identified before -- as
11 non-citizens before the DMV offered them voter
12 registration; correct?

13 A. That's possible, though it's also possible that
14 they -- they self-identified as citizens in the context
15 of registering to vote or they claim to be citizens. In
16 that context, I'm not sure what the procedures would be.

17 Q. But if they showed a green card in the course of
18 obtaining their driver's license, at that time they
19 would have self-identified as a non-citizen prior to
20 beginning the voter registration transaction; correct?

21 A. In the context of the driver's license
22 transaction, it certainly seems like that would be --
23 that would be my assumption about their status.

24 Q. Okay. Now, for the match between the green card
25 holders and the Kansas voter file, you did not look to

1 check to see the status of those registrations; correct?
2 In other words, you don't know how many people on that
3 match list successfully registered to vote; correct?

4 A. I'm sorry, I think I'm confused by this question.
5 The -- the match that -- that was provided was
6 represented to me as being a match of individuals on the
7 suspense list. So I think all of them had that status.
8 That's my impression.

9 Q. You don't know why those people were in suspense
10 though, do you, Dr. Richman, whether it was for
11 documentary proof of citizenship or for some other
12 reason that their registration application was
13 incomplete; correct?

14 A. That is correct.

15 Q. Now, you're aware overall the defendants have
16 identified somewhere in the neighborhood of 130 possible
17 individual non-citizens who've registered or attempted
18 to register to vote through Bryan Caskey and Tabitha
19 Lehman, Dr. Richman?

20 A. I've heard that number mentioned.

21 Q. And, Dr. Richman, you haven't attempted to
22 determine whether or not these individuals from your
23 green card match are within that 130 individuals that
24 Mr. Caskey and Miss Lehman have collectively identified;
25 correct?

1 A. At the time of the deposition, I had not yet had
2 a chance to do that; however, I have now been able to do
3 that.

4 Q. But that information is not in your expert
5 reports; correct?

6 A. That information is not in the expert reports.

7 Q. Thank you.

8 A. I --

9 Q. Let's back up, Dr. Richman. You don't know what
10 criteria were used in that match that KDOR performed
11 between green card holders and voter file; correct?

12 A. I'm sorry, could you, please, restate it.

13 Q. You don't know what criteria that the Department
14 of Revenue used to perform the match between green card
15 holders and the voter file; correct?

16 A. As we discussed at deposition, I do not. My
17 impression is that this is a routine process at this
18 point that they have been engaged in for some time. So
19 I presume they are matching on a range of available
20 criteria. I don't know specifically.

21 Q. At the time you submitted your reports in this
22 case, Dr. Richman, you had taken no steps to assess the
23 accuracy of the DOV's matching process between green
24 card holders in the DMV file and the voter registration
25 file; correct?

1 A. I did not have any data that would allow me to
2 assess that. As I discussed in the deposition, I
3 generally would be inclined to believe the results of
4 analyses performed by an official government agency.

5 Q. Dr. Richman, let's shift gears and talk about
6 some of your survey work. Let's bring your expert
7 report, DX952, up on the -- to the screen and let's look
8 at page 7 of that report. It's on your screen. There's
9 a header there titled Suspense Voter List. Do you see
10 that, Dr. Richman?

11 A. Hold on. I'm finding the page here. I think
12 you're on the wrong paper. Beg pardon. Okay.

13 Q. Do you see on page 7 near the bottom there's a
14 header titled Suspense Voter List?

15 A. Yes.

16 Q. In this section of your report, you're describing
17 a survey of individuals on the suspense list; correct?

18 A. That's correct.

19 Q. And in that survey, you received responses from
20 about 1,380 individuals on the suspense list; right?

21 A. Yes.

22 Q. Okay. Now, you provided an estimate of the
23 number of non-citizens on the suspense list based on
24 that survey; right?

25 A. That is correct.

1 Q. So the way you got there is you got -- you did
2 your survey of 1,380 or so people on the suspense list
3 and seven of them on the survey reported that they were
4 non-citizens; correct?

5 A. That is correct. I believe. Let me -- let me
6 double-check. Get to the right page. Yeah -- yes.

7 Q. Okay. Now, seven out of 1,380 translates to
8 about 0.5 percent; right?

9 A. I'm sorry, could you, please, restate the
10 question.

11 Q. Seven out of 1,380 translates into about
12 0.5 percent; correct?

13 A. If you round --

14 Q. Okay. But --

15 A. -- the number.

16 Q. -- when you estimated the number of non-citizens
17 on the suspense list, you didn't use that 0.5 percent
18 figure; correct?

19 A. That is correct.

20 Q. You used a higher figure; right?

21 A. Slightly.

22 Q. And you did that in order to adjust for
23 differences between the frequency of individuals with
24 some characteristics appearing on the suspense list --
25 on your sample of a suspense list to match the suspense

1 list as a whole; correct?

2 A. Correct.

3 Q. Another way of saying it is you weighted the
4 data; correct?

5 A. Right.

6 Q. And as a political scientist you believe the
7 weighted estimate is more likely to be accurate than the
8 unweighted one; correct?

9 A. We discussed this in the deposition.

10 Q. So is the answer yes?

11 A. Yes.

12 Q. Okay. And you weighted your suspense list sample
13 for age; correct?

14 A. Yes.

15 Q. And for gender; correct?

16 A. Yes.

17 Q. For party identification; correct?

18 A. Party identification? I think I might have. Let
19 me find the specific list of all of the --

20 Q. Why don't you look at page 8 of your report, the
21 second full paragraph, first line in that paragraph.

22 A. Okay. There we go. Yes.

23 Q. Okay. So you weighted for party identification;
24 correct?

25 A. Yes.

1 Q. You weighted for geographic region; correct?

2 A. Correct.

3 Q. You weighted for year of registration; correct?

4 A. Yes.

5 Q. You weighted for foreign name; correct?

6 A. Correct.

7 Q. And after performing all of this weighting, your
8 best estimate was that about 117 people out of the
9 18,000 or so people on the suspense list, the version
10 you were using, were non-citizens; correct?

11 A. Depending on how one rounds, roughly.

12 Q. And that's your best -- that was your best
13 estimate; correct?

14 A. Yes.

15 Q. All right. You provided another estimate of
16 characteristics of people on the suspense list. You
17 talked with Secretary Kobach about an estimate that
18 2.2 percent of people on the suspense list don't have a
19 way of -- 2.2 percent of self-identified citizens on the
20 suspense list don't have a way of proving documentary
21 proof -- of proving citizenship; correct?

22 A. They don't have a way absent the hearing process.

23 Q. That's your estimate; correct?

24 A. That's my estimate.

25 Q. And let's break that down. That 2.2 percent that

1 you estimate, that includes self-identified citizens on
2 the suspense list who (1) do not have a documentary
3 proof of citizenship that can satisfy the law (2) those
4 who do not have someone who keeps such a document for
5 them and (3) were not born in the state of Kansas;
6 correct?

7 A. Correct.

8 Q. Okay. So the 2.2 percent of people are people
9 for whom those three criteria do not apply; correct?

10 A. That -- I think that's right.

11 Q. Okay. Now, you do not have an estimate for the
12 percentage of eligible voters, not just people on the
13 suspense list who don't have a citizenship document,
14 don't have someone who keeps it for them and weren't
15 born in Kansas; correct?

16 A. Not of eligible voters.

17 Q. Okay. Now, you attempted to get information that
18 would allow you to make that estimate from the Kansas
19 Secretary of State but they never gave you that
20 information; correct?

21 A. I initially did not have an estimate to do that.
22 And, as I discussed with the Secretary in direct, I -- I
23 do have an analysis of the portion of people who have
24 registered to vote since the -- since the law went into
25 effect in January who have -- were affected by this.

1 Q. Dr. Richman, let's stick to what's actually in
2 your reports. Can you do that today?

3 A. As an expert, I may need to make reference to
4 underlying data that informed opinions in my reports.

5 Q. Okay. So in your reports you do not provide an
6 estimate as to the percentage of all eligible voters in
7 Kansas who lack a citizenship document, don't have
8 someone who has such a document for them and were not
9 born in the state of Kansas; correct?

10 A. Could you define "eligible voters"?

11 Q. You don't know what makes a person an eligible
12 voter in the state of Kansas?

13 A. I just want to make sure we're on the same page.
14 I'm sorry.

15 MR. KOBACH: Objection. Argumentative. The
16 report speaks for itself. He doesn't need to ask the
17 same question over.

18 THE COURT: Overruled. Overruled.

19 BY MR. HO:

20 Q. Someone 18 or older who's a resident of the state
21 of Kansas and a United States citizen. You understand
22 those are the eligibility requirements for voting in
23 Kansas, don't you, Dr. Richman?

24 A. Yes, I do.

25 Q. So you don't have an estimate for the percentage

1 of those people who don't have a citizenship document,
2 don't have someone who keeps them for them, and were not
3 born in the state of Kansas in your expert reports in
4 this case; correct?

5 A. That is correct.

6 Q. And you asked Secretary Kobach for information
7 that would allow you to make that kind of estimate but
8 you were never provided with that kind of information,
9 correct, before your expert reports were submitted in
10 this case?

11 A. Before the expert reports were submitted, no.

12 Q. Okay.

13 THE COURT: Mr. Ho, when you reach a good
14 stopping place, doesn't have to be this second as long
15 as you're on topic, but we do need to take a break at
16 some point.

17 MR. HO: Now would be okay, Your Honor.

18 THE COURT: You sure?

19 MR. HO: Sure.

20 THE COURT: All right. Let's be in recess
21 for 15 minutes.

22 (Recess.)

23 THE COURT: Proceed.

24 BY MR. HO:

25 Q. Dr. Richman, before the break we were talking

1 about your estimate about 2.2 percent of the
2 self-identified non-citizens on the suspense list who, I
3 believe in your characterization in your report, you
4 described them as not having immediate access to
5 documents?

6 A. I'm sorry, can you rephrase the question? I'm
7 not sure whether you said citizens or non-citizens.

8 Q. Before the break, Dr. Richman, we were talking
9 about in your estimate that 2.2 --

10 Before the break we were talking about your
11 estimate that 2.2 percent of self-identified citizens on
12 the suspense list lack what you would describe as having
13 immediate access to documents; correct?

14 A. Yes.

15 Q. Now, that was based -- that estimate was based on
16 the fact from your survey a total of 32 respondents
17 identified as United States citizens and, based on the
18 survey questions -- their answers to those questions,
19 you concluded that they do not have immediate access to
20 documents; correct?

21 A. Yes, that is correct. As we discussed in the
22 deposition, I think a more appropriate choice of word
23 would have been something like ready or readily have
24 access.

25 Q. We'll get to that in a second, Dr. Richman.

1 With respect to these 32 individuals, you
2 had a concern that they may have misstated their
3 citizenship status on the survey; right?

4 A. That's correct.

5 Q. And so instead of taking their survey responses
6 about their citizenship status at face value, you sought
7 to confirm that they were, in fact, United States
8 citizens with the Department of Homeland Security;
9 correct?

10 A. Correct.

11 Q. And ultimately you weren't able to confirm
12 from -- one way or another from the information from the
13 Department of Homeland Security; correct?

14 A. I believe that is correct.

15 Q. But you didn't, based on that fact, simply assume
16 all these 32 people were, in fact, non-citizens; right?

17 A. Were, in fact, non-citizens?

18 Q. Yeah. You didn't just assume, because you didn't
19 get information from DHS about them, well, they must be
20 non-citizens; right?

21 A. No.

22 Q. Now, let's talk about what you said about
23 immediate access. Now, your report uses the words
24 immediate access I think on page 9 in the first
25 paragraph to describe the 2.2 percent of individuals

1 that we've been talking about. These are the people who
2 don't have immediate access to documents; right?

3 A. That is what I said.

4 Q. And conversely I think what you're trying to
5 imply is that 97.8 percent of self-identified citizens
6 on the suspense list do have immediate access to
7 documents; right?

8 A. That would be the converse.

9 Q. Now, the survey that you use did not use the
10 words "immediate access"; correct?

11 A. That is correct.

12 Q. And when you refer to people in your report as
13 having "immediate access to documents," that includes --
14 includes people who answered yes to the question someone
15 else keeps these for you; correct?

16 A. That is correct. My understanding is that the
17 proof of citizenship process can proceed with a simple
18 scan of the document. So even if the document is being
19 kept by somebody in California, getting access could be
20 quite rapid.

21 Q. Okay. When someone says that someone else keeps
22 the documents for them, you don't know where that person
23 who's keeping the documents is based on the survey;
24 correct?

25 A. Right.

1 Q. Either that person could be, just as you
2 hypothesized, in another state entirely; correct?

3 A. Yes.

4 Q. And when a survey respondent answered yes to this
5 question, you don't have any information about how
6 difficult it would be for the respondent to obtain the
7 documents from the person who keeps it for them;
8 correct?

9 A. I have no information one way or the other about
10 that. My presumption is if someone keeps the document
11 for you, they're willing to provide it to you, but I
12 don't know the -- I did not probe further.

13 Q. You'd agree with me, Dr. Richman, that it's a bit
14 of an overstatement to say that someone in that
15 situation has immediate access to a document?

16 A. I agreed with you and I -- I offered that
17 correction in the deposition.

18 Q. The correction that you wish you had left out the
19 word "immediate" from your report; correct?

20 A. That is correct.

21 Q. You didn't submit any addendum or correction
22 making that clear though to the court; right?

23 A. I -- I discussed that in the deposition with you.
24 And, as we just discussed, immediate might be a little
25 bit too strong a word to choose. As I said a moment

1 ago, perhaps ready would have been a better choice.

2 Q. Now, you would agree that in most instances
3 trying to get your documents from someone who keeps them
4 for you, that that would be a -- an additional step in
5 the voter registration process that would be an increase
6 in the marginal cost of registering to vote; correct?

7 A. It certainly seems it would be an additional
8 step.

9 Q. And you're aware, I think you made reference to
10 during your direct testimony, of both an appeals process
11 for people who lack access to documents; correct?

12 A. Yes, there's a hearing process.

13 Q. And when you reference the hearing process in
14 your reports, you did not know if eligible voters in
15 Kansas were, in fact, aware of that process; correct?

16 A. I -- as we discussed in the deposition, I did
17 include a link from Secretary of State's Office website
18 to the form. And as we discussed in the deposition, I
19 found the form within maybe a minute of beginning to
20 access the department -- the Secretary's website.

21 Q. You got a Ph.D. though, Dr. Richman. You do not
22 know and did not know at the time that you referenced
23 the hearing in your report what the degree of awareness
24 was about the hearing when you referenced it; correct?

25 A. That's right, I did not specifically ask

1 questions about awareness of hearings.

2 Q. And when you made a reference to the hearing
3 option in your reports, you didn't know how many people
4 in Kansas had access to that hearing option; correct?

5 A. I did not know specifically. I knew it had been
6 accessed but I did not know the specific numbers.

7 Q. And you would agree with me, Dr. Richman, that
8 obtaining a hearing before the Kansas Secretary of
9 State, the Kansas Lieutenant Governor and Kansas
10 Attorney General or their designees would constitute an
11 additional step that increases the marginal cost of
12 registering to vote?

13 A. It's an additional step.

14 Q. Okay. Let's talk about that 2.2 percent figure
15 that we've been talking about a little bit more. Now,
16 that's a weighted estimate; correct?

17 A. Yes.

18 Q. And you, as a political scientist, believe that
19 the weighted estimate is more accurate than the
20 unweighted estimate; right?

21 A. I -- in general provided it's done appropriately,
22 yes.

23 Q. And one of the ways you weighted the data here,
24 when you were estimating document possession rates, was
25 by whether or not an individual has a foreign name;

1 correct?

2 A. Correct.

3 Q. And you and a grad student went through the
4 suspense list and decided which names were foreign;
5 right?

6 A. We coded and I discussed in the report our
7 inter-rater agreement.

8 Q. Before this project you had never done any
9 peer-reviewed research that involved coding names as
10 foreign or not; correct?

11 A. That is correct.

12 Q. And Mr. Roberts, the graduate student who
13 assisted you in this project, he also had no experience
14 coding names as foreign or non-foreign; correct?

15 A. I don't know whether he had experience or not. I
16 -- he had not published peer-reviewed research.

17 Q. You're not aware of any experience --

18 A. I'm not aware.

19 Q. -- of any experience he had coding names?

20 A. I'm unaware.

21 Q. In determining whether someone had a name foreign
22 to you, you primarily looked whether their name, in your
23 view, looked sort of anglophone; correct?

24 A. That was part of the process, but we had a
25 variety of other criteria as well. So --

1 Q. So presumably what you looked at --

2 A. One of the things --

3 Q. -- you looked for --

4 A. Can I finish or not?

5 THE COURT: Go ahead.

6 THE WITNESS: We looked at other things, for
7 example, the match between the names. So if somebody
8 had one name that we might have otherwise coded as
9 foreign that was from -- that was culturally Indian and
10 another name that was culturally Russian, we wouldn't
11 necessarily code that as a foreign name because of the
12 lack of a match.

13 BY MR. H0:

14 Q. Okay. Dr. Richman, I'd like to ask you to turn
15 to page 46 in your deposition transcript, line 9.

16 MR. H0: And in this circumstance, Your
17 Honor, I actually would like to play the video from
18 Dr. Richman's deposition. Got it queued up.

19 MR. KOBACH: Objection. He's got the
20 deposition in front of him. It will be faster.

21 (Video deposition clip played.)

22 Question: "What do you mean by 'appears to
23 you to be foreign'?"

24 Answer: "Well, that was a very subjective
25 coding. So -- it was an aspect of whether the name

1 looked like a sort of anglophone name or not primarily,
2 but I'm sure we made many mistakes in this specific
3 coding. The goal here was to get some sense of whether
4 we had unequal response rates across different groups of
5 respondents."

6 (End of video deposition clip.)

7 BY MR. HO:

8 Q. Dr. Richman, was that an accurate recording of my
9 question and your answer during your deposition?

10 A. As far as I can tell, yes.

11 Q. Okay. So you would describe the work that you
12 did coding individuals for foreign names as very
13 subjective; correct?

14 A. That's how I described it.

15 Q. And you performed this work of coding names as
16 foreign or not as quickly as you could; correct?

17 A. We had limited time as -- yes.

18 Q. And I'm sure you made many mistakes when you were
19 coding names as foreign or not; correct?

20 A. And we quantified an estimate of our mistakes
21 using an inter-rater agreement.

22 Q. Okay. I'm going to hand you what is Plaintiffs'
23 Exhibit 110. Dr. Richman, do you recognize this as the
24 records of your efforts with your grad student to code
25 the names on the suspense list as foreign or

1 non-foreign?

2 MR. KOBACH: Mr. Ho, do you have a copy for
3 us, please?

4 MR. HO: Yes.

5 THE WITNESS: It appears to be.

6 MR. HO: Okay. Your Honor, we'd offer
7 Plaintiffs' Exhibit 110 into evidence.

8 THE COURT: It's actually -- is this 110?

9 COURTROOM DEPUTY: He gave us 154.

10 THE COURT: 110 is actually in evidence by
11 stipulation.

12 MR. HO: I'm sorry. We mislabeled -- we
13 just put a -- the incorrect sticker on that. I
14 apologize. It should be 110. That is 110. My
15 apologies, Your Honor.

16 THE COURT: All right. So 110 is admitted.
17 BY MR. HO:

18 Q. Okay. Can we -- Dr. Richman, could you turn to
19 page 77. And can we bring that up on the screen,
20 please, Steven.

21 This is some of the coding that you did;
22 right, Dr. Richman?

23 A. Let me get to the page.

24 Q. Sure.

25 A. You said 77?

1 Q. Yes.

2 A. Okay.

3 Q. Okay. And you see at the bottom of the page
4 there are six individuals whom you coded who have the
5 last name Lopez?

6 A. Yes.

7 Q. And am I correct that two people with the name
8 Lopez were coded by one of your reviewers as foreign?

9 A. Yes.

10 Q. So, for example, Enrique Lopez was coded by a
11 reviewer as foreign; correct?

12 A. And -- correct.

13 Q. And four individuals with the name Lopez were
14 coded as non-foreign; correct?

15 A. Four? I -- I'm only seeing five.

16 Q. I'm sorry, three.

17 A. Okay.

18 Q. It's five individuals and three are coded as
19 non-foreign; correct?

20 A. Yes.

21 Q. And so, for example, Maria Anita Lopez is coded
22 as non-foreign; correct?

23 A. Right.

24 Q. Just hypothetically, Dr. Richman, if you came
25 across the name Carlos Murguia, would you code that as

1 foreign or non-foreign?

2 A. I'm sorry, could you, please, spell the name.

3 Q. Sure. Carlos, C-a-r-l-o-s, Murguia,
4 M-u-r-g-u-i-a.

5 A. Probably.

6 Q. Probably what?

7 A. Probably would code it as foreign.

8 Q. Okay. Are you aware that Carlos Murguia is a
9 United States District Court Judge who sits in this
10 courthouse?

11 A. I am not.

12 Q. Now, let's talk about your estimates of
13 non-citizen registration rates. I believe in your
14 initial report you produced estimates -- you produced a
15 total of four estimates of the number of non-citizens in
16 Kansas who may have registered or have attempted to
17 register to vote. Does that sound right?

18 A. That sounds approximately right. There were some
19 minor estimates and there were more estimates in the
20 second report.

21 Q. Let's stick with the initial report. You got one
22 based on the CCES; right?

23 A. Yes.

24 Q. You have one estimate based on the Sedgwick
25 County naturalization information; correct?

1 A. That's correct.

2 Q. You have a third -- you have one estimate based
3 on the survey of temporary driver's license holders;
4 correct?

5 A. Correct.

6 Q. And fourth you have an estimate based on 19
7 incidentally contacted non-citizens; correct?

8 A. That's correct.

9 Q. All right. So for each of these four estimates,
10 you started with a smaller sample and extrapolated to
11 the entire non-citizen population of Kansas; correct?

12 A. Yes.

13 Q. So basically what you did is you took the
14 percentage of people in your sample who you believed
15 were registered or had attempted to register to vote and
16 then you applied that percentage to the entire
17 non-citizen population of Kansas in your initial report;
18 correct?

19 A. Yes.

20 Q. And that's the kind of calculation that anyone
21 with a calculator can make; right, Dr. Richman?

22 A. I -- remarkably, it's a calculation that you
23 objected to, including yesterday. So -- I --

24 Q. I think we were talking about different estimates
25 at that point, Dr. Richman. I'm talking about the four

1 estimates that you actually included in your initial
2 report. When you made those calculations, taking the
3 fraction of your samples who you believed were
4 registered or had attempted to register to vote, and you
5 apply that fraction to the total non-citizen population
6 of Kansas, that's the kind of calculation that anyone
7 with a calculator can make. You don't need a Ph.D. in
8 political science to do that; right, Dr. Richman?

9 A. I wouldn't think so. But on the other hand where
10 I tried to provide slides where that was all I did, you
11 objected this was bringing something new. So I'm not
12 sure anymore the answer to that question.

13 MR. HO: Your Honor, I'd move to strike
14 everything after his initial response confirming my
15 answer.

16 THE COURT: All right. I'll strike that --

17 MR. HO: Thank you.

18 THE COURT: -- second part of his response.

19 BY MR. HO:

20 Q. To be clear, Dr. Richman, you're not providing an
21 estimate of the number of non-citizens in Kansas who
22 registered or attempted to register to vote through a
23 DMV office in Kansas specifically; correct?

24 A. In the initial report and supplemental, I did not
25 have access to the codes necessary to determine that

1 status. I do have some information now but limited.

2 Q. Dr. Richman, you're not -- in your reports you
3 did not provide an estimate as to the number of
4 non-citizens in Kansas who have actually voted; correct?

5 A. My focus in my report was on registration. My
6 understanding was that that was the question that I was
7 to address.

8 Q. Now, Dr. Richman, in addition to the analyses
9 that we've discussed, your report -- your initial report
10 in this case also contained a description of a survey of
11 over 500 registered voters in four Kansas counties;
12 correct?

13 A. That's correct.

14 Q. And of the more than 500 registered voters from
15 that survey, not a single one of them stated they were a
16 non-citizen; correct?

17 A. That is correct.

18 Q. But, in your reports in this case, you did not
19 provide an estimate of non-citizen registration based on
20 that survey of registered voters; correct?

21 A. As -- as we discussed at the deposition, I did
22 not provide a specific estimate. I submit the estimate
23 would be zero with a confidence interval that extends up
24 to a bit below 1 percent I believe.

25 Q. Let me just clarify your response to that,

1 Dr. Richman. You took a survey of over 500 registered
2 voters. None of them said that they were non-citizens.
3 You didn't provide an estimate of non-citizen
4 registration in Kansas based on that survey. But if you
5 had, that estimate of the number of non-citizens
6 registered to vote in Kansas based on that survey would
7 have been zero; correct?

8 A. As we discussed in the deposition, if you have a
9 low rate of non-citizen registration, one would expect
10 most of the time to get no non-citizens responding
11 within the sample of that size.

12 Q. Dr. Richman, I don't think you answered my
13 question. If you had produced an estimate --

14 MR. KOBACH: He just gave a very clear
15 answer to the question. Asked and answered.

16 THE COURT: It has not been answered.

17 MR. KOBACH: Go ahead.

18 BY MR. HO:

19 Q. Dr. Richman, if you had provided an estimate of
20 non-citizen registration based on your survey of over
21 500 registered voters, all of whom said that they were
22 United States citizens, that estimate would have been
23 zero; correct?

24 A. Yes, I suppose so.

25 Q. Okay. Now, you would agree with me, Dr. Richman,

1 that for any estimate of non-citizen registration based
2 on a sample, that the reliability of that estimate
3 depends in part on whether or not the individuals whom
4 you believe are non-citizens accurately reported in
5 response to the survey that they were non-citizens?

6 A. We discussed this extensively already in
7 testimony.

8 Q. Your answer to my question is yes?

9 A. Yes.

10 Q. Okay. And you also believe, when you take a
11 sample and you try to extrapolate to the general
12 population based on a survey, that the accuracy and
13 reliability of that estimate depends in part on whether
14 or not people who tell you that they're registered to
15 vote or have attempted to register to vote, in fact,
16 registered or attempted to register to vote?

17 A. I would -- to answer that I would need to
18 elaborate just a little bit if you will allow me;
19 otherwise, I'll -- so --

20 Q. Well, Dr. Richman, if someone tells you that
21 they've registered to vote but they didn't, right, they
22 would undermine the reliability of an estimate based on
23 that survey response; right?

24 A. In many cases that would be the case.

25 Q. Let's talk about your estimates a little bit

1 more. Now, you would agree with me that when you
2 generate an estimate about a larger population based on
3 a smaller sample, you get a point estimate; right,
4 Dr. Richman?

5 A. Yes.

6 Q. And around that point estimate you would have a
7 confidence interval; right?

8 A. Yes.

9 Q. And the conventional standard in political
10 science is to use a confidence interval with a
11 95 percent probability; correct?

12 A. Right.

13 Q. And you would agree with me, Dr. Richman, that
14 generally speaking the smaller your sample size, the
15 larger your confidence interval; correct?

16 A. Correct.

17 Q. Okay. Now, I believe you testified with your
18 direct -- on your direct examination with Mr. Kobach
19 that generally speaking, when you publish articles
20 featuring statistical estimates, you include standard
21 error calculations; correct?

22 A. Generally some means of testing hypothesis is
23 included. Sometimes authors report standard error
24 calculations or confidence intervals. Sometimes they
25 merely report P values.

1 Q. Dr. Richman, when you published your article on
2 non-citizen registration, the *Electoral Studies* article
3 that we've talked a lot about today, you made sure to
4 calculate margins of error for your various estimates of
5 non-citizen registration in that article before you
6 published it; correct?

7 A. We did report some confidence intervals.

8 Q. And you would not have submitted that article for
9 peer review had you not calculated those margins of
10 error; correct?

11 A. The question of whether we would have submitted
12 it or not, I don't -- I don't know the specific answer
13 to that. It's a useful piece of information to include
14 to help people understand the uncertainty of your
15 estimates, and that's part of what we talked about in
16 the demonstratives earlier.

17 Q. Dr. Richman, would you turn to page 96 in your
18 deposition, please, line 21.

19 Question: "You wouldn't have submitted this
20 article for publication without calculating your margin
21 of error, would you?"

22 Answer: "No."

23 Is that my question and was that your
24 answer?

25 A. Yes.

1 Q. Okay. It would not have comported with accepted
2 standards in political science to submit that article
3 without calculating a margin of error for your estimates
4 of non-citizen registration; correct?

5 A. I -- that is correct.

6 Q. Now, in calculating the margin of error in your
7 *Electoral Studies* article for your estimates of
8 non-citizen registration, you employed what you would
9 describe as the Wald method for doing so; correct?

10 A. Yes, I believe that is the method that we
11 employed.

12 Q. And you used the Wald method in your
13 peer-reviewed article on non-citizen registration when
14 you calculated non-citizen registration rates because
15 you believed that the Wald method was methodologically
16 appropriate for those estimates; correct?

17 A. As I discussed in my reports and the deposition,
18 this is the most widely used approach. As I did
19 additional research, based on Professor Ansolabehere's
20 misapplication of the Wald method and calculating his
21 confidence intervals, I brought forward a series of
22 other estimates as well to illustrate how a wide range
23 of different approaches all came to a conclusion
24 radically different from the one reached by
25 Professor Ansolabehere.

1 Q. We'll talk about that in a second, Dr. Richman.
2 But for your report -- I mean, your article that passed
3 peer review and was published in *Electoral Studies*
4 concerning non-citizen registration, you used what you
5 call the Wald method for calculating confidence
6 intervals because you believed it was methodologically
7 appropriate to do so at the time that you submitted the
8 article; correct?

9 A. That's correct. This is a conventional, this is
10 the most widely used approach. Professor Ansolabehere
11 badly misapplied it in calculating his confidence
12 intervals.

13 Q. Now, you described some different ways of
14 calculating confidence intervals in your supplemental
15 report and we'll talk about those. But it's correct
16 that you didn't use any of those methods for calculating
17 the confidence intervals for non-citizen registration in
18 your published, peer-reviewed article on non-citizen
19 registration; correct?

20 A. That's correct.

21 Q. Now, in your initial report in this case with
22 your four estimates of non-citizen registration in
23 Kansas, you did not provide confidence intervals for
24 three out of four of those estimates; correct?

25 A. That is correct.

1 Q. The one estimate that you did provide a
2 confidence interval was for the one based on 19
3 incidentally contacted non-citizens; correct?

4 A. Correct.

5 Q. Now, just let's be clear what this is. These are
6 19 people whom the surveyors did not specifically intend
7 to contact but they accidentally got in touch with them
8 and those people ended up taking the survey; right?

9 A. That's the subset of this group who also
10 indicated that -- on the two questions that they were
11 non-citizens.

12 Q. Okay. And these 19 people incidentally contacted
13 who indicated they were non-citizens, one of them stated
14 that they were registered or had attempted to register
15 to vote; correct?

16 A. I'm sorry, could you, please, restate the
17 question. I -- I was -- I wasn't clear whether you were
18 saying citizens or non-citizens.

19 Q. Of the 19 incidentally contacted people who
20 self-identified as non-citizens in this sample, one of
21 them stated that they were registered or had attempted
22 to register to vote; right, Dr. Richman?

23 A. That's correct.

24 Q. And because one out of 19 equals 5.3 percent, you
25 take this sample and estimate that 5.3 percent of

1 non-citizens in Kansas as a whole could be registered or
2 could have attempted to register to vote; correct?

3 A. That would be the extrapolation in terms of the
4 point estimate.

5 Q. Now, you would describe this sample size of 19 as
6 extremely small; correct, Dr. Richman?

7 A. It was a very small sample size.

8 Q. Extremely small; right, Dr. Richman?

9 A. That seems like another way to characterize it.

10 Q. And you would describe the estimate based on this
11 extremely small sample as very uncertain; right,
12 Dr. Richman?

13 A. Yes, indeed.

14 Q. When you calculated the margin of error for this
15 estimate in your initial report, Dr. Richman, you used
16 what you would describe as the Wald method for doing so;
17 correct?

18 A. I believe I did.

19 Q. You did not use any of the other four methods for
20 calculating a confidence interval that you employed in
21 your supplemental report; correct, Dr. Richman?

22 A. Yes. As you can see in the confidence intervals
23 an illustration of one of the problems with the Wald
24 method, which is it includes negative values in a
25 confidence interval when we have some actual positive

1 values. It's a similar case --

2 Q. Dr. Richman, I'm going to stop you right there
3 because this will go a lot faster if you just answer my
4 question. Right.

5 You didn't use any of the other four methods
6 for calculating confidence intervals that you employed
7 in your supplemental report for calculating the
8 confidence interval for this estimate in your initial
9 report; correct?

10 A. I -- sorry, I thought I already answered that
11 question.

12 Q. What is the answer to that question, Dr. Richman?

13 A. The answer's no.

14 MR. KOBACH: Your Honor, I would like to
15 object. He was giving a complete explanation and then,
16 when Mr. Ho didn't like where the explanation was going,
17 Mr. Ho interrupted him. If he's going to let him
18 explain, let him explain fully. Don't stop the
19 explanation halfway through, please.

20 THE COURT: All right, that's fair. But as
21 you recall, I also cautioned the better way to do this
22 is if, when it's a clear yes or no type question, if you
23 need to provide -- if you think you need to provide a
24 more narrative answer, just say that. That doesn't mean
25 Mr. Ho has to let you do it. That's the purpose of

1 redirect. But then it signals Mr. Kobach to return to
2 that subject with you. That's going to go a lot faster,
3 I assure you, than giving narrative responses when
4 they're not asked for. All right. So let's proceed.

5 MR. H0: Steven, could we bring Defendant's
6 Exhibit 958 up onto the screen.

7 BY MR. H0:

8 Q. This is your supplemental report, Dr. Richman,
9 and specifically turn to pages 8 and 9, Table 2. Now,
10 this table in your report, Dr. Richman, includes data on
11 all of the four estimates from your initial report of
12 non-citizen registration in the state of Kansas;
13 correct?

14 A. It -- that's not quite true.

15 Q. Well, Dr. Richman, your estimate of non-citizen
16 registration based on the CCES from your initial report
17 is in this table; correct?

18 A. Yes.

19 Q. And your estimate for non-citizen registration
20 based on the Sedgwick County data from your initial
21 report is in this table; correct?

22 A. That's correct.

23 Q. And your estimate of non-citizen registration
24 based on the TDL survey from your initial report is in
25 this table; correct?

1 A. Yes.

2 Q. And your estimate of non-citizen registration
3 based on the 19 incidentally contacted individuals from
4 your initial report is on this table; correct?

5 A. That's correct.

6 Q. And, Dr. Richman, in your view, each of these
7 estimates is distinct; correct?

8 A. One of the -- there's an additional estimate on
9 this table which is not entirely distinct from one of
10 those four.

11 Q. Okay. I'm not talking about that additional one.
12 I'm talking about the four from your initial report that
13 are listed on this table. Those four are distinct from
14 each other I believe you testified on direct; correct?

15 A. Yes.

16 Q. Okay. And they range from an estimate of
17 1 percent of non-citizens in Kansas being registered to
18 vote, that's based on the Sedgwick County data, all the
19 way up to an estimate that 28.6 percent of non-citizens
20 in the state of Kansas are registered to vote, and
21 that's based on the CCES data; correct?

22 A. That's correct.

23 Q. Okay. Dr. Richman, in your reports you do not
24 describe any of these four estimates as your best
25 estimate of the percentage of non-citizen adults in

1 Kansas who are registered to vote; correct?

2 A. That is correct.

3 Q. Now, this table contains various calculations for
4 confidence intervals; correct?

5 A. Correct.

6 Q. Dr. Ansolabehere's calculation and several
7 calculations by you; correct?

8 A. Correct.

9 Q. And your understanding is that Dr. Ansolabehere
10 used a version of the Wald method for calculating the
11 confidence interval. Is that your understanding,
12 Dr. Richman?

13 A. He used an inappropriately calculated version of
14 the Wald method. An actual calculation of the Wald
15 method would yield a different interval.

16 Q. The Wald method is what you used in your
17 peer-reviewed article on non-citizen registration and in
18 your initial expert report in this case; correct?

19 A. Yes.

20 Q. Okay. Now, you used four different methods for
21 calculating the confidence interval in this table; the
22 Exact method, the Agresti method, the Jeffreys method
23 and the Wilson score method. That's what you call these
24 four methods; correct?

25 A. Correct.

1 Q. You have never used any of these four methods for
2 calculating a confidence interval in a peer-reviewed
3 publication; correct, Dr. Richman?

4 A. That is correct.

5 Q. Prior to this report, you had never before used
6 the Wilson score method, the one that you have
7 bold-faced here, for calculating a confidence interval
8 in peer-reviewed publication; correct?

9 A. Correct.

10 Q. In fact, your rebuttal report is the first time
11 that you ever used the Wilson score method for
12 calculating confidence intervals; correct?

13 A. I believe so.

14 Q. Okay. Let's start by talking about the first
15 part of this table, the estimate of non-citizen
16 registration based on the 2006 through 2012 CCES.
17 Dr. Richman, just so we understand what you did here,
18 you looked at CCES respondents from the years 2006 to
19 2012 and you found 14 people who on the CCES said they
20 were from Kansas and that they were non-citizens;
21 correct?

22 A. I'm not sure that the assignment -- exactly how
23 the assignment to state was done in the CCES survey.

24 Q. So you don't know if these four people were even
25 in the state of Kansas?

1 A. No. What I'm saying is I'm not sure if it was
2 based solely upon what they said.

3 Q. Okay. So you found 14 people whom you believed
4 were from the state of Kansas and who stated on the CCES
5 that they were non-citizens; right?

6 A. That's right.

7 Q. And four of these 14 people stated, in response
8 to the CCES on-line survey, that they were registered to
9 vote; correct?

10 A. Correct.

11 Q. And 4 out of 14 is 28.6 percent; right?

12 A. I believe so.

13 Q. So you take 28.6 percent, multiply it by the
14 total non-citizen population in Kansas, and you get an
15 estimate just north of 30,000 non-citizens in Kansas who
16 could be registered to vote; correct?

17 A. That seems about right.

18 Q. Okay. Let's look at Richman Demonstrative
19 page 12. You talked about this with your client,
20 Mr. Kobach. So this page 12 of your demonstrative, this
21 is that estimate; right?

22 A. Yes, that's correct.

23 Q. Okay. Let's go back to a table in your
24 supplemental report, Defense Exhibit 958.

25 A. I'm sorry, I'm a little confused. You referred

1 to Mr. Kobach as my client? Okay. Sorry. Go on.

2 Q. Now, let's go back to the table.

3 MR. NAJARIAN: Sorry, what page?

4 BY MR. HO:

5 Q. Right there the top of the table, page 8. Top
6 section of the table. Now, what you're seeing here is
7 that -- let's just use the Wilson score method because I
8 believe that's the one that you've put in bold.

9 When you use the Wilson score method, the
10 rate of non-citizen registration in Kansas within the
11 confidence interval that you calculate based on the CCES
12 could be anywhere from 11.7 percent to 54.6 percent?

13 A. That's correct.

14 Q. And when you employ the conventional 95 percent
15 standard statistical certainty in political science, you
16 don't have any greater certainty than that; right? It
17 could be as low as 11.7 percent. It could be as high as
18 54.6 percent. No way to know that; right?

19 A. Well, so within the bounds of a confidence
20 interval you can do other confidence intervals.

21 Q. I didn't ask you about that, Dr. Richman.

22 A. So typically the estimate --

23 Q. I asked about --

24 A. -- likely to be close to the number estimated
25 rather than further away. But this is the 95 percent

1 confidence interval.

2 Q. And the 95 percent confidence interval is what is
3 generally accepted in the field of political science;
4 correct?

5 A. It's typically what's used for hypothesis testing
6 in the field of political science.

7 Q. Okay. So using any of the four methods that you
8 used for calculating the confidence interval, the total
9 confidence interval for this estimate is more than 40
10 percentage points; correct?

11 A. Probably.

12 Q. And Dr. Ansolabehere's calculation of the
13 confidence interval is more than 55 percentage points;
14 correct?

15 A. Yes.

16 Q. So both of your confidence intervals are rather
17 large. But the difference is that, when you use these
18 four new methods in your supplemental report, the lower
19 bound of the confidence interval shifts from zero;
20 right?

21 A. It's not a zero even with Professor
22 Ansolabehere's number.

23 Q. Well, Professor Ansolabehere's number, the lower
24 bound of the confidence interval is .9 percent; right?

25 A. That is correct.

1 Q. And it's got a -- but when we use your methods,
2 right, the confidence interval stays relatively large at
3 more than 40 percentage points but then the lower bound
4 shifts upwards to closer to 10 percent; right?

5 A. Yes.

6 Q. Okay. You'd agree with me, Dr. Richman, that a
7 sample size of 14, that which this estimate is based on,
8 that that is a small sample size; right?

9 A. Yes.

10 Q. Okay. Now, this estimate, based on the CCES,
11 that's similar to what you did in your *Electoral Studies*
12 article; right?

13 A. The *Electoral Studies* article was looking at
14 single years and the whole country, so the sample size
15 was substantially larger. I attempted to provide an
16 illustrative based on one of those to look at the
17 confidence intervals but was not able to.

18 MR. HO: Move to strike that, Your Honor.
19 Talking about demonstratives that he's trying to put in
20 that have been excluded.

21 THE COURT: All right. I'll disregard it.

22 BY MR. HO:

23 Q. Dr. Richman, I wasn't talking about sample size.
24 I just meant in your *Electoral Studies* article you
25 produced estimates of non-citizen registration based on

1 the CCES and here again you're producing estimates of
2 non-citizen registration based on the CCES; right?

3 A. In both cases the underlying data is from the
4 CCES.

5 Q. Now, we talked about this earlier. In the
6 *Electoral Studies* article, when you calculated estimates
7 for non-citizen registration using the CCES data, you
8 weighted that data based on race and Hispanic ethnicity;
9 correct?

10 A. As we discussed, I did not simply weight on the
11 basis of those criteria.

12 Q. I didn't mean that you simply -- you only
13 weighted it on those two criteria, Dr. Richman. But
14 among the criteria that you weighted, when you produced
15 your estimates for non-citizen registration for your
16 peer-reviewed article on non-citizen registration, you
17 weighted the data for various factors including race and
18 ethnicity; correct?

19 A. That's correct. As we discussed in --

20 Q. And --

21 THE COURT: All right. That answers the
22 question.

23 BY MR. HO:

24 Q. Dr. Richman, for your estimate in this case based
25 on CCES data of non-citizen registration in Kansas, you

1 did not weight the data based on race and Hispanic
2 ethnicity; correct?

3 A. That is correct. I would -- I have some
4 answer --

5 Q. Now, we previously discussed the issue of
6 registration over-reporting on surveys. Do you remember
7 that?

8 A. Yes.

9 Q. And I believe you testified that with your
10 peer-reviewed article in *Electoral Studies*, one of the
11 ways that you tried to account for the phenomenon of
12 registration over-reporting was to look at people who
13 not only said that they were registered to vote on the
14 CCES but who could be linked to an official state voter
15 file; correct?

16 A. That is a way to get a more precise estimate. I
17 think it's -- there's --

18 Q. I think --

19 A. -- there's more I'd like to say for that.

20 Q. So for your report in this case -- your initial
21 report in this case, when you built an estimate of
22 non-citizen registration based on the CCES, you did not
23 conduct a similar analysis to determine if people who
24 said they were registered to vote, these 14 individuals,
25 could actually be linked to the voter file; correct?

1 A. In the initial report. In the supplemental
2 report I do have a discussion of such an estimate.

3 Q. Okay. Well --

4 A. I can point you to the place.

5 Q. Dr. Richman, your impression is that of these
6 four individuals in the CCES on whom you base your
7 estimate of non-citizen registration in Kansas here,
8 only one of those four individuals could actually be
9 linked to the voter file; correct?

10 A. That is correct.

11 Q. Now, you were discussing your supplemental
12 report. Let's put page 14 of it and your discussion of
13 an estimate based on that validated voter registration
14 file. Let's look at paragraph 30. So here you discuss
15 a percentage estimate of non-citizen registration in
16 Kansas based on the validated CCES data; right? The
17 data that could actually be linked to a state voter
18 file, not just the reported response of a survey;
19 correct?

20 A. That is correct.

21 Q. And when you calculate the confidence interval
22 for this estimate, it ranges from 1 percent to
23 25.8 percent of non-citizens in Kansas who are
24 registered to vote; correct?

25 A. That's what I said in the report, yes.

1 Q. Okay. That's a confidence interval of more than
2 20 percentage points; correct?

3 A. Yes.

4 Q. Okay. Let's go back to your -- I just want to
5 ask you some more questions about your *Electoral Studies*
6 article. Now, you believe -- I know you disagree with
7 it ultimately, but you believe that it is a cogent
8 criticism of your *Electoral Studies* article that some
9 people who respond to the CCES and click a box
10 indicating that they're non-citizens might actually be
11 United States citizens; right, Dr. Richman?

12 A. When I said that their response was cogent, that
13 wasn't specifically what I was referring to.

14 Q. Okay. Dr. Richman, could you open your
15 deposition to page 258, and line 1.

16 Question: "And when you say that it -- that
17 the *Electoral Studies* article 'has been the subject of
18 some cogent criticisms,' what are you referring to?"

19 Answer: "I'm referring to most specifically
20 the Ansolabehere, Luks, and Schaffner paper which raise
21 -- makes an argument about the potential that
22 non-citizens, people who said they were non-citizens on
23 the IMMSTAT question on the survey, were actually
24 citizens who mistakenly provided that response."

25 Was that my question and was that your

1 answer?

2 A. Yes. But if you continue down I -- there's more
3 and I --

4 Q. You can talk about that with Mr. Kobach,
5 Dr. Richman. My question was simply was that my
6 question and was that your answer?

7 A. Yes.

8 Q. So it's your understanding that
9 Dr. Ansolabehere's view is that essentially all of the
10 evidence of non-citizen voting that you rely on from the
11 CCES in your *Electoral Studies* article, that essentially
12 all of that evidence is the result of people who
13 identify as non-citizens on the CCES but click the wrong
14 box on the Internet survey and were, in fact, actually
15 United States citizens; correct?

16 A. I'm sorry, could you restate the question?

17 MR. HO: Could you read it back to him.

18 (The requested question read back.)

19 THE WITNESS: I think that is a major piece
20 of his argument.

21 BY MR. HO:

22 Q. And you're aware that Dr. Ansolabehere made that
23 argument critical of your research and published it also
24 in *Electoral Studies*; correct?

25 A. Yes.

1 Q. And you would agree that if Dr. Ansolabehere's
2 correct about that point, that would significantly
3 reduce your estimates about non-citizen voter
4 registration based on the CCES; correct?

5 A. We discussed in direct my working paper, which
6 looks specifically at some of those issues, it would
7 reduce the estimates but they would remain significant.

8 Q. Now, apart from Dr. Ansolabehere's article, there
9 was also an open letter signed by 200 political
10 scientists criticizing your *Electoral Studies* article on
11 the same grounds; correct?

12 A. I think, judging from what the first name is, it
13 was probably initiated by one of the authors of that
14 paper, Schaffner, but I don't know specifically.

15 Q. Well, there were about 200 political scientists
16 who signed an open letter that criticized your *Electoral*
17 *Studies* article on essentially the same grounds as
18 Dr. Ansolabehere's paper; correct?

19 A. I think that was one of their criticisms.

20 Q. Okay. And as of the time of your deposition in
21 this case, you could not recall any specific example of
22 an open letter by hundreds of political scientists
23 criticizing the research of a colleague in the same
24 manner; correct?

25 A. Since then there's been a remarkable example. As

1 I discussed, I --

2 Q. I didn't ask about since then, Dr. Richman.

3 A. -- examples.

4 Q. At the time of your deposition you couldn't
5 remember a single open letter signed by hundreds of
6 political scientists criticizing the work of a colleague
7 in the same manner; correct?

8 A. As I discussed, I remembered a book which
9 discussed a number of such cases but I could not
10 remember a specific example.

11 Q. Now, you say that you have comprehensively
12 responded to this criticism from Dr. Ansolabehere in
13 your working paper, which I believe is Defendant's
14 Exhibit 1035 titled A Valid Analysis of a Small
15 Sub-sample; correct?

16 A. I believe that is the language we used.

17 Q. And you wrote that paper. I believe it's dated
18 January 2017; correct?

19 A. I was one of the co-authors of it.

20 Q. January 2017?

21 A. January 28th, 2017.

22 Q. Okay. That's a little more than a year ago;
23 right?

24 A. Correct.

25 Q. Okay. Now, since the time that you wrote that

1 article, it has not been published in a peer-reviewed
2 journal; correct?

3 A. That's correct.

4 Q. Okay. It's available on your website though;
5 right?

6 A. Yes.

7 Q. All right. Now, in your reports in this case for
8 some of the analysis you did, for example, with the
9 suspense list, you didn't take survey respondents'
10 answers about whether they were citizens at face value.
11 You -- when you were calculating, for example, document
12 possession rates on the suspense list and people told
13 you they were citizens, you wanted to make sure that
14 their answers were correct and that's why you asked
15 Secretary Kobach to check with the Department of
16 Homeland Security; right?

17 A. Correct.

18 Q. But notwithstanding all of the criticism and
19 controversy about whether or not respondents in the CCES
20 say that they are non-citizens, when they say that, that
21 that's correct, you didn't do anything to verify whether
22 the 14 non-citizens CCES respondents in your sample
23 were, in fact, non-citizens; correct, Dr. Richman?

24 A. I'm confused. This was from the CCES survey. I
25 knew -- I had no access to any information specifically

1 about the identity of those individuals.

2 Q. So you -- the only information that you had about
3 their citizenship status was their self-reported
4 citizenship status; correct?

5 A. That is correct.

6 Q. Can we look at your supplemental report,
7 Defendant's Exhibit 958, page 16, paragraph 35. Now,
8 here you're talking about some national as opposed to
9 Kansas specific CCES data; is that correct?

10 A. Yes.

11 Q. And here you're talking about national CCES data
12 where you had higher confidence that the respondents you
13 were looking at were, in fact, non-citizens because you
14 were using a panel study; right?

15 A. Right.

16 Q. And this estimate of 2.4 percent that you have
17 here, that's not based on Kansas specific data; correct?

18 A. This is a national estimate aimed at addressing
19 specifically the issue of to what extent are the
20 estimates being biased in the way that Ansolabehere, et
21 al suggested they were.

22 Q. Okay. Let's go back to pages 8 and 9 in your
23 supplemental report, Table 2. We talked about this
24 table a lot, supplemental report, Defendant's
25 Exhibit 958.

1 A. Okay.

2 Q. And at the bottom going on to the next page here
3 we have your estimate based on Sedgwick County
4 naturalization information from your initial report;
5 right?

6 A. That's right.

7 Q. So let's just break this down so we're clear
8 about what we're talking about. You had information on
9 789 newly naturalized citizens in Sedgwick County;
10 right?

11 A. That is correct for -- for this analysis.

12 Q. And for this analysis, a total of eight of these
13 individuals already had records in the Kansas voter
14 file; correct?

15 A. Correct.

16 Q. So that translates to about 1 percent of this
17 sample; right?

18 A. Right.

19 Q. And you take that 1 percent and you multiply it
20 by the total number of non-citizens in Kansas to arrive
21 at an estimate of non-citizen registration in Kansas
22 based on the Sedgwick County naturalization data;
23 correct?

24 A. Correct.

25 Q. Now, in your initial report you did not produce a

1 confidence interval for this estimate; right?

2 A. That is correct.

3 Q. Now, Dr. Ansolabehere did and he used the same
4 method for calculating a confidence interval that you
5 employed in your *Electoral Studies* article and in your
6 initial report; right?

7 A. That is incorrect.

8 Q. Okay. Well, using -- this estimate has the
9 smallest confidence interval of any of your estimates of
10 non-citizen registration; correct?

11 A. That is correct.

12 Q. And it's also the lowest estimate that you offer
13 for non-citizen registration in the state of Kansas in
14 your initial report; correct?

15 A. Yes.

16 Q. And you would agree this estimate has the most
17 statistical certainty of any of your estimates of
18 non-citizen registration; correct?

19 A. Largest sample size leads to smaller confidence
20 intervals.

21 Q. Can we put up Richman Demonstratives 5 and 6 on
22 the screen. You talked about five -- and can we cycle
23 through to six. These two slides -- during your
24 testimony with Mr. Kobach, these are two different
25 estimates of non-citizen registration in the state of

1 Kansas based on Sedgwick County naturalization data;
2 correct?

3 A. That is correct. Is it possible to move this up
4 and down a little bit? The confidence intervals are
5 hard to see. Thank you.

6 Q. You got two different estimates here. But you
7 would agree with me, Dr. Richman, they don't differ a
8 whole lot. They're about 1,100 each give or take?

9 A. Yeah. They're -- they're very similar estimates.
10 They're based on the same -- similar data.

11 Q. Now, let's leave these up on the screen, Steven.

12 For these two estimates of non-citizen
13 registration based on Sedgwick County naturalization
14 data, you didn't weight the data by age, for example, in
15 the same way that you did with your suspense list
16 survey; correct?

17 A. These are not survey-based estimates.

18 Q. I didn't ask if they were survey-based estimates.
19 I asked if you weighted this data by age so that your
20 sample matched up with a larger population in the same
21 way that you weighted your suspense list survey data by
22 age. You didn't; right, Dr. Richman?

23 A. No.

24 Q. Okay. And you didn't ask for the birth dates on
25 these voter registration forms so that you could do

1 that; right?

2 A. That's correct.

3 Q. In fact --

4 A. Well --

5 Q. -- and you didn't weight this sample by gender to
6 match up with a larger non-citizen population of Kansas
7 in the same way that you weighted your suspense list
8 survey by gender; correct?

9 A. Correct.

10 Q. And you didn't do anything to weight data from
11 Sedgwick County by race and ethnicity in the same way
12 that you weighted your suspense list survey and your
13 estimates from your *Electoral Studies* article; correct?

14 A. Correct.

15 Q. Now, you say that -- well, I'm sorry, let me
16 strike that and start again.

17 Now, this estimate is based only on newly
18 naturalized citizens. It's not based on information
19 about undocumented immigrants or legally present
20 non-citizens who haven't naturalized; correct?

21 A. That is correct.

22 Q. Now, you offered the opinion, I believe on direct
23 testimony, that non-citizens who naturalize are likely
24 to have a lower voter registration rate than
25 non-citizens who do not naturalize. Do you remember

1 saying that?

2 A. I'm having trouble directly recalling that but --

3 Q. Is that your opinion?

4 A. -- if it's in the transcript -- I think it's a
5 possibility. I don't remember the exact context in
6 which perhaps I said that.

7 Q. Do you have an opinion one way or the other as to
8 whether or not --

9 A. I think --

10 Q. -- non-citizen -- let me just finish my question,
11 Dr. Richman, so the transcript is clear.

12 A. I'm sorry.

13 Q. Do you have an opinion one way or the other as to
14 whether non-citizens who do not naturalize have a higher
15 or lower registration rate than newly naturalized
16 citizens, which these estimates are based on?

17 A. There are some reasons why one might take that
18 view. I'd be happy to elaborate if you wish.

19 Q. But I didn't ask if there were reasons
20 hypothetically why one might take that view. I asked if
21 you had an opinion one way or the other whether or not
22 newly naturalized citizens had a higher or lower
23 registration rate than non-citizens who do not
24 naturalize?

25 A. I think it's plausible that the registration rate

1 might be lower among newly naturalized but there are a
2 variety of considerations.

3 Q. Okay. You've never done any research that
4 attempts to quantify or compare registration rates among
5 people who are about to naturalize as compared to people
6 who aren't naturalizing, have you, Dr. Richman?

7 A. Beyond the data collected in this case, no.

8 Q. Let's talk about the data you collected here, and
9 let's look at page 26 of your supplemental report,
10 DX958.

11 A. I'm sorry, which page?

12 Q. Twenty-six and let's look at paragraph 64 about
13 halfway down. Now, here you say there's some reason to
14 believe that registration rates among people who are
15 about to naturalize are likely to be lower than
16 registration rates among other non-citizens; right?

17 A. Yes.

18 Q. Okay. And there's a footnote here for that
19 proposition; right?

20 And I'm sorry could you actually look at --
21 I'm sorry, can you -- let's go to the next line beyond
22 this where you -- it starts the last line on this
23 sentence -- I'm sorry, the last line in this paragraph
24 continues on to the next page.

25 "A former ICE officer" -- "A former ICE

1 officer stated in interviews last fall that he often
2 encountered registration cards on undocumented
3 immigrants." Do you see that?

4 A. Yes, that was one of three footnotes as we saw a
5 moment ago, three footnotes I referenced in discussing
6 this opinion.

7 Q. We'll talk about the other footnotes in a second,
8 but let's talk about this footnote. So for the
9 proposition that undocumented immigrants frequently have
10 voter registration cards, you cite a FOX News article;
11 correct?

12 A. That was one of the sources I cited.

13 Q. Okay. But that's the only source you cite for
14 the proposition that undocumented immigrants frequently
15 have voter registration cards; correct?

16 A. I'm sorry, that's simply -- if you look at this
17 in context, that's not true.

18 Q. Dr. Richman, you --

19 A. Some of the other footnotes relate to this.

20 Q. You have a sentence that says "undocumented
21 immigrants frequently have registration cards" and you
22 have a footnote for that. The only citation for the
23 footnote in that sentence is a FOX News interview;
24 correct?

25 A. The footnote is directly related to the sentence

1 which begins "a former ICE officer stated". This is a
2 sentence specifically about that particular piece.

3 Q. Right. So it's based on an interview with a
4 single former ICE officer that took place on FOX News;
5 correct?

6 A. That particular sentence is related to that
7 interview, correct.

8 Q. It's not based on any other citations in that
9 footnote, is it, Dr. Richman? Am I missing something?

10 A. That sentence is about the ICE officer --

11 Q. Okay. Let's look at the other footnotes --

12 A. -- and it cites the interview --

13 Q. -- that you wanted to mention in this paragraph.

14 Let's scroll back up to Footnote 7 and 8. These two
15 footnotes are a blog from something called
16 usimmigration.com and a list of the documents on the I-9
17 Form; correct?

18 A. That is correct.

19 Q. Okay. You don't cite any other sources for the
20 proposition that undocumented immigrants could have a
21 higher -- a higher voter registration rate than people
22 who are about to naturalize; correct?

23 A. I would be happy to elaborate further if you
24 would like on other pieces of evidence underlying my
25 opinion.

1 Q. You don't cite any other pieces of evidence in
2 the footnotes in your report for that proposition;
3 correct, Dr. Richman?

4 A. That's correct.

5 Q. Dr. Richman, can you quantify how often
6 undocumented immigrants have voter registration cards?

7 A. No.

8 Q. Let's go back to the big table on -- and we'll
9 look at page 9 of your supplemental report. And for the
10 record this is DX958. And I want to talk about your
11 estimate of non-citizen registration based on the TDL
12 survey. So let's get the record clear again here what
13 you did here. You took a survey of temporary driver's
14 license holders. And of the 37 people who responded and
15 whose responses you're reporting from that survey of TDL
16 holders, six of them said that they were registered to
17 vote; right?

18 A. That is correct.

19 Q. Or I'm sorry, six of them said that they were
20 registered or had attempted to register to vote --

21 A. Thank you for clarifying.

22 Q. -- correct?

23 A. Yes.

24 Q. Okay. That's about 16.5 percent of the sample;
25 right?

1 A. That's right.

2 Q. So, again, you take that sample and you multiply
3 it by the total non-citizen population of Kansas --
4 adult non-citizen population of Kansas and you get about
5 18,000 non-citizens registered to vote in the state of
6 Kansas; right?

7 A. That's the estimate.

8 Q. And when you calculate the confidence interval
9 for this estimate, under any of the methods that you
10 prefer for calculating a confidence interval, the
11 confidence interval is larger than 20 percentage points;
12 correct?

13 A. Yes.

14 Q. And if we use the Wilson score method which you
15 like and the 95 percent statistical certainty, which is
16 conventional in political science, the number of
17 non-citizens registered to vote in Kansas could be as
18 low as 7.7 percent, could be as high as 31.1 percent;
19 right, Dr. Richman?

20 A. That's the range of the 95 percent confidence
21 interval.

22 Q. You'd agree that this estimate has weak
23 statistical power; right, Dr. Richman?

24 A. As we discussed in the deposition, I think it is
25 a small sample and consequently the probability, if the

1 rate of non-citizen registration is modest or low in the
2 state of Kansas, the probability of finding nothing
3 would be quite high. That's not what we found here
4 however.

5 Q. Okay. Dr. Richman, will you turn to page 173 in
6 your deposition, line 22. And specifically I would like
7 to play the video of this.

8 (Video deposition clip played.)

9 Question: "Among the estimates that you
10 describe as having weak statistical power, would you
11 include your estimate of non-citizen registration or
12 attempted registration in Kansas based on the TDL
13 survey?"

14 Answer: "Again, it's a very modest sample
15 size. And so what that means is that there's
16 substantial uncertainty. Again, that uncertainty
17 creates a range of an interval in which, no, we're not
18 sure exactly where the true population value is. It
19 might be as low as 7.7 percent. It might be as high as
20 31.1 percent. We're not sure, but this estimate
21 suggests it's somewhere in that range based on the data
22 in that sample."

23 (End of video deposition clip.)

24 BY MR. HO:

25 Q. Dr. Richman, was that my question and was that

1 your answer?

2 A. I'm sorry, I'm having trouble with the
3 transcript. Which page did you say it was from?

4 Q. 173, line 22. You saw the video, Dr. Richman.
5 Did that look like an accurate recording of your
6 deposition?

7 A. Yes.

8 Q. Now --

9 THE COURT: Before you -- I'm going to just
10 caution we need to take a break for lunch. So I suggest
11 you complete this particular piece, if you're still
12 going to be on the TDL list. If you're moving on to a
13 different topic, this is going to be a good time.

14 MR. HO: Yes, I just have some more on the
15 TDL, Your Honor, if I could.

16 BY MR. HO:

17 Q. Dr. Richman, your initial report, that
18 16.5 percent estimate based on the TDL which generated a
19 numerical estimate of 18,000 non-citizens in Kansas who
20 were registered to vote, that's an unweighted estimate;
21 correct?

22 A. Not quite. My recall is that estimate was
23 weighted to match the demographics available in the TDL
24 list, and then I subsequently supplied another analysis
25 weighted to match the demographics of the overall

1 non-citizen population.

2 Q. Okay. So I want to talk about that second
3 estimate that you did in your supplemental report. When
4 you weighted the TDL survey results to match the total
5 population of non-citizens in Kansas, that had the
6 effect of reducing your estimate by about a third;
7 right?

8 A. It cut it to something like 11.4 percent or so.

9 Q. Okay. And that's about 13,000 non-citizens
10 registered in Kansas?

11 A. I think so.

12 Q. And you'd say, as a political scientist, that
13 that 13,000 number, that that's more reliable than the
14 18,000 number that was not weighted to match the total
15 non-citizen population of Kansas; correct?

16 A. I think that weighting to match the overall
17 population is probably a better estimate.

18 Q. Okay. Dr. Richman, are you aware that during
19 opening arguments in this case Secretary Kobach
20 represented that in his view your estimate of 18,000
21 non-citizens on the voter rolls based on the TDL survey
22 as described in your initial report was the best
23 estimate of non-citizen registration in Kansas?

24 A. I'm not aware or I wasn't.

25 Q. Okay. You're aware of it now?

1 A. (Witness nods head.)

2 Q. You'd agree with me, wouldn't you, Dr. Richman,
3 that's not your best estimate of non-citizen
4 registration in Kansas because the weighted estimate is
5 a better one; right?

6 A. I think the weighted estimate has some advantages
7 over the unweighted. However, these are both weighted
8 estimates. So I think it's -- we have to be careful how
9 we characterize them.

10 Q. Okay.

11 MR. H0: Your Honor, I would just like to
12 ask one more conclusive question about the TDL survey
13 before the break if that's okay.

14 THE COURT: Yes.

15 MR. H0: I want to show you a document which
16 is Plaintiffs' Exhibit 109. I believe the parties have
17 stipulated to entering this into evidence but I may be
18 mistaken.

19 THE COURT: I don't think so.

20 MR. H0: Okay. My apologies, we haven't.

21 BY MR. H0:

22 Q. Dr. Richman, do you recognize this document?
23 This is your survey instrument, right, for the TDL
24 survey?

25 A. Yes.

1 Q. Okay. And you also use this same survey
2 instrument for the other samples that we've talked
3 about; right?

4 A. Right.

5 MR. H0: Okay. Your Honor, plaintiffs would
6 offer their Exhibit 109, Dr. Richman's survey
7 instrument, into evidence.

8 THE COURT: Any objection?

9 MR. KOBACH: No objection.

10 THE COURT: 109 admitted.

11 MR. H0: Steven, could we bring up
12 Plaintiffs' 109 on the screen.

13 BY MR. H0:

14 Q. Now, Question 3 in this survey is: "Have you
15 registered to vote or attempted to register to vote in
16 the state of Kansas?" Do you see that?

17 Dr. Richman, I couldn't hear you.

18 A. I'm sorry, yes.

19 Q. You drafted this question; correct?

20 A. Yes.

21 Q. And you'd expect that someone who has registered
22 to vote in Kansas would answer yes to this question;
23 right?

24 A. Yes.

25 Q. And you'd expect someone who has attempted to

1 register to vote in Kansas but not successfully to also
2 answer yes to this question; right, Dr. Richman?

3 A. Right.

4 Q. Okay. Now, from this survey, if someone answers
5 yes to this question, you don't know if that person
6 successfully attempt -- successfully registered to vote
7 or merely attempted to register to vote and failed;
8 correct?

9 A. Yes.

10 Q. So, as it stands, the two estimates of
11 non-citizen registration that you have based on the TDL,
12 one is 16.5 percent translates to 18,000, another one
13 11 percent or so translates to 13,000. When you look at
14 those estimates, you don't know based on the information
15 collected on your survey, which of those individuals
16 actually successfully registered to vote as merely -- as
17 opposed to merely attempting to register to vote;
18 correct?

19 A. I believe both are irrelevant in this context.

20 Q. Wasn't my question, Dr. Richman.

21 A. I agree.

22 Q. Okay. Now, it's possible that half of them
23 successfully registered to vote and half of them tried
24 by failed; right?

25 A. Possible.

1 Q. Now, you could have -- I mean, it's possible that
2 all of them tried to register to vote but failed and
3 that none of them were successful. There's no
4 information in your survey that tells you that that
5 wouldn't be the case; right, Dr. Richman?

6 A. The survey does not provide any information on
7 that.

8 Q. Now, if someone attempted to register to vote but
9 was unsuccessful, the survey doesn't tell you anything
10 about why that person was unsuccessful; right?

11 A. That's correct.

12 Q. Doesn't tell you if it was something other than
13 the documentary proof of citizenship requirement that
14 prevented that person from registering to vote; correct?

15 A. Correct.

16 Q. Like, for example, being informed of the
17 requirement that a person must be a citizen in order to
18 register, that could have been one of the reasons why
19 someone tried but failed to register to vote and yet
20 still answered yes in the affirmative to that question
21 on your survey; right?

22 A. That's a possibility.

23 Q. Okay. The information on your survey doesn't say
24 anything about when someone attempted to register to
25 vote; correct?

1 A. Correct.

2 Q. And so from your survey of TDL holders, if
3 someone answers yes because they tried to register to
4 vote but failed, that could have been well before 2013
5 when the documentary proof of citizenship law went into
6 effect; correct?

7 A. It's possible.

8 MR. HO: Okay. Your Honor, I think this
9 would be an okay time to take a break.

10 THE COURT: All right. Let's take a break
11 until 1:30. What is your estimate, Mr. Ho, on how much
12 longer you'll have this witness on the stand?

13 MR. HO: Actually, moving along pretty well
14 here, Your Honor. It's conceivable that I could be
15 finished in 10 minutes but it might be more like 15 or
16 20.

17 THE COURT: Okay. And the plan still is
18 that obviously -- and I don't know if Mr. Bednasek's
19 attorney wants to cross.

20 MR. WOODS: No, Your Honor.

21 THE COURT: I'm sorry?

22 MR. WOODS: No, Your Honor.

23 THE COURT: And then with redirect. So the
24 plan is, when Dr. Richman -- when we're finished with
25 him, we're going to call your two rebuttal experts.

1 Then after that we will go to defendant's next witness
2 who I think is that Mr. McFerron. Okay. All right.
3 We'll be in recess until 1:30.

4 MR. HO: Thank you, Your Honor.

5 (Recess for lunch hour.)
6

7 CERTIFICATE

8 I certify that the foregoing is a correct
9 transcript from the record of proceedings in the
10 above-entitled matter.

11 DATE: March 21, 2018
12

13 /s/Kimberly R. Greiner
14 KIMBERLY R. GREINER, RMR, CRR, CRC, RDR
15 United States Court Reporter
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