

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

THE OHIO ORGANIZING )  
COLLABORATIVE, ET AL, )  
 )  
PLAINTIFFS, ) CASE NO. 2:15-CV-1802  
 )  
vs. )  
 )  
JON HUSTED, ET AL, )  
 )  
DEFENDANTS. )  
\_\_\_\_\_ )

TRANSCRIPT OF THE BENCH TRIAL PROCEEDINGS - VOLUME I  
BEFORE THE HONORABLE MICHAEL H. WATSON  
MONDAY, NOVEMBER 16, 2015; 9:00 A.M.  
COLUMBUS, OHIO

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1 Monday Morning Session

2 November 16, 2015

3 - - -

4 THE COURTROOM DEPUTY: 2:15-CV-1802, the Ohio  
5 Organizing Collaborative, et al versus Jon Husted, et al.

6 Counsel, please enter your appearances.

7 MR. SPIVA: Bruce Spiva for the plaintiffs. And with  
8 me, my colleagues Joshua Kaul, Rhett Martin, Amanda Callais and  
9 Don McTigue.

10 THE COURT: Good morning.

11 MR. VOIGT: Your Honor, Steven Voigt for the  
12 defendants. And my co-counselers are Sarah Pierce, Bridget  
13 Coontz and Ryan Richardson.

14 THE COURT: Good morning to you.

15 Are you ready for opening statement?

16 MR. VOIGT: Your Honor, before we begin opening  
17 statements, the defense would like to make a motion to separate  
18 the witnesses and have witnesses who will be testifying in this  
19 trial not be present during the testimony of other witnesses.

20 THE COURT: The Court is going to order a separation  
21 of witnesses and ask that each side police their own witnesses.

22 MR. VOIGT: Thank you, Your Honor.

23 MR. SPIVA: Your Honor, I submit that doesn't apply to  
24 the actual parties.

25 THE COURT: No. The parties can be here.

1 MR. SPIVA: We will actually need to ask one person.

2 Your Honor, I have one preliminary matter which is on  
3 Friday, The Buckeye Institute filed a motion to file an amicus  
4 brief with the Court. We would oppose that. I didn't know if  
5 Your Honor wanted briefing on that or if you felt you didn't  
6 need briefing.

7 THE COURT: I've already denied one. I have not  
8 denied that one yet. I suppose I'm looking for a brief from a  
9 similar party from your perspective.

10 MR. SPIVA: Yes, Your Honor. I think the same  
11 rationale that applied the last time Your Honor denied a  
12 similar motion would apply here. And it's not really anything  
13 to file an amicus to at the moment in any event but it seemed  
14 that they were basically trying to present the same types of  
15 arguments about what the law is in their motion.

16 THE COURT: Just a moment.

17 Mr. Voigt?

18 MR. VOIGT: Your Honor, we take no position on the  
19 amicus brief.

20 THE COURT: I'll let you know.

21 MR. SPIVA: Thank you, Your Honor.

22 And Mr. Kaul is going to deliver the opening for our  
23 side.

24 THE COURT: Very good. Do you have a demonstrative?

25 MR. KAUL: Your Honor, we're planning to have

1 Ms. Schultz over here call up some exhibits that are on our  
2 exhibit list during the course of the opening. But that's the  
3 extent of demonstrative. There's no demonstrative that's not  
4 on the exhibit list.

5 THE COURT: Very good.

6 MR. VOIGT: Your Honor, if I may. I'd like to bring  
7 one additional thing to -- one additional issue to the Court's  
8 attention that may be premature. But there are some scheduling  
9 issues with the witnesses and the plaintiffs have indicated  
10 that they want to schedule three of their witnesses, two of  
11 their experts and one of their significant witnesses on Friday  
12 and Monday. One of our expert witnesses will be testifying on  
13 Thursday. So I recognize we have to have some flexibility but  
14 we are a little bit concerned with having enough time to be  
15 able to present our case if the plaintiffs' witnesses are  
16 spilling over more than a reasonable amount into our trial.

17 THE COURT: I don't know how else I can tell you,  
18 you're both going to have the time you need to present your  
19 case. We have to adjourn for Thanksgiving. We'll adjourn and  
20 come back.

21 MR. VOIGT: Thank you, Your Honor.

22 THE COURT: Having said that, I would still like to  
23 get it done in six days, if possible.

24 MR. SPIVA: We very much would like to as well, Your  
25 Honor.

1 THE COURT: If you were in town for the weekend, at  
2 least you had nice weather.

3 MR. SPIVA: Yes.

4 THE COURT: Mr. Kaul, are you ready to proceed?

5 MR. KAUL: Yes, Your Honor.

6 THE COURT: Go right ahead.

7 MR. KAUL: Your Honor, good morning. Let me introduce  
8 myself. I know Mr. Spiva introduced me. I'm Josh Kaul. Along  
9 with my colleagues, I have the honor in this case of  
10 representing the Ohio Democratic Party, the Democratic Party of  
11 Cuyahoga County, the Montgomery County Democratic Party, Jordan  
12 Isern, Carol Biehle and the Reverend Bruce Butcher.

13 THE COURT: Very good.

14 MR. KAUL: The 2004 election in Ohio was disastrous,  
15 Your Honor. Voters in parts of the state waited ten hours to  
16 vote. In Franklin County, lines were as long as seven hours in  
17 predominantly African-American precincts and thousands of  
18 voters were deterred from casting ballots.

19 In the wake of that election, Ohio expanded access to  
20 the polls by, among other things, adopting a 35-day early  
21 voting period. Some of Ohio's largest counties, such as  
22 Cuyahoga County, attempted to encourage absentee voting by mail  
23 by sending absentee-ballot applications to registered voters  
24 and in some cases they prepaid the postage for absentee-ballot  
25 return envelopes to make it easier to send those ballots in

1 even for the poor.

2 Those reforms made a difference. During golden week in  
3 2008, the first week of early voting when voters could register  
4 and cast a ballot at the same time, approximately 67,000  
5 ballots were cast. Nearly 13% of which were cast by voters who  
6 were registering for the first time or who were updating their  
7 registration.

8 In 2012, things improved further. 90,000 voters, nearly  
9 90,000 voters cast ballots during golden week and over 14,000  
10 registered or updated their registration.

11 The evidence in this case will show that  
12 African-Americans were disproportionately likely to use the  
13 opportunity presented by golden week to register and vote at  
14 the same time. In Cuyahoga, Hamilton and Mahoning Counties,  
15 for example, voters in all black census blocks used golden week  
16 at a rate of 3.5 times the rate in voters of all white census  
17 blocks. A report issued by the Franklin County Board of  
18 Elections showed that in 2008, African-Americans were much more  
19 likely than white voters in Franklin County to use early  
20 in-person voting.

21 But despite those successes, significant problems  
22 remained in Ohio's election system. On the last day of early  
23 voting in 2008, for instance, voters in Franklin County had to  
24 wait six hours to cast a ballot. In 2012, lines in Cuyahoga  
25 during the last weekend of early voting were over an hour and a

1 half long, extending outside of the building and onto the  
2 street. The evidence at trial will show that long lines have  
3 the effect of causing voters to leave lines and not cast  
4 ballots.

5 Despite those ongoing challenges, state officials,  
6 particularly in the wake of increasing African-American turnout  
7 in the election of President Obama in 2008, began to undertake  
8 efforts to limit access to the polls. PX97 is one example of  
9 this.

10 That document is an e-mail from then Franklin County  
11 Board of Elections Deputy Director Matt Damschroder to then  
12 State Senator and candidate for Secretary of State Jon Husted  
13 among others with a summary of suggestions for a senate bill.  
14 Among Mr. Damschroder's suggests for enhancing the bill, this  
15 is again still in 2009, we're requiring county board of  
16 elections to notify its county commissioners by October 1st of  
17 the prior year before establishing multiple in-person voting  
18 locations which Mr. Damschroder explained would mean no  
19 multiple in-person voting locations in 2010 when Mr. Husted  
20 would be on the ballot statewide. Requiring additional  
21 information on provisional ballots for them to be counted and  
22 excluding from precinct size calculations voters who cast  
23 absentee ballots in the two prior gubernatorial elections.

24 PX98 is another important document that's particularly  
25 revealing of the mindset of some county officials. This



1 document is an e-mail from Mr. Damschroder to Senator Bill  
2 Seitz on behalf of Franklin County Board of Elections member  
3 Doug Preisse. The e-mail is a defense of Mr. Preisse's voting  
4 in favor of having some expanded early-voting hours in which  
5 Mr. Damschroder explains that this was a significant departure  
6 from the democrats' position earlier in the week which  
7 Secretary Brunner would have supported in a tie-breaking vote.  
8 In other words, Mr. Preisse's vote was defensible because it  
9 was in service not of expanding early-voting hours but rather  
10 of having fewer voting hours early voting.

11           Following the 2010 elections which resulted in  
12 republican control of the Governor's and Secretary of State's  
13 office as well as both houses of the General Assembly, the  
14 legislature enacted H.B. 194 which, among other things, would  
15 have reduced the period for early in-person voting to 17 days  
16 before an election, prohibited county boards of elections from  
17 mailing unsolicited absentee-ballot applications or prepaying  
18 the return postage on such applications, and permitted election  
19 officials to challenge an absentee voter's right to vote if the  
20 absentee-ballot identification envelope was incomplete.

21           After voting rights groups succeeded in putting a  
22 referendum on the 2012 ballot to repeal that law, however, the  
23 General Assembly preemptively repealed H.B. 194 without giving  
24 voters a chance to weigh in on it directly. Even so, as a  
25 result of H.B. 224, a law related to H.B. 194 that, unlike 194,

1 hadn't been repealed, inconsistent deadlines for the early  
2 voting period were left in place. The result of which was that  
3 nonmilitary voters would have been prevented from voting on the  
4 final three days before election day and that military voters  
5 were permitted to do so.

6 After a lawsuit was filed, an injunction was issued  
7 forcing the state to provide early voting on the three days  
8 before election day. On appeal, the Sixth Circuit explained  
9 that the evidence showed that approximately 100,000 Ohio voters  
10 would choose to vote during the three-day period before  
11 election day and that these voters are disproportionately  
12 women, older and of lower income and educational attainment.

13 The Court also rejected the argument that the burden on  
14 nonmilitary voters was slight because they had ample other  
15 means to cast a ballot, including by requesting and mailing an  
16 absentee ballot and voting in person prior to the final weekend  
17 before election day or on election day itself. The Court  
18 explained that thousands of voters who would have voted on  
19 those three days would not be able to exercise their right to  
20 cast a vote in person under the law then in place.

21 In July and August of 2012, Secretary Husted cast  
22 tie-breaking votes always in favor of less expansive  
23 early-voting hours for Cuyahoga, Lucas, Summit, Franklin and  
24 Montgomery Counties. In the middle of August, he issued  
25 directive 2012-35 which imposed these early-voting hours

1 statewide.

2 In 2012, of course, President Obama was re-elected,  
3 African-American turnout was again high in Ohio and nationwide,  
4 and again, President Obama won the state of Ohio. After that  
5 election, efforts to restrict access to the ballot were  
6 renewed. The result of those efforts ultimately was the  
7 enactment of the bills that are at issue in this case, S.B.  
8 200, 205, 216 and 238, as well as the issuance of several  
9 directives, some of which are at issue here.

10 As the Court is well aware, S.B. 238's elimination of  
11 golden week and other reductions in early-voting hours were  
12 challenged in *Ohio State Conference of the NAACP v. Husted*.  
13 I'll leave the discussion of the applicability here of the  
14 findings in that case for the legal argument later in this case  
15 but the important factual upshot I want to note here is that as  
16 a result of the settlement of that case there was an agreement  
17 that every Ohio county would provide early in-person voting on  
18 the final two weekends and until 7:00 p.m. during the final  
19 week before the 2016 election.

20 So with that background, let me briefly summarize the  
21 provisions that are at issue in this case. First, the  
22 plaintiffs are challenging S.B. 238's elimination of golden  
23 week, the five-day same-day registration period during which  
24 voters could register and vote at the same time. Second, the  
25 plaintiffs are challenging Ohio's law which prohibits counties

1 from opening more than one early-voting location no matter the  
2 size of the county or how long its lines are.

3 This case also involves challenges to two provisions  
4 that have reduced the minimum number of DREs, direct recording  
5 electronic voting machines which are used in some counties in  
6 Ohio, that counties must have if they use DREs as their primary  
7 voting device. Under the law in place through the 2012  
8 election, counties were required to have one DRE for every 175  
9 registered voters.

10 S.B. 200 changed the law so that counties can subtract  
11 from the number of registered voters, the number of voters who  
12 cast absentee ballots in the last presidential election.  
13 Meaning that counties will be permitted to have fewer DREs than  
14 they previously were required to have.

15 Directive 2014-26 further reduces the minimum number of  
16 DREs that counties are required to have by permitting counties  
17 to exclude --

18 THE COURT: Who funds those machines?

19 MR. KAUL: They're funded by the counties, Your Honor.  
20 There's no reason that that has to be the case, but that is the  
21 case.

22 THE COURT: Go ahead.

23 MR. KAUL: The way the directive 2014-26 further  
24 reduces the minimum is by excluding from the calculation of  
25 registered voters people who have failed to respond within 30

1 days to any confirmation of residence notice and voters who  
2 have requested an absentee ballot as of the date the allocation  
3 decision is made. An effective double counting of absentee  
4 voters since the ones from the previous election were also  
5 subtracted.

6 Next, the plaintiffs are challenging S.B. 205's  
7 restriction on absentee-ballot mailings. In particular,  
8 Plaintiffs are challenging, first, the prohibition on local and  
9 county governments sending unsolicited absentee-ballot  
10 applications which themselves would have been funded by the  
11 counties; the prohibition on including prepaid postage for  
12 returning absentee ballots, again something that was funded by  
13 the counties; the prohibition on the Secretary of State sending  
14 unsolicited absentee-ballot applications absent specific  
15 authorization from the General Assembly.

16 In addition, the plaintiffs are challenging the  
17 Secretary of State's planned exclusion from the unsolicited  
18 absentee-ballot mailings of fully eligible voters who are in  
19 inactive or active confirmation status if they didn't vote in  
20 the 2012 or 2014 election.

21 The plaintiffs are also challenging additional  
22 unnecessary informational requirements for absentee and  
23 provisional ballots under S.B. 205 and S.B. 216. The  
24 plaintiffs are challenging S.B. 216's reduction from ten to  
25 seven days of the cure period for provisional voters who fail

1 to provide proof of identity on election day and its  
2 prohibition with limited exceptions on election officials  
3 completing on a voter's behalf the information required on the  
4 provisional-ballot affirmation form.

5 Finally, Plaintiffs are challenging the provision in  
6 S.B. 216 that gives discretion but fails to require county  
7 board of elections from consolidating poll books in  
8 multiprecinct locations to ensure that voters aren't  
9 disenfranchised for casting their ballot at the right location  
10 but in the wrong precinct, really the wrong line in that  
11 precinct.

12 The evidence in this case will establish that --

13 THE COURT: Is that the one where the Secretary has a  
14 draft directive addressed to it?

15 MR. KAUL: It is, Your Honor. And it is absolutely  
16 possible that that issue will be mooted by December and we hope  
17 it is.

18 THE COURT: Go ahead.

19 MR. KAUL: The evidence in this case will establish  
20 that these provisions should be struck down for four reasons.  
21 First, these measures violate the Equal Protection Clause under  
22 the Anderson-Burdick test. While the case law we discuss in  
23 our trial brief touches on some of the nuances of that test,  
24 the basics of the test are simple. It requires a balancing of  
25 the burdens that a law imposes on voting rights against the

1 benefits to the state from that law. Unlike our Voting Rights  
2 Act claim in our potential discrimination claim, this is a  
3 race-neutral claim. It focuses on the burdens that the law  
4 imposes on voters, whatever their race. And here the burden  
5 that the laws impose, particularly when they are considered  
6 cumulatively as just the lengthy list I just recited indicates,  
7 are substantial.

8 With respect to the elimination of golden week, the  
9 basic burden is clear. Rather than being able to take  
10 advantage of one-stop shopping that same-day registration  
11 offers, voters who need to register and update their  
12 registration now must register and vote on two separate  
13 occasions. Dr. David Cannon will explain that based on his  
14 research, he would expect to see an increase in turnout of  
15 thousands of voters from five days of same-day registration,  
16 the period of same-day registration that was eliminated in this  
17 case.

18 As I mentioned before, approximately 67,000 voters cast  
19 ballots during golden week in '08, nearly 13,000 of whom  
20 registered or updated their registrations. And the numbers  
21 increased from 90,000 and 14,000 in 2012.

22 The law limiting early voting to a single location for  
23 county also burdens voters who have to travel farther to cast  
24 an early ballot and then have to travel if there were multiple  
25 locations per county. Dr. Yang will explain that extensive

1 literature has concluded that polling-place location can affect  
2 turnout. And this lack of accessibility shows up in the  
3 numbers in Ohio.

4 Despite having a relatively lengthy early-voting period,  
5 Ohio has low rates of early in-person voting. Much lower than  
6 other states that have shorter early-voting periods but that  
7 have more early-voting location. Yet it has extremely long  
8 lines to vote during the early-voting period.

9 The reduction of DRE minimums will mean that at least  
10 some counties have fewer DREs, meaning longer lines at the  
11 polls. The restrictions on absentee-ballot mailings means that  
12 absentee voting is more difficult than it otherwise would be,  
13 causing some voters to vote in person, again meaning long lines  
14 or not to vote at all.

15 The new informational requirements for absentee and  
16 provisional ballots mean that voters who fail to supply the  
17 newly required information and don't cure their ballots will  
18 have their ballots rejected, their votes won't count. The  
19 reduction in the cure period for voters who fail to provide  
20 proof of identity means that some additional number of voters  
21 will inevitably present to cure their ballots too late.

22 The rule preventing election officials from completing  
23 the information on the provisional-ballot affirmation on  
24 voters' behalf presents an obvious burden for voters with low  
25 literacy or with limited English proficiency. And if not



1 remedied, the General Assembly's failure to mandate that poll  
2 books be consolidated which would eliminate the right church,  
3 wrong pew problem that we're challenging will have the effect  
4 of causing some ballots needlessly to be rejected.

5 In contrast to those significant burdens on voting  
6 rights, the benefits to the state from these laws are  
7 negligible at best. As a few examples, the evidence will show  
8 that the elimination of golden week will result in only minor  
9 cost savings and do nothing to reduce fraud or the possibility  
10 of fraud. There's no reason not to give counties the  
11 discretion to open additional early-voting locations. Nor is  
12 there any reason that counties should be required to  
13 disenfranchise voters whom the counties can identify and whose  
14 eligibility isn't in question simply because those voters fail  
15 to include a line on their absentee-ballot envelopes or their  
16 provisional-ballot affirmations.

17 Because the burdens that each of the challenged  
18 provisions imposes on voting rights outweighs the benefits of  
19 those provisions, they should be invalidated under the Equal  
20 Protection Clause.

21 Second, Your Honor, the evidence will establish that  
22 most of the challenged measures interact with the ongoing  
23 effects of the history of racial discrimination in Ohio to  
24 impose disproportionate burdens on minority voters in violation  
25 of Section 2 of the Voting Rights Act. As our trial brief

1 outlines and the evidence will show, Ohio has a lengthy history  
2 of discrimination against African-Americans.

3 I certainly don't want to go through all of the details  
4 of that here but some examples of this history include that  
5 nonproportional representation pursuant to which every county  
6 in Ohio is entitled to one representative in the state House of  
7 Representatives continued until it was ruled unconstitutional  
8 in 1964, well within the lifetime of many African-Americans in  
9 Ohio. There have been incidents in the 2000s of poll watchers  
10 focusing on predominantly minority and student precincts. In  
11 the lead-up to the 2012 election, billboards were erected in  
12 minority neighborhoods in Cleveland stating -- in Cleveland and  
13 Columbus, I should say, stating voter fraud is a felony, up to  
14 three and a half years and \$10,000 fine.

15 In 2012, Doug Preisse, the chair of the Franklin County  
16 Board of Elections, was quoted explaining in defense of his  
17 vote against expanded early-voting hours in Franklin County  
18 prior to the 2012 elections that, I guess I really actually  
19 feel we shouldn't contort the voting process to accommodate the  
20 urban re: African-American voter turnout machine. Despite the  
21 acknowledgment that race was a factor in his decision-making,  
22 the Secretary of State's office, which was aware of the quote,  
23 took no remedial action and didn't even ask Mr. Preisse about  
24 the statement.

25 Federal courts have repeatedly had to intervene to

1 enjoin voting practices that disadvantage poor or minority  
2 voters in Ohio. In 1991, a three-judge panel struck down the  
3 state legislative districts in Mahoning County, which of course  
4 includes Youngstown, under the Voting Rights Act and the 15th  
5 Amendment on the grounds that they had been drawn to split into  
6 two districts and thus dilute the African-American vote. That  
7 opinion noted, among other things, that the KKK had dominated  
8 Youngstown's government in the 1920s.

9 In *Boustani against Blackwell*, a 2006 case, the Court  
10 held that a statute giving election judges unbridled discretion  
11 to challenge any voter's citizenship without any guidelines was  
12 unconstitutional because it created a very real possibility of  
13 profiling voters on the basis of appearance, name, looks,  
14 accent or manner and that it was, quote, shameful to imagine  
15 that the statute is an example of how the state of Ohio says  
16 thank you to naturalized citizens who helped build this  
17 country.

18 Project Vote against *Blackwell*, another 2006 case, the  
19 Court enjoined new voter registration laws that effectively  
20 shut down voter registration drives in low and moderate income  
21 minority and other disenfranchised communities and that had the  
22 discriminatory effect of imposing an undue burden primarily on  
23 poor and/or elderly voter-registration workers.

24 In *United States v. City of Euclid*, a 2008 case, the  
25 Court found that the slotted at-large system in Euclid enhanced

1 opportunities for discrimination. In United States against  
2 Euclid City School Board, a 2009 case, the Court held that  
3 minorities in Euclid have been systematically denied the  
4 opportunity to elect their preferred candidates to the board.

5 In Harkless against Husted, a 2011 case, the Court held  
6 that Ohio's failure to preclude voter registration  
7 opportunities, I'm sorry, to provide voter registration  
8 opportunities at public assistance agencies violated the  
9 National Voter Registration Act. In 2012 in SEIU against  
10 Husted, the Court held that a directive issued by Secretary  
11 Husted violated a consent decree intended to protect indigent  
12 and homeless voters.

13 The ongoing effects of this history of discrimination  
14 manifest themselves in a number of ways that impact access to  
15 the polls. The evidence will show that African-Americans in  
16 Ohio are less likely than whites to have professional and  
17 managerial jobs and are more likely to work in sales and  
18 service occupations, meaning that African-Americans are  
19 disproportionately likely to have hourly-wage jobs that give  
20 them less flexibility to leave work to go vote.

21 Income for African-Americans in Ohio is only about  
22 60 percent of that of whites and the poverty rate for  
23 African-Americans is roughly three times that of white families  
24 in Ohio, meaning that one in three African-American families in  
25 Ohio lives in poverty. Voters in poverty often have limited

1 access to transportation and child care, and African-Americans  
2 are four times more likely in Ohio than whites to rely on  
3 public transportation or to walk to work and four times less  
4 likely to own their own automobile.

5 Ohio also has significant persistent racial segregation.  
6 Its three largest cities all rank in the top 22 nationally in  
7 that respect. African-Americans in Ohio have disproportionate  
8 levels of residential instability as well and are far more  
9 likely than whites to have moved within the previous year.  
10 What that means for voting is that they're more likely to have  
11 out-of-date and inaccurate voter registration information.

12 Of the 100 largest metropolitan areas in the country,  
13 Cleveland has the fifth most segregated school system,  
14 Youngstown has the sixth most segregated school system and  
15 Cincinnati has the 8th most segregated school system, meaning  
16 that Ohio has three of the top eight nationally. Not  
17 surprisingly, in light of those statistics, inequalities show  
18 up in educational attainment as well.

19 African-Americans are less likely than whites to score  
20 proficient or better on the state's standardized graduation  
21 test. The African-American drop-out rate in Ohio is higher  
22 than the white drop-out rate, and whites are more likely than  
23 African-Americans in Ohio to have a college degree.

24 Voting in Ohio is heavily racially polarized as well.  
25 President Obama, for instance, won over 95 percent of the

1 African-American vote in Ohio in 2008 and 2012, yet he lost the  
2 white vote in both elections. And that pattern is far from  
3 limited to President Obama. Sherrod Brown, for example, in one  
4 of those election years, won with similar margins of the  
5 African-American vote and did approximately equally well with  
6 the white vote.

7 During the 2012 presidential election, some members of  
8 the electorate attended rallies for Mitt Romney that read, put  
9 the white back in the White House. Joe the Plumber, a  
10 republican nominee for congress in 2012, posted an article  
11 online entitled, America needs a white republican president and  
12 stating, wanting a white republican president doesn't make you  
13 a racist, it just makes you American.

14 The ongoing effects of discrimination interact with  
15 these challenged provisions in particular to burden minority  
16 voters disproportionately. There will be extensive evidence on  
17 this point at trial but some examples include that the  
18 elimination of golden week will impose a disproportionate  
19 burden on the ability of the poor and the homeless, groups that  
20 are disproportionately composed of African-Americans in Ohio,  
21 to cast a ballot.

22 African-Americans disproportionately live in Ohio's most  
23 densely populated counties and are thus disproportionately  
24 burdened by the rule preventing counties from opening multiple  
25 early-voting locations. African-Americans have greater rates

1 of residential instability and are poorer than white Ohioans  
2 and will therefore be more significantly burdened by S.B. 205's  
3 prohibition on prepaid postage for absentee ballots and the  
4 Secretary of State's decision not to send unsolicited  
5 absentee-ballot applications to many inactive or active  
6 confirmation voters. And African-Americans' lower levels of  
7 educational attainment in Ohio, which again has three of the  
8 eight most segregated school districts among large U.S.  
9 metropolitan areas, will interact with the new informational  
10 requirements for provisional and absentee ballots to cause a  
11 disproportionate percentage of African-Americans' votes to be  
12 discarded.

13 Finally, Your Honor, the challenged measures should be  
14 struck down because they are intended, at least in part, to  
15 depress the vote of minority and democratic voters. And I am  
16 going to reserve legal argument for later in the case but I do  
17 want to note here because it's relevant to some of the first  
18 witnesses that the question presented about intent in the  
19 discriminatory intent context is fundamentally different from  
20 the question presented in the context of statutory  
21 interpretation.

22 The reason they're different is that in the context of  
23 statutory interpretation, the language of the law ideally  
24 speaks for itself and a court need only look to the intent of  
25 the legislature as an aid in defining what that language means

1 if the language is unclear. In this case there's no dispute,  
2 at least no dispute that's relevant to this case, about what  
3 S.B. 200 means or S.B. 205 means or any of the other challenged  
4 provisions mean. We're not looking to intent as a guide to  
5 interpret those statutes.

6 Instead, the central issue in this case, at least with  
7 respect to the potential discrimination claims, is the question  
8 of what the legislature's intent was. Whether that intent was,  
9 at least in part, discriminatory in nature. And so in that  
10 context, the Supreme Court has issued guidelines for how a  
11 court should analyze intent.

12 The Arlington Heights case, which we cite in our trial  
13 brief as the leading case on that, and it lays out several  
14 factors for a court to consider including, among other things,  
15 disproportionate burden imposed by the law, contemporaneous  
16 statements of legislators or relevant decision-makers, the  
17 process by which the legislation was passed and so forth.

18 As I've already mentioned, the evidence here will show  
19 that the challenged provisions disproportionately burden  
20 minority and democratic voters and that the relevant history  
21 includes the extraordinary troubles in 2004 and expansion of  
22 access to the polls in the wake of that election and the  
23 determined persistent effort to roll back that expansion of  
24 access to the polls. It will also show that the elimination of  
25 golden week was passed in only eight days and resulted in the



1 filing of two separate protest letters. That the rationale to  
2 the challenged provisions are tenuous and that there was  
3 significant evidence before the General Assembly that the  
4 challenged provisions would disproportionately burden minority  
5 and democratic voters.

6 Perhaps most tellingly, the evidence will show that  
7 supporters of S.B. 205 expressly noted that the counties they  
8 were trying to reign in were urban. In the words of  
9 Representative Dovilla, when enacted, S.B. 205 will no longer  
10 allow some counties to push unsolicited absentee-voting  
11 applications and offer prepaid postage on such applications and  
12 ballots. And it does change the level of convenience  
13 associated with force-feeding applications and ballots to  
14 voters. But unlike some, I believe the residents of this state  
15 don't need to be spoon-fed everything from the government.

16 He notes elsewhere and other representative note the  
17 urban nature of the counties that are allegedly engaging in  
18 this activity. In light of the evidence that will be presented  
19 at trial, we submit that it's clear who these urban voters are  
20 to whom Representative Dovilla and others were referring.

21 Your Honor, the government should be in the business of  
22 making it easier to vote, not harder. It certainly shouldn't  
23 be in the business of making voting harder for groups of voters  
24 that have historically been discriminated against.

25 As you'll hear in the testimony over the next week and a

1 half, however, the challenged measures have exactly that  
2 effect. That is, the testimony from government officials, from  
3 experts and from regular citizens can who can speak to the  
4 difficulties that the challenged measures present will  
5 establish that the challenged provisions have the effect of  
6 making it harder to vote in particular for minorities in Ohio.  
7 We accordingly ask that the find the challenged measures  
8 unconstitutional and in violation of Section 2 of the Voting  
9 Rights Act and issue the requested injunctive relief. Thank  
10 you.

11 THE COURT: Thank you, Mr. Kaul.

12 MR. VOIGT: May it please the Court. My name is  
13 Steven Voigt and I represent the defendants in this case.

14 Your Honor, there are four general areas that I would  
15 like to address in my opening. First, I would like to go over  
16 Ohio's broad voting opportunities. Second, I will provide a  
17 brief response to Mr. Kaul's explanation of the plaintiffs'  
18 claims. Third, I will preview to the Court the expert  
19 testimony that will be presented to the Court by both sides.  
20 And lastly, I will very briefly address the primary legal  
21 issues in this litigation.

22 Your Honor, it is easy to vote in Ohio. In Ohio, there  
23 are three ways to vote. First, the polls are open on election  
24 day from 6:30 a.m. until 7:30 p.m. That is 13 hours. Ohio  
25 could stop there and be in the company of 16 other states. But

1 Ohio does not stop there.

2 Ohio also has 23 days of early in-person voting. Early  
3 in-person voting is where a voter can go to the county early  
4 voting center before election day and cast a ballot. And in  
5 Ohio, a voter does not need an excuse to vote early. This of  
6 course is called no-excuse early voting.

7 Twenty-three days of early in-person voting is a big  
8 number by itself. But 23 days of early in-person voting is  
9 also a big number compared with other states. In fact, 23 days  
10 of early in-person voting are more early voting days than 41  
11 other states. And Ohio's early voting calendar also includes  
12 weekends and evenings. In fact, Ohio is one of only 12 states  
13 that has early voting on a Sunday. Ohio's early-voting period  
14 in the 2016 presidential election will include two Sundays and  
15 two Saturdays.

16 Your Honor, stripping away all of the politics that have  
17 been introduced into this case, Ohio undeniably provides  
18 extensive voting opportunities for all Ohioans, including  
19 Ohioans who might have trouble taking time off from work. To  
20 put Ohio's early voting opportunities in context, we can  
21 compare Ohio with the three other states in the Sixth Circuit,  
22 Michigan, Kentucky and Tennessee.

23 First, let's take a look at the number of days of early  
24 in-person voting offered by those four states. Michigan and  
25 Kentucky do not have any early in-person voting. Tennessee

1 does a pretty good job. They have 14 days. Where does Ohio  
2 stand? We are the best. We have 23 days of early in-person  
3 voting, the best of the Sixth.

4 Let's see how those days stack up in terms of hours. Of  
5 course Michigan and Kentucky do not have early in-person voting  
6 so they have no in-person voting hours. Tennessee does have  
7 early in-person voting and it has quite a lot of hours before  
8 election day, 143. Ohio, once again, leads the pack. 207  
9 early in-person voting days, excuse me, 207 early in-person  
10 voting hours before election day.

11 One of the plaintiffs' positions in this case is that  
12 the ability to vote in evenings and on weekends reduces the  
13 burden on voters to vote. With that in mind, we can look at  
14 Ohio against the Sixth Circuit. Once again in terms of  
15 early-voting hours, Michigan and Kentucky have no evening and  
16 weekend hours because they have no early voting. And again,  
17 Tennessee does a pretty good job. 34.5 evening and weekend  
18 early in-person voting hours. Where does Ohio fall? Again at  
19 the top. 39 hours of evening and weekend early in-person  
20 voting hours.

21 Your Honor, Ohio is not only a leader in early in-person  
22 voting days. In addition to voting on election day and voting  
23 early in-person, Ohio also offers mail-in voting. Many states  
24 only allow mail-in voting if a voter proves that he or she  
25 cannot vote on election day. Not Ohio.

1           In Ohio, an eligible voter can vote by mail before  
2 election day for any reason. In fact, in Ohio, it's possible  
3 to vote by mail without doing anything more than walking to  
4 your mailbox.

5           Some of the plaintiffs' claims relate to mail-in voting.  
6 So with that in mind, a comparison among the states in the  
7 Sixth Circuit would again be worthwhile. The pattern that we  
8 saw in the prior comparisons continues. Michigan, Kentucky and  
9 Tennessee do not offer no-excuse mail-in voting. Ohio does.

10           Your Honor, we have looked at the Sixth Circuit. If we  
11 pull back and look at all of America, Ohio has more voting  
12 opportunities than do most other states. Without question,  
13 Ohio is a leader in voting innovation and voting opportunities.  
14 Ohio should be commended, not sued.

15           The Court has heard from Mr. Kaul about Plaintiffs'  
16 claims and there's a lot to distill. Given the number of  
17 arguments that the plaintiffs are raising, I wanted to take a  
18 little bit of time to respond to Mr. Kaul's description of the  
19 case and simplify what the plaintiffs are actually seeking.

20           During this trial, Your Honor, the plaintiffs will  
21 likely call a dozen or more witnesses. A lot of evidence will  
22 be presented. There will be many facts put before the Court.  
23 Throughout all of this, Your Honor, I ask the Court to keep in  
24 mind two truths. One, Ohioans have many opportunities to vote;  
25 and, two, Ohio has legitimate interests that support the

1 challenged laws.

2 Your Honor, these truths really go to the heart of the  
3 case. They put the case in perspective. Over the past few  
4 months, the plaintiffs have done a lot of work to prepare for  
5 this trial. They have received far over 500,000 pages of  
6 documents. There have been over 103 hours of depositions.  
7 Despite all of this discovery, Your Honor, the plaintiffs will  
8 be unable to disprove those fundamental truths. And moreover,  
9 they will be unable to establish that there was any  
10 discriminatory animus behind any of the challenged laws. They  
11 will be unable to meet their burden for any of their claims.

12 The plaintiffs' first claim relates to the elimination  
13 of same-day registration or SDR. SDR in Ohio is sometimes  
14 referred to as golden week. Golden week was five days when the  
15 voting and registration periods overlapped. In 2014, the  
16 General Assembly eliminated the overlap and voting now starts  
17 on the first day after the end of the registration period.

18 In 2014, the state litigated this issue. After a  
19 favorable ruling for Ohio before the United States Supreme  
20 Court, the parties settled the litigation. The plaintiffs in  
21 that case, which included the NAACP, the League of Women Voters  
22 and several African-American pastors agreed to an early-voting  
23 calendar that does not include golden week. But here we are  
24 again. Here, Plaintiffs are now raising the exact same claim,  
25 the exact same golden week claim that Ohio litigated all the

1 way to the Supreme Court and settled.

2 During the trial, Your Honor will be presented with  
3 numerous reasons supporting the elimination of SDR. Golden  
4 week created administrative burdens. It was rarely used.  
5 Eliminating golden week improved voter confidence. With golden  
6 week, there was an increased possibility of fraud. And lastly,  
7 bipartisan support existed for eliminating golden week. So  
8 where does the elimination of golden week put Ohio in the  
9 context of other states?

10 With the elimination of SDR, Ohio joins 35 other states  
11 that do not have same-day registration. And this includes the  
12 other three states in the Sixth Circuit.

13 Plaintiffs' second claim relates to the number of early  
14 in-person voting locations. Each county in Ohio has always had  
15 one early-voting location. Plaintiffs, in their brief, argue  
16 that they want to let counties have discretion to open  
17 additional early voting sites. But this is not what the  
18 plaintiffs argued in their amended complaint.

19 In their amended complaint in paragraph 99 and in the  
20 prayer for relief, the plaintiffs requested a mandated number  
21 of early-voting sites in each county on a population-per-county  
22 basis. And so the way the plaintiffs' theory would work is  
23 that if the smallest county has 10,000 voters, that county  
24 would get one site and that county would serve as the baseline.  
25 If another county has 100,000 voters, that county would be

1 mandated to have ten early-voting sites.

2 Defendants' expert Sean Trende did the math on  
3 Plaintiffs' theory and the total number of early-voting sites  
4 that Ohio would need to add under Plaintiffs' argument is 784  
5 early-voting sites. The cost to Ohio would easily exceed  
6 \$60 million per election. The immense cost would be borne by  
7 the citizens of Ohio. Importantly, Your Honor, this change is  
8 not supported by the overwhelming majority of election  
9 officials in Ohio and a number of county officials have even  
10 stated that adding just one additional early-voting site in  
11 their county is not possible.

12 The plaintiffs have objected to this number 784 but they  
13 have not introduced any other formula that reflects the  
14 proportionality that they seek. Your Honor, it is also notable  
15 that almost every county's early-voting center is located in a  
16 position where it geographically favors democrats. We can see  
17 this by looking at maps of Cuyahoga County and Montgomery  
18 County.

19 A map of Cuyahoga County is on the screen and the red  
20 dot on the screen shows the approximate location of the  
21 early-voting center. As you can see, the early-voting center  
22 is in a highly democratic area.

23 The same pattern is evident in Montgomery County. The  
24 red dot again representing the early-voting center and again,  
25 the early-voting center is located closer to democratic voters.



1           In addition to geographically favoring democrats, across  
2 all counties --

3           THE COURT: Is that consistent throughout the state?

4           MR. VOIGT: Yes, Your Honor. And in fact, there is --  
5 with the exception of possibly one or two counties, a very  
6 small number of counties, it is consistent in almost all of the  
7 counties. And in fact, there's a chart in Sean Trende's expert  
8 report that shows the distance disparity between Democrats and  
9 Republicans on average to travel to the early-voting center as  
10 well as the different disparity between African-Americans and  
11 other voters to travel to the early-voting center.

12           THE COURT: All right.

13           MR. VOIGT: Which brings me to my next point. In  
14 addition to geographically favoring Democrats across all  
15 counties, the early-voting center is, on average,  
16 geographically closer to minorities. And the chart that is up  
17 on the screen now is an excerpt from Sean Trende's report. On  
18 average, a nonwhite voter across all of Ohio is two miles  
19 closer to their early-voting site than a white voter. We can  
20 see that in Cuyahoga and Montgomery counties the disparity is  
21 even more pronounced.

22           The plaintiffs' next claim relates to the formula for  
23 direct-recording electronic voting machines used by some of the  
24 counties in Ohio. DRE machines are touch-screen voting  
25 machines. In 2014, Ohio changed its formula so that the

1 minimum number of DREs required by voting precincts factors in  
2 the number of early voters. Defendants' expert Ted Allen will  
3 testify about how the new formula gives counties much more  
4 flexibility to proportion their voting resources where those  
5 voting resources will be most needed.

6 One additional point is worth mentioning here with  
7 regard to DRE machines, Your Honor. Plaintiffs are complaining  
8 about DREs in Ohio. But Ohio leads every other state in the  
9 Sixth Circuit in DRE resources. In fact, Ohio leads every  
10 other state in the nation in DRE resources.

11 THE COURT: Are these 28,664 DREs deployed every  
12 election and how long have you had them?

13 MR. VOIGT: Yes, Your Honor. These are the number  
14 that is in the current inventory and they are not --

15 THE COURT: They're all used?

16 MR. VOIGT: Yes, Your Honor, they are all used. In  
17 fact, the Secretary of State issued a directive ordering the  
18 counties not to get rid of any of their DRE machines. Not all  
19 of the counties in Ohio use DRE machines, but of the counties  
20 that do, the ratio of the number of voters to DRE machines  
21 exceeds that ratio in the other states, all other states. And  
22 that evidence is in the report of Sean Trende.

23 Plaintiffs' next claim relates to the identification  
24 requirements of absentee-ballot envelopes. Plaintiffs are  
25 challenging Senate Bill 205. The only change with regard to

1 identification on absentee-ballot envelopes created by S.B. 205  
2 is that voters are required to list their date of birth and  
3 address. However, the county boards preprint the voter's  
4 address on the envelope. So that means all the plaintiffs are  
5 really complaining about is writing down the voter's birthdate.

6 Evidence will be presented during trial that the  
7 information on absentee-ballot envelopes assists boards in  
8 identifying voters. In addition, Ohio has a low rate of  
9 rejecting absentee ballots and the biggest reason for  
10 rejections is not voter error but rather that the voter missed  
11 the deadline to mail in the ballot.

12 Plaintiffs also challenge the state mailing  
13 absentee-ballot applications. And the rationale behind this  
14 claim is pretty difficult to ascertain. Under the current law  
15 there is uniformity and when absentee-ballot applications are  
16 mailed, they are mailed statewide. Previously, the mailing  
17 ballot applications was at the discretion of the counties.  
18 Under that system, counties with more money were capable of  
19 mailing applications whereas other counties were not. And of  
20 course this created a disparity. Some Ohioans received an  
21 application, others did not.

22 Under the current system of uniformity, many more people  
23 get applications now than did under the prior system. And  
24 lastly, Your Honor, I want to mention that mailing statewide  
25 absentee ballots is an anomaly. Ohio is only one of two states

1 in the nation that does this.

2 Plaintiffs' next challenge a law that out of two  
3 requirements on provisional ballots. Adding a voter's current  
4 address and date of birth. And again, these are pretty basic  
5 pieces of information that help boards identify voters. It is  
6 important to remember that provisional ballots are different  
7 than absentee ballots.

8 Provisional ballots are a safety net where the state  
9 attempts to capture as many votes as possible from individuals  
10 who, in other states, might not -- might be denied their vote.  
11 Importantly, Ohio has one of the highest acceptance rates among  
12 all states for provisional ballots. In fact, Ohio is in the  
13 top five states, the top five, for accepting provisional  
14 ballots.

15 Your Honor, next I'd like to very briefly preview the  
16 experts who will testify in this case. The defendants will  
17 call Sean Trende, Dr. Trey Hood, Dr. Nolan McCarty and Dr. Ted  
18 Allen.

19 Mr. Trende will explain Ohio's broad voting  
20 opportunities and explore the implications of Plaintiffs'  
21 claims on Ohio. Dr. Hood will discuss the state interests  
22 supporting the challenged laws. Dr. Allen will discuss lines  
23 and the implication of spreading resources across multiple  
24 early-voting sites. And Dr. McCarty will testify about  
25 demographic turnout.

1 I wanted to highlight a couple of very important points  
2 from Dr. McCarty's findings. Your Honor, all of the laws that  
3 the plaintiffs are challenging were in effect for the 2014  
4 gubernatorial election. And the prior gubernatorial election  
5 in 2010, the laws were not in place. So this provides a  
6 comparison point, and Dr. McCarty did that. He compared the  
7 2014 election when the laws were in place with the 2010  
8 election where the laws were not in place.

9 Dr. McCarty found that of the African-Americans who  
10 voted, a higher percentage voted early in-person in 2014 when  
11 the laws were in place than they did in 2010 when the laws were  
12 not in place. In other words, African-Americans chose to vote  
13 early more often in 2014 than they did in 2010. Your Honor,  
14 this finding alone contradicts nearly all of Plaintiffs'  
15 claims.

16 A second point that I want to raise related to  
17 Dr. McCarty's work is that he found in the year 2014 when the  
18 laws were in place, African-Americans and whites --

19 THE COURT: Statewide average?

20 MR. VOIGT: Yes, it is, Your Honor. In fact, the data  
21 is very comprehensive and includes -- the data set consists of  
22 millions of voters.

23 THE COURT: All right. I'm sorry. I broke your train  
24 of thought.

25 MR. VOIGT: A second point is that Dr. McCarty found

1 that in 2014 when the laws were in place, African-American and  
2 white voters chose to vote by mail at about the same rate.  
3 This too contradicts Plaintiffs' claims about disparities in  
4 absentee mail-in voting.

5 From the plaintiffs, the Court will hear from three  
6 primary experts. Dr. Minnite will argue that widespread fraud  
7 does not exist in American elections. She concedes, however,  
8 that voter fraud does exist. She also concedes that it is  
9 reasonable for states to enact laws to prevent voter fraud.

10 Their second expert, Dr. Yang, is going to testify about  
11 lines and the formula for DRE machines. Importantly, at his  
12 deposition, Dr. Yang admitted that the new DRE formula that the  
13 plaintiffs are challenging, quote, makes sense.

14 The plaintiffs' third major expert is Dr. Timberlake.  
15 He's going to talk about the burdens on voting.  
16 Dr. Timberlake's report was, in significant part, copied from  
17 past reports of two other experts who are not testifying in  
18 this case.

19 Dr. Timberlake admitted at his deposition that Ohio's  
20 broad opportunities to vote are a relevant factor when  
21 considering burdens on voting. But Dr. Timberlake did not  
22 consider Ohio's broad voting opportunities and he also did not  
23 include other relevant information in his analyses. Lastly,  
24 Dr. Timberlake's own analysis reinforces Dr. McCarty's finding  
25 that African-Americans were more likely to vote early in-person

1 after the challenged laws were in effect.

2 Your Honor, none of Plaintiffs' experts presented in  
3 their reports any causal connection between the challenged laws  
4 and a purported vote denial. Plaintiffs' failure to prove  
5 causation is fatal to their case.

6 Finally, I would like to touch briefly on Plaintiffs'  
7 legal claims. We extensively briefed Plaintiffs' claims in our  
8 trial brief and in the interest of brevity I'm only going to  
9 quickly touch on their two primary claims.

10 Plaintiffs' Voting Rights Act claim fails for several  
11 reasons. To prove a violation of the VRA, a plaintiff must  
12 prove harm, causation and a lack of meaningful access to the  
13 polls. Plaintiffs can prove none of these.

14 Regarding harm, Plaintiffs have set forth no benchmark  
15 to prove any vote denial nor would any benchmark work. In  
16 fact, Ohio is a national leader in all of the areas about which  
17 the plaintiffs complain.

18 With regard to causation, Plaintiffs have introduced no  
19 evidence to try to prove a causal connection between the  
20 challenged laws and a vote denial.

21 As for meaningful access, in vote denial cases, courts  
22 have found that the most relevant factors include the adequacy  
23 and scope of voting opportunities, the implication of relief on  
24 other states and the state's reasons for enacting the laws.  
25 Plaintiffs' experts did not consider these important factors.

1 Plaintiffs' second major claim is their equal protection  
2 claim. That claim should be judged under the rational basis of  
3 the standard. In fact, in Mr. Kaul's opening, he stated that  
4 the challenged laws are race neutral. Indeed, Ohio's broad  
5 voting laws apply to everyone. No one is singled out as a  
6 result of these laws. But, Your Honor, even if a heightened  
7 standard applies, Ohio's state interest for these incredibly  
8 minor changes that the plaintiffs challenge greatly outweigh  
9 any minimal burden on voters.

10 There's one additional legal point that I wanted to  
11 raise that came up in the plaintiffs' trial brief. The  
12 plaintiffs argued in their trial brief that the vacated *NAACP*  
13 *v. Husted* decision should be given preclusive effect in this  
14 case. They are wrong.

15 In the *NAACP* case, the U.S. Supreme Court decided in  
16 favor of Ohio and granted a stay of the District Court's  
17 decision. Following the stay from the Supreme Court, the Sixth  
18 Circuit vacated its own decision and noted that the District  
19 Court's preliminary injunction no longer has any effect.

20 A vacated judgment is essentially a legal nullity and  
21 has no precedential or preclusive effect, legally or factually,  
22 as the Sixth Circuit has stated in *Dodrill versus Ludt*,  
23 764 F.2d 442, Sixth Circuit, 1985.

24 As a second point on this matter, Your Honor, the *NAACP*  
25 matter was in the context of a preliminary injunction



1 proceeding which involved an entirely different standard than  
2 the merits trial beginning in this Court. Frankly, Your Honor,  
3 that the plaintiffs have resorted to relying on a vacated  
4 decision says quite a lot about the weaknesses in their case.

5 In closing, Ohio is a leader in voting opportunities.  
6 Plaintiffs pick at small adjustments in Ohio's laws, but in  
7 doing so, they miss the bigger picture.

8 Ohio has 23 early voting days. Ohio has 207 hours  
9 during which someone can vote early in-person. In 2016, Ohio's  
10 early voting calendar will have two Saturdays and two Sundays.  
11 In Ohio, a voter can vote entirely by mail. Ohio is one of  
12 only two states that mails ballot applications statewide. Ohio  
13 offers online voting services where voters can track their  
14 absentee ballot and update their registration online. Ohio  
15 recently set aside \$12.5 million for electronic poll books.  
16 Ohio is a top-five state in accepting provisional ballots.  
17 Ohio has more DRE resources than any other state. Ohio has  
18 uniform early-voting hours where voters in small counties are  
19 given just as much time as voters in bigger counties to vote.  
20 And some of Ohio's counties, such as Franklin County, have even  
21 garnered national awards for election innovation.

22 Your Honor, Ohio is an anomaly in the election world.  
23 If Ohio is not the best, it certainly is one of the best states  
24 in offering voting opportunities. Ohio should be commended,  
25 not sued, for its voting opportunities. The idea that a state

1 can never make minor adjustments to its election laws should  
2 not win the day. Thank you.

3 THE COURT: Thank you.

4 Who's first?

5 MR. KAUL: Plaintiffs call Nina Turner, Your Honor.

6 (Witness sworn.)

7 THE COURT: Thank you.

8 - - -

9 NINA TURNER

10 Called as a witness on behalf of the Plaintiffs, being first  
11 duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. KAUL:

14 Q. Good morning, Senator Turner.

15 A. Good morning.

16 Q. Would you please start off by saying your name for the  
17 record?

18 A. My name is Nina Turner.

19 Q. And how are you currently employed?

20 A. I am a professor at Cuyahoga Community College where I  
21 teach African-American history, women's history, U.S. history  
22 and also the chair of party engagement at the Ohio Democratic  
23 Party.

24 Q. And have you served an elected office prior to holding  
25 your current position?

1 A. Yes.

2 Q. Can you provide a brief overview of your history in  
3 elected office?

4 A. Yes. I was formerly a Cleveland city councilwoman in  
5 the city of Cleveland for ward one. My community is  
6 predominantly African-American, about 99.9 percent  
7 African-American community.

8 Q. And when were you first elected to the city council?

9 A. I was elected to the city council in 2005 and my term  
10 began in 2006.

11 Q. And how long did you remain a city council member?

12 A. I was on city council for about two years after which I  
13 was appointed to my senate seat, the 25th senate district,  
14 which at the time composed the majority of Cuyahoga County.  
15 Now that district has since changed to encompass Cuyahoga  
16 County and Lake County. But I served in 2008 to fulfill an  
17 unexpired term and then I was elected to that seat in 2010.

18 Q. And you were referring to the Ohio State Senate?

19 A. Yes.

20 Q. And you described your city council district before.  
21 Can you describe the composition of your state senate district?

22 A. My state senate district was a racially-mixed district.  
23 I would say equal African-American, whites, Hispanics, but  
24 equal district. Not necessarily majority African-American  
25 district.

1 Q. And do you know how the demographics compared to Ohio  
2 overall?

3 A. No.

4 Q. During your time in the senate did you have a role in  
5 leadership?

6 A. I did. I served as majority or minority -- I wish it  
7 was majority, minority whip.

8 Q. And how long did you serve in that role?

9 A. It was my job to keep our caucus informed about bills  
10 and, when necessary, to whip the vote, just that, to make sure  
11 we are all on the same page on issues.

12 Q. And just for the record, what party are you a member of?

13 A. I am a party of the democrats.

14 Q. What's your race?

15 A. I am African-American.

16 Q. You mention that you were a professor before?

17 A. Yes.

18 Q. How long have you worked as a professor?

19 A. I started as an adjunct professor in the late '90s.

20 THE COURT: Did we get -- excuse me. Did we get an  
21 answer to how long did you serve in your role? I don't think  
22 your answer really spoke to that.

23 BY MR. KAUL:

24 Q. How long did you serve in your role as minority whip?

25 A. Minority whip for about two years.

1 THE COURT: Thank you.

2 BY MR. KAUL:

3 Q. And you were describing your time teaching. When did  
4 that start?

5 A. I started off as an adjunct in the late 1990s and then  
6 full-time tenure, I forget when that started. I've been at the  
7 college for at least 15 years.

8 Q. And did you continue working there while you were in  
9 elected office?

10 A. Yes.

11 Q. And you mention that you currently have a role with the  
12 Ohio Democratic Party?

13 A. I do. I am the chair of party engagement. So I help  
14 with traveling around the state energizing voters, educating  
15 voters about the atmosphere both politically and also on the  
16 civic side I would say talking to voters about the environment  
17 of voting, making sure that they are aware.

18 Q. During the course of your career have you been involved  
19 in voting rights work?

20 A. I have. Even before my career I would say I really  
21 started an activist role as a student at Cleveland State  
22 University where a group of my colleagues and I formed an  
23 organization called Students for Positive Action and we were  
24 very excited about going out to start to register people to  
25 vote, believing that the power of the ballot box to have people

1 become engaged. We did that in some of the poorest communities  
2 in Cleveland, the Hough community in particular under the  
3 leadership of then Councilwoman Fannie M. Lewis who is since  
4 deceased, but that's where I got my real grass roots work and  
5 experience in registering people to vote.

6 Q. I will not be so rude as to ask you your age. Can you  
7 tell me approximately what year that was when you began doing  
8 that work?

9 A. That was in the late '90s. It was around '96, '97. I  
10 was a junior at Cleveland State University.

11 Q. And you said that you worked in some of the poorest  
12 communities in Cleveland?

13 A. Yes. We did that registration work in the Hough  
14 community. Hough community was plagued with riots at one time  
15 in the '60s. It was a very economically and socially depressed  
16 community.

17 Q. And during your time working the community, did you  
18 observe the racial makeup of that community?

19 A. Yes. That community too is majority African-American,  
20 socially and economically challenged community and they  
21 definitely needed a lot of help with registering and  
22 understanding the political process. And also help with  
23 understanding that their voice could matter and could make a  
24 difference but that they would have to participate in that  
25 process. And part of participation means being registered to

1 vote and being actively engaged. And we started that  
2 organization to empower people to do just that.

3 Q. And I think you mentioned that that community was  
4 majority African-American.

5 A. Yes.

6 Q. Do you have a sense of --

7 A. It still is today.

8 Q. Do you have a sense of approximately what the percentage  
9 was?

10 A. Close to 100 percent, yes.

11 Q. And you said they needed help understanding that their  
12 voices could matter. Who is the they you are referring to?

13 A. The African-American community. Historically and still  
14 to this day, African-American community is still plagued by  
15 barriers to the ballot box and that was just as true in the  
16 late 1990s. So for populations who are socially and  
17 economically challenged, sometimes they need more help. They  
18 are burdened by their everyday lives but that their everyday  
19 lives should not necessarily prohibit them from participating  
20 in the process. And so they need help understanding that.

21 And as a college student, somebody that was blessed  
22 enough to be able to be in an institution of higher learning,  
23 we really took that on as a cause to both educate and empower  
24 that particular community. And we focused on that community  
25 because of the social, economic challenges and because of

1 councilwoman Fannie M. Lewis who was such a trailblazer for her  
2 neighborhood, bringing that neighborhood back from the brink.

3 Q. You mentioned voter-registration work. Did you also do  
4 get out the vote work?

5 A. Yes.

6 Q. And, first, can you describe what that is?

7 A. Get out the vote is making sure at the time that  
8 elections are had that you're really rallying voters, you're  
9 knocking on doors, you -- in the old days you had sheets of  
10 paper with peoples' streets and addresses. You're really  
11 knocking on doors, you're calling people, please don't forget  
12 to come out to vote. Your vote is important. So you're really  
13 rallying the voter and also reminding them at the same time  
14 that it's an election time.

15 Q. And did you do that work in the same area?

16 A. Yes.

17 Q. Now, after graduating college where did you work?

18 A. After graduating college I had the opportunity  
19 immediately after graduating college to serve as a legislative  
20 service commission intern. It's called the Legislative Service  
21 Commission and it is operated by the Ohio General Assembly. I  
22 competed for that and got the opportunity to serve as an intern  
23 for former state Senator Rhine McLin of the Dayton area and  
24 then later on was hired by her to be her legislative aide.

25 Q. And in that capacity did you work or were you engaged



1 with constituents?

2 A. Lots of constituency work but also when the Senator had  
3 to run for office you leave on your own time to be helpful.  
4 Lots and lots of constituency work in the office.

5 Q. Did the constituency work involve voting or voter  
6 registration?

7 A. From time to time people would call to ask questions  
8 about elections but a lot of the work had to do with services  
9 in particular.

10 Q. And you mentioned that you worked on her campaigns as  
11 well?

12 A. Yes.

13 Q. And what type of work did that involve?

14 A. Get-out-the-vote efforts primarily.

15 Q. And what type of communities were you working in then?

16 A. African-American communities, even though the Senator's  
17 district at the time was a mixed district but the  
18 African-American community.

19 Q. And after doing that work, that internship, where did  
20 you go next?

21 A. So internship and then officially hired by the Senator.  
22 And then after that I went back home to my Cleveland community  
23 where I served for former Mayor Michael R. White. And in that  
24 capacity I served as the Executive Assistant for Legislative  
25 Affairs. So my job was to work directly with the Cleveland

1 City Council. At that time there were 21 members of the  
2 Cleveland City Council. My job was to work with the council on  
3 the Mayor's behalf.

4 Q. And what type of issues did you work on in that  
5 capacity?

6 A. Budget issues, legislation that the Mayor wanted to see  
7 passed through council, working with the council members to  
8 make sure that they were briefed on the Mayor's vantage point.  
9 On the local-level government, at least in Cleveland, most of  
10 the legislation that goes before the city council is initiated  
11 from the Mayor versus in the legislature it's the other way  
12 around. So it was really just working with the council  
13 members, debriefing them, talking to them about any concerns  
14 that they may have about any of the policies that the Mayor  
15 wanted to put forward that had to go through the council. Did  
16 a lot of work on the budgetary side.

17 Q. And do you recall how long you worked in that capacity?

18 A. Yeah. I worked for the Mayor from about 19 -- early  
19 1999 until he decided not to run for re-election again which I  
20 think happened sometime in either 2000 or 2001.

21 Q. So what did you do after that position?

22 A. After that position I went on to work for the Cleveland  
23 Metropolitan School District as Director of Government Affairs.  
24 And my job in that capacity was to lobby on behalf of  
25 Cleveland's children. So I spent a lot of time in the

1 legislature lobbying on behalf of Cleveland's children for  
2 either budgetary concerns or any changes to some of the rules  
3 in the educational realm. I primarily did that work on the  
4 state level, although from time to time some federal things  
5 would pop up. Primarily I was right here in Columbus lobbying.

6 Q. And you mention lobbying in connection with budgetary  
7 concerns?

8 A. Yes.

9 Q. Can you explain what you mean by that?

10 A. Yeah. At times when budget cuts may impact the work of  
11 the Cleveland district, it was my job to come and meet with  
12 legislators, to talk to them about those impacts. If any rules  
13 changed, which, you know, I don't remember every single thing I  
14 did in terms of rule change but just anything that would either  
15 have a negative impact. It was my job to let legislators know,  
16 particularly legislators from Cuyahoga County so that when they  
17 are in committee that they could lobby on behalf of the  
18 children of their district.

19 If things were okay, we would lobby and let folks know.  
20 We like those, too. But primarily the work was about making  
21 sure that Cleveland's children had a voice and that they were  
22 recognizing the concerns and the needs of the district were  
23 recognized.

24 Q. In that capacity did you become familiar with the  
25 funding of Cleveland schools?

1 A. Yes.

2 Q. What did you learn?

3 A. Well, Cleveland -- the funding for the schools was  
4 deficient. The city of Cleveland in particular from that time  
5 but especially now recently, even when I was in the  
6 legislature, it was very hard to get levies, local levies  
7 passed. And we need those local levies to compensate for some  
8 of the cuts to the budget, the education budget that happened  
9 in the General Assembly. That certainly happened in my time in  
10 the senate which is why I voted against every single budget  
11 that came through because of those cuts to both local  
12 governments and also education. You've got to have the money  
13 to be able to do the work.

14 So in Cleveland, because the poverty rates are so high,  
15 sometimes it is very hard to pass a levy because a lot of folks  
16 don't believe that they can afford it. The homeowners in  
17 particular. And in Cleveland, we do have an aging population.  
18 I think it might be even greater than the aging population in  
19 Ohio. And so a lot of seniors that are on fixed incomes, you  
20 know, they have some concerns about their property taxes going  
21 up even though, you know, investing in schools is a very good  
22 thing.

23 Levies are very important. But they become even that  
24 much more important when the state of Ohio cuts funding to K  
25 through 12 education.

1 Q. Now, you mentioned earlier that you ran for city  
2 council, I think in 2001?

3 A. Yes. I -- yes. I ran in 2001 unsuccessfully and ran  
4 again in 2005 and I was elected in 2005 and I took office in  
5 2006.

6 Q. Thank you for the clarification. In those two -- in the  
7 context of those two elections, did you engage with voters?

8 A. I did. Absolutely. When you're running for office you  
9 want to engage with voters. You want people to vote which, you  
10 know, really concerns me that people would engage in trying to  
11 stop that process. But, yes, I knocked on doors, I asked  
12 people to support me. I talked to them about my platform and  
13 why I was running. So absolutely I engaged in that.

14 I had voter registration cards with me. My team did.  
15 We took them with us everywhere that we went. We encouraged  
16 people to go to libraries or even Cuyahoga Community College in  
17 the student center people can go and register to vote.  
18 Absolutely I engaged in trying to get folks engaged in the  
19 process.

20 Q. And you mentioned you were appointed to the senate  
21 in '08 and elected in 2010?

22 A. Yes.

23 Q. In the context of those races, did you do get out the  
24 vote and voter registration?

25 A. Absolutely. When you're running you want people to vote

1 or you should want people to vote. To me, you should not be  
2 running for office and not want people to get out there and be  
3 engaged in the process. So, yes.

4 Q. And in 2014, did you run for office?

5 A. I did. I did not seek re-election to my seat. I had  
6 one more term. In the state of Ohio we do have term limits.  
7 So I was eligible for one more term in 2014 but I did not seek  
8 re-election to my seat but instead I ran for Ohio Secretary of  
9 State as the democratic nominee and I ran for that seat because  
10 of my deep-seated passion for the electoral process and I was  
11 running to make sure that people would have unfettered access  
12 to the ballot box. It did not matter to me which party they  
13 hailed from. I was running to make sure that every single  
14 eligible voter in this state would have that access to the  
15 ballot box.

16 Q. In the get out the vote work you've described and the  
17 voter registration work you've described, did you encounter any  
18 challenges with getting people registered and getting them out  
19 to vote?

20 A. Well, challenges in the sense that sometimes people were  
21 hesitant because they didn't believe that either their voice  
22 mattered, that it would make a difference that they would vote  
23 or some of the challenges that they had themselves in having  
24 access to the ballot box. So it is very challenging. Again,  
25 when you are dealing -- and most of my political career has

1 been with folks who are socially and economically challenged  
2 because I represent the city of Cleveland and the inner-ring  
3 suburbs and many of the inner-ring suburbs are majority  
4 minority areas.

5 So constituents in my district, both in my ward but also  
6 in my senate district, are challenged. And any little thing  
7 that happens in their lives that kind of throw them off their  
8 game can impact whether or not they vote, whether they do  
9 anything. And that's why I firmly believe that those of us who  
10 are in the elected ministry, and I call it that on purpose,  
11 should be in the business of trying to help people vote, help  
12 them get that access to the ballot box and we should expand  
13 that access, not constrict it.

14 Q. Did you encounter individuals who had transportation  
15 difficulties?

16 A. All the time. Mothers, my constituents in my district,  
17 that's why having those 35 days, having that extra opportunity  
18 to be able to get out the vote is so important because a lot of  
19 my constituents were wage workers so they could not just  
20 cavalierly leave work during lunch and go and vote. They had  
21 to vote either before or after. And, again, if any little  
22 thing happened picking up their child from day care or anything  
23 kind of threw them off, they may or may not have the  
24 opportunity to vote.

25 So the 35 days of no-fault absentee or absentee voting

1 was very important. Early in-person voting is important.  
2 Three days before election, those weekend days are very  
3 important so that we make sure that we enfranchise the greatest  
4 number of people.

5 Q. And with respect to the transportation problems  
6 specifically, what, if any, impact did those have on the  
7 ability of people who you work with to vote or to register?

8 A. A lot of impact. Public transportation is hard. You've  
9 got to get the timing right. And if you are a mom or even a  
10 father who have children that you may have to pick up from  
11 school or pick up from day care, it makes it difficult if you  
12 do not have a car. A lot of folks in urban areas are trans --  
13 public-transportation dependent. We all depend on  
14 transportation. But they need the public-transportation system  
15 and those challenges are very evident.

16 Q. And in the context of your work did you have -- did you  
17 observe people who had difficulty understanding how the  
18 electoral process worked?

19 A. Oh, yeah. It's not in common language. Even for me,  
20 probably if I were not doing this for -- doing this both in a  
21 volunteer basis before I ever came to elected office and then  
22 in my elected capacity and now just doing it across the state.  
23 If I were not involved in this, I'm not so sure that I would  
24 even know myself. You have to be engaged in it at all times to  
25 really understand it. The rules are constantly changing. For



1 me, it is important to be out there making sure that people are  
2 educated so that we help them to have the access that they  
3 need.

4 Q. Let me ask you specifically about the 2008 election.

5 A. Yes.

6 Q. Did you go to the early-voting center in Cuyahoga County  
7 prior to that election?

8 A. I did.

9 Q. What did you observe?

10 A. I observed long lines. The voting location for early  
11 voting in Cuyahoga County is located on East 30th and Euclid.  
12 It is centrally located in downtown Cleveland. As I'm sure we  
13 all can agree that the excitement about the election of the  
14 first African-American President of the United States of  
15 America was something that was important to this entire country  
16 to have that happen, as it has taken too long to happen. But  
17 particularly for the African-American community. And so, yes,  
18 there were lines wrapped around East 130th street just wrapped  
19 around -- even there's a freeway kind of on the back towards  
20 Superior, I think. But just lines wrapped all around that  
21 building of families coming out to vote.

22 Particularly on the Souls to the Polls days, that  
23 Sunday, lots of churches brought their parishioners to come and  
24 vote. It was quite a sight to see. Mothers with babies in  
25 carriages and fathers there and pastors there, rabbis there.

1 It certainly was a mosaic of people at that polling place in  
2 2008, but the overwhelming majority of folks, just by looking,  
3 were the African-American community.

4 Q. Did you also observe the early-voting center in Cuyahoga  
5 County in 2012?

6 A. Absolutely, I did. Unfortunately, at that time there  
7 were lots of things happening in the legislature and also by  
8 directive of Secretary of State Husted that put in jeopardy  
9 some of the access to the ballot box that people had enjoyed in  
10 2008. In my caucus, the Ohio Democratic Senate Caucus under  
11 the leadership of Senator Eric Kearney at the time had decided,  
12 especially when we were unsure whether or not we would have the  
13 last three days of early voting as we had in 2008, had decided  
14 to create an initiative called sleep out the vote. And so  
15 senators in our caucus, there were ten members in our caucus,  
16 slept out the vote, for the most part, across the state.

17 I did that in 2012 with my husband, a tent, cold,  
18 freezing rain, slept out the night before early voting was to  
19 start to show symbolically that we didn't know whether we were  
20 going to get back the three days. So don't wait on the last  
21 three days. You got to get out there to vote right now.  
22 Although we did not like the rules of engagement, we wanted to  
23 make sure that voters knew that. And so we did that. So I  
24 slept out. I was the first person to vote in Cuyahoga County  
25 in 2012, that particular year, because of those reasons. I did

1 not want to sleep out but I did it because it was important to  
2 let the voters know what was happening in the legislature and  
3 that it was wrong, what was happening, but we were not going to  
4 let that stop us from getting out to vote.

5 Q. Did you observe lines outside the early-voting center in  
6 2012?

7 A. Yes.

8 Q. During your time in the senate did you become familiar  
9 with a bill known as H.B. 194?

10 A. Yes.

11 Q. What, if anything, do you recall about that bill?

12 A. The bill, H.B. 194, had provisions in the bill that  
13 really sought to cut back on the voting activities. I don't  
14 remember exactly every little detail of that bill. If you can  
15 kind of help me recall a little bit of it or show it to me.  
16 But I am familiar with the bill.

17 Q. Okay. Do you recall whether there was any recall  
18 efforts related to 194?

19 A. Yes, there were. Yes. The General Assembly -- it's  
20 coming back to me.

21 The General Assembly passed that bill, republicans  
22 passed that bill and there were efforts by groups to repeal  
23 that bill. Enough signatures were collected to get that bill  
24 on the ballot and then the General Assembly subsequently  
25 repealed its own bill.

1 Q. And you had mentioned directives issued prior to the  
2 2012 election. What specifically were you referring to?

3 A. Some directives that prohibited boards of elections from  
4 having extra hours, for example. The Secretary of State came  
5 down, especially in urban -- in some of the rural areas  
6 republican and democratic board of election members did vote to  
7 increase access to early voting but in urban areas, republican  
8 members on the boards of election voted against having access  
9 to early voting.

10 Whenever there is a tie, the Secretary of State has to  
11 break the tie. So it turned out we had two disparate kind of  
12 systems going on in the state of Ohio where residents in more  
13 rural, red-leaning areas had more access to voting and  
14 residents that lived in urban, more blue-leaning areas did not  
15 have that same kind of access. So of course it caused lots of  
16 confusion and frenzy. Those are the types of things.

17 Not allowing boards of elections to be able to mail out  
18 unsolicited absentee-ballot applications in counties like my  
19 county, which I know the best, residents came to expect that to  
20 happen. And so when you change it to the negative, it causes  
21 lots of confusion, especially among elders. I did get calls  
22 into my district office about whether or not those  
23 absentee-ballot applications were going to come or not come.  
24 And that's wrong to cause that type of confusion.

25 Q. And you mentioned disparate treatment in different

1 counties. Do you know whether there was ultimately a statewide  
2 directive issued?

3 MS. COONTZ: Objection, Your Honor.

4 MR. KAUL: I'll withdraw the question.

5 BY MR. KAUL:

6 Q. You mentioned Souls-to-the-Polls efforts before. Can  
7 you explain what that is?

8 A. Souls to the Polls is something that the  
9 African-American community started to make sure that voters in  
10 the African-American community, churches, pastors would take  
11 their vans and put their parishioners in there after church and  
12 go to vote as a community. Very evident in 2008 as the  
13 African-American community was very excited about the president  
14 or then Senator Barack Obama but about having an  
15 African-American president. So black churches all across the  
16 state of Ohio were very engaged in bringing their parishioners  
17 to Souls to the Polls.

18 It was not exclusively used by African-Americans but it  
19 certainly overwhelmingly used by African-Americans. The whole  
20 notion that we're going to vote as a community. And it really  
21 does have a lot to do, again, with the history in this country  
22 of disenfranchising African-Americans and many of our elders  
23 who had to live through the '50s and the '60s remember that  
24 very clearly what was happening. So it was a communal way of  
25 rallying folks to come, let's go worship together and then

1 let's go vote together.

2 Q. And this goes without saying, what day of the week did  
3 souls to polls take place?

4 A. Souls to the Polls happened on a Sunday.

5 Q. And do you have an understanding as to why those voters  
6 went to the polls in person rather than casting absentee  
7 ballots?

8 MS. COONTZ: Objection, Your Honor. This witness is  
9 not being offered as an expert in voter behavior. Speculation.

10 THE COURT: Sustained.

11 BY MR. KAUL:

12 Q. Have you been directly involved with Souls to the Polls?

13 A. I have been directly involved in Souls to the Polls.

14 Q. Why did you get involved in those efforts?

15 A. Got involved to motivate voters. Again, in 2008 and  
16 2012 I was at those polls at the time to see ministers bring  
17 their parishioners there to encourage the African-American  
18 community to get out to vote. It was very important. The  
19 African-American community tends to be very suspicious and want  
20 to go out and vote in person. They want to see and make sure  
21 that their ballot is cast.

22 I know as a professor of African-American history, in  
23 studying the history of the African-American community and the  
24 impacts that barriers have caused from literacy test to poll  
25 taxes, that it is ingrained in us culturally. Having my

1 grandmother talk to me about why it was important to get out to  
2 vote and her making sure that I did so when I turned 18 years  
3 old because I had an obligation to vote. Yes, the  
4 African-American community is suspicious of the system based on  
5 historic racism and discrimination in the realm of voting and  
6 they -- we prefer, we prefer to vote in person.

7 MS. COONTZ: Your Honor, I'm going to move to strike  
8 the witness' entire answer. She's not being offered as an  
9 expert witness on African-American voting behavior and the  
10 suspicion of African-Americans of the vote-by-mail process.

11 THE COURT: She's describing matters that she's  
12 personally been involved in in her own life.

13 MS. COONTZ: And she can certainly describe the  
14 get-out-the-vote efforts that she's had. But right now the  
15 witness is making broad-sweeping statements of all  
16 African-Americans.

17 THE COURT: There's no jury here. I get it.

18 BY MR. KAUL:

19 Q. When you were personally involved in souls to polls  
20 efforts, did you encourage individuals to vote in person?

21 A. Absolutely I did. It was important, and especially in  
22 2008 and 2012 with the historic import of President Barack  
23 Obama, absolutely encouraged people to get out to vote early  
24 and to vote in person.

25 Q. Was your personal decision to encourage voters to engage

1 in in-person voting for the reasons you just mentioned?

2 A. Yes, they were. Especially after 2008 to see the  
3 legislature, and I was in the legislature at the time that most  
4 of these bills started coming through. When the state of Ohio  
5 corrected itself in 2004, and I was a voter then, I wasn't  
6 involved in the political process to the extent that I am now,  
7 but to see the legislature correct itself which is why we got  
8 the 35 days of early in-person voting, no-fault absentee  
9 voting, golden week, all of those things the legislature did to  
10 correct itself because of the debacle of 2004, to see the sea  
11 of people who came out to vote in 2008, particularly the  
12 African-American community of which I am a member of that  
13 community and have lived through the pains, either through my  
14 grandmother or my auntie's stories or being a student of it and  
15 now a professor of it. To see the legislature then reverse  
16 course after that election in the legislature, whether it was  
17 taking away golden week which really did not make a whole lot  
18 of sense because people were utilizing that to be able to go  
19 and vote early and in person to be able to both register and  
20 vote at the same time so that if you have a burden in your life  
21 you can get all of that stuff done.

22 I just did not understand why my republican colleagues  
23 would want to regress the state, regress the progress. I was  
24 very proud that Ohio was one of the states that had that kind  
25 of mantel that we were very progressive in terms of giving



1 people access to the ballot box. It was very clear by some  
2 comments that were made by republicans in this state, and I  
3 will name Doug Preisse in particular, a chairman of the  
4 republican party, I believe in Franklin County. Also a member  
5 of the board of elections to say that he doesn't believe that  
6 we should contort --

7 MS. COONTZ: Objection, Your Honor.

8 THE WITNESS: -- the African-American voting machine.

9 BY MR. KAUL:

10 Q. Let me ask -- when she objects, let me ask you to just  
11 break off.

12 A. Okay. I'm sorry.

13 THE COURT: And the basis?

14 MS. COONTZ: The relevance of Doug Preisse's  
15 statements, the introduction of Doug Preisse's statement  
16 through this witness.

17 THE COURT: As I understand it, Mr. Preisse is going  
18 to introduce his statement, isn't he?

19 MS. COONTZ: That remains to be seen. If the  
20 plaintiffs call Mr. Preisse, potentially. But it's certainly  
21 not something that this witness can testify to. It's a hearsay  
22 statement.

23 THE COURT: First of all, I'm aware of the statement.

24 MS. COONTZ: Right.

25 THE COURT: And so we can probably move on.

1 MR. KAUL: Okay.

2 BY MR. KAUL:

3 Q. Senator, let me ask you -- let me call up an exhibit  
4 that will come up on your screen. This is Exhibit 92. Do you  
5 recognize the picture contained in Exhibit 92?

6 A. Yes, I do.

7 Q. And why do you recognize that?

8 A. I recognize this billboard because I was at that  
9 billboard. This billboard is in a Cleveland community where  
10 one of the campuses of Cuyahoga Community College is housed and  
11 it is the campus that I teach at. This is right around the  
12 corner from Cuyahoga Community College, Metro Campus. I  
13 recognize this billboard because I joined Councilwoman Phyllis  
14 Cleveland who represents this community in front of that  
15 billboard outraged by the fact that this billboard appeared in  
16 a predominantly African-American community and predominantly  
17 poor community saying that voter fraud is a felony. Certainly  
18 believe that this billboard was meant to intimidate members of  
19 the African --

20 MS. COONTZ: Objection.

21 MR. KAUL: Your Honor, I'll redirect this line.

22 THE COURT: Thank you.

23 BY MR. KAUL:

24 Q. Let me first ask you as an evidentiary matter, is this a  
25 fair and accurate representation of what you saw?

1 A. Yes.

2 MR. KAUL: Your Honor, I move that this be admitted.  
3 And, Your Honor, just as a process matter, would you like us to  
4 move with each exhibit?

5 THE COURT: The point of asking that you resolve this  
6 ahead of time was that all of this would be preadmitted, I  
7 assumed. How have we dealt with that?

8 MR. KAUL: We certainly have not resolved every  
9 dispute.

10 THE COURT: Yes, then move for it.

11 MR. KAUL: And we can try to work certain exhibits out  
12 and maybe move at the end of the day. I guess that may be  
13 easier.

14 THE COURT: That would be easier and I suppose if  
15 you're going to have somebody testify to an exhibit it would be  
16 best to move its admission before it gets broadcast on the  
17 screen.

18 MS. COONTZ: Do you want an objection now or later,  
19 Your Honor?

20 MR. KAUL: Why don't I move this one in since she's  
21 testifying about it. But for future reference I'll handle it  
22 the way you suggest.

23 THE COURT: Very good. And you object?

24 MS. COONTZ: Your Honor, lack of foundation. The  
25 witness -- we don't know who took the picture. We don't know

1 where the picture was taken. We don't know what election this  
2 was taken before. We object to the text below it. If the  
3 witness wants to testify about the billboard, if the Court  
4 determines that it's admissible, but there's really no  
5 foundation from this witness as to what we're even looking at.  
6 The witness can't testify as to --

7 THE COURT: Let's go back for a moment. Senator  
8 Turner has testified that this billboard was a billboard that  
9 was right around the corner from the Cuyahoga County -- the  
10 Cuyahoga Community College, Metro Campus, that she and another  
11 city council member gathered and I don't know, had a press  
12 conference or something to that effect. You're objecting to  
13 the tone of the message in the billboard. We don't know who  
14 paid for the billboard, who put it up, but it certainly is  
15 within reason if there weren't similar billboards in other  
16 areas of the county and it was targeted for placement there,  
17 the Court might draw one conclusion over another.

18 So what's your --

19 MS. COONTZ: The additional foundational evidence we  
20 would seek is when was this taken, when was this billboard put  
21 up.

22 THE COURT: Do you know when it was put up?

23 THE WITNESS: Your Honor, this billboard was put up  
24 around the 2012 election. And, Your Honor, if I may, the  
25 underneath --

1 THE COURT: Before or after?

2 THE WITNESS: Before, Your Honor. And the Stan  
3 Donaldson, *The Plain Dealer* reporter, Your Honor, I was right  
4 there when he took the picture of the billboard. I recognize  
5 his name and his work as a reporter for *The Plain Dealer*.

6 MS. COONTZ: Your Honor, I would also just note the  
7 relevance of this picture. I realize that it's a bench trial  
8 but at issue today are the directives issued by the Secretary  
9 of State and the laws passed by the General Assembly. Voter  
10 fraud did not become a felony as a result of any of the  
11 challenged laws. And there's no evidence that any of my  
12 clients actually erected this billboard and it's highly  
13 prejudicial, the leap that the plaintiffs are asking the Court  
14 to take, as to the intent of the billboard upon the voters who  
15 saw it.

16 My clients are entitled to defend themselves with  
17 respect to the laws that they passed and the directives issued.  
18 But this is not something that my clients are responsible for  
19 and there's no evidence before the Court that they are.

20 THE COURT: Sustained.

21 MS. COONTZ: Thank you, Your Honor.

22 THE COURT: Go ahead.

23 MR. KAUL: I was just going to say, Your Honor, one of  
24 the many factors is, in section 2, is the degree to which there  
25 is ongoing discrimination, the degree to which the political

1 processes are fair and open. I think Senator Turner is going  
2 to speak to, in a moment, to the extent to which, in her  
3 experience, this type of intimidation tactic discourages  
4 voting. The fact that I think everybody in Cleveland already  
5 knows that voter fraud is a felony so there's really only one  
6 purpose for this billboard. Other facts along those lines  
7 which go to the accessibility of the political process for  
8 African-Americans.

9 THE COURT: Let's do this. Let's do this. Let's take  
10 a break. Counsel approach for a moment.

11 Senator Turner, if you'd step down and we'll call you  
12 back in a moment.

13 - - -

14 Thereupon, the following proceeding was held at side-bar:

15 THE COURT: What is the purpose of her testimony? And  
16 I suppose it's former Senator Turner, correct?

17 MR. KAUL: In general, Your Honor, or the specific?

18 THE COURT: Yes.

19 MR. KAUL: Several factors. One is to establish as a  
20 factual matter that's going to support what our experts testify  
21 to. The difficulties for a number of individuals for  
22 registering to vote, in particular in the African-American  
23 community where she has experience, direct experience getting  
24 out the vote and registering voters. Secondly, the ongoing  
25 disparities that which go to the section 2 factors that we've

1 talked about in our briefing in various areas including, as she  
2 testified about, educational disparities, income disparities,  
3 that sort of thing.

4 And then I'm soon going to turn to the legislative  
5 history of the relevant provisions where she can speak directly  
6 to the testimony that took place on the floor, the knowledge of  
7 the legislature in terms of the disparate impact that the  
8 provisions would impose, and the unusual process that was used  
9 in connection with S.B. 238. All of which goes to intent and  
10 to the openness of the political process.

11 MS. COONTZ: We have a lot of problems with that, Your  
12 Honor. This witness was not offered as an expert witness and  
13 she's offering expert testimony, essentially, on what all  
14 African-Americans feel with respect to the voting process and  
15 with respect to the history of discrimination. This is a lay  
16 witness and what she is offering is her opinion testimony about  
17 discrimination in Ohio. She is not an expert and under 702 she  
18 cannot offer this testimony.

19 With respect to the intent of the General Assembly, I  
20 think we've been through this before with respect to the intent  
21 of the General Assembly is that which is passed in the bill.  
22 That is how laws are passed in Ohio and that is a legislative  
23 history in the state of Ohio. What counsel is indicating is  
24 that they want to call Senator Turner to testify as to  
25 statements made by other legislators during the legislative

1 process, which is hearsay. None of that can come in.

2 The transcripts, again, unauthenticated. The videos are  
3 unauthenticated and they are not government records such that  
4 they're self-authenticating. None of this testimony is  
5 relevant.

6 Her testimony with respect to get-out-the-vote efforts  
7 we've been a little bit lenient with respect to her personal  
8 experience regarding the get-out-the-vote efforts but now what  
9 the plaintiffs are doing are asking to impute the intent of the  
10 General Assembly from a billboard erected by we don't even know  
11 who in a certain location. This far exceeds the qualifications  
12 of this witness to testify.

13 MR. KAUL: Your Honor, let me just briefly address a  
14 couple of those points and there are a couple things I should  
15 add. Number one is, Senator Turner is the engagement chair for  
16 the Ohio Democratic Party. So one of the things I'll ask her  
17 about --

18 THE COURT: She's doing a very good job. Go ahead.

19 MR. KAUL: One of the things I'll ask her about is  
20 what she does in that connection which goes to the Ohio  
21 Democratic Party's involvement. Also I was going to note with  
22 respect to her status as an expert, first of all, she's clearly  
23 not a 702 expert and to the extent that she's making statements  
24 beyond her personal knowledge, as the Court indicated, the  
25 Court understands, I think, that she's -- to the extent that



1 she's speaking for African-Americans generally, it's based on  
2 her experience. It's not for all African-Americans.

3 And secondly, just like, for example, a DEA agent who  
4 testifies based on his experience in law enforcement as a lay  
5 witness under -- lay expert witness under 701, she's testifying  
6 based on her extensive experience in get out the vote,  
7 voter-registration work. And so she is permitted to testify as  
8 to what she's learned through the course of that.

9 MS. COONTZ: Can I add one thing, Your Honor?

10 THE COURT: Yes.

11 MS. COONTZ: Ms. Turner, I believe, according to news  
12 reports, has stepped down as Engagement Chair of Ohio  
13 Democratic Party. That's what's being reported in the media  
14 currently. Regardless, her personal experience as the  
15 engagement chair, that's not what the state is objecting to.  
16 What the state is objecting to is her personal feelings  
17 regarding these particular laws. And if counsel was going to  
18 introduce her as a lay expert, which seems kind of strange,  
19 that should have been disclosed, and it never was.

20 MR. KAUL: That's not how lay expert testimony works.

21 THE COURT: I'll let you know when I come back.

22 MS. COONTZ: Thank you, Your Honor.

23 MR. KAUL: Thank you.

24 (A recess was taken at 10:57 a.m. until 11:07 a.m.)

25 Thereupon, the following proceeding was held in chambers:

1           THE COURT: I guess I'm a little frustrated because I  
2 didn't know the scope of Senator Turner's intended testimony.  
3 It seems to be getting much broader than I certainly  
4 anticipated. She's a former Senator. She is a former city  
5 council member. She is a former Ohio Democratic Party  
6 Engagement Chair. She's a current Cuyahoga County -- Cuyahoga  
7 Community College professor and she's a private citizen. And  
8 she's purporting to testify about what every African-American  
9 in the state of Ohio has experienced over the course of  
10 history, I think. How much further do you intend to go with  
11 this witness?

12           MR. KAUL: Your Honor, she undertook efforts to get  
13 that billboard taken down. I was going to ask her about that.  
14 Then I was going to ask her about a few things related to the  
15 legislative history of the bills.

16           THE COURT: How about we do this. How about you give  
17 me something that allows me to take into consideration the  
18 testimony that took place in the senate and the house.  
19 Certainly I have observed Senator Turner and the objections  
20 that she raised contemporaneously with the votes that were  
21 taken as to each one of these pieces of legislation and we get  
22 away from some of the parade of horrors.

23           I don't see the tie-in with the board being particularly  
24 relevant to what the senate or the house may have passed and  
25 enacted in the bill.

1 MR. KAUL: Your Honor, I agree with that point. What  
2 we think it's relevant to is the senate factors that go to the  
3 DRE test which is broad all-encompassing examination, the  
4 extent to which the process is fully opened to the members of  
5 minority communities. Our position is that this is evidence  
6 that there's ongoing efforts to target people based on their  
7 race and to discourage them from voting based on their race and  
8 that introducing it into evidence is within the scope of that  
9 inquiry.

10 THE COURT: The paragraph underneath the billboard is  
11 what?

12 MR. KAUL: The paragraph is from Mr. Timberlake's  
13 expert report. So we're happy to excise that from the exhibit.

14 THE COURT: So redact that and the billboard can come  
15 in. Again tell me what she's going to get into, what more is  
16 she going to get into?

17 MR. KAUL: The topic to cover -- I'm certainly happy  
18 to take the Court's direction. I was going to have her talk  
19 about the efforts to take the billboard down which go to the  
20 fact that, first of all, that there was a community response to  
21 this billboard and --

22 THE COURT: And that testimony is already in.

23 MR. KAUL: That's fine. And then, Your Honor, I'm  
24 going to turn to the legislative debate where she can talk  
25 about evidence that she presented about the disproportionate

1 impact of the bills. In particular, the golden week bill which  
2 goes to the knowledge of the legislature. And in particular,  
3 the process that relates to -- that related to that bill which  
4 is one of the factors under Arlington Heights. And then I'm  
5 going to have her talk about her knowledge of --

6 THE COURT: She was permitted to speak at every  
7 opportunity, correct?

8 MR. KAUL: She was, yes. But in the house, which she  
9 observed, there were members who were gaveled down and the  
10 process which she'll testify to, I believe, was unusually fast  
11 for the passage of golden week. It led to the issuance of a  
12 protest by members who voted against it which she'll testify, I  
13 think, is an extremely unusual thing to do, which is evidence  
14 that there was particular evidence -- there's unusual amounts  
15 of evidence presented on this issue going to knowledge of the  
16 legislature.

17 THE COURT: And why doesn't the transcript give me the  
18 tone of that?

19 MR. KAUL: It will, and I'm happy to focus just on her  
20 testimony about the unusual process, which you can't entirely  
21 get from the transcript, and the unusual nature of the protest.  
22 I can avoid having her go into what the protests said and that  
23 sort of thing.

24 THE COURT: Who says it's unusual?

25 MR. KAUL: She'll testify that it was based on her

1 experience in the senate. The other thing, Your Honor, I would  
2 note is that there's a pending objection to all these  
3 legislative transcripts.

4 THE COURT: I know that.

5 MR. KAUL: So obviously to the extent that remains.

6 THE COURT: I'm trying to get away from --

7 MR. KAUL: I understand.

8 MS. COONTZ: Starting with the billboard. Again, we  
9 don't know who put it up. If the intent is to impute some sort  
10 of discriminatory intent from this billboard, she's not an  
11 expert who can testify as to what this billboard did and the  
12 intent of whoever put it up. We don't even know who put it up  
13 at this point. But there's no evidence in this case that it  
14 was either one of my clients, and my clients are essentially  
15 being unfairly tapped with responsibility for this billboard.

16 With respect to the unusual process that counsel keeps  
17 referring to, there is no claim in this case that the Ohio  
18 Constitution and Ohio law was not followed in the passage of  
19 Senate Bill 238. And this is the second time this law has been  
20 challenged. If Ohio law was violated with respect to the  
21 method in which the bill was passed, we would be --

22 THE COURT: Tell me more about the settlement.

23 MS. COONTZ: The NAACP settlement?

24 THE COURT: Yes.

25 MS. COONTZ: So the NAACP, to be frank, was not

1 concerned about golden week. They wanted the additional  
2 weekend and evening hours and so a settlement was reached where  
3 there were more additional evening hours, additional weekend  
4 hours and that was what the NAACP wanted and they abandoned any  
5 claims with respect to a challenge to golden week. Again,  
6 there was no claim in that case with respect to the process  
7 that was reached but they didn't intend to pursue and they  
8 weren't interested in pursuing any challenge to golden week.  
9 From their perspective, the additional evening and weekend  
10 hours were satisfactory.

11 THE COURT: Typically the NAACP speaks for the  
12 African-American community, correct?

13 MR. KAUL: Absolutely, Your Honor. But we don't agree  
14 with that characterization of the settlement at all.

15 MS. COONTZ: I was counsel of record. I was involved  
16 in the settlement negotiations.

17 MR. VOIGT: Your Honor, I was lead counsel.

18 MS. COONTZ: I was one of counsel of record but --

19 MR. KAUL: We'll let them work that out.

20 MR. VOIGT: But maybe we were co-counsel. I forget.

21 But the change that they requested regarding the 2016  
22 presidential election was one additional Sunday of early voting  
23 and they did not push for golden week in the settlement. There  
24 were statements made that the golden week issue is just not --  
25 it's dead. It's a dead issue. Nobody is --

1 MR. KAUL: Your Honor --

2 MS. COONTZ: If I can just go back to the process  
3 arguments. Again, no challenge was ever made to the process by  
4 which this law was passed. And laws are debated. Laws are  
5 always debated. That's what happens. Sometimes it's more  
6 heated than other times. But the intent of the General  
7 Assembly is what is passed.

8 THE COURT: She can't speak to the intent of the  
9 General Assembly. She can speak to -- I don't want to hear any  
10 testimony from her that I could get from the transcript.

11 MR. KAUL: I understand.

12 THE COURT: That I haven't already seen and read. Was  
13 there sponsor testimony that was rejected?

14 MR. KAUL: A couple different things. There was an  
15 attempt to amend the bill in the house and the transcripts  
16 reflect that. So I don't think she needs to go into that. But  
17 under Arlington Heights, one of the factors the Court considers  
18 in assessing whether there was discriminatory intent is the  
19 process, the legislative process and any unusual nature of the  
20 process. We're not -- our position is not that any laws were  
21 violated in the passage, but that's a separate question from  
22 whether it was an ordinary process or an unusual one. There's  
23 case law on that issue. And so, frankly, it's going to be --  
24 that portion of the testimony is brief. It's a couple  
25 questions about how long it was debated and whether it followed

1 usual process and the unusual nature of the protest.

2 MR. VOIGT: If I could add one more thing about the  
3 settlement. The primary relief that the plaintiffs sought in  
4 that case was two -- they wanted two Sundays to be able to do  
5 their Souls-to-the-Polls effort. We had one Sunday and they  
6 wanted an additional Sunday because they felt that it would be  
7 more -- it would be easier to do the program over two Sundays.  
8 And they approached us after we were successful before the U.S.  
9 Supreme Court. They approached us. We sat down at the table.  
10 We worked it out. All of the other parties agreed that golden  
11 week did not need to be part of the schedule.

12 MR. KAUL: Your Honor, I'll just say it's true that I  
13 was not counsel of record. I was co-counsel with Mr. Ho who  
14 was one of the lead counsels in the North Carolina case.  
15 That's different from my understanding of their perspective. I  
16 would also note that --

17 THE COURT: And that would be what?

18 MR. KAUL: First of all, I was told that he learned --  
19 again, we're now getting far afield here, but my understanding  
20 was that he learned at a court conference that settlement was a  
21 possibility and that's what led to the discussions. I think  
22 based on what Mr. Voigt said at the hearing -- I'm not trying  
23 to represent the details here. This is beyond my depth but I  
24 do know that the big issue here is the early-voting hours were  
25 set by the Secretary. So those could be settled. Golden week



1 is a statute. It couldn't possibly be settled. And of course  
2 we represent different parties in this case who are -- we're  
3 not representing the NAACP.

4 THE COURT: I'll admit the billboard for whatever  
5 purpose with this out. So redact that.

6 MR. KAUL: Absolutely. Thank you, Your Honor.

7 MR. VOIGT: Thank you.

8 - - -

9 Thereupon, the following proceedings were had in open  
10 court:

11 THE COURT: Senator Turner, let's confine your  
12 testimony to conclusions you can fairly reach by having done  
13 constituent work, specific problems. I don't want to hear a  
14 parade of horrors necessarily. I'm aware that my perception  
15 is different than your perception generally and I believe that  
16 the plaintiffs are entitled to bring some of that in. But  
17 let's limit it to what you know personally, not what the whole  
18 community knows or has experienced. All right?

19 THE WITNESS: Yes, Your Honor.

20 THE COURT: Thank you.

21 MR. KAUL: Thank you, Your Honor.

22 THE COURT: And if I could get some sort of foundation  
23 for like maybe something from the clerk of the branch of the  
24 legislature that was in charge of the particular bill that  
25 certifies that it's an authentic transcript. Your court

1 reporter, clearly the oath would do that, it seems to me.

2 Where did she get the transcripts or where did she get the  
3 recordings? I assume they came from --

4 MR. KAUL: They're from the videos, Your Honor.

5 THE COURT: And the videos came from?

6 MR. KAUL: Ohio Channel. I'll actually ask the  
7 Senator a question about that in just a moment.

8 THE COURT: And it seems to me that the Ohio Channel  
9 is the only entity that records those sessions?

10 MR. KAUL: I'll elicit this from the Senator in a  
11 moment but my understanding is it's sort of the equivalent of  
12 the Ohio C-SPAN.

13 THE COURT: Do I have the complete record? In other  
14 words, do the transcripts show me everything that took place as  
15 to a given bill or only a session when it was passed?

16 MR. KAUL: My understanding, Your Honor, and I will  
17 confirm this, but my understanding is that we have included all  
18 of the discussion of the relevant bills but that there are some  
19 sessions that are very long and discuss multiple bills. Now,  
20 the videos themselves, which we linked to, show the full video  
21 and so we could introduce them that way if the Court would  
22 prefer. And certainly if Defendants want to object to the way  
23 we've divided those videos up so that it focuses, in our view,  
24 on the relevant portions. When I say that, I don't mean  
25 portions that are -- my understanding at least is that it

1 doesn't mean portions that are helpful to one party or the  
2 other, just the portions that are relevant to the right bills,  
3 if that makes sense.

4 THE COURT: It does.

5 She is a former Senator. It seems to me that you  
6 probably need a current records custodian to properly introduce  
7 the transcripts. Is it possible to get a current custodian?

8 MR. KAUL: The transcripts, Your Honor, were prepared  
9 not by the legislature but by the court reporter who signed  
10 them. So we can certainly look into finding a legislative  
11 witness. I will say that another option is we can call our  
12 paralegal.

13 THE COURT: You can call a clerk.

14 MR. KAUL: We could call the paralegal who downloaded  
15 them from the Ohio Channel or who at least directed that  
16 process or knows about it and can confirm that they are true  
17 and accurate copies of the videos.

18 MS. COONTZ: I think the Court is aware of the State's  
19 objection to the introduction of these. The Court raises  
20 another issue with the completeness of these. Is this every  
21 single time these bills were debated? We would need some sort  
22 of foundation that these aren't just portions of the debate,  
23 portions of a committee hearing. I believe the witness list  
24 actually identifies these as excerpts. And based on prior  
25 conversations with counsel, the transcripts themselves have

1 errors. So an incomplete record --

2 THE COURT: Are they errors -- are they spelling  
3 errors or what kind of errors are they?

4 MS. COONTZ: It's not entirely clear whether it's  
5 inaudibility of the transcripts. The exact errors have not yet  
6 been identified, which raises a host of other issues with  
7 admissibility, completeness, authentication of these particular  
8 transcripts and recordings. It's no different than pulling  
9 something off of Channel 4, having half a news story and an  
10 almost-perfect transcription of the story. And that's  
11 essentially what we're dealing with. It doesn't change simply  
12 because we're talking about OGTV.

13 MR. KAUL: And I'll just add, Your Honor, they have  
14 the types of errors that every transcript that's ever created  
15 has. Which is there are inaudibility portions, there are  
16 things that are hard to hear.

17 MS. COONTZ: I believe there's issues with identity of  
18 speakers as well, Your Honor, which raises issues if the motive  
19 behind the statements being made are being imputed to one  
20 speaker or another, and we don't even know who's saying them.

21 MR. KAUL: There are some speakers who are  
22 unidentified on the transcript. It's clear whether they'll  
23 supporters or opponents of the bills and certainly we can go  
24 back through and have somebody with personal knowledge of the  
25 identity of each speaker identify them. I don't think it's

1 relevant to any of the issues, frankly, and to the extent the  
2 state thinks it is, we're happy to identify those particular  
3 individuals whose statements they're concerned about.

4 THE COURT: I think that would be a good idea. And I  
5 still am reserving on whether or not I'm going to admit them at  
6 all.

7 MS. COONTZ: Thank you, Judge.

8 THE COURT: Go ahead. You can proceed.

9 BY MR. KAUL:

10 Q. Senator, let me just pick up where we just left off,  
11 actually. Are you familiar with Ohio Channel?

12 A. Yes, I am.

13 Q. What is it?

14 A. Ohio Channel is charged with recording not the committee  
15 hearings but the sessions of the General Assembly both in the  
16 house and also in the senate. When members of the General  
17 Assembly stand up to speak, in the senate we're recognized by  
18 the president of the senate, in the house we're recognized by  
19 the speaker of the house. Our names are clearly identified  
20 when we stand up so that the viewers who are watching can both  
21 see us and hear us. This only happens during floor debate. It  
22 does not happen when we are debating in committee.

23 Q. And you said they're charged with recording sessions?

24 A. Yes, they are. They are the official recorders of the  
25 sessions for the General Assembly. There are cameras in both

1 chambers and those cameras are controlled by the Ohio Channel.

2 Q. And they are charged by whom with doing that?

3 A. By the state, with the state.

4 THE COURT: They're under contract with the state, is  
5 that the deal?

6 THE WITNESS: Your Honor, I'm not sure about contract  
7 but they are housed in the portion of the building I will call  
8 the basement of the Ohio -- of the capitol. So they have  
9 formal offices there, is my understanding. I don't know if  
10 it's the General Assembly that necessarily controls them but  
11 there is an entity that is in control of them that has been  
12 commissioned by the state of Ohio. And they are the only ones,  
13 Your Honor, other than the fact if reporters may come in with a  
14 camera but they keep -- they are charged with keeping the  
15 official record of the sessions both in the house and also in  
16 the senate, Your Honor.

17 THE COURT: That's some evidence and it seems to me  
18 that we need somebody who's currently there and can better  
19 explain exactly what it is. Thank you.

20 BY MR. KAUL:

21 Q. Just a couple brief follow-up questions on that and I'll  
22 switch topics. Have you observed the videos that Ohio Channel  
23 puts up?

24 A. Yes. I have observed some videos. I have gone back  
25 from time to time, both when I was a member of the General

1 Assembly and even now, to watch the proceedings.

2 Q. Are they complete videos?

3 MS. COONTZ: Objection. Vague. Which ones are we  
4 talking about?

5 THE COURT: Specific ones. The ones you've reviewed,  
6 what?

7 BY MR. KAUL:

8 Q. Do you know whether all of the videos are complete  
9 videos?

10 A. Yes, they are. When the Ohio Channel records a session  
11 of the General Assembly, they record us from beginning to end.  
12 If we ever take a recess, which we do from time to time, a  
13 viewer will see Ohio Senate in recess across the screen or Ohio  
14 House in recess. We'll resume momentarily. When the president  
15 of the senate hits the gavel, they begin recording our  
16 proceedings.

17 Q. Do you know whether those videos are posted online?

18 A. They are posted online. Anybody in the world could go  
19 to the Ohio Channel link and pull up a specific date where they  
20 would like to see what the General Assembly was debating in  
21 session.

22 Q. Thank you.

23 Let me ask you, are you familiar with the laws that  
24 are -- the statutes that are at issue in this case?

25 A. Yes, I am.

1 Q. I'd like to ask you about S.B. 238, the provision  
2 eliminating golden week specifically. Do you recall the  
3 process that related to the passage of that bill?

4 A. The process went very quickly, I will tell you that.  
5 The General Assembly, or certainly the senate, we did not  
6 deliberate on that bill for a particularly long period of time  
7 given the weight and the import of that bill. We did not have  
8 a lot of -- long debate either in committee or on the floor.  
9 It happened very quickly.

10 Q. And do you know whether a protest was filed after that  
11 bill was passed?

12 MS. COONTZ: I'm going to object on relevance grounds,  
13 Your Honor. Standing objection.

14 THE COURT: Sustained.

15 MR. KAUL: Your Honor, if the question is  
16 objectionable, I'm sure you'll let me know.

17 BY MR. KAUL:

18 Q. Let me ask you about the process for protests. Are you  
19 familiar with that process?

20 A. Somewhat. We rarely exercise that, at least in my time  
21 in the General Assembly. My time in the General Assembly we  
22 have rarely, as a caucus, exercised that. But our caucus did  
23 submit a formal objection that was entered into the journal,  
24 which is the record of the senate, explaining why we believed  
25 that Senate Bill 238, which took away golden week, would be



1 harmful to the voters of the state. Particularly the impact  
2 that such a bill would have on the African-American community.

3 Q. We'll let the protest speak for itself.

4 THE COURT: You used the word journal. It seems to me  
5 that the Court speaks through its journal and perhaps the  
6 Senate and the House do as well speak through their journal.

7 MR. KAUL: They do to an extent, Your Honor, and we  
8 agree with that. But again, going back to Arlington Heights,  
9 one of the factors that the courts are supposed to look to is  
10 the contemporaneous statements but it's a multifactor test that  
11 looks at a variety --

12 THE COURT: The record should reflect that I have both  
13 watched the transcripts or watched the videos and I've read the  
14 transcripts. So to that extent I'm familiar with it.

15 MR. KAUL: Absolutely, Your Honor. And that was the  
16 extent of this line of questioning.

17 THE COURT: All right.

18 BY MR. KAUL:

19 Q. Senator, let me ask you about your role with the Ohio  
20 Democratic Party. First of all, you've announced that you're  
21 taking a leave of absence; is that right?

22 A. Yes, I have announced that.

23 Q. You, until recently, were involved with activities with  
24 the party; is that right?

25 A. Yes.

1 Q. And I think you were describing before what your  
2 position was?

3 A. Yes. As a chairwoman of party engagement, I travel the  
4 state, I speak at county functions encouraging democrats to get  
5 out to vote. I have participated in fundraising activities in  
6 that capacity as well.

7 Q. Do your efforts involve voter education efforts?

8 A. Yes. We do talk about education. We have a team of  
9 folks within my division whose job it is to help the county  
10 parties get the materials that they need to both educate the  
11 voters about the rules of engagement but also just civically  
12 really keeping voters motivated to make sure they vote every  
13 single election year is very important.

14 Q. And based on your experience, do you have an  
15 understanding of what educational activities the Ohio  
16 Democratic Party will be engaging in?

17 A. Yes. It's making sure that voters and particularly we  
18 have new voters coming to the rolls, making sure they know what  
19 type of ID requirements there may be. If things change in  
20 terms of the rules, what time you can vote, what day you go  
21 vote, how long the polls are open, we engage in making sure  
22 that the voters know that as well. We do work very much in  
23 conjunction with the party chairs in the 88 counties in the  
24 state of Ohio.

25 Q. And do you know whether the Ohio Democratic Party

1 intends to do education, voter education relating to the  
2 provisions that are being challenged in this case?

3 A. That's ongoing. That's ongoing, yes.

4 Q. And if the Ohio Democratic Party was not engaged in  
5 those efforts, would it be doing other efforts?

6 MS. COONTZ: Objection.

7 THE COURT: It's a pretty broad question, isn't it?  
8 Would they be doing other things? That's essentially what  
9 you've asked, right?

10 MR. KAUL: Yes.

11 THE COURT: Other things directed at what?

12 MR. KAUL: I bring it up, Your Honor, because it goes  
13 to diversion of efforts and resources, which is the basis for  
14 standing.

15 THE COURT: Perhaps you can rephrase your question.

16 MR. KAUL: Thank you, Your Honor.

17 BY MR. KAUL:

18 Q. If the Ohio Democratic Party was not doing education  
19 about the bills that we just talked about, would it be involved  
20 in other political activities with that time that's being used?

21 A. Yes.

22 MS. COONTZ: Objection.

23 THE COURT: Let me get something clear first. You are  
24 currently serving in the role as get out the vote chair for the  
25 party, is that it?

1 THE WITNESS: I like that, Your Honor. Yes. I'm  
2 chair of party engagement.

3 THE COURT: That's it. Okay. You are currently in  
4 that role, correct?

5 THE WITNESS: I am, Your Honor. But I am taking a  
6 leave of absence that will be effective December 1 because of  
7 some endorsements that I've made and I want to make sure I keep  
8 the party separate from that, yes, sir.

9 THE COURT: So from now until the 1st of December you  
10 will still be in that role.

11 What's your question again?

12 MR. KAUL: Good question, Your Honor. If she has an  
13 understanding based on her experience with the party of whether  
14 if it were not engaged in the educational activities she's  
15 described if it would instead be devoting that time and effort  
16 to other political activities.

17 THE COURT: And you object to that question?

18 MS. COONTZ: Yes, Your Honor.

19 THE COURT: Basis.

20 MS. COONTZ: Speculation. If she wants to state what  
21 they do between now and December 1st of 2015, she can certainly  
22 testify based on her personal knowledge. But she can't testify  
23 as to what the Ohio Democratic Party is going to do once she's  
24 gone.

25 MR. KAUL: I'm happy to elicit whether she knows.

1 THE COURT: Let's limit it to what you personally know  
2 about other things the democratic party would be engaged in.

3 THE WITNESS: Yes, Your Honor.

4 THE COURT: Thank you.

5 BY MR. KAUL:

6 Q. So can you answer that question, if you remember?

7 A. Yes. In terms of the other activities, if we did not  
8 have to constantly educate voters about the changing rules to  
9 the negative when it comes to voting, really increasing our  
10 get-out-the-vote efforts, really focusing in on registering new  
11 voters into the process.

12 MR. KAUL: Thank you. No further questions.

13 THE WITNESS: Thank you.

14 THE COURT: Thank you.

15 Ms. Coontz.

16 - - -

17 CROSS-EXAMINATION

18 BY MS. COONTZ:

19 Q. Good morning, Senator Turner.

20 A. Good morning.

21 Q. My name is Bridget Coontz and I'm here on behalf of  
22 Secretary of State Husted and Attorney General DeWine. I just  
23 have a couple questions to go back on some of the testimony  
24 that you've already offered this morning.

25 You offered testimony with respect to your background.

1 You didn't mention any board of elections work. You've never  
2 worked with the county board of elections as an employee,  
3 correct?

4 A. Correct.

5 Q. And you've never served on a board of elections as a  
6 member, correct?

7 A. Correct.

8 Q. So you've never actually administered an election at the  
9 county level, correct?

10 A. Correct.

11 Q. Okay. So do you know how many early-voting hours there  
12 will be for the 2016 general election?

13 A. No.

14 Q. Do you know how many of those hours will be weekend  
15 hours?

16 A. No.

17 Q. And do you know when the last time counties had  
18 discretion to set their early-voting hours?

19 A. No.

20 Q. Would it surprise you if I told you it was 2010?

21 MR. KAUL: Objection.

22 MS. COONTZ: I'll withdraw the question.

23 THE COURT: That's probably best. Let's let her  
24 testify.

25

1 BY MS. COONTZ:

2 Q. You mentioned the long lines in 2008. Was that at the  
3 Cuyahoga County early-voting center?

4 A. Yes.

5 Q. Where is the Cuyahoga County early-voting center  
6 located?

7 A. Located on East 30th and Euclid Avenue in Cleveland.

8 Q. And is that a predominantly democrat or republican area?

9 A. Cuyahoga County is predominantly democrat.

10 Q. And are you aware that after the 2008 long lines and  
11 problems experienced at the early-voting center that the  
12 Secretary of State removed all four members of the county board  
13 of elections?

14 MR. KAUL: Objection.

15 THE COURT: Basis.

16 MR. KAUL: Form.

17 THE COURT: Rephrase.

18 BY MS. COONTZ:

19 Q. Did you know that after the problems in the 2008  
20 election the Secretary of State removed all four members of the  
21 Cuyahoga County Board of Elections?

22 A. No.

23 Q. And you also mentioned sleeping out to get out the vote  
24 in 2012. I believe you testified this was your effort to  
25 educate voters with respect to when they can vote early, absent

1 the additional three days?

2 A. Yes.

3 Q. So you adjusted your own voting behavior to the changes  
4 in the law, correct?

5 A. Reluctantly.

6 Q. And you were educating voters on how to do the same,  
7 correct?

8 A. The efforts for sleep out the vote was to make sure that  
9 voters were not totally dependent on the last three days, that  
10 they may not be there. So it was incumbent upon them to get  
11 out to vote.

12 Q. And this is part of your voter education effort,  
13 correct?

14 A. As a member of the General Assembly and somebody that  
15 cares about voting, absolutely it was.

16 Q. And one of your objections, regardless as to what the  
17 law is, is always teaching voters about Ohio's voting laws,  
18 correct?

19 A. Correct.

20 Q. And I believe you testified that you have reviewed some  
21 videos on OGTV; is that correct?

22 A. Yes.

23 Q. Have you reviewed every single video on Ohio's  
24 government channel?

25 A. No.



1 Q. Have you reviewed any of the videos that the plaintiffs  
2 seek to admit in this case?

3 A. I have seen some of that video footage, particularly  
4 when I was on the floor of the senate at the time arguing  
5 against the bills that are in this case.

6 Q. And have you reviewed those with the transcripts that  
7 Plaintiffs are admitting in this case?

8 A. No.

9 MS. COONTZ: If I may have one minute, Your Honor.

10 BY MS. COONTZ:

11 Q. Senator, you indicated that resources were diverted as a  
12 result of voting law changes. What resources?

13 A. You mean resources from the Ohio Democratic Party?

14 Q. Yes.

15 A. Meaning that we have to focus so much on educating  
16 voters about the moving target that is voting in Ohio when we  
17 could be using those resources to register and rally people to  
18 vote.

19 Q. But the laws that we're here about today were in effect  
20 in 2014, correct?

21 A. You said they -- I'm sorry?

22 Q. But Senate Bill 238, golden week, that law was in effect  
23 in 2014, correct?

24 A. Correct.

25 Q. So your education efforts with respect to golden week

1 won't change from 2014 to 2016, correct?

2 A. Correct.

3 MS. COONTZ: I have nothing further, Your Honor.

4 THE COURT: Redirect?

5 MR. KAUL: Briefly, Your Honor.

6 - - -

7 REDIRECT EXAMINATION

8 BY MR. KAUL:

9 Q. Senator, you mention that you had seen some of the  
10 videos involving the debates regarding this case?

11 A. Yes.

12 Q. Were they fair and accurate representations of what took  
13 place on the floor?

14 A. Absolutely they were.

15 Q. Do you recall which legislative debates you saw?

16 A. Senate Bill 238 in particular, which for me serving in  
17 the General Assembly at the time, I got on the floor and talked  
18 about how Senate Bill 238 would cause a disproportionately  
19 negative impact to the African-American community because the  
20 African-American community, not just through anecdotal but also  
21 through empirical data has been shown to utilize early  
22 in-person voting disproportionate to their numbers in the  
23 population. And so for me on the floor trying to convince my  
24 republican colleagues that this was the wrong tact to take, it  
25 was very important for me to make sure that I was on the record

1 with that and also watching -- rewatching what had happened on  
2 the senate floor.

3 Q. And just briefly, you mentioned voter education efforts  
4 with respect to golden week before 2014 and after. Why are you  
5 continuing those or why, in your understanding, is ODP  
6 continuing those efforts even though 2014 election has passed?

7 A. In my understanding, and also my experience as someone  
8 who's been on the ground educating voters, even when I was not  
9 on the -- necessarily on the ballot, voters sometimes become  
10 confused and because the voting rules have changed constantly  
11 over the course of time from the time that the General Assembly  
12 expanded them, a lot of voters still do not know what the rules  
13 are. So it is important to make sure that we educate them so  
14 that they will have access to the democracy through the power  
15 of the ballot box.

16 Q. And what, if any, differences are you aware of between  
17 midterm elections and presidential elections?

18 MS. COONTZ: Objection.

19 THE COURT: What are you getting at, turnout or what?

20 MR. KAUL: I was getting to the point that these  
21 educational efforts need to continue.

22 THE COURT: Why don't you ask that question.

23 BY MR. KAUL:

24 Q. Why, despite the fact that 2014 election has passed, do  
25 the educational efforts need to continue?

1       A.     Because the educational efforts need to continue because  
2     there's falloff from election to election, especially in  
3     nonpresidential election years. And as someone who cares about  
4     people voting every single election year because there's an  
5     issue or person on the ballot that will have an impact on all  
6     of our lives, we get out there to make sure that people know  
7     that.

8             Last year, Your Honor, the voter turnout in this country  
9     and also in our state was the lowest it has ever been in 70  
10    years since World War II and so we have to, in my opinion, we  
11    have to constantly -- those of us who care about people having  
12    access to the ballot box, regardless of their political  
13    affiliation, we have to constantly be out there talking to  
14    people about why it's important to vote, why it is just as  
15    important to vote for a mayor or a judge or a township trustee  
16    person as it is to vote for the President of the United States  
17    of America. And that is why we continue our efforts.

18            That is why I personally continue my efforts even though  
19    I'm not officially in the General Assembly right now. And if I  
20    were not affiliated with the Ohio Democratic Party right now, I  
21    would still be engaged in those types of activities because I  
22    believe it is important to create a good democracy. We need  
23    more people to participate. And the way that most people  
24    participate is through the power of the ballot box.

25            MR. KAUL: Thank you, Senator.

1 THE WITNESS: Thank you.

2 MS. COONTZ: Nothing further, Your Honor.

3 THE COURT: Thank you, Senator, you may step down.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: Let's break until one o'clock for lunch.

6 We'll begin with your second witness.

7 MR. KAUL: Thank you, Your Honor.

8 (A recess was taken at 11:53 a.m.)

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1 Monday Afternoon Session,  
2 November 16, 2015.  
3 1:00 p.m.

4 - - -

5 THE COURT: You may call your next witness.

6 MR. SPIVA: Plaintiffs call Reverend Bruce Butcher,  
7 Your Honor.

8 - - -

9 BRUCE BUTCHER

10 Called as a witness on behalf of the Plaintiffs, being first  
11 duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. SPIVA:

14 Q. Good afternoon, Reverend Butcher. Can you please state  
15 your full name for the record?

16 A. Bruce Lambert Butcher.

17 Q. And where do you live, Reverend Butcher?

18 A. I live in Akron, Ohio.

19 Q. What county is that in?

20 A. That's Summit County.

21 Q. And what is your profession, Reverend Butcher?

22 A. I'm a minister, pastor.

23 Q. Where do you minister?

24 A. I pastor the St. Paul African Methodist Episcopal  
25 Church.

1 Q. How long have you been the pastor at St. Paul?

2 A. It's been ten years.

3 Q. Where is the church located?

4 A. The church is located in west Akron in a predominantly  
5 black community neighborhood.

6 Q. Can you describe your congregation?

7 A. My congregation looks a whole lot like the neighborhood  
8 in which the church sets in. Mostly black people, mostly poor  
9 people. You might describe it as a blue collar congregation  
10 with a sprinkling of some professionals. A lot of young  
11 people, some aged folks.

12 Q. What are your responsibilities as pastor entail?

13 A. Well, I'm responsible for the spiritual, physical and  
14 mental and emotional wellbeing of my people. I know that's  
15 rather broad but I deal with constantly working to keep my  
16 people in touch with resources in the community. I work an  
17 education theme by bringing in experts and other persons with  
18 services I think would be good for them. I'm always a  
19 matchmaker in that I work to see what services are provided at  
20 a state, county and federal level and I assess whether that  
21 would be good for my people and I match my people with those  
22 services.

23 Q. Have you been involved, Reverend Butcher, in any  
24 voter-registration activities or get-out-the-vote efforts?

25 A. Yes. Yes, I have been.

1 Q. Can you describe some of those efforts?

2 A. I work with several indigenous groups in the community.  
3 Some that were created expressly for that purpose. Some deal  
4 with more political purposes. But I work for it to educate  
5 persons about the voting process, registering persons to vote  
6 and getting persons to the polls to vote, either on the day of  
7 the election or whatever, if it's before the election for that  
8 purpose.

9 Q. You mentioned community organizations. Can you tell us  
10 about what community organizations you're referring to?

11 A. Yes, sir. One is the Concerned Clergy and Community  
12 Leaders of Akron and Summit County and vicinity. Another would  
13 be the Coalition for a Safe Community that deals, as the name  
14 suggests, it deals primarily with safety issues, and the last  
15 few years those issues have been community/police relations.  
16 Also work with the Interdenominational Ministerial Alliance  
17 which is one of the organizations for clergy persons. In  
18 addition to the Concerned Clergy group, it is another group of  
19 concerned -- another group of clergy persons who work together  
20 for common cause dealing with the interests of people we serve.

21 Q. And have you been involved in voter registration and  
22 get-out-the-vote efforts in connection with those groups that  
23 you just described?

24 A. Yes. Yes. Particularly with the Concerned Clergy  
25 group, we work with anything from having forms to bring in



1 speakers to if they're running for particular offices on a  
2 county or a city-wide race for what their positions are. We  
3 also have worked with -- through this particular group in terms  
4 of registering -- partnering with other groups to register  
5 persons to vote and to educate people on the voting process and  
6 then to get them out to the polls.

7 Q. Have you held any leadership positions within the AME  
8 church that is pertinent to voter registration and  
9 get-out-the-vote efforts?

10 A. Yes, sir. In 2011, I was appointed by my Bishop, I'm a  
11 Methodist, to be the Director of Social Action for my  
12 conference which is the North Ohio Conference. And that  
13 conference geographic region is Youngstown to the east, Toledo  
14 to the west, Mansfield to the southwest and Canton, Ohio as the  
15 southern area. So it includes Cleveland and Akron, Canton, as  
16 far east as Wellsville, Ohio which is very near Steubenville.  
17 And part of what I do in that as the social action director is  
18 to help educate and coordinate its 70 some odd congregations in  
19 regard to the political -- the voting process and the issues in  
20 the geographic region.

21 Q. Let me ask you, let me focus in on 2008 for the moment.  
22 Were you involved in get out the vote and voter-registration  
23 efforts in 2008?

24 A. Yes, sir, I was involved.

25 Q. Can you describe those efforts?

1       A.     Those efforts in 2008 centered around voter  
2 registration, firstly. In terms of just the process before  
3 you -- before we would educate you to vote, we want to make  
4 sure you were registered to vote. So we registered. When I  
5 say we, my local church and groups I work with, primarily the  
6 Concerned Clergy and community leaders, and we partnered with  
7 other groups in the community to register perhaps upward of  
8 5,000 people. And then out of that, we shared the voting  
9 process means where you go vote, how do you vote, what does a  
10 ballot look like. Just the very, very basics of what's  
11 involved in voting. And then we began to even share with  
12 people where their local precincts were or the availability of  
13 any early-voting opportunities as well as the day of the  
14 election taking people to the polls.

15       Q.     Did you experience any challenges registering and  
16 getting people out to vote in the communities that you serve?

17       A.     Yes. There was several challenges dealing with  
18 primarily with black voters. You had to overcome the notion  
19 that the vote did not matter or that it was already rigged and  
20 their vote didn't count. You had to overcome a historical  
21 suspicion of the voting process. So that was ongoing.  
22 Actually a lot of the people voted because they trusted the  
23 person who was presenting that to them. So in other words,  
24 they voted because they believed in me.

25       Q.     Reverend Butcher, you're familiar with something called

1 Souls to the Polls?

2 A. Yes, sir, I am.

3 Q. Can you tell the Court what Souls to the Polls is and  
4 what your involvement with it has been?

5 A. The Souls to the Polls was part of the clergy's effort  
6 to get people to come from the churches to go vote and it took  
7 place particularly on a Sunday, especially on a Sunday. And we  
8 would lead our congregations from the church to the voting  
9 place to vote. And we would stress in many cases in our  
10 sermonizing and our exhortation the need to vote and  
11 particularly for African-American people. And then we would go  
12 together as a congregation in our Sunday best to the polls.

13 Q. You didn't tell people -- did you tell people how to  
14 vote in terms of who to vote for?

15 A. No. No. We didn't -- no. We told -- one of the things  
16 that you find, particularly among black preachers, I don't know  
17 if you know but we do a particularly good job policing what the  
18 IRS expects. One of the first things you learn is you can't  
19 push for a particular person. That you can just push the  
20 process and you tell people to go vote. They might try to quiz  
21 you privately who you voted for and that's on you whether you  
22 want to tell them or not but from the pulpit or from your  
23 church you don't do that. You just say, go vote. And I think  
24 that's a major step just to vote.

25 Q. You had mentioned earlier that your congregation was

1 predominantly African-American and that you've worked with  
2 these other groups. Was there a predominant race of the people  
3 that you were registering and getting out to vote through these  
4 other community groups that you worked with?

5 A. Yes. We worked -- besides black people, many people  
6 were poor. We also had first-time young voters who had just  
7 reached the age of being able to vote and they were registered  
8 for the first time. They were participating in the voting  
9 process for the first time. So we had a significant number of  
10 persons along those lines.

11 We also had people who had been formerly incarcerated  
12 who were re-entering society who we had to work with as well.  
13 Primarily what we found in the community, whatever we felt in  
14 the community, my church is a microcosm of the community. So  
15 outside of the church, whatever, if there was a group that  
16 specialized in returning citizens, we worked with that group.  
17 There was one group I remember that focused on first-time young  
18 voters and we worked with that group. The strategy might  
19 change. With the first-time young voter you would go to a  
20 concert or skating rink or wherever younger people congregated  
21 and you tried to go that route.

22 Q. What relevance, if any, in 2008 did early voting have to  
23 the types of organizing and registration efforts that you were  
24 engaged in?

25 A. It made a difference because it gave us more time to do

1 the things we wanted to do in terms of registration and  
2 education and mobilization. So in 2008, for example, we talked  
3 about the golden week earlier this morning. The golden week  
4 presented a valuable opportunity for poor people because you  
5 could register to vote voters and have them actually vote at  
6 the same time and they would not have to get an additional  
7 baby-sitter or take off more time from their jobs that they  
8 barely held onto anyway or otherwise disrupt their household or  
9 make burdens on their mate or their families or whatever system  
10 that they had that was supporting them. They didn't have to do  
11 anything additional with that support system. They could go  
12 register to vote and get an absentee ballot and then they could  
13 take care of all of that at the same time.

14 Q. Let me ask you, if we can turn to the 2010 election.  
15 Did you engage in get out the vote and voter-registration  
16 efforts in 2010?

17 A. Yes, sir, I did.

18 Q. And what was the outcome of those efforts?

19 A. Well, in comparison to the 2008 election, it was dismal.  
20 There was a dramatic drop-off of voter participation or even  
21 the desire to vote. I felt voter apathy in 2010. People felt  
22 like the only election that counted was the vote for  
23 presidential -- for president and not other officials or other  
24 issues.

25 Q. Let me ask you to turn to 2012. Were you also involved

1 in get out the vote and voter-registration efforts in 2012?

2 A. Yes. Yes, I was involved.

3 Q. Was your church also involved in the Souls-to-the-Polls  
4 program in 2012?

5 A. My church was the headquarters for the  
6 Souls-to-the-Polls effort for Akron and Summit County. And we  
7 coordinated the efforts for the rest of the county. It was  
8 just Souls-to-the-Polls central if you wanted to describe it  
9 that way.

10 Q. Do you have a sense of the magnitude of the number of  
11 people you were able to register or get to vote through the  
12 souls to the -- not register, but to get to vote through the  
13 Souls-to-the-Polls program?

14 A. Because of -- coming through my church there was  
15 thousands of people who went to the polls as a result of the  
16 Souls-to-the-Polls effort. In that weekend we had devised our  
17 own transportation program with locations around the city and  
18 that the people made use of. We had numbers, in my estimation,  
19 over 1,000 people easily that took advantage of that. At least  
20 50 congregations that -- I would think primarily  
21 African-American congregations that we coordinated.

22 Q. Why was it important to devise your own transportation  
23 system?

24 A. Well, poor people count on the bus system in general and  
25 the bus system didn't run on the schedule that we had and so we

1 made it more accessible by customizing locations that the  
2 buses -- bus routes did not cover and times that the buses did  
3 not run. And specifically to go to the polls, which buses may  
4 or may not have done.

5 Q. What significance did golden week or early voting have  
6 to your efforts in 2012?

7 A. It made a tremendous difference.

8 Q. Why was that?

9 A. Again, because of the convenience for poor people. For  
10 people who were -- the working poor who maybe was holding down  
11 a couple of jobs and they could not leave any job for the sake  
12 of voting, that they didn't have the luxury. In order to do  
13 either one, to register or to vote, you had to get a  
14 baby-sitter, you had to get off from work, you had to get  
15 yourself together, car fare, bus fare, you had to work it out  
16 with your support group where you were going, how long you were  
17 going to be gone. At the same time, if you were a first-time  
18 voter, you had to overcome those anxieties of being a  
19 first-time voter. You had to know something about the issues.

20 So by having like the golden week, golden week was very  
21 helpful because you could kill two birds with one stone. You  
22 could register people and you could help them cast their vote.  
23 They voted for who they wanted but even something as simple as  
24 showing them how to walk into the little booth, to put the  
25 cover behind them. A lot of people that we dealt with had

1 never done that before. So that was very helpful. The  
2 additional hours that we had, weekends, through the week that  
3 we had, we took advantage of those things because it just gave  
4 us more time to work with people.

5 Q. Can you tell me about the early-voting location in  
6 Summit County in 2012?

7 A. The early-voting location was originally the board of  
8 elections headquarters and it posed its own set of challenges.  
9 First, parking is very limited parking at this location. If  
10 you're familiar with it, if you know where it is, it's got a  
11 few places. Also, there was some handicapped challenges  
12 because you had some stairs in several places.

13 So we, the Concerned Clergy, raised our voices in  
14 protest and ultimately the early-voting location was moved to a  
15 larger area that was more conducive to parking and more  
16 conducive to having numbers of people to moving people. But  
17 the initial place, the board of elections, it was confining and  
18 it did not serve very well when you were dealing with numbers.

19 Q. Do you have a sense of the magnitude of numbers of  
20 people that you and the groups you were working with were able  
21 to register and get out to vote in 2012?

22 A. Yes. We were able to register in excess of 5,000  
23 persons and we probably worked to educate the equal amount  
24 through forms, through just -- I think even on one occasion we  
25 had -- at least one occasion we had the Summit County Board of



1 Elections to bring us a mock voting area where people could  
2 manipulate or play with it or familiarize themselves with what  
3 it's like to go into a voting booth. So these are the type of  
4 efforts that we were engaged in. And, again, I felt like we  
5 were successful in the number of people that we registered to  
6 vote or updated their registration. First-time voters and  
7 updating persons who had prior -- had registered prior but had  
8 moved around or something else had happened to change their  
9 status.

10 Q. What was the predominant race of the individuals that  
11 you and the groups you worked with were able to register and  
12 get out to vote in 2012?

13 A. They were African-American.

14 Q. Would additional early-voting locations be helpful to  
15 your get out the vote and voter-registration efforts in Summit  
16 County?

17 MS. COONTZ: Objection.

18 THE COURT: Basis.

19 MS. COONTZ: Speculation. And it's vague.

20 MR. SPIVA: As a community organizer who's engaged in  
21 these activities, I just want to see if he believes it would be  
22 useful to his efforts.

23 MS. COONTZ: Relevance, in addition.

24 THE COURT: I'm sorry?

25 MS. COONTZ: Relevance, in addition.

1 MR. SPIVA: We have a claim that one early-voting  
2 center per county is not sufficient.

3 THE COURT: I'm going to overrule the objection.

4 BY MR. SPIVA:

5 Q. Would additional early-voting centers in Summit County  
6 be beneficial to your efforts to get out the vote and register  
7 the voters?

8 A. Yes. It would have made it more convenient for the  
9 persons that we engaged black people and poor people because  
10 some could walk instead of having to travel by bus to the one  
11 location that was open.

12 THE COURT: Have we established where the newly  
13 constituted early-voting location is in Summit County?

14 MR. SPIVA: I think so, Your Honor. Why don't we,  
15 just to make sure the record is clear.

16 BY MR. SPIVA:

17 Q. Can you tell the Court where the location moved -- when  
18 it moved from the board of elections what the new location was?

19 A. It moved to Tallmadge Avenue to a place that was the  
20 Department of Motor Vehicles and the job center.

21 Q. Let me ask you. In 2012 --

22 THE COURT: So Job and Family Services is there, too?

23 THE WITNESS: No, sir. I don't think so. I don't  
24 believe so, to my knowledge. I do remember distinctly the DMV  
25 and also a job program but I can't say for certain that it was

1 the Job and Family Services. I cannot say that.

2 THE COURT: Thank you.

3 THE WITNESS: Yes, sir.

4 BY MR. SPIVA:

5 Q. In 2012, did you observe -- did you go to the  
6 early-voting site personally at any point?

7 A. Yes, I did.

8 Q. And what did you observe?

9 A. I observed it being in constant use. Prior, as the days  
10 led up to the actual election day and as we got closer to the  
11 election day, the numbers of people swelled to the point of the  
12 weekend before the election and election day itself you had  
13 lines of people that were standing, waiting to vote.

14 Q. When you say lines, can you describe how long the lines  
15 were?

16 A. Blocks.

17 Q. You said blocks?

18 A. Blocks, yes. Long lines of people. Hundreds of people  
19 standing in line. Numbers of people.

20 Q. Did you observe what race most of the --

21 A. Most of the people that were standing in line were  
22 African-American people.

23 Q. Did you go to any polling places on election day in  
24 2012?

25 A. Yes, I did.

1 Q. What did you observe?

2 A. In fact, there is on election day I started -- went to  
3 my church first and there's an election polling place right  
4 across the street and I believe the polls opened at seven  
5 o'clock and I got to my church at about 6:30 and there were  
6 already people standing in line waiting to vote. And  
7 throughout the day as I returned to my church, the lines never  
8 abated. They stayed lengthy throughout the day until the polls  
9 closed.

10 Q. Can you describe what you mean when you say lengthy?

11 A. That particular morning, it's 6:30 in the morning and  
12 there's 50 people already in line. And the lines would get  
13 lengthier as opposed to doing the opposite. Maybe they would  
14 get larger at lunchtime or when people got off from work but  
15 throughout the day there were numbers of people, 50 people or  
16 more in line. In some of the other areas like, for example, at  
17 the early-voting place and at the board of elections, the lines  
18 stretched for blocks.

19 Q. This is before election day?

20 A. This is.

21 Q. Reverend Butcher, do you plan to -- actually, first, let  
22 me ask you, were you involved in voter registration and  
23 get-out-the-vote efforts in the 2014 elections?

24 A. Yes. Yes, I was involved.

25 Q. And can you just tell me briefly what the outcome of

1 those efforts were?

2 A. It was similar to the 2010 election that there was a  
3 sharp drop-off of voter participation. People just didn't vote  
4 on other than a presidential election, which is disappointing.

5 Q. And do you plan to be involved in voter registration and  
6 get-out-the-vote efforts in 2016?

7 A. Yes, I do plan on being involved. Hopefully at the same  
8 level of involvement and expending the same energies and time  
9 in that.

10 Q. And having had the experience of organizing when golden  
11 week existed, do you think that the elimination of golden week  
12 will have any effect on your organizing efforts in 2016?

13 MS. COONTZ: Objection. For one, it calls for  
14 speculation. Second, golden week wasn't eliminated in 2016.  
15 It was eliminated in 2014. Mischaracterizes the law.

16 MR. SPIVA: I didn't say it was eliminated in 2016. I  
17 said do you think the elimination will have any effect on your  
18 efforts in 2016.

19 THE COURT: Yes. That's right.

20 I'm going to overrule the objection but I have a  
21 question of my own.

22 You said you had the opportunity in 2012 to observe  
23 throughout the period of early voting what the lines were like  
24 in Summit County in Akron, correct?

25 THE WITNESS: Yes, sir.

1 THE COURT: You noticed towards the last weekend and  
2 on election day the lines were very long?

3 THE WITNESS: Yes, sir.

4 THE COURT: What were they like before that when there  
5 were a couple of weeks before that when people could early  
6 vote?

7 THE WITNESS: They were not -- they were not as long  
8 but what you had at the early-voting center was a steady  
9 traffic of persons going to vote.

10 THE COURT: And you described -- I don't want to cut  
11 you off. You described, on election day, long lines at both  
12 the board of elections and the early voting?

13 THE WITNESS: Yes, sir. And also in the precinct  
14 like, again, where my church is, there's a church right across  
15 the street and the people were out early before the doors  
16 opened.

17 THE COURT: And do they vote in your church?

18 THE WITNESS: No. They were across the street. They  
19 used to vote when I first arrived there but they changed over  
20 to the church across the street from us.

21 THE COURT: And this dropped off in 2014 because it  
22 was a midterm, correct?

23 THE WITNESS: Yes, sir.

24 THE COURT: All right. Thank you.

25 THE WITNESS: Yes, sir.

1 MR. SPIVA: I just had that one last question, Your  
2 Honor, if I may.

3 BY MR. SPIVA:

4 Q. How do you think the elimination of golden week will  
5 affect your organizing efforts in 2016?

6 A. I think it will make it more tougher because I'm dealing  
7 with a population that's already suspicious of the political  
8 process. Some are first-time voters and they are the working  
9 poor. Just to get off from work to do one is enough but then  
10 you have to get off from work twice and get your support system  
11 involved twice to do the baby-sitters, whatever else it is.  
12 It's going to make it that much more difficult.

13 MR. SPIVA: Thank you, Reverend Butcher. I have no  
14 further questions.

15 THE COURT: Ms. Coontz, you may cross.

16 MS. COONTZ: Thank you, Your Honor.

17 - - -

18 CROSS-EXAMINATION

19 BY MS. COONTZ:

20 Q. Good afternoon, Reverend Butcher.

21 A. Good afternoon.

22 Q. My name is Bridget Coontz and I represent Secretary of  
23 State Jon Husted and Attorney General DeWine.

24 A. Yes, ma'am.

25 Q. I just have a couple questions for you.

1           You indicated that you educate the public about the  
2 voting process and the voter-registration process, correct?

3           A.    Yes, ma'am.

4           Q.    And when you do that, do you educate the members of your  
5 congregation and members of the community on the current state  
6 of the law?

7           A.    As much as I'm able to.  But may I say that it changes.  
8 It shifts so it's difficult to keep up to stay current.  But  
9 what is best, as we know, we share with the people of my  
10 congregation and others in the community.

11          Q.    So did the changes in the law make it difficult to  
12 educate the individuals to whom you're trying to -- that you're  
13 trying to reach?

14          A.    Yes, ma'am.

15          Q.    So if the law were to change because of this case or  
16 because of any other action, be it by the Secretary of State or  
17 the General Assembly, would you have to change your education  
18 efforts to your congregation and to members of the community?

19          A.    I would have to educate the members of the community and  
20 my congregation to whatever changes that were made in the law.  
21 Whether it's this case or any other case.

22          Q.    Okay.  And I believe you said that you engage in  
23 education efforts with roughly 70 congregations?

24          A.    In Souls to the Polls, we worked to get those persons to  
25 the polls, it was 70 plus congregations involved.



1 Q. So if the law were to change, that would be a lot of  
2 educating that you would have to do or re-educating I should  
3 say?

4 A. Yes, ma'am.

5 Q. Now, the Souls-to-the-Polls efforts that you talked  
6 about, you mention that those occur on Sundays?

7 A. Yes, ma'am.

8 Q. Do you know how many early-voting Sundays there will be  
9 for the 2016 presidential election?

10 A. Not right offhand, no.

11 Q. Voter registration drives is also a big part of what you  
12 do within your community?

13 A. Yes, ma'am.

14 Q. And you're not aware of any changes in the  
15 voter-registration process itself, are you?

16 A. No.

17 Q. So your education efforts with respect to voter  
18 registration haven't changed?

19 A. Not as of yet.

20 Q. Okay. And provided the law doesn't change, those  
21 efforts will not change, correct?

22 A. Probably not.

23 Q. Okay. You talked about multiple early-voting locations.  
24 And I believe you said that that would be a positive thing for  
25 you?

1 A. Yes.

2 Q. Would that depend on where those early-voting centers  
3 were?

4 A. To some extent.

5 Q. How so?

6 A. Well, if they were nearby, it would be good on the  
7 persons that we serve because they wouldn't have to rely on  
8 public transportation or any other mode of transportation  
9 except for them to walk. They could walk if it was close  
10 enough. And if there were enough early-voting points, they  
11 could walk or they would not have to rely on the transportation  
12 that they currently have which is predominantly public  
13 transportation. But then if you don't take the bus and if  
14 there's not another system set in place, you have to hire a  
15 vehicle or you would have to take a cab and these are costly  
16 alternatives to the people that I serve.

17 So by having alternatives and if they're close enough,  
18 the people can walk to these places. However, if they're  
19 remote then the problem is compounded. It depends on where  
20 they're located.

21 Q. It's fair to say that if they're not close to your  
22 congregation they would not be helpful?

23 A. Relatively so.

24 Q. And we talked about the lines in 2012 leading up to the  
25 election and I believe you testified that these were the lines

1 at the early-voting center?

2 A. The lines at the early-voting center and the lines at  
3 the board of elections headquarters and the lines across the  
4 street from my church.

5 Q. Do you have any idea how long any of those people were  
6 waiting?

7 A. No. Except that they were waiting. I did not ask  
8 anyone, how long have you been in line?

9 MS. COONTZ: If I can just have one moment, Your  
10 Honor.

11 Thank you for your time.

12 THE WITNESS: Thank you, ma'am.

13 THE COURT: Mr. Spiva?

14 MR. SPIVA: Thank you, Your Honor. No further  
15 questions.

16 THE COURT: Thank you, Reverend Butcher. Thank you  
17 for your time. You may step down.

18 THE WITNESS: Thank you, Your Honor.

19 MR. SPIVA: Your Honor, our next witness will be  
20 Matthew Caffrey.

21 THE COURT: Raise your right hand to be sworn.

22 (Witness sworn.)

23 THE COURT: You may inquire, Mr. Spiva.

24 MR. SPIVA: Thank you, Your Honor.  
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MATTHEW CAFFREY

Called as a witness on behalf of the Plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SPIVA:

Q. Good afternoon, Mr. Caffrey. Can you state your full name for the record, please?

A. Yeah. I'm Matthew Bernard Caffrey, III.

Q. And how old are you, Mr. Caffrey?

A. Twenty-six.

Q. Where do you live?

A. Washington, DC.

Q. How long have you lived in Washington, DC?

A. Just since March. And before that I lived in Columbus for the past eight years.

Q. What do you do for a living?

A. I'm a nonprofit organizer for a group that helps students start careers in clean energy.

Q. You mentioned that you lived in Columbus for eight years. Are you from Ohio?

A. I'm not. I grew up in Montgomery, Alabama and then moved to Ohio when I was 16, graduated high school from Beaver Creek High School and then came to Ohio State for undergraduate. Graduated in 2011.

1 Q. Where is Beavercreek?

2 A. It's a suburb of Dayton, in the Dayton area.

3 Q. And what year did you -- you made have said this. What  
4 year did you graduate from Ohio State?

5 A. In 2011. I graduated high school in 2007.

6 Q. Can you tell me a little bit about what types of  
7 organizations or leadership positions you had when you were in  
8 college?

9 A. Sure. Yes. I was the president of the College  
10 Democrats of Ohio State from 2009 to 2011 and the --

11 Q. Mr. Caffrey, I ask you to slow down a little bit. You  
12 speak very quickly which is fine but just to the court reporter  
13 can get it all down.

14 A. Yeah. Absolutely. I was also the vice-president of the  
15 college or the College Democrats of Ohio which is sort of the  
16 state federation of all the college democrat groups in the  
17 state.

18 Q. And Mr. Caffrey, were you involved in get-out-the-vote  
19 efforts or voter-registration efforts while you were in  
20 college?

21 A. Yeah. My first day as a student at Ohio State I signed  
22 up to join the Buckeyes for Obama. I eventually was a dorm  
23 captain for Morrill Tower which is the largest dorm on campus.  
24 I was also deeply involved with College Democrats and helped  
25 with the Obama campaign over the course of August of 2007

1 through election day 2008.

2 Q. So you started at Ohio State in 2007, I take it?

3 A. That's right. In September.

4 Q. What were your responsibilities as a volunteer for the  
5 Obama campaign in 2008?

6 A. Yeah. They varied quite a bit, but a lot of what I was  
7 doing was talking to the other students that lived in my dorm  
8 about the upcoming election, helping them to register to vote  
9 and become aware of early-vote opportunities or absentee-voting  
10 opportunities, particularly in the primary. By the general  
11 election I was knocking on doors off campus, helping with get  
12 out the vote, helping with voter registration off campus and on  
13 campus.

14 Q. Let me just ask you generally. In your experience, did  
15 you experience challenges, particular challenges associated  
16 with registering and getting students out to vote?

17 A. Yeah. I think that there are challenges not only for  
18 students but also for young people generally. People tend to  
19 be very transient. I move, you know, every 18 months or more  
20 frequently even now and having to re-register between every  
21 election creates a fair amount of confusion. People will say  
22 oh, well I still live in the same county, I don't need to  
23 re-register, do I?

24 MS. PIERCE: Objection, Your Honor. Hearsay.

25 MR. SPIVA: We have to let the Judge rule on the

1 objection.

2 But, Your Honor, it's not being offered for the truth of  
3 the matter. It simply is his experience with the challenges he  
4 faced as an organizer. We're not offering statements for the  
5 truth.

6 MS. PIERCE: And I would also add an objection to  
7 improper lay witness opinion, Your Honor.

8 MR. SPIVA: I'm actually not offering a lay witness  
9 opinion although I think he could qualify under Rule 701. It's  
10 just I'm just asking for his personal experience as an  
11 organizer.

12 THE COURT: I gathered it was personal experience.  
13 I'm going to overrule the objection.

14 MS. PIERCE: Thank you, Your Honor.

15 THE WITNESS: Where were we?

16 BY MR. SPIVA:

17 Q. What types of challenges did you face as an organizer  
18 registering and getting students out to vote?

19 A. Yeah. I mean, again, so I'll speak from my personal  
20 experience.

21 THE COURT: That would be helpful.

22 THE WITNESS: I've registered many, many students who  
23 do not understand that they have to re-register to vote because  
24 they have recently moved. They will say oh, I lived in the  
25 same dorm last year but I changed a room or I lived on campus

1 but I changed dorms and so there's quite a bit of confusion  
2 about the law about re-registering to vote. I personally have  
3 had to re-register to vote, as I said, every year or so. And  
4 then there's also the challenge that students move in, or at  
5 least in 2008 when I was on campus doing that, move into campus  
6 just two and a half weeks before the deadline to register to  
7 vote.

8 BY MR. SPIVA:

9 Q. Let me just interject a question. I don't mean to  
10 interrupt you.

11 A. Sure.

12 Q. So just focusing in on that period in the fall of 2008,  
13 what were the challenges that you faced as an organizer and  
14 someone who was trying to get students registered and out to  
15 vote in the fall of 2008?

16 A. Yeah. So when students move back to campus it's  
17 obviously a very busy time. There's a lot going on. Classes  
18 starting, new jobs, moving into new places. And the window, at  
19 least in 2008 and 2010, was very narrow between when classes  
20 started at Ohio State and the last day to register to vote.  
21 About two and a half weeks between those two dates. So there  
22 was a big effort to try and reach as many students as we could  
23 who, again, because they had moved, would need to re-register  
24 to update their registration and to be able to vote. So we  
25 worked very hard to reach as many students as we could.



1           We registered eight and a half thousand students which  
2 sounds really wonderful but there are 60,000 students in the  
3 university district and many of them would, again, need to  
4 re-register. So there were other registration efforts. I'm  
5 not saying that only eight and a half thousand students  
6 registered to vote but at least what our campaign did there was  
7 about eight and a half thousand.

8           Q. Did you become familiar with what's been called golden  
9 week in this period in 2008?

10          A. Yeah. We were incredibly familiar with golden week. It  
11 was a big priority for the campaign.

12          Q. Why is that?

13          A. Because, again, when students are so busy, stretched so  
14 thin, the opportunity to go and to register and to have clarity  
15 as to whether you were registered and if your registration was  
16 current and to be able to then vote and have that all happen on  
17 the same day is really helpful. And I would point out, again,  
18 in my experience, I was a political science major, I was very  
19 involved in the electoral process.

20                I have never missed, even in an odd year, an election or  
21 a primary even and yet once when I went to vote, luckily during  
22 golden week in 2011, I found that my voter registration had  
23 been either processed incorrectly or perhaps I wrote down a  
24 number incorrectly, something had happened and my registration  
25 was incorrect. It had the wrong address. So I wasn't going to

1 be able to vote. But because I was there during golden week, I  
2 went over, re-registered to vote, walked back over, cast my  
3 vote and it was all done in, you know, 30, 45 minutes. And  
4 that really made the process much easier for me.

5 THE COURT: I'm sorry, was that about the first time  
6 you registered to vote?

7 THE WITNESS: No. That is a time that I updated my  
8 registration in 2011. I had just moved. Again, I mentioned  
9 that young people move all the time. I had just moved.  
10 Re-registered in 2011 for probably the fourth time and then  
11 cast my ballot that day.

12 BY MR. SPIVA:

13 Q. So you personally used golden week?

14 A. I did, yeah. And I didn't use it just because I wasn't  
15 registered already and I wanted to register. It's because I  
16 went to vote early and luckily I did during golden week when I  
17 discovered that there was a problem. Otherwise, I assume I  
18 would have had to vote provisionally.

19 Q. You hadn't realized when you went to the site that  
20 you -- that there was any kind of an issue with your  
21 registration?

22 A. Yeah. I had no idea. I had filled out a registration  
23 form and submitted it. But as so often happens, you submit a  
24 form like that and --

25 THE COURT: Slow down.

1 THE WITNESS: Sure.

2 THE COURT: Take a breath.

3 THE WITNESS: Sure. You don't necessarily know or,  
4 you know, you do get a notification once you've registered to  
5 vote but I get them all the time and it's information I  
6 generally already know and so I just sort of throw it in the  
7 recycling. I think a lot of folks most likely do that. And so  
8 I had no idea that there was an error with my registration when  
9 I went to vote.

10 BY MR. SPIVA:

11 Q. Okay. Let me ask you, you may have answered this, and I  
12 apologize. But going back to 2008, approximately how many OSU  
13 students did the Obama for America campaign register during the  
14 2008 campaign?

15 A. We registered eight and a half thousand voters that  
16 year.

17 Q. Do you know how many of those, approximately, were  
18 registered during golden week?

19 A. Somewhere between 3- and 4,000.

20 THE COURT: Do you think that was because of the  
21 campaign's focus on registering that many people during that  
22 period of time or were these people that came to your attention  
23 that simply wanted to register otherwise?

24 THE WITNESS: That's an interesting question. I would  
25 say in 2008 very many students were excited to participate. It

1 was a very galvanizing election. We did a mixture of sort of  
2 setting up tables and saying, you can come here and register to  
3 vote if you'd like, and stopping people on the street or  
4 knocking on their doors to ask them to register to vote. I  
5 would say it would be hard to judge what percentage of them  
6 sort of sought us out versus the opposite.

7 THE COURT: Okay.

8 BY MR. SPIVA:

9 Q. After the end of golden week in 2008, did you still  
10 encourage students to vote early?

11 A. Absolutely. Voting early is, by far, the most  
12 convenient way to vote, in my experience. Being able to go to  
13 a location, give them your driver's license number, the very  
14 last four of your social and date of birth and cast your ballot  
15 and know that it's been counted, it is, by far, the surest bet  
16 for students and transient people generally and, again, in my  
17 experience. And the campaign prioritized it because of some of  
18 the challenges with students voting on election day.

19 I vividly remember in 2010, students coming to the  
20 polling location or to the field office we had on campus after  
21 trying to go to vote and they came back and said that they'd  
22 been turned away because the driver's license, the Ohio  
23 driver's license that they had had a different address --

24 MS. PIERCE: Objection, Your Honor. Hearsay again.

25 MR. SPIVA: Not being offered for the truth of the

1 matter, Your Honor. Just to, again, speak to challenges that  
2 he faced as an organizer for the campaign.

3 MS. PIERCE: I don't believe the question was about  
4 challenge, it's to the campaign.

5 MR. SPIVA: I can ask another question.

6 THE COURT: Do that.

7 BY MR. SPIVA:

8 Q. Can you tell me about the challenges that you faced as  
9 an organizer in terms of students waiting to vote on election  
10 day?

11 A. Yeah. So --

12 THE COURT: And I think this entire line of  
13 questioning has been about challenges for young people to vote.  
14 So go ahead.

15 MR. SPIVA: Thank you, Your Honor.

16 THE WITNESS: Great. So there are a number of  
17 challenges that either I've experienced or people have told the  
18 campaign about on election day. One of the challenges is  
19 knowing the correct polling location. For students, in  
20 particular, it can be very confusing because students who live  
21 in dorms -- who all live in dorms might vote at different  
22 locations. There are a number of polling locations on election  
23 day on campus. It can be a little bit confusing.

24 Also, ID requirements are different for early vote than  
25 they are for election day. For early vote, you know --

1 BY MR. SPIVA:

2 Q. Let me interject here a question related to that. The  
3 fact that ID requirements are different for early vote than  
4 election day, how did that impact your or the campaign's that  
5 you were participating in organizing efforts in terms of early  
6 voting?

7 A. Yeah. Because students seemed to find, you know, the ID  
8 requirements challenging on election day, we would encourage  
9 students to vote early. Because the requirements are  
10 different, students may not have a utility bill, often their  
11 driver's licenses get turned away, if they're an out-of-state  
12 student they don't have a driver's license at all and so  
13 because of that challenge, we would encourage people to vote  
14 early. I personally went to an early-vote location to ask the  
15 presiding judge to turn to page 65 or whatever it was and read  
16 this paragraph because we were having so many people come back  
17 to the office and tell us that they weren't able to vote  
18 because of the driver's license issue in particular, which is  
19 something that was very concerning.

20 But this is --

21 THE COURT: This is 2010 then?

22 THE WITNESS: Yes, sir. But even if they had a  
23 utility bill, the university e-mailed every dorm student a zero  
24 dollar water bill or something. But students would have to  
25 print it out and, like, identify that the e-mail was important.

1 The students get a lot of e-mail. A lot of students did not  
2 catch that that was something important and print it out and  
3 get it in time for the election.

4 BY MR. SPIVA:

5 Q. Just so the record is clear, why was the university  
6 e-mailing a zero dollar water bill? How did that relate to  
7 voting?

8 A. It was to provide students who lived in a dorm some  
9 documentation of their residency that would fulfill the  
10 requirements of election day voter ID. And again, it was  
11 confusing. For students who lived off campus it's somewhat  
12 more complicated because if there isn't a utility bill in your  
13 name in your apartment, you may not have access to anything  
14 like that to document that you're a resident there. And  
15 certainly that was one of the motivations why students chose to  
16 take advantage of early vote. And many, many, many students  
17 took advantage of that.

18 Q. Tell me about the location of the early-voting center in  
19 2008 in relationship to the campus?

20 A. It was at Vets Memorial which I would estimate is about  
21 three miles from campus. I was --

22 THE COURT: Or it used to be.

23 THE WITNESS: Yeah. Exactly. Where Vets Memorial  
24 used to be. I was among 40 or so students that camped out at  
25 the early-vote location in 2008. We got tents from the

1 university and had a DJ come out and we got some pizza and sort  
2 of had a party there the night before and then voted. I think  
3 I was the 8th person in Franklin County to vote in 2008.

4 But I will say we encouraged students to go down to the  
5 early-vote location and we asked volunteers to drive their  
6 minivans back and forth and we set up stations on campus where  
7 students could come and wait and every 15 minutes we'd have a  
8 car come and pick them up to take them to the early-vote  
9 location.

10 Q. Why did you have to arrange for minivans?

11 A. Unfortunately, public transit to and from even Vets  
12 Memorial was not wonderful. Students could take a bus but that  
13 can be a little intimidating and also it isn't directly off the  
14 number 2 bus. It's a little bit of a walk once you get  
15 downtown to go to Vets Memorial. And so for many students,  
16 being able to have a shuttle van was a lot more convenient --

17 MS. PIERCE: Objection, Your Honor. He's testifying  
18 about matters outside of his personal knowledge. Talking about  
19 how buses are intimidating to students and how students are  
20 motivated to use early voting are not matters within his  
21 personal knowledge.

22 MR. SPIVA: He's the campaign organizer and this goes  
23 to the campaign's motive. I think we're almost done with this  
24 line of questioning, Your Honor.

25 THE COURT: That would be good. I'm going to sustain



1 that objection.

2 BY MR. SPIVA:

3 Q. Let me ask you about the 2010 election. Were you the  
4 College Democrat President at that point?

5 A. Yes, I was.

6 Q. Tell me about your registration and get-out-the-vote  
7 efforts in 2010.

8 A. Registering voters during an off-year election or a  
9 midterm election is substantially more difficult. We  
10 registered about 3,200 students to vote that year. We had a  
11 campus office again, and again it was a very tight time frame  
12 between when students moved in and the voter registration and  
13 golden week deadline of about two and a half weeks.

14 So we recruited student volunteers and went onto campus,  
15 off campus to the off-campus housing, knocked on doors, set up  
16 tables, many of the same things. Because during midterm  
17 elections, our feeling was that fewer students were as informed  
18 or aware of the election, we prioritized voter registration a  
19 little bit more than helping students take advantage of golden  
20 week because our perception was that not as many students were  
21 paying attention to the process at the point of the  
22 voter-registration deadline. But we still ran, again, a number  
23 of shuttle buses that students took advantage of or not shuttle  
24 buses, but vans and did what we could. We had little rallies  
25 that encouraged students to then go down to the early-vote

1 location which in 2010 was the board of elections which is  
2 about the same distance from campus and has -- might present a  
3 similar challenge to a student.

4 Q. So the location had moved from Veterans Memorial to the  
5 board of elections headquarters?

6 A. Yeah. That's correct.

7 Q. Did you mention the number of students you were able to  
8 register during this period in 2010?

9 A. Yeah. 3200 students during that phase.

10 Q. What was the importance of golden week -- what was the  
11 relationship, if any, between the two-and-a-half-week period  
12 you mentioned and golden week?

13 A. The last week of that two-and-a-half-week period was  
14 golden week and so we emphasized voter registration during that  
15 period because it was the deadline but we also encouraged  
16 students to take advantage of the opportunity to both register  
17 and vote on the same day, to have it all done. We know  
18 students tend to be very busy so we want to encourage them to  
19 do whatever would be convenient for them.

20 Q. Let's turn to 2012. Were you involved in election  
21 activities, registration, get-out-the-vote work in 2012?

22 A. Yes, I was. I started with the Obama campaign in March  
23 of 2012.

24 Q. Were you still a student at that point?

25 A. I was not. I graduated in 2011. So I worked for the

1 Obama campaign for six months outside of campus and then in  
2 August, as students were preparing to come back to campus, I  
3 was transferred to work on campus at Ohio State.

4 Q. What was your position with the Obama campaign?

5 A. I was a field organizer with the Obama campaign and  
6 served as the lead organizer for Ohio State.

7 Q. Tell me about what you did in that position.

8 A. Sure. We organized student volunteers, hundreds of  
9 student volunteers to register their peers to vote both on and  
10 off campus. Again, knocking on doors, setting up tables on  
11 campus, having clipboards all the campus community. We  
12 registered 12 and a half thousand voters over a six-week  
13 period.

14 The academic calendar at Ohio State changed starting  
15 school a month earlier versus when I had been a student at Ohio  
16 State and so it provided a little bit more time. And then what  
17 that allowed was we prioritized our voter-registration push  
18 really during the first five weeks of that period so that we  
19 could emphasize even more so the opportunity to go and early  
20 vote during golden week and make sure that all of your  
21 registration was taken care of, everything was clear. And we  
22 actually organized charter buses to and from the early-vote  
23 location.

24 Q. Was it still at the same place in 2012 as it had been in  
25 2010?

1       A.     It was not. The early-vote location in 2012 was a  
2 shutdown Kohl's at the corner of Morse and Kenny in northeast  
3 Columbus which is both further from campus and also takes  
4 substantially longer to do a round trip from campus which  
5 presented challenges.

6             Rather than having volunteers drive students and buses  
7 and stations that pick up students every 15 minutes, we felt  
8 that it was helpful, instead, to turn these buses into sort of  
9 events and take more students at a time because we knew it was  
10 going to take much longer than students might have between  
11 classes, which is sort of the way that our van/shuttle service  
12 worked. So, instead, we set up buses that we marketed across  
13 campus and, you know, had musicians riding the buses and  
14 entertaining students and we did whatever we could to encourage  
15 students to vote. And hundreds and hundreds and hundreds of  
16 students, I would hesitate to put an exact number but many,  
17 many, many students took advantage of that as a good option.

18             At the end of golden week, President Obama came to  
19 campus for a rally on the oval. We had 15,000 attendees at the  
20 rally. I spoke, actually, at that rally which was real neat.  
21 And afterward, we had a number of charter buses that were  
22 scheduled to take students and other attendees directly from  
23 campus to the early-vote location.

24             They got there, there were pretty long lines after the  
25 buses arrived. They had national entertainers come and kind of

1 perform a mini concert there at the early-vote location to keep  
2 people happy and in line. But we did everything we could to  
3 help students take advantage of that period. By that point I  
4 had my personal experience with golden week and how important  
5 it was to be able to go and vote when you knew that you could  
6 correct a problem if there was one right then without having to  
7 go through the provisional headache.

8 Q. And about how many people did you register and get out  
9 to vote during golden week in 2012?

10 A. Voter registration was a smaller priority for us that  
11 week just because we had a longer period. But I think we  
12 registered 1500 or so during golden week in 2012.

13 Q. After the end of golden week in 2012, did you still  
14 encourage students to vote early?

15 A. Yeah. We continued doing the kind of shuttle or  
16 charter-bus event kind of driven approach. Many students  
17 continued to take advantage of early vote. We worked with  
18 other student organizations on campus to co-sponsor buses.  
19 That's something we got a lot of interest from students on. It  
20 is my impression that they saw a lot of value in being able to  
21 vote early and --

22 MS. PIERCE: Objection, Your Honor. Speaking as to  
23 the value of voting early. Outside his personal knowledge.

24 THE COURT: Sustained.

25

1 BY MR. SPIVA:

2 Q. Let me ask you why did you, as an organizer in the  
3 campaign, place such an emphasis on early voting as opposed to  
4 just allowing the students to vote on election day?

5 A. Well, a big part of that is we experienced some of the  
6 challenges students reported with election-day voting. The  
7 reports of being turned away at the polls because of the  
8 identification requirements or confusion over the polling  
9 locations. With early voting they can go, they can get their  
10 vote in, they know it's going to be counted and everything is  
11 in the clear. They have confirmation that everything has gone  
12 well. It also allows if more students are able to vote early  
13 then we can focus attention on the students who haven't voted  
14 yet, helping them learn about where they vote and how and sort  
15 of help them navigate that process.

16 Q. Did you personally visit the early-voting location in  
17 2012?

18 A. Yes, I did. We, again, camped out at the polls,  
19 although we had a thunderstorm and ended up sleeping in a YMCA.  
20 So we took a large group of students to the early-vote  
21 location. There was a pretty long line on the first day of  
22 voting during early vote the first day of golden week and we  
23 experienced sort of the difficulty of getting there, which was  
24 a little bit of a challenge. I voted that morning as well.

25 And then I also was very involved with some hearing

1 about some of what was happening later on with long lines  
2 during the Sunday voting, the one Sunday that we had of early  
3 voting. Very, very long lines. The campaign worked to get  
4 folks to take advantage of that opportunity as well and  
5 publicized that opportunity. And we saw lines wrapping around  
6 the parking lot.

7 Q. At the early-voting location?

8 A. At the early-vote location on the Sunday before election  
9 day.

10 Q. Let me ask you about did you actually witness the people  
11 standing in line at the early-voting location?

12 A. On the first day I did, yes.

13 Q. Let me ask you about election day.

14 THE COURT: The first day of what?

15 THE WITNESS: Of early vote.

16 BY MR. SPIVA:

17 Q. Did you visit any of the polls on election day in 2012?

18 A. I did. I visited two polling locations on election day.  
19 For the first several hours I was stationary at a kind of a  
20 reporting location where people could call in and tell me how  
21 things were going. We had students stationed at different  
22 polling locations and staging locations sending volunteers to  
23 go out and knock on doors. At 4:00 p.m. I left that location  
24 and went to help with different tasks and so around 5:00 p.m. I  
25 arrived at the Ohio Union which is where many students who live

1 in dorms, although not all students who live in dorms, are set  
2 up to vote.

3 Q. What did you observe when you got there?

4 A. There was an incredibly long line at the Ohio Union  
5 location. For anyone who's ever been there, there's sort of a  
6 large ballroom on the ground floor which is where the voting  
7 was taking place and the line wound around the union, down a  
8 long corridor outside and then up the street quite a ways.

9 Q. What was the weather like in the evening time when you  
10 arrived there?

11 A. It was just starting to get cold and actually I was  
12 asked shortly after arriving to go and travel to a number of  
13 the different staging locations the campaign had set up around  
14 the area to get hand warmers that we had purchased for our  
15 volunteers to instead bring them to give to students who were  
16 waiting in line to vote. There were students who -- we were  
17 taking reports over the course of the day from a student that  
18 was stationed there talking to people as they left and asked  
19 about their voting experience and students were reporting two  
20 and three-hour waits over the course of the day.

21 Q. And did the campaign do anything to try to keep people  
22 in line?

23 A. Yeah. We had pizza delivered, we had, again, student  
24 musicians come and bring their guitars and sing, and people  
25 telling jokes. We walked up and down the line asking if we can



1 get folks anything. There was quite a bit to try to make sure  
2 people were happy.

3 Also checking to make sure they had the correct  
4 identification, that they were at the right place. So many  
5 students who were confused about their polling location and  
6 were waiting in line at Ohio Union and were not scheduled to  
7 actually vote at Ohio Union.

8 Q. I think this is implicit in what you said, but were most  
9 of the people that you observed in line at Ohio Union students?

10 MS. PIERCE: Objection, Your Honor. Outside his  
11 personal knowledge.

12 MR. SPIVA: That he observed.

13 MS. PIERCE: How can you tell a student?

14 THE COURT: You can testify what you observed.

15 THE WITNESS: By all appearance, 100 percent of the  
16 people in line appeared to be between 18 and 24.

17 BY MR. SPIVA:

18 Q. You mentioned that you also had visited a second polling  
19 location on election day, 2012?

20 A. Yeah. There's a Methodist church just north of Lane  
21 that I noticed as well. I was there right around seven o'clock  
22 and I had gone out to knock on the doors in the neighborhood  
23 and encourage students to go vote. There was a small line at  
24 that polling location ahead of polls closing. I was sort of  
25 walking back past it again around 7:30, 7:45 and noticed kind

1 of there were only one or two people still outside of the  
2 building waiting in line there.

3 Q. And as an organizer, did you know that to be a location  
4 that served students as well?

5 A. It was one of our targeted campus precincts, absolutely,  
6 yes.

7 Q. And did you observe -- what was the age of the people  
8 that you observed at that location?

9 A. I would guess between 20 and 25.

10 Q. Did you observe anybody leaving a line at either  
11 location?

12 A. Yeah. Unfortunately, there were people who left and who  
13 I saw leave the line at the Ohio Union. Over the course of the  
14 day we heard reports that some people were leaving the lines.  
15 You know, students have classes and work and so I didn't -- I  
16 assumed that they wanted to vote.

17 Q. What time did the polls close in Ohio in 2012?

18 A. 7:30 p.m.

19 Q. Do you know from your position with the campaign the  
20 time that the polling location -- the last person voted at the  
21 polling location at Ohio State?

22 A. Yeah. After I finished door knocking and the polls  
23 closed, I walked back to the Ohio Union and stood right outside  
24 the doors of the polling location. The last student voted  
25 somewhere between 8:45 and nine o'clock, somewhere in that kind

1 of time range.

2 MR. SPIVA: Thank you, Mr. Caffrey. I have no further  
3 questions.

4 THE COURT: Cross.

5 - - -

6 CROSS-EXAMINATION

7 BY MS. PIERCE:

8 Q. Good afternoon, Mr. Caffrey. My name is Sarah Pierce.  
9 I represent the defendants in this case. That's Secretary of  
10 State Husted and Attorney General DeWine. I just have a couple  
11 questions for you about your testimony today.

12 A. Sure.

13 Q. I believe you said you are currently living in D.C. now,  
14 correct?

15 A. Yes.

16 Q. Did you vote in this past election in 2015 in Ohio?

17 A. I did not.

18 Q. Are you registered to vote in D.C. then?

19 A. Yes, I am. And there was no election.

20 Q. I believe you said a lot of your get-out-the-vote effort  
21 surrounded registering students to vote. How can a prospective  
22 voter in Ohio register to vote?

23 A. In 2012, the ways that we were aware of students  
24 registering to vote was filling out a paper form that then is  
25 submitted to the board of election.

1 Q. So a voter doesn't have to go to the board of elections  
2 in person to register to vote, correct?

3 A. No, they don't.

4 Q. I believe you gave us a lot of figures about students  
5 that you registered to vote in several election. I think 1500  
6 during golden week in 2012. Does that sound about right?

7 A. Uh-huh.

8 Q. Were those 1500 people that you took to the board of  
9 elections to register in person and then voted?

10 A. Oh, no. I don't know the total number of students that  
11 went to the early-vote location, registered and voted all at  
12 the same time. I don't have that number.

13 Q. So all the figures you gave us were just people that  
14 your get-out-the-vote efforts registered to vote, right?

15 A. Yeah. That's correct.

16 Q. How did you register people? How did you register  
17 students to vote, what was that process?

18 A. So there were -- basically it's by having -- presenting  
19 them with the form either by knocking on their door, being on  
20 campus, having a table but then having them fill out the form,  
21 sign it, and then it's quickly returned to the board of  
22 elections to be processed.

23 Q. And I think you mention that you had to, I believe your  
24 words were, re-register to vote several times --

25 A. Yeah.

1 Q. -- of the years?

2 A. Sorry, that might be a poor choice of words. Update the  
3 information with a new address.

4 Q. How did you update your registration?

5 A. You fill out exactly the same form except you list an  
6 additional section of the form where you say where you had  
7 previously been registered.

8 Q. And you are aware that you can update your registration  
9 online, correct?

10 A. That was a new option in 2012. It had a slightly  
11 different identification requirement than registering on paper  
12 in that it required, if I'm not mistaken, both your driver's  
13 license number and the last four digits of your social rather  
14 than one or the other. It was brand new when we were doing our  
15 voter-registration drive in 2012 and we were a little  
16 uncomfortable with it as a campaign and chose not to encourage  
17 students to take advantage of it. Instead, we stuck with  
18 paper.

19 Q. As a student at OSU, you had access to the internet,  
20 correct?

21 A. Yeah.

22 Q. And I believe you mentioned that OSU is now on a  
23 semester system, not on a quarter system?

24 A. That's correct.

25 Q. So that allows more time for students moving to the

1 Columbus area, if they choose to, to register in this area  
2 before an election?

3 A. Yeah.

4 Q. But students also have the option to register at their  
5 home addresses, correct?

6 A. It is my understanding that students have both options,  
7 yes.

8 Q. So --

9 A. It depends slightly for out-of-state students. I think  
10 laws are different in different states that some students who  
11 are out-of-state college students are allowed to vote in their  
12 home states and some are not. I think it's a little bit  
13 complicated.

14 Q. You have never worked for a board of elections; is that  
15 right?

16 A. I have not.

17 Q. So you've never actually administered an election in  
18 Ohio?

19 A. I have not.

20 Q. This work you did during the 2012 -- President Obama's  
21 campaign during the 2012 election, was that paid work?

22 A. Yes.

23 Q. I think you mentioned an instance where you were able to  
24 update your registration at the board of elections --

25 A. Uh-huh.

1 Q. -- before the close of registration?

2 A. Uh-huh.

3 Q. If you hadn't done, that would you still have been able  
4 to vote in that election?

5 A. I would have voted provisionally, is my understanding,  
6 which, again, I have always tried to avoid having to vote  
7 provisionally. I believe it would have required coming back to  
8 the board of elections a second time to verify that I was a  
9 legitimate voter.

10 Q. And are you certain that's the case?

11 MR. SPIVA: Objection. Asked and answered. Calls for  
12 a legal conclusion.

13 MS. PIERCE: I'll withdraw the question, Your Honor.

14 BY MS. PIERCE:

15 Q. You're also aware that voters in Ohio, including Ohio  
16 State students, have the option to vote by mail, correct?

17 A. Yes.

18 Q. Did you at any point encourage students to utilize that  
19 option?

20 A. Early on in 2007 and early 2008 we encouraged students  
21 to vote by mail during the primary election. There is --  
22 voting by mail is something that many -- that we have heard  
23 concerns about. There is no receipt. You don't -- no one  
24 informs you that your vote has been received and so students,  
25 because there's no feedback loop, students have questions

1 about. I might have a question if I were to vote that way  
2 about whether my vote has been received and counted. And so  
3 it's -- it has always been, since the spring of 2008, it has  
4 always been, when I've worked for a campaign, the preference  
5 that people can go and vote in person where they have no  
6 question about the reception of their vote.

7 Q. When you say preference, that's the campaign's  
8 preference?

9 A. It's the campaign's preference to encourage their  
10 supporters to vote early.

11 Q. Okay. But vote by mail was an option for voters in the  
12 2012 election, correct?

13 A. Yeah. Uh-huh.

14 Q. And you're aware that there is a process for voters for  
15 verify that their absentee ballot has actually been received?

16 A. I am aware that that process exists.

17 Q. A voter could call the board of elections to verify that  
18 their absentee ballot has been received by mail, correct?

19 A. I don't have specific knowledge of that process but I'm  
20 confident that they could.

21 Q. A voter can also go online and verify that same  
22 information as well, correct?

23 A. I have used the board of election website and can only  
24 speak -- yes. It might be a little bit intimidating for a  
25 first-time voter to navigate that system to determine if their



1 vote had been counted. I certainly, as a millennial that is  
2 very comfortable with the internet and not comfortable with  
3 board of elections websites which would be confusing  
4 personally.

5 Q. Students at OSU are, as am I, in your millennial  
6 demographic, correct?

7 A. Yeah.

8 Q. I believe you said you had observed folks leaving the  
9 voting lines on election day at the Ohio Union polling  
10 location; is that right?

11 A. Uh-huh. Yeah.

12 Q. I think you also mentioned that a number of folks in  
13 that line were in the wrong location to vote on that day?

14 A. Yeah.

15 Q. So those voters could be leaving to go to the correct  
16 location to vote?

17 A. Yes. And in fact, you know, one of the things we were  
18 trying to do was help students discover that so that they could  
19 go to the correct polling location. Whether or not they ended  
20 up going to the correct polling location after learning that  
21 they had been waiting in line at the wrong place, I don't know.

22 Q. Okay. But they certainly could have been doing that,  
23 correct?

24 A. Yeah. Yeah.

25 Q. They also could have been leaving to come back to vote

1 at another time?

2 A. Uh-huh. Yeah. To wait again.

3 Q. I think you mentioned that you believed that the ID  
4 requirements were different if you were voting early versus  
5 voting on election day. Did I hear that correctly?

6 A. Yeah.

7 Q. What makes you believe that to be the case?

8 A. Well, I voted both in person on election day and in  
9 person early. When I voted in person on election day I've been  
10 asked for either a utility bill or, you know, a bank statement  
11 or a driver's license or something to document that my address  
12 matches what my voter registration location is. When I have  
13 voted early, the requirement is the same as if you would vote  
14 by mail. My understanding is that you're effectively voting  
15 absentee in person as opposed to absentee by mail. So you're  
16 asked for either your driver's license number or the last four  
17 digits of your Social Security number and your date of birth  
18 and a signature, your current address. That information. So  
19 it's my experience that the requirement is different.

20 Q. And is there a time frame for those that you just said  
21 one time you voted on election day and one time you voted  
22 early.

23 A. Sure.

24 Q. Which elections were those that you're referring to?

25 A. I voted in person on election day in 2007 and I voted

1 early in person in 2008, in 2010, 2011 and 2012. I don't  
2 recall where I voted in 2009.

3 Q. Did you vote in the 2014 election?

4 A. Yes. And I voted early. I believe it was after golden  
5 week but I voted early and in person in 2014.

6 Q. And when you voted early in person in the 2008 election,  
7 you recall being asked for your date of birth.

8 A. I believe so. It's been a long time.

9 Q. That's fair.

10 Just give me one second, please.

11 A. Sure.

12 MS. PIERCE: Thanks for your time.

13 THE WITNESS: Thank you.

14 THE COURT: Mr. Spiva?

15 MR. SPIVA: Thank you, Your Honor. Thank you,  
16 Mr. Caffrey. I have no further questions.

17 THE COURT: Thank you, sir. You may step down.

18 Who's next?

19 MS. CALLAIS: Good afternoon, Your Honor. Amanda  
20 Callais for the plaintiffs and we'll be calling Andrew Kohn.

21 THE COURT: Sir, if you'd approach the witness stand,  
22 raise your right hand and be sworn, please.

23 (Witness sworn.)

24 THE COURT: Please tell us your name.

25 THE WITNESS: My name is Andrew Kohn.

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- - -

ANDREW KOHN

Called as a witness on behalf of the Plaintiffs, being first  
duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. CALLAIS:

Q. Mr. Khan, where do you currently live?

A. I live in Granville, Ohio.

Q. What county is that it?

A. It's in Licking County.

Q. How long have you lived there?

A. I have lived there for five years.

Q. So you moved there in what year?

A. 2010.

Q. What brought you to Licking County?

A. We just were looking to get away and bought a bed and  
breakfast.

Q. Where were you looking to get away from?

A. We were in Washington, D.C.

Q. Mr. Kohn, I understand that you were recently elected to  
office in Licking County?

A. I am. I'm a member-elect of the Granville Board of  
Education.

Q. So I take it that you're also registered to vote in  
Ohio?

1 A. I am.

2 Q. And when did you register to vote in Ohio?

3 A. In 2010.

4 Q. And what method of registration did you use?

5 A. Being new citizens, we went to the board of elections  
6 and registered in person.

7 Q. When you say new citizens do you mean --

8 A. To the state.

9 Q. To the state. Did you also vote at the same time?

10 A. We did.

11 Q. And why did you choose to register and vote at the same  
12 time?

13 A. It was convenient for us and because we were new to the  
14 state, taking advantage of the process.

15 Q. And in 2010, is that your first time in Ohio.

16 A. It is not.

17 Q. When was the first time that you came to Ohio?

18 A. I lived in Columbus in 2008 from about August until  
19 November.

20 Q. And what brought you to Columbus in 2008?

21 A. I was working on the Obama for America campaign.

22 Q. And what I'd like to do, Mr. Kohn, right now is just  
23 focus a little bit on the work that you did in 2008 on the  
24 Obama for America campaign.

25 When did you first start working with President Obama's

1 campaign?

2 A. I believe it was probably the last week in August. We  
3 were here through election day.

4 Q. And what was your role?

5 A. I was a member of the early vote corps.

6 Q. And what did you do? Can you tell the Court what you  
7 did as a member of the early vote corps?

8 A. Sure. It was a group of 20 of us. We would go knock on  
9 doors in Franklin County, primarily in Columbus areas, hand  
10 people literature about our candidate. We would ask them if  
11 they were registered and register them if they were not, and we  
12 would tell people about their polling locations and where to go  
13 vote.

14 Q. And what area of Franklin County, what area of Columbus  
15 did you primarily work in?

16 A. We worked in sporadic, kind of immigrant Somali  
17 communities throughout and primarily on the east side of  
18 Columbus.

19 Q. Can you just describe generally the demographic of the  
20 east side of Columbus?

21 MS. COONTZ: Objection. What's his basis of knowledge  
22 of the demographics of any area of Columbus?

23 THE COURT: Let's find out where he was, where was he  
24 was working first.

25

1 BY MS. CALLAIS:

2 Q. What area of Columbus did you work in?

3 A. East side of Columbus around Newbury Street.

4 Q. Can you describe generally that area of Columbus, the  
5 people that you worked with?

6 A. Sure. It was low income, predominantly  
7 African-American, and a lot of transient population.

8 Q. When you say transient population, what do you mean by  
9 that?

10 A. People that weren't long-term residents. Elderly people  
11 who had moved in. There were younger people living in houses  
12 together there.

13 Q. About how many people did you canvass each day?

14 A. We knocked on about 100 to 300 doors each day. So about  
15 100 to 200 people a day.

16 Q. And in the course of your canvassing did you encounter  
17 any individuals who had transportation difficulties?

18 A. We did. It's predominantly lower income so a lot of  
19 people use public transportation in the area.

20 Q. Did you also encounter any individuals had difficulty  
21 understanding the electoral process?

22 A. They did. There was a lot of skepticism in the  
23 community we were in about whether their vote would count, how  
24 to vote and just about the process in general.

25 Q. And about how many people did you register each day?

1 A. There were about 20 of us in the group and we averaged  
2 about ten people a day per person.

3 Q. And when you encountered individuals who were  
4 registered, what was your role then?

5 A. We would give them information about our candidate and  
6 then we would also give them information about the polling  
7 location.

8 Q. So, Mr. Kohn, did there come a point in time in the fall  
9 of 2008 when the focus of your registration and  
10 get-out-the-vote activities changed?

11 A. It did change when it shifted focus when you were able  
12 to go register and vote at the same time.

13 Q. And just for clarification, if I use the term golden  
14 week, do you understand that to mean the period of time in Ohio  
15 when you could register and vote at the same time?

16 A. It is.

17 Q. And so do you know why the focus changed at that point  
18 of your activities?

19 A. We shifted away from if people weren't registered,  
20 filling out paper forms and taking them back to headquarters  
21 and going through that whole process when we could have them go  
22 to one single location, register and vote in one fell swoop.

23 Q. Was your work the same, the work that you did each day,  
24 or did it change in any way?

25 A. It shifted a little. We would still go knock on doors



1 for probably about half the day but then the other half we  
2 would be at the voting location handing out literature about  
3 our candidate.

4 Q. When you were at the voting location handing out  
5 literature about your candidate, did you also see individuals  
6 who you had canvassed earlier?

7 A. We did. We probably saw about 20 a day.

8 Q. Was it your understanding that they had also registered  
9 and voted?

10 A. That's my understanding.

11 Q. And so when you were canvassing during golden week, what  
12 did you observe about the reaction of the people who you  
13 interacted with?

14 MS. COONTZ: Objection.

15 THE COURT: Sustained. Rephrase.

16 BY MS. CALLAIS:

17 Q. Mr. Kohn, can you tell me how golden week facilitated  
18 your get out the vote and registration efforts?

19 A. Yeah. It helped us because we could go -- two ways it  
20 helped. We could go to people who were kind of sceptical about  
21 the process because they weren't sure if they filled out a form  
22 and it just went somewhere and they didn't know that that was  
23 going to be verified. It helped people know that they could go  
24 to a location, see someone in the flesh, a government official,  
25 tell them they were registered or get them registered and then

1 having that vote done at the same time. It also helped people  
2 who were maybe unavailable to vote on election day because the  
3 place where we were canvassing, people have two jobs and maybe  
4 can't get off that day. So it also helped them go and get  
5 their vote taken care of.

6 Q. And what was the general reaction of individuals when  
7 you knocked on their door and told them about golden week?

8 MS. COONTZ: Objection.

9 THE COURT: Is there a particular person encountered  
10 that you want to focus on?

11 MS. CALLAIS: I can certainly ask if there's a  
12 particular encounter he'd like to focus on.

13 THE COURT: Why don't you do that.

14 BY MS. CALLAIS:

15 Q. Are there any particular encounters that you remember  
16 from your time canvassing?

17 A. Sure. We met a lot of people, obviously, knocking on  
18 doors. But there were a few that stood out. One in particular  
19 was in canvassing, you knock on the door, you're told to wait  
20 60 seconds and then you move on because you have time  
21 constraints. We had waited. I was just going through papers.  
22 It was two minutes and I turned away and I slowly heard the  
23 door open and in front of me was an African-American or Middle  
24 Eastern woman who was severely disabled. And we went through,  
25 asked if she's registered to vote. She said she didn't know.

1 She had just moved to the area it turns out. And we asked her  
2 if she was going to vote. She said she can't because she has  
3 no way to get to the polls.

4 We were able to tell her about golden week, that she  
5 could register and vote at the same time and we were able to  
6 get her a ride to that location and she burst into tears,  
7 ecstatic, joyful that she was going to be able to be a part of  
8 the process.

9 Q. Mr. Kohn, is it your understanding that the week that  
10 we've just discussed, golden week, is no longer an option for  
11 Ohio voters?

12 A. Yes.

13 Q. And as an Ohio voter, has the loss of golden week made  
14 you more or less confident in Ohio's electoral system?

15 MS. COONTZ: Objection.

16 THE COURT: Sustained.

17 MS. CALLAIS: Your Honor, Defendants have argued in  
18 their opening that golden week was specifically repealed in  
19 part to make people more confident in Ohio's election system.  
20 I think as an Ohio voter, Mr. Kohn's opinion as to the loss of  
21 golden week is directly relevant to this case.

22 THE COURT: He's one man.

23 MS. CALLAIS: Every person is one voter when they're  
24 in the voting booth, Your Honor.

25 MS. COONTZ: Your Honor, what counsel is referring to

1 is expert testimony that the Court is going to hear regarding  
2 issues of voter confidence, voter confusion. Again, one  
3 person's opinion about how much confidence he has regarding the  
4 elimination of golden week is irrelevant.

5 MS. CALLAIS: In one person's opinion in the  
6 confidence of the electoral system is exactly what we're  
7 talking about here. Whether or not an Ohio voter is more  
8 confident because golden week is here or less confident is  
9 absolutely relevant to why Defendants have argued the  
10 legislature enacted this law. It's completely relevant to the  
11 section 2 claims, the tenuousness of the legislature's and the  
12 defendants' justification.

13 He's an Ohio voter. He should be able to speak to how  
14 the loss of something that he actually took advantage of  
15 affects his perception on the voting system.

16 THE COURT: Very well.

17 BY MS. CALLAIS:

18 Q. Mr. Kohn, how has the loss of golden week affected your  
19 own perception of Ohio's election system in government?

20 A. In my perception, it's a partisan attempt to stop a  
21 certain segment of our electorate from voting, and that's  
22 predominantly low-income African-American voters.

23 MS. COONTZ: Your Honor --

24 THE COURT: That's way outside the scope --

25 MS. CALLAIS: Can I re --

1 THE COURT: -- of the question to answer.

2 BY MS. CALLAIS:

3 Q. Has the loss of golden week made you more or less  
4 confident?

5 THE COURT: That was the first question you posed and  
6 that's the one that was objected to. So you may answer that  
7 question.

8 THE WITNESS: Less confident.

9 BY MS. CALLAIS:

10 Q. And why is that?

11 A. Because everyone we're ignoring or trying to get the  
12 vote taken away from is a citizens of our state.

13 MS. COONTZ: Objection.

14 BY MS. CALLAIS:

15 Q. Is that based on the work that you did in 2008?

16 MS. COONTZ: Objection.

17 THE COURT: Sustained.

18 MS. CALLAIS: No further questions, Your Honor.

19 THE COURT: Cross.

20 - - -

21 CROSS-EXAMINATION

22 BY MS. COONTZ:

23 Q. Good afternoon, Mr. Kohn. My name is Bridget Coontz and  
24 I'm with the Ohio Attorney General's Office. I just have a  
25 couple questions to follow up on what you were talking about.

1           The work that you were talking about, you were a paid  
2 campaign staffer at this time for the Obama for America  
3 campaign, correct?

4           A.    Yes.

5           Q.    And that campaign encouraged early in-person voting,  
6 correct?

7           A.    That was our job was to tell people about voting and to  
8 get them to vote when they could.

9           Q.    To secure that early in-person vote for your candidate,  
10 correct?

11          A.    To vote for our candidate, yes.

12          Q.    Which you were paid to do?

13          A.    I was a paid staffer. I also did other -- made calls  
14 and did stuff like that as well.

15          Q.    And you were also paid to help this woman, about whom  
16 you just testified, get to the polls in was it the 2012  
17 election?

18          A.    2008.

19          Q.    2008.

20          A.    I can honestly tell you our protocol was to hand the  
21 name off to someone else. So I can't tell you whether she made  
22 it to the poll or not.

23          Q.    You don't know --

24          A.    I was told to provide that information.

25          Q.    So then how do you know that she cried when she got

1 there?

2 A. She cried when I told her about it at the door.

3 Q. Okay. And then your job, which you were paid to do, was  
4 to arrange for her to get to the polling location, correct?

5 A. To pass her name on, yes.

6 Q. And you're aware that confined voters in Ohio have other  
7 options, correct?

8 A. I know they do have other options. I don't know  
9 specifically how many they are or what they are.

10 Q. Are you familiar with the vote-by-mail procedures?

11 A. Yes.

12 Q. And are you familiar that the Secretary of State will be  
13 mailing unsolicited absentee-ballot applications to voters in  
14 2016?

15 A. I did not know that.

16 Q. So you would agree with me that unsolicited  
17 absentee-ballot applications would help these confined voters  
18 about whom you just testified, correct?

19 A. I think there's contingencies on when they move to the  
20 area. They may only have moved to Ohio a month before an  
21 election and I don't know if they would get those ballots or  
22 not. I think there's certain contingencies. It's not a  
23 blanket that's going to help everybody.

24 Q. It would help certain populations, correct?

25 A. It might perhaps. I don't know.

1 Q. But your job as a campaign staffer was not to encourage  
2 this vote-by-mail process, right?

3 A. To tell you the truth, in 2008 I was not an Ohio  
4 resident so I was not completely familiar with the process for  
5 voting by mail in 2008.

6 Q. You only familiarized yourself with the early in-person  
7 voting procedures?

8 A. Knocking on doors and talking to voters.

9 Q. That's what you were paid to do by a candidate's  
10 campaign, correct?

11 A. Yes.

12 Q. Are you familiar with the process by which boards of  
13 elections will send elections officials to homebound  
14 individuals for purposes of voting?

15 A. I am not familiar with that.

16 MS. COONTZ: I have nothing further, Your Honor.

17 THE COURT: Mr. Callais, anything further?

18

19 MS. CALLAIS: I have no further questions, Your Honor.

20 THE COURT: Thank you. You may step down. Thank you,  
21 sir.

22 Let's take a ten-minute recess.

23 (A recess was taken at 2:35 p.m. until 2:55 p.m.)

24 THE COURT: Good afternoon, ma'am. How are you?

25 THE WITNESS: Fine.



1 (Witness sworn.)

2 THE COURT: Would you please state and spell your name  
3 for the record.

4 THE WITNESS: My name is Carol Eileen Biehle. The  
5 last name is spelled B-I-E-H-L-E.

6 THE COURT: Thank you very much. You may proceed.

7 - - -

8 CAROL BIEHLE

9 Called as a witness on behalf of the Plaintiffs, being first  
10 duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. MARTIN:

13 Q. Hello, Ms. Biehle. Where do you live?

14 A. I live in Goshen Township.

15 Q. Which county is that?

16 A. Clermont County.

17 Q. How long have you lived there?

18 A. In Clermont County since 1969. In Goshen since 1973.

19 Q. What do you do for living?

20 A. I'm an administrative assistant.

21 Q. How long have you done that?

22 A. Well, in various -- I've done office work for over 25  
23 years.

24 Q. What does your husband do for a living?

25 A. My husband was retired and then recently went back, two

1 years ago went back to work for Kroger.

2 Q. What did he do before Kroger?

3 A. He was employed for over 41 years for Sysco Food  
4 Services and initially as a truck driver.

5 Q. And have you been involved in working in politics and  
6 political campaigns?

7 A. Yes. I started in the '80s with some local issues and  
8 then in about 2004, '6, around there, I know 2006 I was  
9 involved in making calls for the Strickland campaign in regards  
10 to the whole ticket, all of the state offices. I worked on the  
11 Kerry campaign and then handed out -- during 2008 I scheduled  
12 time to be at headquarters in Clermont County, democratic party  
13 headquarters to be available to make sure people could get  
14 literature and signs for local candidates. Because the Obama  
15 people were there but we also had local candidates running and  
16 I wanted to make sure that people coming in got literature on  
17 them, too. And I have done, gosh, fundraising for the party,  
18 hosting -- not hosting, setting up events, fundraisers and  
19 stuff like that.

20 Q. Okay. And have you ever worked as a poll worker?

21 A. Yes. Since about, I'm not sure, it's 28 or 29 years.

22 Q. Okay. Do you recall the year in which you began working  
23 as a poll worker?

24 A. I'm not sure if it was '86 or '87. It's been a while.

25 Q. What have your duties been as a poll worker?

1       A.    I started out as a ballot judge and then eventually I  
2       guess I had changed precincts and then in that particular  
3       precinct I became the presiding judge.  And then as the voting  
4       for the governor in that precinct changed, I went back to being  
5       a ballot judge.  So I've been a ballot judge now for a number  
6       of years.  And also in several elections I've been what they  
7       refer to as a director that's out in the hallway, it's a  
8       multiprecinct location, to direct people to their correct  
9       precinct.

10       Q.    What were your duties when you were a ballot judge?

11       A.    The presiding judge would confirm that the voter was to  
12       receive a ballot and then the recording clerk or clerks, there  
13       used to be two at one time, would be writing down the  
14       information, then I would provide the recording clerks with the  
15       number of the ballot that I was giving the voter.  I would  
16       remove the stubs and then hand the voter the ballot and then  
17       they would hand it -- again, the system has changed.  Later,  
18       they put it in the machine themselves but initially it did come  
19       back and it was put in the box.

20       Q.    And what were your duties as a presiding judge?

21       A.    The presiding judge, I think now they're called the  
22       voting location managers, they verify that the voter belongs in  
23       that precinct.  Now they also record the ID that the voter has  
24       used and then they also get the signatures, have the voter sign  
25       their name.

1 Q. You mentioned earlier that you had served as a greeter,  
2 I think?

3 A. Director.

4 Q. A director. And describe a little bit more your duties  
5 as a director.

6 A. The precinct in Goshen, Goshen Township everyone votes  
7 at the high school. And that has had up to 14 precincts in the  
8 high school gym. I think currently it's 12 but it has had as  
9 many as 14. And it was very confusing to the voters when they  
10 entered the room as to -- many only vote every four years and  
11 it's like, where did I go last time?

12 So there were two of us set up in the hallway with  
13 address books and then we would ask voters their current  
14 address and then we would direct them to their correct  
15 precincts. In order to help that, I had drawn, actually, a map  
16 of the room with the tables numbered around the room so they  
17 could tell more easily exactly where they had to be in the  
18 room.

19 Q. And so this location is obviously a multiprecinct --

20 A. Oh, yes.

21 Q. -- voting location. Do you also vote in a multiprecinct  
22 voting location?

23 A. Yes. When I vote, but most of the time lately we do  
24 vote absentee.

25 Q. I see. So are you familiar with a problem so-called

1 right church, wrong pew problem?

2 A. Very. Yes.

3 Q. Could you describe what that is in your opinion?

4 A. Well, it's a situation where the voter is at the correct  
5 precinct, not precinct, the correct voting location, pardon me,  
6 but they're at the wrong table or precinct, and for some reason  
7 they are permitted to vote in the incorrect precinct.

8 MR. VOIGT: Objection, Your Honor, to the extent she's  
9 calling for legal procedures related to this issue.

10 THE WITNESS: Sir, I've had situations where I had  
11 had -- I'm sorry.

12 MR. MARTIN: Ms. Biehle has been working as a poll  
13 worker for almost 30 years in Ohio.

14 THE COURT: The basis of the objection is what?

15 MR. VOIGT: She is providing the legal description of  
16 what happens when you go to a particular polling location.  
17 It's a legal issue.

18 THE COURT: It's a fairly-well understood concept,  
19 isn't it? I rather thought it was.

20 MR. VOIGT: I withdraw the objection.

21 THE COURT: It can be the result of, I suppose, a  
22 number of different reasons but she's describing the one she's  
23 been involved with, I would assume.

24 MR. VOIGT: I withdraw the objection.

25 THE COURT: Thank you.

1 THE WITNESS: Can you restate your question?

2 MR. MARTIN: Yes.

3 BY MR. MARTIN:

4 Q. Could you describe the right church, wrong pew problem  
5 as far as your understanding?

6 A. It's where a voter goes to -- and when I say precinct or  
7 table, it means the same thing. They're at the correct  
8 location but for some reason they end up at the wrong table and  
9 they're permitted, maybe they're given a provisional ballot to  
10 vote, and that ballot, because they voted at the wrong table or  
11 precinct, is not going to be counted. And this is why when  
12 voters have come to us, we are very emphatic with them that  
13 they must go to the correct table to vote in order to have  
14 their ballot count.

15 Q. I see. And in your experience, have you witnessed  
16 voters involved in a so-called right church, wrong pew problem?

17 A. Yes. I had a situation early in provisional voting  
18 where a lady showed up at our precinct to vote and I told her  
19 that -- she had admitted that her new address was no longer in  
20 our precinct and I directed her to the correct precinct which  
21 actually at that point was in a different building but it's  
22 also in the township. They were using two schools at that  
23 time. And I sent her to that precinct. And instead of  
24 allowing her to vote, they told her that she wasn't in their  
25 book and they sent her back to us.

1 MR. VOIGT: Objection. Outside of her personal  
2 knowledge.

3 THE COURT: Is it outside of your personal knowledge?

4 THE WITNESS: No, sir. Because she came back to me as  
5 a voter and said they refused to allow her to vote. And at  
6 that point then our table wasn't busy so I personally escorted  
7 her to the correct precinct and informed the presiding judge  
8 that she had moved into his precinct and she was to be allowed  
9 to vote as a provisional voter in her new precinct.

10 THE COURT: Overruled.

11 BY MR. MARTIN:

12 Q. And do you know if she was indeed allowed to vote?

13 A. Then she was allowed to vote, yes.

14 Q. But if she had not come back to you and she had taken  
15 the other poll worker's who was at the other precinct's word  
16 for it, what would have happened?

17 A. Well, had she come back to us and we had allowed her to  
18 vote, the vote would not have counted.

19 Q. Right. And is it, in your opinion, this might happen  
20 that people are told that they are actually in the wrong  
21 location do not make the return trip that you just described?

22 A. Yes. And I think sometimes they get very frustrated.  
23 Apparently, if I hadn't escorted her back, I don't know if she  
24 would have gone back.

25 Q. And do you know about how long this entire incident

1 took?

2 A. I would say probably 15 or 20 minutes from the time she  
3 went over to the other building and then came back to me.  
4 Because I don't know what their line situation was when she got  
5 to them, if she had to wait before they sent her -- denied her  
6 to vote and then sent her back to me.

7 Q. Okay. Can you recall or have you observed other  
8 incidences where people are trying to vote in the wrong  
9 location or wrong precinct?

10 A. Yes. I had a second situation when I was a director  
11 that a young man came up to me and our question as director  
12 immediately to the voter is, what is your current address? And  
13 he gave me his current address. When I looked it up in the  
14 book it was in a different township than Goshen. And I  
15 explained to him that he needed to go to another precinct and  
16 he said, well, he was registered in Goshen. And I said, yes,  
17 but you've moved but you're still in the county so you just  
18 need to go to this other township.

19 So I gave him the address and he knew where it was, and  
20 I guess within the hour he was back standing in front of me  
21 again and he said that they told him that he wasn't in their  
22 book. And so with that, the board of elections had provided us  
23 notepads. With that, I literally sat there and wrote a note to  
24 him to provide to the presiding judge at the precinct where he  
25 was going to go back to, telling her that he had moved into her



1 precinct and that he was -- should be allowed to vote as a  
2 provisional voter in his new precinct. Then I also provided  
3 him with the phone number to the board of elections and I told  
4 him that if he goes back there a second time and they denied  
5 him the right to vote, he needs to call the board of elections.

6 Q. Thank you.

7 Are you aware about Senate Bill 216 which is recently  
8 passed which is being challenged in this lawsuit and it imposed  
9 a number of changes on the laws governing provisional ballots.  
10 One of those changes was that it gave to the county board of  
11 elections the discretion --

12 THE COURT: Why don't you let her tell you what it's  
13 about. That way we'll know if she knows anything about it.

14 BY MR. MARTIN:

15 Q. Are you familiar with any of the provisions of Senate  
16 Bill 216?

17 A. I'm not sure of the numbers. Is Senate Bill 216 the one  
18 that with the provisional ballots they can have certain errors  
19 in them and then they won't count?

20 Q. That is correct.

21 A. Yes.

22 Q. Are you aware of any of the other provisions in Senate  
23 Bill 216?

24 A. Is that also kind of changing the hours for early voting  
25 or is that a different one?

1 Q. That's a different law. This has to do about poll books  
2 at multiprecinct voting locations.

3 A. About consolidating the poll books.

4 Q. Yes.

5 A. I'm familiar with the consolidating the poll books, yes.

6 Q. So how, in your understanding, would it work if a  
7 multiprecinct location consolidated its poll books?

8 A. All voters would be sent to tables by the letter -- the  
9 first letter of their last name instead of the area where they  
10 live as they do now and that each -- say that there was an A  
11 through C table, that table would have all the ballots for  
12 those people who needed -- all the ballots they needed for  
13 whatever precinct they were in. And that there would be a  
14 table set up for provisional voters only to go to who you  
15 either had moved or for whatever reason needed to vote  
16 provisionally, a special table for them.

17 Q. And how is that system different than the system that  
18 you've experienced in Clermont County with multiprecinct voting  
19 locations?

20 A. Well, it puts everything like, I think, alleviates some  
21 confusion as to what table they're supposed to be at. If they  
22 know, they go to the table with the letter of their first name  
23 whereas now they're not always sure of what table they need to  
24 go to. And it just makes, I think, the system a little easier  
25 that all the ballots they need are right there.

1 THE COURT: You're telling me that Clermont County  
2 doesn't have consolidated poll books.

3 THE WITNESS: No. They do not have consolidated  
4 books, no.

5 BY MR. MARTIN:

6 Q. Why, in your opinion, is it less likely that they would  
7 be confused about the table? Is it correct that unless they've  
8 consolidated the poll books that each table serves its own  
9 precinct?

10 A. Correct.

11 MR. VOIGT: Objection. She's speaking -- she's  
12 speculating.

13 MR. MARTIN: Your Honor, she's describing the polling  
14 location where she's worked for almost 30 years.

15 MR. VOIGT: She's speculating as to what other people  
16 will think.

17 THE COURT: So you could ask -- you've dealt with  
18 people who've been confused about where they should vote,  
19 correct?

20 THE WITNESS: Oh, yes.

21 THE COURT: So how does that relate to your knowledge  
22 of the improvement that consolidated poll books would bring?

23 THE WITNESS: Right now, for instance, as I said,  
24 Goshen, initially the location where I was was originally 14  
25 precincts, now it's 12. So those people whose precincts were

1 consolidated into other precincts were somewhat confused  
2 initially as to where they should go vote. The room originally  
3 had 12 tables, 14 tables around it and then it was down to 12  
4 and I know just even I normally work in precinct E and just  
5 precinct E moved from one side of the door to the other and our  
6 people kept wanting to go to where they'd been going for  
7 several years instead of coming down -- stopping one table  
8 early to come vote.

9 THE COURT: Who sets that up, the presiding judge?

10 THE WITNESS: Well, the room is set up in alphabetical  
11 order. A starts on this -- there are two doors. It's a high  
12 school gymnasium. So let's use this as an example. There's  
13 the two doors to enter the gym. Table A would be over there  
14 and they go around the room until you get to table N. And when  
15 they lessen the room by two tables, it was A, B, C, D and then  
16 there was a set of double doors and E was on the other side of  
17 the double doors. But when one of the precincts A through D  
18 disappeared, E moved down one to where D used to be. So the  
19 people from D were originally coming to us --

20 THE COURT: There were signs above it?

21 THE WITNESS: Well, we have signs on the tables. We  
22 have the walls in the gym but it's a little difficult. People  
23 are coming in. We try to hang it on the end of our table what  
24 precinct we are but if there's a line, sometimes those signs  
25 are hard to see. Because there's all sorts of literature hung

1 up all around the room and then but in front of each wall, for  
2 instance, say where your bench is here, the second bench, are  
3 the voting booths. So they sort of block access. Unless you  
4 have really good vision, some of those signs can be difficult  
5 to see.

6 THE COURT: Okay.

7 BY MR. MARTIN:

8 Q. Were you a poll worker in the 2004 election?

9 A. Yes.

10 Q. Did you observe any problems with administration of that  
11 election?

12 A. I was a director in the hallway that election directing  
13 peopling but I do know, for instance, that the one precinct had  
14 quite a long line and it was difficult for us to keep people  
15 from going into that line who didn't belong there. So we  
16 actually asked those people, instead of lining up in the gym,  
17 to line up in the hallway behind us like they would come out  
18 that other -- instead of lining up from that door across, to go  
19 out that door and line up in the hallway behind us so that  
20 people who were coming into the gym wouldn't automatically get  
21 in their line because, again, then they would be in line for  
22 the wrong precinct and when they waited at that table then they  
23 would find out, no, you shouldn't be at N, you should be at I,  
24 and they'd have to go to another line. So we were doing what  
25 we could to try to make sure people didn't get in the wrong

1 line.

2 Q. Do you recall how long the lines were at your polling  
3 location?

4 A. Being out in the hallway I couldn't tell all of them. I  
5 could only tell N, and N was long for a long time.

6 Q. And does Ohio have no-excuse absentee voting?

7 A. Now, yes.

8 Q. Do you know when Ohio adopted no-excuse absentee voting?

9 A. I think maybe 2005 or '6. I'm not sure.

10 Q. And did the state also expand early voting when it  
11 adopted no-excuse absentee voting?

12 A. Yes.

13 Q. And do you know how many days the state adopted?

14 A. I think initially it was 35 days. I'm not positive on  
15 that, but I think so.

16 Q. Okay. And now in Ohio what are the ways in which a  
17 person can vote absentee?

18 A. Well, they can go down for early voting or they can send  
19 in the requests for an absentee ballot and vote, and I'm  
20 assuming that there are still some days that they can go up to  
21 the board of elections to vote early. But the board of  
22 elections is a little different from -- the board of elections  
23 is in Batavia, and Clermont County doesn't have a very good  
24 public transit system.

25 So it's one of those deals in many cases where you have

1 to call up a couple days ahead of time to reserve  
2 transportation and then your return transportation would have  
3 to be reserved at the same time. So if you're voting and you  
4 don't know what the schedule is or whatever, how much time it's  
5 going to take you, you can either wait around a long time after  
6 you vote or not have a way back home.

7 THE COURT: Could those same people vote by mail?

8 THE WITNESS: Yes. If they have a way to print out  
9 the absentee -- the ballot request.

10 BY MR. MARTIN:

11 Q. And in your 30 years experience as a poll worker, have  
12 you encountered some people who prefer to vote in person?

13 A. Oh, yes. I remember early on we had this elderly  
14 gentleman who used to put on a suit and tie and hat and  
15 everything else to come in and vote. To him, it was a very big  
16 thing. I know other people who simply don't trust the absentee  
17 process.

18 MR. VOIGT: Objection. Speculation.

19 MR. MARTIN: Your Honor, she is describing people in  
20 her community that she's interacted with as a poll worker.  
21 She's acquainted with the ways that they like to vote and this  
22 is within her personal knowledge.

23 MR. VOIGT: She's testifying as to their state of  
24 mind.

25 THE COURT: I'm going to sustain that.

1 BY MR. MARTIN:

2 Q. Did you work as a poll worker in the 2008 presidential  
3 election?

4 A. Yes, I did.

5 Q. And did you notice any improvements in that election  
6 over the 2004 election?

7 A. Again, having worked so many elections, it doesn't  
8 always stand out in the mind. In president elections there are  
9 always long lines, you know. Unfortunately, people sometimes  
10 don't always vote in off-year elections and but they all  
11 seem -- not all, but a good majority seem to turn out for  
12 presidential. But I do recall, you know, lines and waits for  
13 votes.

14 Q. You said that people don't vote as frequently or fewer  
15 people vote in midterm elections. Do you have a sense of how  
16 many fewer in your township?

17 MR. VOIGT: Objection.

18 THE COURT: Sustained. We're going to hear experts  
19 tell us about that, I assume.

20 BY MR. MARTIN:

21 Q. In your experience, do you know personally of people who  
22 have taken advantage of the expanded early-voting opportunities  
23 to vote who would not have been able to vote on election day?

24 MR. VOIGT: Objection. Speculation.

25 MR. MARTIN: Your Honor, if she has -- if she has



1 personal knowledge.

2 THE COURT: She can answer yes or no to that question,  
3 I suppose.

4 THE WITNESS: I'm not sure.

5 THE COURT: Sustained.

6 THE WITNESS: To be quite honest, I'm not sure.

7 THE COURT: Sustained.

8 BY MR. MARTIN:

9 Q. Your husband, you described earlier, used to work as a  
10 truck driver, correct?

11 A. Uh-huh.

12 Q. Were there any election days that he was unable to vote  
13 because of his job?

14 A. Yes. He used to drive a lot of hours and be gone some  
15 time and he missed some elections because of the previous  
16 restrictions on absentee voting because there just wasn't time  
17 in the day for him to get to work, finish his route and get  
18 back and vote. And then when we became aware that he could  
19 vote on the days he was out of the county then I do believe  
20 several times he did take advantage of the absentee voting when  
21 he knew his routes would take him out of the county.

22 Q. So just to clarify, you have personal knowledge of at  
23 least one person --

24 A. Uh-huh.

25 Q. -- who's been able to vote -- use early voting to

1 vote --

2 A. Correct.

3 Q. -- who was not able to before it was expanded, correct?

4 A. Uh-huh.

5 MR. MARTIN: I have no further questions right now,  
6 Your Honor.

7 MR. VOIGT: Your Honor, I object to the  
8 characterization of that, of Mr. Martin's -- Mr. Martin's  
9 characterization of the witness' testimony.

10 THE COURT: Who's been able to vote, use early voting  
11 to vote, correct, was not able to be -- it is characterizing  
12 the testimony, so I'll sustain the objection. We all know  
13 somebody like that, I suppose.

14 - - -

15 CROSS-EXAMINATION

16 BY MR. VOIGT:

17 Q. Good afternoon, Ms. Biehle. My name is Steven Voigt and  
18 I represent the defendants in this case.

19 You are a plaintiff in this case; is that right?

20 A. Yes.

21 Q. I'm going to refer collectively to the laws that the  
22 plaintiffs are challenging as the challenged laws. Is that  
23 understandable to you? In other words, the laws that  
24 Plaintiffs, including yourself, the laws that they're  
25 challenging in this case, I'm just going to call them the

1 challenged laws.

2 A. Okay.

3 Q. Is that understandable?

4 A. I think so.

5 Q. And one of the challenged laws relates to a lack of  
6 consolidation of poll books; is that correct?

7 A. Uh-huh.

8 Q. And that is the law that you personally are challenging;  
9 is that correct?

10 A. Yes.

11 Q. Currently, is the decision whether to consolidate poll  
12 books made at the county level?

13 A. Yes.

14 Q. And I believe you already testified to this but in which  
15 county do you vote?

16 A. Clermont County.

17 Q. And I believe you already testified to this but are the  
18 poll books currently consolidated in the precinct where you  
19 vote in Clermont County?

20 A. No, they're not.

21 Q. Have you ever petitioned Clermont County to consolidate  
22 the poll books --

23 A. No.

24 Q. -- in the precinct?

25 A. No, I have not.

1 Q. Just so we can get a clear record, just allow me to get  
2 the question out.

3 Have you ever petitioned Clermont County to consolidate  
4 the poll books in the precinct where you vote?

5 A. No.

6 Q. If you could please turn, there are some binders in  
7 front of you.

8 A. I didn't bring my glasses up if I have to read  
9 something.

10 Q. I am going to ask you to take a look and read some  
11 things. Do you need to go and get your glasses?

12 A. I would need glasses, yes. Thank you.

13 Q. There are a number of binders there and one -- several  
14 of the binders are listed Defendants exhibit lists.

15 A. Uh-huh.

16 Q. And I'd just like you to turn to the one that has tab 5  
17 in it.

18 A. Is it Exhibit 5?

19 Q. Exhibit 5, that's correct.

20 A. Okay.

21 Q. Are you familiar with exhibit -- Defendants' Exhibit 5?

22 A. Yes.

23 Q. What is it?

24 A. It's my response to Defendants' questions for admission.

25 Q. I'm going to ask you a few questions that are similar to

1 some of the questions in that pleading. And I just wanted you  
2 to have it in front of you because you may want to refer to it  
3 to refresh your recollection, as needed.

4 You are not claiming in this lawsuit that your vote was  
5 not counted in a past election as a result of any of the  
6 challenged laws; is that correct?

7 A. Correct.

8 Q. You are not claiming in this lawsuit that your vote in  
9 2016 will not be counted as a result of consolidation or lack  
10 of consolidation of poll books in the location where you vote;  
11 is that correct?

12 A. Correct.

13 Q. And you do not claim that the challenged laws will make  
14 it impossible for you to vote in the 2016 election; is that  
15 correct?

16 A. Which question is that one?

17 Q. It's a paraphrase of number 5.

18 A. Correct.

19 Q. You are not claiming that the challenged laws will make  
20 it impossible for you to vote in any election; is that correct?

21 A. Correct.

22 Q. And you agree that the state is permitted to have  
23 reasonable rules that govern its elections?

24 A. Correct.

25 MR. MARTIN: Objection, Your Honor. It's opinion

1 testimony.

2 THE COURT: It's something she's admitted previously.

3 Overruled. Go ahead.

4 BY MR. VOIGT:

5 Q. You are not asserting count 1 of this complaint; is that  
6 correct? And you may want to turn to number 9. I'll actually  
7 reask the question when you get there.

8 A. Is that on page 4?

9 Q. It's on page 3. Let me reask the question.

10 You are not asserting count 1 of the complaint; is that  
11 correct?

12 A. My goodness. Maybe I'm not in the right place. I don't  
13 see count 1.

14 THE COURT: It's page 3 and it's number 9.

15 THE WITNESS: I have a number 7.

16 MR. VOIGT: Permission to approach the witness.

17 THE WITNESS: If you could just show me where I'm  
18 supposed to be here.

19 BY MR. VOIGT:

20 Q. Are you still in tab 5?

21 A. I thought you said tab 9.

22 Q. No. Stay in the same tab.

23 A. I'm sorry. I thought you wanted me to go to tab 9.

24 Q. I apologize.

25 A. I see where it is now. Okay. Number 9.

1 Correct.

2 Q. Let me get the question out. You are not asserting  
3 count 1 of the complaint; is that correct?

4 A. Yes.

5 Q. And you are not asserting count 2 of the complaint; is  
6 that correct?

7 A. Yes.

8 Q. You are not asserting count 4 of the complaint; is that  
9 correct?

10 A. Yes.

11 Q. You are not asserting count 5 of the complaint; is that  
12 correct?

13 A. Yes.

14 Q. And you are not asserting count 6 of the complaint; is  
15 that correct?

16 A. Yes.

17 Q. You are active in the Clermont County Democratic Party;  
18 is that correct?

19 A. Yes.

20 Q. And in 2009, did you receive a grass-roots award from  
21 the Clermont County Democratic Party?

22 A. Yes.

23 Q. Earlier you testified about working as a poll worker.  
24 When you worked as a poll worker, was that a paid position?

25 A. Yes. Not much, but yes.

1 Q. Have you ever been employed by any county board of  
2 election?

3 A. No. Other than as a poll worker.

4 Q. You also talked quite a bit about the right church,  
5 wrong pew situation. As the law currently stands in a right  
6 church, wrong pew situation is it correct that the poll workers  
7 are required by law to identify where the voter is supposed to  
8 go to vote?

9 A. Yes. But if they fail to do that, the vote still won't  
10 count.

11 Q. Is the poll worker required to fill out an affirmation  
12 that they have told the poll worker -- strike that.

13 Is the poll worker required to fill out an affirmation  
14 that they have told the voter where the voter is supposed to go  
15 to vote?

16 A. Yes. But if the poll worker has made an error, the vote  
17 still will not count. There are situations that where  
18 currently things are set up as precinct lines where you have  
19 even and odd numbers on streets and sometimes one side of the  
20 street is one precinct and the other side of the street is  
21 another precinct. So if the poll worker did not look at the  
22 book properly and realize that maybe because we had a  
23 street-line divide that the voter really should have voted in  
24 another precinct and allowed them to vote in the incorrect  
25 precinct, the voter's ballot still does not count.



1 MR. VOIGT: Your Honor, I move to strike as voluntary.  
2 That was not the question that I asked.

3 MR. MARTIN: Objection, Your Honor. It was directly  
4 responsive to the question that he asked.

5 THE COURT: You got your answer in yes. I'll allow  
6 it. Go ahead.

7 BY MR. VOIGT:

8 Q. During Mr. Martin's direct, you gave two examples of  
9 voters going to the wrong location; is that right?

10 A. Uh-huh.

11 Q. And in those two cases, the voters were able to vote,  
12 correct?

13 A. I don't know about the second one with the young man  
14 because I only can hope that he went back to his correct voting  
15 location. I know in fact the woman voted because I took her  
16 over so that she could do that.

17 Q. In both cases, the problem was that the voter had failed  
18 to update the registration; is that right?

19 A. If you live within the county and you move prior to the  
20 election, you are not required to update your registration  
21 prior to election. You can simply be a provisional voter at  
22 your new precinct when the election comes. You don't  
23 necessarily -- as long as you stayed within the county, you  
24 don't have to update your registration.

25 Q. Are you aware that the Secretary of State -- are you

1 aware -- strike that.

2 Are you aware that there is a Secretary of State  
3 directive currently --

4 MR. MARTIN: Objection, Your Honor.

5 THE COURT: Let him get it out first. Go ahead.

6 BY MR. VOIGT:

7 Q. Are you aware that there is a Secretary of State  
8 directive currently available for public comment related to the  
9 consolidation of poll books?

10 A. No.

11 Q. If a directive came out by the Secretary of State that  
12 required multiprecinct locations to combine their poll books,  
13 would that eliminate your complaint in this case?

14 A. On that particular --

15 Q. You can answer.

16 A. On that particular section.

17 Q. And when you say on that particular section, what do you  
18 mean by that?

19 A. Well, I think I have some more than just the  
20 consolidated poll books that I'm concerned about.

21 Q. Which other portions of the complaint are you --

22 A. Well, I'm concerned that, I don't know if it's actually  
23 in the complaint but I think what we just discussed with  
24 vote -- with poll-worker error, with voters being denied, the  
25 ballots not being counted because of poll-worker error.

1 Q. Do you consider yourself a member of any minority group?

2 A. No.

3 MR. VOIGT: One moment, Your Honor.

4 No further questions.

5 THE COURT: Thank you.

6 Mr. Martin?

7 MR. MARTIN: I have no further questions, Your Honor.

8 THE COURT: Thank you. Thank you, Ms. Biehle.

9 MR. KAUL: Your Honor, the plaintiffs call William  
10 Anthony.

11 THE COURT: Mr. Anthony, good afternoon. Would you  
12 please raise your right hand and be sworn.

13 (Witness sworn.)

14 THE COURT: If you'd have a seat right there on the  
15 stand, please, and make yourself comfortable.

16 You may inquire.

17 - - -

18 WILLIAM ANTHONY

19 Called as a witness on behalf of the Plaintiffs, being first  
20 duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. KAUL:

23 Q. Mr. Anthony, good afternoon.

24 A. Good afternoon.

25 Q. Would you please state your full name for the record?

1 A. My name is William A. Anthony, Jr.

2 Q. And how are you currently employed?

3 A. I am the director of the Franklin County Board of  
4 Elections.

5 Q. And how long have you been involved in election  
6 administration work, approximately?

7 A. I think 1997 or '96.

8 Q. And how did you first get involved in election  
9 administration work?

10 A. I was a member of the Franklin County Board of  
11 Elections.

12 Q. And what period of time did you serve on that board?

13 A. Again, I'm not sure the start date but '96 or '97  
14 through 2008, I believe.

15 Q. And what positions did you hold on the board during your  
16 time?

17 A. I was a member of the board and I was also chairman of  
18 the board.

19 Q. Do you recall when you were chairman, approximately?

20 A. It would have probably been about 2000 -- pretty much  
21 from 2000 to 2008.

22 Q. And you said you're the director of the board now?

23 A. Yes.

24 Q. When did you become the director of the board?

25 A. 2010.

1 Q. And have you been director since then?

2 A. Yes.

3 Q. And just for the record, can you explain what the  
4 relationship is between the county board and the director?

5 A. The county board is the governing body of the board of  
6 elections. They make all the major decisions. They're pretty  
7 much the overseers of the board of elections. The director and  
8 then there's a deputy director, we do the day-to-day function  
9 of the board of elections.

10 Q. And how are the members of the county board appointed?

11 A. They're appointed -- they're selected by their  
12 prospective political parties, the major parties, democratic  
13 party and republican party and then they're confirmed or  
14 approved by the Secretary of State.

15 Q. And does the Secretary of State have the authority to  
16 reject those nominations?

17 A. Yes.

18 Q. How are the director and deputy director selected?

19 A. The deputy director and director are selected by the  
20 four member board and then they're ultimately approved by the  
21 Secretary of State.

22 Q. Does the Secretary of State have removal powers over the  
23 board?

24 A. Yes.

25 Q. Can you explain what those are?

1 A. I would imagine --

2 Q. Not from firsthand experience?

3 A. Not from firsthand experience but we take a sworn oath  
4 to follow the Ohio constitution and the laws of Ohio and the  
5 directors of the Secretary of State and if we do not do those  
6 then we are in malfeasance of those directives and we can be  
7 removed.

8 Q. When you say we, are you talking about the county board  
9 members or the director and deputy director or both?

10 A. Both.

11 Q. Have board members been removed from office during the  
12 time that you've been serving?

13 A. Yes, sir.

14 Q. What were the circumstances in which that happened?

15 A. In 2012 I believe we had the director and I'm not sure  
16 if it was a board member, they were removed because they did  
17 not follow a directive from the Secretary of State. I lived  
18 through where there was --

19 THE COURT: This is in Franklin County?

20 THE WITNESS: This is in Montgomery County. And then  
21 in -- I forgot the other counties now. Akron and also maybe  
22 Lucas. Lucas County and Summit County I believe the boards  
23 were, and maybe even in Cleveland at that time the directors  
24 were removed or a board members were removed for various  
25 reasons. One that I recall was that they didn't get along

1 well. The boards weren't functioning as a good bipartisan  
2 operation. There was a lot of partisan ship going on.

3 THE COURT: Can you remove the congress the same way?

4 THE WITNESS: If the Secretary of State has that  
5 power. It might be nice but, no, sir, I don't think so.

6 BY MR. KAUL:

7 Q. I don't think that congress would approve of the United  
8 States Secretary of State having that power.

9 Let me ask you about the 2004 election.

10 A. Yes, sir.

11 Q. Were you on the board when that election took place?

12 A. Yes, sir. Yes, I was.

13 Q. And did you make observations during that election?

14 A. Yes, I did.

15 Q. Can you describe those observations for the Court?

16 A. Well, it's like if it could go wrong, it went wrong. It  
17 was probably the worst election cycle that I can remember.

18 Seemed like everything that could have went wrong, went wrong.

19 We had long lines in just about every polling location.

20 It rained, it got cold. It was just -- the ballots were way

21 long. We had a lot of local issues on the ballot so we had a

22 longer ballot which meant that it took a lot longer to vote

23 because there's so many issues on the ballot and during that

24 time we were using a lever machine where you actually pushed a

25 lever down for who you wanted to vote and then when you

1 finished voting you had to pull that -- you had to pull the  
2 lever across to actually vote your ballot.

3 We had so many issues, local issues that we had them  
4 taped up to the sides of the machine on the inside the walls of  
5 the machine so the folks would have an opportunity to read --  
6 so they could read what the initiatives were. We even passed  
7 them out in line. As folks were standing in line, we walked  
8 through the lines and we passed out what the language was on  
9 the ballot in hopes that that would help make voting go faster,  
10 but it didn't do much help.

11 Q. Did you have early voting, in-person early voting in  
12 2004?

13 A. No, we did not.

14 Q. Did you have minimum requirements for the number of  
15 voting machines?

16 A. I don't recall.

17 Q. You mentioned long lines.

18 THE COURT: Minimum requirements. Okay. Go ahead.

19 BY MR. KAUL:

20 Q. You mentioned long lines before. How long were the wait  
21 times to vote in 2004?

22 A. I'm not sure, but I know it was over an hour in some.  
23 Might have been two or three hours in some locations and even  
24 longer. I did take a tour of a number of locations in 2004,  
25 some in the inner city and some in the suburban areas, and



1 there were long lines pretty much everywhere.

2 Q. How late did the polls close that year? I'm sorry. By  
3 polls close, when were the last ballots cast?

4 A. The polls closed at 7:30. If I didn't do that, that  
5 would be one of the reasons I would be removed. So the polls  
6 closed at 7:30 but we placed a person in the end of the line  
7 at 7:30 and there was several locations that did not finish  
8 voting until almost midnight.

9 Q. Do you know whether there was some that finished after  
10 midnight?

11 A. I'm not sure. I know it was pretty late before we  
12 closed all the locations.

13 THE COURT: You didn't turn anyone away that year.

14 THE WITNESS: That's exactly right.

15 BY MR. KAUL:

16 Q. Following that election did you undertake steps to  
17 address the long lines?

18 A. Yes, we did. That was probably one of the worst  
19 experiences that I was in and so myself and the other director,  
20 deputy director, and I believe another board member, we  
21 decided -- we sat down and we had meetings with the general  
22 public. We invited everyone who was interested to attend them  
23 and we started taking a look at how we were doing voting with  
24 an eye on improving it.

25 Q. And what, if any, steps did you undertake to improve

1 voting?

2 A. Several other things happened, too. We weren't the only  
3 ones. This was a systemic problem across the country and  
4 across the state of Ohio. So one of the things that we did, we  
5 decided that we were going to take a look at all of our voting  
6 locations because I had went to some where they would never be  
7 a voting location now just because of accessibility of trying  
8 to get in, they were too small, not enough lighting. There was  
9 a lot of problems.

10 So we decided to take a look at every one of our voting  
11 locations and we also decided to look at implementing a system  
12 where, since all voting is precinct based, we were looking at a  
13 system of, we called them LIDS, location -- what does it stand  
14 for? Location -- I forgot what it stands for now. Please  
15 forgive me.

16 Q. That's okay.

17 A. But we decided to determine a location instead of a poll  
18 book for each precinct, each specific precinct whereas you all  
19 recall in the old days you go into a voting location and there  
20 would be a table and it said Precinct A, there would be another  
21 table in the room that would be Precinct J. So instead of  
22 having -- so you could actually go and stand at the Precinct A  
23 table and they couldn't find your name and you could say, well,  
24 I want to vote anyway, and you should have been at the other  
25 table in the same room.

1           So what we did was we combined all the precincts and in  
2 that room we went with an alpha-designation table instead of a  
3 precinct-designation table.

4           THE COURT: You combined the poll books?

5           THE WITNESS: Yes. We would have the poll books and  
6 we did the poll books by alpha. A through J would be in one  
7 line and only folks would be in that poll book were A through  
8 J. Then it would be up to the poll worker then to make sure  
9 they get the right authority to vote slip, that they assign the  
10 right precinct.

11          BY MR. KAUL:

12          Q. These locations you're talking about, these LIDS, are  
13 they multiprecinct locations?

14          A. We call them -- that's what we call them internally. We  
15 call them LIDS. But they are polling locations. So it's  
16 easier for us to -- so we just call them LIDS, but they're  
17 polling location. And I'll think of the name in a minute if I  
18 sit here long enough.

19          Q. So when you're saying that you broke them down by  
20 alphabet, this is the point the Judge was just making, are you  
21 saying you consolidated the poll books?

22          A. I guess you could call it consolidating the poll book.  
23 It still probably created more poll books because, depending on  
24 how -- if we had three LIDS in there or two LIDS, then we  
25 probably have more poll books. We break the poll books down to

1 either three poll books or up to 20 some poll books at a  
2 location.

3 Q. I think I was using a euphemism so I apologize. Did  
4 signing in for any of the poll books permit somebody to vote in  
5 the correct precinct?

6 A. That's correct. No. You would have to go to the one  
7 with your last name.

8 Q. But as long as you got the last name right?

9 A. Yeah. If you knew your last name, you could stand in  
10 the right line, then you could vote.

11 Q. Were there any costs to you in consolidating the poll  
12 books in that way?

13 A. The cost to us was we reduced the number of precincts,  
14 actual precinct locations, so that would have been some  
15 savings. We have, in Franklin County, over 800 precincts and  
16 by going to the LIDS system we reduced it down to a little over  
17 400. So in a precinct they cost anywhere from \$200. We pay  
18 locations up to at least a minimum of \$200 to use their  
19 building on election day.

20 THE COURT: That's cheap rent you're getting away  
21 with.

22 THE WITNESS: Some we charge, yeah. Don't get that  
23 out though.

24 BY MR. KAUL:

25 Q. So you're saying that by consolidating the poll books

1 you save money?

2 A. Yes.

3 Q. Did you have any harms or costs?

4 A. Well, the harm that we didn't want to see happen,  
5 because right now precincts are generally -- a polling location  
6 is generally within two miles of a precinct and we try to keep  
7 that -- I'm not sure if that's Revised Code language or not.  
8 But we try to keep every polling location, even a LID, at least  
9 in a two-mile range of where the voters are.

10 Q. Why do you do that?

11 A. In case folks want to walk. So we take a look at if  
12 folks want to walk to the polls on election day it's not more  
13 than a two-mile walk.

14 Q. Let me ask you about the 2008 election. First of all,  
15 was there early voting in-person in the 2008 election?

16 A. Yes, there was.

17 Q. And where was that early-voting center?

18 A. It was -- in the primary it was at our offices at 180 --  
19 at 280 East Broad Street. And in the general it was at the  
20 Veterans Memorial Hall on West Broad Street.

21 Q. And did you observe lines for early voting in 2008?

22 A. Yes, I did.

23 Q. And did you personally test the lines?

24 A. Yes, I did.

25 Q. And what did you find?

1       A.    Well, I believe it might have been a Sunday that I  
2    tested it.  I took a lot of photographs and a lot of videos of  
3    the lines and the folks standing outside the line.  Of course  
4    this was our first time dealing with the early-vote center so  
5    we were just trying to see how to do it.  And I photographed or  
6    videoed a guy and three people at the end of the line and I  
7    stayed there and would go photograph and video as they  
8    progressed through the line in like one hour, two hours.  I was  
9    trying to figure out where they were.  And it was six hours  
10   later by the time they were finished.

11       Q.    And that was, you said, the Sunday before election day?

12       A.    That may have been either the Sunday or Saturday before  
13   election.

14       Q.    Following that election did you commission a study?

15       A.    I think I --

16       Q.    Let me ask you a different question.

17               MR. KAUL:  Your Honor, may I approach?

18               THE COURT:  You may.

19               MR. KAUL:  Your Honor, I'm going to direct the witness  
20   to Plaintiffs' Exhibit 19.

21       BY MR. KAUL:

22       Q.    Mr. Anthony, do you recognize this document?

23       A.    Yes, I do.

24       Q.    What is this document?

25       A.    This document shows, pretty much, a graphic and a

1 narrative with some data on what happened at our early vote  
2 center in 2008. We were concerned that we had super long  
3 lines. So what I had my staff do was go through and do a  
4 query. We had a guy, he was our GIS analyst, and we had him go  
5 through and try to break down who came into the early-vote  
6 center and this is the result of it. I asked him to overlay  
7 those numbers as best we could with the census data.

8           Some of this data we do not track at the board of  
9 elections. We do not track race or ethnicity. So what I had  
10 him do was take a look at the numbers. We could extrapolate  
11 where the votes came from based on folks voting and the  
12 information that they give us. We could put a dot on the map.  
13 You can see the maps shown on here. We can figure out where  
14 people actually came from, who showed up at the vote center.  
15 We could figure out age, we could figure out race, we could  
16 figure out nationality. And so that's what I had him basically  
17 do, just go through and take a look at who really came out in  
18 2008.

19           Q. And was this report prepared in the ordinary course of  
20 your work for the board of elections?

21           A. I did it as a director. This happened after the 2008.  
22 I forgot when we actually did this now.

23           THE COURT: August of '12.

24           THE WITNESS: That's when we did it.

25

1 BY MR. KAUL:

2 Q. Let me direct you to the first page. Do you see the  
3 date at the top right?

4 A. 8/16/12.

5 Q. Does that reflect when this report was prepared?

6 A. Yes.

7 Q. If you go to the bottom left of that cover page, do you  
8 see where it says Franklin County Board of Elections?

9 A. Yes, sir.

10 Q. And then your name is under that, correct?

11 A. That's correct.

12 Q. And Dana Walch is listed?

13 A. Yes.

14 Q. Who is Mr. Walch?

15 A. Dana was the deputy director at the time.

16 Q. And was he appointed by a particular political party?

17 A. He was appointed by the republican party.

18 Q. On page 3 and 4 of this report there are some  
19 photographs. Do you see those?

20 A. Yes, sir.

21 Q. Who took those photographs?

22 A. I did.

23 Q. And what are these photographs of?

24 A. That's of voters waiting in line to cast their ballot.

25 Q. And can you just walk us through the progression



1 somebody in line would take to cast a ballot? And I'm  
2 specifically referring to outside and inside.

3 A. Well, this would have probably been -- some of these had  
4 the actual dates on them. These would have probably been the  
5 Sunday before the election. So the voter would come up to the  
6 Vets Memorial Hall, they would park and they would get out and  
7 stand in these lines and we had the line snaking, as you can  
8 see, all around the building. And what I have on page 3 are  
9 the lines are outside the building.

10 Then on page 4 you have the line as you go through the  
11 main entrance that we were taking the voters into which was the  
12 north side of the memorial hall. And then on the bottom of  
13 that picture is a line that was inside the building. We took  
14 them through the actual hall itself and we snaked them around  
15 tables because we didn't have extensions at the time.

16 Q. And when this report was prepared, did you approve it?

17 A. Yes.

18 Q. Did Mr. Walch also approve it?

19 A. Yes, he did.

20 MR. KAUL: Your Honor, we move that this be admitted  
21 as Plaintiff's Exhibit 19.

22 THE COURT: Is this representative of the primary that  
23 year?

24 THE WITNESS: No. This was the general election.

25 THE COURT: The general.

1 THE WITNESS: That was the general election of 2008.

2 THE COURT: It's a warm November. Okay.

3 Is there an objection?

4 MS. PIERCE: We do have an objection. I think  
5 Mr. Anthony testified that he took the photos but as to the  
6 statistical analysis and further analysis in the report, he did  
7 not. So we object as to hearsay.

8 MR. KAUL: It's analysis, Your Honor, conducted for  
9 the board at Mr. Anthony's direction, which he and the  
10 republican member approved which contains statistical -- it's  
11 data. The data speaks for itself.

12 MS. PIERCE: And if Mr. Anthony wants to testify what  
13 they did in response to the report or anything like that, that  
14 would be fine. But as to the truth of the matter of that  
15 analysis, hearsay.

16 THE COURT: Sustained.

17 MR. KAUL: Your Honor, the other -- let me also  
18 develop a separate basis.

19 BY MR. KAUL:

20 Q. Mr. Anthony, did this report receive public attention?

21 A. Yes, it did.

22 Q. What do you mean by that?

23 A. Well, during this time in history we had some concerns  
24 or I had some concerns about the voting hours, hours of  
25 operation and how you do early voting, and I wanted to

1 highlight some of the concerns that we were faced with here in  
2 Franklin County. So I put this material together and then I  
3 shared it with just about everybody I could think of. I sent  
4 it out to the press, sent it to the *New York Times*. It made  
5 its way around to a lot of folks.

6 Q. And did you see reports on this in the press?

7 THE COURT: So you're vouching for the accuracy of the  
8 numbers, is that what you're saying?

9 THE WITNESS: I had -- yes. The guy that did the  
10 numbers, he worked on the board as our GIS analyst.

11 THE COURT: He was an employee?

12 THE WITNESS: Yes. The author is Daniel Brill.

13 BY MR. KAUL:

14 Q. Did this receive press?

15 A. Yes, it did.

16 Q. In Ohio?

17 A. Yes.

18 MR. KAUL: Your Honor, based on that, I'd move to  
19 admit it both based on the representation he just made but also  
20 because it goes to the knowledge of the legislators who were  
21 acting in changing the early-voting laws in that it's a report  
22 published demonstrating that there's disproportionate usage of  
23 in-person early voting by African-Americans.

24 THE COURT: That sort of gets at her objection,  
25 doesn't it? Are you going to bring somebody else in to

1 testify? Are you going to bring Mr. Brill in to testify to the  
2 numbers?

3 MR. KAUL: We hadn't intended to. He's not on our  
4 witness list, Your Honor.

5 THE COURT: What if I want to add him?

6 MR. KAUL: As long as we can --

7 THE WITNESS: He's no longer employed by the Franklin  
8 County Board of Elections.

9 MR. KAUL: Do you know where he is now?

10 THE WITNESS: Yes, I do.

11 MR. KAUL: Is he in Ohio?

12 THE WITNESS: Yes, he is.

13 MR. KAUL: We would be comfortable calling him, Your  
14 Honor.

15 THE COURT: Mr. Anthony commissioned the report and  
16 this gentleman worked for him at the time, but you don't know  
17 the methodology used to arrive at the numbers, correct?

18 THE WITNESS: Not really.

19 THE COURT: So Mr. Brill, presumably, would be able to  
20 give us that, right?

21 MR. KAUL: I believe so. Although may I explore that  
22 topic briefly?

23 THE COURT: All right.

24 BY MR. KAUL:

25 Q. Do you see there are maps on page 9?

1 A. Yes.

2 Q. First, do you know what those maps show?

3 THE COURT: Page 9, you say?

4 MR. KAUL: Yes. Page 9 of the exhibit.

5 THE COURT: Thank you.

6 THE WITNESS: What this map shows as what I asked  
7 Daniel to do is graphically show me where the voting density  
8 was for the 2008 turnout. So where the folks come from that  
9 voted at our early-vote center. And so based on the voting  
10 records of folks that showed up, he plotted them out on this  
11 map and then color coded them to show the density of the  
12 voters. So the darker the color, the blues -- the darker blues  
13 are the higher density of where folks actually traveled to come  
14 to the early-vote center.

15 BY MR. KAUL:

16 Q. And the map on the left on page 9. I'm sorry.

17 MR. KAUL: May I approach, Your Honor?

18 THE COURT: You may.

19 BY MR. KAUL:

20 Q. Let me turn you to the next page. Do you see a map on  
21 the left on page 9 that says African-American population  
22 density underneath?

23 A. Yes.

24 Q. What do you understand that map to reflect?

25 A. One of the purposes for me to commission this document

1 was to show the percent of African-American voters that voted  
2 at the vote center and it showed where they lived. And I think  
3 there may even be an age. I don't know if he put that in there  
4 or not. But basically to show where African-American voters  
5 lived and where they came in and voted at the early-vote  
6 center.

7 Q. And what's your understanding for how Mr. Brill  
8 determined where the African-American population in Franklin  
9 County resided?

10 A. I told him to use the census, census data.

11 Q. The map on the right, is that the one you were  
12 describing before?

13 A. Yes. That's correct.

14 MR. KAUL: Your Honor, with that, we would move to  
15 admit it. I think he knows the methodology. But in the event  
16 that we don't, we're happy to try to subpoena Mr. Brill.

17 MS. PIERCE: Objection, Your Honor. He can testify as  
18 to his understanding of the maps but the objection to the maps  
19 themselves still stands.

20 THE COURT: Bring Mr. Brill in.

21 MR. KAUL: Thank you, Your Honor. To the extent, I  
22 guess, we are not able to bring Mr. Brill in later, I will  
23 revisit it with respect to the photographs.

24 THE COURT: I want to make sure I understand. This is  
25 election day or this is early in-person turnout prior to

1 election day?

2 THE WITNESS: This is early in-person turnout.

3 THE COURT: And so this is how long, 35 days?

4 THE WITNESS: This is 35 days, yes, sir.

5 THE COURT: And so this is, what, the first day of  
6 early in-person or you said it was the last weekend, didn't  
7 you?

8 THE WITNESS: Some of the photographs are the last  
9 weekend but the data, that was taken from the entire 35 day  
10 period.

11 THE COURT: All right. Thank you. That's helpful.

12 BY MR. KAUL:

13 Q. Let me ask you about the primary election in 2012. At  
14 that point in time were you -- in 2012 would you have been  
15 director?

16 A. That's correct.

17 Q. And did the Franklin County Board of Elections vote on  
18 the early-voting hours that would be available for the primary?

19 A. Yes, we did.

20 Q. And did that vote result in the inclusion of weekend and  
21 evening voting hours?

22 A. Yes, it did.

23 Q. And was there a significant primary election in 2012?

24 MS. PIERCE: Objection. Vague as to significant.

25 MR. KAUL: Let me ask it a different way.

1 BY MR. KAUL:

2 Q. What election was at the top of the ticket in the  
3 primary in 2012?

4 A. It would have been the presidential primary election.

5 Q. And do you know whether there was a competitive  
6 democratic primary that year?

7 A. There was not.

8 Q. Do you know whether there was a competitive republican  
9 primary?

10 A. There wasn't much of one, if I recall. I think Romney  
11 had already pretty much sealed the nomination.

12 Q. And I apologize if you already answered this. Did you  
13 answer whether there were evening and weekend hours for the  
14 primary?

15 A. There were.

16 Q. For the 2012 general election, did your county offer  
17 evening and weekend hours?

18 A. We had voted to keep the same hours that we had in the  
19 primary but then a directive came out from the Secretary of  
20 State and then we voted to accept the directive hours.

21 Q. Did you have a choice whether to accept the directive  
22 hours?

23 A. I didn't think we did. None I would have made.  
24 I shouldn't make comments like that, I'm sorry.

25 THE COURT: And for the record just because I'm not --



1 MR. KAUL: I think I understand.

2 BY MR. KAUL:

3 Q. How did the hours for the general election compare to  
4 the hours for the primary?

5 A. It would be better if we had -- I actually have the  
6 hours on my cell phone.

7 THE COURT: You approved hours, the board approved  
8 hours and then the directive did what to it?

9 THE WITNESS: The directive approved a set of  
10 standardized hours that every board of election had to go with  
11 and our board voted to go by those hours.

12 THE COURT: And did that reduce the number of hours  
13 that you were going to have available?

14 THE WITNESS: Yes, it did.

15 BY MR. KAUL:

16 Q. And in particular, what hours were removed from the  
17 calendar, if you remember?

18 A. If I recall, I just looked at this, we still had some  
19 evening hours. We had Saturday hours but that last weekend was  
20 removed and we got it -- then there was a court order to bring  
21 them back. So we ended up doing the last weekend. But  
22 initially they were not part of our hours of operation.

23 THE COURT: So that was a result of the directive?

24 THE WITNESS: That's correct.

25

1 BY MR. KAUL:

2 Q. And based on your observations, has the existence of  
3 early voting affected lines on election day in Franklin County?

4 A. It has tremendously helped us to reduce lines on voting  
5 days. We still have some lines but it's reduced the overall  
6 impact of election day lines.

7 Q. And do you know whether you have discretion to open  
8 multiple early-voting locations?

9 A. There was nothing to prohibit us from doing it as long  
10 as we kept it a precinct-based election. This is for election  
11 day. There's now been a bill that was introduced that allows  
12 counties to choose to have multiple precincts and it sets up  
13 the -- it sets up how -- it gives a guideline of how you're  
14 supposed to do it.

15 Q. Let me ask you specifically about early voting. Do you  
16 know whether you have discretion to have multiple early-voting  
17 locations?

18 A. I do not.

19 Q. You do not know or you do not have discretion? Sorry.

20 A. I do not have discretion to have -- I can only have what  
21 was in SS directive 1.

22 Q. Would there be any harm to your board of elections if  
23 you had discretion to open multiple early-voting locations?

24 MS. PIERCE: Objection, Your Honor.

25 THE COURT: Basis.

1 MS. PIERCE: Vague as to harm and also a legal  
2 conclusion.

3 THE COURT: Overruled. You may answer.

4 THE WITNESS: No. If we could, we might or might not.  
5 I'm not sure.

6 BY MR. KAUL:

7 Q. Franklin County is a DRE county, correct?

8 A. That's correct.

9 Q. And does Franklin County exceed the statutory minimum  
10 number of DREs required?

11 A. Yes, we do.

12 Q. Why do you do that?

13 A. To make sure -- several reasons. One, to make sure that  
14 if anything was to go down, equipment failure, and the other  
15 one is to make sure that we just have more than enough  
16 equipment to prevent any lines in case there are lines.

17 Q. And you refer to equipment going down. How old are the  
18 DRE machines that Franklin County has?

19 A. We actually purchased -- they're ten years old.

20 Q. And have you made public statements about the age of the  
21 voting machines?

22 A. Yes, I have.

23 Q. And what have you said?

24 A. Well, a lot. I'm really concerned about the integrity  
25 of our whole system with equipment that's ten years old and I

1 believe there's a need to think about replacing them with  
2 either new equipment or something. And I go to Washington,  
3 D.C. every year and I walk the halls of Congress and I beg for  
4 more federal money to help pay for new voting machines because  
5 we got the money from the -- we received the first batch of  
6 money from the federal government.

7 So every year I take my republican colleague and we  
8 knock on the congressional doors and our two senators' doors  
9 and we give our story of why we believe there's some need to  
10 fund voting in America again. And then I make my calls here  
11 locally to state reps and state senators and again talk about  
12 the need to take a look at what we're going to do in 2020 and  
13 beyond.

14 Q. And what, if any, funding have you received from the  
15 state for voting machine purchases?

16 A. None.

17 Q. Let me ask you about the 2015 election briefly.

18 THE COURT: Let's go back.

19 MR. KAUL: I apologize.

20 THE COURT: The board of elections funded by -- its  
21 general revenue through the county commissioners, correct?

22 THE WITNESS: That's correct.

23 THE COURT: And you are responsible for purchasing the  
24 machines, correct?

25 THE WITNESS: That's correct.

1 THE COURT: And the federal money that went to, what,  
2 initially buy the DRES?

3 THE WITNESS: That's correct. The HAVA, Help America  
4 Vote Act, they gave each state a big pile of money and it was  
5 up to the Secretary of State to distribute the money. It was  
6 up to the Secretary of State to set standards for the voting  
7 machines and they ultimately selected vendors that we could  
8 choose from to buy our voting machines from. So each county  
9 chose one of the selected vendors and we got our machines.

10 THE COURT: Okay. Thank you.

11 BY MR. KAUL:

12 Q. So an election just took place.

13 A. That's correct. 2015.

14 Q. Did you have any observations about that election?  
15 That's too broad a question. Let me ask you a different  
16 question.

17 A. I have a lot.

18 Q. I'll object to my own question.

19 Were there wait times to vote in the election that was  
20 just held in Franklin County?

21 A. Yes, there were.

22 Q. Where were the lines forming for voting in that  
23 election?

24 A. Well, you have to break the election down to early  
25 in-person voting and then election day. If you talk about

1 early in-person voting, we always have lines that last weekend,  
2 the last Friday -- last Saturday and Sunday and maybe even  
3 Friday. So we did have lines and they did go outside the  
4 building on both Saturday and Sunday and maybe Friday. But the  
5 wait was less than a half an hour but there was still a line  
6 because of the number of people that just show up. So it's  
7 inevitable you're going to have a line. We were able to  
8 process folks very quickly. And it was about a half hour wait,  
9 if that.

10 On election day where we have multiple precincts, we saw  
11 lines. We also did a pilot project this election cycle where  
12 we use electronic poll books and we had those, we had three  
13 companies at three different sites. They were all what we call  
14 LID 6s. They were all six precincts in a site so they were  
15 going to be heavily attended, a lot of voters were going to  
16 come out.

17 We felt there would be about a 20 percent turnout and it  
18 had been about 35 percent turnout so we had lines in the  
19 evenings between 5:00 and 7:00 at several locations. But they  
20 moved pretty quickly. So no one --

21 THE COURT: Between 5:00 and 7:00 p.m?

22 THE WITNESS: Yes, sir. Between 5:00 and 7:30 p.m.  
23 To my knowledge, I believe, I think all locations when they  
24 closed at 5:30 -- at 7:30 there wasn't -- that line to finish  
25 voting pretty much was gone by eight o'clock.

1 BY MR. KAUL:

2 Q. And you mentioned a pilot program, I believe?

3 A. Yes, sir.

4 Q. Can you explain what that was?

5 A. The Secretary of State has allocated money for all 88  
6 counties, if they would like, to purchase electronic poll  
7 books. Electronic poll books would get away -- right now we  
8 have a paper poll book that's labor intensive, created and  
9 outdated. Electronic poll books make processing voters a lot  
10 easier.

11 THE COURT: What kind of training is involved in that  
12 with your poll workers?

13 THE WITNESS: It actually is a lot easier to train a  
14 poll worker to go through an electronic poll book because the  
15 poll book does most of the lookup work for it.

16 THE COURT: They give a name?

17 THE WITNESS: Yes. The electronic poll book, if you  
18 have a license or you put the last three letters of a person's  
19 last name, it populates it. So it takes a lot of work off the  
20 poll worker and it makes processing voters a lot faster.

21 THE COURT: So if there's a discrepancy in an address  
22 or something like that, it's discovered more quickly?

23 THE WITNESS: Absolutely. Again, the poll books are  
24 all -- they're electronically produced but we have to put them  
25 together page by page and there's always --

1 THE COURT: You have to populate them?

2 THE WITNESS: No. We populate the pages via our  
3 computer programming but then we have to actually make the  
4 books. So we create the books ourselves. And then there's  
5 always some issue somewhere where a page got in the wrong  
6 place.

7 Electronic poll books we found it causes -- it causes us  
8 to process voters quickly because now you don't even have to  
9 have A through E line and D through F line. You can just be  
10 any line. A person just walk up to any open poll worker and  
11 give a name and their information will come and then an  
12 authority to vote slip would be printed out real quickly.  
13 We're able to process the voters a lot faster. Even with that,  
14 we had some lines towards that evening.

15 BY MR. KAUL:

16 Q. And where were the lines, where in the process of voting  
17 were the lines forming in those precincts?

18 A. They're still checking in because if 20 people show up  
19 at five o'clock, you're going to have 20 people in line before  
20 you know it. So we got those lines moving pretty fast. And  
21 the lines are now going to show to actually get on the DREs.  
22 We were processing them faster through the check-in and they're  
23 having to kind of wait to get a DRE. So we're looking at that  
24 as well.

25 Q. So the lines were forming at the voting machine?



1 A. Yes.

2 Q. Let me ask you about absentee-ballot mailings briefly.

3 Prior to the 2008 election did the Franklin County Board of

4 Elections send out unsolicited absentee-ballot mailings?

5 A. Yes.

6 Q. Why did you do that?

7 A. There were several reasons why we did it in Franklin  
8 County. One is because we had a multiple-page absentee ballot  
9 and so you had a big envelope and then you had the ballots in  
10 the envelope and then we were concerned with the folks not  
11 knowing what the costs of the postage would be. So we did --  
12 we talked with our county commissioners and they agreed to  
13 spend the money to put a stamp on it so a voter would not have  
14 to worry about the correct postage. So we did that both for  
15 the request for an application and then for the actual ballot  
16 themselves.

17 Q. And why were you worried about voters knowing what the  
18 postage was?

19 A. Well, we didn't want -- if it didn't have the right  
20 postage that could create some problems.

21 Q. Let me ask you a different way. Do you know how much  
22 the postage was for those absentee ballots?

23 A. I think it was \$1.75. It was over \$1.

24 Q. But not a standard first-class stamp?

25 A. No. I think it would be three first-class stamps.

1 THE COURT: It's up to \$1.75 now.

2 BY MR. KAUL:

3 Q. And do you know how many absentee-ballot applications  
4 you received in 2008?

5 A. I'm not sure of the number but it was over 100,000. I  
6 think it was 120-. I think it was 120-.

7 Q. In 2012, did you do an absentee-ballot mailing?

8 A. In 2020, we did the mailing, yes. Not 2020. 2012.

9 Q. Are you aware of any directives related to  
10 absentee-ballot mailings?

11 A. There was a directive, I think it came out -- I forget  
12 when it came out. But where we were no longer allowed to  
13 include postage on it.

14 Q. What, if any, impact did that have on how many  
15 absentee-ballot applications you received?

16 MS. PIERCE: Objection, Your Honor. We don't know the  
17 impact -- we don't know the cause and effect setup of that  
18 situation. Speculation, Your Honor.

19 THE COURT: You can answer if you know. Do you know?

20 THE WITNESS: In 2012, we received about 80,000  
21 absentee ballots, so there was a reduction.

22 BY MR. KAUL:

23 Q. Have you, in your work for the board of elections,  
24 encountered difficulties in getting people to respond or to  
25 engage in voting by absentee ballot?

1       A.    The best way I can answer that question is that we have  
2 voters that are still a little confused over what early  
3 in-person voting is because it is still absentee voting.  And  
4 so they come in and they don't want to fill the card out  
5 because they think it's too much information.  And so I will  
6 say to them, you know, you can vote by mail and just mail it  
7 in.  I've said this to more than -- several people, lots of  
8 folks.  And they would tell me, well, I don't trust the mail.  
9 I don't know what it's going to cost me and I don't know if you  
10 guys are going to count it or not.  So those are some of the  
11 responses that I would get.

12       Q.    And in your experience have you encountered that issue  
13 with particular demographic groups?

14       A.    Saw a lot of little old folks and black folks telling me  
15 that.

16               THE COURT:  Bill, how are the absentee votes counted?

17               THE WITNESS:  First.  So they are counted.  And I  
18 explained that to folks when they say that.  A lot of folks  
19 think that their absentee ballot would not be counted and I  
20 make it real clear that they are counted.

21       BY MR. KAUL:

22       Q.    Let me ask you about precincts in the Ohio State campus  
23 area on election day.

24       A.    Okay.

25       Q.    Have you had -- have you observed the wait times to vote

1 there?

2 A. Yes, sir.

3 Q. And how have the wait times been?

4 A. Long.

5 Q. And is that a recurring problem?

6 A. Yes.

7 Q. Do you know how far Ohio State's campus is from the  
8 early-voting location?

9 A. Maybe eight miles or more.

10 Q. In the 2012 election did you direct people from the  
11 early-voting center to the board of elections office?

12 A. Repeat that.

13 Q. Let me ask it a different way.

14 THE COURT: People, voters?

15 MR. KAUL: Voters, yes.

16 BY MR. KAUL:

17 Q. Do you recall whether, during any of the recent  
18 elections, board of elections staff had directed voters in line  
19 at the early-voting centers to the board of elections' office  
20 to cast an absentee ballot?

21 A. I'm not quite following the question.

22 Q. I'll withdraw it. I think it's not a clear question.

23 A. Okay.

24 Q. Are you involved with an association known as the OAEO?

25 A. The Ohio Association of Election Officials, yes, sir, I

1 am.

2 Q. And what is that organization?

3 A. That would be our -- pretty much our association for  
4 election officials.

5 Q. And do you know how many African-Americans are part of  
6 that organization?

7 A. No, I do not.

8 Q. Do you approximately know how many?

9 A. Not many, but I couldn't tell you. They're made up of  
10 all 88 counties.

11 Q. Is each county represented equally?

12 A. Yes.

13 Q. Regardless of its size?

14 A. Yes. Now, a county can send additional folks to our  
15 training in our conferences but we all get the same amount of  
16 folks.

17 MR. KAUL: No further questions.

18 THE COURT: Thank you.

19 Ms. Pierce.

20 - - -

21 CROSS-EXAMINATION

22 BY MS. PIERCE:

23 Q. Good afternoon, Mr. Anthony.

24 A. Good afternoon, Ms. Pierce.

25 Q. As you know, I think you know, I represent the

1 defendants in this case.

2 A. Yes, I do.

3 Q. Secretary Husted and Attorney General DeWine.

4 A. Yes, I know.

5 Q. I just have some questions for you today. Taking you  
6 all the way back to the 2004 election.

7 A. Please don't. I'm sorry. Go ahead.

8 Q. Just a couple questions. I think you described it as  
9 the worst ever; is that right?

10 A. I could have used better words or worse words, but  
11 absolutely I said that.

12 Q. That election took place before there was no-fault  
13 absentee voting in Ohio, correct?

14 A. That's correct.

15 Q. It was also a high turnout year in Franklin County?

16 A. Yes, it was.

17 Q. There was a long ballot, I think you said, right?

18 A. Yes, it was.

19 Q. And a long ballot means voters spend more time in a  
20 voting machine; is that right?

21 A. Theoretically, yes.

22 Q. It also rained that day; is that right?

23 A. And it got cold.

24 Q. And I think you said in those days Franklin County used  
25 the old style voting machines, the punch-card machines?

1 A. Yeah. They were the lever machines. They were lever.  
2 They actually pushed a lever down and once you pulled to draw  
3 the curtains back open, it punched through that paper in the  
4 back.

5 Q. I think you said this before but in those days, voters  
6 could not vote if they showed up at the wrong precinct on  
7 election day; is that right?

8 A. Their vote didn't count. They could vote, they could  
9 still do -- I'm not sure if it was a provisional ballot. I'm  
10 not sure but the vote did not count.

11 Q. So taking you forward just a little more, we're going to  
12 the 2008 early-voting period. The early-voting center in the  
13 2008 general election, that was at the Vets Memorial Center?

14 A. That's correct.

15 Q. And that's no longer there, correct?

16 A. No, it's not.

17 Q. Actually took my bar exam there.

18 The board of elections was not located in that center at  
19 that time, right?

20 A. That's correct.

21 Q. They were up Broad Street on the other side of downtown  
22 Columbus?

23 A. That's correct.

24 Q. I think you said the Vets Memorial location was not a  
25 great location for early voting.

1 A. It was really bad.

2 Q. Really bad. Okay.

3 THE COURT: So it's about a mile away, right?

4 BY MS. PIERCE:

5 Q. Is it about a mile away?

6 A. It's about a mile away, yeah. I can explain how we got  
7 there but you didn't ask me so I'll be quiet.

8 Q. At the Vets Memorial Center you were actually relegated  
9 to a smaller room in that location for early voting; is that  
10 right?

11 A. Yes, we were.

12 Q. And you couldn't move rooms within the center because  
13 you had to have your early-voting location in one place during  
14 the whole voting period, right?

15 A. That wasn't quite the reason why we couldn't move.

16 Q. What was the reason that you couldn't move?

17 A. The vets had pre-events that were already scheduled for  
18 all the larger rooms and the only room that had no events  
19 scheduled in it was a small room we ended up being in.

20 Q. But you needed that small room the whole time, the whole  
21 35 days, right?

22 A. We needed -- we actually needed a larger room but we  
23 were stuck in that small room.

24 Q. I should reask. You needed one room for the whole  
25 early-voting period; is that right?



1 A. We would have liked to have had one large room.

2 Q. You had to run data lines into that room to support your  
3 early-voting location; is that right?

4 A. One of the reasons for going there is that it was a  
5 county building that should have had data lines in there and  
6 they weren't that good so we had to run lines in anyway.

7 Q. And in 2008 at the early in-person voting center, voters  
8 used paper ballots to vote, right?

9 A. That's correct.

10 Q. And you used a ballot on-demand system to print those  
11 ballots?

12 A. That's correct.

13 Q. So a voter would check in and you would print a specific  
14 ballot for that voter, right?

15 A. It was a four-page ballot.

16 Q. So again, the ballots were pretty long that year?

17 A. Yeah.

18 Q. I believe you mention there was also a political rally  
19 in town on that last Sunday of early voting, is that true?

20 A. That's correct.

21 Q. So all in all, early voting in 2008 was a perfect storm?

22 A. Yes. A different storm than 2004.

23 Q. I think you said in your direct examination that you  
24 were learning?

25 A. Yes.

1 Q. And you walked the lines at Vets Memorial during early  
2 voting in 2008; is that correct?

3 A. That's correct.

4 Q. To make sure the voters were okay in line?

5 A. Yes. Just to talk to them, get some feedback from them.

6 Q. And most of the voters were actually willing to stand in  
7 line to vote during the early-voting period, isn't that right?

8 A. Yeah. From the look at the lines in the pictures we  
9 have a lot of folks that were not going to leave.

10 Q. Because it was their choice to stand in that line and  
11 vote, right?

12 A. I would assume that it was a choice to stay, because  
13 they stayed.

14 Q. In fact, you told some folks in the early-voting line  
15 they could vote on election day and not stand in line, right?

16 A. I certainly did.

17 Q. But they wanted to stand in the line and vote at the  
18 early-voting location?

19 A. Yes.

20 Q. And there weren't long lines to vote on election day in  
21 2008; is that right?

22 A. None that I can recall. I also drove around to the same  
23 locations that I always drive to on election day, some in the  
24 inner city, some in the further reaches of the county and  
25 different neighborhoods just to assess what's going on and I

1 did not witness long lines.

2 Q. In 2008?

3 A. In 2008.

4 Q. On election day?

5 A. On election day.

6 Q. Some of the voters that were standing in line that last  
7 weekend at Vets Memorial in 2008 to early vote, they actually  
8 left the line to go to the board of elections down Broad  
9 Street, right?

10 A. From my understanding, yes.

11 Q. Because at the board of elections office they could  
12 request an absentee ballot, right?

13 A. That's correct.

14 Q. And the board of elections could either mail that  
15 absentee ballot to them?

16 A. Yes.

17 Q. Or the board of elections could hand it to them in  
18 person?

19 A. That's correct.

20 Q. So some of those people got that absentee ballot in  
21 person and walked out to their car?

22 A. There were folks out there helping them giving them -- I  
23 noticed some volunteers out there telling voters that, don't  
24 stand in line. Go down to the board of elections, request an  
25 absentee ballot, fill it out in the car and put it in the

1 mailbox. We had a mailbox. Not just any mailbox, it was our  
2 absentee mailbox.

3 Q. You had a mailbox at the board of elections office where  
4 they could drop off their completed ballot?

5 A. That's correct. We had one at the Vets as well.

6 Q. Someone could walk into the board of elections, get an  
7 absentee ballot in person and drop it off in person at the  
8 board of elections office, right?

9 A. Yes.

10 Q. And that's still true today?

11 A. Yes.

12 Q. And will be true in 2016?

13 A. Unless the directive changes.

14 Q. A voter's family member can also deliver the completed  
15 ballot to the board of elections in person, right?

16 A. That's correct.

17 Q. In 2012, the early-voting site was moved up to the Morse  
18 Road location?

19 THE COURT: A ballot that's sealed and stamped, right?

20 THE WITNESS: It has to be sealed and has to have all  
21 the information correct on it.

22 THE COURT: Go ahead.

23 BY MS. PIERCE:

24 Q. So in 2012, you moved your early-voting center up to the  
25 one on Morse Road; is that right?

1 A. That's correct.

2 Q. Is that Morse and Kenny?

3 A. No. It's Morse and Karl.

4 Q. And the board of elections office is located in that  
5 same space, right?

6 A. Yes, it is.

7 Q. And that location is located on a public transit route?

8 A. Yes. 1700 Morse Road.

9 Q. It's located on a public transit?

10 A. That's correct.

11 Q. And in fact, that's one of the reasons you chose that  
12 particular location?

13 A. Yes, it is.

14 THE COURT: You're not on Broad Street anymore?

15 THE WITNESS: No, sir. We moved.

16 THE COURT: What's in that building?

17 THE WITNESS: It's Veterans Memorial.

18 THE COURT: Okay. I just live here. Go ahead.

19 BY MS. PIERCE:

20 Q. The new Morse Road location, that's also closer to the  
21 center of the voting population in Franklin County, isn't that  
22 right?

23 A. Yes. We estimate it's probably 60 percent of the voters  
24 in Franklin County live in that general area based on the  
25 voting population, eligible voters.

1 Q. It's also in the middle of population that largely  
2 walks, isn't that right?

3 A. That's correct.

4 Q. And again, you specifically chose that location for that  
5 reason?

6 A. That's correct.

7 Q. I think you mentioned that you observed some lines  
8 during the last weekend of early voting in 2012 as well,  
9 correct?

10 A. Oh, yeah. Yes.

11 Q. But the longest a voter had to wait in line, that you're  
12 aware of, is 45 minutes, thereabouts?

13 A. In '12 it might have been a little bit longer.

14 Q. And on those last few days of early in-person voting in  
15 2012, you had voters being bussed in to that location though,  
16 right?

17 A. That's correct.

18 Q. Franklin County is actually expanding that early-voting  
19 site for the 2016 general election?

20 A. That's correct.

21 Q. You're building out about 8,000 square feet of space to  
22 accommodate early voting?

23 A. That's correct.

24 Q. And that's going to be a state-of-the-art build out I  
25 think you said?

1 A. Unless the commissioners don't fund it. It's our desire  
2 that it will be state-of-the-art.

3 Q. You're also planning to put a tent outside the building  
4 to accommodate even more early voters?

5 A. To accommodate the cumulative voters.

6 Q. And you're planning to install TV monitors in that  
7 location to keep voters entertained while they're waiting in  
8 lines, planning?

9 A. Well, we're looking at -- may I say what we're doing?

10 Q. Sure.

11 A. We're looking at -- we have total of about nine TV  
12 monitors in the 8,000 square foot space and on there we're  
13 looking at explaining how to vote and how to use the machines.  
14 We're going to have electronic poll books in. We're going to  
15 do quick demonstration. We haven't gotten all this down pat  
16 yet. We may even have that information in Somali and Spanish  
17 language. We intend to have a lot of Somali voters in that  
18 area.

19 So we're going to try to prepare the voters as much as  
20 we can prior to them actually getting -- prior to them going to  
21 our intake person and give them their information to remind  
22 them what kind of information they need to have. If that  
23 changes. Right now all they need is to know who they are.

24 THE COURT: How many different languages are the  
25 ballots prepared in?

1 THE WITNESS: Just one.

2 THE COURT: Just English?

3 THE WITNESS: Just English. We're not required to do  
4 any other language because we don't meet that threshold of five  
5 percent of our community. But we see enough folks that we  
6 think it would be wise to at least do something, at least try  
7 it out this election to see how it works.

8 BY MS. PIERCE:

9 Q. And you also tried to have board employees who speak  
10 Somali or Spanish or other languages on staff to assist voters  
11 as well?

12 A. Yes. We bring in a lot of seasonal and, again, we do  
13 everything to try to make sure it's not one party and at least  
14 both parties or at least independent voter so it doesn't appear  
15 that we're trying to sway the votes one way or the other. So  
16 we make sure that the vote center has equal number of democrats  
17 and equal number of republicans in every position. Or  
18 independents if you can't find -- or unaffiliated.

19 Q. You talked with Mr. Kaul on direct a little bit about a  
20 report issued in 2008 and I believe you said that at that time  
21 in history you had concerns about early-voting hours. Have  
22 your thoughts or concerns about early-voting hours changed  
23 since that time?

24 A. Yeah, some. Yeah. They've tendered a little bit.

25 Q. Tendered?



1 A. Tendered.

2 Q. Could you explain to me what you mean by that?

3 A. Well, back in 2008 we had a lot of -- we had -- we could  
4 vote 35 days out and in 2012 we could not. So the reason I did  
5 that report was I was trying to highlight the importance of  
6 those 35 days of why we needed all 35 of those days. And  
7 several things have kind of happened.

8 From the standpoint of election official, so I kind of  
9 put my election official hat on and not my party hat and I have  
10 to do that a lot. So it occurred to me that as an elected  
11 official, Franklin County is pretty large and we spent a lot of  
12 money on elections here in Franklin County. We have a budget  
13 during presidential years of about \$12 million or more. And  
14 our surrounding counties don't come nowhere close to that kind  
15 of money.

16 We have an advertising budget of about \$600,000 during a  
17 presidential cycle and we advertise the early-vote center,  
18 early-vote hours, ID requirements, the fact that you could  
19 request an absentee ballot by mail instead of coming in to  
20 vote. And then we also do, closer to election, just an ID  
21 requirement and don't forget to go vote and exercise your right  
22 to vote.

23 What kind of happened was that our hours, and we had  
24 generous hours in 2008, and other counties, some of the smaller  
25 counties around us, we started getting some phone calls because

1 they were looking -- folks were complaining to us because we  
2 had the extended hours and they didn't and their voters were  
3 upset because not only do we have extended hours but we put a  
4 stamp on our absentee ballots returning.

5 THE COURT: You were making them look bad?

6 THE WITNESS: We made them look really bad. And this  
7 overflowed into numerous OAE0 meetings and we had numerous  
8 discussions about this at meetings in subsequent years. I was  
9 lucky enough or not lucky enough, I wasn't on the legislative  
10 committee but I would attend those because I thought I had skin  
11 in the game and it started occurring to me, boy, I really did  
12 make it hard for these smaller counties. So then I started  
13 tempering my judgment about it.

14 I would still love to have 35 days. Don't think I  
15 don't. I would love to have two weekends. But as an election  
16 administrator, I saw the problems that that was giving to some  
17 of my smaller contemporaries across the state and so I agreed  
18 to compromise and was hoping that they would also agree to  
19 compromise. So we basically sat in on closed doors, hollered  
20 at each other, fussed at each other and we agreed to come to a  
21 consensus and that consensus was some of the hours you're  
22 seeing now. That's where I am on it.

23 BY MS. PIERCE:

24 Q. I want to talk to you a little bit about DRE machines  
25 because Franklin County uses DRE machines for voting now; is

1 that right?

2 A. That's correct.

3 Q. As I can attest to. And you use DRE machines on  
4 election day and for early voting, right?

5 A. That's correct.

6 Q. State law requires DRE counties to have, in their  
7 inventory, one machine for every 125 voters; is that right?

8 A. That's correct.

9 Q. I'm sorry.

10 A. It's 175. One machine for every 175.

11 Q. Okay. But Franklin County has more DRE machines than  
12 the state law requires; is that right?

13 A. Yes.

14 Q. So Franklin County deploys machines on a 1 to 125 ratio?

15 A. Let's back up --

16 Q. Sorry. I got that all wrong.

17 A. -- just a hair on this. It's based on voters. It's  
18 based on eligible voters and based on active voters. So  
19 that's -- and then they allow us to extrapolate early voting.  
20 Folks who come out and early vote either in person, absentee or  
21 mail-in absentee. And so we were able to extrapolate those out  
22 of that number of active voters which then puts our voting  
23 machine to voter ratio we could take it down because we know,  
24 like this past election we know 11,000 folks voted in the  
25 early-vote center, I think 30,000 voted so we can extrapolate

1 those numbers from our election day totals. So this allows us  
2 to be able to deploy more machines than what the current ratio  
3 is.

4 Q. So I think I heard a yes in there that Franklin County  
5 actually has more DRE machines than the minimum required by  
6 state law?

7 A. When you talk about deployment, yes. Yes.

8 Q. Deployment and in your inventory?

9 A. We have 4,760 odd machines.

10 Q. There's nothing in state law that prevents Franklin  
11 County from doing that, that is having more machines than  
12 required by law?

13 A. That's correct. Matter of fact, we bought an  
14 additional -- the county paid for additional machines for us  
15 after we got our first group from the HAVA money, we bought  
16 some additional machines. I think we bought 500 additional  
17 machines.

18 THE COURT: 500?

19 THE WITNESS: I believe that was the number.

20 BY MS. PIERCE:

21 Q. When did you buy those?

22 A. We bought those in probably '7 maybe.

23 Q. And there's nothing in Secretary of State directives  
24 that prevents Franklin County from having more machines than is  
25 required by law?

1 A. That's correct.

2 Q. And to decide how many DRE machines you're actually  
3 going to deploy out in the precincts on election day, you take  
4 a look at turnout in the past like election; is that right?

5 A. That's correct.

6 Q. So for the 2014 gubernatorial election you took a look  
7 at turnout in the 2010 gubernatorial election?

8 A. That's correct.

9 Q. You also take a look at the length of the ballot, right?

10 A. That's correct.

11 Q. Because a longer ballot means the voter spends longer --  
12 spends more time at the voting machine?

13 A. That's correct.

14 Q. And if a DRE machine in Franklin County wasn't  
15 functioning correctly, you wouldn't deploy that machine on  
16 election day, right?

17 A. That's correct.

18 Q. And you won't be putting faulty election machines out in  
19 the field on the 2016 election day, right?

20 A. I will not.

21 Q. I think you talked with Mr. Kaul a little bit about  
22 lines to vote on election day at the Ohio State campus. There  
23 were long lines to vote there during the 2012 presidential  
24 election, right?

25 A. Yes.

1 Q. That year OSU actually switched rooms on you before the  
2 election, right?

3 A. Yes.

4 Q. You were actually in a smaller room on election day than  
5 you had planned for?

6 A. Yes, we were.

7 Q. You discussed how you break down poll books by alphabet  
8 but in 2012 at Ohio State the breakdown you put out there  
9 wasn't sufficient, the number of voters coming in, right?

10 A. No, it was not.

11 Q. So you had to go back and break them down more?

12 A. We had to break the books down. We added four more  
13 check-in places.

14 Q. The hope being that you could speed up intake of voters  
15 and keep that line moving?

16 A. That was the hope.

17 Q. So the lines were forming at the check-in process?

18 A. That's exactly right.

19 Q. Some of those voters had also shown up at the wrong Ohio  
20 State location to vote, correct?

21 A. Yes.

22 Q. So some voters were at the Ohio Union that should have  
23 been up at the Newman Center?

24 A. They have long lines, too, so they probably had to wait  
25 there as well.

1 Q. They were showing up at the wrong location?

2 A. Right.

3 Q. And vice versa?

4 A. Yes.

5 Q. And because the check-in process was taking so long in  
6 2012, not many of the DRE machines were actually being used by  
7 voters, right?

8 A. There was a lot of vacant DRE machines at both sites.

9 Q. Voters in Franklin County can look up their polling  
10 location on the board's website; is that right?

11 A. That's correct.

12 Q. And to do that all they have to enter is their name and  
13 their birth year and their street number, right?

14 A. Yes.

15 Q. And to further speed up the check-in process, your board  
16 is moving to electronic poll books in 2016?

17 A. Yes.

18 Q. The Franklin County Board of Elections is funded by the  
19 county commissioners I believe you said, right?

20 A. That's correct.

21 Q. And if you need additional funding for the board, you go  
22 back to the commissioners to ask for more?

23 A. We do every year.

24 Q. Just recently in 2015 you went back to ask for  
25 additional funding, right?

1 A. Twice.

2 Q. To the tune of an additional \$800,000. Does that sound  
3 right?

4 A. We may be going again.

5 Q. Did you receive that additional funding?

6 A. Yes. And we may be going again. So we may have three  
7 times.

8 Q. For 2015?

9 A. Yeah. For 2015.

10 Q. The Franklin County Board of Elections, the board  
11 members, they vote whether to accept or reject absentee  
12 ballots; is that right?

13 A. That's correct.

14 Q. And current law requires voters to enter a date of birth  
15 on their absentee ballot identification envelope?

16 A. Yes.

17 Q. So the ballot identification envelope is the one that  
18 actually contains the voter's voting ballot, right?

19 A. That's correct.

20 Q. And that envelope is how the board verifies that the  
21 correct person actually voted that absentee ballot, right?

22 A. Yes. It should have more than that -- it should have a  
23 name, first and last name, last four of your social, the date  
24 of birth or your driver's license number if you have it and  
25 your address, and then have you to sign it.



1 Q. The board in 2016 I believe also -- in 2016 will be  
2 preprinting name and address on that identification envelope?

3 A. I don't know. I do not know. Is that a directive?

4 Q. We'll get you that information, sir.

5 Leaving a signature off that identification envelope,  
6 that would be a big no-no, right?

7 A. That's cause to reject.

8 Q. You can't figure out who voted that ballot if they don't  
9 put a name on the envelope, right?

10 A. That's automatic reject.

11 Q. The new date of birth requirements for that ID envelope,  
12 that makes that category a little easier, doesn't it?

13 A. Yes, it does. That's not a fatal flaw as we use, the  
14 vernacular we use in board language. Fatal flaw. So that's  
15 not.

16 Q. That is not?

17 A. That could be remedied.

18 Q. So the voter doesn't actually fill in that line, you  
19 contact the voter to get that information?

20 A. Yes.

21 Q. And the voter could even get their date of birth wrong  
22 and the board could still vote to accept that ballot?

23 A. That's correct.

24 Q. So not a fatal flaw?

25 A. No, it's not.

1 Q. Board employees are not allowed to fill in information  
2 on a voter's absentee ID envelope, right?

3 A. That's correct.

4 Q. You're not allowed to do that for a provisional ID  
5 envelope either?

6 A. That's correct. They should not. They should not. We  
7 train them to look at it and tell if a person has not completed  
8 and encourage them to complete it. But we don't complete it  
9 for them.

10 Q. Why is that?

11 A. Because we could get the information wrong.

12 Q. And then that vote wouldn't be counted?

13 A. We just shouldn't be messing with that. They are not  
14 the voter. It's to be filled out by the voter.

15 Q. The Franklin County Board of Elections has received a  
16 number of national awards for your work, hasn't it?

17 A. Yes, ma'am.

18 Q. You won a national award for a tool you developed to  
19 assess ADA compliance at polling locations, right?

20 A. That's correct.

21 Q. And multiple counties are using that tool right now?

22 A. Yes, they are.

23 Q. You also have a program for recruiting high-quality poll  
24 workers from businesses and civic groups, right?

25 A. Yes.

1 Q. You won an award for that?

2 A. Yes.

3 Q. You have a system on election day that tracks complaints  
4 until they're resolved, right?

5 A. Yes.

6 Q. Won an award for that?

7 A. Yes, we did.

8 Q. You own the source code for your voter registration  
9 database, right?

10 A. Yes, we do.

11 Q. That makes it easy for your workers to customize the  
12 lookup to help find voters in the system?

13 A. Yes.

14 Q. Helps identify provisional voters and get their vote  
15 counted, right?

16 A. Yes.

17 Q. Every election you print a manual to train your poll  
18 workers, right?

19 A. That's correct.

20 Q. You assess their understanding of that training, right?

21 A. Yes, we do.

22 Q. And if they don't pass that assessment, they go back to  
23 training, right?

24 A. Or we don't use them.

25 Q. Or you don't use them.

1 A. Or we make them greeters.

2 Q. And you won a national award for that, right?

3 A. Yes, we did.

4 MS. PIERCE: Just give me one second, Mr. Anthony.

5 BY MS. PIERCE:

6 Q. So I think you mentioned you would love to have two  
7 weekends for early voting; is that right?

8 A. Yes, I did say that.

9 Q. Do you know how many weekends of early voting there will  
10 be in the 2016 general election?

11 A. There will be two weekends.

12 Q. Does a voter need postage to drop a completed absentee  
13 ballot off at the drop box at the board of elections?

14 A. They do not.

15 MS. PIERCE: Okay. Thank you, Mr. Anthony.

16 THE WITNESS: Thank you.

17 THE COURT: Redirect?

18 MR. KAUL: Yes, Your Honor.

19 - - -

20 REDIRECT EXAMINATION

21 BY MR. KAUL:

22 Q. Mr. Anthony, you were asked about voters who don't fill  
23 in the date of birth information.

24 A. Yes.

25 Q. How are those voters contacted?

1 A. By phone. Let me back up. By mail.

2 Q. Are you permitted to contact them any other way?

3 A. No.

4 Q. And what if the categories are left blank?

5 A. Pardon me?

6 Q. What if categories are left blank?

7 A. We send -- we're actually in the last day of this  
8 process today for the 2015 election. If some areas are blank,  
9 we have to send a letter to the voter if we have the right  
10 address to ask them to supply us with the information that's  
11 left off the envelope.

12 Q. Do you know what the response rate is to those mailings?

13 A. I have -- no, I do not.

14 Q. Do you know approximately what it is?

15 A. No, I do not. I know what the -- I kind of know what  
16 our approval rate is on provisional ballots. We end up  
17 approving over 87 percent of the ballots. Sometimes higher.  
18 It may get up into the 90 percent. Because we try to do much  
19 of the work prior to sending the stuff out so we could count as  
20 many as we could count. The ones we can't count are normally  
21 the ones that are just not registered.

22 Q. You were talking about comparisons across counties  
23 before?

24 A. Yes, sir.

25 Q. Did you assess the early-voting usage across counties?

1 A. We have. The association, of the 2014 election cycle,  
2 we kind of got all our heads together and started e-mailing  
3 each other how many folks are showing up. I guess it was the  
4 last Saturday in 2014 and we were sharing e-mails across the 88  
5 counties like hearing counties that we had five folks show up.  
6 Franklin County we had 300, Putnam County, zero. Is that what  
7 you were asking?

8 Q. That's what I was going to ask. How did early-voting  
9 usage in large counties compare to small counties?

10 A. There was no comparison. We certainly had -- there were  
11 some small counties that had zero folks that showed up all day  
12 long or eight folks that show up all day. And the majority of  
13 them, only the larger counties were experiencing turnouts.

14 THE COURT: This is last Saturday before the election?

15 THE WITNESS: Yes. In 2014.

16 BY MR. KAUL:

17 Q. Does Franklin County inform voters when there are lines  
18 to vote?

19 A. No, sir, we do not.

20 Q. You mentioned the state-of-the-art facility for early  
21 voting?

22 A. Yes, sir.

23 Q. That may or may not get built?

24 A. I'm hoping, knock on wood.

25 Q. Why are you building a state-of-the-art facility?

1 A. Well, we're building for the presidential election  
2 cycles because that's the largest cycle. We're doing it so  
3 that we won't have voters -- we will limit voters' exposure to  
4 the elements is what we're trying to do.

5 Q. Why are you building a tent?

6 A. Because that line is going to go out the door and  
7 depending on what the weather is, we've been fortunate -- in  
8 2012 we were very fortunate that the last weekend it was nice  
9 weather but we had -- I bet we had 1,000 people standing  
10 outside the building but it was a nice Saturday and Sunday fall  
11 day. I'm not going to depend on that to happen all the time.  
12 We're going to have a tent this time around.

13 Q. So your planning assumes there will be long lines?

14 A. That's correct.

15 Q. Ms. Pierce asked you about where the voting --  
16 early-voting location was in relation to the voting  
17 population --

18 A. Yes, sir.

19 Q. -- in the county?

20 Do you remember that map you were looking at before?

21 A. Yes.

22 Q. Is that a map of where the voting populations are in  
23 Franklin County?

24 A. Well, it shows where -- it shows where African-Americans  
25 lived in 2008 that voted at the downtown location.

1 Q. Is that consistent with your knowledge of where  
2 African-Americans live?

3 A. Yes. Pretty much consistent.

4 Q. You were asked about people going to the board of  
5 elections in 2008 by Ms. Pierce.

6 A. Yes.

7 Q. And she was getting at the same thing I was trying to  
8 but she asked the questions better than I did because she got  
9 you to talk about the right topic which I was unable to.

10 A. Sorry about that.

11 Q. No. No. It was her questions that did it, unlike mine.

12 What I was getting at was voters -- so voters -- I just  
13 want to be clear. Voters were at the early-voting location  
14 went to the board of elections?

15 A. That's correct.

16 Q. And why were they doing that?

17 A. Because at the board of elections you can request an  
18 absentee ballot and we would give you an absentee ballot. We  
19 would either mail it to you or we would hand it to you and you  
20 would have to leave. You couldn't fill it out inside. You had  
21 to leave and then -- most folks just went out in the parking  
22 lot and filled it out and then mail it into the mailbox we had  
23 outside.

24 Q. And so were the lines long at the early-voting center?

25 A. Yeah, in 2008 they were huge.



1 Q. And did having that second place for voters to go  
2 alleviate the lines to some extent?

3 A. It was something that we were not pushing. It was  
4 something that some folks realized and I don't believe it  
5 really did because the lines were still -- well, you saw the  
6 pictures. They were still way out.

7 Q. How about for the people who went to your board of  
8 elections office?

9 A. They probably got in and out real quick.

10 Q. You were asked about lines in the 2008 election?

11 A. Yes.

12 Q. And on election day specifically?

13 A. Yes.

14 Q. Do you know if there were lines at Ohio State?

15 A. I'm not sure. Historically speaking, there probably was  
16 a line at Ohio State.

17 Q. And you said in 2008 for early voting you saw a lot of  
18 people who stayed in line for the six-hour wait?

19 A. Yeah. I just saw people coming. I saw people leaving  
20 but I didn't know if they were leaving because they voted or if  
21 they were leaving because they were just frustrated.

22 Q. You don't know if people showed up and saw the line and  
23 never got in line?

24 A. I don't know that. I'm quite sure that happened.

25 Q. And was there anything historic about the 2008 election?

1 A. Oh, yeah. You need me to tell you?

2 Q. No. I think I know.

3 MR. KAUL: Thank you.

4 MS. PIERCE: One moment, Your Honor.

5 No further questions.

6 THE COURT: Thank you, Mr. Anthony. You may step  
7 down.

8 THE WITNESS: Thank you, sir.

9 THE COURT: We will adjourn until nine o'clock in the  
10 morning. Have a good evening.

11 (The proceedings were adjourned at 5:05 p.m.)

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I, Lahana DuFour, do hereby certify that the foregoing is a true and correct transcript of the proceedings before the Honorable Michael H. Watson, Judge, in the United States District Court, Southern District of Ohio, Eastern Division, on the date indicated, reported by me in shorthand and transcribed by me or under my supervision.

s/Lahana DuFour  
Lahana DuFour, RMR, CRR  
Official Federal Court Reporter