

KEVIN KENNEDY

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2
3 IN THE UNITED STATES DISTRICT COURT
4 FOR THE WESTERN DISTRICT OF WISCONSIN
5 * * * * *
6 ONE WISCONSIN INSTITUTE, INC., et al.,
7 Plaintiffs,
8 -vs- Case No. 15-CV-324-bbc
9 GERALD C. NICHOL, et al.,
10 Defendants.
11 * * * * *
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13
14
15 VIDEOTAPED DEPOSITION OF KEVIN J. KENNEDY
16 Thursday, January 14, 2016
17 9:14 a.m.
18
19 Reported by: Lisa A. Creeron, RPR
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1

I N D E X

2 Examination by:	Page
3 Attorney Kaul	7
4 Attorney Murphy	--
5 Exhibit	Identified
6 1 Memo to Wisconsin Municipal Clerks and others from K. Kennedy dated 12-10-12	22
8 2 Memo to Wisconsin County Clerks and others from M. Haas dated 4-11-14	29
10 3 GAB press release dated 10-26-12	43
11 4 GAB report, An Examination of Early Voting In Wisconsin	48
13 5 WSJ article dated 7-30-14	83
14 6 Testimony of K. Kennedy dated 10-9-13	84
15 7 Emails between N. Judnic and M. Haas and others dated 2-14 and 2-15-13	90
17 8 E-mails from M. Klingermeyer and J. McGinley dated 2-15-13	94
19 9 Email from D. Lowe to D. Buerger dated 10-28-14 and other emails	99
20 10 Various emails between A. Oberle and others dated January 2011	111
22 11 Written remarks by K. Kennedy dated 4-27-11	117
23 12 Emails between M. Haas and others dated 8-23-13	136
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1 VIDEOTAPED DEPOSITION OF KEVIN J. KENNEDY, a
2 witness in the above-entitled action, taken at the
3 instance of the plaintiffs, under the provisions of the
4 Federal Rules of Civil Procedure, taken pursuant to
5 notice, before LISA A. CREERON, a Registered Professional
6 Reporter and Notary Public in and for the State of
7 Wisconsin, at the Wisconsin Department of Justice, 17 West
8 Main Street, in the City of Madison, County of Dane, and
9 State of Wisconsin, on the 14th day of January, 2016,
10 commencing at 9:14 a.m.
11
12 A P P E A R A N C E S
13 JOSHUA L. KAUL,
14 PERKINS COIE, LLP,
15 Attorneys at Law,
16 One East Main Street, Suite 600,
17 Madison, Wisconsin 53703, appearing on
18 behalf of the plaintiffs;
19 S. MICHAEL MURPHY and GABRIEL JOHNSON-KARP,
20 Assistant Attorneys General,
21 WISCONSIN DEPARTMENT OF JUSTICE,
22 17 West Main Street,
23 Madison, Wisconsin 53703, appearing on
24 behalf of the defendants.
25 ALSO PRESENT: TODD CAMPBELL (Videographer)

* * * * *

2

I N D E X (Continued)

2 Exhibit	Identified
3 13 Memorandum to Interested Parties from N. Robinson dated 5-23-12	139
4 14 News article dated 7-2-14	145
5 15 Testimony of K. Kennedy dated 1-23-14	151
7 16 Letter to Election Observer Organization from N. Robinson dated 11-1-12	160
8 17 GAB press release dated 7-31-12	162
10 18 Emails between D. Lowe and others dated July 2012	164
11 19 Emails between M. Haas and K. Kennedy and others dated 10-22-12	169
13 20 Letter to B. Landgraf from N. Albrecht dated 11-5-12	173
14 21 Emails between M. Haas and various people dated 10-22 and 10-23-12	176
16 22 AP article dated 10-8-12	179
17 23 Emails between S. Falk and R. Magney and others dated 4-1 and 4-2-14	180
18 24 Emails between N. Robinson, M. Haas and others dated 9-7 and 9-8-10	182
20 25 Congressional testimony of K. Kennedy dated 5-14-14	203
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29	Emails between D. Buerger, S. Falk and others dated 9-29 and 9-30-11	226
30	Emails between R. Magney, D. Buerger and others dated 8-16-11	228
31	Emails between R. Hein, A. Steinhauer and others dated 7-22-11	235
32	Memo to K. Kennedy from B. Burden and others dated 1-4-11	240
33	Letter to Hon. G. Tauchen from K. Kennedy dated 5-3-11	243
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(Original transcript is filed with Attorney Kaul)

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called as a witness, being first duly sworn in the above cause, testified under oath as follows:

MR. MURPHY: As an initial housekeeping matter, we're here today under a notice to depose Mr. Kevin Kennedy in his capacity as defendant and we're appearing on that notice today. There may be another deposition or other depositions where he appears in a representative capacity, but here he is in his capacity as defendant.

EXAMINATION

BY MR. KAUL:

Q All right. Mr. Kennedy, I just introduced myself a moment ago, but I'm Josh Kaul. I'm here on behalf of the plaintiffs in this case, and let me start out by going over just a few ground rules. I know you've been deposed before, right?

A Yes.

Q And you're an attorney, correct?

A That's correct.

Q So are you generally familiar with the deposition procedures?

A I am.

Q All right. Then just briefly I'll say if at any

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THE VIDEOGRAPHER: We are on the record. Seated before you is Kevin Kennedy. This is Video No. 1 of his video deposition, taken pursuant to notice, at the instance of the plaintiffs, in the matter of One Wisconsin Institute, Inc., et al., vs. Gerald C. Nichol, et al., defendants, in the United States District Court for the Western District of Wisconsin, Case No. 15-CV-324.

This deposition is taking place at the State of Wisconsin, Department of Justice, 17 West Main Street, Madison, Wisconsin. The date is January 14th, 2016. The time is 9:15 a.m. I am Todd Campbell, videographer for Campbell Legal Video Company. The court reporter is Lisa Creeron with Madison Freelance Reporters.

Would counsel please first introduce themselves and state whom they represent? And the court reporter will swear in the witness.

MR. KAUL: On behalf of the plaintiffs, I'm Josh Kaul.

MR. MURPHY: On behalf of the defendants and Mr. Kevin Kennedy, Mike Murphy.

KEVIN J. KENNEDY,

6

point during today's deposition you want to take a break or stop to get some water, feel free to let me know that and we'll take a break, okay?

A Fine.

Q The one thing I would ask is that if I have a question pending that you answer the question before we take the break, okay?

A Yes.

Q And you understand that you just took an oath to testify truthfully, right?

A I do.

Q And if at any point I ask you a question today and you don't understand the question, please ask me to clarify and I'd be happy to do so.

A Okay.

Q But if I ask a question and you do answer it, I'll assume that you understood the question. Is that fair?

A That's fair.

Q Do you have any other questions about the deposition procedure before we get started?

A No.

Q Let me start out by asking you a bit about your background for the record. When did you get involved in elections work?

8

1 A I was appointed the legal counsel for the former
 2 State Elections Board on April 1st, 1979 and began my
 3 career representing the State of Wisconsin in
 4 elections and campaign finance at that point.
 5 Q Okay. And that was after you graduated law school?
 6 A That's right.
 7 Q And at the time the State Elections Board was the
 8 chief elections administration agency in the state,
 9 right?
 10 A That's right.
 11 Q And what positions have you held in elections
 12 administration since that time?
 13 A Well, in December of 1982 I was appointed acting
 14 director of the State Elections Board and in -- on
 15 August 17th, 1983 I became the executive director for
 16 the State Elections Board and began my career as the
 17 chief election officer for the State of Wisconsin.
 18 Q And have you been the chief election officer since
 19 1983?
 20 A Yes.
 21 Q Now, that was with the State Elections Board until
 22 2007, is that right?
 23 A That's right.
 24 Q Okay. And in 2007 the State Elections Board was
 25 replaced by an agency known as the Government

9

1 A It's an organization of chief election officials from
 2 around the country or their designees because in many
 3 cases it's a secretary of state who's the chief
 4 election official, but these are the people who are
 5 responsible for running elections in the 50 states,
 6 District of Columbia and four territories.
 7 Q And what purpose does that organization serve?
 8 A It's really designed to share professional knowledge
 9 is probably the primary goal. It doesn't lobby for
 10 election law changes, but it's really more of a
 11 professional organization where people can exchange
 12 ideas, learn best practices.
 13 Q And through your work in that organization, have you
 14 become familiar with practices, election practices in
 15 other states around the country?
 16 A I have.
 17 Q Let me ask you about the Government Accountability
 18 Board also. Can you explain how the Government
 19 Accountability Board was different from the agencies
 20 that preceded it?
 21 MR. MURPHY: Object to form. You can
 22 answer to the extent you're able.
 23 A Well, Wisconsin up until 1974, the Secretary of State
 24 was in charge of elections, campaign finance and
 25 lobbying. After Watergate, Wisconsin was one of

11

1 Accountability Board?
 2 A Technically the State Elections Board and the State
 3 Ethics Board went out of business in January of 2008,
 4 but I was hired on November 5th of 2007 as the
 5 director and general counsel for the Government
 6 Accountability Board.
 7 Q And if I refer to the Government Accountability Board
 8 as GAB, you'll understand I'm referring to that?
 9 A Yeah. I'll crinkle because we say G-A-B.
 10 Q Okay. I will try to say G-A-B, although GAB is so
 11 much easier, I may go with that. So you have been
 12 the director and general counsel of GAB since the
 13 beginning of 2008, is that right?
 14 A Since November 5th, 2007.
 15 Q Okay. And you hold that position as we sit here
 16 today, correct?
 17 A I do.
 18 Q Now, in the course of your work on elections, you've
 19 been involved in national organizations on election
 20 administration, right?
 21 A That's correct.
 22 Q And in 2006 you were the president of the National
 23 Association of State Election Directors?
 24 A That's correct.
 25 Q What is that organization?

10

1 several states that created an independent state
 2 agency to oversee elections and campaign finance and
 3 so the State Elections Board was created. It
 4 consisted of -- it was a bipartisan board in the
 5 sense of four of the nominees came from legislative
 6 leaders.
 7 The political parties who got 10 percent of the
 8 vote for governor each got to nominate someone to
 9 serve on the board. The governor designated someone
 10 to serve on the board, and the chief justice of the
 11 Supreme Court nominated someone. For a short period
 12 of time towards the end, from 2003 until 2007, the
 13 Libertarian Party also got to nominate someone
 14 because their candidate for governor got 10.04
 15 percent of the vote.
 16 Q Ed Thompson?
 17 A Yeah.
 18 Q So how does the GAB differ from those agencies?
 19 MR. MURPHY: Object to the form. You
 20 can answer to the extent you're able.
 21 A Well, the Government Accountability Board -- well,
 22 the staff for both the State Elections Board and the
 23 former Ethics Board were required by statute to be
 24 nonpartisan. There was no requirement on those board
 25 members except for the Ethics Board, but the

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1 Government Accountability Board, there are specific
 2 statutory criteria that say that, one, members of the
 3 board have to be former judges who had been elected
 4 and, two, they have to meet certain criteria of not
 5 having belonged to a political party, not made a
 6 campaign contribution for a year prior to their
 7 service on the board and while they're there can't
 8 hold any other public office other than that of a
 9 reserve judge.
 10 Q And the model that Wisconsin had with the Government
 11 Accountability Board was unique within the country,
 12 is that right?
 13 A Yes.
 14 MR. MURPHY: Object to form. You can
 15 answer.
 16 A Yes.
 17 Q And you've spoken at national forums about that
 18 model, is that right?
 19 A I have.
 20 Q And you spoke favorably about that model, is that
 21 fair?
 22 A I have.
 23 Q And there's been legal scholarships specifically
 24 discussing the GAB, is that right?
 25 MR. MURPHY: Object to form.

13

1 Q And Wisconsin has also consistently been a national
 2 leader in turnout, is that right?
 3 A It has.
 4 Q And are you familiar with a Big 10 poll that studied
 5 voter confidence and voter satisfaction with election
 6 administration?
 7 A By Barry Burden from the University of Wisconsin and
 8 others.
 9 Q Do you know when that poll was conducted?
 10 A I don't.
 11 Q Do you know if it was around 2010 time frame?
 12 A It could have been, yes.
 13 Q And that poll showed that Wisconsin voters were more
 14 satisfied with their election process than voters in
 15 other states in the Big 10, is that right?
 16 MR. MURPHY: Object to form.
 17 A That's correct.
 18 Q And also other voters in the nation, is that right?
 19 A I don't recall, but I know that the poll demonstrated
 20 that Wisconsin had the highest level of confidence
 21 among its voters.
 22 MR. MURPHY: Object to form. I'm just
 23 going to put in a standing objection that to the
 24 extent you're asking him about what's in
 25 documents, that document would be the best

15

1 A That's correct.
 2 Q And in particular, are you familiar with an article
 3 by Daniel Tokaji at Ohio State University regarding
 4 GAB?
 5 A Yes.
 6 Q And Mr. Tokaji is an election law expert, is that
 7 right?
 8 A That's correct.
 9 Q And that article called GAB the best American model,
 10 is that right?
 11 A It did. I think he was right.
 12 Q All right. Let's talk about the success or lack
 13 thereof in elections in Wisconsin through 2010, the
 14 time of the 2010 election specifically. Pew did a
 15 study analyzing election administration across the
 16 country, is that right?
 17 A Pew's done several different studies.
 18 Q And are you familiar with a study that analyzed the
 19 2008 election specifically?
 20 A Are you referring to the performance index?
 21 Q Yes.
 22 A Yes.
 23 Q And Wisconsin ranked first in the nation in 2008, is
 24 that right?
 25 A It did.

14

1 evidence of that, not what he thinks of the
 2 document. So that's going to be a standing
 3 objection through the rest of this questioning,
 4 and I won't make that objection every time.
 5 MR. KAUL: Okay. I appreciate that.
 6 Q And it's also your understanding that Wisconsin
 7 voters were more confident that their votes had
 8 counted according to that poll than voters in other
 9 states, right?
 10 A That's my recollection, yes.
 11 Q Let me ask you a bit about what your duties entail as
 12 the chief elections officer in Wisconsin. First can
 13 you just generally provide an overview of what you
 14 consider to be your duties in that role?
 15 A Well, as the chief election officer, I'm the person
 16 that has to ensure that Wisconsin's elections are
 17 conducted consistent with state statutes and federal
 18 requirements in Wisconsin. That means that I have a
 19 staff of two divisions.
 20 I have an elections division with an election
 21 division administrator who handles the day-to-day
 22 matters on those things and directly supervises the
 23 staff, but we oversee the basic state infrastructure.
 24 We provide information and training for our local
 25 election officials. Wisconsin probably has the

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1 most -- it does have the most number of local
2 election officials because we administer our
3 elections at the municipal level, so we have 1,853
4 towns, cities and villages where that clerk, except
5 in Milwaukee where it's a board of election
6 commissioners, is sort of like the person on the
7 ground that handles poll worker recruitment, polling
8 place staffing, location, voting equipment
9 acquisition, absentee voting, voter registration
10 responsibilities, and it's our job to make sure that
11 they're following uniform practices.

12 Since 2006 we've had to implement requirements
13 under the Help America Vote Act that give the state
14 much more direct authority on things such as voter
15 registration, training, voting equipment approval.

16 Q And in the course of your duties, do you and your
17 staff review and analyze legislation?

18 A We do.

19 Q Specifically legislation relating to election laws,
20 right?

21 A Yes.

22 Q Do you also regard it as part of your duties, both
23 you and your staff, to review news regarding election
24 law matters?

25 A I don't know if it's a duty, but it certainly seems

17

1 Q And do you know, is there any chief elections officer
2 in the country who has as much experience as you
3 have?

4 MR. MURPHY: Object as calls for
5 speculation.

6 A The election director for the State of Michigan,
7 Christopher Thomas, has been there a couple years
8 longer than I have. Otherwise I'm the longest
9 serving state election director, but again there is a
10 distinction that not all state election directors are
11 chief election officials. In Michigan, for example,
12 the secretary of state is the chief election officer,
13 but Chris has been -- has served for four or five
14 different secretaries of state during that time
15 period.

16 Q Okay. So with the possible exception of Chris in
17 Michigan, you're the longest serving, is that right?

18 MR. MURPHY: Object to form.

19 A That's correct.

20 Q Now, in the course of your --

21 A Let me just clarify. Since secretaries of state are
22 in charge of elections as the chief election officer
23 in most states, New Hampshire secretary of state
24 Bill Gardner probably has been there longer than I
25 have.

19

1 like a prudent thing to do to read news articles and
2 various studies that come out, yes.

3 Q Okay. So that's something you do in the ordinary
4 course of your work?

5 A Yes.

6 Q And you mentioned studies. You read those as well?

7 A Yes.

8 Q And it's not just you reading it, your staff also
9 reads these, right?

10 MR. MURPHY: Object to form.

11 A That's correct. It's not unusual that my staff will
12 bring matters to my attention to read.

13 Q And does the review of those materials help -- I'm
14 thinking of how to phrase this. Does the review of
15 those materials form the body of knowledge that you
16 and your staff have in making elections decisions?

17 MR. MURPHY: Object to form.

18 A I would say that it enhances the body of knowledge.
19 I mean the body of knowledge that myself and the
20 staff have was our experience, our working with state
21 election laws and the collegiality that we've
22 developed amongst ourselves. That's really the
23 strength of the staff is it's, you know, looking at
24 the statutory responsibility that it has in carrying
25 those out.

18

1 Q Okay. So there are two exceptions, I guess.

2 A Yes.

3 Q And you mentioned working with your colleagues and
4 collegiality a moment ago. When you interact with
5 your staff, do you regularly correspond via e-mail in
6 the course of your work?

7 A There is -- each of our divisions have a standing
8 weekly meeting. We try to have agency-wide meetings,
9 although those tend to be more about operational
10 issues every quarter. But a lot of the communication
11 is either -- it's a small office, so people are in
12 and out of my office all day long, and we have lots
13 of face-to-face meetings, but a lot of stuff is done
14 by email and a lot of people are on -- it's not
15 unusual that five to eight people might be on an
16 email related to a particular issue.

17 Q Okay. And you have official GAB email accounts,
18 right?

19 A That's correct.

20 Q And those are for the purpose of doing GAB business,
21 correct?

22 A That's correct.

23 Q And I'll ask you about some specific emails later in
24 the deposition, but are those emails unless an
25 exception applies, are those emails public records?

20

REVIN KENNEDY

1 A They are.

2 Q And how are they maintained?

3 A Well, the State of Wisconsin through the Department
4 of Administration provides the email service and
5 staff regulate archives and it's backed up every
6 night. We don't have a specific written policy on
7 maintenance of those emails, but you know, the
8 practice has been generally unless it's a transitory
9 email such as are we ordering Indian food today or
10 it's so-and-so's birthday, if it's -- generally the
11 staff will archive those emails.

12 Q Okay. And do you have any practice for automatic
13 deletion of emails?

14 A No.

15 Q Now, we were talking a moment ago about your review
16 of legislation and news. Is part of that work, does
17 part of that work involve reviewing statements that
18 legislators make in the news?

19 A We tend to focus our attention on what is in the
20 drafting, you know. We subscribe to a news service,
21 so we will circulate the articles amongst the staff
22 so that they are aware of news coverage, and
23 obviously that will contain statements made by
24 legislators.

25 Q You've testified before the Legislature several

21

1 times, right?

2 A That's correct.

3 Q Do you communicate with legislators in other ways?

4 A It's not unusual for me to talk with them on the
5 phone, to meet with them in their offices. Usually
6 any email communications tend to be with legislative
7 staff, not so much with legislators.

8 Q Okay. And do legislators consult with you when bills
9 are in the drafting process?

10 A Sometimes they do.

11 Q Let me then turn to 2011. From 2011 to the present,
12 do you know how many changes, if any, the Legislature
13 has made to Wisconsin election law?

14 A I don't know the exact number. I just know that
15 there's been a lot of changes.

16 Q Do you know approximately how many changes?

17 A I'm not going to speculate.

18 Q You've -- actually let me show you a document. We'll
19 mark this as Kennedy 1.
20 (Exhibit 1 is marked for identification)

21 Q And when you've had a chance to review that to your
22 satisfaction, please let me know.

23 A Okay.

24 Q Let me just first ask you about the form of the
25 document. This is on letterhead, correct?

22

1 A That's right.

2 Q And that's the Government Accountability Board's
3 official letterhead, is that right?

4 A It is.

5 Q Now, this letter says that it's from you
6 specifically, is that right?

7 A Well, it says it's from myself and the elections
8 division administrator at the time, Nat Robinson.

9 Q And did Mr. Robinson, when did he leave your agency?

10 A He left shortly after 2012.

11 Q And do you know why he left?

12 MR. MURPHY: Object to form.

13 A I do.

14 Q Why is that?

15 A I asked him to leave.

16 Q And why was that?

17 A I wasn't satisfied with the way he was handling some
18 of the personnel matters in the office.

19 Q And he was replaced by Michael Haas, is that right?

20 A That's correct.

21 Q And I don't mean to ask about anybody in particular,
22 so to the extent my question suggests that, let me --
23 I'm not asking about that. I want to frame the
24 question this way. But generally speaking, what were
25 the concerns you had about his management of

23

1 personnel?

2 A Well, it had more to do with his treatment of staff.
3 I thought that in many cases he was overbearing,
4 there were times he made inappropriate comments that
5 needed to be addressed. You know, I specifically
6 hired him because he was a taskmaster and I felt we
7 were bringing together a large number of people and
8 he had a proven reputation as a good manager and he
9 was very successful at that time, but from a
10 personality standpoint, it had gotten to the point
11 where I was losing staff who did not want to work
12 under his leadership and I thought despite all the
13 success we had that it was better for the staff and
14 for agency morale that he no longer be that person.

15 Q Now, there are letters that go out on GAB letterhead
16 that are sent from folks other than you, correct?

17 A Yes.

18 MR. MURPHY: Object to form.

19 A That's correct.

20 Q Do you always approve those letters before they go
21 out?

22 A Not necessarily always. But it depends on what
23 they're about.

24 Q Would it be fair to say that you typically approve
25 those letters?

24

1 A It's fair to say that I review them and will offer
 2 suggestions, but it's not necessarily a formal it's
 3 okay to send. Many of them are pretty standard
 4 items, but, yes, I'm usually involved in most of the
 5 communications that go out.
 6 Q Okay. Let me direct you to the third paragraph in
 7 this letter. In the second sentence, you write --
 8 well, let me -- I'm not going to quote you, but let
 9 me ask you a question. In the second sentence you
 10 indicate that in 2012, election officials had to deal
 11 with the most sweeping changes in election
 12 administration since Wisconsin's 1848 statehood, is
 13 that right?
 14 A That's right.
 15 Q And you specifically refer to voter photo ID, is that
 16 right?
 17 A That's right.
 18 Q And so when you were referring to the most sweeping
 19 changes since statehood, were you specifically
 20 referring specifically to voter ID?
 21 A Well, that was the biggest piece of several changes
 22 that were made.
 23 Q And you believe that statement is accurate?
 24 A I believe that statement conveys how important we
 25 thought the change was. I'm sure people might

1 quibble over whether expanding the franchise to let
 2 women vote or people of color vote might be -- you
 3 could argue some other changes, but this was -- it
 4 was looking at it primarily from what election
 5 administrators had to deal with and what the voters
 6 had to deal with.
 7 Q Okay. And this was prior to any changes to election
 8 law that were made in 2013 or '14, right?
 9 A That's correct.
 10 Q You can put that one aside. Would the changes to
 11 voting laws from 2011 through the present, would you
 12 agree that there have been more than 10 provisions
 13 that have been changed?
 14 A Yes.
 15 Q Based on your training and your knowledge and your
 16 experience, do any of those changes make it easier to
 17 vote?
 18 MR. MURPHY: Object to form.
 19 A I'm not sure that I could speculate on that. I mean
 20 there's just a lot of factors in evaluating what
 21 constitutes easier to vote. I mean voting contains
 22 so many different aspects and there's different
 23 elements, so I guess I'm not in a position to say
 24 whether it makes it easier or more difficult.
 25 Q Okay. We'll come back to that. Are you aware of any

1 aspect of voting that has been made easier by any of
 2 these laws?
 3 MR. MURPHY: Object to form.
 4 A Again I think I mentioned before that there's a lot
 5 of opinion as to what's easy or what's not on that.
 6 You know, I think we do our best to find ways to
 7 reach out to voters so that they're able to
 8 participate in the process, and increased use of
 9 technology makes it easier for some people and harder
 10 for others. So again I would be loath to try and put
 11 a label on those.
 12 Q During this time period, which I'll refer to as
 13 post -- I guess post-2010, meaning 2011 to the
 14 present, you have recommended that Wisconsin adopt
 15 online voter registration, correct?
 16 A That's correct.
 17 Q Why have you recommended that?
 18 A Because it would cut down on the number of mistakes
 19 that are made when voter registration forms are
 20 filled out both by special registration deputies --
 21 actually probably primarily by special registration
 22 deputies but also by voters. It would increase the
 23 accuracy of those lists. It would enable people who
 24 expect technology to serve them, meaning people my
 25 age and younger who are used to doing things that

1 way.
 2 The idea of filling out a piece of paper and
 3 mailing it in, I've had representatives of the
 4 University of Wisconsin-Madison tell us that their
 5 students probably haven't gotten 10 pieces of mail in
 6 their lifetime, and so it's a recognition of just how
 7 you do business. And so we've recognized that it's
 8 more cost efficient in terms of the work that our
 9 local elections officials do, it's much more
 10 accurate, and that's why I have promoted it with the
 11 blessing of the Government Accountability Board.
 12 Q And Wisconsin has not adopted online voter
 13 registration, is that right?
 14 A Not yet.
 15 Q Do you recall when you began advocating for that
 16 change?
 17 A I don't. I'm sure that we talked about it in 2011.
 18 In 2011 it was something that was on the cutting
 19 edge. Now we say that, you know, we're far back in
 20 the pack for not having done it. You know, over half
 21 the states have online registration.
 22 Q So going back to the changes that have been made
 23 since 2011 or -- yes. Those changes increase the
 24 responsibilities that election administrators have,
 25 correct?

1 MR. MURPHY: Object to form.

2 A You know, that's --

3 Q Let me actually do this a different way. I'll

4 withdraw the question.

5 A Okay.

6 Q I'm going to show you a document. We'll mark this as

7 Kennedy 2.

8 (Exhibit 2 is marked for identification)

9 Q And you are welcome to read as much of the document

10 as you would like. I will tell you that I'm only

11 going to ask you about the first paragraph.

12 A Okay.

13 Q Now, this letter is from Michael Haas who we

14 discussed a moment ago, right?

15 A That's right.

16 Q Is this a letter that you reviewed?

17 A It is.

18 Q And so you were explaining before that you review

19 letters. You don't necessarily approve them. In the

20 event that you disagree with the content of a letter,

21 do you request that the person drafting the letter

22 change the content?

23 A Absolutely.

24 Q And so in this first paragraph, the letter indicates

25 that the "legislative changes will continue to cause

1 A Well, that reflects the communication we have with

2 local election officials who have been here part

3 time. Probably 62 percent of our 1,853 clerks are

4 part time, and a lot of the feedback we get is they

5 don't have time to do all the things that they need

6 to do, that they have limited resources.

7 You know, when you're making a communication

8 like this, you want to be able to show some empathy

9 for what they're going through on this. I mean it's

10 an incredible challenge. We want to make sure that

11 people see us as working together, and that means

12 understanding, you know, what the impact of things

13 are from their perspective, meaning we've heard what

14 they've told us, and that's why we put items like

15 this in there.

16 Q But that statement is accurate, correct?

17 A I believe it is.

18 Q You can put that one aside too. Now, in addition to

19 the changes to the laws about voting that we've been

20 discussing, the Legislature recently voted to

21 eliminate the GAB, is that right?

22 MR. MURPHY: Object to form.

23 A That's correct.

24 Q And when does that change go into effect?

25 A June 30th of 2016.

1 increased responsibilities for all of us," is that

2 right?

3 A That's right.

4 Q And this is a letter to clerks and election

5 commissioners and special registration deputies?

6 A That's right.

7 Q So you were -- I'm sorry, so your agency was

8 indicating in this letter that the changes to

9 election law at least in the period prior to April

10 2014 or I guess August 2014 had increased

11 responsibilities for election administrators, is that

12 right?

13 MR. MURPHY: Object to form. You may

14 answer.

15 A That's what we indicate, yes.

16 Q And is that your view?

17 A I think that reflects -- I mean it's part of what

18 we're communicating to people is that you need to pay

19 much closer attention to certain requirements as a

20 result.

21 Q And the letter also indicates that these changes may

22 strain limited resources in the clerk's office and

23 the GAB, right?

24 A That's right.

25 Q And what's your understanding of what that meant?

1 Q Which we now are in, believe it or not. Now, there's

2 an election in November 2016, is that right?

3 A That's right.

4 Q And you've said that the time at which the change in

5 the elimination of GAB goes into effect is a really

6 bad time, is that right?

7 A I said that was not a good time to change the way

8 elections are administered in the State of Wisconsin.

9 Q And you urged the Legislature to delay implementation

10 of that change until after the 2016 elections, is

11 that right?

12 A Well, first I urged them not to make the change, but

13 if they were going to make the change, that it should

14 not happen until after the 2016 elections.

15 Q All right. And why did you make that request?

16 A Presidential election years are the most challenging

17 for local election officials. Our agency has been

18 very successful in how we conduct elections in the

19 state. We've been through both the current agency

20 and its predecessor agency, the State Elections

21 Board, as you can see from these communications to

22 our local election officials, the need to have a

23 consistent voice throughout that period of time is

24 important.

25 And quite frankly, any change means that not

1 only the leadership who might change as a result in
 2 terms of staff and managers but also in terms of the
 3 board members means people are going to have to come
 4 up to speed on some very important issues very
 5 quickly, and the truth is it just keeps getting more
 6 and more frenetic as you move through the year.
 7 Q So is it fair to say that based on your knowledge,
 8 your training, your experience that that change is
 9 going to be harmful to at the very least the
 10 administration of the 2016 election?
 11 MR. MURPHY: Object to form.
 12 A I'm saying I have those kind of concerns. I also
 13 have a lot of confidence that the staff that remains,
 14 again not knowing what that will be, is in a very
 15 good position to continue things, that the groundwork
 16 that we've laid, the processes that have been put in
 17 place, you know, I have a lot of confidence in those
 18 people to do the job.
 19 But when it comes to legislative change, that
 20 doesn't mean that I'm not going to advocate for what
 21 I think is the best course of action. In that case
 22 it was maintaining the status quo in terms of agency
 23 leadership throughout that period of time.
 24 Q And while we're just still speaking generally about
 25 the changes, you mentioned before that one of the

1 did. I guest lectured -- he's now teaching a class
 2 on politics at the University of
 3 Wisconsin-Platteville and I went down there last fall
 4 and talked to his class for a couple of hours. That
 5 was on campaign finance, not on elections, but --
 6 Q Based on your conversations with him, do the
 7 statements that he was reported as having made in the
 8 press accurately reflect his views?
 9 MR. MURPHY: Object to form.
 10 A I'm not surprised at them. You know, again my
 11 conversations with him, he was just generally
 12 supportive of the work that we did and the
 13 professionalism of how our agency carried itself and
 14 so, you know, I'm not surprised at that, but I
 15 couldn't speak specifically that he was posing for --
 16 or posturing in any way.
 17 He's a politician, so he was making the
 18 statements to make a point, and I'm not surprised at
 19 the points that were being made. That's all I can
 20 say.
 21 Q And he actually didn't run for reelection in 2014,
 22 right?
 23 A That's right.
 24 Q All right. Let me start talking about some specific
 25 provisions then. I'd like to speak first about

1 things you do in the course of your work is you stay
 2 aware of news regarding election laws, is that right?
 3 A That's right.
 4 Q And in the course of your work, did you observe a
 5 statement in 2014 from then State Senator
 6 Dale Schultz regarding a large number of bills that
 7 had been passed relating to elections?
 8 A I recall seeing that statement in the pleadings that
 9 I think you're referring to.
 10 Q That is what I'm referring to.
 11 A Yeah. And at the time I remember the comment, yes,
 12 but had I not reviewed the pleadings before the
 13 deposition, I might not have remembered it
 14 specifically.
 15 Q But you did see the quotes in the pleadings from
 16 Mr. Schultz --
 17 A I did.
 18 Q -- in the paper at the time?
 19 A And I saw -- I remember reading it in the paper at
 20 the time.
 21 Q Did you discuss those comments with Mr. Schultz?
 22 A I don't recall if I did. Senator Schultz and I have,
 23 you know, always had a very good relationship. We
 24 would see each other on the street. We would talk.
 25 He was always very supportive of the work that we

1 in-person absentee voting. If I refer to that as
 2 early voting, will that create any confusion?
 3 A It will only create confusion for people who don't
 4 understand the fact that we don't have early voting
 5 in Wisconsin.
 6 Q Right. So stipulating that in-person absentee
 7 differs from early voting in that in-person absentee
 8 ballots are not counted immediately, it would be okay
 9 if I refer to that as early voting?
 10 MR. MURPHY: No. Let's use the right
 11 words.
 12 MR. KAUL: Okay.
 13 A I can do my best not to use the term early voting, to
 14 make that distinction because I think it's an
 15 important distinction.
 16 Q Okay. I was trying to make the deposition go a
 17 little more quickly, that's all. In 2008 -- actually
 18 let me go back a step. In both 2008 and 2012
 19 approximately, half a million people used in-person
 20 absentee voting in Wisconsin, is that right?
 21 A I don't know the exact numbers, but that sounds close
 22 to the neighborhood. We've got the statistics
 23 somewhere.
 24 Q All right. And early -- I'm sorry, in-person
 25 absentee voting provides certain benefits for

1 election administration, is that right?
2 MR. MURPHY: Object to form.
3 A I think like any process, it has its benefits and its
4 costs. So it depends on -- depending on the volume
5 of in-person absentee voting, you know, you're
6 shifting resources and costs. You might get less
7 lines at the polls on Election Day, but you also have
8 a lot more processing of absentee ballots at the end
9 of the day that takes time in getting results out.
10 You also end up with long lines in larger elections.

11 In the municipal clerk offices, there would be
12 an absentee voting location if they choose to move it
13 outside of their office. So there are changes no
14 matter how you handle it.

15 Q One benefit of in-person absentee voting is that it
16 can reduce lines on Election Day, correct?

17 MR. MURPHY: Object to form.

18 A That's one --

19 MR. KAUL: What's the form objection?

20 MR. MURPHY: That it's a benefit or a
21 detriment is an opinion outside of sort of a
22 factual ingredient.

23 MR. KAUL: Okay.

24 A I guess my answer, I was going to say that's one of
25 the consequences. Whether that's a benefit or not is

1 absentee.
2 Q When you say there's been increased usage of absentee
3 voting, you mean that over time, the number of votes
4 or the percentage of voters who cast their ballots by
5 absentee voting has gone up, is that right?

6 A That's right.

7 Q And that's true of in-person absentee voting
8 specifically, right?

9 A That's right.

10 Q And there's also been a national trend towards
11 increased early or in-person absentee voting usage,
12 right?

13 MR. MURPHY: Object to form.

14 A The answer is, yes, there's been a lot -- a
15 significant increase in changes in the voting from
16 Election Day, whether it's early voting in some
17 states or in-person absentee voting or all mail
18 voting.

19 Q And you mentioned earlier that you had reviewed
20 reports and studies relating to elections. Did you
21 review the report of the Presidential Commission on
22 Election Administration?

23 A I did.

24 Q And is it your understanding that one of their
25 recommendations was that early voting or in-person

1 a value judgment.
2 Q Whether shorter lines for Election Day voting is a
3 benefit is a value judgment?

4 A Well, because it translates into longer lines at a
5 different time.

6 Q Does in-person absentee voting reduce costs on
7 Election Day?

8 A I don't know. Again as I pointed out, you still --
9 you have more absentee ballots to process at the
10 polls on Election Day. Because Wisconsin has
11 in-person absentee voting or all of its absentee
12 voting, if not early voting, it means at the polling
13 place a certain number of those ballots, and I know
14 that we were looking at around 25 percent of all the
15 votes cast were by absentee ballots, not quite that
16 high in 2008 and 2012, it kept moving up on that.

17 It meant they all had to be processed at the
18 polls on Election Day, which actually probably takes
19 more time than a person going up, stating their name,
20 showing their ID, giving -- signing the poll and
21 going because poll workers have to check the name in,
22 to make sure that the form is properly filled out,
23 have to open it up, check to make sure there's only
24 one ballot in there and then have to process it and
25 have to make a notation that the person voted

1 absentee voting be expanded?

2 A I don't recall specifically.

3 Q Do you recall generally whether the report was --
4 took a favorable review with respect to early voting
5 or in-person absentee voting?

6 A I think there was a recognition in the report that
7 some people place a high value on the fact that if
8 you have early voting or increased opportunities for
9 in-person absentee voting that the elector might be
10 better served in terms of their ability to choose
11 when they cast their ballot.

12 Q And is that your view?

13 A I think that -- I'm trying to think how to
14 characterize it. I think that's one of the
15 advantages to having a flexible system is that it
16 provides voters with the opportunity to participate
17 in the process. It doesn't increase participation,
18 but it enables them to adapt the voting into -- you
19 know, it can be a very busy life, but you know, we
20 have not seen -- the numbers that I've seen do not
21 show that voter participation increases as a result
22 of those opportunities. It just means people change
23 their behavior to better reflect their lifestyle.

24 Q And when you refer to the numbers you've seen, what
25 are you referring to specifically?

1 A I'm looking at -- well, I look at our numbers, first
 2 of all. You know, our voter participation has
 3 remained relatively stable. It's more of a factor of
 4 how interesting the race is than anything else.
 5 Obviously we had a higher turnout I think in 2004
 6 than we did in 2008 because people knew that the vote
 7 made a difference and the results showed that.
 8 The same thing, the percentage might have been
 9 lower in 2000, but generally what drives voter
 10 participation from my observations is whether or not
 11 the voters feel like their vote is going to make a
 12 difference in the race. In some states that it's
 13 pretty lop-sided, you'll see that their voter turnout
 14 is lower. So it's not really reflective of how well
 15 elections are administered. It's more of a question
 16 of what is at stake for the voter's choice.
 17 Q Would you agree that based on your experience that
 18 holding that factor constant, interest in the
 19 election, that the existence or lack of existence of
 20 early voting or in-person absentee voting can impact
 21 turnout?
 22 A Again the studies I've seen, most people -- the
 23 references seem to suggest that it doesn't change
 24 turnout.
 25 Q And are you specifically referring to a study done by

1 Q Do you know how the percentages compare?
 2 A I don't.
 3 Q Let me show you another document. We'll mark this
 4 one as Kennedy 3.
 5 (Exhibit 3 is marked for identification)
 6 Q And when you've had a chance to review this, let me
 7 know, please.
 8 A Okay.
 9 Q All right. Now, this is on GAB letterhead, correct?
 10 A Yes.
 11 Q And did the letterhead change, or is it different for
 12 different purposes?
 13 A This is a standard press release letterhead. It's a
 14 little different. We're less concerned about
 15 identifying, you know, who is in charge of the agency
 16 on this than we are in getting the information out to
 17 the media and ideally to the public.
 18 Q And we talked earlier about your review process for
 19 the letters, I guess, that go out. Is your review
 20 process the same for press releases?
 21 A Yes.
 22 Q So you would have reviewed this before it went out?
 23 A I would have.
 24 Q And in particular, you approve your own quotes,
 25 right?

1 Professors Burden and Mayer, among others, at the
 2 University of Wisconsin?
 3 A I think they may have said that. Again I haven't
 4 gone back and reviewed the literature.
 5 Q And are you aware of their conclusion that when early
 6 voting was paired with the same day registration, it
 7 generally increases?
 8 A I'm aware of that. I do know that the studies
 9 generally say that there's a slight increase in
 10 participation as a result of Election Day
 11 registration.
 12 Q And Wisconsin does have not only Election Day
 13 registration but same day registration during early
 14 voting, right?
 15 A Yes, during in-person absentee voting.
 16 Q Thank you. Do you know how the percentage of voters
 17 who use in-person absentee voting in Milwaukee
 18 compares to the rest of the state?
 19 A I don't. I'd have to go back and look at the
 20 numbers.
 21 Q How about Madison versus the rest of the state?
 22 A Again I'd have to go back and look at the numbers. I
 23 mean those are the two largest cities, so the numbers
 24 are going to be higher no matter what the percentage
 25 is.

1 A I do.
 2 Q All right. Let me ask you about a couple of those.
 3 The second paragraph -- actually before I do that, I
 4 will note that the title refers to in-person absentee
 5 or early voting, right? So it's not just me at
 6 least.
 7 A No. And it's a recognition of the fact that voting
 8 before an election is referred to as early voting,
 9 and election officials cringe in Wisconsin when they
 10 see that because they recognize the difference. So
 11 this is targeted to reach voters and so we craft our
 12 language to reflect that.
 13 Q The second paragraph quotes you saying, "We are
 14 seeing long lines at many municipal clerks' offices
 15 around the state." Is that right?
 16 A Yes.
 17 Q Now, this was issued October 26, 2012, right?
 18 A That's right.
 19 Q All right. So that's a reference to lines for
 20 in-person absentee voting for the 2012 presidential
 21 election, is that right?
 22 A That's right.
 23 Q When you say long lines, what do you mean by that?
 24 A I mean that for some of us who did -- stood in those
 25 lines, we waited a while to cast our votes. It means

1 that as municipal clerks called in, we would ask them
 2 questions about how busy they were or they would
 3 volunteer how busy they were and they'd talk that
 4 we've had lines since it opened up.
 5 You know, so when we say seen, we didn't
 6 necessarily travel to Superior to look at the lines,
 7 but we got reports back from our local election
 8 officials and we saw news articles that showed lines
 9 as well.
 10 Q So when you say long lines, does that refer to any
 11 particular length of line?
 12 A No, I think it's just a recognition that you're not
 13 going to walk in and get to go right to the counter.
 14 You're going to spend a period of time waiting,
 15 anywhere from 15 minutes to more than an hour.
 16 Q And what were the longest lines you were seeing?
 17 A I don't know that -- we did not quantify them.
 18 Q Did they exceed an hour?
 19 A I'm sure in many cases they did.
 20 Q And when you said that you saw lines around the
 21 state, were there particular parts of the state you
 22 were referring to, or was that a general statement?
 23 A It was a general statement.
 24 Q And you indicated personally you experienced long
 25 lines in Madison, is that right?

1 A That's right.
 2 Q And were there also long lines in Milwaukee?
 3 A Yes, there were.
 4 Q All right. Let me ask you about the quote -- there's
 5 a quote on the second page, and it's the first full
 6 paragraph, and in the second sentence of that quote
 7 you state, "The number of absentee voters continues
 8 to grow," is that right?
 9 A That's right.
 10 Q And then you say, "There could be many reasons -
 11 voter enthusiasm and convenience," is that right?
 12 A That's correct.
 13 Q When you say voter enthusiasm, what did you mean by
 14 that?
 15 A Well, there was a recognition in the 2008 and 2012
 16 elections that again based on the nature of the
 17 election with the first African-American candidate
 18 for president and running for reelection, there was a
 19 definite enthusiasm that you picked up from news
 20 articles and news stories that people were excited
 21 about the opportunity to participate in the electoral
 22 process.
 23 You picked up similar things sometimes in
 24 closely contested elections where people wanted to
 25 make sure their voted counted, but that was probably

1 a characteristic from my observations that was noted,
 2 and that's why I used the term voter enthusiasm.
 3 Convenience, as I referred to before, that's one of
 4 the reasons why people choose to vote ahead of
 5 Election Day because it fits their schedules better,
 6 and that's an important factor.
 7 Q Okay. So it makes it easier to vote for those
 8 people, is that fair?
 9 A That's a fair characterization.
 10 Q And these statements were accurate, right?
 11 A Well, there could be many reasons for voter
 12 enthusiasm and convenience. In my opinion on that, I
 13 think it's accurate, but the numbers were double
 14 checked before we put that in there.
 15 Q Right. And these statements you're making, both in
 16 the deposition and any public statements you make,
 17 reflect your 30-plus years of experience as the state
 18 elections -- state's chief elections officer, is that
 19 right?
 20 A They reflect my experience, they reflect the
 21 information I'm getting from the data that we collect
 22 and the information we pick up from observations.
 23 You know, I mean the goal of this press release is to
 24 give some direction to the voters, taking advantage
 25 of the media, letting them know that you need to be

1 prepared when you go to the polls that there's going
 2 to be lines, that if you need to register, you need
 3 certain documents. I mean this is the kind of
 4 outreach we think is important.
 5 Q Now, as early voting was starting in 2014, you also
 6 stated that the GAB expected to see lines at many
 7 municipal clerks' offices around the state, is that
 8 right?
 9 A We expected that for in-person absentee voting, yes.
 10 Q And were there in fact lines for in-person absentee
 11 voting?
 12 A There were.
 13 Q All right. And the next document I'm going to show
 14 you is the early voting report that your office
 15 prepared. We've been going about an hour, so I'm
 16 happy to take a break now if you guys want or we can
 17 start working through that document.
 18 A Let's start working through the document.
 19 Q This is Kennedy 4.
 20 (Exhibit 4 is marked for identification)
 21 Q Do you recognize this document?
 22 A I do.
 23 Q What is this?
 24 A This is a report that was prepared at my direction
 25 and submitted to the approval of the Government

KEVIN KENNEDY

1 Accountability Board examining the concept of early
 2 voting in Wisconsin.
 3 Q And why was this report prepared?
 4 A Well, after the 2008 election, we noticed just how
 5 much in-person absentee voting had increased. We had
 6 gotten a lot of feedback from local election
 7 officials about the challenges it presented. There
 8 was a lot of attention in the media about the long
 9 lines.
 10 You know, the distinctions we talked about
 11 earlier between in-person absentee voting and early
 12 voting were things we thought needed to be explored.
 13 We wanted to find ways to make the process more
 14 efficient, more cost effective, and so we wanted to
 15 take advantage of that and provide an in-depth
 16 analysis that we could present to the Legislature for
 17 consideration.
 18 Q You just referred to attention to long lines. Was
 19 that reference to the long lines for in-person
 20 absentee voting in the 2008 presidential election?
 21 A Yes.
 22 Q And there were long lines for early voting in the --
 23 sorry, for in-person absentee voting in the 2008
 24 presidential election?
 25 A Much as we said in the 2012 report, the answer is,

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1 yes, there were.
 2 Q Now, this report was submitted to Governor Doyle and
 3 the Legislature, is that right?
 4 A That's right.
 5 Q And what's the process for submitting these reports
 6 to the Legislature and the governor?
 7 A Well, basically, you know, after the staff has worked
 8 on a report, it's been vetted internally, we present
 9 it to the board with a series of recommendations.
 10 The board reviews it at a public hearing. It gets
 11 feedback as part of that, and it directs some changes
 12 to the report, although the focus is mainly on what
 13 recommendations are going to be made because the
 14 staff's done most of the work.
 15 If there had been concerns about the tenor of
 16 the report, I'm sure the board would have addressed
 17 them at that point. But generally they were looking
 18 at, well, what are the conclusions that are being
 19 proposed to the board and recommendations that it
 20 would like to forward on. It is given to the chief
 21 clerks in the Assembly and the Senate for
 22 distribution to the Legislature, and it is delivered
 23 to the governor's office.
 24 Q And what role did you play in the preparation of this
 25 report?

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1 A Well, it was my idea to do it. It was Nat Robinson
 2 who put together the team and assigned them. I would
 3 review information as they were working on the
 4 report.
 5 I would review several drafts of the report,
 6 probably had a hand in crafting some of the more
 7 forward facing parts of the report that -- you know,
 8 not the details but the summary, the conclusions,
 9 things like that where, you know, you wanted to take
 10 the data and synthesize it. I probably had much more
 11 of a hand in that. But it was something that we
 12 thought was an important thing to evaluate and get as
 13 much input as we could.
 14 Q And did you approve the final content of the report?
 15 A I did. Well, ultimately the board approved it. But
 16 before it went to the board, it had my approval.
 17 Q All right. Let me ask you about specific parts of
 18 the report. First, page iii of the letter at the
 19 start, so it's the Roman numeral iii, the third
 20 paragraph down, about halfway through the paragraph,
 21 there's a statement that says, "The board was mindful
 22 that an estimated 60,000 voters cast ballots in the
 23 offices of municipal clerks on the day before the
 24 November 2008 general election." Do you see that?
 25 A Yes.

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1 Q That would be the Monday before Tuesday election?
 2 A Right.
 3 Q And that is a day of early voting that was eliminated
 4 by subsequent legislation, right?
 5 A That's right.
 6 Q And is that 60,000 figure accurate to the best of
 7 your knowledge?
 8 A Well, it's an estimate, and I'd say we had a basis
 9 for putting that number together.
 10 Q That was your best estimate?
 11 A Yeah.
 12 Q All right. Now, there's another letter from you that
 13 follows the Roman numeral pages. Do you see that
 14 letter?
 15 A I do.
 16 Q And there's -- this is a -- I guess it's better
 17 described as a report synopsis, is that fair?
 18 A Yes.
 19 Q And there's a statement at the beginning of that
 20 synopsis about concerns from voters, elected
 21 officials and election administrators following the
 22 November 2008 presidential election, is that right?
 23 A Yes.
 24 Q And it says, "In particular, election administrators
 25 felt overwhelmed with managing in-person absentee

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1 applications and ballot logs before Election Day
 2 while voters complained of long lines at in-person
 3 absentee voting sites."
 4 A That's right.
 5 Q And that statement is accurate?
 6 A That's right.
 7 Q All right. We'll then turn to the body of the
 8 report. Now, I've been asking you whether particular
 9 sentences are accurate. To the best of your
 10 knowledge as you sit here today, is there anything in
 11 the report that's not accurate?
 12 A I can't think of anything. And again we spent quite
 13 a bit of time vetting the report.
 14 Q All right. Let me direct your attention to Page 14
 15 of the report. And near the bottom there's a heading
 16 that says keep absentee voting as is.
 17 MR. MURPHY: Sorry, before the
 18 question, do you want a minute to look at this
 19 before he asks you about it?
 20 THE WITNESS: Well, I looked at it --
 21 I mean now that he's directed my attention to
 22 it.
 23 MR. MURPHY: Okay. Sorry.
 24 Q I'm going to ask you about the paragraph under that
 25 heading.

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1 A Okay.
 2 Q All right. Now, this indicates that what you refer
 3 to as a sizable portion of clerk survey responses and
 4 the public's responses supported keeping in-person
 5 absentee voting unchanged, is that right?
 6 A That's right.
 7 Q Now, at this time, the window during which in-person
 8 absentee voting could take place was as long as 30
 9 days, is that right?
 10 A I believe it was. It used to be as soon as the
 11 ballots were made available for mailing out, a person
 12 could go to the clerk's office and get the absentee
 13 ballot. That was the general practice up until --
 14 I'm not sure when the change is specific -- I know we
 15 had two changes reducing that window for voting in
 16 the clerk's office.
 17 Q And the time when those absentee ballots were
 18 available that you just referred to, that was 30 days
 19 before the election?
 20 A It was in 2008. It's now 48 days before the
 21 election.
 22 Q Prior to 2008, do you know when those were prepared?
 23 A Well, we've had a requirement that absentee ballots
 24 have to be available for voting 30 days before the
 25 election for quite a while. Probably it goes back

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1 into the 1980s. It used to be 21 days, but that's
 2 primarily to make ballots available for people who
 3 are overseas, military electors.
 4 Q And this states they, referring to the sizable
 5 portion of clerks and the public's responses, argued
 6 that changes -- this is a reference to changes to
 7 in-person absentee voting were unnecessary, citing
 8 costs, confusion of voters and poll workers if
 9 changes were made. Do you see that?
 10 A I do.
 11 Q And that's accurate, right?
 12 A That's the inference we drew from those responses,
 13 yes.
 14 Q And then it indicates that a few stated, "This is
 15 only Madison and Milwaukee, so don't penalize us for
 16 their problems." Do you see that?
 17 A Yes.
 18 Q What's your understanding of what that means?
 19 A That means that whether it was members of the public
 20 who responded to a survey that we had, a
 21 questionnaire, or clerks, I think that was an exact
 22 quote from one of the clerks is my recollection,
 23 there was a perception that, you know, long lines
 24 that were seen in 2008 and the concerns that were
 25 raised in editorials really only reflected the two

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1 largest cities in the state.
 2 Q Was that accurate?
 3 A Well, I think that's an accurate perception by some
 4 people. You know, I mean --
 5 Q I'm sorry, let me rephrase it. Was the perception
 6 accurate?
 7 A Again that's a value judgment that people would have
 8 to make. I mean I know from my own experience that
 9 voting, depending on the size of the municipality,
 10 depending on how well the clerk prepares for that
 11 voting before Election Day, you know, presents --
 12 some places it runs very smoothly because their
 13 common council gives them the resources to do that.
 14 Other places, the sheer numbers and the size of
 15 the location -- in Wisconsin, we have a large number
 16 of municipalities where the population is under
 17 5,000, so it's very easy with people coming in to
 18 vote on the standard percentage. It's just not a big
 19 burden on the clerks. And in some clerks' offices,
 20 they're part time, and that means that they don't
 21 have set hours for absentee voting. You call the
 22 clerk up and say will you be available to do this.
 23 Q Would you agree that Milwaukee faced particular
 24 challenges in the 2008 election with in-person
 25 absentee voting?

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1 A Well, Milwaukee has more people, so that creates more
 2 challenges. It requires more resources to handle
 3 that.
 4 Q And what about Madison?
 5 A Madison is the same way. I mean Madison is the
 6 second largest city in the state. And Madison
 7 continues to run its voting through the clerk's
 8 office rather than moving it to an off-site location
 9 where they might have more space.
 10 Q Is Milwaukee's in-person absentee voting location at
 11 the clerk's office?
 12 A No.
 13 Q It's at the Zeidler building, right?
 14 A It's in a building next door where they've got more
 15 room and at ground level as opposed to a sixth floor.
 16 Q Okay. Now, let me direct your attention to Page 18.
 17 This contains an overview of GAB's recommendations,
 18 is that right?
 19 A Yes.
 20 Q Now, there are five dashed points, I guess. I'm not
 21 sure what that symbol is called. But do you see what
 22 I'm referring to?
 23 A Yes.
 24 Q One of them is move the start of in-person absentee
 25 voting from 30 days to 20 days before the election?

1 A Yes.
 2 Q And by the way, this is -- let me go back a step. In
 3 this report, GAB laid out three different options,
 4 Options A, B and C, is that right?
 5 A That's correct.
 6 Q And GAB's view was that the best option was what you
 7 called a modified version of Option C?
 8 MR. MURPHY: Object to form.
 9 Q Is that right?
 10 A That's my recollection. I'd have to look at it more
 11 carefully, but that's my recollection.
 12 Q All right. So one of the recommendations made was to
 13 move the start of in-person absentee voting from 30
 14 to 20 days before the election, is that right?
 15 A Yes.
 16 Q Why was that recommendation made?
 17 A Well, I think there were a number of factors that we
 18 looked at. One was that most of the people who came
 19 in to vote in the clerk's office were coming in in
 20 the two weeks prior to the election, and very few
 21 people were coming into the clerk's office to cast
 22 their vote in the office.
 23 We also had some restrictions in voter
 24 registration. Wisconsin has three periods of voter
 25 registration -- regular registration where you can

1 register by mail or through a voter registration
 2 drive or in person in the clerk's office, which cuts
 3 off 20 days before the election, and then you have
 4 what we call late registration, which is in the 20
 5 days before the election, you can register in the
 6 clerk's office, but -- in person, and then you have
 7 Election Day registration where on Election Day you
 8 can, and that registration is not just your initial
 9 registration. You can make changes if you've moved
 10 and your name has changed, you can make those kinds
 11 of changes as well during that period of time.
 12 And from an administrative standpoint, it made
 13 sense to recognize, okay, very few people are coming
 14 into the clerk's office to cast absentee ballots and
 15 there's a different set of requirements for voter
 16 registration for those people who may not be
 17 registered, so let's tie it to that period of time.
 18 That was I think really the basis for the
 19 recommendation was to try and sync up the deadlines
 20 and to recognize we really don't need to offer it
 21 during this time period. It's not going to have that
 22 much of an impact on voter convenience. They can
 23 still get the ballot by mail. There's plenty of time
 24 for it to be returned in that 30 to 20-day period.
 25 Q Another recommendation was to allow for multiple

1 in-person absentee voting locations outside of or in
 2 addition to the municipal clerk's office, is that
 3 right?
 4 A That's right.
 5 Q And why was that recommendation made?
 6 A I think there was a recognition that in larger
 7 municipalities or even smaller municipalities where
 8 geographically it made sense, again thinking of the
 9 convenience factor for voting, that municipalities
 10 ought to have the option to provide locations that
 11 were not necessarily tied to the clerk's office.
 12 You know, and this was true whether it was
 13 Madison, Milwaukee or Green Bay, which are the larger
 14 municipalities, but also you have a number of
 15 municipalities of medium size such as Sun Prairie and
 16 Middleton where they divided their municipal services
 17 into two locations and so people, it was not unusual
 18 that people would go to a different location for
 19 other types of services and why not do voting at the
 20 same time in those.
 21 Q And you mentioned before that you've become familiar
 22 with at least some voting practices in other states,
 23 is that right?
 24 A That's correct.
 25 Q Are you aware of any other state that limits

1 in-person absentee voting or early voting to a single
 2 location per municipality?
 3 A I don't know if anyone else has that. I mean there's
 4 some states that don't have early voting that have
 5 in-person absentee and they have developed the same
 6 way as Wisconsin. I don't know quite how Minnesota
 7 does it, for example. They're very similar to
 8 Wisconsin in many of their requirements.
 9 Q And a number of states have multiple early voting
 10 locations in municipalities when they conduct their
 11 elections, correct?
 12 MR. MURPHY: Object to form.
 13 A That is correct.
 14 Q And based on your training, your knowledge and
 15 experience, do you have a view as to whether having
 16 multiple early voting locations -- sorry, multiple
 17 in-person absentee voting locations would reduce wait
 18 times for in-person absentee voting in Milwaukee, for
 19 instance?
 20 A I don't know how it would apply in Milwaukee. It
 21 would probably depend on the locations, but it would
 22 make sense to me if you have more than one location,
 23 you would have less wait times.
 24 The drawback is it costs you more money to do
 25 that because you have to staff it, you have to

1 account for security procedures. You know, when
 2 ballots are not -- are in multiple locations, that's
 3 an additional concern that you have to account for in
 4 terms of your administration issues. So there's
 5 always a balancing of interests here that have to be
 6 evaluated.
 7 Q And as a matter of basic geography, if you had
 8 multiple locations, that would reduce commutes for a
 9 number of voters, correct?
 10 A It would reduce -- it would provide probably more
 11 accessibility in terms of public transportation or
 12 being able to walk or not have to find parking,
 13 depending on the locations, and again each city has
 14 its own unique geographic features.
 15 I mean you have some places that are divided by
 16 the river and what side of the river you're on makes
 17 a big difference sometimes to accessibility of
 18 government services.
 19 Q Do you know if there's free parking outside the
 20 Zeidler building in Milwaukee?
 21 A I don't know. I doubt it.
 22 Q Let me direct your attention then to the next page.
 23 And I guess before I do that, I should note that on
 24 the previous page, the heading for this section is
 25 Discussion: Retention of Monday Deadline.

1 A Okay.
 2 Q This section indicates that the GAB staff recommended
 3 that in-person absentee voting remain available until
 4 the day before the election, is that right?
 5 A Where are you specifically pointing?
 6 Q Let me go through a couple specific parts. The first
 7 full paragraph -- the first paragraph on Page 19,
 8 halfway through, the report states that the privilege
 9 of absentee voting until 5 o'clock p.m. on the Monday
 10 prior to a Tuesday election has been accorded to
 11 Wisconsin voters since 1965, is that right?
 12 A Yes.
 13 Q And it says, "Moving up the deadline for in-person
 14 absentee voting in the days leading up to Election
 15 Day would restrict opportunities to vote that the
 16 public has relied upon for over 44 years," is that
 17 right?
 18 A That's right.
 19 Q And those statements are accurate?
 20 A Yeah. They are.
 21 Q And then the next paragraph notes that, "In
 22 developing its recommendation on this issue, board
 23 staff balanced the concerns expressed by clerks with
 24 the strong historical trend and intent of Wisconsin
 25 election law to encourage and accommodate the

1 greatest possible voter participation. Wisconsin
 2 laws and election procedures have consistently
 3 resolved such legitimate and competing concerns in
 4 favor of putting the voter first, and this has been a
 5 key reason why Wisconsin is often recognized as a
 6 leader in election administration." Do you see that?
 7 A I see that.
 8 Q And so the reference to concerns expressed by clerks
 9 refers to the administrative burden that having
 10 in-person absentee voting placed on clerks in the
 11 final three days before the election, is that right?
 12 A That's right.
 13 Q And clerks expressed concerns about that burden, is
 14 that fair?
 15 A They did. That's why we spent so much time
 16 discussing this.
 17 Q And you're indicating here that that was being
 18 balanced against the intent of Wisconsin election law
 19 to encourage and accommodate the greatest possible
 20 voter participation?
 21 MR. MURPHY: Object to form.
 22 Q Is that right?
 23 A That's the language that's in the report, yes.
 24 Q And that's because having those final three days of
 25 early voting encouraged and accommodated the greatest

1 possible voter participation, correct?

2 A I think that was the opinion that we expressed, yes.

3 Q In the next paragraph, the second sentence, you

4 indicated that, "Changing the current deadline would

5 move Wisconsin away from the forefront in providing

6 access to voting opportunities," right?

7 MR. MURPHY: Object as misstates

8 evidence, and I'll expand on that if you want me

9 to.

10 MR. KAUL: Please do.

11 MR. MURPHY: Excuse me. I'm getting

12 confused when you're using you. This is a GAB

13 report. If we could just be a little more clear

14 on that.

15 MR. KAUL: Okay.

16 MR. MURPHY: Thank you.

17 Q The report states that, "Changing the current

18 deadline would move Wisconsin away from the forefront

19 in providing access to voting opportunities,"

20 correct?

21 A And where is that?

22 Q Sorry. It's the second sentence in the next

23 paragraph after the one we were just discussing.

24 A Yes.

25 Q Now, this is from the report that you approved,

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1 Q Now, let me direct your attention to Page 24. Now,

2 this reflects public comments on the draft report, is

3 that right?

4 A Yes.

5 Q And does this summary to the best of your ability and

6 your staff's ability reflect your accurate

7 characterization of statements that were made in

8 response to the report?

9 A I believe it does.

10 Q And then let me direct your attention to Appendix A.

11 Now, this shows the results of a survey conducted of

12 municipal and county clerks, is that right?

13 A That's right.

14 Q And how was this administered, the survey?

15 A I don't remember.

16 Q These results do not account for relative population

17 differences that the clerks serve, right?

18 A No.

19 Q No meaning that my statement was accurate, right?

20 A You're correct, it does not account for that that I

21 see here.

22 Q Okay. And Appendix B summarizes public responses to

23 GAB staff's early voting surveys, is that right?

24 A Yes.

25 Q And do you recall how this data was collected?

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1 correct?

2 A Right. This is the staff report, and yes, I

3 definitely had a hand in this.

4 Q And the GAB ultimately issued a different

5 recommendation, correct, the actual board?

6 A That's correct.

7 Q Let me direct your attention to Page 20. And the

8 preceding Page 19 indicates that these are a specific

9 recommendation, is that right?

10 A Yes.

11 Q No. 4, locations, in the second sentence you indicate

12 that municipalities -- by you, I mean the report

13 indicates that, "Municipalities which determine that

14 multiple sites are necessary, however, should be able

15 to use them," is that right?

16 A Yes.

17 Q And that reflects your view, right?

18 A That reflects the view in the report, yes.

19 Q That was the view of GAB staff?

20 A That's right, which obviously I approved, that this

21 was what -- it's a GAB staff report.

22 Q And the report in the next Bullet 5 recommends that

23 hours for in-person absentee balloting become

24 flexible and under municipal control, is that right?

25 A Yes.

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1 A I don't recall, but I thought I saw earlier in this

2 report where it made a comment that we posted on our

3 website and invited comments. I mean if you're

4 looking at Page 24 --

5 Q Thank you.

6 A -- I think that might answer the question. It does

7 explain at the top of Page 24 under the introduction.

8 Q Okay. So these were all comments received via online

9 submission?

10 A According to the report, yes.

11 Q All right. And then following the collection of the

12 survey results, there are some other material,

13 including letters from some cities in Wisconsin, is

14 that right?

15 A It appears there's not only letters, but there's

16 resolutions adopted by the county also in at least

17 one case.

18 Q And let me direct your attention to Page 8 of that

19 appendix, which is a letter from the City of

20 Milwaukee.

21 A It's from the Milwaukee City Board of Election

22 Commissioners.

23 Q Okay. Thank you. And it's signed by Sue Edman who

24 at the time was the executive director of the City of

25 Milwaukee Election Commission, correct?

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1 A Yes.

2 Q And let me direct your attention then to Point No. 1

3 on Page 8. This indicates that the City of Milwaukee

4 is requesting the opportunity to -- I'm sorry, is

5 requesting a change to the election law that would

6 permit municipalities to operate additional satellite

7 in-person absentee ballot locations, correct?

8 A That's right.

9 Q And it says that, "During high turn-out elections,

10 such as the November 2008 presidential election,

11 Milwaukee witnessed wait times of three hours or

12 longer at its in-person absentee voting location," is

13 that right?

14 A That's what she says in her letter, yes.

15 Q And is it your understanding that that's correct?

16 A I can't speak to how long it was. I do know there

17 were lines. I was present there in 2008 and 2012 and

18 2014, so I know that there were lines. I wasn't

19 measuring wait times.

20 Q In 2014 there were lines?

21 A Yes.

22 Q And the next sentence indicates that, "Providing

23 municipalities with the authority to establish

24 additional satellite locations would provide voters

25 with greater accessibility to community-based voting

1 utilized those methods of voting for each of these

2 listed cities and towns and villages in 2008,

3 correct?

4 A That's right.

5 Q The reference to Milwaukee says City of

6 Milwaukee-Main?

7 A That's because part of the City of Milwaukee goes

8 into Waukesha County and into Washington County, but

9 I don't believe there are any voters there.

10 Q Okay. So this is the total for Milwaukee then?

11 A Yes.

12 Q And this is based on data from the SVRS?

13 A I'm not sure if it's entirely -- it could be because

14 I mean obviously this is not all 1,850 -- in fact,

15 back then there were only 1,851 municipalities, I

16 think, and so these are the ones where we had the

17 data from, and that means that we were -- our best

18 source for that would have been our statewide voter

19 registration system.

20 Q Okay. So is it fair to say that your belief is that

21 that's where the data is from, but you're uncertain?

22 A Yes.

23 Q And there are statewide totals listed here, do you

24 see those?

25 A Yes.

1 and reduce wait times"?

2 A That's what she says in her letter, yes.

3 Q What does greater accessibility to community-based

4 voting mean, if you know?

5 A I'm assuming -- again this is an assumption I'm

6 making that it reflects the fact that a city like

7 Milwaukee has various neighborhoods, parts of the

8 city. You know, the interstate divides the city

9 north and south, so that can be a barrier. There are

10 other, you know, geographical features that tend to

11 create different community areas within the city, and

12 I think that there's a recognition of that.

13 I think most cities, you see a lot of comments

14 about serving neighborhoods or serving communities

15 within the city. So it's a reflection when you have

16 a large diverse community how do you best provide

17 government services.

18 Q Let me direct your attention to Appendix G then. I

19 just want to make sure I'm understanding this

20 accurately. This is data regarding both all absentee

21 voting in the 2008 presidential election and data

22 regarding in-person absentee voting in the 2008

23 presidential election, right?

24 A Yes.

25 Q And specifically this shows the number of people who

1 Q Those reflect the totals for the entire state, not

2 just those cities listed, right?

3 A That's right. Those are collected by a separate

4 survey after the election.

5 Q Did you have discussions regarding this report with

6 members of the Legislature?

7 A Some discussions. Mostly with the chairs of the

8 committees about the recommendations.

9 Q And do you recall the content of any of those

10 discussions?

11 A I don't specifically. This was quite a while ago.

12 Again part of this was to give the Legislature some

13 information to make decisions.

14 Q Do you generally recall the content of those

15 conversations?

16 A No.

17 MR. KAUL: All right. I think this is

18 a good time to take a brief break. So we'll go

19 off the record.

20 THE VIDEOGRAPHER: The time is 10:50.

21 We are going off the record.

22 (Short recess is taken)

23 THE VIDEOGRAPHER: We are on the

24 record. The time is 11:05 a.m. This marks the

25 beginning of Disk No. 2 in the deposition of

KEVIN KENNEDY

1 Mr. Kevin Kennedy.
 2 Q We were talking a moment ago about the rule that
 3 limits localities -- I'm sorry, municipalities to one
 4 in-person absentee voting location. Have you
 5 testified at any legislative hearings regarding
 6 proposals to change that rule?
 7 A I don't recall. I know that there was a Legislative
 8 Council Study Committee on Elections. I don't know
 9 if it was in 2006 or something that I was an ex
 10 officio member of and we discussed it at that time,
 11 but I don't recall specifically testifying on this.
 12 It doesn't mean I wouldn't have because it was
 13 something that I personally thought was a good idea.
 14 Q Did that Legislative Council Study Committee issue
 15 any reports?
 16 A It did. It was under the leadership of
 17 Senator Leibham, L-e-i-b-h-a-m.
 18 Q And what did those reports pertain to?
 19 A It was -- it dealt with changes in election law
 20 administration. Again I think it was after the Help
 21 America Vote Act, which was an act in 2002 and
 22 started to be implemented in 2006.
 23 Q And was that a bipartisan study committee?
 24 A Well, it was under the leadership of just one
 25 Republican senator, but there were representatives

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1 from both parties, local election officials and
 2 citizen groups who sat on it.
 3 Q And what recommendations did the study committee
 4 make?
 5 A I don't remember all of the recommendations. I do
 6 remember that there was a consensus -- actually I
 7 don't remember how it came out on that particular
 8 issue, I should say.
 9 Q What issues was there a consensus on?
 10 A I'd have to go back and look at the report.
 11 Q Is that a publicly available report?
 12 A Sure. You could get it from the Legislative Council
 13 off their website, I'm sure.
 14 Q The SVRS does not keep data on the race or ethnicity
 15 of voters, correct?
 16 A That's right. It's not collected as part of the
 17 voter registration process, so the form that collects
 18 information on voters does not track race, ethnicity
 19 or sex.
 20 Q Does GAB have any means of determining whether
 21 election laws or changes to election laws impact
 22 people differently by race?
 23 A No.
 24 MR. MURPHY: Object to form.
 25 A The answer is no.

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1 Q Okay. So it would be fair to say that GAB hasn't
 2 done any assessment of racial disparities imposed by
 3 any election laws in Wisconsin?
 4 MR. MURPHY: Objection, calls for
 5 speculation. You can answer.
 6 A We have not.
 7 Q And based on the experience we've been discussing
 8 before, are you aware of how early voting rates or
 9 in-person absentee voting rates in other states
 10 compare by race?
 11 A I am not.
 12 Q Now, one of the changes that the Legislature made in
 13 2011 to the election laws was to reduce the period
 14 during which early voting could take place from 30
 15 days to 12 days, is that right?
 16 A It changed the deadline from in-person absentee
 17 voting.
 18 Q I'm sorry, thank you. 30 days to 12 days is correct?
 19 A I believe that's the case. It was a Monday through
 20 Friday, including the weekend in between, yeah. The
 21 third Monday through the Friday before the election.
 22 Q And based on your experience, in what, if any, ways
 23 does that change make voting more difficult?
 24 MR. MURPHY: Object to form.
 25 A Well, you know, the question is -- on one hand, it's

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1 easier for clerks, they have a limited time period to
 2 do it, but they probably have to process more voters
 3 because I mean we hadn't seen a reduction in
 4 participation as a result of the change in numbers.
 5 In fact, if anything, we've seen an increase. It
 6 obviously impacts a voter in terms of their ability
 7 to go to the clerk's office. It reduces the number
 8 of days that are available to do that, but in
 9 practice the numbers hadn't changed and the
 10 experience was that the two weeks was the heaviest
 11 period of time anyway.
 12 Q You said that clerks need to process more voters in a
 13 shorter period. Is that what you meant?
 14 A Yes.
 15 Q And what, if any, impacts does that have on election
 16 administration?
 17 A It depends on the resources that the clerks bring to
 18 bear. It could be longer lines, more staff that they
 19 have to hire, certainly more work at the polls on
 20 Election Day if there's more votes cast absentee.
 21 Q What, if any, state interests are served by the
 22 reduction in early voting from the 30 days to 12
 23 days?
 24 A I'm not sure I could speculate on that.
 25 Q Are there any interests in election administration

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KEVIN KENNEDY

1 that are served by that reduction?
 2 A Well, as I said before, clerks have more time to
 3 concentrate on other duties if they only have to gear
 4 up their resources for different time periods. As
 5 clerks love to tell us, they do other things besides
 6 elections.
 7 Q Meaning those first 18 days -- I'm sorry, the 18 days
 8 that no longer have early voting, they now can have
 9 time to devote to other activities?
 10 A I noticed one of the comments was that when they
 11 weren't conducting in-person absentee voting, they
 12 could do -- they would have more time to focus on
 13 timely responding to mail requests for absentee
 14 ballots that would come in.
 15 Sometimes those requests, you know, there are
 16 people who are proactive enough and have difficult
 17 delivery situations and so it requires more time.
 18 And if there's not someone standing at your counter
 19 asking to vote absentee, it means you're less
 20 distracted from those kind of election related
 21 duties. You also are recruiting and training
 22 co-workers during that time period, and I'm only
 23 speaking about the election duties, not their other
 24 duties, and making sure that the polling places are
 25 all set up.

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1 because I actually meant -- I was actually talking
 2 about the clerks --
 3 A You said voters.
 4 Q I know, I must have misspoke. I apologize. During
 5 the 12-day window the clerks as a result of this
 6 change will now have less time to devote to other
 7 tasks, right?
 8 A They would spend more time servicing the voters, but
 9 again they'd also be able to plan their resources for
 10 a more concentrated period of time. It might be
 11 easier for them to recruit temporary staff to assist
 12 them. You know, from a planning standpoint, if you
 13 have a defined period that you know you have to work,
 14 it makes a difference.
 15 Q Let me come back to that. I'm just trying to make
 16 sure I understand the point. But before you said
 17 that absentee voting was fairly light until the first
 18 two weeks, right?
 19 A That's the feedback that we were getting from clerks.
 20 That's from the limited amount of data that we tried
 21 to collect, it seemed that people paid more attention
 22 the closer it got to voting, that there was less
 23 voting towards the 30-day period than there was in
 24 the 12-day window.
 25 Q And do you have -- does GAB have data on that, or is

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1 I mean this is not something that happens just
 2 overnight before Election Day. You've got to make
 3 sure -- I can think of several instances where clerks
 4 did not know that there was construction going on in
 5 front of a polling place and all of a sudden had to
 6 make adjustments. So there's a lot of those kind of
 7 preparations that if you don't have to respond to a
 8 voter, which normally would be persons -- a clerk's
 9 top priority, you can focus on those things as
 10 well.
 11 Q And would the converse also be correct, by which I
 12 mean during the days when early voting remains, now
 13 the voters would have less time to devote to other
 14 tasks given, as you said before, that there were more
 15 voters in a shorter period of time?
 16 MR. MURPHY: Object as vague. But you
 17 can answer.
 18 A I'm not sure -- I mean I'm familiar with what the
 19 clerk's tasks are. Voters bring a whole lifetime of
 20 issues. I mean the idea of allowing people to vote
 21 before Election Day in a format is to provide some
 22 convenience to the voters to cast a ballot because
 23 the 13 hours that are available on Election Day may
 24 not be enough.
 25 Q I think Mike is right that my question was vague

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1 that just based on anecdotal information?
 2 A I know it's anecdotal. There might have been some
 3 data that was collected as part of the Election Day
 4 survey or the early voting report, but I don't --
 5 Q So if absentee in-person usage was fairly light
 6 during that time, that would mean that the burden on
 7 clerks would also be relatively light during that
 8 period, is that correct?
 9 A As far as serving the absentee voters go, yes.
 10 Q Now, there was a second change to the early voting
 11 law made in 2013, is that right?
 12 A Yes.
 13 Q And as a result of that change, municipalities were
 14 no longer allowed to offer early voting during the
 15 weekend, correct?
 16 A You could not vote in-person absentee over the
 17 weekend --
 18 Q I'm sorry.
 19 A -- in between was one of the changes, yes.
 20 Q And that change also limited the hours during which
 21 in-person absentee voting could take place to 8 a.m.
 22 to 7 p.m., is that right?
 23 A That's correct.
 24 Q Did the final version of that bill have provisions
 25 that dealt with appointments with local clerks,

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KEVIN KENNEDY

1 voters setting up appointments with local clerks?
 2 A I don't recall. I mean I think one of the arguments
 3 in favor of the hours was that everybody would be the
 4 same, but the reality is in many places, they don't
 5 offer that many hours because they don't have as many
 6 people. The clerk is part time, as I mentioned
 7 before, so it doesn't -- it provides a uniform
 8 window, but it doesn't provide uniform hours because
 9 there's a lot of places where there's no voting on
 10 certain days of the week or it's only in the
 11 afternoon.
 12 Q And prior to that change, there was a uniform window
 13 also, correct?
 14 A It was still a uniform window in the sense that there
 15 was nothing that said you couldn't vote on how early
 16 you started or how late, how early you could start or
 17 how late you could run or weekends or holidays.
 18 Q Do you know prior to the change which cities in
 19 Wisconsin offered in-person absentee voting on the
 20 weekends?
 21 A I don't recall.
 22 Q Do you know whether Milwaukee offered in-person
 23 absentee voting on the weekends prior to the change
 24 in the law?
 25 A I know they offered some. It varied depending on the

1 type of the election. I know that in preparation of
 2 this legislation, there was some data submitted by
 3 local election officials on those hours.
 4 Q And do you know whether Madison offered in-person
 5 absentee voting on the weekends prior to the change?
 6 A I don't know for sure.
 7 Q Do you know which cities offered in-person absentee
 8 voting after 7 o'clock p.m. prior to the change?
 9 A Again I don't know. One thing I can state is that
 10 municipalities because it was under their control and
 11 it was their responsibility would adjust their hours
 12 based on what seemed to be the demand that best
 13 suited either their citizens or, as I said before,
 14 you have part-time clerks where they couldn't offer
 15 voting on certain days because their clerk was
 16 unavailable or they had office hours that had been
 17 established for other reasons.
 18 Q All right. Now, you said before that with respect to
 19 this change we've been discussing that there were
 20 concerns that it will have an impact on people who
 21 live in urban areas who might be working during those
 22 hours, meaning the eliminated hours, is that right?
 23 A What do you mean, I said before? Are you referring
 24 to my testimony before the Legislature? Are you
 25 referring to something I said today?

1 Q No, no, I'm sorry. I think this was a public
 2 statement, but let me just show you the document.
 3 That will be easier. This will be Kennedy 5.
 4 (Exhibit 5 is marked for identification)
 5 Q And this is a printout of a Wisconsin State Journal
 6 article. Is that what it appears to you to be?
 7 A Yes.
 8 Q And this article discusses the change in early voting
 9 hours that occurred since 2012, is that right?
 10 A That's right.
 11 Q And then the article quotes you saying there are
 12 concerns it will have an impact on people who live in
 13 urban areas who might be working during those hours,
 14 do you see that?
 15 A Yes.
 16 Q Do you recall if that's a statement that you made?
 17 A It is a statement that I made. It's a statement that
 18 reflects comments that I have heard in general. You
 19 know, observations that were made as part of the
 20 discussion in making these changes, you know, what
 21 I'm saying there is there are concerns. It doesn't
 22 say it's my concerns specifically or that I have
 23 anything to base it on, but it reflects the issues
 24 that were discussed about the changes in this.
 25 Q And do you recall who had raised those concerns?

1 A Well, these concerns were raised in testimony before
 2 the Legislature by a number of different individuals
 3 and groups when this was debated in the Legislature,
 4 when committee hearings were held.
 5 Q And how do you know that?
 6 A Because I was present at the hearings.
 7 Q And your quote here is in reference to the 2013
 8 change in early voting hours, correct?
 9 A That's right.
 10 Q All right. And you also testified regarding this
 11 change, is that right?
 12 A I did.
 13 MR. KAUL: We'll mark this as
 14 Kennedy 6.
 15 (Exhibit 6 is marked for identification)
 16 Q And actually I may have misstapled something here.
 17 There's a letter on the back page of this. Do you
 18 know whether that letter relates to this testimony --
 19 oh, I'm sorry, it does.
 20 A I did. I made a reference to it at the beginning of
 21 my testimony.
 22 Q I apologize, thank you. I'm confused by my own
 23 exhibits. Does this -- is this a true and accurate
 24 copy of the testimony you provided to the
 25 Legislature?

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1 A It looks like it is.
 2 Q Meaning that to the best of your knowledge, it is?
 3 A Yeah. I mean this is the format that I prepared it
 4 in. It sounds familiar as I look at it. So I'm
 5 pretty sure we provided it to you based on our
 6 records.
 7 Q And the GAB has a website, correct?
 8 A It does.
 9 Q And there is testimony posted on that website, is
 10 that right?
 11 A That's right.
 12 Q And are the documents posted on that website true and
 13 accurate copies of what they purport to be?
 14 A Yes.
 15 Q And is that also true of the other documents posted
 16 on the website?
 17 A Yes. I think you make mistakes probably, but
 18 hopefully they're taken down and fixed if there's
 19 something wrong.
 20 Q All right. Now, one of the things on Page 2 of the
 21 testimony, about halfway through the second
 22 paragraph, you indicate that Milwaukee served a
 23 little over 36,000 in-person absentee voters at City
 24 Hall in 2012, is that right?
 25 A Right.

1 Q And then in the following sentence -- I'm sorry, two
 2 sentences later, you indicate that in many
 3 municipalities, absentee in-person voting is by
 4 appointment with the clerk and that there are no
 5 regular office hours, right?
 6 A I'm sorry, which paragraph was that?
 7 Q I'm sorry, the same paragraph but the last sentence.
 8 A Yes, um-hum. That's right.
 9 Q And that remains true after the change to the 2013
 10 change to early voting hours, right?
 11 A It remains true, although the appointment has to be
 12 made within that window.
 13 Q And it was prior to that change, it was true that the
 14 appointment had to be made within the allotted window
 15 also, right?
 16 A That's right.
 17 Q Now, two paragraphs down, you recommended that the
 18 committee consider expanding the window to permit
 19 in-person absentee voting between 7 o'clock a.m. and
 20 8 o'clock p.m., is that right?
 21 A Yes.
 22 Q And why did you recommend 8 o'clock p.m.?
 23 A Well, as I said in my testimony, these are the same
 24 hours the polls were open on Election Day. So I was
 25 looking to provide some level of uniformity as far as

1 establishing the window goes. And Election Day hours
 2 are set to a certain degree to accommodate voters on
 3 that day and some time after a regular work schedule,
 4 some time before a regular work schedule and covering
 5 people with different work schedules.
 6 Q All right. And later in the paragraph you indicate
 7 that in-person absentee voting should be an option
 8 for municipalities on the weekend?
 9 A I do.
 10 Q And why did you take that position?
 11 A Again talking about one of the reasons for allowing
 12 people to vote before Election Day is to accommodate
 13 various schedules and there are people who couldn't
 14 get to a clerk's office to cast their vote during the
 15 hours that are proposed here or even the 7 to 8
 16 o'clock hours I proposed on the weekends might
 17 provide a better opportunity for people.
 18 There are also other distractions in people's
 19 lives during the week such as school, children's
 20 obligations, and they may have more flexibility on
 21 the weekend.
 22 Q Are you familiar with the phrase Souls to the Polls?
 23 A I am.
 24 Q And do you know whether there were Souls to the Polls
 25 efforts in Wisconsin?

1 A I don't think it was a phrase that was used in
 2 Wisconsin like it is used in some southern states.
 3 There certainly were some efforts to target religious
 4 communities because we had a lot of people in one
 5 place and you could say, hey, let's now go to the
 6 polling place or go cast a vote.
 7 Q And just to be clear, Souls to the Polls generally
 8 refers to efforts by predominantly African-American
 9 churches to vote following church on Sundays, right?
 10 A That's right.
 11 Q And I guess regardless of what phrase was used, do
 12 you know whether there were such efforts in
 13 Wisconsin?
 14 A My understanding was there were efforts. I don't
 15 know if it was limited just to the African-American
 16 community, but there were certainly efforts to do
 17 that. It's not unusual for any type of rally to --
 18 in that period when people could vote in the clerk's
 19 office to encourage them to then go, whether it was a
 20 weekday rally or a national candidate came in to
 21 speak, they would then say, hey, if you want to go
 22 down and vote now because we've got your attention,
 23 let's do it.
 24 Q And on the weekend specifically and the post-church
 25 trips to the polls, is it your understanding -- I

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1 think you said that wasn't exclusively in
2 predominantly African-American churches. Do you know
3 if it was predominantly African-American churches?
4 A I don't really know. You know, again the term wasn't
5 used much in Wisconsin. I know from talking to
6 individuals that this was -- part of their get out to
7 vote efforts was to target these kind of communities,
8 but I also know it was done not just with church
9 groups, it was done with political rallies as well.
10 Q Now, did you receive --
11 A Just so you know, I have two copies of this.
12 Q Oh, thanks. That's why I was one short. Thank you.
13 You're welcome to keep it for posterity if you'd
14 like.
15 A I have my own electronic version.
16 Q The GAB has received complaints from a number of
17 municipal clerks regarding this change to the law,
18 correct?
19 A Which change?
20 Q The change in 2013 that limited early voting hours.
21 A I don't know if -- I'm sure we've had comments that
22 could be characterized as complaints from different
23 groups or I mean different local election officials.
24 I just don't recall any specifically, and I don't
25 recall that we treated them as something that was --

1 call it a Listserv, but they get on and they make
2 their comments amongst each other and we try to
3 monitor it, and staff at various times request to opt
4 out of monitoring it so someone else can do it
5 because, as you can see from the comments, the clerks
6 have strong views, but we think it's important to
7 understand what's ruling them, what's important to
8 them, and so we try to have our staff monitor this
9 and when they see something in particular that dealt
10 with legislation that was up, it gets forwarded.
11 So Nate forwarded it to the people who were most
12 likely to read it, our public information officer and
13 the two elections supervisors and myself.
14 Q Okay. And so it would be a fair characterization of
15 what you just said then that GAB monitors the
16 contents of the clerk list to stay abreast of
17 concerns of local clerks?
18 A Yes.
19 Q All right. And we discussed Nathan Judnic. And the
20 Michael Haas on this email is Michael Haas we talked
21 about before, right?
22 A Right. And at that time he was the elections
23 division administrator.
24 Q Okay. And Reid Magney is the public information
25 officer?

1 a specific action was taken on other than maybe to
2 respond to the complaints or say talk to your
3 legislator.
4 Q Let me go over a couple of documents. Here's
5 Kennedy 7.
6 (Exhibit 7 is marked for identification)
7 A Okay.
8 Q Let me start with a few just background questions on
9 this. First of all, you were one of the recipients
10 of this email, right?
11 A Yes.
12 Q And this was sent by -- actually I'll let you
13 pronounce it because I'll mispronounce the last name.
14 A Judnic.
15 Q Nathan Judnic?
16 A Yes.
17 Q And who is he?
18 A He's currently our staff counsel. I'm trying to
19 remember if he had taken that position -- I don't
20 think he had taken that position in 2013. He's been
21 a long-time staff member with the Government
22 Accountability Board working both in the elections
23 division and the ethics and accountability division,
24 and what he's forwarding is there's a clerk list
25 which is the municipal clerks, I don't know if you

1 A That's correct.
2 Q And who is Ross Hein?
3 A Ross Hein is our election supervisor. He oversees
4 primarily our election related IT initiatives. He
5 used to be the voting equipment coordinator, meaning
6 he ran all the certifications on voting equipment,
7 but he was promoted to a position we call election
8 supervisor, which is sort of like the second person
9 in command in the elections division, gets a bit more
10 specialized than I asked him to, I wanted to
11 cultivate an in-house IT expert so that when we're
12 managing IT projects and so about half of his
13 responsibility is to make sure that the various IT,
14 meaning information technology endeavors we're in,
15 are effectively managed.
16 So he does the recruitment of our outside
17 contractors. He evaluates their performance. He is
18 sort of like the project manager on the various IT
19 related projects that we have.
20 Q And this also indicates that Shane Falk was a
21 recipient of this email?
22 A Yes.
23 Q All right. And he was a legal counsel at the time,
24 right?
25 A Yeah, he was one of our staff counsel at the time.

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1 At the time he was the only staff counsel. Nate
 2 eventually got promoted to that position later in the
 3 year. You can see from the title underneath his name
 4 he was still in the ethics division.
 5 Q And when did Mr. Falk leave the GAB?
 6 A I believe it was August of 2014.
 7 Q And do you know why he left?
 8 A He thought he could do better financially in the
 9 private sector.
 10 Q Probably right about that, is that fair?
 11 MR. MURPHY: Object to form.
 12 MR. KAUL: I'm teasing.
 13 A For some people, I'm sure that is the case.
 14 Q Now, is it your understanding that all of the
 15 individuals on the clerk list are in fact clerks or
 16 clerk staff in Wisconsin?
 17 MR. MURPHY: Object to form.
 18 A Well, you know, our staff is on it, so we're not
 19 clerks, but I think the general audience is primarily
 20 clerks, deputy clerks or other staff members in
 21 clerks' offices.
 22 Q Okay. And one of the things that the emails in this
 23 string indicate is that at least the clerks who sent
 24 these were unhappy about the inability to make
 25 appointments with the voters outside of the time

1 window prescribed by the 2013 early voting
 2 legislation, is that right?
 3 A Well, I think they talked about the inability to make
 4 appointments or to have -- provide services beyond
 5 the window, whether it was a weekend or whether it
 6 was after -- I think the original proposal cut things
 7 off at 5 or 6 o'clock, and there were a number of
 8 changes to that legislation as it went through, but
 9 this is -- reflects what some clerks felt about their
 10 ability to serve their voters.
 11 Q And let me show you another email from the clerk
 12 list. This is Kennedy 8.
 13 (Exhibit 8 is marked for identification)
 14 MR. MURPHY: Object to the exhibit on
 15 foundation grounds, but please proceed.
 16 Q Well, let me lay some foundation. Do you know what
 17 this document is?
 18 A I see it's a document that looks like it was
 19 generated from the clerk list we were discussing
 20 before. It involves two different clerks'
 21 communications. I don't know how it got in your
 22 hands or anything because I don't see anything that
 23 indicates that it somehow came from our office.
 24 Q All right. And if this was produced in discovery by
 25 your office in this case, would that mean that your

1 office had it?
 2 A If we produced it in discovery, we had it. But again
 3 on the face of it, this is apparently all that was
 4 retained from it.
 5 Q And when your office receives clerk list emails, they
 6 would show up as this does at the top of the email,
 7 correct?
 8 A I don't look at the clerk list. I only see what's
 9 passed on to me. But so I'm not quite sure -- again
 10 I'm not sure if they're going to a website on the
 11 clerks or whether they subscribe to the list and so
 12 it would have the header of the staff person who
 13 picked it up.
 14 Q Let me direct you to the prior exhibit then.
 15 A Yeah.
 16 Q Just to clarify. Now, the top email in that prior
 17 exhibit was a GAB internal email, right?
 18 A Yes.
 19 Q But the email below is a clerk list email, correct?
 20 A Yes.
 21 Q And that header is consistent with this new exhibit
 22 in that they're both addressed to Clerk List, right?
 23 A Right. Although the second one also talks about the
 24 clerk network, and I think there might be two
 25 different types of lists as a result of that.

1 I've often heard our staff refer to the clerk
 2 network, which might be more of the back and forth
 3 exchange that clerks have among themselves sometimes,
 4 but again I don't know the distinctions.
 5 Q Okay. Do you know whether GAB staff are on both the
 6 Clerk List and Clerk Network email?
 7 A I don't know. We just try to monitor the
 8 communications as best we can because we think it's
 9 important to get a flavor of what their concerns are
 10 so that we can address them.
 11 Q I understand. All right. So this new exhibit, the
 12 top email which appears to be from the clerk
 13 treasurer in the Village of West Baraboo talks about
 14 resenting the Friday deadline since it changed, do
 15 you see that?
 16 A I see that.
 17 Q Are there any circumstances in which a voter can cast
 18 an in-person absentee ballot on the weekend before
 19 the election?
 20 MR. MURPHY: Objection to the extent
 21 it calls for a legal conclusion, but you may
 22 answer.
 23 A I don't think that there's an ability for them to go
 24 into the clerk's office to cast it. I'm trying to
 25 think, you know, military and overseas have some

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1 different deadlines for applications, but those are
 2 transmitted electronically or by mail, so I'm not
 3 aware -- I'm trying to think about in --
 4 Q Sorry.
 5 A I'm trying to think about if there's a limit on -- we
 6 have other methods tailored to specific situations.
 7 Sequestered jurors, which I'm not sure if there's a
 8 specific restriction on the time period, I'd have to
 9 go back and look at the statutes, but we have special
 10 procedures for sequestered jurors to get absentee
 11 ballots, and I don't know if they're excluded in this
 12 period of time without going back and doing some
 13 checking.

14 We have people who are in nursing homes or other
 15 special locations where we send special deputies out.
 16 Again I mean I don't know if we've restricted the
 17 time period by the weekend. I'm pretty sure that
 18 that all ends before -- I mean it closes by Friday
 19 before the election for sure, but I don't know if
 20 that would allow for those special deputies to go to
 21 a nursing home or community-based residential
 22 facility or other special thing that's recognized in
 23 the statutes on the weekend in between or if they
 24 could go after hours. I'd have to go back and look
 25 for those specific situations.

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1 also incidents in which clerks issued absentee
 2 in-person ballots to voters outside of the prescribed
 3 window, correct?

4 MR. MURPHY: Objection, calls for
 5 speculation.

6 A I don't recall specifically, but I wouldn't be
 7 surprised if that were the case.

8 Q Okay. In the event that that happens, what happens
 9 to that ballot?

10 A It depends. I mean I would think someone would have
 11 to identify it and would have to raise it as an
 12 issue. I'm not aware that it became part of any
 13 recount issues or challenges, but again, you know,
 14 since we run this at the municipal level, not all of
 15 these issues percolate up to us.

16 Q Let me show you a document relating to this. This
 17 will be Kennedy 9.

18 (Exhibit 9 is marked for identification)

19 A Okay.

20 Q All right. Now, first of all, this is a string of
 21 emails among GAB staff, correct?

22 A That's right.

23 Q And until the last forward of the email, you're
 24 copied on these emails, is that right?

25 A Yes.

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1 I'm trying to think if other hospitalized
 2 electors is another one where we have a special
 3 provision where an individual can apply to the clerk
 4 to take an absentee ballot to someone and deliver it,
 5 and that actually can be done on Election Day.
 6 Q Okay. Since this change we've been discussing in
 7 early voting hours which eliminated weekend early
 8 voting and early voting after 7 p.m., clerks have
 9 made mistakes and received ballots outside of the
 10 allowable hours, correct?

11 MR. MURPHY: Object to form.

12 A I don't know for certain what the extent of those are
 13 that a clerk might have offered someone the
 14 opportunity to vote outside of those hours. I
 15 remember -- I remember getting a call about it from
 16 the Republican Party about a clerk in far northern
 17 Wisconsin who did that on one instance. I'm trying
 18 to think what the time period was on that, but -- so
 19 I remember that incident specifically. And I
 20 wouldn't be surprised that clerks have done this
 21 either unintentionally or possibly even intentionally
 22 because they're more concerned about taking care of
 23 the voter.

24 Q And following the first change in early voting we
 25 discussed from the 30 days to the 12 days, there were

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1 Q Let me start with the first in time email, which is
 2 the last page of the document.

3 A Um-hum.

4 Q That's an email from Shane Falk to you, correct?

5 A That's right.

6 Q Now, this is dated October 25, 2012, is that right?

7 A Yes.

8 Q And in your experience, do the names and the dates on
 9 your internal emails accurately reflect the people
 10 who sent the emails and the dates that they were sent
 11 on?

12 A Yes.

13 Q Now, at the beginning of Mr. Falk's email, he said,
 14 "As you know, we have received numerous inquiries
 15 regarding how to treat absentee ballots that a clerk
 16 mistakenly permitted voters to vote in person," and
 17 it goes on, do you see that?

18 A I see that.

19 Q To the best of your knowledge, is that statement
 20 correct?

21 A I know that it was brought to my attention that we've
 22 had these. I don't know whether -- you know, how we
 23 characterized numerous, whether that's three or 30,
 24 but the fact is it was enough of an issue we needed
 25 to craft a response for clerks.

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1 Q And then after Mr. Falk sent you that email, you
2 forwarded it to other members of the staff, is that
3 right?
4 A That's right.
5 Q And that indicates that you -- well, is it fair to
6 say that you agreed with the guidance that Mr. Falk
7 had provided?
8 A Yes.
9 Q And then Mr. Falk replied to that email the next day,
10 right?
11 A Yes.
12 Q And I'd like to direct your attention to the fourth
13 paragraph of his email beginning with the time
14 period.
15 A Okay.
16 Q And going to the last sentence, Mr. Falk writes that,
17 "Ballots cast in contravention of the mandatory time
18 period for in-person absentee must be rejected
19 despite the fact that clerk or deputy error may be
20 the cause." Do you see that?
21 A Yes.
22 Q And that is GAB's position, correct?
23 A That was the advice that we were giving clerks. The
24 board did not weigh in specifically on this, but this
25 is the kind of troubleshooting we had to do.

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1 are served by the elimination of weekend and early
2 evening voting?
3 A I guess I'm not the right person to ask about that.
4 I can only talk, you know, just about what it is. I
5 mean it's a policy decision that I have to apply.
6 Q Do you know how the cost of in-person absentee voting
7 compares to the cost of absentee voting by mail for
8 clerks' offices?
9 A I don't. I mean I could think through some of the
10 elements, but I don't really know specifically.
11 Q Do you know which is more expensive?
12 A I don't know.
13 Q Now, you mentioned before that you follow news
14 related to election bills, right?
15 A Yes.
16 Q And Senator Glenn Grothman was the author of this
17 bill we've been discussing that eliminated weekend
18 and early evening voting, right?
19 A I don't recall specifically, but I'm sure he was --
20 I'm not surprised that he would have been involved in
21 it.
22 Q Okay. And did you see comments of his reported in
23 the press in which he stated that he wanted to nip
24 weekend and early voting in Madison and Milwaukee in
25 the bud before it spread to other areas?

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1 Q So when GAB is asked questions about this issue,
2 that's the advice they provide, right?
3 A This is what the staff would provide. Again we've
4 not presented this specifically to the board to
5 endorse, but we can't get everything in front of the
6 board, particularly in that time period.
7 Q And do you know whether clerks follow the advice that
8 GAB or GAB staff provides?
9 MR. MURPHY: Object as calls for
10 speculation.
11 A I don't know. I mean that's part of why we're there
12 is to give them advice and direction and in most
13 cases they appreciate knowing how to handle things.
14 Sometimes they're not happy.
15 Q Not happy because they may disagree with your
16 decision?
17 A They may disagree. It may require them to do more
18 work, more documentation or they may disagree.
19 Q But they follow it despite the disagreement?
20 MR. MURPHY: Same objection.
21 A Again I don't know, but my experience is that
22 generally they will follow our advice even if it is
23 begrudgingly sometimes. Sometimes, as I said, they
24 welcome it, so --
25 Q What, if any, interests in election administration

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1 A I don't recall specifically seeing them. I think
2 that was included in your amended complaint.
3 Q Did you have any conversations with Senator Grothman,
4 then Senator Grothman about this bill?
5 A I recall having meetings with him. I'm not sure if
6 it was this bill or if it was about something dealing
7 with voting in long-term care facilities, but I know
8 that I certainly -- both Mike Haas and I have been in
9 his office and talked with he and his staff on his
10 initiatives. I don't remember specifically about
11 this one.
12 Q Do you know whether that statement that you saw in
13 the complaint accurately reflects the views that he
14 conveyed to you and Mr. Haas?
15 A I don't -- I really couldn't say. You know, it
16 doesn't surprise me. It seems consistent with his
17 approach.
18 Q What do you mean by that?
19 A I mean I think he had a concern about restricting the
20 amount of -- not restricting. I think he thought
21 that there ought to be different provisions in place
22 for the timing of absentee voting.
23 Q Okay. Let's switch gears and talk about voter
24 registration, and let's start with corroboration.
25 First of all -- well, can you explain what

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1 corroboration was just for the record?
 2 A Corroboration, which is often referred to as
 3 vouching, is a process where for Election Day
 4 registration, and it may have been in place for late
 5 registration as well where people who are required to
 6 provide a document establishing proof of residence
 7 showing that they currently live in a particular
 8 address that they're registering to vote from, if
 9 they didn't have that, someone who lived in the same
 10 municipality could corroborate that person's address
 11 by signing a statement under penalties of perjury
 12 that the person was who they said they were, that
 13 they lived at the location that they said they did
 14 and this person knew them personally and that person
 15 then had to show proof of residence establishing that
 16 they lived in the same municipality as the voter they
 17 were corroborating the information for.
 18 Q Okay. And was the identity of the corroborator kept
 19 in the clerk's records?
 20 A It was supposed to be.
 21 Q Are you aware of any fraud resulting from
 22 corroboration?
 23 A I was aware of general allegations that people who
 24 were offering to corroborate may not have actually
 25 had the knowledge that they claimed to have had, that

1 a complaint about voter fraud is send it to the
 2 district attorney. We don't have any enforcement
 3 power over that.
 4 There are certain provisions we have where we're
 5 required to identify that. We have to do
 6 post-election audits to determine if anyone who was
 7 convicted of a felony has voted, and those get
 8 referred directly to the district attorney's office,
 9 but we do try to make sure that where we find the
 10 match between the Department of Corrections list and
 11 our list, people who are supposedly not eligible to
 12 vote, we check with the Department of Corrections to
 13 make sure their list was accurate and sometimes it's
 14 not. We check with the municipal clerk to make sure
 15 they recorded the proper person on the poll list
 16 before we send it to the district attorney. So we do
 17 that level of investigation.
 18 Occasionally we've been -- we've addressed
 19 complaints. We had someone come to our -- one of our
 20 meetings and wave around a list of noncitizens they
 21 claimed had voted at the election and the board felt
 22 given the fact that the person was going to make a
 23 very public showing on this that before we refer it
 24 to the district attorney, maybe we should do some
 25 checking on this and so we did. And it turned out

1 I mean the comments tended to be, well, we don't know
 2 if this person is -- I had co-workers or observers
 3 tell me that they would caution people in student
 4 locations don't volunteer this if you don't know the
 5 truth on this.
 6 I mean I know that there were concerns about the
 7 veracity of that. I don't know that there were any
 8 cases that were presented to district attorneys on
 9 that or any complaints that were given to our office
 10 that gave specific facts on it, but I know those were
 11 the kind of concerns that were articulated and that
 12 people claimed to have had those observations.
 13 Q Did you verify any of those observations?
 14 A You know, by the time they got to me, they would be
 15 after the election and wouldn't be in a position
 16 where I would be able to go back and dig that up.
 17 And absent a formal complaint, we probably were not
 18 going to focus our resources on investigating those
 19 kind of things, and ultimately it's the district
 20 attorney who makes the prosecutorial decision anyway.
 21 Q When your office believes that there is voter fraud,
 22 what actions do you take?
 23 A Well, generally if something is brought to our
 24 attention, we'll tell the complainant to take it to
 25 the district attorney because the most we can do with

1 that not one single person on that list was actually
 2 a non-U.S. citizen.
 3 Q What is the name of that person?
 4 A Her name was Ardis Cerny.
 5 Q I'll ask you about Ms. Cerny later. But just
 6 focusing specifically on corroboration, did you ever
 7 have instances in which you recommended that poll
 8 workers or anybody else, for that matter, refer a
 9 case of allegedly fraudulent corroboration to a
 10 district attorney?
 11 A I don't remember that.
 12 Q And you may have already addressed this, but do you
 13 know of any even criminal case charging somebody with
 14 fraudulent corroboration?
 15 A I don't recall any.
 16 Q Have you ever heard of the phrase chain
 17 corroboration?
 18 A I don't specifically recall it.
 19 Q Have you ever to your knowledge had any reports about
 20 chain corroboration?
 21 A Do you want to tell me what chain corroboration is?
 22 I mean I think I know, but tell me what you're asking
 23 me about.
 24 Q I'll provide you the context for my question, and I
 25 acknowledge that this is not part of the record.

1 This is for background. Senator Lazich is alleged to
 2 have made a statement that chain corroboration was
 3 out of hand. Do you know what she would have meant
 4 by chain corroboration?
 5 MR. MURPHY: Object to foundation to
 6 this line of questioning. But you can answer to
 7 the extent you're able.
 8 A I mean I've heard of situations where individuals,
 9 one individual has offered to corroborate for several
 10 different people. I could make the leap from that
 11 that maybe that's what she's referring to as chain
 12 corroboration. But like I said, the term is -- I
 13 think I might have seen the term, now that you
 14 mentioned it, in the complaint, but I don't recall it
 15 specifically.
 16 But I have heard of people being concerned about
 17 one individual doing that, you know, providing
 18 corroboration for individuals so they could register
 19 to vote at the polls on Election Day.
 20 Q Now, that wouldn't indicate that that corroboration
 21 was being done fraudulently, would it?
 22 A Well, again requirements for a person to corroborate
 23 is they have to know that -- they have to live in the
 24 same municipality as the individual and they have to
 25 know that the individual lives at the address that

1 get the data to the extent we could. So I'm sure
 2 there's some information on our voter registration
 3 system that does it. How complete it is I'm not
 4 sure.
 5 Q Okay. So when you say clerks could skip it --
 6 A I'm speculating on whether they could skip it or not.
 7 Q Okay.
 8 A Whether it's a mandatory field to enter on the voter
 9 record. Sorry to get ahead of you there.
 10 Q No, it's okay. To the extent that they could skip
 11 it, that would mean that the number of corroborations
 12 was higher than the SVRS would suggest, right?
 13 A That could be a possibility.
 14 Q Is there any reason to think that the SVRS would
 15 overreport the number of corroborations?
 16 A No.
 17 Q All right. Let me show you another document,
 18 Kennedy 10.
 19 (Exhibit 10 is marked for identification)
 20 A Okay.
 21 Q All right. First of all, this is a string of emails
 22 among GAB staff, right?
 23 A Well, it starts with an inquiry from Milwaukee
 24 Journal Sentinel.
 25 Q Thank you. Following that, it's a string of emails

1 they say they do and they have to state so under
 2 penalty of perjury.
 3 Q All right. So a student who lived in a dorm, for
 4 instance, could likely corroborate a number of
 5 people?
 6 MR. MURPHY: Object to the extent it
 7 calls for speculation, but you may answer.
 8 A Again can it be done fraudulently? I'm sure it could
 9 be. But the question is on any case, I don't know.
 10 I just know what's required of that, and if there's a
 11 failure on that, then ultimately it's the district
 12 attorney who is going to prosecute that, but it needs
 13 to be brought to the DA's attention with enough facts
 14 that they could evaluate it.
 15 Q Do you know how many voters registered through
 16 corroboration before it was eliminated?
 17 A I don't know if we have very good data on that. We
 18 tried when we built the statewide voter registration
 19 system to identify the method by which -- what type
 20 of proof of residence was used, which included
 21 collecting information about corroboration and, you
 22 know, how accurate the clerks were in completing
 23 that. It wasn't -- I don't think it was a mandatory
 24 field in the sense that they could skip it. But, you
 25 know, it was something that we wanted to be able to

1 among GAB staff, is that right?
 2 A That's right.
 3 Q Let me just ask you, first of all, who some of these
 4 people are. Who is Sarah Whitt?
 5 A Sarah Whitt is our technology lead for our voter
 6 registration system. She probably knows more about
 7 the data fields and structure. She's sort of, you
 8 know, the person that is the go-to on the ground with
 9 any of our developers, any of -- you know, when we
 10 were looking to develop things like online
 11 registration or other projects. She's nationally
 12 recognized for her knowledge in voter registration
 13 structures data.
 14 Q So if you wanted to obtain data from the SVRS about a
 15 particular election practice, say, she's the person
 16 you'd go to?
 17 A She'd be the person I would ask if we could get it.
 18 I'd probably have someone else do the work, but she
 19 would be the bigger picture person. I mean she could
 20 do it, but it might not be the best use of her
 21 resources.
 22 It would be more of, all right, if I'm looking
 23 to get this information, how could we do it, can we
 24 talk through it. She would be my subject matter
 25 expert in that area.

1 Q And who is -- and I apologize if I mispronounce this,
 2 Kamalakar Pasikanti?
 3 A Kamal is -- we call him Kamal -- is one of our
 4 contract programmers who has been -- that works on
 5 our statewide voter registration system.
 6 Q And Ann Oberle?
 7 A That's right. Ann Oberle is the -- her primary
 8 responsibility is testing the statewide voter
 9 registration system. In other words, every time we
 10 have to make a change in it, she's the one that
 11 oversees the internal testing that we do on that, but
 12 she has a number of other responsibilities. I mean
 13 she runs our statewide canvass, those interfaces with
 14 that.
 15 Like Sarah, she probably has the most knowledge
 16 of a permanent staff person in terms of the structure
 17 of the database and how it works and where we can
 18 extract data.
 19 Q Is Sarah Whitt her supervisor?
 20 A No, Ross Hein supervises both of those individuals.
 21 Q And David Umhoefer is a reporter with the Milwaukee
 22 Journal Sentinel, right?
 23 A That's right.
 24 Q So this email indicates that Mr. Umhoefer was
 25 requesting information about corroboration, right?

1 A That's right, but that number is a very low number to
 2 begin with. I mean when we look at the source of
 3 registration, people who register in the clerk's
 4 office before Election Day -- I mean because during
 5 this time period, you only had to provide proof of
 6 residence in two circumstances, Election Day
 7 registration and late registration in that 20-day
 8 period. And the number of people statically who
 9 register in the clerk's office is very small, it's
 10 always less than one percent of voters. It might
 11 have been higher in 2006 simply because that's when
 12 statewide registration went into effect.
 13 So if you look at the number of Election Day
 14 registrations in 2006 compared to 2010, 2006 was the
 15 year that we required every voter in the state to be
 16 registered as opposed to prior to that time if you
 17 were in a smaller municipality, there was no voter
 18 registration requirement and so a number of people,
 19 that was the first time they were ever asked to fill
 20 out a registration form and so we caught them on
 21 Election Day.
 22 Otherwise the numbers tend to be closer
 23 percentagewise to what you see for 2010 for off year
 24 elections.
 25 Q Okay. And so I take the point that there are a

1 A That's right.
 2 Q And in response, you had your staff pull that
 3 information, correct?
 4 A We did.
 5 Q And let me direct your attention to the fourth page
 6 of the document, which contains a big chart. Now,
 7 this chart is information that your staff provided to
 8 the Milwaukee Journal Sentinel, right?
 9 A That's correct.
 10 Q And that's because you believed it was accurate?
 11 A Yes.
 12 Q And this chart, among other things, includes the
 13 total number of Election Day registrations for the
 14 2006, 2008 and 2010 general elections?
 15 A Yes.
 16 Q And then it shows the number and percentage of
 17 Election Day registrants who registered through
 18 corroboration, right?
 19 A Yes.
 20 Q In other words, they proved their residence through
 21 corroboration?
 22 A Yes.
 23 Q Now, this does not include the number of voters who
 24 registered using corroboration prior to Election Day,
 25 is that right?

1 smaller percentage of voters who vote absentee in
 2 person, register at the same time that they do that,
 3 than the number who do Election Day registration?
 4 A Yeah, it's a much, much smaller number.
 5 Q Within that universe, though, do you know what the
 6 percentage who use corroboration is?
 7 A I'd actually have to go back and see whether
 8 corroboration was an acceptable option. It probably
 9 was, but I don't recall. And again I would just
 10 stop -- it would have been probably more difficult if
 11 you saw Sarah's instructions on how to identify an
 12 Election Day registrant.
 13 There were certain assumptions we had to make to
 14 figure out that that person actually did register on
 15 Election Day based on the timing, the date that --
 16 the information that the clerk put into the system.
 17 Q Let me then direct your attention to the first page.
 18 A Okay.
 19 Q And there's another chart about three emails down.
 20 Now, you're not copied on that email, right?
 21 A No.
 22 Q Are you familiar with that chart?
 23 A I think this is the first time I saw it. It might
 24 have been discussed with me, but it was something I
 25 think people were just -- Reid asked some more

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1 follow-up questions and so they did some more
 2 digging.
 3 Q So just to be clear, you're familiar with, generally
 4 speaking, with what the content of the chart is but
 5 not the chart itself?
 6 A I don't recall seeing it. I don't recall discussing
 7 it. It doesn't mean that -- I mean once my staff
 8 starts looking at something, they may -- I could see
 9 from the pattern of emails that Reid raised a couple
 10 of questions in anticipation of press follow-up
 11 questions. And that led them to do some more number
 12 crunching to see what they could come up with.
 13 MR. KAUL: Actually why don't we go
 14 off the record for just a moment.
 15 THE VIDEOGRAPHER: We are off the
 16 record at 12:17.
 17 (Short recess is taken)
 18 THE VIDEOGRAPHER: We are back on the
 19 record at 12:29.
 20 Q All right. Director Kennedy, let me show you another
 21 document, Kennedy 11.
 22 (Exhibit 11 is marked for identification)
 23 Q And I'll also tell you right now my plan is to ask
 24 you about this document at two different portions
 25 today, time permitting.

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1 eliminates the opportunity for voters registering to
 2 vote at the polling place on Election Day or in the
 3 office of the municipal clerk after the close of
 4 registration from using a corroborator to vouch for
 5 the voter's residence." Do you see that?
 6 A I see that.
 7 Q So that answers our first issue from before. It
 8 indicates that corroboration is permissible during
 9 the early voting -- I'm sorry, the in-person absentee
 10 voting period, right?
 11 A Yes, it does. And I'm comfortable if I said it in my
 12 testimony that I don't have to go back and review the
 13 statute.
 14 Q Okay, good. And then you wrote, "It appears this
 15 proposal is driven by the perception the voter who
 16 needs a corroborator is more likely to commit fraud."
 17 Do you see that?
 18 A I see that.
 19 Q And why did you say it appeared that that was the
 20 case?
 21 A I say that because the main arguments that were used
 22 for voter identification by its proponents were to
 23 eliminate fraud and since this was included in that
 24 legislation, even though it had more to do with voter
 25 registration than it did with voter identification, I

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1 A Okay.
 2 Q Much of it relates to the voter identification law,
 3 but right now I'm planning to ask you about
 4 corroboration, which is discussed at the end, but
 5 take as much time as you need to make yourself
 6 comfortable with the document.
 7 First does this appear to be a true and accurate
 8 copy of the written testimony that you submitted to
 9 the Wisconsin Assembly Committee on Election and
 10 Campaign Reform on April 27th, 2011?
 11 A Yes.
 12 Q And as I mentioned, I just want to ask you about the
 13 corroboration part right now. So let me direct you
 14 to Page 11. First this testimony was provided in
 15 response to a bill that was a predecessor to what
 16 ultimately became Act 23, is that right?
 17 A Yes. I guess I'm not -- I don't remember exactly
 18 which bills. I thought it was the Assembly version
 19 that ultimately got enacted into law, but it might
 20 have been.
 21 Q Okay. The same --
 22 A Yeah.
 23 Q -- issues are discussed, is that right?
 24 A Right, um-hum.
 25 Q And first of all, this says, "The legislation

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1 wanted -- it seemed appropriate to make that comment.
 2 Q Okay. And then the next sentence you wrote, "Based
 3 on statistics collected by our staff from municipal
 4 clerks, it appears most of these voters have the
 5 required photo identification." And then you write,
 6 "It is not current, so it cannot be used to establish
 7 proof of current residence."
 8 What, if any, relationship did that have to the
 9 fraud point you had just made?
 10 A Well, it points out that the people who are having
 11 someone corroborate for them were having them do it
 12 not because they lacked proper identification to
 13 establish who they were but that the identification
 14 didn't establish that they lived at the location they
 15 wanted to register to vote for because it wasn't
 16 current.
 17 And one of the requirements for proof of
 18 residence, which is what we're talking about there,
 19 is that the identifying document be current with --
 20 you know, the Legislature drew a distinction on that
 21 for voter identification, meaning photo ID, by not
 22 having the same currency requirements, recognizing
 23 that the driver's license is the last eight years and
 24 people often don't -- only update them online and
 25 don't get a new one reissued.

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1 Q So am I righting in understanding this to mean that
 2 many voters who use corroboration to register had a
 3 form -- had a driver's license with the address at
 4 which they registered, but they couldn't use it for
 5 proof of residence because it was expired?
 6 A That's right.
 7 Q And then the next sentence you indicate that,
 8 "Municipal clerks have informed our staff this could
 9 work a real hardship on the elderly and women." Do
 10 you see that?
 11 A Yes, um-hum.
 12 Q And why did you write that?
 13 A Because that was the feedback we got from a number of
 14 clerks who felt strongly that corroboration should
 15 not be eliminated and that was what they articulated,
 16 that elderly people and women that they had from
 17 their own experience often did not have current
 18 identifying documents that listed their name and then
 19 go on to explain that things like bank statements and
 20 utility bills are often in the name of someone else.
 21 Q I'm going to move on to a different topic. I'd like
 22 to ask you next about statewide special registration
 23 deputies. One of the changes to the election laws in
 24 2011 is that the Legislature eliminated the authority
 25 of the GAB to appoint special registration deputies,

1 A That's right.
 2 Q How were statewide -- if I call them statewide SRDs,
 3 do you understand I'm referring to the GAB --
 4 A The GAB.
 5 Q Sorry, GAB trained SRDs?
 6 A Yes.
 7 Q How were statewide SRDs trained when GAB had the
 8 authority to train them?
 9 A We developed a training program which we shared with
 10 municipal clerks and we -- and we would hold training
 11 programs at various locations around the state. I
 12 had one staff member who did that. We would also --
 13 I believe we also designated certain municipal clerks
 14 and county clerks with the authority to do that
 15 training for us.
 16 Then we assigned them a number and they were
 17 required to list that number on their registration
 18 forms when they were completing them. But it was
 19 basically we used one format for that and we also
 20 required that municipal clerks when they train their
 21 own registration deputies had to use the same format,
 22 same training.
 23 Q Okay. So municipal clerks were doing the same
 24 training that you were doing?
 25 A Right.

1 correct?
 2 A Yes.
 3 Q And prior to that time, the GAB and only the GAB
 4 could appoint special registration deputies who had
 5 the authority to register voters who resided anywhere
 6 in the state, right?
 7 A That's right.
 8 Q Municipalities can also appoint special registration
 9 deputies, right?
 10 A Municipal clerks can, yes.
 11 Q And those clerks -- I'm sorry, those special
 12 registration deputies are only authorized to register
 13 voters who reside in the municipality that the clerks
 14 serve, right?
 15 MR. MURPHY: Objection, requires a
 16 legal conclusion, but you can answer.
 17 A That's right.
 18 Q Can county clerks appoint special registration
 19 deputies?
 20 A I don't know if they currently -- if that was a
 21 change, but I don't think so.
 22 Q Okay. So as a result of the change in 2011, special
 23 registration deputies can no longer be appointed with
 24 authority to register voters on a statewide basis,
 25 right?

1 Q And in fact, some of the municipal clerks were doing
 2 your training?
 3 A They were, but they had to be specifically authorized
 4 by us to do it.
 5 Q And in your view, were the trainings done
 6 professionally?
 7 A I think the trainings were done professionally.
 8 Q So the people you were training were well trained?
 9 A Yes.
 10 Q So currently if a special registration deputy is
 11 deputized or appointed in a particular city, say
 12 Madison, and a voter from Fitchburg wants to
 13 register, can that special registration deputy
 14 register the voter?
 15 A No, they can't.
 16 Q Do you know whether this change in the law has had
 17 any impact on voter registration drives?
 18 A On the drives? It's forced the drives to probably
 19 change their approaches. Instead of collecting the
 20 forms and delivering them to the clerk, they would
 21 have to mail them because anyone can have someone
 22 fill out a form and they can be mailed in to the
 23 clerk.
 24 So photo registration drives would probably have
 25 to treat this as very similar to the kind of outreach

1 they do where they send -- where they mail a form to
 2 people to register to vote and the people would be
 3 handing it out, like assisting in filling it out, but
 4 it couldn't be personally delivered to the clerk. It
 5 would have to be mailed to the clerk. And I think
 6 the other distinction was that if you have a special
 7 registration deputy, there's not a confirmation
 8 mailing, but there was for mail-in registration.
 9 Q Okay. And has GAB assessed the race or ethnicity of
 10 voters who tend to register at voter registration
 11 drives, how that compares to the overall population?
 12 A No.
 13 Q What, if any, election administration interests were
 14 served by the elimination of statewide SRDs?
 15 A Well, on one level, it's hard to say. I do know that
 16 it was not something we opposed. On this, I mean I
 17 think our experience with statewide registration
 18 deputies were that there were several very good ones,
 19 but most of the forms that get completed as a result
 20 of voter registration drives or many of the forms, I
 21 shouldn't say most, and by mail tend to be hard to
 22 read, inaccurate and in many cases people who have
 23 already -- who are already registered in the system.
 24 That's one of the reasons why we push online
 25 registration. The problems we get from registration

1 successful in terms of when they do their outreach.
 2 Q Let me also ask about special registration deputies
 3 at high schools and I guess about registration in
 4 high schools generally. So one of the changes in
 5 2011 is that the Legislature eliminated the
 6 requirements that SRDs be appointed at public high
 7 schools, correct?
 8 A Yes.
 9 Q The requirement that in certain circumstances, SRDs
 10 be appointed at or sent to private high schools or
 11 tribal schools?
 12 A I'm not quite as familiar with that provision. I
 13 know that it was eliminated. I think that was
 14 discretionary with the municipal clerk to allow that.
 15 I'd have to go back and look.
 16 Q Okay. And one of the other changes in 2011 was that
 17 the Legislature eliminated the requirement that voter
 18 registration applications from enrolled students and
 19 members of the high school staff be accepted at high
 20 schools, right?
 21 A Isn't that the same comment about eliminating special
 22 registration deputies? I'm not quite sure what
 23 you're getting at.
 24 Q I guess it's the flip side of the same coin, right?
 25 A Yeah.

1 by mail and registration drives tend to be things
 2 that drive up the cost of registering voters.
 3 Q Okay. And we were talking a minute ago about how
 4 voter registration drives now need to do -- need to
 5 submit registrations by mail rather than in person,
 6 right?
 7 A I'm saying that that's an avenue that voter
 8 registrations can use without any special
 9 registration deputies, that when they collect it,
 10 they just have to make sure that they're mailed to
 11 the appropriate municipal clerk.
 12 Q And you said that the ones that are received by mail
 13 are the ones that have created the problems
 14 eventually, right?
 15 A No. I think we had equally problems with special
 16 registration deputies, meaning that the forms were
 17 difficult to read, they were delivered to the wrong
 18 municipal clerks. They registered voters who were
 19 already registered.
 20 Q Okay. And special registration deputies remain in
 21 place, right?
 22 A They remain in place on the municipal only basis.
 23 You know, some enterprising special registration
 24 deputies have gotten -- tried to get deputized in
 25 adjoining municipalities so that they can be more

1 Q And what, if any, election administration interest
 2 does that change serve?
 3 A I'm not sure exactly. I mean registration in high
 4 schools came about in the 1970s, late '70s, and I
 5 think it was assessed now that we had 18-year-old
 6 voters that we should try and provide opportunities
 7 as best we could for reaching out to them.
 8 Back then all registration was pretty much paper
 9 driven even though we did have Election Day
 10 registration at the time, but I think there was much
 11 more of a commitment in the '70s to -- at least in
 12 Wisconsin to finding, expanding the opportunities of
 13 where we would present a registration form to voters
 14 to get them onto the list.
 15 I think the political climate changed since then
 16 to focus more on getting accurate, complete and not
 17 redundant voter registration forms, and that might be
 18 one of the things that was driving this.
 19 Q Okay. But is it fair to say you're speculating when
 20 you say that --
 21 A Yes, I am.
 22 Q Okay. And by definition, Wisconsinites who are under
 23 18 years of age can't register, right, unless they're
 24 going to be 18 by the election?
 25 A They have to be 18 by Election Day. You know, we

1 don't collect -- we don't actively collect
 2 registration forms. If it appears they're going to
 3 be 18 by Election Day, it gets marked in the poll
 4 list so that we can turn it on on Election Day.
 5 But unlike some states that will register 16 and
 6 17 year olds and then turn it on, for us it's
 7 mostly -- we don't actively do that. Our law doesn't
 8 specifically permit a 16 year old to register and not
 9 be able to vote until then. What we do is if we
 10 happen to get a form, our system is set up so that
 11 they won't show up as an active voter until they turn
 12 18.
 13 Q And you would agree that the vast majority of
 14 Wisconsinites become eligible to vote when they're
 15 attending high school, right?
 16 A I wouldn't know that. My daughter didn't turn 18
 17 until a week before she started college, or her best
 18 friend. If you figure they get out of school by the
 19 end of May, that's five months out of the year --
 20 most people turn 18 sometime in the senior year.
 21 You'd have to figure -- there's a number ways to
 22 calculate that, but a lot --
 23 Q Let me ask a different --
 24 A -- of high school seniors do turn 18, but I don't
 25 know if it's the vast majority.

1 Q So the previous rule, though, meant that every public
 2 high school student had a chance to register right at
 3 their high school?
 4 A Yes.
 5 Q All right. Now, are you also aware that Madison for
 6 a period of time had an ordinance that required
 7 landlords to provide voter registration applications
 8 to new tenants?
 9 A I remember that, yes.
 10 Q And is it your understanding that in 2013 the
 11 Legislature passed a bill that, among other things,
 12 eliminated that requirement in Madison?
 13 A It prohibited that requirement. It prohibited
 14 requiring it, yes.
 15 Q Now, this requirement had made registration easier
 16 for some voters in Madison, right?
 17 MR. MURPHY: Object to form.
 18 A Well, it provided a registration form to a very
 19 mobile population.
 20 Q Right. And voters who move and intend to remain at
 21 their new location for -- and have been there for 28
 22 days are required to reregister, right?
 23 A If they want to vote, yes.
 24 Q Fair enough. Do you know how Madison's population
 25 compares to the rest of the state in terms of its

1 demographics?
 2 A I know what you've said in your complaint, and it
 3 jibes with my sense. I mean I've lived in Madison
 4 all my life, so --
 5 Q Is there any election administration interests served
 6 by preventing Madison from requiring landlords to
 7 provide registration voter applications to tenants?
 8 A Again I already said it provides a registration form
 9 to a very highly mobile population.
 10 Q Sorry. I mean to be asking the reverse question. Is
 11 there any interests served in getting rid of that
 12 requirement?
 13 A The interest that could be served based on my
 14 observations of forms that are filled out by hand are
 15 that they would be less -- they're more likely to be
 16 illegible, not delivered to the right location. You
 17 know, that's been one of the constant complaints that
 18 local election officials have had is the quality of
 19 registration forms that are not completed
 20 electronically or in their presence.
 21 Q Right, okay. And voters can still register outside
 22 of the presence of --
 23 A They can.
 24 Q And in fact, the window during which voters could
 25 both register and vote was reduced by the early

1 voting legislation we were discussing before, right?
 2 A The late registration still closes 20 days out. So
 3 if someone could register late but not be able to
 4 vote in-person absentee the same day they registered,
 5 but again that's a very small number of people that
 6 take advantage of that based on the numbers we've
 7 gathered, but they could still vote in absentee
 8 ballot if it was mailed to them and they could still
 9 vote at the polls on Election Day.
 10 So I'm not sure that it doesn't -- it's just the
 11 contemporaneous voting that you're talking about, I
 12 think, which again is a relatively small number of
 13 people who are not registered who try to -- who
 14 register during that late period.
 15 Q And to eliminate this problem we've been discussing
 16 about -- the problem with mailed in ballots and
 17 ballots filled out at registration drives that are
 18 either redundant or not --
 19 A You meant registration forms, not ballots.
 20 Q Sorry, yes. That are filled out in sloppy
 21 handwriting or that are redundant as you've been
 22 discussing, the only way to eliminate that problem
 23 would be to eliminate all forms of registration other
 24 than in person and electronic registration, right?
 25 A I would say the best way to deal with that problem is

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1 to utilize online registration or an online
 2 registration tool.
 3 Right now we have a tool where you can go onto
 4 our website and draw your registration information,
 5 print it out and send it to the municipal clerk and
 6 it's more likely to be legible and accurate.
 7 Q How does that differ from online voter registration?
 8 A It differs from online registration in that while we
 9 will -- when they enter -- I should preface we just
 10 converted our voter registration system. It's no
 11 longer SVRS. It's WisVote, and it's been totally
 12 rewritten. It just went live on Monday,
 13 January 11th.
 14 And in the process, we've had to make some
 15 changes to our online registration tool. You can
 16 still go on, type everything in and print it out
 17 prior. But because we haven't synced up everything
 18 with that tool with the new system and won't probably
 19 until June, what we were doing is when they would
 20 enter that information, it would be stored in our
 21 voter registration system so it didn't have to be
 22 rekeyed by the clerk.
 23 But you know, in order to get our system rolled
 24 out, we had to make some choices where we were going
 25 to put our work, and so for the next five months,

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1 the data, so it saves some data entry costs. It
 2 prints it out in the appropriate form.
 3 Also online registration now under the proposals
 4 would eliminate having to provide a separate proof of
 5 residence document because the residence would have
 6 been confirmed against the DMV database.
 7 Q All right. Let me ask you about dorm lists for
 8 registration. First of all, when I say dorm lists,
 9 do you understand that I'm referring to the lists
 10 that colleges provided to municipal clerks in
 11 connection with voter registration?
 12 A Yes.
 13 Q So under the law prior to 2011, a voter could use a
 14 college ID as proof of residence for voter
 15 registration if the college that he or she attended
 16 sent a dorm list to a municipal clerk and he or she
 17 was on that list, right?
 18 MR. MURPHY: Object to form.
 19 A They could. The list had to be certified by the
 20 college, but it still could to be.
 21 Q And in 2011 the law changed so that colleges also had
 22 to certify the citizenship of the students on the
 23 list, right?
 24 A That's correct.
 25 Q Now, has that requirement created any issues?

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1 people can still get the nice looking form, but we
 2 won't be storing the data in WisVote until we have
 3 updated that component.
 4 Q But so how does using the online form differ from
 5 what voters would be able to do if there were an
 6 online voter registration law passed?
 7 A Good follow-up. With online voter registration, one
 8 of the requirements when you register to vote is it
 9 has to be matched against your driver's license if
 10 you submit that, which is a new requirement that we
 11 have on it. It gets matched against the DMV
 12 database.
 13 If you don't have a driver's license or a
 14 state-issued ID, you have to list the last four
 15 digits of your Social Security number and that gets
 16 matched against the Social Security database. And
 17 because we don't have a live connection yet with the
 18 Department of Transportation, we can't do that type
 19 of online registration, which is something we need to
 20 be authorized by the law and we expect the current
 21 Assembly Bill 389 to do.
 22 And so we would not have that automatic check
 23 that would get them registered as soon as they fill
 24 out the form, but the proposed legislation would
 25 allow that. What it does do, as I said, it collects

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1 A I don't know. I don't have any information or data
 2 on that. I've read the concerns that are raised by
 3 the fact that it runs counter to information that's
 4 required under federal education laws, but what the
 5 actual impact has been I don't know.
 6 Q Okay. Do you know prior to the change in the law how
 7 many voters registered through that method with the
 8 dorm list?
 9 A I don't know.
 10 Q Do you know which colleges sent dorm lists to clerks?
 11 A I think most -- I guess I shouldn't say. I know a
 12 lot of the private colleges definitely did. I don't
 13 know about the state colleges, state universities.
 14 Q Do you know how many colleges currently provide dorm
 15 lists?
 16 A I don't.
 17 Q I'll show you a couple of exhibits. This one is
 18 Kennedy 12.
 19 (Exhibit 12 is marked for identification)
 20 A Okay.
 21 Q All right. Now, first of all, this is an email
 22 exchange that Michael Haas forwarded to several other
 23 members of the GAB staff, right?
 24 A Yes.
 25 Q And it's an exchange between him and representatives

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1 from the University of Wisconsin-Madison and
 2 Milwaukee and then a third individual, is that right?
 3 A I think it's -- the UW-Madison and the UW System
 4 themselves. Matt Lind represent the UW System, which
 5 is all campuses, and UW-Madison is counsel
 6 Nancy Lynch.
 7 Q Okay. So it's a representative from the UW System,
 8 University of Wisconsin-Madison and University of
 9 Wisconsin-Milwaukee, is that right?
 10 A I don't know. I didn't see a Milwaukee person on
 11 here.
 12 Q There's a jurdan@uwm.edu.
 13 A Okay. And I don't see them weighing in, but I see
 14 that they're copied, so I assume that's UW-Milwaukee,
 15 but I don't know.
 16 Q All right. And let me direct your attention to the
 17 third page. There's a section that starts with
 18 residency and then it says on campus.
 19 A Yes.
 20 Q All right. Now, in this email, Ms. Lynch from
 21 UW-Madison is reporting that under the Family
 22 Education Rights and Privacy Act, universities and
 23 colleges are not permitted to disclose information
 24 about a student's citizenship, is that right?
 25 A That's what I read, yes.

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1 outcome of the problem. It just makes it more
 2 difficult to use a list for proof of residence in
 3 conjunction with an ID card.
 4 Q The next sentence says, "No other voters are required
 5 to show proof of citizenship as a requirement of
 6 voting other than certifying their citizenship on the
 7 registration form." Do you see that?
 8 A I see that.
 9 Q Is that correct?
 10 A It's correct in the sense that to register to vote,
 11 all you normally have to do is just sign the
 12 statement saying you're a U.S. citizen. You actually
 13 do it twice. You check a box and as part of your
 14 verification, you indicate you're a U.S. citizen.
 15 This isn't, you know, here it's a question of -- I'm
 16 not so sure you're showing your citizenship. I mean
 17 but Mike points out that in order to get on this
 18 list, you have to be a U.S. citizen. It's one of the
 19 requirements that the Legislature has put in.
 20 Q Okay. We'll go a few more minutes and then we'll
 21 take a lunch break. If I can find my document. This
 22 is Kennedy 13.
 23 (Exhibit 13 is marked for identification)
 24 A Okay.
 25 Q Do you recognize this document?

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1 Q And so she and Mr. Haas are trying to identify means
 2 of permitting voters to register via the dorm list
 3 option without violating that law, is that right?
 4 A Well, I'm not sure it's specific to the dorm list as
 5 much as it is the proof of residence because they're
 6 talking about an enrollment certification and I guess
 7 it does talk about the housing list as well. But I
 8 understand they're trying to work through that
 9 problem that the Family Education Rights Privacy Act
 10 restricts them on in terms of that list.
 11 Q Okay. And then there's a response below that. Is it
 12 your understanding that that's a response from
 13 Mr. Haas?
 14 A Yes.
 15 Q And in the middle of that email or that response,
 16 rather, I guess the second sentence, halfway through
 17 he says that he doesn't believe the Legislature
 18 anticipated the problem with FERPA rules. Do you see
 19 that?
 20 A I see that.
 21 Q Do you agree that there's a problem with the FERPA
 22 rules with this dorm list bill?
 23 A Well, to the extent that it limits what the
 24 university can provide or makes it more difficult for
 25 what they can provide. You know, it does present an

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1 A I do.
 2 Q What is this?
 3 A It is a memorandum that was prepared by our staff to
 4 be distributed I think primarily to municipal clerks
 5 and universities about proof of residence for
 6 registration.
 7 Q And did you approve this memorandum before it went
 8 out?
 9 A I definitely did, yes.
 10 Q And the paragraph at the bottom of the first page
 11 indicates that FERPA restricts the disclosure of
 12 student citizenship status by most educational
 13 institutions, do you see that?
 14 A Yes.
 15 Q And then it goes on to discuss FERPA in more detail.
 16 Do you agree with the statements here about FERPA?
 17 Are they accurate?
 18 A These are -- this reflects my understanding of the
 19 law.
 20 MR. MURPHY: A belated objection to
 21 the extent it calls for a legal conclusion.
 22 Q Okay. And what I meant to ask, is it consistent with
 23 your understanding of how FERPA impacts voters
 24 attempting to register with the dorm list option?
 25 A Yes.

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1 MR. KAUL: Let's take our break now
 2 then.
 3 THE VIDEOGRAPHER: The time is 1:12
 4 p.m. We are going off the record concluding
 5 Disk No. 2 in the deposition of
 6 Kevin J. Kennedy.
 7 (Lunch recess is taken)
 8 (1:12 p.m. to 2:08 p.m.)
 9 THE VIDEOGRAPHER: We are on the
 10 record. The time is 2:08 p.m. This marks the
 11 beginning of Media No. 3 in the deposition of
 12 Kevin J. Kennedy.
 13 Q Director Kennedy, we'd been talking about the
 14 registration laws before and there's one more subject
 15 area I want to go over in that realm, which is the
 16 change to the documentary proof of residence law.
 17 And just to be clear, prior to 2013, voters were
 18 required to show documentary proof of residence when
 19 registering only if they were registering fewer than
 20 20 days before an election, right?
 21 A Twenty days or less.
 22 Q Okay.
 23 A Including Election Day.
 24 Q And now all voters other than overseas and military
 25 voters are required to provide documentary proof of

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1 residence with their voter registration even if they
 2 register 20 or more days before an election, is that
 3 right?
 4 A I believe so. I'm trying to think about if we
 5 have -- the exceptions I'm thinking about are photo
 6 ID, so yes.
 7 Q Okay. And what, if any, interests in election
 8 administration are served by that change in the law?
 9 A Well, the practical considerations that when you have
 10 the form, you can compare it to the proof of
 11 residence to make sure that it's accurate, that it
 12 corrects some entry errors that assures the public
 13 that when someone filled out a registration form,
 14 they provided some evidence that they really live at
 15 the address that they're registering from.
 16 Q And previously if voters registered more than 20 days
 17 before an election without proof of ID, they did
 18 still need to provide proof of -- I'm sorry, proof of
 19 residence, they still needed to provide proof of
 20 residence when they showed up to vote, correct?
 21 MR. MURPHY: Object to form.
 22 A No.
 23 Q Okay. So voters didn't have to provide proof of
 24 registers?
 25 A If you're already on the voter registration --

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1 MR. MURPHY: Go ahead.
 2 A If you're already on the voter registration list, the
 3 only time you had to provide proof of residence was
 4 if you were a first-time voter who had registered by
 5 mail.
 6 Q Okay.
 7 A And that was a federal requirement that the state
 8 adopted from the Help America Vote Act, so that only
 9 kicked in starting in 2006.
 10 Q Okay. So prior to the 2013 change then with proof of
 11 registration -- I'm sorry, proof of residence, a
 12 voter could register, for example, with an SRD more
 13 than 20 days before the election and that voter
 14 wouldn't have to show proof of residence, is that
 15 right?
 16 A That's right.
 17 Q A voter could also register in person at the clerk's
 18 office, right?
 19 A That's right.
 20 Q Without showing proof of ID?
 21 A That's right.
 22 Q Now, there is a confirmation process that the clerk's
 23 office used to confirm residency, right?
 24 A That's correct.
 25 Q How does that work?

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1 A Basically when someone registers to vote, they send
 2 them a confirmation mailing and if it comes back
 3 undeliverable, they inactivate them in our voter
 4 registration system and in a follow-up with them
 5 have the person reregister if they can.
 6 Q How long does that process take?
 7 A It depends how quickly the clerk gets it out and the
 8 mail delivery service. There's a lot of variables to
 9 that.
 10 Q Is there a typical amount of time?
 11 A I wouldn't know.
 12 Q Do you know how, if at all, this change has made
 13 registration more difficult for voters?
 14 MR. MURPHY: Object to form.
 15 A Well, it requires an extra step for voters to have
 16 the document or a copy of the document if they're
 17 going to mail in the registration.
 18 Q New, this change doesn't only apply to by mail
 19 registrations, right?
 20 A No, it applies to any registration.
 21 Q Since this change in the law, is it your
 22 understanding that clerks' offices have received
 23 numerous registration forms that didn't have proof of
 24 residence included with them?
 25 A I don't know. I don't know what kind of contact our

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1 staff has had for that. I haven't been monitoring
 2 very closely, so I don't know.
 3 Q And do you know whether groups involved in voter
 4 registration, if many of them continued to use forms
 5 following the change in the law that did not solicit
 6 proof of registration?
 7 A It's not unusual that voter registration groups don't
 8 avail themselves of the most current forms, whether
 9 they're doing it by mail or whether they're doing it
 10 in voter registration drives.
 11 We spend a lot of time troubleshooting voter
 12 registration drives either by mail, trying to get
 13 them to make sure that they are paying attention to
 14 the law and using the correct forms.
 15 Q Okay. And the DMV actually also didn't update its
 16 system to reflect this change following the
 17 implementation of this law, did it?
 18 A I don't know.
 19 MR. MURPHY: Object --
 20 Q Let me show you a document. This is Kennedy 14.
 21 (Exhibit 14 is marked for identification)
 22 Q All right. Does this appear to be a news report from
 23 July 2014?
 24 A Yes.
 25 Q And the report cites statements from you, is that

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1 it's one of your clients that was mailing those forms
 2 out.
 3 Q Okay. So the voter registration forms were coming in
 4 through the mail without proof of residence with
 5 them, right?
 6 A They were coming in without proof of residence and
 7 that required the clerk to follow up and say you
 8 wouldn't be registered unless you provided that
 9 proper proof of residence.
 10 Q So unless proof of residence came in, the voter would
 11 not be registered?
 12 A That's right.
 13 Q Okay. And that reference to my client before, was
 14 that -- which client was that?
 15 A I remember the attorney. It was someone at your DC
 16 office. I'm trying to think what the -- the voter --
 17 VPC.
 18 Q Voter Protection Council or commission or something?
 19 A No, it's not voter protection. But we dealt with
 20 Perkins Coie lawyers to straighten it out, that's why
 21 I remember.
 22 Q Oh, okay. Not one of our clients in this case?
 23 A No.
 24 Q Okay. Now, in the next paragraph in the second
 25 sentence, you wrote that, "Unfortunately, some

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1 right?
 2 A It does. It's based on a news release that we
 3 prepared.
 4 Q Okay. And in the second line of the article, second
 5 paragraph, I guess, it indicates that you had said
 6 that, "Many Wisconsin municipal clerks report
 7 receiving voter registrations on old forms that do
 8 not have space for newly required information about
 9 the voter's proof of residence." Do you see that?
 10 A I do.
 11 Q Did you say that?
 12 A I did.
 13 Q And is that accurate?
 14 A That's accurate. It's part of why we prepared this
 15 press release was to deal with groups that weren't
 16 updating their forms and the problems that clerks
 17 were having, although the clerks, we did remind them
 18 that they can -- just because there's not a space,
 19 they can still write the proper document on the form
 20 themselves.
 21 Q Okay. But the clerks -- were they receiving those
 22 applications in person or by the mail?
 23 A They're getting them by mail. They're getting them
 24 from the voter registration drives, which would be
 25 mail registration forms. I could remind you that

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1 organizations which register voters are still using
 2 old forms, and it is creating a lot of extra work for
 3 clerks and headaches for voters." Do you see that?
 4 A I see that.
 5 Q That is your statement?
 6 A Yes.
 7 Q And it's accurate?
 8 A It is.
 9 Q And then let me direct your attention to the second
 10 page, the only text paragraph there. It indicates
 11 that, "Mr. Haas said that some clerks were also
 12 experiencing problems with voter registration forms
 13 that have the proof of residence language in very
 14 small print." Do you see that?
 15 A I see that.
 16 Q Which is causing some voters using those forms not to
 17 send the required proof of residence document?
 18 A Yes.
 19 Q And is that accurate?
 20 A That's accurate.
 21 Q Okay. And let me clarify. It's accurate that he
 22 said that and what he said is accurate, is that
 23 right?
 24 A What he said, it reflects -- that's why we put it in
 25 the news release. We wanted to be proactive and

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1 shift the responsibility for these inaccurate forms
 2 away from municipal clerks in our office to those
 3 groups that were trying to register voters.
 4 Q Now, the proof of residence requirement has made the
 5 process of registering voters slower, is that right?
 6 A It's added an extra step to the process.
 7 Q And is it your understanding that it will also
 8 increase the number of voters who have to register at
 9 the polls because they don't properly register?
 10 MR. MURPHY: Object to form.
 11 A I don't know that it necessarily will. You know,
 12 we've only had one election since that point and it's
 13 hard to tell from the numbers given. It was a 2014
 14 election.
 15 Q To the extent that there is an increase in the number
 16 of voters who register at the polls, will that cause
 17 an increase in wait times to vote?
 18 A Well, there's a number of reasons why people would
 19 register to vote at the polls. It wouldn't be just
 20 because they were unable to register in advance, but
 21 the more people who register to vote at the polls,
 22 usually those are separate lines. So people who are
 23 already registered aren't going to have a problem,
 24 but people waiting to register will wait longer.
 25 Q And do you know whether the change in the proof of

1 residence law has deterred some individuals and
 2 groups from engaging in voter registration
 3 activities?
 4 A I don't know for sure. I've heard comments from
 5 groups that it makes it more difficult for them to
 6 conduct the drives.
 7 Q Do you recall which groups those were?
 8 A I don't.
 9 Q And are there particular groups of voters that your
 10 office has identified who have been particularly
 11 impacted by this change in the law?
 12 A No.
 13 Q What about residents of nursing homes?
 14 A There is -- I guess we have brought it to the
 15 attention of the -- that there is an issue there
 16 because they often don't lack proof of residence and
 17 there's been some legislation introduced to modify
 18 some of the documents for people who are in extended
 19 care facilities.
 20 Q And I think you accidentally misspoke, so I just want
 21 to verify something. Individuals in a nursing home
 22 often don't have proof of residence, right?
 23 A What did I say?
 24 Q I think you said don't lack.
 25 A Oh, don't lack. Yeah.

1 Q But it's they often don't have proof of residence?
 2 A They often don't have.
 3 Q And you've also explained that many students don't
 4 carry a driver's license because they live on campus,
 5 use public transportation or don't drive, right?
 6 A I made those comments in part of my testimony for the
 7 voter ID law, yes.
 8 Q Let me ask you about your testimony regarding proof
 9 of residence specifically. This will be Kennedy
 10 15.
 11 (Exhibit 15 is marked for identification)
 12 A Okay.
 13 Q And this is a copy of testimony that you submitted to
 14 the Senate Committee on Elections and Urban Affairs?
 15 A Yes.
 16 Q And I'd like to ask you about the part that discusses
 17 Senate Bill 459, and that was a bill that required
 18 electors to vote -- to provide proof of residence
 19 when submitting a voter registration form, right?
 20 A That's right.
 21 Q Do you know if this is the bill that ultimately
 22 became the law we've been discussing?
 23 A I don't know. I do know that I identified some
 24 concerns with the bill, and I think some of them have
 25 been remedied.

1 Q Okay. Which have been remedied?
 2 A I'm not sure without going back and looking.
 3 Q You wrote in your testimony that, "This creates some
 4 very practical issues because of many different ways
 5 in which voters submit voter registration forms," is
 6 that right?
 7 A Yes.
 8 Q So one of the points you raise is that it's not clear
 9 how a voter can provide proof of residence at a voter
 10 registration drive, is that right?
 11 A That's right.
 12 Q And has that problem been remedied?
 13 A I think there was a recognition that if it's a
 14 special registration deputy that they can make a
 15 notation of the type of registration on the form. If
 16 it's a mail-in registration, they can provide a copy
 17 that gets mailed in with the form.
 18 Q Okay. So if it's somebody doing the registration
 19 who's not a special registration deputy, the form can
 20 only be submitted if they're able to make a copy of
 21 proof of residence?
 22 A That's right.
 23 Q And we talked before about the changes to the special
 24 registration deputy laws, right?
 25 A That's right.

1 Q So it's now a more limited class of individuals who
2 can take that information, proof of residence
3 information, without making a copy, is that right?
4 A Well, it's more limited in the sense that they have
5 to be appointed by municipal clerks and can only
6 serve whatever jurisdiction they're appointed by.
7 Q And I meant to ask you this before, but do you know
8 how many statewide SRDs there were when the law
9 eliminating that position changed?
10 A I don't know.
11 Q And what happened to their SRD status when the law
12 changed?
13 A I believe we sent them a letter saying that they were
14 no longer registered, they were no longer registered
15 as statewide registration deputies and if they wished
16 to continue, they'd have to contact municipal clerks.
17 Q You note in the next paragraph that identifying
18 documents contain very personal information, is that
19 right?
20 A That's right.
21 Q And so has that problem been remedied in any way?
22 A It has not in the sense that special registration
23 deputies would have access to that information.
24 Q All right. And in the next paragraph you indicated
25 that, "There was no provision in the law that allows

1 Q Yeah, absolutely. Those facts are all relevant to
2 your testimony here because they're reasons that it
3 may not be necessary to require proof of residence
4 more than 20 days -- documentary proof of residence
5 more than 20 days before an election?
6 A I suppose someone could take that position and what
7 we're pointing out is that there are current checks
8 in the law. At that time there were current checks
9 in the law in addition to the proof of residence,
10 one, undeliverable mail, the person doesn't get it
11 activated. If there's a lack of a match, not so much
12 with the DMV database, unless there's no match
13 whatsoever, but if it's an inconsistent match, they
14 usually count it.
15 But if it's the driver's license doesn't turn up
16 any of it, they will be inactivated. If they show up
17 as dead, there has to be a follow-up similar as with
18 a felon. It was just to point out exactly what
19 provisions we already have in the statutes.
20 Q So just to be clear, if a voter submitted a voter
21 registration without proof of residence and that
22 voter didn't have a Wisconsin identification issued
23 from the DMV, was that application invalidated?
24 A Yes. I mean it probably wouldn't even get entered
25 into the system if that form -- if there was no

1 a voter who has submitted a voter application without
2 a proof of residence to cure that later." Is that
3 right?
4 A That's right.
5 Q And that remains true in the law that was enacted,
6 right?
7 A I don't think -- well, they have to re-register with
8 the proper proof of residence again is my
9 understanding.
10 Q All right. And the next paragraph here talks about
11 the confirmation mailing process that we had talked
12 about a minute ago?
13 A Yes.
14 Q And this states that the GAB sends these forms on a
15 weekly basis?
16 A That's right.
17 Q And you also had a number of checks that have to be
18 met as part of activating a voter registration,
19 including matches against the DMV database, death
20 records and phone records, is that right?
21 A That's correct.
22 Q And those are all reasons that proof of registration
23 may not be necessary for voters who register more
24 than 20 days before an election, right?
25 A I'm sorry, can you rephrase it?

1 driver's license or ID number listed or Social
2 Security, it wouldn't even get entered into the
3 system. The voter would be told by the clerk I can't
4 process it, I don't have all the information that's
5 required by law.
6 Q All right. And what if a confirmation mailing was
7 sent and the mailing was returned as undeliverable?
8 A Then they would already be in the system, so they
9 would be inactivated, and there's a code tied to the
10 system that says inactivated because of returned
11 mail.
12 Q And what happened when a voter was inactivated for
13 that reason?
14 A They would not show up on the poll on Election Day.
15 Q They would not be allowed to vote?
16 A Well, they would have to register again at the polls.
17 Q Absent new registration, they couldn't vote?
18 A Right.
19 Q I'm going to switch gears and talk about election
20 observers. Do you know how long Wisconsin has
21 permitted citizens to serve as election observers?
22 A There's always been some provision as long as I have
23 been working on this, and I'm sure it goes back, but
24 I haven't really researched it because we've made a
25 number of changes over the years. It used to be much

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1 more limited than it is now.
 2 Q What changes have been made over the years?
 3 A It used to be that only candidates or political
 4 parties could designate observers to be present at
 5 the polling place. Then it was expanded to allow
 6 nonpartisan groups to be approved by the State
 7 Elections Board and then was expanded to allow anyone
 8 other than a candidate who was on the ballot to be an
 9 observer.
 10 Q And when did that last expansion happen
 11 approximately?
 12 A Probably late '80s, early '90s.
 13 Q And have there been elections in which you learned
 14 that election observers were being overly aggressive?
 15 A It was not unusual for us to get complaints that they
 16 were overly aggressive.
 17 Q And has the volume of those complaints increased over
 18 time?
 19 A They increased for quite a while in early -- from
 20 2000, 2004, 2008. Probably less of a problem I think
 21 since then.
 22 Q And was one of the complaints that observers were
 23 slowing down the voting process?
 24 A I think it was more that they were interfering with
 25 the process. One of the consequences would be it

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1 it that way, but I generally don't have the
 2 demographics of a polling place or a municipality.
 3 Q Okay. And you said that your office provided
 4 guidance to local election officials, is that right?
 5 A Well, also to observers. We have a pamphlet that we
 6 prepared that we still continue to use even though
 7 it's not backed by an administrative rule.
 8 Back in -- before the 2006 election, I had one
 9 of our staff, Ross Hein, who we've identified
 10 earlier, sort of led a group where we brought in
 11 representatives of the two major political parties,
 12 League of Women Voters, other groups that we knew who
 13 were active in this and municipal clerks to try to
 14 hammer out what were reasonable guidelines for
 15 individuals on behavior by observers and reinforce
 16 what the current provisions are in the law in terms
 17 of sanctions.
 18 Q Okay. And one of the -- part of the guidance you
 19 issued I guess is that observers should be typically
 20 6 to 12 feet from the locations where voters
 21 announced their presence and where they registered to
 22 vote, right?
 23 A That's right.
 24 Q And in Racine specifically, the enforcement of that
 25 rule helped resolve some problems the city had been

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1 would slow down, it would distract poll workers, it
 2 would create a disruption at the polling place.
 3 Q And do you know which elections you received those
 4 complaints in?
 5 A Well, I think 2000 and 2004 were the big elections
 6 where we saw the most issues because it was after
 7 that that we developed a set of administrative rules
 8 which -- you know, working with various groups to
 9 provide reasonable guidelines. And since that time,
 10 the Legislature has actually directed us to
 11 promulgate rules, although they tend not to approve
 12 them when we submit them.
 13 Q And what about the 2012 recall election?
 14 A I'm sure there were some complaints about that.
 15 There were certainly a lot of -- in the 2012 recall
 16 election, I know that there was a lot of concerns
 17 about it going into the election, and as I said,
 18 there's always places where there's some incidences
 19 where this goes on.
 20 Q Have the complaints you've received come
 21 disproportionately from certain types of precincts?
 22 A It's hard to say.
 23 Q What about heavily minority precincts?
 24 A I usually don't know necessarily when we get the
 25 complaint. You know, the complainer might identify

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1 having with observers, is that right?
 2 A I'm sure in a lot of municipalities that was the
 3 case.
 4 Q You mentioned --
 5 A I mean having a definite space was what was really
 6 required.
 7 Q You mentioned before in the letter to election
 8 observers -- I'll show you a copy of that. This is
 9 going to be Kennedy 16.
 10 (Exhibit 16 is marked for identification)
 11 A Okay.
 12 Q Is this the letter to observers you were referring
 13 to?
 14 A This is one of the letters to observer organizations,
 15 yeah.
 16 Q And this was sent out under Nate Robinson's name,
 17 right?
 18 A Yes.
 19 Q Did you approve this letter?
 20 A I did.
 21 Q All right. And I'd like to ask you about some
 22 specific parts of it. In the middle of the first
 23 paragraph, the letter states that, "In recent
 24 elections, the GAB received an increasing number of
 25 reports describing aggressive or disruptive behavior

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1 by a minority of observers." Do you see that?
 2 A Yes.
 3 Q And this is dated November 1st, 2012, right?
 4 A That's right.
 5 Q And so the most recent election before then would
 6 have been the recall elections, right?
 7 A The most recent major statewide election, yes.
 8 Q And then the next sentence says, "We've also received
 9 reports regarding the apparent intentions of some
 10 observers for the election next week."
 11 A Yes.
 12 Q What is that in reference to?
 13 A I don't remember the specifics, but I know that in
 14 looking at news accounts and social media reports,
 15 you know, there were comments about people trying to
 16 be disruptive at the polling place, and again we're
 17 trying to be proactive here.
 18 Q And the first sentence that I read, you refer to
 19 aggressive -- I'm sorry, the letter refers to
 20 aggressive or disruptive behavior.
 21 A Yes.
 22 Q What type of behavior did that mean specifically?
 23 A Oftentimes it was observers who insisted on seeing
 24 voters' proof of residence documents when they were
 25 registering, complaining loudly at the polling place

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1 right?
 2 A That's correct.
 3 Q And this contains some quotes from you?
 4 A It does.
 5 Q And a little over halfway down, the second half of
 6 the paragraph, you're quoted as saying, "In recent
 7 elections, we have received disturbing reports and
 8 complaints about unacceptable, illegal behavior by
 9 observers. Voters expect a calm setting in which to
 10 exercise their right to vote." Do you see that?
 11 A I do.
 12 Q Is that a statement that you made?
 13 A It is. Or that I authorized to be made for me.
 14 Q Fair enough. Yes, that's how these press releases
 15 are drafted, right. The unacceptable and illegal
 16 behavior you're referring to, what was that?
 17 A The same thing I was describing earlier, that
 18 observers wanting to inject themselves into the
 19 administration process, being disruptive, which would
 20 be illegal. Talking to voters, which is not
 21 permitted, asking to see documents that they couldn't
 22 see or insisting on seeing documents that would
 23 disrupt the process, such as even looking at the poll
 24 book.
 25 Well, they have a right to see the poll book.

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1 that they couldn't see or they couldn't hear.
 2 Q And they're not entitled to see that, right?
 3 A They're not entitled to see the proof of residence.
 4 We state that in this correspondence, but the concern
 5 was a small number of them, that's why we used the
 6 term minority of observers, tend not to be there to
 7 observe but want to have their hands on the process,
 8 and our response is if you want to do that, become a
 9 poll worker.
 10 Q The beginning of the next paragraph indicates that,
 11 "In 2008, the GAB initiated emergency administrative
 12 rules governing the conduct of election observers
 13 which have been credited with establishing consistent
 14 treatment of observers throughout the state and
 15 preserving order at the polls during recent
 16 elections." Do you see that?
 17 A Yes.
 18 Q And one of those rules was the 6 to 12-foot rule
 19 we've been discussing, right?
 20 A That's right.
 21 Q Let me show you another documents. This is Kennedy
 22 17.
 23 (Exhibit 17 is marked for identification)
 24 A Okay.
 25 Q Now, this is a press release put out by the GAB,

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1 They don't have a right to see it whenever they want,
 2 particularly when there's a line of voters waiting to
 3 check in.
 4 Q And this was issued shortly before the August 2012
 5 primary, right?
 6 A That's right.
 7 Q And this again is after the recall?
 8 A After the recall.
 9 Q This is the document-intensive portion of the
 10 deposition. And this one is Kennedy 18.
 11 (Exhibit 18 is marked for identification)
 12 A Okay.
 13 Q Now, this exchange began with Janice Johnson-Martin
 14 emailing various people at the GAB, correct? At the
 15 top of Page 2 is where it starts.
 16 A Yes.
 17 Q And then Diane Lowe prepared a draft response, is
 18 that right?
 19 A That's right.
 20 Q Who is Diane Lowe?
 21 A Diane Lowe is our lead elections specialist. She's
 22 been there the longest and probably has the most
 23 experience of people who are sort of our front line
 24 people dealing with municipal clerks.
 25 Q Okay.

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1 A And candidates.
 2 Q Would Michael Haas be her supervisor then?
 3 A Yes. At this time it would have been Nat Robinson.
 4 Q Okay. And do you know whether you approved her draft
 5 email?
 6 A I don't know. I'm sure we probably would not have
 7 let it go out this way.
 8 Q Why do you say that?
 9 A I think we would -- I mean we would probably have
 10 some of the language. Again that's just my sense
 11 today. I would have to go see what email actually
 12 went out.
 13 Q Now, at the beginning of --
 14 A I mean I don't have much of a problem as I look back
 15 over this with her draft answers. I was thinking
 16 more about her initial part where we definitely were
 17 taking it seriously, the second part, but we probably
 18 would not editorialize too much as she started out in
 19 the first paragraph. But again I'd have to see what
 20 we filed.
 21 Q Do you disagree with the statement in the first
 22 paragraph of the draft response, the one beginning
 23 with I am so sorry?
 24 A No, I think we were sympathetic. If people have to
 25 deal with that, I think that it reflects our

1 sentiments. But in dealing with clerks and making a
 2 record, we're probably going to try and be a bit more
 3 careful on how things were phrased.
 4 Q And I don't want -- I want to make sure I'm
 5 characterizing this correctly. So would it be fair
 6 to say that your concern was more the tone of it than
 7 the substance?
 8 A Yes. I mean I think we -- you know, in the cases
 9 where we have observers who act inappropriately, it
 10 rankles us as much as it does the clerks. It's one
 11 of the challenges when you're dealing with people is
 12 how do you get them to conform their conduct to that
 13 of a civil society.
 14 Q Let me direct your attention to the email from
 15 Ms. Johnson-Martin. Who is she, by the way?
 16 A She's either the Racine city clerk or the deputy
 17 clerk.
 18 Q And --
 19 A Or she was at the time.
 20 Q And in her email, she's indicating that there were
 21 several incidents with observers in the June 5th
 22 recall election, right?
 23 A Yes.
 24 Q Now, in the second full paragraph in her email, about
 25 two-thirds of the way down, she indicates that most

1 of her poll workers are informing her that they will
 2 not work any more elections?
 3 A Is this under election officials?
 4 Q Yes, thank you. About two-thirds of the way down.
 5 A Okay, um-hum.
 6 Q She's informing your office that most of her poll
 7 workers will not work any more elections due to the
 8 treatment they received from the observers at the
 9 June 5th election, right?
 10 A That's right.
 11 Q And is that problem unique to Racine, or are there
 12 other locations that have had that problem?
 13 MR. MURPHY: Object to form.
 14 A I think Racine was particularly challenged in that
 15 election. Poll worker recruitment is a national
 16 challenge. I think larger municipalities have --
 17 because they need more poll workers and have more
 18 polling places, they have those challenges and
 19 obviously if they're in a volatile situation where
 20 observers are acting out, it makes it more difficult
 21 to retain people.
 22 Most of the people who work as poll workers, the
 23 average age is well over 60, and so I think there's a
 24 sense they have better things they can do with their
 25 time than be treated that way. But I would say that

1 Racine required and we took the initiative, as was
 2 said, with Racine to do extra training in Racine
 3 because it wasn't just the observers. There were a
 4 number of issues with the way the elections were
 5 conducted. We said, you know -- in fact, I was part
 6 of a team that went to Racine in August of 2012 to
 7 observe how the elections were conducted.
 8 Before that, we sent a team of people down to do
 9 special training for them and we worked with the
 10 mayor to give them some ideas on recruitment of poll
 11 workers and things because it was sort of pointed out
 12 as this was a problem area both in how the elections
 13 were performed and how things were done in terms of
 14 behavior of inspectors, so I think the idea was how
 15 can we best do this.
 16 We also specifically sent election -- for every
 17 election, we sent out a group of people to evaluate
 18 polling places for accessibility for people with
 19 disabilities, and we targeted Racine so that when
 20 those people went in, we asked them for the first
 21 three things, evaluate the polling place and let us
 22 know if you see whether it seems to be under control.
 23 Again you're trying to be proactive and make
 24 sure that the problems that occurred in Racine in the
 25 recall election would not be repeated in future

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1 elections.
 2 Q Now, this is one of several exchanges we've discussed
 3 so far between GAB staff members and municipal
 4 clerks, right?
 5 A Yes.
 6 Q And are municipal clerks instructed to relay problems
 7 to your office?
 8 A They are.
 9 Q And so this document we've just been going over is an
 10 example of what they're instructed to do in the
 11 ordinary course of their work?
 12 A Yes.
 13 Q Let's switch to Milwaukee. Have you also had issues
 14 with election observers in Milwaukee?
 15 A Over the years, yes.
 16 Q By issues, I mean complaints about observers being
 17 boisterous or rude or that sort of thing.
 18 A Yes, there were complaints about Milwaukee.
 19 Q This will be Kennedy 19.
 20 (Exhibit 19 is marked for identification)
 21 A Okay.
 22 Q Now, this is an email exchange between you and
 23 Michael Haas on which some other GAB staff members
 24 are copied, correct?
 25 A Well, the initial email is to all of the elections

1 were not following protocol, is that right?
 2 A Yes. I think I probably got direct phone calls from
 3 representatives of those two groups saying why isn't
 4 this happening and having to explain to them what the
 5 law permitted and didn't permit.
 6 Q Okay. And specifically the complaint was that the
 7 voters were not stating their names and addresses
 8 when requesting an absentee ballot at the absentee
 9 voting location, right?
 10 A That's right.
 11 Q And were voters required to state their names and
 12 addresses when requesting absentee ballot at the
 13 absentee voting location?
 14 A I don't believe they are. In this email I suggest
 15 that that's not the case, that because they've filled
 16 out an absentee ballot application, they've made a
 17 record of who they are.
 18 Q All right. And in Mr. Haas' response to you, he
 19 referred to a conversation he had with Neil Albrecht,
 20 is that right?
 21 A That's right.
 22 Q And Mr. Albrecht is now and I believe at the time was
 23 the head of the Milwaukee Election Commission, right?
 24 A He was -- yeah, he's the executive director.
 25 Q Thank you. That's the equivalent position to yours

1 division.
 2 Q Oh, so is the second email, I apologize.
 3 A And then Mike's response is to the same group.
 4 Q Okay. Now, this exchange was taking place -- this
 5 would have been the first day of early voting. I'm
 6 sorry, in-person absentee voting in Wisconsin for the
 7 2012 presidential election, right?
 8 A That's right.
 9 Q I'm never going to get that right. Now, you
 10 indicated that you were receiving complaints from
 11 WWWE?
 12 A Yes.
 13 Q And RPW?
 14 A Yes.
 15 Q What is WWWE?
 16 A It's a group of people from -- of women from Waukesha
 17 and probably broader. We are Watching Wisconsin
 18 Elections.
 19 Q And is that an election observation group?
 20 A Yes.
 21 Q All right. And RPW is the Republican Party of
 22 Wisconsin?
 23 A That's right.
 24 Q All right. And those groups were sending complaints
 25 suggesting that early in-person voters in Milwaukee

1 but for the Milwaukee Election Commission, right?
 2 A I don't know if it's -- it might be more equivalent
 3 to Mike's position.
 4 Q Okay.
 5 A He's not required to be a lawyer. He's simply in
 6 charge of the agency. So it's equivalent in terms of
 7 agency head, but he doesn't -- they oversee campaign
 8 finance and elections. We oversee elections,
 9 campaign finance lobbying and ethics.
 10 Q Fair enough. He's the boss?
 11 A He's the boss, if you want to say.
 12 Q That's what I was getting at.
 13 A He reports to a commission like I report to a board.
 14 Q Okay. And he's relaying that the line for in-person
 15 absentee voting was three blocks long when they
 16 opened, right?
 17 A Yes.
 18 Q And that observers were being very aggressive and
 19 that he authorized one observer who was out of
 20 control to be given a final warning before being
 21 removed?
 22 A Yes.
 23 Q And is that length of a line for in-person absentee
 24 voting in Milwaukee, is that unusual?
 25 A I don't know. Again it was the first time they were

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1 opening. A lot of attention was being presented.
 2 It's a shorter period of time. I don't know if it's
 3 unusual.
 4 Q Now, in the prior presidential election, 2008, early
 5 voting would have begun a couple weeks earlier,
 6 right -- I'm sorry, in-person absentee voting?
 7 A Yeah, because the changes came in 2010 or 2011.
 8 Q All right. The next document, this is Kennedy 20.
 9 (Exhibit 20 is marked for identification)
 10 A Okay.
 11 Q This is a letter that was sent to you from
 12 Mr. Albrecht, correct?
 13 A That's right.
 14 Q And the letter is dated November 5, 2012?
 15 A Yes.
 16 Q And did you receive this letter?
 17 A I'm pretty sure I did. I don't have a specific
 18 recollection of receiving it. But I'm familiar with
 19 the incident as it's described, so --
 20 Q Okay. And did your office -- first of all, was this
 21 sent to you due to your oversight responsibilities
 22 for elections in Wisconsin, is that your
 23 understanding?
 24 MR. MURPHY: Object to form.
 25 A I guess that's one way of characterizing it. I mean

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1 Q And this took place -- this incident took place just
 2 prior to the 2012 presidential election?
 3 MR. MURPHY: Object to form.
 4 Q If you know.
 5 A He says it happened on Friday, November 2nd, which
 6 would have been the last day of absentee voting
 7 before that election.
 8 Q Do you in your role as the chief elections officer
 9 for Wisconsin provide information to the Legislature
 10 about or have you provided information about
 11 observers intimidating voters?
 12 A We've talked about it in general terms. We haven't
 13 done any real in-depth reports. A lot of the issues
 14 with observers are one-day incidents, so we try to
 15 take the general trends and use them to shape our
 16 training and information.
 17 Q And when you say you've provided information to the
 18 Legislature in general terms, what general
 19 information did you provide them?
 20 A Well, you've seen -- you've shown me copies of my
 21 testimony where I've made reference to -- in some of
 22 that testimony to behavior of observers and certainly
 23 the Legislature gets copies of things such as our
 24 communication about election observer rules, and we
 25 were pushing our administrative rule on election

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1 Neil Albrecht knows who I am and is going to tell me
 2 when they have problems, and so yes.
 3 Q He wasn't sending this to you because you're personal
 4 friends, it's because of your role with the GAB,
 5 right?
 6 A That's right.
 7 Q And here --
 8 A Although he did tell me last night that if he won the
 9 lottery, he would not be at work today.
 10 Q Unless he bought his ticket in California, I think
 11 he's back, unfortunately. Did your office conduct
 12 any follow-up investigation into this incident?
 13 A I don't recall.
 14 Q All right. And his letter is describing, generally
 15 speaking, an incident in which a voter was
 16 intimidated and ultimately didn't vote due to
 17 observers, right?
 18 A I think that's a fair characterization, yes.
 19 Q And one of those observers is a person named
 20 Ardis Cerny, right?
 21 A That's -- he identifies that person, yes.
 22 Q And that's A-r-d-i-s C-e-r-n-y?
 23 A Yes.
 24 Q Is it common for you to receive a letter like this?
 25 A No.

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1 observers. This is some of the things we've pointed
 2 out.
 3 Q And in your experience, do elected officials have a
 4 keen interest in what takes place at polling
 5 locations during elections?
 6 A Well, I would say that they -- I often characterize
 7 them as experts in election law since they have to go
 8 through the process to get into office. So there's
 9 at least one time a year, maybe two if you count the
 10 primary, where they have a very strong interest in
 11 what happens, mostly in the outcome.
 12 Q Have you also had situations in which observers were
 13 photographing or videoing voters?
 14 A There have been instances where that's occurred at
 15 various places around the state over time, yes.
 16 Q And one of those incidents involved Ms. Cerny, is
 17 that right?
 18 A I don't recall.
 19 Q I'll show it to you. We'll mark this as Kennedy
 20 21, and this may refresh your recollection about
 21 that.
 22 (Exhibit 21 is marked for identification)
 23 A Okay.
 24 Q All right. And the top email, the last in time email
 25 is one that Mr. Haas is circulating to staff members

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1 at the GAB forwarding an email that he had received
 2 from Neil Albrecht, right?
 3 A Yes.
 4 Q And Mr. Albrecht is indicating that Ms. Cerny had
 5 been photographing voters entering the location at
 6 which in-person absentee voting took place in
 7 Milwaukee, right?
 8 A I think that's in an earlier email.
 9 Q Oh, okay.
 10 A I don't think it's in the one on the first page.
 11 Q Right. It's in this string, though?
 12 A It's in this string. It's dated October -- the day
 13 before.
 14 Q And he referred to three people taking photographs,
 15 is that right?
 16 A Yes.
 17 Q Do you know who else was involved?
 18 A No.
 19 Q Is Ms. Cerny from Milwaukee?
 20 A I don't believe so. I think she resides in Waukesha
 21 County.
 22 Q In the course of your work, did you become aware of
 23 billboards that were posted in Milwaukee prior to the
 24 2012 election regarding voter fraud?
 25 A I recall that. And I remember seeing them.

1 Q What did you see?
 2 A I don't remember exactly. I would need to --
 3 Q Were they billboards that indicated that voter fraud
 4 was a felony?
 5 A That sounds about right, yeah.
 6 Q Do you know how many of those billboards there were
 7 in Milwaukee?
 8 A No.
 9 Q Was there more than one?
 10 A Yes, because I saw at least two.
 11 Q And do you know which parts of Milwaukee those
 12 billboards were located in?
 13 A No.
 14 Q Where did you see the two that you saw?
 15 A Well, I would have seen them off of a highway.
 16 Q Okay.
 17 A I know one was exiting Milwaukee on 94. That's the
 18 one I can picture in my head.
 19 Q And prior to the 2012 election, local election
 20 officials around the state received an increasing
 21 number of questions and complaints about recent
 22 mailings that contained errors that could interfere
 23 with voting, right?
 24 MR. MURPHY: Object to form.
 25 A I'm not quite sure what you're referring to.

1 Q Let me work with a document. It's Kennedy 22.
 2 (Exhibit 22 is marked for identification)
 3 A Okay.
 4 Q And this appears to you to be a news article from the
 5 AP of October 2012, is that right?
 6 A Yes.
 7 Q And the article indicates that Wisconsin election
 8 officials warn voters to be cautious about slick
 9 mailings giving misleading or incorrect information
 10 about voter registration and absentee voting, is that
 11 right?
 12 A Yes.
 13 Q And did your agency in fact give that warning?
 14 A We issued a press release trying to draw people's
 15 attention to it.
 16 Q And you said in the release that local election
 17 officials around the state had been receiving an
 18 increasing number of questions and complaints and
 19 recently mailings that contain errors that could
 20 interfere with voting, right?
 21 A Yes.
 22 Q And one of the mailings was from the Republican Party
 23 of Wisconsin, is that right?
 24 A That's right.
 25 Q And that mailing told residents in Madison and Dane

1 County to return voter registration applications to
 2 the Town of Albion, is that right?
 3 A That's right.
 4 Q And that is not the correct location for voter
 5 registration applications from Madison or Dane
 6 County, is it?
 7 A Well, it depends where in Dane County. It depends --
 8 I think Albion is a township in Dane County. So if
 9 they lived in Albion, that would be correct.
 10 Q The rest of the residents in Dane County, though,
 11 should be returning their voter registration
 12 applications elsewhere, right?
 13 A Right. And I'm not sure since we're not quoted who
 14 characterized Madison and Dane County as heavily
 15 Democratic. It probably would not be.
 16 Q That's why I didn't ask you that. I figured you
 17 wouldn't. We'll go through a couple more documents.
 18 Kennedy 23.
 19 (Exhibit 23 is marked for identification)
 20 A Okay.
 21 Q Now, this began -- this exchange began in your office
 22 with Reid Magney forwarding a blog post, I guess,
 23 regarding the group Waukesha Women Watching Wisconsin
 24 Elections, is that right?
 25 A That's what it says in the subject line.

1 Q Okay. And there are actually four W's now, but
 2 that's the group you were previously referring to as
 3 WWWE, is that right?
 4 A But I always understood We Were -- We are Watching
 5 Wisconsin Elections is what I always understood that
 6 acronym to be.
 7 Q Okay.
 8 A We often referred to them as the Waukesha Women,
 9 but --
 10 Q Okay. It's the same individuals, right?
 11 A It's the same general group of people, yes.
 12 Q And Mr. Falk recommended forwarding this to the
 13 board, meaning the actual board members, right?
 14 A That's right.
 15 Q And do you have an understanding of what he meant by,
 16 "So they are aware of the impact of Ardis, Mary Ann
 17 and their close connections with the Legislature"?
 18 MR. MURPHY: Object to form.
 19 A Well, Ms. Cerny and Ms. Hanson, Ardis and Mary Ann
 20 respectively, tend to appear at almost every GAB
 21 meeting and engage -- always have a presentation,
 22 always have a handout and will talk to board members
 23 on the breaks and stuff, and Shane thought that maybe
 24 the board ought to know just how influential they are
 25 in terms of their lobbying activity in front of the

1 Q And let me direct your attention to the third page.
 2 A Is that 321 on the bottom?
 3 Q Yes, yes. There's a heading that says we have the
 4 tools to make you an effective observer. Do you see
 5 that?
 6 A Yes.
 7 Q And there are -- Point No. 3 says that there are
 8 training classes open to the general public?
 9 A Yes.
 10 Q And one of the locations at which the training was
 11 taking place is the Waukesha Republican Party
 12 headquarters, right?
 13 A That's right.
 14 Q And a few lines down it indicates to call
 15 John Waclawski --
 16 A Yes.
 17 Q -- to arrange a training program. Do you know who
 18 Mr. Waclawski is?
 19 A I know he's an attorney that works with the
 20 Republican Party of Wisconsin. I don't know if
 21 he's -- what exactly the role is, but we had a lot of
 22 contact with him.
 23 Q When you had contact with him, was he representing
 24 the Republican Party?
 25 A That's my recollection. I can't remember if he was

1 Legislature.
 2 Q All right. And so here is Kennedy 24.
 3 THE WITNESS: Let's have a contest
 4 with Mike Haas in his deposition to see who has
 5 the most exhibits.
 6 Q I'm not taking his deposition, so --
 7 (Exhibit 24 is marked for identification)
 8 A Okay.
 9 Q Now, this is an email exchange among some members of
 10 the GAB which began with a forward of an email from
 11 We're Watching Wisconsin Elections' campaign, is that
 12 right?
 13 A It was forwarded by someone to Nat Robinson, yes, a
 14 Deborah Speckmann.
 15 Q So you were just saying, we were just talking about
 16 the confusion with the name. Is it your
 17 understanding that the individuals involved in this
 18 group are the same ones as the group we were just
 19 discussing?
 20 A Yes. I don't know all the membership, but as I said,
 21 you can see that their website is We're Watching
 22 Wisconsin Elections.
 23 Q Okay.
 24 A And we're familiar with it. We would often go and
 25 look at it.

1 representing -- if he spoke on behalf of the Romney
 2 campaign as well.
 3 Q Okay. Now, in the very first -- the top email, the
 4 last in time email for Mr. Robinson, he says, "You
 5 wanna bet they are giving out 'accurate'
 6 information," and then it says, "Note this group."
 7 Is it a fair assumption that he meant not this group?
 8 A That's the way I would have read it.
 9 Q And is it your understanding that he was writing that
 10 because this group had given out inaccurate
 11 information in the past?
 12 MR. MURPHY: Object as requiring
 13 speculation.
 14 A I think he is just passing on his opinion of this. I
 15 think our experience had been that they often did not
 16 understand the law based on their questions.
 17 Q And the 2013 change to the observer rules requires
 18 all polling places to permit or to have a designated
 19 observer area within three to eight feet of where
 20 voters check in and where they register, is that
 21 right?
 22 A That's a statutory change.
 23 Q Yes.
 24 A Yes.
 25 Q And previously the rule that applied was based on GAB

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1 policy, correct?

2 MR. MURPHY: Object to form.

3 A Well, the policy we had that was embodied in our

4 emergency administrative rules was 6 to 12 feet,

5 which we arrived at through various discussions with

6 the groups involved. The Legislature changed it by

7 legislation to make it three to eight feet.

8 Q So the statute had the effect of moving the

9 observation area closer to the voters, correct?

10 A Potentially, yes. Again it's three to eight feet.

11 Six to 8 is within a 6 to 12, so you don't have to

12 put it at three feet. You could put it at eight.

13 Q Okay. Well, it depends on the layout of the

14 facility, right?

15 A Everything is dependent -- when you're placing

16 observers, it's all dependent on the setup of the

17 facility.

18 Q But if the best place is 10 feet away, a chief

19 inspector can't put the observation area there now,

20 right?

21 A That's right.

22 Q Okay. And does moving election observers closer to

23 voters aid election administration in any way?

24 A I think that's a question that people would have

25 differing views on.

1 were and where the observers were, right?

2 A Yes.

3 Q And so you thought six foot at a minimum was

4 appropriate?

5 A That was the agreement that we came to in our

6 discussions. We actually started at three feet back

7 in 2006 talking about the suggestion.

8 Q Right.

9 A Three feet is about where you and I are.

10 Q I bet it's between you and Mike, but yeah.

11 A No, it's not much different.

12 Q But in Racine, for example, one of the things that

13 they did differently in 2012 in the presidential that

14 hadn't been done on the recall was enforcing the

15 six-foot limit at the time, right?

16 A I don't recall, but I wouldn't be surprised.

17 Q You said you would not be surprised?

18 A Yeah. I mean I don't recall specifically that that

19 was, you know, one of the things they did

20 differently. I mean as I said before, we spent a lot

21 of time training people in Racine and so -- and since

22 observers was an issue, we reviewed those

23 requirements so that -- part of the frustration that

24 was expressed in that communication from

25 Janice Martin was poll workers feeling like they were

1 Q What about your view?

2 A I think it's all dependent on behavior, not distance.

3 How people behave is going to be the bigger issue and

4 how far away they are. If they're going to observe,

5 you know, look and listen and make their own notes,

6 that's one thing.

7 If they're going to interrupt, it doesn't matter

8 whether they're six feet away or three feet away if

9 they're going to disrupt the process. That's real --

10 we try to focus on the behavior. By setting the

11 distance, it gives you something concrete to work

12 with, and the distance has always been a comfort

13 level, you know, balanced against what can you see or

14 hear at particular distances, and there are different

15 activities that go on at the polling place.

16 When someone checks in, it's one thing. You

17 hear their name and their address. When someone is

18 registering to vote, that's usually at a different

19 location, and when someone is putting their ballot in

20 or if they're challenged, those are different

21 locations in the polling place.

22 Q You said the distance doesn't matter. I want to, I

23 guess, follow up on that a little bit. When your

24 agency set the 6 to 12-foot distance, there's a

25 reason you had some distance between where the voters

1 being harassed.

2 Well, if you give them the information about

3 what can and can't be done, it gives them some power

4 and confidence in their abilities.

5 Q And you've received complaints from election

6 observers about observers standing too close to them,

7 right?

8 A You mean from election officials?

9 Q Yes, I'm sorry.

10 A I think people have different comfort levels. Some

11 don't like them that close and it may not matter

12 whether it's three feet or six feet. And part of the

13 reason I will tell you for the 6 to 12 feet was they

14 didn't get too far away either. We had clerks that

15 were willing to say that you can be in the room, but

16 you're going to be 10 feet away, you're going to be

17 12 feet away, and we tried to keep -- tried to find a

18 reasonable accommodation because observers have a

19 right to see what's going on.

20 Q Let me switch gears. I think we have about a half an

21 hour left on the tape. Are you okay to go for

22 another 20 minutes or so?

23 A I am.

24 THE WITNESS: How about you?

25 Q That's a good question. Let's talk about absentee

1 voting. In 2011 the Legislature changed the law so
 2 that absentee ballots could be sent to -- could only
 3 be sent to overseas and military voters by fax or
 4 email, correct?
 5 A That's right.
 6 Q Previously clerks could have sent an absentee ballot
 7 by fax or email to anybody, right?
 8 A The clerks have the option to do that. It wasn't
 9 required.
 10 Q Now they don't have that option, right?
 11 A That's right.
 12 Q Now, you've encountered problems with overseas voters
 13 who are not permanent overseas voters being able to
 14 obtain and return their absentee ballots in time to
 15 be counted, correct?
 16 A Yes, yes.
 17 Q And the GAB recommended that electronic transmission
 18 of absentee ballots be approved for all overseas
 19 voters, right?
 20 A I believe that's the case, yes.
 21 Q And you provided testimony relating to that issue, is
 22 that right?
 23 A I don't specifically recall, but that wouldn't
 24 surprise me.
 25 Q Okay. If there's testimony on the GAB website from

1 And so what we did is we built a mechanism where
 2 those voters could directly contact the Government
 3 Accountability Board through the My Vote Wisconsin
 4 portal and they could arrange to have their ballot
 5 electronically transmitted to them.
 6 Q Could that system be modified so that all voters
 7 could have their absentee ballots transmitted to them
 8 that way?
 9 A If the law permitted it, yes.
 10 Q There's nothing technical that prevents that? You
 11 said no?
 12 A No.
 13 Q And just to be clear, to qualify as a permanent
 14 overseas voter, is it your understanding that an
 15 individual has to be residing overseas with no
 16 present intention to return to the United States?
 17 A I believe that's the definition, yes.
 18 Q So somebody doing study abroad for a year is not a
 19 permanent overseas voter?
 20 A No.
 21 MR. MURPHY: Object to form.
 22 Q All right. Let me ask about the return of ballots by
 23 municipal clerks. In 2011 the Legislature changed
 24 the law to limit the circumstances in which municipal
 25 clerks could send absentee ballots back to voters for

1 you on that topic, is it fair to say that you did
 2 provide that testimony?
 3 A Yes.
 4 Q And do you -- has GAB assessed which parts of
 5 Wisconsin temporary overseas voters tend to be from?
 6 A No.
 7 Q What, if any, state interests are served -- I'm
 8 sorry, election administration interests are served
 9 by prohibiting clerks from emailing absentee ballots
 10 to voters other than overseas or military voters?
 11 A I don't know.
 12 Q And those ballots are currently sent by the My Vote
 13 Wisconsin voter portal, right?
 14 A That's the primary means. That's what we encourage
 15 people to do.
 16 Q Can you explain what that is?
 17 A Well, under the Help America Vote Act, it
 18 specifically required that what are known as UOCAVA
 19 voters, Uniformed and Overseas Citizens Absentee
 20 Voting individuals, which means people who are
 21 permanently overseas as civilians or people who are
 22 associated with the armed forces in some capacity as
 23 defined by federal law, are entitled to have their
 24 ballots transmitted to them electronically if they
 25 ask.

1 corrections, right?
 2 A That's right.
 3 Q And specifically absentee ballots can now only be
 4 returned to voters if they're spoiled, damaged or the
 5 certificate is either improperly filled out or
 6 there's no certificate, is that right?
 7 A Well, there's always the certificate. The question
 8 is if it's not completed.
 9 Q Right.
 10 A So improperly filled out or blank I think is --
 11 Q Okay.
 12 A Because that's one of the problems is that they don't
 13 sign it, they don't get a witness.
 14 Q Right.
 15 A So that's I think the reference to no certificate.
 16 Q Okay. So in those cases the law hasn't changed,
 17 right?
 18 A No.
 19 Q Are there other circumstances in which absentee
 20 ballots are cast with errors that prevent them from
 21 being counted?
 22 A Well, as I understand it, the concern is that the
 23 voter knows there's an error, but since the election
 24 official doesn't know of an error, they can't -- you
 25 know, they're relying on the voter to say I made a

1 mistake, I want to recast my ballot because the
2 ballot is sealed up in an envelope and so all the
3 election official can tell is is there a damaged --
4 is the thing damaged through transit or delivery or
5 does it lack the requirement of a signature properly
6 and filled out returned certificate. And in most
7 cases, the certificate is all filled out by the clerk
8 with the exception of the signature of the voter and
9 the signature of the witness.

10 Q So in what circumstances would clerks prior to this
11 change in the law have been returning absentee
12 ballots to voters aside from those covered by this
13 law?

14 MR. MURPHY: Object to form.

15 A I'm not sure. My sense is it would be when a voter
16 contacted them and said I'd like my ballot back, I
17 made a mistake or I changed my mind or it would be
18 those kind of circumstances.

19 Q Okay. And under current law, the clerk cannot send
20 that ballot back, is that right?

21 A That's my understanding.

22 MR. MURPHY: Object to form.

23 Q Okay. So if a voter mistakenly votes for two
24 candidates for president and realizes that, the voter
25 can't get that absentee ballot back, right?

1 provision.

2 Wisconsin law also specifically only allows
3 people who have left Wisconsin and indicated that
4 they're permanently overseas to vote only in national
5 elections, not in local elections.

6 Q And the first provision you mentioned about the
7 straight ticket, that applies to a federal right in
8 absentee ballots, right?

9 A That's right.

10 Q Does it also require that the official ballot have a
11 straight ticket voting option?

12 A I don't recall that it does. And my sense, again I'd
13 have to go back and look at the provisions on that.

14 Q Well, whatever they are, let me ask you this. Aside
15 from that issue, are there other distinctions that
16 are relevant for election administration purposes
17 between overseas and military voters and other voters
18 that relate to straight ticket voting?

19 MR. MURPHY: Object as vague.

20 A The only distinctions I can think of were, one,
21 you're dealing with the ability to allow someone to
22 cast a vote who may not know yet who the candidates
23 are because of the timing of the process, which is
24 why they allow a federal write-in absentee ballot.
25 So that's one of the issues in terms of straight

1 A That would be my understanding.

2 Q Do you know if the rate at which absentee ballots are
3 rejected varies from municipality to municipality?

4 A I don't know. I'm sure we have some numbers on it
5 based on the post-election surveys we do. But I'm
6 not real familiar with that and it's not something I
7 think we've looked at very carefully.

8 Q Okay. And what -- do you know what the impetus for
9 this law change was?

10 A I don't.

11 Q Let me ask about straight ticket voting. In 2011
12 straight ticket voting was eliminated in Wisconsin
13 for all voters except for military and permanent
14 overseas voters, right?

15 A Yes.

16 Q What, if any, election administration interest is
17 there in having military and overseas voters be able
18 to cast a straight ballot that distinguishes them
19 from other voters?

20 A Well, military and overseas voters are covered by the
21 Uniform -- by the UOCAVA provisions. And as a
22 result, federal law permits them to cast a ballot for
23 candidates of a party even if they don't know who the
24 candidates are in order to facilitate a better
25 transit of those ballots, and so it's a federal

1 party voting. Federal says they should be able to
2 cast a vote for all candidates of a political party.

3 And then the distinction with, you know, the
4 rest in Wisconsin law, the federal law guarantees the
5 right of all U.S. citizens to vote in federal
6 elections, and so Wisconsin says -- has taken the
7 position in its legislation that if you are a former
8 Wisconsin resident whose right to vote is based
9 there, but you're no longer a resident of the state,
10 you get to use that residence for voting purposes for
11 participation in federal elections, that limits it to
12 casting for candidates for those federal offices
13 only, not for state and local offices.

14 Q Are there circumstances in which the candidates for
15 office are not set when the UOCAVA ballots are sent
16 out?

17 MR. MURPHY: Object to form.

18 A Well, first of all, there are no UOCAVA ballots that
19 are sent out.

20 Q Fair enough.

21 A The only ballots that get sent by local election
22 officials are the official ballots, which could come
23 from the My Vote portal electronically or it could be
24 mailed by them.

25 The federal right in absentee ballot that you

1 referred to is a form that is placed at U.S.
 2 embassies and consulates and made available at
 3 military installations for people who are covered by
 4 the UOCAVA provisions.
 5 Q When the official ballot is sent out to military and
 6 overseas voters, first of all, that has to happen
 7 something like 47 days before the election, is that
 8 right?
 9 A Federal law requires that it be sent 45 days before
 10 the election. Wisconsin law requires it be sent 47
 11 days before the election.
 12 Q And are there any circumstances in which the
 13 candidates for election are not set 47 days before an
 14 election?
 15 A Yes.
 16 Q And what circumstances are those?
 17 A Well, after a primary election, it could be a recount
 18 and the resolution may not be there. After ballot
 19 qualification, there could be a challenge to whether
 20 a person's name should be on the ballot or either
 21 they were improperly placed or they were denied and
 22 were tied up in court for that particular office.
 23 There's also the possibility that someone, a
 24 candidate passes away in the position if it's
 25 permanent and hasn't been filled appropriately.

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1 Progressives controlled State Legislature changed --
 2 made sure that a straight party vote did not count
 3 for president because --
 4 Q Bob LaFollette wanted to be elected president. No,
 5 I'm kidding.
 6 A Well, actually -- no, because the Progressives
 7 controlled the Legislature and if a Democratic ballot
 8 was cast or a Republican ballot was cast on a
 9 straight party, the Progressives wouldn't get their
 10 vote.
 11 Q That was the opposite of what I was saying. Okay.
 12 So a voter who is casting a straight ticket ballot
 13 had to fill out two votes essentially?
 14 A In a presidential year, yes, and you only get to do
 15 it in a general election. You don't get to do it in
 16 a primary.
 17 Q And otherwise it was just -- in a gubernatorial
 18 election year, it would be just one vote, right?
 19 A That's right.
 20 Q But so now voters have to fill out all of the -- fill
 21 out a vote for each election in order to have a vote
 22 cast in that election, right?
 23 A For each contest, yes.
 24 Q And one result of that change, all else being equal,
 25 is that wait times to vote will increase, right?

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1 Q The reason that Wisconsin's primaries were moved from
 2 September to August was so the primaries would take
 3 place before ballots had to be sent out to military
 4 and overseas voters, right?
 5 MR. MURPHY: Object to form.
 6 Q If you know.
 7 A It is. The main reason we moved from the second
 8 Tuesday in September to the second Tuesday in August
 9 was so that we could comply with the federal 45-day
 10 transit requirement.
 11 Q Okay. Now, in your experience in elections
 12 administration, all else being equal, it takes voters
 13 longer to cast ballots as ballots increase in length,
 14 is that fair?
 15 A I don't think you have to be an election official to
 16 realize if you have more choices, it takes more time.
 17 Q Okay. And when voters would cast a straight ticket
 18 ballot, they would only have to fill out one vote,
 19 right?
 20 A Well, not in Wisconsin.
 21 Q Okay. What did they have to do?
 22 A Because in presidential elections, straight party
 23 doesn't count.
 24 Q Okay.
 25 A Wisconsin many, many years ago back when the

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1 A Well, it would except there's been some other changes
 2 as well. The number of offices that are on the
 3 ballot has been reduced because the county courthouse
 4 offices, you know, in a general election, you
 5 normally have your president in presidential years,
 6 your governor and four other state office holders --
 7 well, actually the governor, lieutenant governor and
 8 three other state office holders. You might have two
 9 congressional, a U.S. Senate and Congress. You might
 10 have two legislative races, but there could be five
 11 to seven county courthouse races and now that's been
 12 cut to three.
 13 Q Right. And that could have been cut while straight
 14 ticket voting was retained, though, right?
 15 A I'm just saying that the number of choices was also
 16 reduced during that same time period. Not by that
 17 legislation but by some other different legislation.
 18 Q Right. And I guess all I want to do is be clear that
 19 all else being equal, an election system that has
 20 straight ticket voting will have shorter lines than
 21 one that doesn't, is that fair?
 22 A It depends on whether people choose to use the
 23 straight party voting.
 24 Q Okay. Did they in Wisconsin?
 25 A I really don't have very good numbers on that. And

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1 when they were talking about -- in Wisconsin they've
 2 talked about going -- they went back and forth about
 3 straight party voting for many years.
 4 Q Does the GAB keep records on who casts straight
 5 ticket ballots?
 6 A No. We have some limited documents, I think. It
 7 depends on how the voting equipment is programmed
 8 whether you can get a report that reflects that.
 9 Q When straight ticket voting was available, do you
 10 know approximately what percentage of voters use that
 11 option?
 12 A I don't recall.
 13 Q Do you know if it was more than say 25 percent?
 14 A I don't recall.
 15 Q Who would know that at the GAB?
 16 A I don't think anyone at the GAB would know that.
 17 Q Is there anybody in Wisconsin who would know that?
 18 A There might be some political science professor who's
 19 gathered this data. One of the problems is that
 20 unless you've been actively tracking this for several
 21 years, it would be difficult to do.
 22 Q What, if any, election administration interests are
 23 served by eliminating straight ticket voting for all
 24 but military or overseas voters?
 25 A Well, I think there were definite reasons for

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1 military and overseas voters that I explained that
 2 provides for convenience for the voting.
 3 Otherwise I think it's entirely a policy
 4 decision on whether or not you use straight party
 5 voting. As I pointed out, Wisconsin even deviated
 6 from that for -- based on its own considerations back
 7 in the '40s and '50s.
 8 Q Okay. But when you say it's purely a policy
 9 decision, that means you're not aware of any election
 10 administration interests that are served by the
 11 elimination of straight ticket voting, is that right?
 12 A I think that's fair because in all the discussions,
 13 no one ever talked about the time it took to vote.
 14 They always talked about what was the impact on the
 15 political party, who would benefit from it.
 16 Q Do you want to do residency requirements or take a
 17 quick break?
 18 A Let's take a break.
 19 THE VIDEOGRAPHER: The time is 3:49.
 20 We are going off the record concluding Disk
 21 No. 3 in the deposition of Kevin Kennedy.
 22 (Short recess is taken)
 23 (Exhibit 25 is marked for identification)
 24 THE VIDEOGRAPHER: The time is 4:12
 25 p.m. We are on the record. This marks the

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1 beginning of Media No. 4 in the deposition of
 2 Kevin J. Kennedy.
 3 Q All right. I've just handed you what's been marked
 4 as Kennedy Exhibit 25. And I actually just have
 5 one question about this document near the end, but
 6 I'm happy to let you take a look at it until you're
 7 comfortable with it obviously.
 8 A Okay.
 9 Q And first does this appear to you to be a copy of a
 10 statement that you made to the U.S. Senate?
 11 A Yes.
 12 Q And this was specifically the Committee on Rules and
 13 Administration?
 14 A The Senate Committee on Rules and Administration,
 15 yes.
 16 Q And do you know if this was written testimony or if
 17 it was oral testimony?
 18 A It was written testimony. I was limited in what I
 19 could say orally.
 20 Q Time limited, is that right?
 21 A Right.
 22 Q The only thing I want to ask you about on this is on
 23 the second to last page, there's a heading that says
 24 importance of data and shaping legislative proposals.
 25 A Yes.

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1 Q And then in this written testimony, you indicate
 2 that -- first of all, this testimony was provided in
 3 2014, right?
 4 A Yes.
 5 Q And you indicate that, "In the recently concluded
 6 2013-14 legislative session, 18 separate election
 7 proposals were enacted" -- I'm sorry, "were acted on
 8 in the waning days of the session". Do you see that?
 9 A Yes.
 10 Q Is that correct?
 11 A I would make sure that what I put in my testimony was
 12 accurate, yes.
 13 Q Okay. And do you know how many of those 18 election
 14 proposals were passed?
 15 A I don't.
 16 Q And then you write that, "With several of the bills,
 17 GAB staff was able to provide illuminating
 18 information about the impact of the proposals"?
 19 A Yes.
 20 Q And you provide as an example that you were able to
 21 show how many voters cast absentee ballots in person
 22 during what time periods, do you see that?
 23 A Yes.
 24 Q How was that information supplied to the Legislature?
 25 A Well, I'm assuming there was a report that we

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1 extracted from our voter registration system for
 2 those municipalities that do absentee voting. We
 3 could track -- I mean some of the municipalities used
 4 the mechanism in our system for tracking absentee
 5 voting and population-wise it's a large number.
 6 Municipality-wise it's not quite as large, but it
 7 covered that, and so we could tell based on when an
 8 absentee ballot was processed what the mechanisms --
 9 what day it was issued, so it allowed us to tie that.
 10 Now, it didn't cover every single day because
 11 not every -- I mean every single absentee vote that
 12 was cast because again a large number of the
 13 municipalities don't use that tool.
 14 Q Did that permit you to determine what time of day
 15 those ballots were obtained?
 16 A No. It would not be time. It would just give us a
 17 day.
 18 Q Okay. But it did let you determine whether it was on
 19 a weekend day?
 20 A Yeah. If that was during the time period when --
 21 yes. Absentee voting can be done on a weekend.
 22 Q And do you know, is that report publicly available?
 23 A I'm sure it is. I don't know where. We can try and
 24 track it down. If you haven't gotten it in
 25 discovery, then we can look for it.

1 Q Okay.
 2 A And the idea was you don't qualify for a full ballot
 3 because you haven't been here long enough. But in
 4 order to allow you to participate in the federal
 5 election, you get a presidential only ballot.
 6 We have a similar provision for people who have
 7 left Wisconsin who may not qualify to vote in that
 8 state. Even for president, we'll let them vote only
 9 for president if they -- again they have to fill out
 10 a form asserting that they don't qualify to vote. I
 11 mean it happened to a friend of mine who moved to
 12 Hawaii. Most of the time it's because they forget to
 13 register.
 14 Q Right.
 15 A So we give them a presidential only ballot for that
 16 election.
 17 Q And the law previously was that if you moved within
 18 Wisconsin, it took 10 days to establish residency in
 19 your new location, correct?
 20 A That's right.
 21 Q And now it's 28 days?
 22 A Twenty-eight consecutive days.
 23 Q Okay. A voter who moves who has not established
 24 residency at his or her new location has to vote at
 25 the residence at which he or she previously lived,

1 Q Okay. It's possible we have. I don't remember, but
 2 if it's something you guys are able to get, we'll
 3 request it.
 4 A Yeah.
 5 Q Let's see. That's all I have to ask about that one.
 6 Okay. I promised we would do residency requirements.
 7 Now, one of the changes to the law in 2011 changed --
 8 was a change to the residency requirements for voting
 9 in Wisconsin, right?
 10 A Yes.
 11 Q And specifically it changed the residency -- the
 12 in-state residency period for voting from 28 to 10
 13 day -- I'm sorry, from 10 to 28 days for all offices
 14 except for president and vice president, is that
 15 right?
 16 A That's pretty much right. I think there's more of a
 17 distinction with president and vice president.
 18 Q Can you explain?
 19 A Wisconsin has always had a provision for former
 20 Wisconsin residents and for new Wisconsin -- actually
 21 it's for new Wisconsin residents. There's two
 22 different provisions that relate to presidential
 23 voting, but for new Wisconsin residents, the position
 24 was if you had moved into Wisconsin for less than 10
 25 days, we would let you vote for president only.

1 right?
 2 A If they're a Wisconsin resident.
 3 Q Right.
 4 A Otherwise if they're a non-Wisconsin resident, they
 5 would be subject to whatever are the laws in that
 6 state in using their right to vote.
 7 Q Okay. So they may not be able to vote at all if
 8 they're not a Wisconsin resident?
 9 A It depends on the rule of the state. You know, as I
 10 said for former Wisconsin residents, we will give a
 11 presidential only ballot because they don't qualify
 12 in their current state.
 13 Q And what, if any, election administration interests
 14 are served by that increase in the residency period?
 15 A I don't know.
 16 Q Is it your understanding that as a result of that
 17 change, more people than previously would now have to
 18 vote at their prior residence?
 19 A It's not something that I've -- we've collected any
 20 data on or that we've attempted to analyze.
 21 Q Okay. If an individual who is unregistered moves but
 22 doesn't meet the residency requirements, moves within
 23 Wisconsin, is that individual able to register at his
 24 old address?
 25 A I would think so because the registration

1 requirement -- I mean it's your residency vote for
2 voting purposes that triggers that, and so my sense
3 is that if someone who had forgot to register lived
4 someplace for two years and just wasn't interested in
5 voting who all of a sudden was but didn't qualify at
6 their new residence, as long as they were still a
7 Wisconsin registrant, they could still register and
8 vote at that location. I think there would be
9 questions coming from the clerk, but I think that
10 would be permissible.

11 Q Do you know, does the registration form require
12 voters to indicate that they have no intent to leave
13 their current residence?

14 A I think it does, but I don't know for sure. We'd
15 have to -- the form is on the website. You can look
16 at it.

17 Q Assuming for the sake of argument that that's on the
18 form, a voter couldn't truthfully fill that out if he
19 had moved to a new location, correct?

20 MR. MURPHY: Object to form.

21 A Again, you know, you deal with the individual
22 circumstances and if -- and with the law also
23 doesn't -- the form doesn't reflect people who
24 haven't been there that they have to go to their old
25 location. I mean I think again I'd have to go back

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1 A One of the purposes of the law is to ensure that the
2 person who's there is the person who's entitled to
3 vote by confirming their identity, yes.

4 Q The voter identification law doesn't serve any
5 purpose with respect to residency, does it?

6 MR. MURPHY: Object to form.

7 A It doesn't touch residency, no. I mean it's all
8 about identifying who you are.

9 Q And you can actually vote with a form of
10 identification that has an address that's different
11 from the address at which you're registered, correct?

12 A That's right.

13 Q Have you assessed the cost, the financial cost that
14 the voter identification requirement will impose on
15 the GAB?

16 A Well, it depends on what aspect. I mean we've -- I
17 mean we've already done all of the training materials
18 and things and the Legislature gave us a couple
19 million dollars for that, which also included a voter
20 outreach program, but we've already -- you know, I'm
21 not sure exactly how much money we spent developing
22 all the training materials and then revising them
23 again after the Supreme Court didn't act, although
24 the revisions weren't that large, but we spent
25 resources in 2015 to make sure everything was up to

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1 and read the statute, but I don't recall that we've
2 ever dealt with an incident of someone since the 28
3 days has been around.

4 Q Do you recall if there were issues with that in the
5 2012 recall election?

6 A There were certainly issues with students in terms of
7 their qualifications to vote because of the 28 days.
8 There was a lot of questions about where they were
9 eligible to vote. And I know we spent a lot of time
10 trying to work through guidance, which probably
11 covered some of the questions you just asked.

12 Q Were there other groups of voters, like students,
13 with whom you noticed particular issues like that?

14 A I'm sure there were a number of different kinds of
15 individuals. I mean the recall elections generated a
16 high turnout election, so you're probably faced with
17 a number of different questions. The fact that it
18 landed in the summertime where a lot of people move,
19 particularly students, that would have had a big
20 impact.

21 Q Okay. Let's turn then to the voter identification
22 law. From an election administration standpoint, the
23 purpose of that law is to identify voters but not
24 confirm their residence, is that right?

25 MR. MURPHY: Object to form.

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1 date.

2 Q When did your agency conduct outreach efforts
3 relating to the voter ID law?

4 A We started in 2011 and continued through February of
5 2012 and we restarted again in 2015.

6 Q Okay. And since 2015 started, what efforts have you
7 taken for outreach purposes?

8 A Well, first of all, we updated all of our information
9 or brochures to make sure that accurately reflected
10 the law as it was in place based on some
11 modifications by the Supreme Court, updated our
12 public service announcements, our television and
13 radio ads.

14 We've had meetings with various groups, one in
15 particular was AARP, and I know that because I
16 remember reading an email with an article that they
17 did based on our meeting with them on that, but we've
18 talked to -- had training for municipal clerks.
19 We've conducted a Webinar on how to use the voter ID
20 for them, and that's been recorded and is on our
21 website so they can go back to it. I think we just
22 actually presented it in the last couple weeks.

23 We have a person, Meagan McCord-Wolfe, who is
24 our voter outreach specialist who coordinates
25 meetings with civic groups. A lot of times if it's

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1 just going to be a small group, we'll send them the
 2 materials and say here, when we can't send someone
 3 there.
 4 But we've done our best to make everything
 5 available for the clerks and for -- and we will --
 6 part of our plan going into 2016, for example, is at
 7 the end of this month I will hold a press
 8 availability before the February primary election
 9 because this will be the first statewide election
 10 where we will emphasize the need for a photo ID for
 11 voting, and our plan right now is to do that for each
 12 of the four major elections.
 13 Q And how much money do you have allocated for
 14 advertising related voter ID?
 15 A None.
 16 Q Has the Legislature provided any additional funding
 17 for outreach since the Supreme Court decision that --
 18 well, since the law has once again become effective?
 19 A No.
 20 Q Have you asked the Legislature to provide more
 21 funding?
 22 A I'm trying to think. We have not made a specific
 23 media request. We've had some informal conversations
 24 letting them know if you want this, you're going to
 25 need to act because we don't have it in our budget.

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1 There was a discussion where groups came to us
 2 saying what are you going to do and our answer was,
 3 well, if the Legislature gives us the directive
 4 because the original law gave us a very targeted time
 5 period to do that, and we're outside that time period
 6 now.
 7 Q And when you say that you had informed people that if
 8 they want advertising, they have to act, are you
 9 talking about conversations with legislators?
 10 A I've had some conversations with legislators where we
 11 said if you think it's important to get out the voter
 12 ID information, we have everything ready to go, but
 13 we'll need money.
 14 Q Is it your expectation that you will receive that
 15 funding?
 16 A I haven't gotten any signal that that's going to
 17 come.
 18 Q Did you do any advertising in -- before the law was
 19 first enjoined?
 20 A Yes.
 21 Q So that was in 2011?
 22 A 2011 and early 2012.
 23 Q Okay. But nothing since then?
 24 A No.
 25 Q Have any other agencies received funding for

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1 advertising relating to voter ID?
 2 MR. MURPHY: Object to form.
 3 A I don't know.
 4 Q Do you know whether the DMV has?
 5 A I don't know.
 6 Q All right. Let me show you a couple documents.
 7 We'll start with this one, which is going to be
 8 Kennedy 26 -- oh, that's mine. Sorry. And once
 9 you've had a chance to look through it, I'll ask if
 10 you can tell me what this is.
 11 A Okay.
 12 Q So what is this document?
 13 A This is a fiscal estimate that was prepared by the
 14 GAB staff with respect to the photo ID legislation,
 15 the initial version introduced by the Senate.
 16 Q Okay. And did your fiscal estimate change based for
 17 the final version?
 18 A I'm sure there were some changes made, but I don't
 19 know exactly. We didn't update it, I don't think.
 20 And the basic costs wouldn't have changed because I
 21 think the basic things that we were required to do
 22 were modifications to our voter registration system
 23 and our -- and the requirement that we engage in an
 24 information program didn't change.
 25 Q Let me direct you to Page 7, the last page. And this

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1 would be an instance in which the bottom line is
 2 literally the bottom line, is that right?
 3 A Okay, yeah.
 4 Q So the projection you provided to the Legislature for
 5 the cost of the voter ID bill for GAB was a little
 6 over two million dollars, is that right?
 7 A Yes.
 8 Q How much funding did GAB receive in connection with
 9 the voter ID law?
 10 A I don't remember.
 11 Q Was it two million?
 12 A I think it was slightly less than that.
 13 Q You list the total local projected cost as
 14 indeterminate, is that right?
 15 A That's right.
 16 Q And that's referring to local clerks' offices, right?
 17 A That's right.
 18 Q And why did you put that -- mark that as
 19 indeterminate?
 20 A Because we would have no credible way of estimating
 21 what their training costs would be, what their
 22 commitment would be to outreach, to whatever costs
 23 they might have paid for replicating materials that
 24 we provided.
 25 Q And one of the consequences of the voter ID law is

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1 that there will be more provisional ballots cast,
 2 right?
 3 A That's right. Or at least that's what we assumed.
 4 Q And does that impose an administrative burden on
 5 local clerks' offices?
 6 MR. MURPHY: Object to form.
 7 A It will require more work, assuming that there are
 8 more ballots. I mean right now we have very few
 9 provisional ballots. I'm assuming that any
 10 significant amount more will require more work by the
 11 clerk's office after the election to process those
 12 and on Election Day to deal with them by the poll
 13 workers.
 14 Q And is it your expectation that the 2016 presidential
 15 election will be the first election in which there
 16 are large volumes of provisional votes cast in
 17 Wisconsin?
 18 A I think we will see -- because that will be the
 19 largest turnout election since then, I think we'll
 20 see more. Right now we don't have a very good handle
 21 on how many that's going to be and maybe as we see
 22 what happens in February and April, we'll have a
 23 better sense of what we can project in November.
 24 Q And I should ask, by the way, you authorized this --
 25 you're listed as the authorized signature?

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1 not doing that could be done would be getting a
 2 public information campaign going through the media.
 3 Obviously we probably will not have staff
 4 resources available to do community outreach or
 5 meetings either, but a lot of that was premised on
 6 implementing this back in 2011 and 2012.
 7 Q Has GAB been required to utilize staff to prepare for
 8 the transition to the new Elections Board and the
 9 Ethics Board in the summer?
 10 A Yes. I mean a lot of my activity was specifically
 11 directed by the legislation to coordinate the
 12 transition and work with the Department of
 13 Administration on that, but a lot of the things that
 14 have to be accomplished require directing staff to do
 15 certain things such as inventory division,
 16 document -- electronic document division. Some of
 17 it's already been done, but there's a lot to do.
 18 Q All right. Let me show you a news article which
 19 we'll mark as Kennedy 27.
 20 (Exhibit 27 is marked for identification)
 21 A Okay.
 22 Q First does this appear to you to be a news article in
 23 the Milwaukee Journal Sentinel in November of 2011?
 24 A Yes.
 25 Q And you're quoted in this article, correct?

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1 A That's right.
 2 Q Asking it that way. That means you approved this
 3 document, right?
 4 A That's right.
 5 Q And this was provided to the Legislature?
 6 A It was.
 7 Q This estimate also does not include any costs for the
 8 DMV, right?
 9 A No. We only do our costs. DMV would have provided
 10 their own fiscal estimate.
 11 Q Do you know if they did?
 12 A I don't know.
 13 Q Has the money that you were appropriated in
 14 connection with the voter ID law been spent at this
 15 point?
 16 A It has.
 17 Q So any additional expenditures relating to voter ID
 18 are coming out of the regular budget that you have?
 19 A That's right.
 20 Q Aside from the advertising we discussed before, are
 21 there activities that -- other activities that you
 22 would like to take relating to voter ID law prior to
 23 the 2016 election that you're unable to take due to
 24 cost?
 25 A I think at this point the primary thing that we're

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1 A I am.
 2 Q And the article indicates that when you speak to
 3 groups about how to get a photo ID for voting, you
 4 use a flow chart?
 5 A I did.
 6 Q Okay. And you're quoted as saying, "I hold it up
 7 mostly to show that this is not easy." Do you see
 8 that?
 9 A Yes.
 10 Q And is that an accurate quote?
 11 A Yes.
 12 Q And what did you mean by that?
 13 A I mean that in order to get an ID, there were a
 14 number of different documents you have to get, they
 15 have to meet certain requirements, and we took the
 16 information from the DMV website and put it into a
 17 flow chart, one, so that our staff could answer
 18 questions, but, two, it was a great visual when
 19 speaking to groups in preparation for this process to
 20 show them that this is not an easy task to get the
 21 required identification.
 22 Q Let me direct you to the last paragraph on that first
 23 page. And specifically the second sentence says,
 24 "Kennedy said he's not aware of a single case of
 25 identity fraud in voting behavior" -- I'm sorry, "in

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1 voting being prosecuted in Wisconsin," do you see
 2 that?
 3 A Yes.
 4 Q Does that accurately reflect what you said to the
 5 Milwaukee Journal Sentinel staff?
 6 A Yes.
 7 Q And let me direct you to the last line in the
 8 article. I'm sorry, the last paragraph. It quotes
 9 you as saying, "If they don't go online," they
 10 referring to voters, "If they don't go online and
 11 look at the list of required documents and then
 12 figure out how do I get these before I come in, their
 13 trip to the DMV will require a second stop." Do you
 14 see that?
 15 A Yes.
 16 Q And are you accurately quoted there?
 17 A Yes.
 18 Q Now, you've also said publicly that in connection
 19 with the voter ID law that you're well aware of what
 20 you would have had to do to help your mother out if
 21 photo ID had been in effect when she was voting. Do
 22 you recall that?
 23 A I do.
 24 Q What did you mean by that?
 25 A I meant that my mother no longer had a valid driver's

1 iteration that was presented in 2011 that was
 2 ultimately passed and some of my comments on this
 3 because I was asked as various bills, you know, came
 4 up in prior legislative sessions too.
 5 Q Okay. The comment we were discussing, that was made
 6 after it was passed, isn't that right?
 7 A I don't know.
 8 Q Okay. Well, let me ask you about the resources to
 9 get IDs to everyone who needs one. This is Kennedy
 10 28.
 11 (Exhibit 28 is marked for identification)
 12 Q Okay. And let me direct you to the second
 13 paragraph -- well, first of all, what is this
 14 document?
 15 A It's a press release issued by the Government
 16 Accountability Board informing the public about a
 17 Speakers Bureau that we put together to speak to
 18 groups on how to get a photo ID.
 19 Q And in the middle of the second paragraph you're
 20 quoted saying, "The Government Accountability Board
 21 does not have the resources to help every individual
 22 voter who needs to get a photo ID. We can, however,
 23 provide organizations with the tools and knowledge to
 24 get the job done." Is that right?
 25 A Yes.

1 license and she did qualify for certain exceptions to
 2 the voter ID law because she was indefinitely
 3 confined, but a lot of those comments were made
 4 before the law was put in place. You know, and there
 5 was a recognition that my mother had a son who knew
 6 the law or knew the proposals for the change in the
 7 law and a son who lived in the same town as her,
 8 actually two at the time who could take the time to
 9 help her if that was going to be required to get an
 10 ID.
 11 Q And am I right in understanding that the point you
 12 were making was that if your mother hadn't had that
 13 assistance, it would have been very difficult for her
 14 to obtain an ID to vote?
 15 A Yes.
 16 Q You've also said that the GAB does not have the
 17 resources to get IDs to everyone who needs them,
 18 right?
 19 A I'm sure I probably made that statement in some
 20 context. I mean I would point out that my mother
 21 passed away before the voter ID law went into --
 22 Q Yeah, actually --
 23 A So just to go back in terms of perspective, this has
 24 been an ongoing discussion, voter ID has been
 25 discussed for several legislative sessions and so the

1 Q When you wrote that the government or said that the
 2 Government Accountability Board does not have the
 3 resources to help every individual voter who needs to
 4 get a photo ID, what did you mean by that?
 5 A Well, I was trying to manage some people's
 6 expectations that the Government Accountability Board
 7 is going to take care of everyone that doesn't have
 8 it. I mean it was being realistic that if there's an
 9 expectation that the state elections agency can
 10 somehow identify and reach out to every voter who
 11 needs the required ID, you know, to get out ahead of
 12 that and point out that that's not a realistic
 13 expectation of our agency, but that doesn't mean that
 14 we're giving -- that we're folding up, that we are
 15 still making efforts to provide the tools for that.
 16 Q And this release was issued after the voter ID law
 17 was passed, right?
 18 A That's right.
 19 Q Is the voter photo ID Speakers Bureau, is that
 20 still -- is that an ongoing group?
 21 A I'm not sure we call it a Speakers Bureau anymore.
 22 Part of that is we didn't need it after February of
 23 2012. It was actually closer to April when it got
 24 shut down. But we still have, as I said earlier, we
 25 still have everything in place to do that and we

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1 still have a person dedicated to that.
 2 We've expanded. She has some other
 3 responsibilities at this time besides that, focusing
 4 on military and overseas voting, but it's still part
 5 of our mission. I'm not sure we call it the Speakers
 6 Bureau. But as I mentioned, we've worked with groups
 7 to get them that kind of information and we continue
 8 to do that.
 9 Q Have you received as many requests for information
 10 since the voter ID law has gone back into effect as
 11 you received around the time that it was originally
 12 passed?
 13 A I don't know.
 14 Q Would you agree that the voter ID law places greater
 15 burdens on voters who don't possess a qualifying form
 16 of ID than it places on voters who do possess a
 17 qualifying form of ID?
 18 A Well, I think the question is -- it depends on what
 19 they need to get it. I mean some people would have
 20 an easier time obtaining the requirement, but
 21 obviously if you need an ID to vote, it's an extra
 22 step that you have to take.
 23 Q And you've said that student IDs in particular are a
 24 challenge under the voter ID law, is that right?
 25 A I probably have made comments along those lines

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1 MR. MURPHY: All right.
 2 A Okay.
 3 Q All right. This is an email exchange among GAB staff
 4 that followed the receipt of an email from
 5 Matthew Lind to Michael Haas, right?
 6 A Um-hum.
 7 Q And you mentioned earlier that Mr. Lind works with
 8 the University of Wisconsin System, is that right?
 9 A Yes, that's right.
 10 Q And Mr. Lind's email indicates that the UW System
 11 schools intend to charge students segregated fees for
 12 the expense of creating voter ID compliance student
 13 ID cards, is that right?
 14 A That's what it says in the last line, yes.
 15 Q All right. And Mr. Falk responded to that email by
 16 saying, "Charging for a voter ID for students? Can
 17 someone say poll tax!" Do you see that?
 18 A I see that.
 19 Q Do you understand what he meant by that?
 20 MR. MURPHY: Object to form.
 21 A I can't speak specifically to what he meant on that.
 22 I mean one of the concerns was that if it cost money
 23 to be able to participate in the process, does that
 24 constitute a poll tax. I mean that was one of the
 25 issues that was being discussed.

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1 because the rules are different for the use of a
 2 student ID than they are for most IDs because they
 3 require two sets of documents.
 4 Q And can you explain how they're different?
 5 A Well, in addition to showing your ID card that has
 6 your picture on it that has certain requirements in
 7 terms of its currency, you also have to have proof
 8 that you are actually enrolled at the college during
 9 the time that you're using that to vote.
 10 Q Does that proof of enrollment requirement serve any
 11 elections administration purpose in your experience?
 12 A I can't say. I think it was just the provision the
 13 Legislature put in because it saw student IDs as
 14 different.
 15 Q Okay. Let me show you another document. This is
 16 Kennedy 29.
 17 (Exhibit 29 is marked for identification)
 18 MR. MURPHY: How much more on ID do we
 19 have?
 20 MR. KAUL: I'd say I'm about halfway
 21 through it.
 22 MR. MURPHY: Are there any claims
 23 left -- I've just got to ask what's left.
 24 MR. KAUL: Intentional discrimination
 25 claims.

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1 Q Is it your understanding now that student IDs -- let
 2 me rephrase that.
 3 Is it your understanding that students are now
 4 being charged separated segregated fees for their
 5 voter ID compliance student IDs?
 6 A I don't know how that process works. I mean when
 7 students paid their tuition, part of that tuition
 8 goes into a segregated fee account. I'm not sure
 9 that that means that a student is paying a specific
 10 fee for their ID on that. Again I think that's best
 11 asked of the university system.
 12 Q But that is what your staff was understanding
 13 Mr. Lind's email to mean?
 14 MR. MURPHY: Object to form.
 15 A Well, at this point it's a question of it costs money
 16 to get valid IDs and where is the source of that
 17 money. And Mr. Lind indicated that, you know,
 18 campuses are taking on this cost, but they're pulling
 19 it from this particular fund. And this is just an
 20 internal, you know, comment by the staff -- amongst
 21 staff about how student funds are being used, but
 22 student funds as in general, they're not individual
 23 as I understand the segregated fund account.
 24 Q Okay. And let me show you another document, Kennedy
 25 30.

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1 (Exhibit 30 is marked for identification)
 2 A Okay.
 3 Q Now, this is an email exchange among members of the
 4 GAB staff, correct?
 5 A This email was shared. I mean it starts with one of
 6 our staff showing a video and sharing it with select
 7 staff and that was followed up by the public
 8 information officer sharing this news article
 9 attached with the same individuals but adding me to
 10 the email string.
 11 Q All right. And the information -- I'm sorry, the
 12 email from the public information officer indicates
 13 that the voter ID law was slowing down the voting
 14 process in some locations, is that right?
 15 A No. The news article says that. But the public
 16 information officer simply says this looks like
 17 something we'll have to address with the clerks.
 18 Q Is it your understanding that the voter ID
 19 requirement, the requirement that an ID be shown
 20 slows down the voting process?
 21 A I'm not sure I can say. I know that clerks have done
 22 a number of -- taken a number of steps to measure its
 23 impact. I mean it used to be when you went in to
 24 vote if you were already registered, all you did was
 25 give your name.

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1 So those are all things that we're thinking,
 2 recognizing you've got two more steps here, you've
 3 got additional requirements of the poll workers, what
 4 do you do. But we haven't really had a chance to
 5 look at this in a full-blown statewide election.
 6 That February primary was a very low turnout, so
 7 we'll have four more opportunities to evaluate it in
 8 2016.
 9 Q And increasing of the transaction time that voters
 10 have when they check in, all else being equal, means
 11 longer lines, right?
 12 A It will take more time to get through, yes.
 13 Q And it also increases the likelihood of there being a
 14 backlog, right?
 15 A It depends on how many check-in stations you have.
 16 You know, there are ways to cut the lines down. Part
 17 of it, as I said, is better information to the
 18 voters. Part of it is having more poll workers
 19 there.
 20 Q Right. So I guess the point you're making is if
 21 there are enough stations, there won't be any line at
 22 all, so it won't make any difference in the line, is
 23 that right?
 24 A I think there will always be some line of some kind.
 25 Q Right.

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1 Under Act 23, which is now in place, you have
 2 two more steps to do. You have to show the ID and
 3 you have to sign the poll book. So that's additional
 4 steps. The question is how that works. We had some
 5 cities that were timing that process, suggesting it
 6 added a minute per transaction to the process. You
 7 know, what we tried to do was understand that and
 8 figure out how can we get people to be focused on the
 9 process, and we've sort of boiled it down to the
 10 voter has three things to do, state their name, show
 11 their ID, sign the poll list and then they get a
 12 ballot.
 13 The poll worker has four things they have to do
 14 when they look at the ID to make sure that it's
 15 valid. Again part of it is we didn't want this to be
 16 a cursory process where someone waves something and
 17 it was never examined. So part of our training was
 18 trying to break these things down and make sure
 19 people understand because the more you have a routine
 20 down, if the voter understands when they walk in
 21 they're going to have to show their ID and they're
 22 going to have to sign something, they're better
 23 prepared as opposed to, oh, digging into their
 24 pocket, pulling their wallet out and finding what
 25 they need to show.

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1 A Even if the line is one person.
 2 Q Right. But this makes -- I mean by making the
 3 process of checking in slower, you're going to
 4 increase lines, right?
 5 A Well, it adds two steps, and that means it's going to
 6 take more time to process each voter.
 7 Q Okay. Aside from the issues you just mentioned, in
 8 the elections in which voter ID has been in effect,
 9 and I'm including in this the soft roll-out election,
 10 poll workers make mistakes in assessing what was
 11 required from the voter ID, right?
 12 MR. MURPHY: Object to form.
 13 A I'm sure that they did. I don't recall specifically
 14 what kind of information we collected on that, but
 15 it's only inexperience. We expect that they're going
 16 to make mistakes.
 17 Q Right. And that can also slow down the process,
 18 right?
 19 A It might speed it up if they're not doing all they're
 20 supposed to do.
 21 Q If they're asking for information that's not
 22 required, it would slow it down, right?
 23 A Yes. I'm not sure if that's exactly what was going
 24 on, but again there's a whole range of mistakes that
 25 can be made that relate to voter ID or relate to

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1 other aspects of the process.
 2 Q Some poll workers were insisting on a form of ID that
 3 had the address that was reflected on the voter
 4 registration, right?
 5 MR. MURPHY: Object to form.
 6 A I don't specifically recall.
 7 Q Did -- some voters were also upset about the voter ID
 8 law being in effect, right?
 9 MR. MURPHY: Object to form.
 10 A I heard reports of that. In my observations during
 11 that period of time, I didn't see that. I saw more
 12 people prepared to show their IDs.
 13 Q To the extent that voters are unhappy about the law
 14 and they express that while they're signing in, that
 15 can slow the process down also, right?
 16 A If that happens, yes.
 17 Q In doing outreach back in 2011 and 2012 related to
 18 the voter ID law, the GAB targeted particular
 19 minority groups, is that right?
 20 A Yes.
 21 Q And specifically you targeted African-Americans and
 22 Latinos, is that right?
 23 A Yes.
 24 Q Why did you target those groups?
 25 A Because those were groups that we thought would

1 probably need additional help from the feedback we
 2 had gotten. You know, they were clearly identifiable
 3 groups where there was a sizable number of voters,
 4 and they were also groups that had community
 5 organizations involved where we could reach to those
 6 community organizations.
 7 Q And what led you to believe that those groups needed
 8 more help with outreach?
 9 A I think this is just general analysis of the concerns
 10 that were raised during the debate.
 11 Q And one of those issues was the concern that
 12 African-Americans and Latinos were less likely to
 13 have qualifying forms of IDs than other voters,
 14 right?
 15 A That was one of the assertions that was made
 16 throughout the discussions. So it made sense to
 17 target those groups.
 18 Q Were there other groups that you targeted that you
 19 were concerned might be less likely to have IDs?
 20 A Students and the elderly. We had a whole initiative
 21 where I had staff dedicated to working with the
 22 various private and public higher educational
 23 institutes. As I said, we met with AARP. We've
 24 reached out to associations of nursing home providers
 25 to make sure that that information was there.

1 Q Have you targeted all those groups we've just been
 2 discussing in any outreach efforts that have been
 3 done since the voter ID law went back into effect?
 4 A I think we've built on the connections we made in
 5 2011 and 2012 for that.
 6 Q Can you explain what you mean by that?
 7 A Well, I mean in 2011 and 2012, we -- part of our
 8 contract with our provider was to hire some people
 9 who specifically reached out to the African-American
 10 community and to the Latino community. We don't have
 11 that contract in place anymore, but we still have the
 12 names of various organizations that we provided
 13 information to and so we have access to that and
 14 we've continued to identify that as we remind people
 15 that photo ID is back in place and are prepared to
 16 either get materials to them or to go and speak,
 17 depending on the size of the audience.
 18 Q Okay. Let me show you the next document, Kennedy
 19 31. I'm just trying to help with your contest with
 20 Michael Haas.
 21 A He doesn't know about it yet.
 22 (Exhibit 31 is marked for identification)
 23 Q All right. Would you please take a look at this
 24 document and then let me know what it is when you've
 25 had a chance to take a look?

1 A Okay. What's your question?
 2 Q Can you describe what this is, first of all?
 3 A Well, it's a series of email exchanges amongst staff
 4 at the Government Accountability Board based on a
 5 news article that was shared that talked about the
 6 Madison City Clerk's evaluation after conducting a
 7 special election in the summer of 2011 as part of the
 8 soft implementation of voter ID.
 9 Q Okay. And the Madison City Clerk, it refers to a
 10 letter from the Madison City Clerk, the article
 11 that's being --in this case here?
 12 A Yes.
 13 Q Did you receive that letter?
 14 A I don't recall who this letter was addressed to that
 15 they're referring to, whether it was addressed to our
 16 office or not. I'm aware of what she had to say.
 17 Q I'm sorry, did you say you were aware of what she had
 18 to say?
 19 A Yes.
 20 Q Okay. And so she had expressed in one manner or
 21 another these concerns to you?
 22 A She had expressed those concerns and I was aware of
 23 them. I'm not sure if they were directed to me or if
 24 they were directed to someone else on our staff or if
 25 they were directed to the mayor and got lots of

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1 coverage.
 2 Q Okay.
 3 A Again I don't know -- I don't recall who the letter
 4 was addressed to.
 5 Q And those concerns included that the changes as part
 6 of the voter ID law would result in long lines,
 7 correct?
 8 A Yes. I mentioned earlier that they had done some
 9 mock elections. Madison was one of them that was
 10 timing the process.
 11 Q And what was Madison finding in its mock elections,
 12 if you know?
 13 MR. MURPHY: Object to form -- never
 14 mind.
 15 A I just know that they were documented that it was
 16 going to increase the amount of time to serve the
 17 voter with these two extra steps.
 18 Q Madison also reported that voters were angry at
 19 having to sign the poll book, is that right?
 20 A That's what the news article says.
 21 Q So it appears you received reports from Madison and
 22 from Brown County in the document we were previously
 23 discussing and Kenosha, I guess, about voter ID law
 24 causing longer lines, is that right?
 25 A Yes.

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1 is a city department, what is it, is it somebody we
 2 should be in touch with.
 3 Q And then the last email in time, the top email,
 4 Mr. Hein says this should definitely be part of our
 5 outreach?
 6 A Yes.
 7 Q Do you have an understanding of what he meant by
 8 that?
 9 A I think the fact that we've identified a City of
 10 Madison office that has information about minority
 11 breakdowns and statistical breakdowns would be a good
 12 place for us to reach out. I don't know if they
 13 could get us in touch with organizations we should be
 14 reaching out to.
 15 Q Did your office in fact reach out to that
 16 organization?
 17 A I don't know specifically if we did.
 18 Q Do you know if you've reached out to the organization
 19 since voter ID was reinstated?
 20 A Again I don't know.
 21 MR. MURPHY: While we're in
 22 transition, and maybe you are, but please make
 23 sure we're keeping the distinction between
 24 Mr. Kennedy and the GAB. And if you are, that's
 25 fine, but I think when he's answering when you

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1 Q Were there other locations in the state from which
 2 you received those sorts of reports?
 3 A I don't recall.
 4 Q And in one of the emails in this string at the bottom
 5 of the first page, Mr. Falk refers to this being
 6 useful to help narrow down the groups at risk and
 7 that we were charged to work with, do you see that?
 8 A Yes.
 9 Q Do you have any understanding of what he meant by
 10 narrow down the groups at risk?
 11 A Well, you know, part of the Act 23 was a specific
 12 provision that was added that directs the Government
 13 Accountability Board to reach out to organizations
 14 that serve individuals who might have difficulty
 15 obtaining an ID, and that's a pretty broad charge and
 16 I think Shane is commenting, well, it would be
 17 helpful to identify specifically what kind of groups
 18 we should be reaching out to to get some specifics.
 19 Q And is he referring to the data that's cited at the
 20 very end of this article?
 21 MR. MURPHY: Object to form.
 22 Q If you know.
 23 A Well, he's responding to a comment in an earlier one
 24 by his co-counsel asking if anyone knows anything
 25 about the Department of Civil Rights, who that -- it

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1 say I, you mean him. Or, I'm sorry, when you
 2 say you, you mean him.
 3 Q Yeah, if any of my questions are unclear as to that,
 4 please feel to correct me. And I apologize if they
 5 aren't.
 6 A Well, I can answer what I know and don't know, but
 7 I'm also speaking about some of the things that the
 8 agency I'm in charge of is doing.
 9 Q All right. This is Kennedy 32. And again once
 10 you've had a chance to look at this, I'll ask you if
 11 you recognize this document.
 12 (Exhibit 32 is marked for identification)
 13 A Okay.
 14 Q And for today's purposes at least, I'm not going to
 15 ask you about the contents of what this is, but can
 16 you just tell me what this is?
 17 A It's a memorandum from a number of political science
 18 professors at the University of Wisconsin.
 19 Q And this was sent to you, is that right?
 20 A It was sent to me.
 21 Q And what were the circumstances of their sending this
 22 to you, if you know?
 23 A Well, this was early on in the beginning of the
 24 debate on developing voter ID legislation.
 25 Q And do you know, was this letter shared with the

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1 Legislature?
 2 A Well, these individuals testified to the Legislature
 3 on much of what's in here. I don't know that we
 4 specifically shared this. It was certainly, as I
 5 mentioned before, this is the kind of information
 6 that would have informed our views about what were
 7 vulnerable populations based on reports that we had
 8 seen or heard in discussion of the development of the
 9 legislation.
 10 Q And how do you know that those individuals testified
 11 before the Legislature?
 12 A Because I was at the hearings and I remember -- I
 13 think only one of them appeared or maybe two of them
 14 appeared, but I remember them at the Senate hearing.
 15 Mike Haas handled the Assembly hearing, so I don't
 16 know if they were at that one.
 17 Q And is it your recollection that they testified to
 18 the contents, whichever one of these professors
 19 testified or two testified to the contents of this
 20 letter?
 21 A Well, I think they -- what's contained in this letter
 22 was probably reflected in their testimony, but I
 23 can't speak for sure. But given this is the
 24 information they shared with me, I don't know why
 25 they would share something less than this with the

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1 Legislature whom they were trying to persuade.
 2 Q And do you know, was this document made publicly
 3 available at the time also?
 4 A I don't know.
 5 Q If this document is on your website now, would it
 6 have been on your website around the time you
 7 received it?
 8 A Yes. And I mean one of the things that we did even
 9 before legislation was openly discussed was following
 10 the 2010 election, knowing that voter ID would be an
 11 issue internally, we did a lot of research and we
 12 shared that research with members of the Legislature,
 13 as is mentioned in testimony that you showed me in a
 14 prior exhibit.
 15 Q And is this part of the research that you were
 16 referring to?
 17 A Well, this probably was added to it. I don't know if
 18 this is something we shared specifically with them,
 19 but we had developed a packet of information that I
 20 describe in that testimony and certainly this is
 21 information that our staff would have absorbed in
 22 preparing that.
 23 Q And is that information publicly available to you?
 24 A The information we share with the Legislature, yeah.
 25 I think we turned it over in discovery.

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1 Q Okay.
 2 A I know internally we talked about it. So I'm pretty
 3 sure. I mean it's one of the things that -- we've
 4 touted throughout this process that we've been trying
 5 to be ahead of the game to give the Legislature as
 6 much as possible. And again I make reference to it
 7 in the testimony that you have as Exhibit 11.
 8 Q Putting aside whether it was provided in discovery or
 9 not, do you know if it's available publicly?
 10 A It would be available publicly. I don't know if it's
 11 posted on our website. We have a whole -- if it's
 12 currently posted on our website, but we have a
 13 whole -- everything we developed on photo ID at one
 14 point was throughout the discussion process. You
 15 know, I'm not quite sure what the structure is at the
 16 moment. Right now I think we focus more on use of
 17 the ID than the background of it. But it's certainly
 18 a public document that can be obtained.
 19 Q Meaning through a public records request?
 20 A Through a public records request.
 21 Q Let me show you Kennedy 33.
 22 (Exhibit 33 is marked for identification)
 23 Q And once you've had a chance to take a look at this,
 24 would you let me know if you recognize this document?
 25 A Okay.

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1 Q What is this document?
 2 A It's a letter from me addressed to Representative
 3 Gary Tauchen, T-a-u-c-h-e-n, who was the chair at the
 4 time of the Assembly Committee on Elections, and to
 5 the members of that Assembly committee.
 6 Q And in the second paragraph of this letter, you make
 7 certain statements about identification requirements
 8 for absentee ballots, right?
 9 A Yes.
 10 Q As a result of those statements, were any changes --
 11 well, let me take out the as a result part. Were any
 12 changes made to the absentee voting rules for
 13 identification subsequent to your sending this
 14 letter?
 15 A I'm not sure. I know there are some changes that
 16 dealt with indefinitely confined voters and voters --
 17 I can't remember specifically, but I know -- I'm
 18 pretty sure there were some changes made.
 19 Q Okay. And your statement applied to the for absentee
 20 voting in general, right?
 21 A Yes.
 22 Q And that requirement remained in place, right, with
 23 the exception you just mentioned?
 24 A Yes.
 25 Q All right. And going down two paragraphs to the

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1 middle of the fourth paragraph, you said -- you've
 2 suggested that the Legislature consider permitting
 3 voters who do not have the required identification to
 4 sign an affidavit of identity. Is that right?
 5 A That's right.
 6 Q And if the Legislature had adopted that idea, a voter
 7 without a photo ID, a qualifying photo ID could still
 8 cast a ballot by signing an affidavit as to their
 9 identity, right?
 10 A That's correct.
 11 Q And that was not included in the final bill, right?
 12 A No.
 13 Q By the way, you testified on multiple occasions
 14 regarding the voter ID bill, right?
 15 A I did.
 16 Q And the suggestions you were making for improving the
 17 bill were consistent throughout that process, right?
 18 A Yes.
 19 Q And they included the two suggestions we just
 20 discussed?
 21 A Yes.
 22 Q In the final paragraph on that page, you discuss,
 23 first of all, proposed changes for proof of residence
 24 and the use of student identification cards, do you
 25 see that?

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1 the legislation as to how to deal with student ID
 2 cards both again as in terms of proof of residence
 3 because that also made changes as we talked about to
 4 the certified list.
 5 Q Okay. And so just so I'm clear, the Legislature
 6 initially didn't have student IDs as a form of
 7 identification that could be used for voting, right?
 8 A In my understanding, neither Assembly Bill 7 in 2011
 9 or 2011 Senate Bill 6, which were the two initial
 10 pieces of legislation, permitted the use of student
 11 ID cards for an acceptable ID.
 12 Q Okay. And you recommended that student IDs be added,
 13 right?
 14 A That was part of my initial testimony and was part of
 15 our analysis.
 16 Q And the Legislature did add student identification
 17 cards as a form of approved voter identification,
 18 right?
 19 A Yes.
 20 Q But the requirements for those identification cards
 21 set a standard that was not met by any university in
 22 Wisconsin at the time, is that right?
 23 A That was our understanding, yes.
 24 Q And that was also true at the time the legislation
 25 was passed, right?

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1 A Yes.
 2 Q You wrote that, "They do no facilitate participation
 3 by this important segment of voters and offer no
 4 practical improvement to the original bill." What
 5 did you mean by that?
 6 A Well, I think in the next sentence it says that, "No
 7 student identification card meets the standards
 8 proposed in the bill," meaning that it had to have a
 9 current address, a date of birth and a signature of
 10 the student.
 11 Q Okay. And the ultimate bill did not require a
 12 current address, is that right?
 13 A It did not.
 14 Q Oh, I'm sorry, this is for the --
 15 A This is for student identification, correct.
 16 Q But this is for proof of residence, right -- oh,
 17 sorry, I'm conflicting two things.
 18 A Well, the bill dealt with proof of residence and with
 19 student identification, so -- and the use of student
 20 ID cards in voting the original bill did not have a
 21 provision that you could use a student ID card as
 22 proof of identification and so there's a reference --
 23 I mean there was a reference to various changes that
 24 were enacted.
 25 This was where there was a lot of tinkering in

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1 A That was our understanding from our outreach to
 2 colleges and universities.
 3 Q And in this letter you were informing the Legislature
 4 that it was highly unlikely that universities and
 5 college would adopt the legislative standards because
 6 of student security concerns, is that right? It's
 7 the last sentence on the first page.
 8 A That's what I said, yes.
 9 Q Okay. Now, the next paragraph you were writing that,
 10 "The elimination of the use of a list of certified
 11 addresses for on-campus students will only serve to
 12 deter voter participation by students." Do you see
 13 that?
 14 A Yes.
 15 Q So had the Legislature originally proposed to do away
 16 with the dorm list option entirely?
 17 A I don't remember.
 18 Q Ultimately the dorm list option remained, but there
 19 was a requirement that citizenship status be
 20 certified, right?
 21 A Yes, that's right.
 22 Q And we've discussed that issue already. And then the
 23 final paragraph, you indicate that, "This draft was
 24 first available for review late on Friday of last
 25 week. There has been no time for the careful

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1 evaluation and vetting needed to ensure the best
 2 options for voters and election officials as enacted.
 3 There are numerous other provisions in this bill
 4 which will significantly alter the administration of
 5 elections and put additional stress on an already
 6 overburdened system." Do you see that?
 7 A Yes.
 8 Q Do you know how long after this the committee passed
 9 this bill?
 10 A I don't know. I mean I think they met in the
 11 following week.
 12 Q And do you know when --
 13 A I mean again I'd have to go back. I'm not sure what
 14 day May 3rd, 2011 was in reference to the Friday of
 15 last week and the time of the hearing, but I know it
 16 was moving very quickly and I expressed my concerns
 17 about -- in the paragraph about how effective that
 18 was for careful consideration of the changes.
 19 Q And the final bill, Act 23, it was passed only a few
 20 weeks after this, is that right?
 21 A I don't remember the exact time period.
 22 Q And at other points during the process of enacting
 23 Act 23, you had raised concerns about the speed at
 24 which the process was going, right?
 25 A I very likely did.

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1 or providing photo ID was that it was designed to
 2 combat fraud, and the idea was that we needed to be
 3 prepared to address those issues.
 4 Q Okay. And when you said other communities, other
 5 Wisconsin communities do not have a fraud problem,
 6 what did you mean by that?
 7 A I mean that we did not have any evidence that there
 8 was a voter fraud problem in general.
 9 Q Let me ask you about a news article.
 10 MR. KAUL: Mark this as Kennedy 35.
 11 (Exhibit 35 is marked for identification)
 12 Q And again take as much time as you need, but I'll
 13 tell you I'm going to ask you about a portion in
 14 which you're quoted near the end of the second page.
 15 A Okay.
 16 Q Now, according to this article, you said you were "at
 17 a loss" to explain certain details on obtaining
 18 proper ID when asked by attendees at a recent NAACP
 19 conference, do you see that?
 20 A Yes.
 21 Q Is that an accurate quote?
 22 A Yes.
 23 Q And this was shortly before the voter ID bill was
 24 passed, right?
 25 A That's right.

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1 Q I'm going to show you Kennedy 34 next.
 2 (Exhibit 34 is marked for identification)
 3 Q And once you've had a chance to review this, can you
 4 tell me what it is?
 5 A Okay.
 6 Q Can you explain what this is?
 7 A Well, it appears to be a string of emails that
 8 initiated from an individual at Demos that I worked
 9 with on Election Day registration testimony that I've
 10 provided in the past alerting us to this -- to a
 11 potential advisory referendum that was going to be
 12 held in Wauwatosa and then reaching out among staff
 13 to see if we could identify exactly what was driving
 14 this proposal.
 15 Q All right. And in your email in response -- well,
 16 not a response, a forwarding to staff, this is on the
 17 bottom of the second page.
 18 A Yes.
 19 Q You indicated that you needed to get information out
 20 that other Wisconsin communities do not have a fraud
 21 problem, do you see that?
 22 A Yes.
 23 Q What did you mean by that?
 24 A I mean that a lot of times it was driving questions
 25 about providing citizenship as a requirement to vote

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1 Q And what did you mean when you said you were at a
 2 loss?
 3 A I mean they asked me questions and I couldn't give
 4 them answers.
 5 Q And what did those questions pertain to, if you
 6 recall?
 7 A How to get a qualifying ID.
 8 Q And -- okay. Next I've got Kennedy 36. This is
 9 the single-sided one, and I'm just going to
 10 authenticate that document with you.
 11 (Exhibit 36 is marked for identification)
 12 A Okay.
 13 Q Is this a copy of testimony that -- written remarks,
 14 I should say, that you prepared for the Joint
 15 Committee on Review of Administrative Rules?
 16 A Yes.
 17 Q The only content about which I want to ask you is on
 18 Page 3, the second paragraph from the bottom, there's
 19 a reference to this not being the first time a
 20 statute may not mean what the author intended.
 21 A Okay.
 22 Q Do you know what you meant by that?
 23 A Well, I meant that there was quite a bit of
 24 discussion about whether or not the technical college
 25 system student ID card qualified as a college ID

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1 under the statutes, and our initial analysis as a
 2 staff which the board adopted was it didn't, and we
 3 were looking at statutes we don't administer to
 4 evaluate that.
 5 And in going back and looking at it again, we
 6 recognized that there were different interpretations
 7 that could be applied to this, and the board after
 8 listening to the impact of its initial decision chose
 9 to treat this in a manner which made more sense than
 10 the language of the statute, which was a technical
 11 college is a college and we're going to treat it as
 12 that even if the definition in the statute seems to
 13 exclude that.
 14 Q And when you say listening to evidence of the impact
 15 of that interpretation, what are you referring to
 16 specifically?
 17 A At the board meeting that it reconsidered its initial
 18 decision. There were several, 20, 30-plus
 19 individuals who testified why technical college
 20 students should be able to use their ID card as an
 21 acceptable photo ID, as a college ID.
 22 Q And was it your understanding when you prepared this
 23 testimony that the members of the Legislature who had
 24 voted for Act 23 did not intend for technical college
 25 IDs to be acceptable forms of IDs?

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1 A I think there was an argument based on the fact that
 2 technical college IDs were specifically allowed in
 3 one draft and not in another.
 4 Q Did the members of the Legislature specifically state
 5 that they didn't want those forms of ID to be
 6 included as an acceptable form of ID under the law?
 7 A Well, the position that they took in these hearings
 8 was if you're going to interpret the law, you need to
 9 adopt an administrative rule to reflect that
 10 interpretation so that we have a chance to review
 11 your interpretation.
 12 Q And did you adopt an administrative rule?
 13 A The board has adopted an administrative rule. We
 14 have an emergency rule in place during the various
 15 periods of ID. The permanent rule has passed all of
 16 the steps except for publication, which I think is
 17 February 1st, and it will be placed permanently on
 18 February 1st.
 19 Q And at that point is the Legislature, can it still
 20 review the rule?
 21 A No. Its review process has ended and so it's
 22 published and it will be effective.
 23 Q Is there anything that would prevent it from being
 24 effective?
 25 A New legislation that would specifically override the

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1 rule.
 2 Q Okay. But absent new legislation, technical college
 3 IDs will be permissible forms of photo ID?
 4 A Well, they are permissible now because our emergency
 5 rule is still in place.
 6 Q Okay. Are colleges currently permitted to use
 7 stickers on their student IDs to make the IDs comply
 8 with the voter ID requirements?
 9 MR. MURPHY: Object to form.
 10 A Our position is no.
 11 Q Why is that?
 12 A Because we haven't adopted a rule to reflect that
 13 process, and I think it's pretty clear from talking
 14 to the Legislature they wouldn't sign off on that
 15 rule.
 16 Q Okay. Who specifically has indicated that to you?
 17 A Well, when the technical college ID rule was going
 18 forward, you know, the questions we were getting,
 19 well, does this allow stickers because if it does, we
 20 can't support it, and that was talking to members of
 21 the Joint Committee on Review of Administrative Rules
 22 staff.
 23 Q Okay. And is it your understanding that that was the
 24 view of the majority in the Legislature?
 25 A I don't know if it's the view of the majority in the

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1 Legislature, but it's got to get through the Joint
 2 Committee on Review of the Administrative Rules and
 3 we're getting inquiries from colleges right now and
 4 suggesting that they not go that route because we
 5 don't think that that rule would get through.
 6 Q So it's your understanding that that's the view of
 7 the majority of the Joint Committee on Administrative
 8 Rules?
 9 A Yes.
 10 Q Kennedy 37.
 11 (Exhibit 37 is marked for identification)
 12 A Okay.
 13 Q Do you recognize this document?
 14 A I do.
 15 Q What is this?
 16 A It's correspondence from myself to Representative
 17 Jeff Fitzgerald.
 18 Q And was Representative Fitzgerald the speaker of the
 19 Assembly at this time?
 20 A I think he was. That's why I'm surprised it says
 21 Dear Representative Fitzgerald and not dear speaker,
 22 but --
 23 Q I want to ask you about the conclusion on the fifth
 24 page. You wrote, "Speaking frankly on behalf of our
 25 agency and local election officials, absent direct

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1 evidence, I believe continued unsubstantiated
 2 allegations of voter fraud tend to unnecessarily
 3 undermine the confidence that voters have in election
 4 officials and the results of the election." Well, it
 5 says that, correct?
 6 A Yes, it does.
 7 Q All right. And then two sentences later, skipping
 8 the next sentence is what I mean, you write, "I hope
 9 that, as an elected official, you would also agree
 10 that there is little benefit in promoting"
 11 unsubstantiated -- I'm sorry, "unsupported
 12 allegations questioning the credibility of the
 13 election process and the work of local clerks and
 14 election inspectors." Is that right?
 15 A That's right.
 16 Q And that is your view, correct?
 17 A It is.
 18 Q And then I'm just going to ask about a few other
 19 things quickly and then we'll be all done for today
 20 at lease. First I'm going to ask you about the use
 21 of electronic records for proof of residence briefly.
 22 A Okay.
 23 Q In August of 2012, you ruled that electronic records
 24 showing an individual's address could be used to
 25 prove residence for the purpose of voter

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1 registration, assuming they met the other proof of
 2 residence qualifications?
 3 A The Government Accountability Board adopted that
 4 condition, yes.
 5 Q Okay. Thank you for the clarification. That ruling
 6 was criticized by certain members of the Legislature,
 7 correct?
 8 A Yes.
 9 Q And specifically Senator Lazich?
 10 A Yes.
 11 Q Did you have any conversations with Senator Lazich
 12 about that decision?
 13 A Yes.
 14 Q And what did she say to you?
 15 A I'm not sure exactly. She's not the kind of person
 16 that you talk a whole lot of policy with. Sometimes
 17 she just has her views and --
 18 Q She conveyed them to you?
 19 A Conveyed them to me.
 20 Q And you saw that she was quoted in our complaint, is
 21 that right?
 22 A I do. I forgot what she said, but -- or what the
 23 quote was, but yes.
 24 Q Was the quote in the complaint consistent with your
 25 understanding of her views based on your conversation

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1 with her?
 2 A Yes.
 3 Q And have you been -- has the GAB been required to
 4 issue an administrative rule on this topic?
 5 A No.
 6 Q Do you know how the -- or how electronic records have
 7 been used in practice by voters and voter
 8 registration groups to register voters? That's a
 9 very vague question. Let me rephrase it.
 10 Do you know which groups of voters have used
 11 electronic registration in particular?
 12 A You're asking if I have an idea of what the
 13 demographics are of the individual voters who might
 14 have pulled up an electronic record to show their
 15 proof of residence?
 16 Q Yes.
 17 A I've got reports that it comes primarily -- or that
 18 people have noticed it a lot at polling places that
 19 serve colleges and universities, from observers and
 20 poll workers there, but I don't think it's by any
 21 means limited to that, but it would make sense that
 22 that group, which is not used to dealing with paper
 23 and has access to that, would just assume that they
 24 could flash their utility bill.
 25 Q Okay. You mentioned earlier that until 2006,

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1 Wisconsin did not require everyone to register to
 2 vote, is that right?
 3 A That's right.
 4 Q And specifically voters were required to register
 5 only if they lived in cities or municipalities with
 6 populations of over 5,000 residents, is that right?
 7 A Municipalities with a population of more than 5,000
 8 had to provide voter registration. Those with less
 9 than 5,000 had the option of doing it.
 10 Q Okay. And that policy ended as a result of the Help
 11 America Vote Act?
 12 A Of legislation adopted by the State Legislature in
 13 response to the Help America Vote Act. The Help
 14 America Vote Act didn't have anything to do with it
 15 other than it required the statewide voter
 16 registration system to be used and it made sense if
 17 we were going to have one that everyone should be
 18 registered, not just 76 percent of the eligible
 19 population.
 20 Q Did the GAB have -- did the State Elections Board
 21 have a position on whether statewide registration was
 22 required to comply with the HAVA?
 23 MR. MURPHY: Object to form.
 24 A The State Elections Board I don't think took a formal
 25 position, but in my role as the head of the State

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1 Elections Board working with the Legislature to
 2 implement it, I recommended that we do that. I said
 3 it didn't make sense to try and implement a system
 4 where a large number of voters would not be
 5 registered. It would defeat the whole purpose of a
 6 statewide voter registration system, and we didn't
 7 specifically say that, but I guess the question was
 8 did we really want to get into a fight with the
 9 federal government over that.
 10 Q Right. All right. And am I right that until 2002,
 11 no city in Wisconsin provided Spanish language
 12 ballots?
 13 MR. MURPHY: Object to the form.
 14 Answer to the extent you're able.
 15 A I'm not aware that any Spanish language ballots were
 16 provided to voters until Milwaukee was subject to
 17 that, which I thought happened in 20 -- after the
 18 2012 or before the 2012 election because of the
 19 triggering mechanisms if ballots were available in
 20 another language, they weren't authorized by state or
 21 federal law. And in inquiries that we had about
 22 that, we took the position that an official ballot
 23 could not be in any other language unless it was
 24 required by law.
 25 Q Okay. And I'll come back to that in a second.

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1 census certified a certain threshold of minority
 2 voters, and I'd have to go back and look at the
 3 criteria that's in the census in that -- and the U.S.
 4 Department of Justice is responsible for informing
 5 them, so they sent a letter addressed to me as the
 6 chief election official and they sent a letter to the
 7 City of Milwaukee advising them that they were now
 8 subject to those requirements.
 9 And when a jurisdiction comes under that, the
 10 U.S. Department of Justice spends a lot of time
 11 monitoring their compliance to make sure of that, and
 12 it took Milwaukee a bit of time to get their act
 13 together.
 14 Q Okay. And in April of 2012, the Justice Department
 15 sent special monitors to oversee the conduct of
 16 elections in Milwaukee, right?
 17 A That's my recollection, yes.
 18 Q And do you have an understanding as to why that
 19 occurred?
 20 A Part of it I'm sure was just normal practice for a
 21 new Section 203 jurisdiction. And part of it I'm
 22 sure was a response to the fact that Milwaukee, their
 23 perception that Milwaukee might not have been taking
 24 this seriously.
 25 Q And do you have a perception as to whether Milwaukee

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1 Focusing just on Milwaukee first, prior to
 2 Milwaukee's change, there was an action brought by
 3 the U.S. Justice Department, right?
 4 A Not with respect to language compliance. I mean
 5 there was -- the Section 203 of the Voting Rights Act
 6 kicks in based on census findings and we were
 7 informed by the U.S. Department of Justice, as was
 8 the City of Milwaukee, that they were now going to be
 9 subject to the minority language requirements of
 10 Section 203 as a result of -- the results of what I
 11 thought as I recall was the 2010 census, not the 2000
 12 census. I'm fairly confident that's the case.
 13 And the U.S. Department of Justice was
 14 monitoring Milwaukee's compliance with that. I don't
 15 know that they filed a formal action, but they
 16 certainly were spending an awful lot of time vetting
 17 their materials and trying to get -- assure that they
 18 were complying.
 19 Q Okay. So I guess let me rephrase the question then,
 20 I guess. Milwaukee's adoption of Spanish language
 21 ballots was in response to activities that the U.S.
 22 Justice Department or investigation that the U.S.
 23 Justice Department --
 24 A No, they were required, specifically required by law
 25 under Section 203 of the Voting Rights Act. Once the

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1 was taking it seriously?
 2 A I don't think they were taking it seriously.
 3 Q And why do you have that view?
 4 A Because they kept -- they weren't communicating to
 5 their attorneys about their communications with the
 6 Department of Justice, for one. In other words, the
 7 Department of Justice would call and talk to them and
 8 they wouldn't tell their attorneys about it and we'd
 9 only find out and we'd call the city attorneys and
 10 say your people are talking to lawyers who are going
 11 to sue you, so -- and they kept saying, oh, this is,
 12 you know -- and we tried to give them as much help as
 13 we could, but we also had a few other things on our
 14 plate at that time.
 15 Q You said they kept saying, oh, this is and then you
 16 sort of trailed off. What were they saying it was?
 17 A I'm sorry. They felt like they had things under
 18 control, but they weren't giving any specifics and
 19 our emphasis was they needed a very detailed plan and
 20 they needed to show progress.
 21 Q Who was the executive director of the Milwaukee
 22 Election Commission at that time?
 23 A Sue Edman.
 24 Q So it wasn't Neil Albrecht at that time?
 25 A It was not Neil Albrecht. Neil had -- he had been

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1 the deputy director and had left at that time.
 2 Q You mentioned a moment ago that the State Elections
 3 Board I think you said had taken a position that the
 4 official ballot could only be in English unless
 5 otherwise required by law, is that right?
 6 A That's right.
 7 Q And did that -- is that GAB's position also?
 8 A That's -- I don't think the board itself has taken
 9 that position and I don't think the prior board did,
 10 but in response to questions about can we have a
 11 ballot in another language, the answer was not unless
 12 there's a specific requirement authorizing it.
 13 Q And what's the basis for that? Does it --
 14 A I guess the sense is that it's unusual to provide
 15 ballots in another language unless there's been a
 16 specific requirement to do that, and we didn't see
 17 that as something we wanted municipalities to engage
 18 in willy-nilly because we weren't sure that they
 19 would give the kind of attention that you need to
 20 ensure that things were properly translated and it's
 21 an expensive undertaking and it seemed like a
 22 misallocation of resources for that.
 23 We did take the position there's nothing that
 24 stops informational materials being put out in
 25 another language, and we do that with the voter

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1 registration form. When we designed our system in
 2 2006, we specifically allowed for access in Spanish
 3 and Hmong in the anticipation that at some point they
 4 would be required languages. And a lot of government
 5 agencies do put out informational materials, but a
 6 ballot is a different kind of document.
 7 Q Okay. So just so I make sure I'm understanding
 8 clearly, so Milwaukee offers ballots that are in both
 9 English and Spanish, correct?
 10 A Right.
 11 Q And they're required to by federal law?
 12 A That's right.
 13 Q But am I right that every other municipality in
 14 Wisconsin is only permitted to offer ballots in
 15 English?
 16 A That would be our advice to them, that's right.
 17 Q And is it your understanding that that's the practice
 18 that every other municipality follows?
 19 A That's right.
 20 Q Let me ask you about one more document. This is
 21 Kennedy 38.
 22 (Exhibit 38 is marked for identification)
 23 A Okay.
 24 Q Do you recognize this document?
 25 A I do.

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1 Q What is this?
 2 A It's an email containing an attachment that was
 3 forwarded to our public information officer by
 4 Mary Spicuzza, who I think at the time was a
 5 Wisconsin State Journal or Cap Times reporter.
 6 Q And do you have an understanding as to why she
 7 forwarded this to you without comment? To you, I
 8 mean to the GAB.
 9 A To Reid.
 10 Q Yes.
 11 A It may be that she -- I don't know why. I mean there
 12 may have been some discussions offline about were we
 13 aware of this and Reid's practice would have been I
 14 don't know, show me. Because she obviously had
 15 gotten -- the document that's attached is a press
 16 release from One Wisconsin Now.
 17 Q All right. And it's a press release regarding
 18 alleged voter caging coordination, is that right?
 19 A Right. Voter suppression including caging.
 20 Q And Mr. Magney's email said we need to discuss this,
 21 do you see that?
 22 A Yes.
 23 Q Did you participate in discussions regarding this?
 24 A We did.
 25 Q And what action, if any, did you take?

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1 A I don't recall that we took any specific action
 2 because we generally don't act on press releases, but
 3 that doesn't mean we don't read them and talk about
 4 what may come from them.
 5 Q And did you review the recording or video, I forgot
 6 which, referred to in the press release?
 7 A I believe I did. I don't specifically recall, but it
 8 sounds like something that I would have been paying
 9 attention to.
 10 Q And with allegations of this sort, does the GAB --
 11 well, first of all, does the GAB have authority to
 12 investigate these sorts of actions?
 13 A We can investigate, but the most we can do is refer
 14 to a district attorney to take any action. And the
 15 general policy is we don't investigate unless we have
 16 a sworn complaint alleging a specific violation of
 17 the law.
 18 Q Okay. So to the best of your recollection, there was
 19 no investigation regarding this incident?
 20 A I don't recall one.
 21 MR. KAUL: Let's go off the record for
 22 just a moment.
 23 THE VIDEOGRAPHER: Off the record at
 24 6:01.
 25 (Short recess is taken)

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1 THE VIDEOGRAPHER: We are back on the
 2 record at 6:14.
 3 Q Director Kennedy, there's one last topic I just want
 4 to ask you about. The GAB sometimes receives reports
 5 from groups that do election observing, correct?
 6 A Yes.
 7 Q And that includes the League of Women Voters, is that
 8 right?
 9 A Yes.
 10 Q And a group called Wisconsin Election Protection, is
 11 that right?
 12 A Yes.
 13 Q What, if anything, does your agency do with those
 14 reports when you receive them?
 15 A We read those reports. We try to figure out if
 16 there's any trends in there that we might need to
 17 focus our training on. And I mean that's really the
 18 primary use. We don't necessarily use that to
 19 trigger further follow-up on those. You know,
 20 probably -- it usually has to be a pretty egregious
 21 set of issues before we do some specific follow-up.
 22 Racine's June 20th recount -- recall and recount
 23 was one good example of that as you saw from the
 24 exhibits that were done, but generally we're reading
 25 the reports to see where there might be performance

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1 comments being made, it gave us more information
 2 about where we thought there were issues. So I think
 3 there was an inherent assumption of trusting them,
 4 but it had more to do with the fact that we've had
 5 regular dealings with both of those groups in terms
 6 of their training and work and we've seen them in the
 7 field doing our own observations.

8 MR. KAUL: I think that's all I have
 9 for you. My understanding, Mr. Murphy, is that
 10 you don't have any questions today, is that
 11 right?

12 MR. MURPHY: No redirect, that's
 13 correct.

14 MR. KAUL: Okay. We can go off the
 15 record then.

16 THE VIDEOGRAPHER: The time is 6:17.
 17 We are going off the record. This concludes
 18 Media No. 4 in the deposition of
 19 Mr. Kevin J. Kennedy take January 14th, 2016.
 20 (6:17 p.m.)
 21
 22
 23
 24
 25

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1 issues. It might direct us to do some more training
 2 in a particular location, but it's also trying to get
 3 an understanding of what causes confusion for voters
 4 and poll workers so that we can address our advice to
 5 clerks and our training materials and things like
 6 that.
 7 Q When those reports raise issues about the
 8 administration of elections, do you do any follow-up
 9 with the administrators at the relevant -- in the
 10 relevant municipalities or polls?
 11 A Well, I can't recall if those reports have done it.
 12 I mean there have been matters that have been brought
 13 to our attention where we will reach out to the clerk
 14 to ask if they understand some things or if they need
 15 assistance or where we think that they clearly are
 16 going off on the wrong path. So I think those
 17 reports might be one of those catalysts, but there's
 18 been other reasons why we've done that.
 19 Q Focusing just on the reports prepared by those two
 20 groups, the League of Women Voters and Wisconsin
 21 Election Protection, have you found the contents of
 22 those reports to be reliable?
 23 MR. MURPHY: Object to form.
 24 A I don't think we've evaluated them in terms of
 25 reliability. To us, if we saw the same kind of

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1 ERRATA SHEET
 2 Witness Name: Kevin J. Kennedy
 3 Date Taken: January 14, 2016
 4 Case Name: One Wisconsin Now Institute v. Gerald Nichol
 5 Page/Line Reads Should Read Reason
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 25 _____
 Kevin J. Kennedy

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1 STATE OF WISCONSIN)
2) ss.
3 COUNTY OF DANE)
4
5 I, LISA A. CREEERON, a Registered Professional
6 Reporter and Notary Public in and for the State of
7 Wisconsin, do hereby certify that the foregoing is a
8 true record of the deposition of KEVIN J. KENNEDY, who was
9 first duly sworn by me; having been taken on the 14th day
10 of January, 2016, at the Wisconsin Department of Justice,
11 17 West Main Street, in the City of Madison, County of
12 Dane, and State of Wisconsin, in my presence, and reduced
13 to writing in accordance with my stenographic notes made
14 at said time and place.

15 I further certify that I am not a relative
16 or employee or attorney or counsel for any of the
17 parties, or a relative or employee of such attorney
18 or counsel, or financially interested in said action.
19 In witness whereof, I have hereunto set my hand
20 and affixed my seal of office this 17th day of January,
21 2016.

Notary Public, State of Wisconsin
My Commission Expires: 1/29/17

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