

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 IX  
BEFORE THE HONORABLE MICHAEL H. WATSON  
WEDNESDAY, DECEMBER 2, 2015; 9:30 A.M.  
COLUMBUS, OHIO

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Wednesday Morning Session

December 2, 2015

- - -

1 THE COURT: Good morning. Please be seated.

2 Okay. So let's start with Mr. Damschroder. You want  
3 declaration, 30(b)(6) and his other transcript in as well?

4 MR. SPIVA: No. We don't want the declaration, Your  
5 Honor. They, I think, want to put the declaration in. We  
6 actually object to that, but we want the 30(b)(6) designations  
7 and the individual designations in as evidence.

8 THE COURT: Okay.

9 MR. VOIGT: Your Honor, we don't feel that's  
10 necessary, because he's going to be testifying today. And,  
11 second, the --

12 THE COURT: Do you want the declaration?

13 MR. VOIGT: Yes, Your Honor. We believe that if the  
14 transcript comes in, presumably the purpose of that deposition  
15 was to test the contents of the declaration. You know. We  
16 would say that the declaration should come in.

17 THE COURT: Well, since he's going to testify, you'll  
18 both have an opportunity to elicit from him whatever testimony  
19 you want to elicit. And I'm not going to limit the scope of  
20 that. So, I mean, he's the oracle, supposedly. So let's let  
21 him serve in that role.

22 I'd rather not admit the declaration, then. The  
23  
24  
25

1 30(b)(6), I've read it. I suppose you can  
2 certainly cross-examine him if he testifies differently than he  
3 did in either one of the depositions. But since we have him  
4 live -- you're going to have that opportunity -- I'd rather  
5 keep it out.

6 MR. SPIVA: Okay.

7 THE COURT: Pat McDonald. In a 35-page deposition,  
8 what did you get from him?

9 MR. SPIVA: Well, we got the budget.

10 THE COURT: What do you want?

11 MR. SPIVA: Right. I mean, the designations, Your  
12 Honor, without having it right in front of me, but I did take  
13 that deposition, you know, he confirmed the budget for Cuyahoga  
14 County and how it alternated between presidential years and  
15 midterms and compared that, of course, to the cost of golden  
16 week in Cuyahoga County. He said some helpful --

17 THE COURT: Did he testify any differently than his  
18 deputy director?

19 MR. SPIVA: Well, he has -- again, we would object to  
20 the declaration coming in. He has not been here live, and I  
21 understand he's not coming live. He actually made some what we  
22 viewed as helpful admissions. You know. I don't want to speak  
23 out of school, not having it right in front of me, but  
24 there -- as I recall, there were several places where I think  
25 there were points of agreement that he had with our point of

1 view on things like, you know, prevalence of fraud and the  
2 like. And we pretty sparingly, as I recall, designated.

3 THE COURT: Right.

4 MR. SPIVA: In all honesty, I think we might have  
5 overdone it on the 30(b)(6) for Mr. Damschroder. I reviewed  
6 that more carefully last night than I had. But, you know, Mr.  
7 McDonald, Director McDonald, is not going to be here. He is  
8 outside of the hundred miles. There is no dispute about that  
9 even, you know, as compared to crow flies versus Google Maps.  
10 And, you know, we thought there were several helpful statements  
11 in there. And he authenticated some exhibits as well.

12 MR. VOIGT: Your Honor, --

13 THE COURT: Yes.

14 MR. VOIGT: -- we would object, obviously, to the  
15 exhibits. I mean, I'm not sure what Mr. Spiva is referring to.  
16 But in terms of the --

17 THE COURT: Well, let's do this: Let's do our  
18 testimony now, and we'll get back to those issues when we've  
19 got everything in front of us so that we can make an informed  
20 decision.

21 But you asked about what I want in closing. Ultimately,  
22 I want one final brief, sort of omnibus brief, from each of  
23 you. If you want to expand your trial briefs to include  
24 references to the trial transcript, that will be fine. If  
25 there are motions outstanding or issues that are outstanding

1 for briefing, you may include them in that one final closing  
2 brief. I'd prefer to do that, rather than closing argument.

3 MR. VOIGT: Okay.

4 MR. SPIVA: Okay.

5 THE COURT: Okay?

6 MR. SPIVA: Great!

7 THE COURT: So you have Sherry Poland?

8 MR. VOIGT: Yes, your Honor. And then Mr.  
9 Damschroder.

10 THE COURT: Okay. And what do we have done with  
11 Mr. Price?

12 MR. McTIGUE: Mr. Price's declaration is an exhibit,  
13 plaintiffs' exhibit, now.

14 THE COURT: Okay. And have I seen that?

15 MR. SPIVA: I don't think we've handed it up yet.

16 I think, along with Mr. Price's declaration, we have a  
17 few other things that we've put exhibit stickers on that, you  
18 know, we were wanting to deal with kind of at once. I mean --

19 THE COURT: Okay. We'll do that.

20 MR. SPIVA: All right. Thanks.

21 THE COURT: You don't plan to call him, then?

22 MR. McTIGUE: No.

23 THE COURT: All right. Very good.

24 Where are you on the declaration? You agree with it?

25 MR. VOIGT: With Mr. Price's declaration, Your Honor,

1 you know, I recognize there were some difficulties having him  
2 here at attendance. We do object to the content based on  
3 relevance. I mean, we don't believe that his statement, you  
4 know, helps or is determinative of legislative intent. But  
5 beyond that relevance objection --

6 THE COURT: Well, if someone would like to share it  
7 with me at some point, then I could play, too. So that would  
8 be nice. But we don't need to do it right now. Just, at some  
9 point, get it to me. Okay? And then what?

10 MR. VOIGT: Just one more thing. They didn't attempt  
11 to actually try to have Mr. Price appear until trial, Your  
12 Honor.

13 THE COURT: Well, they've sought, multiple times, to  
14 subpoena him --

15 MR. VOIGT: During trial, Your Honor, yes.

16 THE COURT: -- to no avail.

17 There is also -- the other issue that I have is Daniel  
18 Troy and John Weber. You want declarations or transcripts, or  
19 both, from them?

20 MR. SPIVA: Yes. I think those are just the  
21 designated transcripts. And I believe those two are clearly  
22 outside of the hundred-mile range.

23 THE COURT: As would Mr. McDonald be.

24 MR. SPIVA: Yes, that's right. And we withdrew, or,  
25 we didn't press three of the ones that fell within the

1 crow-flies hundred miles. I mean, I think we have an argument,  
2 I think still, at least with respect to one of them, that she  
3 would fall within the managing-agent branch of 32(a). But we  
4 just -- to resolve a dispute and take one dispute off the  
5 table, we have withdrawn that.

6 THE COURT: All right. Well, we'll revisit that. But  
7 we're going to have Mr. Damschroder and Ms. Poland first,  
8 correct?

9 MR. VOIGT: Yes, Your Honor.

10 THE COURT: All right. So we will circle back on the  
11 other three. Okay?

12 Call your next witness.

13 MS. PIERCE: Defendants call Ms. Sherry Poland, Your  
14 Honor.

15 THE COURT: Good.

16 Ms. Poland, if you'd approach the witness stand over  
17 here, raise your right hand and be sworn.

18 (Witness sworn.)

19 THE COURT: Ms. Pierce, you may inquire.

20 MS. PIERCE: Thank you, Your Honor.

21 - - -

22 SHERRY POLAND

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

25 DIRECT EXAMINATION



1 BY MS. PIERCE:

2 Q. Good morning, Ms. Poland.

3 A. Good morning.

4 Q. Would you please state your name for the record? And  
5 just spell your last name, if you would.

6 A. Sure. It's Sherry Poland, P-o-l-a-n-d.

7 Q. Great! Thank you.

8 And, Ms. Poland, where are you currently employed?

9 A. I am the Director of the Hamilton County Board of  
10 Elections.

11 Q. And how long have you served as the Director of the  
12 Board of Elections?

13 A. I was appointed Director in June of 2014.

14 Q. Okay. And what are your responsibilities as Director of  
15 the Hamilton County Board?

16 A. Right. I'm responsible for the day-to-day operations,  
17 which is administering all local, state, and federal actions  
18 that occur in Hamilton County. That includes maintaining our  
19 voter registration database, processing absentee  
20 requests/applications, recruiting and training poll workers,  
21 printing of the ballots, vote counting. The list goes on.

22 Q. Okay. As the Director, how do you interact with the  
23 Board of Elections, the four-member board?

24 A. Sure. I was appointed Director by a four-person board.  
25 It's made up of two members of the Democratic Party, locally,

1 and two members of the local Republican Party.

2 Q. Okay. And, as Director, are you involved in the  
3 budgeting process for the Board of Elections at all?

4 A. Yes. I do oversee the budgeting process.

5 Q. And what is the Board's budget heading into the 2016  
6 election cycle?

7 A. It's a little under ten million. I think it's  
8 approximately 9.8.

9 Q. And has that budget been set for 2016, or is that kind  
10 of still in the process?

11 A. Right, it is set. We submitted our budget. We were  
12 required to submit our budget to County Administration in July  
13 of 2015. And I believe the commissioners are in the process of  
14 voting on the final County budget any day now.

15 Q. Okay. Shifting gears just a little bit, how does an  
16 individual in Hamilton County register to vote?

17 A. By completing a registration form. And that  
18 registration form can be obtained numerous ways. The form can  
19 be downloaded from our website and mailed in or delivered in  
20 person. They can also obtain registration forms from public  
21 libraries, Bureau of Motor Vehicles, Jobs and Family Services.  
22 There is also a lot of community organizations and outreach  
23 events where people can register to vote.

24 Q. Okay. So does an individual have to come to the Board  
25 of Elections to register to vote?

1 A. No, they do not need to appear in person.

2 Q. All right. And what options does a voter have to update  
3 their registration with the Board of Elections?

4 A. They can complete a registration form. It's the same  
5 type of form when someone moves, has a change of address or a  
6 change of name. And they can obtain those forms in all those  
7 ways I previously mentioned. Or they could -- if they have a  
8 change of address, they can change their address online through  
9 the Secretary of State's website.

10 Q. Okay. And how many registered voters do you have in  
11 Hamilton County, approximately?

12 A. Approximately a little over 540,000.

13 Q. How do most of your voters in Hamilton County actually  
14 cast a ballot? What method do they normally choose?

15 A. A majority of the voters in Hamilton County,  
16 approximately 70 percent, vote on election day at their polling  
17 place.

18 Q. And how do the other 30 percent or so typically vote?

19 A. By absentee mail. I'm not -- I'm sorry. By absentee  
20 voting, which includes by mail and in person. But of those  
21 that choose to vote by absentee, the majority of those vote by  
22 mail.

23 Q. Are there any electoral jurisdictions in Hamilton County  
24 that actually cross over county lines?

25 A. Yes. We have many. Both of the congressional districts

1 in Hamilton County overlap into other counties. We have many,  
2 many school districts that overlap into other counties. We  
3 even have one city that overlaps into three different counties.

4 Q. Does that create any issues for the Board from an  
5 election administration standpoint?

6 A. Yes. We have to work on, and have, coordination with  
7 the other counties, making sure that the same ballot language  
8 is appearing on the same ballots in every county, making sure  
9 that we are relating the same information as far as election  
10 results and providing the same opportunities for voters in all  
11 counties.

12 Q. What do you mean by "opportunities for voters"?

13 A. That we're providing the same access to the ballot as  
14 far as having uniform days and hours of when voters can appear  
15 to vote in all counties, as well as the same time frame for  
16 casting absentee ballot by mail, the same way we have uniform  
17 hours for voting on election day throughout the state.

18 Q. And, Ms. Poland, I understand you're recovering from a  
19 cold. So, if you need to get water or anything, please feel  
20 free to do so.

21 A. Thank you. Thank you.

22 Q. Can you describe how a golden week voter, that is, a  
23 voter who wanted to both register and vote early in person at  
24 the same time, how that voter was handled in Hamilton County  
25 when golden week was in existence?

1 A. Sure. If a voter appeared to register and vote at the  
2 same time, the voter was given a registration form that was  
3 completed, and then the voter was sent to the absentee voting  
4 department, where they were then processed as an absentee  
5 voter. The Board's staff would immediately issue an  
6 acknowledgment card to the voter. Basically, it contains the  
7 voter's name and address, acknowledges their registration, and  
8 also has their precinct polling location information, that sort  
9 of thing. That was mailed on the very same day that the voter  
10 appeared to register.

11 Q. Why the same day?

12 A. Because the timing is so critical. The acknowledgment  
13 card serves two purposes. It acknowledges to the voter that  
14 their registration has been received and provides necessary  
15 information to the voter, but it also confirms the voter's  
16 address for the Board of Elections. And so it was mailed on  
17 the same day so that we would have time that if the card -- The  
18 acknowledgment card is not forwardable. So, if the  
19 acknowledgment card was returned as undeliverable, the same day  
20 the acknowledgment card is returned as undeliverable, we then  
21 would issue a confirmation notice. A confirmation notice is  
22 forwardable. So that's an attempt to confirm the voter's  
23 address, whether they're still at the same address they  
24 registered from, or if they've moved.

25 Q. Okay. What else is the Board doing during that week

1 before the election? So that would be around 35 days before  
2 the election.

3 A. There is many processes that are occurring during that  
4 time frame. That is the last few days before voter  
5 registration. So, our registration uptick, it's always higher.  
6 You always have more registrations right at the very end. So  
7 we're entering registrations. We're editing registrations,  
8 because we proof every registration that's entered into the  
9 database.

10 We also are preparing our absentee ballots by mail.  
11 Again, the majority of voters who vote by absentee in Hamilton  
12 County vote by mail. So it's processing those applications,  
13 putting together the packets, printing the ballots for those.

14 We also have thousands of pieces of voting equipment  
15 that at that time frame the testing is beginning on those  
16 pieces of equipment. You know, we have staff members working  
17 at our warehouse facility on that project.

18 We also at that time are beginning the printing process  
19 for our ballots that are used on election day, because the  
20 majority of voters in Hamilton County vote on election day.  
21 And that's a pretty massive process. We have 540,000. If it's  
22 a multiple-page ballot, you're talking, you know, over a  
23 million sheets of paper that need to be printed.

24 So we have all those many processes. There's also  
25 campaign finance deadlines that occur around that time period.

1 So there is lots going on.

2 Q. How many people actually utilized golden week? And,  
3 again, by that I mean registered and voted at the same time in  
4 Hamilton County in 2008.

5 A. In 2008, we had -- I believe there was 600.

6 Q. Okay. What about in 2010, if you remember?

7 A. Right. I believe it was a low number, approximately 39,  
8 40. I don't believe it was a high number.

9 Q. All right. What about in 2012?

10 A. In 2012, there were 199.

11 Q. Okay. Did the Board, to your knowledge, receive any  
12 complaints from voters about the elimination of golden week?

13 A. I have no personal knowledge of any complaints by  
14 voters.

15 Q. Okay. And how did the elimination of golden week  
16 alleviate the administrative burden on the Board in preparing  
17 for election day, say in 2014 and 2015?

18 A. Right. It gives us --

19 MR. MARTIN: Objection, Your Honor. It's leading.

20 THE COURT: Rephrase.

21 BY MS. PIERCE:

22 Q. Did the elimination of golden week help with those  
23 administrative burdens that we were just discussing?

24 A. Yes, it helped greatly. It gives us a whole extra week  
25 to prepare those absentee ballots, both by mail and to prepare

1 for the voters that choose to vote in person.

2 We're very deadline driven in election administration,  
3 very calendar driven. There is processes you cannot begin  
4 until this day and you have to complete by this day. Ballot  
5 production is one of those things. The very last filing  
6 deadline doesn't occur until the 60th day prior to election  
7 day. So we don't know what's going to be on the ballot until  
8 close of business by the 60th day.

9 We do have to have ballots prepared for UOCAVA voters 45  
10 days before, but that's a small number. In fact, in this past  
11 election, it was less than a hundred. And I think, in  
12 presidentials, it's maybe just a thousand or a few thousand.  
13 That is doable. But, having ballots prepared, we could have a  
14 backlog of 50,000. So, that's a big difference. So having  
15 that extra week really assists the Board of Elections in  
16 accurately preparing for the opening of absentee voting.

17 Q. If gold -- what kind of staffing would you need to have  
18 in place for a presidential election to administer golden week?

19 A. We would have to bring in extra temporary staff. We do  
20 not have the staff that can handle a presidential, in general,  
21 full-time staff. So our full-time staff would have to work  
22 overtime, and our temporary staff would have to work overtime.

23 Again, you can't begin the process until this date. It  
24 has to be completed by this date. The only thing you can do is  
25 bring in more staff and work more hours.



1           And something we face in Hamilton County is, our  
2 facility is not -- doesn't meet our space needs. And so  
3 sometimes we're limited by the number of people we can bring in  
4 to get the job completed purely due to space constraints.

5           Q. And is there a cost associated with that extra staffing?

6           A. Yes. I mean, there is overtime costs, as well as, you  
7 know, paying temporary employees to start earlier and also work  
8 overtime.

9           Q. Are you aware of any instances of voter fraud that  
10 occurred in Hamilton County during golden week in 2012?

11          A. I am. There were two instances of voter fraud that  
12 occurred during golden week in Hamilton County in 2012.

13          Q. Could you describe a little bit about what happened in  
14 those cases?

15          A. Sure. To the best of my recollection, both of those  
16 voters appeared at the Board of Elections to register and vote  
17 on the same day. We followed our procedures to issue the  
18 acknowledgment card the same day. Their cards were returned as  
19 undeliverable. We then issued the confirmation notice the same  
20 day. Those were returned as undeliverable.

21                 Per Secretary of State directive, we presented those  
22 ballots to our Board, in a public meeting, to determine whether  
23 or not they should be counted. And our Board, at that time,  
24 voted not to count them because the address could not be  
25 confirmed.

1 Q. Were those two cases referred for prosecution?

2 A. Yes. Shortly after the canvassing of the election was  
3 over, the Board staff investigated, and the Board referred  
4 those cases to the Hamilton County Prosecuting Attorney's  
5 Office, who -- I believe a grand jury returned indictments on  
6 both the individuals.

7 Q. Other than those two cases you were just discussing,  
8 were any other golden week ballots not counted in 2012 because  
9 of that confirmation process you described?

10 A. There were. There were four ballots that were not  
11 counted for the same reason. So there was a total of six that  
12 were originally presented to the Board to determine whether or  
13 not they should be counted.

14 THE COURT: You have an ability to match up the  
15 address, correct?

16 THE WITNESS: Correct. Correct. So, because we could  
17 not confirm those six addresses, those votes were not counted.

18 As I described before, after the canvassing was over and  
19 we had more time to conduct an investigation, it was determined  
20 that four out of the six actually did live at the address that  
21 was on their absentee ballot. Their ballots were not counted,  
22 but they, obviously, were not referred to the Prosecutor's  
23 Office.

24 BY MS. PIERCE:

25 Q. Would that process have played out differently if golden

1 week had not been in place?

2 A. I believe that it would have, because the process -- any  
3 voter, not just a voter who votes during golden week, but every  
4 voter who registers to vote is sent an acknowledgment card.  
5 And, under Ohio law, if that acknowledgment card is returned as  
6 undeliverable, they are flagged that they have to vote  
7 provisionally when they appear to vote. So, then, when the  
8 voter comes to vote provisionally, either at their polling  
9 place on election day or in person at the Board of Elections,  
10 they pass the provisional ballot, and they record their address  
11 on the provisional affirmation envelope. So that's confirming  
12 their address, and that's sufficient, under Ohio law, to then  
13 count the ballot.

14 Q. Okay. So how is that different than what actually  
15 happened?

16 A. Well, again, if the voters would have registered to vote  
17 and then there would have been enough time for the  
18 acknowledgment process to play out, when the voter then  
19 appeared to vote, they would have cast a provisional ballot and  
20 been given the opportunity to confirm. But because it happened  
21 all at the same time, there wasn't that second chance for the  
22 voter to confirm where they live in person.

23 Q. So let's switch gears, just a little bit, and talk about  
24 the early in-person voting location. Where is Hamilton  
25 County's early in-person voting location?

1 A. It's at our board headquarters, our main office, which  
2 is in downtown Cincinnati.

3 Q. Is that on a public transport line?

4 A. Yes. Government Square is just a few blocks away. And  
5 Government Square is, like, the central hub for public  
6 transportation in Cincinnati. And it's also right -- minutes  
7 away from 71 and 75, major interstates.

8 Q. Does the Board of Elections maintain a drop box at that  
9 early voting center?

10 A. We do. We have a 24-hour drop box.

11 Q. What considerations would the Board need to take into  
12 account if it were to open additional early in-person voting  
13 locations?

14 A. There is many considerations we would have to take into  
15 account, many questions: How many early voting locations,  
16 where would they be located throughout the county. I think  
17 that that, sometimes, can be a difficult decision for boards of  
18 elections to make. And then, you know, you have to rent the  
19 facility. Then there is the general office supplies. There is  
20 the additional staffing. Other questions are -- right now,  
21 with one location, any voter in Hamilton County can come to  
22 that one location. If there is multiple, would voters be  
23 assigned to certain areas, to certain locations to vote, the  
24 way they are on election day? Or would they -- or would any  
25 voter be able to go to any early voting location?

1           And, if that was the case, then you have to have every  
2 different ballot style that there is in Hamilton County  
3 available at every location. We can do that with one location.  
4 But there is -- in a primary election, like in a presidential  
5 primary, there is thousands of different ballot styles just in  
6 Hamilton County. So we would have to be able to provide all  
7 those thousands of different ballot styles at every location.

8           The advantage of having it at one location is that we  
9 have full-time -- again, we bring in temporary employees that  
10 assist in processing absentee voters, but we can have our  
11 full-time employees oversee that process.

12           I'd have concerns that if it's -- if there is multiple  
13 early voting locations, I don't have enough full-time staff to  
14 send a full-time staff person to each one of those locations.  
15 So I'm relying on temporary staff, who doesn't know the process  
16 as well. They're good, but they don't know it as well. And  
17 they would have thousands of different ballot styles to choose  
18 from. And I have concerns about them being able to make sure  
19 the voter receives the correct ballot.

20           I also have computer-networking concerns. We would have  
21 to have the voter registration system at each one of these  
22 sites. And, if there is multiple sites, we're going to need a  
23 way to network that so that voters can go from location to  
24 location to location voting. And I just -- I know we don't  
25 have the resources to set up that type of network. So we would

1 have to consult with an outside vendor.

2 There is also the ballot printing, additional licenses  
3 for ballot-printing software. There is the whole security  
4 issue with voted ballots, you know. Do we trust that they're  
5 out at these different locations? So, you know, we have  
6 bipartisan officials that we'll have to transport them from  
7 those locations back down to the Board, ballot accounting, that  
8 sort of thing.

9 There is a lot to be thought out about this.

10 Q. Is there a monetary cost that comes with those  
11 considerations?

12 A. Yes. All of what I just mentioned would be, you know, I  
13 believe, extremely costly.

14 Q. Okay. Under the current --

15 THE COURT: Can you ballpark that?

16 THE WITNESS: The best ballpark I can do is to say  
17 that we took a look at what our one current location costs to  
18 operate, and that's approximately 75,000.

19 THE COURT: Thank you.

20 BY MS. PIERCE:

21 Q. Under your current 2016 budget, would Hamilton County be  
22 able to accommodate an additional location next year?

23 A. No, not under the current budget. No.

24 Q. Switching gears, again, to mail-in absentee voting,  
25 voting by mail, prior to the Secretary of State's statewide

1 mailings, did Hamilton County mail absentee ballot  
2 applications?

3 A. We did.

4 Q. Who did you mail them to?

5 A. I think we may have to all voters in some elections.  
6 There may have been an election where we only mailed to active.  
7 I don't recall the details.

8 Q. Did Hamilton County include return postage in those  
9 mailings?

10 A. No.

11 Q. Why not?

12 A. Due to the extra cost.

13 Q. Okay. Under the current law, what information is  
14 required on absentee identification envelopes?

15 A. It must contain the voter's name, address, date of  
16 birth, a form of ID, and their signature.

17 Q. And does the Board pre-fill in some of those fields?

18 A. Yes. We pre-fill the name and the address.

19 Q. Okay. What happens if a voter does not correctly fill  
20 out the information required on an absentee ballot  
21 identification envelope?

22 A. The voter is sent a uniform form that the Secretary of  
23 State proscribes informing them of the information that was  
24 missing and allowing them the opportunity to provide that  
25 information on that form. And the voter can return that in

1 person, or they can simply just mail it back to the Board of  
2 Elections.

3 Q. And, in your experience, why is that information  
4 important, that information that's required on that ID  
5 envelope?

6 A. Right. Well, it allows us to accurately identify the  
7 voter, issue voter credit to the correct individual to make  
8 sure that the voter -- by signing it, they're -- even though we  
9 pre-print the address, they're signing, confirming that that is  
10 their address so we know they received the correct ballot for  
11 their precinct.

12 Q. Have you ever had concerns that the wrong voter voted a  
13 ballot, an absentee ballot, that you got returned?

14 A. We have had that happen in Hamilton County.

15 Q. Would you describe what happened?

16 A. We had a voter who cast an absentee ballot in the name  
17 of three to four other individuals. She knew the individuals  
18 well enough that she knew their name, their address,  
19 their -- date of birth was not required at that time. She knew  
20 a form of their ID, and she got their signature pretty close.  
21 And all those ballots were counted.

22 Q. What election was that?

23 A. The 2012 presidential election.

24 Q. Did you have any other circumstances like that in the  
25 2012 election?



1 A. We did. We had another individual who his wife had  
2 requested an absentee ballot. She passed away before she  
3 received the ballot, and he voted the ballot in her name.

4 Q. Have you had any circumstances like that after the 2012  
5 election?

6 A. I don't believe so.

7 Q. Has the Board rejected absentee ballots for insufficient  
8 information on that ID envelope?

9 A. We have.

10 Q. Have you rejected absentee ballots in the 2015 and 2014  
11 elections for those reasons?

12 A. We have. We have not seen any type of significant  
13 change. We haven't -- the overall number of rejected absentee  
14 ballots in Hamilton County has not increased, I don't believe,  
15 in the past few elections. I think it's stayed about the same.

16 Q. Are those same five fields of information now required  
17 on a provisional identification envelope?

18 A. They are.

19 Q. Okay. And why is that information important in that  
20 context?

21 A. All right. It's extremely important because it allows  
22 the Board of Elections to identify the individual. There are  
23 many individuals who have the same first and last name, just in  
24 Hamilton County. There is a lot more that have it statewide.  
25 And it's particularly important with provisionals because the

1 number one reason why voters vote provisionally is that they  
2 move and fail to update their address prior to the close of  
3 registration. So you have a number of voters who will move  
4 from county to county. And, in Ohio, that's fine as long as  
5 you are registered anywhere in the state prior to the close of  
6 registration. If you move to another county, you can go to  
7 that new county, the correct polling location, and cast your  
8 ballot.

9           So what happens in the past, prior to the address being  
10 required on the form, is that voters wouldn't fill out the  
11 address. They would give us their name and their signature and  
12 a form of ID, but there would be no address. So, if  
13 they -- they could do everything right, go to the correct  
14 polling location, pronounce their -- state their address to the  
15 poll worker; the poll worker correctly processes them,  
16 provisionally, in the correct location, but then the voter  
17 doesn't put the address on the provisional envelope. So, when  
18 the bipartisan election officials at the Board of Elections are  
19 conducting the verification process, they have no way of  
20 knowing where the voter lives. So, with no way of knowing if  
21 they cast the ballot in the correct location, their ballot  
22 would be rejected.

23           So what we have seen since the address is now required  
24 to be provided, the overall number of provisional ballots, at  
25 least in Hamilton County, the acceptance rate has increased

1 based on this new requirement.

2 Q. What about the date-of-birth requirement? Why is that  
3 important for election administration?

4 A. Again, because it helps us to identify the voter. And  
5 then go back to the scenario, especially, of voters who move  
6 from county to county within the state. There is lots of  
7 voters that have the same first name and the same last name.  
8 And the form of ID was not always sufficient in order to  
9 identify them. For example, they may have provided the last  
10 four digits of their Social Security number when they  
11 registered to vote, but then, when they appeared to vote at the  
12 polling place, they presented a utility bill. And so there is  
13 nothing for us on the envelope to match that voter. So the  
14 date of birth has helped us be able to identify the voter.

15 Q. I think we discussed this a little bit, but why is it  
16 important from an election administration standpoint that voter  
17 rolls be maintained up-to-date?

18 A. It's very important. It's important for the voters  
19 because we need to have their correct address so that we can  
20 send them their absentee applications to the correct address  
21 when those are sent during elections; so that, when we change a  
22 polling location, we can make sure that we provide proper  
23 notice to that voter. And then it's also important from an  
24 elections administrative standpoint because all of the planning  
25 involved in an election is based on the number of registered

1 voters in a precinct. So the number of ballots that are  
2 ordered, the number of poll workers we should assign to that  
3 location, all of the supplies, the number of provisional  
4 envelopes, the number of "I Voted Today" stickers, you know,  
5 it's all based on the number of voters who are registered. So,  
6 if we have this inflated number, you know, it's wasting money  
7 and time.

8 Q. Does Hamilton County have multi precinct voting  
9 locations?

10 A. We do. We do.

11 Q. And do you have consolidated poll books in those  
12 locations?

13 A. We just switched to electronic poll books in 2015. We  
14 had our first special election in August, and then a countywide  
15 in November. So that was the first time we had a consolidation  
16 of poll books.

17 Q. And could you describe your experience with e-poll books  
18 in the countywide election in 2015?

19 A. Sure. We had some glitches, some technical glitches, on  
20 election day. And there was also a learning curve for our poll  
21 workers, we knew that there would be. And that's why we  
22 implemented this in an odd-year election, when the turnout is  
23 much lower, rather than in a presidential election. But even  
24 that learning curve and those glitches rose to a level that was  
25 higher than what we had anticipated.

1 Part of that was our poll workers had difficulty with  
2 going to a location-based system. And what I mean by that is,  
3 in the past, you had, you know, your individual precincts at a  
4 location. So here is a team of poll workers working at one  
5 table, representing that precinct, and then you have another  
6 table with a team. And, with e-poll books, everything was  
7 consolidated. And so now they were working together as one big  
8 team.

9 You know, it doesn't really matter how a voter gets  
10 checked in just as long as they're getting the correct ballot.  
11 And, even though we sent that information to them prior to  
12 election -- prior to their training in a packet when they first  
13 signed up to be a poll worker, we also trained on it for three  
14 to four hours in their training class; but some of the  
15 locations struggled. They struggled with that  
16 consolidation-location concept. It was part of the problems  
17 that we had in November.

18 Q. And did that have any impact on the voters who came to  
19 vote during that election?

20 A. It did have an impact on some of the voters that came to  
21 vote. You know, it was -- because they were having a hard time  
22 adjusting to that, there was some wait times early in the  
23 morning.

24 Q. How is Hamilton County addressing the 2015 experience  
25 with e-poll books for the 2016 election coming up?

1 A. Right. You know, I'm so thankful that we administered  
2 it for the first time in an odd-year election. You do not want  
3 massive change in a presidential election year. So we've  
4 learned a lot from it. And we have, you know, a lot of ideas.  
5 We're confident, you know, going forward in 2016.

6 Q. What measures are you implementing, specifically?

7 A. Sure. We are actually seeking professional assistance  
8 in adult education. Like I said, even though we had trained  
9 our poll workers, evidently, some -- many grasped the concept  
10 and were fine, but some did not. And the ones that did not,  
11 that rose to an unacceptable level. So we are seeking outside  
12 professional assistance with that.

13 Q. Any other programs that you're looking to implement for  
14 2016 to help with that problem?

15 A. Sure. We implemented a program for the past several  
16 years called "Youth at the Booth." In Ohio, 17-year-old  
17 high-school seniors are allowed to work the polls even though  
18 they're not registered. There can be one per precinct. And we  
19 had 125 high-school seniors that worked the polls in November.  
20 And, you know, by all accounts, they did an outstanding job and  
21 were very valuable to the poll workers. So we want to expand  
22 upon that. Our goal is to have one -- three-hundred-and-sixty-  
23 five, one in every polling location. I think it's a really  
24 neat idea to have, you know, these high-school seniors, that  
25 are not afraid of the technology, coupled with our experienced

1 poll workers, who know the election process as well. So that's  
2 one of the goals.

3 THE COURT: So your 17-year-olds, then, could do your  
4 adult education component.

5 THE WITNESS: Maybe slightly older, because we're  
6 reaching out to local colleges for that.

7 BY MS. PIERCE:

8 Q. And what would changes to election laws at this point  
9 mean for your election administration planning for 2016?

10 A. It would have a significant effect not only -- mainly on  
11 election administration. You know. We are already in the  
12 midst of the presidential primary. The filing deadline is  
13 December 16th. You know. Our training has to be set in stone  
14 by the second week of January.

15 To make those changes on this short notice would be very  
16 difficult for the Board, but it's also difficult for the poll  
17 workers. You know, they've had at least two countywide  
18 elections, now, with the rules as they are. You know.  
19 Changing them in a presidential year, you know, it will cause  
20 confusion. And it could also cause confusion with voters,  
21 because they've been experiencing these same rules, now, for  
22 the past two years. And then, in a presidential, where you  
23 have, you know, the largest turnout, you know, to then change  
24 things, I just know most election officials will agree: Do not  
25 implement major changes in a presidential year.

1 MS. PIERCE: Thank you very much, Ms. Poland.

2 No further questions at this time.

3 THE COURT: Thank you, Ms. Pierce.

4 Mr. Martin, are you crossing?

5 MR. MARTIN: Yes. Good morning, Your Honor.

6 THE COURT: Good morning.

7 - - -

8 CROSS-EXAMINATION

9 BY MR. MARTIN:

10 Q. Good morning, Ms. Poland.

11 A. Good morning.

12 Q. I want to start with talking about early in-person  
13 voting in Hamilton County, specifically.

14 MR. MARTIN: Could we pull up Plaintiffs' Exhibit 105?

15 BY MR. MARTIN:

16 Q. Can you see the screen well enough? Or we can give you  
17 a hard-copy version to look at if you'd like.

18 A. Does it move?

19 THE COURT: Does that move?

20 COURTROOM DEPUTY CLERK: Not much. I mean --

21 MR. MARTIN: Your Honor, may I approach? I can show  
22 her the hard copy. This will be easier, I think.

23 BY MR. MARTIN:

24 Q. Do you recall reviewing this document at your  
25 deposition?



1 A. Yes.

2 Q. And can you describe for the Court what it is?

3 A. This is a report from the Hamilton County Board of  
4 Elections, an In-Office Early Voting by Day, Time and Party.

5 Q. Okay. And can we turn to page 13 of this document? And  
6 do you see the columns, there, "Dem" and "Rep"?

7 A. Yes.

8 Q. And what are those columns in your understanding?

9 A. Under "Dem," it's the number of registered Democratic  
10 voters who voted in-office. And "Rep" stands for the number of  
11 registered Republican voters who voted in-office.

12 Q. And down there at the bottom row, the total, could you  
13 just read out the numbers for the Democrats and the  
14 Republicans?

15 A. For the Democrats, 3,655. And for the Republicans,  
16 2,133.

17 Q. So is it fair to say that approximately 1500 more  
18 registered Democrats used early in-person voting in Hamilton  
19 County than Republicans in 2012?

20 A. Yes.

21 Q. Okay. Can we go to Plaintiffs' Exhibit 104?

22 And we also reviewed this exhibit, as well, at your  
23 deposition, correct?

24 A. I'm sorry. Which one is it?

25 Q. Oh, 104. It's the previous tab.

1 A. Yes.

2 Q. And can you describe for the Court what this document  
3 is?

4 A. It's a similar document from the Hamilton County Board  
5 of Elections: In-Office Early Voting by Day, Time of Day, and  
6 Party for the 2010 General Election.

7 Q. Okay. And, for both of these documents, does the Board  
8 keep these in the normal course of its business?

9 A. Yes, or something similar.

10 Q. Okay.

11 A. Formatting may change over the years.

12 Q. Okay. Could we go to page 13 of this document, as well?

13 And, as with the 2012 numbers, could you read out the  
14 numbers for Democrats and Republicans?

15 A. For Democrats, 1,535. And for Republicans, 1,134.

16 Q. Forgive me if I mess up my math, but is that 401 more  
17 voters, or Democratic voters, who used early in-person voting  
18 in Hamilton County in 2010?

19 A. Yes.

20 Q. Okay. So, for both of these, it's fair to say that  
21 Democrats used early in-person voting in Hamilton County at  
22 significantly higher rates than registered Republicans,  
23 correct?

24 A. Correct.

25 Q. Okay. Let's talk a little bit more about golden week,

1 which you discussed on your direct examination.

2 Do you recall what the estimates for administering  
3 golden week in 2014 would have been?

4 A. I believe it was eight to twelve thousand for staffing  
5 costs, alone.

6 Q. And do you recall what the budget was for the 2014  
7 elections in Hamilton County?

8 A. This would be a very approximate number. I don't  
9 remember exactly. I believe it was somewhere around eight  
10 million.

11 Q. Okay. And do you know how the costs for administering  
12 golden week in 2014, those estimated costs, compared to how  
13 much it cost in 2012 to administer golden week?

14 A. I don't recall.

15 Q. Okay. Would the eight to twelve thousand number be  
16 roughly comparable?

17 A. No. It was a presidential election. It would be double  
18 that.

19 Q. Double that? Okay. So approximately 16 to 24 thousand,  
20 probably, for a presidential?

21 A. Approximately. Again, I don't recall what the exact  
22 cost was.

23 Q. And you were also asked some questions about voter fraud  
24 during golden week, correct?

25 A. Correct.

1 Q. Now, did the elimination of golden week change -- it did  
2 not change the registration deadline, correct?

3 A. It did not.

4 Q. And an individual can still register to vote between the  
5 35th and the 30th day before an election, correct?

6 A. Correct.

7 Q. And that same person can now vote in the early voting  
8 period after the close of registration, correct?

9 A. Correct.

10 Q. So a person who registered on, say, the 30th day prior  
11 to election day can still vote on the 28th day prior to  
12 election day, correct?

13 A. Correct.

14 Q. And, in that scenario, the Board has no more time to  
15 process the person's registration form and verify their address  
16 than if that person had voted and registered on the 30th day,  
17 correct?

18 A. Well, you have a few more days.

19 Q. Is there any realistic chance that the acknowledgment  
20 card, for instance, would arrive with a voter who voted on the  
21 28th? Is there any more time, since the elimination of golden  
22 week, to send an acknowledgment card to the voter?

23 A. Just a few days.

24 Q. And how is that?

25 A. Well, if they register on the 30th day and then come in

1 on the 29th, or the 20th day, it's at least a day or two. It's  
2 not enough time to receive the acknowledgment card back. It's  
3 not, but it's -- I wish that we had more time between when  
4 registration closes and when absentee voting began in order to  
5 receive that information, but it's better than what we had in  
6 golden week.

7 Q. Is it your understanding that the Constitution requires  
8 that the registration cutoff date be no earlier than 30 days  
9 before the election?

10 A. It's my understanding that's Ohio law.

11 Q. Right, the Ohio Constitution. Yeah. So that would need  
12 to be changed, in your opinion, to allow more time to verify  
13 the registration of a voter?

14 A. Or the absentee voting period.

15 Q. You were asked about two examples of fraud during golden  
16 week in 2012, correct?

17 A. Yes.

18 Q. And, in explaining what might be different now since the  
19 elimination of golden week, you said that a voter who  
20 registers, say, on the 30th day and then is sent an  
21 acknowledgment card because their address was -- it wasn't  
22 deliverable to their address, may now come back in and vote a  
23 provisional ballot, correct?

24 A. Correct. If their acknowledgment card is returned as  
25 undeliverable, they would be flagged to vote provisionally.

1 Q. And if that person puts the same address on their  
2 provisional ballot that they put on their registration, then  
3 that ballot would be counted, correct?

4 A. Correct.

5 Q. Now, the two examples of fraud during golden week that  
6 you were asked about on direct, in neither of those instances  
7 were the ballots actually counted, correct?

8 A. That's correct, they were not.

9 Q. So, now if, say, one of those individuals -- for  
10 example, I believe one person's name was Andre Wilson. Do you  
11 recall Andre Wilson's name?

12 A. I believe so, yes.

13 Q. I believe he was the person who registered his brother's  
14 fiance's house?

15 A. That sounds familiar, yes.

16 Q. So, now, if he had registered on the same day that he  
17 registered in the 2012 election and then came back in and voted  
18 provisional and put the same address on his provisional ballot  
19 form that he had on his registration, that ballot would count  
20 now, correct?

21 A. It would.

22 Q. But, in 2012, his ballot did not count?

23 A. That's correct.

24 Q. Now, with the elimination of same-day registration that  
25 golden week allowed, that requires more effort by eligible

1 voters, because they might -- they must show up to register and  
2 them come back to vote a second time, correct?

3 A. I'm sorry. Could you repeat that question?

4 Q. Does the elimination of golden week require more effort,  
5 by voters, to register and vote?

6 A. Yes. I don't believe that it's an unreasonable effort.

7 Q. But it requires more effort?

8 A. And I have -- it's a two-step process. They have to  
9 register, and then vote.

10 Q. So, the elimination of golden week imposes additional  
11 burdens on eligible voters, correct?

12 A. I don't think that they're unreasonable burdens.

13 Q. But they are additional burdens?

14 A. There is an additional step. It's a two-step process.

15 Q. Let's talk a little bit about absentee ballots for a  
16 moment. When do you start receiving applications for absentee  
17 ballots?

18 A. We can start receiving absentee ballots any time after  
19 January 1st of the current election year. There is an  
20 exception for presidential primaries. We can start receiving  
21 those in -- I believe on December 16th of this year.

22 Q. And, before the elimination of golden week, you could  
23 begin mailing out absentee ballots on the 35th day before the  
24 election, correct?

25 A. We mailed ballots the same day that -- it all happened

1 at the same time. As far as absentee voting, you mail and  
2 receive in-person voters all on the same day.

3 Q. And that was the 35th day before the election?

4 A. That's correct.

5 Q. And now, after the elimination of golden week, you  
6 cannot begin mailing absentee ballots until the 28th day before  
7 election day, correct?

8 A. That's correct.

9 Q. So you now have a shorter amount of time in which to  
10 mail those, the absentee ballots, correct, before election day?

11 A. It's a shorter amount of time before election day, but  
12 it's a longer amount of time to prepare from when the ballot is  
13 created.

14 Q. And you now have a shorter time to process absentee  
15 ballots that are sent back by the voters and determine whether  
16 the information required on the absentee ballot envelope is  
17 correct; is that right?

18 A. We do -- it's a shorter time, but that is not an  
19 unreasonable burden, in my opinion, on the boards. We are able  
20 to handle that in that 28-day period.

21 Q. But it's shorter than it used to be, correct?

22 A. It's shorter than it used to be. We would rather have  
23 the time on the front-end, in my opinion.

24 Q. Voters in Hamilton County, and elsewhere, now have a  
25 shorter amount of time in which to correct those mistakes on



1 their absentee ballot envelope, correct?

2 A. Are you referring -- I'm sorry. I don't understand.

3 Q. You notify voters who have a mistake on their absentee  
4 ballot envelope, correct?

5 A. Yes.

6 Q. And now that those ballots cannot be returned until  
7 beginning on the 28th day before the election, those voters  
8 have a shorter amount of time to receive the notice of the  
9 problem and correct it?

10 A. They have until seven days after election day.

11 Q. Right. But there are fewer days in which to correct  
12 those mistakes now than there used to be, correct?

13 A. Correct. The absentee voting period is shorter.

14 Q. On direct, you were also asked some questions about  
15 provisional ballots --

16 A. Uh-huh.

17 Q. -- and, in particular, the new requirements for date of  
18 birth and current address in the provisional ballot affirmation  
19 form.

20 Now, at your deposition, you cannot provide a rough  
21 estimate of how many provisional voters could not be identified  
22 prior to those requirements, correct?

23 A. I do not recall, but it was a significant number. It  
24 was -- I can tell you that the bipartisan election officials at  
25 the Board of Elections were very happy when the legislation was

1 passed requiring the additional information, because it  
2 provides for a better verification process. They're able to  
3 locate and identify the voters easier than before.

4 Q. Now, before these new -- before the date of birth and  
5 the address were made to be requirements, voters could still  
6 provide that information on the provisional ballots, correct?

7 A. They could, but we've seen a significant increase in the  
8 amount of envelopes that have that information once it became a  
9 requirement.

10 Q. And, under the previous law, the failure to provide that  
11 information would not automatically result in the ballot being  
12 rejected, correct?

13 A. That's correct.

14 Q. Under the new law, the failure to provide this  
15 information will result in the ballot being automatically  
16 rejected?

17 A. That's correct. But, as I stated before, the overall  
18 rejection rate in Hamilton County has declined, the acceptance  
19 rate has increased, since this legislation was passed.

20 Q. Going back to absentees for a moment, you also were  
21 asked about other instances of fraud in Hamilton County. And  
22 you mentioned one person who voted a ballot for herself and  
23 several family members, I think it was.

24 A. Yes.

25 Q. Is that the Melowese Richardson case?

1 A. Yes, it is.

2 Q. Melowese Richardson was actually a poll worker, correct?

3 A. She was.

4 Q. Would any of the new requirements prevent a poll worker  
5 from manipulating the system to do what she did?

6 A. She wasn't able -- she cast two ballots in her name, one  
7 by absentee and one at the polling place. She was able to do  
8 that because of her role as a poll worker.

9 Casting the absentee ballots in the other three to four  
10 family members had nothing to do with her role as a poll  
11 worker.

12 Q. And you also mentioned a husband who voted an absentee  
13 ballot that had been requested by his wife, who then became  
14 deceased, correct?

15 A. Correct.

16 Q. In either of those examples, neither one of them was a  
17 golden week voter, correct?

18 A. I believe they were. It was all by mail.

19 Q. Okay. And, going back to the provisional ballots for a  
20 moment, you could have made the form look the same as it does  
21 now, with the requests for the date of birth and the address  
22 information on the previous form, without rejecting those  
23 ballots for the failure to include that information, correct?

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

25 THE COURT: You could've done?

1 BY MR. MARTIN:

2 Q. Was there anything that prohibited designing the  
3 provisional ballot/affirmation form, before SB 216, to look the  
4 way it does now?

5 A. I could not change the design. It's a uniform design  
6 statewide.

7 Q. That's fine. Let's change tack for a moment and talk  
8 about early voting locations.

9 Are you aware that there are several states that have  
10 more than one early voting location per county?

11 A. I'm somewhat familiar. I believe those states have  
12 shorter early voting periods than we do in Ohio.

13 Q. In your opinion, is there any reason not to allow a  
14 county the discretion to open up more than one location if it  
15 has the resources and wants to do so?

16 A. I believe a clear set of rules for the entire state  
17 causes less confusion for voters. If you have some counties  
18 that there is multiple places where those voters can go and  
19 vote and then you have other counties, such as Hamilton, that  
20 just doesn't have the resources to do that, I think that would  
21 cause confusion, especially when we have so many districts that  
22 overlap into other counties.

23 MR. MARTIN: Just one moment.

24 (Whereupon, there was a brief interruption.)

25 BY MR. MARTIN:

1 Q. Just a couple more questions.

2 Cities with differing populations have differing numbers  
3 of precincts, correct?

4 A. Correct.

5 Q. And there are probably some cities like that in Hamilton  
6 County, correct -- Cincinnati -- compared to some of the  
7 smaller cities?

8 A. Yes. If there is a city with a larger population, they  
9 have more precincts than a city with a smaller population.  
10 That's correct.

11 Q. And that hasn't caused any confusion among voters in  
12 Hamilton County, has it?

13 A. Not to my knowledge.

14 Q. Okay. You're not aware of any instance of a golden week  
15 ballot that was ineligible or fraudulently cast having actually  
16 been counted, are you?

17 A. I don't believe so.

18 MR. MARTIN: Nothing further, Your Honor.

19 THE COURT: Thank you, Mr. Martin.

20 Redirect, Ms. Pierce.

21 MS. PIERCE: Yes, Your Honor.

22 - - -

23 REDIRECT EXAMINATION

24 BY MS. PIERCE:

25 Q. Ms. Poland, Counsel just showed you several charts from

1 2012. And I noticed that there was a column labeled "Non" next  
2 to "Dem" and "Republican." What does that column represent?

3 A. Those are voters who are unaffiliated with a political  
4 party. The majority of voters in Hamilton County are  
5 unaffiliated.

6 Q. And I think you mentioned that you would prefer a longer  
7 amount of time on the front end of absentee voting beginning.  
8 Could you explain why that's important?

9 A. Sure. Again, just what I explained earlier is that, you  
10 know, we don't know what's on the ballot until the 60th day.  
11 There are so many different ballot styles, so many different  
12 contests, the proofing process is extremely important. You  
13 cannot have an election where a candidate's name is left off  
14 the ballot, something to that effect. So it's extremely  
15 important. And it's also extremely important that the voter  
16 receive the correct ballot for their precinct.

17 The elimination of golden week has allowed the Board of  
18 Elections, at least in Hamilton County, more time to make sure  
19 that all of those processes occur and occur correctly.

20 Receiving ballots, as far as on the back ends when it  
21 went from -- that reduced that by a week, we have not noticed  
22 an effect on that administratively. It's actually amazing. A  
23 lot of voters -- the biggest amount of requests come in up unto  
24 the first day of absentee. And then we get our largest wave,  
25 also, in that first week. It's really kind of incredible how

1 many voters that receive their ballot vote it and mail it back  
2 the very same day or next day.

3 Q. What does the preparation process for sending out those  
4 ballots in that first wave look like in a presidential  
5 election, say 2012?

6 A. In a presidential election, we actually have to  
7 outsource that process. We just don't have the space or the  
8 staffing to do that in a presidential election. So we  
9 outsource this to an outside vendor. We send a bipartisan team  
10 of election officials. Actually, it's in Cuyahoga County. So  
11 they spend several weeks at the facility overseeing the  
12 process, delivering the ballots back to Hamilton County. And  
13 then they're then mailed out from that point.

14 MS. PIERCE: No further questions, Your Honor.

15 MR. MARTIN: I have nothing further, Your Honor.

16 THE COURT: Thank you, ma'am. You may step down. I  
17 appreciate your testimony.

18 Why don't we take a ten-minute break and come back, for  
19 Mr. Damschroder, I assume?

20 MR. VOIGT: Yes, Your Honor.

21 (A recess was taken from 10:35 a.m. until 10:55 a.m.)

22 THE COURT: Hello.

23 MS. RICHARDSON: Good morning, Your Honor.

24 THE COURT: Mr. Damschroder, if you would approach,  
25 please. Raise your right hand, sir.

1 (Witness sworn.)

2 THE COURT: Good morning.

3 THE WITNESS: Good morning.

4 THE COURT: Ms. Richardson.

5 - - -

6 MATTHEW DAMSCHRODER

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

9 DIRECT EXAMINATION

10 BY MS. RICHARDSON:

11 Q. Good morning, Mr. Damschroder.

12 A. Good morning.

13 Q. Could you please state and spell your name for the  
14 record?

15 A. My name is Matthew. Last name is Damschroder,  
16 D-a-m-s-c-h-r-o-d-e-r.

17 Q. And, Mr. Damschroder, where are you currently employed?

18 A. I am the Assistant Secretary of State and Chief of Staff  
19 to Ohio Secretary of State Jon Husted.

20 Q. How long have you been at the Secretary of State's  
21 Office?

22 A. Since January of 2011.

23 Q. And how long have you been in your current position with  
24 the Secretary of State?

25 A. I've been Assistant Secretary of State and Chief of



1 Staff since January of this year.

2 Q. What was your position prior to January of this year?

3 A. Deputy Assistant Secretary of State and Director of  
4 Elections.

5 Q. And, generally, can you describe what your  
6 responsibilities are at the Secretary of State's Office?

7 A. In my current capacity, I'm in charge, on behalf of the  
8 Secretary, of all of -- essentially, managing the day-to-day  
9 operations of the office, business services, campaign finance,  
10 and elections administration.

11 Q. And do you also work with the various boards of  
12 elections across the State as part of your responsibilities  
13 with the Secretary of State's Office?

14 A. I do.

15 Q. Prior to joining the Secretary of State's Office, where  
16 were you employed?

17 A. Prior to the Secretary of State's Office, I was employed  
18 with the Franklin County Board of Elections.

19 Q. And what was your role at the Franklin County Board of  
20 Elections?

21 A. I started, in June of 2003, as the Director; became  
22 Deputy Director in March of '08; and then remained Deputy  
23 Director until I resigned to go to the Secretary of State's  
24 Office.

25 Q. And what were your responsibilities as Director and

1 Deputy Director at the Franklin County Board of Elections?

2 A. So, at the Board of Elections, the duties of Director  
3 and Deputy Director were essentially to manage the day-to-day  
4 operations of the Board, everything from managing voter  
5 registration, polling place selection, hiring of precinct  
6 election officials, absentee voting, election day voting,  
7 essentially all of the elections operations for the County.

8 Q. So is it fair to say that, in all, you have more than a  
9 decade of experience overseeing and administering elections in  
10 Ohio?

11 A. Yes.

12 Q. As a result of your professional experience and  
13 training, have you acquired firsthand knowledge about the  
14 manner in which elections are run in Ohio?

15 A. Yes.

16 Q. Can you just generally describe the methods by which an  
17 Ohio voter can cast a ballot?

18 A. So there is two broad categories, the first being  
19 election day. Polling places are open from 6:30 a.m. to 7:30  
20 p.m. on election day. And that's the mode of voting that most  
21 voters still use.

22 Then the other mode would be pre election day voting,  
23 absentee voting. And voters in Ohio -- all registered voters  
24 are eligible to vote absentee either by mail or in person at  
25 the Board of Elections.

1 Q. And why do you include early in-person voting as a  
2 category of absentee voting rather than a stand-alone, distinct  
3 category?

4 A. Because that's the way the state law constructs it.  
5 Anything prior to election day is an absentee ballot.

6 Q. Are the requirements for voting in-person absentee the  
7 same as the general requirements that govern voting absentee by  
8 mail?

9 A. So, regardless of whether the person, the voter, is  
10 going to vote absentee by mail or absentee in person, the voter  
11 must complete an application and provide the voter's, you know,  
12 name, address, date of birth, a form of identification, and  
13 signature. The board then takes that information, enters it  
14 into the county voter registration system to confirm the  
15 voter -- the applicant's eligibility, then at that point  
16 provides the voter a ballot. Again, if it's in person, it  
17 would provide the ballot to the voter in person, or they would  
18 mail the ballot to the voter.

19 Q. And I believe you just mentioned that, in Ohio, anyone  
20 is eligible to vote -- any registered voter is eligible to vote  
21 absentee. Is that correct?

22 A. Ohio has no-fault absentee voting, which means any  
23 qualified elector or registered voter whose information is  
24 current with the board of elections can request an absentee  
25 ballot.

1 Q. How long has Ohio had no-excuse absentee voting?

2 A. The General Assembly adopted the legislation at the end  
3 of 2005 creating no-fault absentee voting. So the first  
4 election for which -- the first federal -- first general  
5 election for which it was effective was the 2006 general  
6 election.

7 Q. And I'd like to walk through each of these methods in a  
8 little more detail. Let's start with election day voting.

9 Can you describe how election day voting works in Ohio?

10 A. So, the boards of elections divide the county into  
11 precincts, and they assign the voters in each precinct to a  
12 polling place. When a voter comes to their assigned polling  
13 place on election day between, again, 6:30 a.m. and 7:30 p.m.,  
14 the voter would go to the check-in table, announce their name  
15 and address. The poll worker would find their name in the  
16 signature poll book. The voter would provide a form of  
17 identification, sign the signature poll book, and then the  
18 precinct election officials would direct the person to either a  
19 voting booth, where they would mark a paper ballot, or they  
20 would vote on a direct-recording electronic -- DRE -- voting  
21 machine.

22 Q. And the hours that you mentioned, I believe 6:30 a.m. to  
23 7:30 p.m., are those uniform across the state on election day?

24 A. Yes, they are. They're established by state law.

25 Q. You mentioned that voters are assigned a particular

1 precinct. How would a voter find out where his or her polling  
2 location is?

3 A. So, when a voter registers to vote or updates their  
4 address with the board of elections, the board is required, by  
5 law, to send that voter an acknowledgment card that provides  
6 the voter with information about their assigned polling place.

7 If the board of elections changes the precinct  
8 boundaries or changes the polling place, the board is required,  
9 by law, to send a notice to all of the affected voters, letting  
10 them know what their new precinct is and their new polling  
11 place.

12 Q. Are there other ways that a voter can find out what his  
13 or her correct polling location is?

14 A. Yes. I mean, they can call the board of elections and  
15 ask for that information. Many boards have, for a long time,  
16 provided that information online. Earlier this year, Secretary  
17 Husted issued a directive requiring all boards to provide that  
18 information as a lookup on the county board of election's  
19 website. And it has, for a number of years, been on the  
20 Secretary of State's website.

21 Q. Let's turn now to absentee voting. And, to begin, we'll  
22 talk about the first category you mentioned: Absentee voting  
23 by mail. Can you describe, generally, the process by which a  
24 voter casts a ballot absentee by mail in Ohio?

25 A. So, again, the applicant would submit a form to the

1 county board of elections providing their name, address, date  
2 of birth, a form of identification, usually in the form of the  
3 last four digits of the voter's Social Security number or their  
4 Ohio driver's license number, or they could enclose a copy of  
5 one of a number of qualifying forms of identification, and then  
6 sign the application. They would submit that to the board of  
7 elections. And then when the board had entered that into the  
8 county voter registration system to confirm the voter's  
9 eligibility, the board would then issue a ballot to that voter  
10 by mail.

11 Q. And so you're referring to -- I believe you mentioned  
12 the application for obtaining an absentee ballot. Is that  
13 correct?

14 A. Right.

15 Q. Where would a voter obtain the application for voting  
16 absentee?

17 A. So, under state law, the application doesn't have to be  
18 in any particular form or in any particular, you know, you  
19 know, government form. So candidates, political parties, mail  
20 applications to voters. Applications are available at many  
21 libraries. It's available as a downloadable form on the  
22 Secretary of State's website and many other websites. They can  
23 pick a form up at the board of elections.

24 And then, in federal general elections in 2012 and '14,  
25 the Secretary mailed an absentee ballot application to almost

1 every registered voter in the state. And we'll be doing that  
2 again in 2016.

3 Q. I'd like to talk a little bit about that statewide  
4 mailing. You mentioned that the first time that that was done  
5 was in 2012?

6 A. Correct. That was the first time it was done on a  
7 statewide basis.

8 Q. And so, then, I take it, prior to 2012, no Secretary of  
9 State in Ohio, that you know of, had made the decision to send  
10 absentee ballot applications out statewide?

11 A. Correct. The first time that applications were mailed  
12 was in Franklin County in 2006. When I was at the Board, we  
13 mailed applications to all of our registered voters. And other  
14 boards started doing that in other elections, including '08 and  
15 '10. And, then, 2012, Secretary Husted mailed it for all  
16 counties, for the whole state.

17 Q. And so why -- given that it was unprecedented at the  
18 time to conduct this type of statewide mailing, why did the  
19 Secretary of State's Office decide to send applications out on  
20 a statewide basis?

21 A. Well, I think it was -- it was two reasons. The first  
22 is, the Secretary had a long-standing view that a voter,  
23 regardless of what county they live in, should have the same  
24 opportunity to vote as another voter whether it's in a  
25 different part of the same congressional district, a different,

1 you know, city but in a different county, and wanted to make  
2 sure that all voters across the state had the opportunity to  
3 receive an absentee ballot and had the opportunity to decide  
4 whether or not they wanted to use it.

5 The other, in 2012 -- you know, a presidential election  
6 is the largest turnout election. And if we could, you know,  
7 assist voters who wanted to -- you know, who wanted to vote by  
8 mail in doing so, you know, that would mean, you know, that set  
9 of voters would not be voting on election day, and it would  
10 reduce the chance of lines.

11 Q. And, in 2012, which voters did the Secretary of State's  
12 Office send the applications to?

13 A. So, both in '12 and in '14, the Secretary's application  
14 went to all active voters in the state, and also to any  
15 inactive voters who had voted in either of the most recent two  
16 federal elections.

17 Q. Can you describe what it means to be an active voter?

18 A. It's -- this is one of those things where it's easier to  
19 describe the larger category by describing the exceptions. So  
20 an active voter is, essentially, anybody whose address is  
21 current and on file with the county board of elections.

22 The most frequent -- the largest reason a voter would be  
23 inactive would be that the voter had filed a change of address  
24 with the post office that, you know, the post office then  
25 notified the Secretary of State; the board had sent a



1 confirmation card to the voter, giving them an opportunity to  
2 update their address; but, if a voter doesn't respond to that  
3 confirmation card, the voter would then be in inactive status,  
4 meaning that the election officials know, from information from  
5 the post office, that the person has moved and is no longer at  
6 the address on file with the board.

7 Q. Are the vast majority of eligible Ohio voters in active  
8 status?

9 A. The majority of the registered voters in the state are  
10 in an active status.

11 Q. And just to clarify for the record, you said "an active  
12 status"?

13 A. Right.

14 Q. Thank you. And why not send out the absentee ballot  
15 application form to all registered voters?

16 A. Well, the Secretary pre-prints the voter's name and  
17 address on the application, as well as that voter's unique  
18 voter identification number as a bar code, which allows the  
19 boards of elections to efficiently, when they scan that bar  
20 code, efficiently identify the voter in the county voter  
21 registration system, and then process -- you know, check the  
22 ID, and then process the application.

23 Because that -- because address is a required element of  
24 the application and because it's pre-printed on the  
25 application, to send it to a person who has moved and has to

1 update their registration before they're eligible to vote by  
2 absentee would mean that, essentially, some voters would be  
3 getting an absentee application that they would not lawfully be  
4 allowed to use.

5 Q. And, in your opinion, is the application less likely,  
6 then, to receive -- or is the application less likely to reach  
7 the intended voter if you're sending it to an inactive voter?

8 A. If we were to send -- if we were to send the  
9 applications to voters who have a change of address on file  
10 with the post office, I think it would be less likely that the  
11 voter would receive that than, you know, compared to an active  
12 voter. But, even if they did receive it, you know, if it was  
13 forwarded by the post office, it would have an outdated address  
14 for the voter; and the voter would not be allowed to use that  
15 application either to update their address or to request an  
16 absentee ballot.

17 I think it's worth noting that one of the things that  
18 the Secretary did in 2012 and '14 that we plan to do in 2016  
19 is, for -- you know, for all of the people who are in inactive  
20 status and who don't receive the application because, you know,  
21 they would likely receive an application that they couldn't  
22 use, we send them a postcard telling -- you know, informing the  
23 voter that, Hey, you've filed a change of address with the post  
24 office; you need to update your registration with the board of  
25 elections. We provide them with a website where they can go

1 online and update their address electronically. And then the  
2 Secretary sends a supplemental mailing of absentee  
3 applications, too, that will then, you know, include a universe  
4 of anybody who, you know, updated their address as a result of  
5 receiving the postcard or registered to vote for the first time  
6 after we did the initial data file.

7 Q. And when was the first -- when did the first mailing go  
8 out? And we can start with 2012 if it's --

9 A. So, in 2012, we dropped the mail, I think, the Friday  
10 before Labor Day.

11 Q. And why was the decision made to send the first mailing  
12 out at approximately Labor Day?

13 A. Because we use bulk rates with the post office to save  
14 tax dollars. You know, bulk-rate mail is not treated with the  
15 same delivery speed as, you know, regular first-class mail by  
16 the post office. And, so, by doing it that early, it gives the  
17 post office, you know, the seven to ten days that they say it  
18 takes to do a large bulk mailing of that type and give voters  
19 time to decide whether they want to vote absentee, fill out the  
20 form, mail it to the board of elections.

21 It gives the board the time, then, to enter all those  
22 into the county voter registration system and have the  
23 mail -- the outbound ballots ready on the first day that  
24 ballots are eligible to be issued by the board.

25 Q. And when is the supplemental mailing sent out?

1 A. We do that immediately after the close of registration.

2 Q. And is that consistent across 2014 and your plans for  
3 2016 in terms of the general timing of the mailing?

4 A. Yes.

5 Q. You mentioned, I believe, that during your time at  
6 Franklin County, Franklin County sent out absentee ballot  
7 applications to voters in Franklin County; is that correct?

8 A. Correct. Franklin County was the first to do that, in  
9 2006, in the general election that year.

10 Q. And, in 2006, who did Franklin County send those  
11 applications out to within the county?

12 A. In 2006, we mailed it to all registered voters. The  
13 reason we did it in 2006 that way is because we were  
14 piggybacking the absentee application on an existing mailing  
15 that state law required boards of elections to do at the time  
16 to notify voters of the new voter identification requirements  
17 that were enacted that year.

18 That requirement has since sun-setted. And so, in 2006,  
19 we mailed to everybody. And, as would be expected, because we  
20 were mailing to everybody, including voters that we had already  
21 sent a confirmation card to because we knew from the post  
22 office that their address was out of date, we got about 20  
23 percent of those back, returned by the post office as  
24 undeliverable.

25 Q. And did Franklin County, after that point in time,

1 change the universe of people it sent the applications to,  
2 going forward?

3 A. We did.

4 Q. Were there other counties, prior to 2012, that sent out  
5 absentee applications?

6 A. Yes, there were.

7 Q. And approximately how many counties did that?

8 A. Again, I think, in '06, Franklin was the first and only  
9 county that did it. In '08, for the general election, I think  
10 there were about 13 or so that did. And I think the number  
11 edged up a little bit more in 2010.

12 Part of it in 2008 was the General Assembly had  
13 appropriated a little bit of money to help counties offset the  
14 expense of doing it if the county chose to do so.

15 Q. And, so, absent the Secretary of State's decision in  
16 2012 to send the applications out statewide, were there many  
17 voters and counties across the state that would not have  
18 received an absentee ballot application by -- unsolicited  
19 absentee ballot application?

20 A. Yes.

21 Q. Of those counties that sent out ballots previously, were  
22 they uniform in terms of the methods by which they sent out  
23 those applications?

24 A. By "methods," do you mean the universe of voters to whom  
25 the mailing was sent?

1 Q. That would be one example.

2 A. Okay. So I think, yes. I think different boards  
3 handled the universe differently. I think some, in '08, did  
4 like Franklin County did in '06 and mailed everybody. I know,  
5 in talking to Pat McDonald, in Cuyahoga County, in 2010, they  
6 did the same thing that Franklin had started doing and excluded  
7 all of the inactive voters. Other counties did things  
8 differently. You know, some provided a return envelope; some  
9 didn't. You know, some were paying postage; some weren't.

10 So it was kind of a patchwork quilt of different  
11 counties doing different things as it related to unsolicited  
12 absentees. At the beginning, only a few counties were actually  
13 sending the applications.

14 Q. And so the Secretary's statewide mailing of the absentee  
15 ballot applications, is that more uniform across the state?

16 A. Correct. I mean, everyone in the universe of voters  
17 that the Secretary was mailing, regardless of the county the  
18 voter lived in, would have received an absentee application.

19 Q. And approximately how many applications were sent out,  
20 if you can recall?

21 A. I don't remember for sure, but I think it was over,  
22 like, 5.5 million. Again, I don't remember for certain.

23 Q. So, on a statewide basis, far more voters received the  
24 absentee ballot application than would have prior to the  
25 statewide mailing by the Secretary of State?

1 A. Yes.

2 Q. We've been talking about the process of obtaining an  
3 application to vote, by mail, absentee. What's the next step  
4 in voting absentee?

5 A. For the mail voter, after the person has submitted their  
6 application, the board mails a ballot to the voter. And then  
7 the voter would mark the ballot, enclose it in the  
8 identification envelope, complete the identification envelope,  
9 and then return it to the board of elections.

10 Q. And could a voter also obtain an absentee ballot in  
11 person at the board of elections?

12 A. Yes.

13 Q. Could a voter return the absentee ballot application  
14 through someone else, for example?

15 A. Yes. There is not, you know, a limitation on who can  
16 possess another person's completed absentee application. So  
17 if -- you know, if all of us at the Elks Lodge wanted to  
18 complete our absentee applications together and have one person  
19 return them to the board of elections, that's permitted.

20 Q. And then how would the voter receive the actual absentee  
21 ballot?

22 A. The board would issue the ballot by mail.

23 Q. I'd like to talk, now, about the process of returning a  
24 completed absentee ballot by mail. How does a voter actually  
25 return the completed ballot?

1 A. So the voter -- most of the by-mail absentee voters then  
2 return their ballot by mail. A voter can return it in person  
3 to the board of elections, or a voter can have a close family  
4 member return the ballot for them.

5 Q. And do some county boards of elections also have  
6 drop-boxes at the actual board office?

7 A. So all boards have some kind of ballot box, you know, at  
8 the board of elections for voters who drop their ballot off.  
9 You know. Some, it's inside the board office. Others have it  
10 kind of in the hallway. In some counties, there's kind of a  
11 depository box like you would drop your utility bill off, you  
12 know, through the wall of the building. Others, like Franklin  
13 County, we put a bin out in the parking lot where a person can  
14 drive up next to it and then -- you know, that way, they  
15 wouldn't have to get out of their car and go into the building  
16 to drop it off.

17 Q. If a voter decides to return a completed absentee ballot  
18 in person to the board of elections, would that require any  
19 type of postage?

20 A. If the voter's returning it in person, it would not  
21 require postage to be delivered.

22 Q. And what if a voter sends it through a close family  
23 member as you described? Would that require any postage?

24 A. No.

25 Q. And, similarly, if the voter used one of the drop-boxes



1 that you mentioned, would that require any type of postage to  
2 return the completed ballot?

3 A. No.

4 Q. When can a voter request an absentee ballot application?

5 A. A voter can request an absentee ballot application  
6 beginning 90 days before the election or January 1 of the  
7 calendar year, whichever is earlier.

8 Q. And when can the voter receive the actual absentee  
9 ballot?

10 A. The board cannot issue any absentee ballots, either in  
11 person or by mail, prior to the start of absentee voting.

12 Q. And when is the start of absentee voting?

13 A. So it's after -- it's the day after the close of voter  
14 registration now, the exception of that being military voters,  
15 who can, under federal law, receive their ballot 45 days before  
16 the election.

17 Q. Now, with respect to absentee in-person voting, prior  
18 to -- let me step back. You mentioned that the first time  
19 there would have been no-excuse in-person absentee voting would  
20 have been 2006; is that correct?

21 A. Correct.

22 Q. And so would 2008 have been the first presidential  
23 election at which the early in-person no-excuse option was  
24 available for voters in Ohio?

25 A. Yes.

1 Q. Prior to 2012, how were the early in-person hours set  
2 across the state?

3 A. Boards of elections set them locally.

4 Q. And what happened if a board of elections could not  
5 agree on a schedule for early in-person voting?

6 A. If a board tied on the schedule for absentee voting, it  
7 would go to the Secretary of State to break the tie.

8 Q. And is that consistent with other situations in which a  
9 board reaches a standstill and can't reach an agreement?

10 A. Yes. State law requires any tie vote by a board of  
11 elections to be submitted to the Secretary of State to break  
12 the tie, with a couple of just narrow exceptions where the law  
13 requires three affirmative votes from the board to decide the  
14 matter, and those don't go to the Secretary of State, but those  
15 are primarily about personnel and those kinds of things.

16 So, a tie on voting location, a tie on days and hours  
17 for in-person absentee voting would go to the Secretary of  
18 State.

19 Q. And do you know whether, in 2008, some boards were  
20 unable to reach an agreement with respect to early in-person  
21 voting?

22 A. I don't recall, for sure, other boards. But, in  
23 Franklin County, Secretary Brunner -- we tied twice, in the  
24 2008 general election, on days and hours. And the Secretary  
25 broke both of those ties.

1 Q. In 2012, when you were at the Secretary of State's  
2 Office, in the beginning of that year, was that the same system  
3 by which early in-person hours were set?

4 A. Yes.

5 Q. Did the Secretary of State -- now, we're referring to  
6 Secretary of State Husted -- communicate to the boards a  
7 position regarding the handling of early in-person scheduling?

8 A. So, Secretary Husted, in June of 2012, at the statewide  
9 conference of elections officials, communicated to the boards  
10 of elections that he expected all boards of elections to work  
11 together locally to set their schedule for days and hours for  
12 in-person absentee voting, and that in -- in the event a board,  
13 you know, couldn't do that, that the Secretary would default to  
14 the board's existing schedule of normal business hours;  
15 regardless of what, you know, the different proposals from  
16 different board members had been, that was going to be his  
17 default position to try to get boards of elections to work it  
18 out locally.

19 Q. And, notwithstanding the encouragement to the boards to  
20 work together to reach an agreement, did some boards ultimately  
21 tie with respect to the schedule for early in-person voting?

22 A. They did. And my recollection is that Secretary Husted  
23 broke, I think, three or four tie votes on days and hours in  
24 summer of 2012, defaulting to the board's regular business  
25 hours.

1 Q. Prior to later in 2012 when the counties were setting  
2 their own schedules for early in-person voting, was there any  
3 uniformity across the state in terms of the schedule that was  
4 being offered?

5 A. At that point, there was no uniformity because boards  
6 have, you know, had different hours of business -- you know, of  
7 normal business hours. Some were 8:00 to 5:00. Some were  
8 4:30 -- 8:30 to 4:30, whatever. And so there was no uniformity  
9 on that. And boards could choose to expand hours if they  
10 could, you know, come to that decision locally. And some did.

11 Q. Did this lack of uniformity create issues with respect  
12 to voter confusion in your view?

13 A. Well, I think, both -- from my perspective at Franklin  
14 County in '08 and '10, it did create voter confusion. You  
15 know. There were a number of times, you know, because Franklin  
16 County widely publicized when I was there -- and I think they  
17 continue to do so -- widely publicized the availability of the  
18 absentee in-person days and hours, and so, you know, a voter in  
19 Delaware County watching T.V. and seeing a commercial saying,  
20 Vote at Vets Memorial, you know, Saturday afternoon at 4:00,  
21 you know, we did, indeed, have Delaware County voters driving  
22 to Franklin County to vote. You know: I saw a T.V.  
23 commercial. You know. I figured I could do this even though  
24 I'm a Delaware resident. You know.

25 So it did create voter confusion, in my experience, in

1 Franklin County. I think in the context, specifically, of  
2 2012, it wasn't so much voter confusion at that point in the  
3 summer as much as it was controversy over, you know, some  
4 boards were reaching local agreement on expanded hours; some  
5 boards were, you know, sticking to their normal business hours;  
6 and then, in a couple of cases, the Secretary had to break the  
7 tie. And so the patchwork approach, I think, was being  
8 exacerbated. And people were, you know, saying, Hey, this is  
9 kind of crazy in Ohio. You know. We've got this, you know,  
10 this hodgepodge.

11 And so the Secretary said, you know, Enough is enough.  
12 I'm going to set uniform hours for the whole state. And he --  
13 I think it was in August of 2012 -- issued a directive setting  
14 uniform hours, including some evening hours, for the whole  
15 state for all counties to use.

16 Q. And do you know whether the ACLU actually reached out to  
17 the Secretary of State's Office on the topic of uniformity and  
18 early voting?

19 A. The Secretary of State's Office did receive a letter  
20 from the ACLU advocating, or advancing, the idea of --

21 MR. SPIVA: Objection, Your Honor. He is now into  
22 hearsay.

23 THE COURT: I don't care. I want to hear it.

24 BY MS. RICHARDSON:

25 Q. I'm sorry. Would you mind repeating your answer?

1 A. Sure. So the Secretary did receive a letter from the  
2 ACLU of Ohio advocating the idea of the Secretary setting  
3 uniform hours for the whole state. The letter, as I recall,  
4 did not, you know, specify a schedule that the ACLU was  
5 suggesting the Secretary set, other than that it be uniform and  
6 have some evening hours and some weekends.

7 Q. And, as a result of the Secretary's decision to issue a  
8 directive with hours, was there, in fact, uniformity across the  
9 state at that point with respect to the hours that were offered  
10 for early in-person voting?

11 A. Beginning with the directive the Secretary issued in  
12 2012, there was uniformity for in-person absentee voting.

13 Q. And I'd like to ask you a quick geography question.

14 A. Oh.

15 Q. In Ohio, are there cities that actually cross over  
16 multiple county lines?

17 A. There are. In Franklin County, specifically, where I  
18 have the most familiarity, you know, the City of Columbus  
19 overlaps from Franklin into Delaware and Fairfield. Dublin  
20 overlaps into Union and Delaware Counties, in addition to being  
21 in Franklin. Reynoldsburg overlaps into Licking.

22 I'm not aware of any county in the state that doesn't  
23 have at least some kind of political subdivision, whether it's  
24 a school district, educational service center district, a  
25 cemetery taxing district, something that doesn't overlap with

1 another county.

2 Q. And so prior to the Secretary's directive setting  
3 uniform hours, voters in Columbus, for example, might have had  
4 different access to early in-person voting; is that correct?

5 A. And in fact did.

6 Q. Did the uniform hours that the Secretary created in that  
7 directive originally provide for voting the weekend prior to  
8 the election?

9 A. It did not because, at the time, a state law had been  
10 passed that ended all forms of nonmilitary absentee voting at  
11 6:00 p.m. the Friday before the election.

12 Q. Did that ultimately change in 2012?

13 A. It did. There was a lawsuit that was filed in 2012 to  
14 bring back in the last three days. And, so, as a part of  
15 that -- the court brought the three days in. The Secretary  
16 issued a directive for uniform hours for those last three days,  
17 but the lawsuit was about the last three days, not about the  
18 uniform schedule for the rest of the period.

19 Q. And do you know who brought the lawsuit that you're just  
20 referring to in 2012?

21 A. The plaintiff was Obama for America, the campaign.

22 Q. And, in 2014, did the Secretary of State again issue  
23 uniform hours across the state for early in-person voting?

24 A. Yes. So, after the 2012 election, the Obama for America  
25 lawsuit was converted into a permanent injunction. So the last

1 three days were, you know, back into the period.

2 And so the Secretary called on the General Assembly to  
3 pass a law establishing uniform days and hours for in-person  
4 absentee voting for the state. The General Assembly did not do  
5 that. To my knowledge, a bill was not even introduced by  
6 anybody.

7 The Ohio Association of Elections Officials, you know,  
8 equal numbers of Republicans and Democrats, formed a task  
9 force, a working group. And they came up with a recommendation  
10 of a schedule for early voting days and hours, uniform early  
11 voting days and hours. In the absence of legislative action,  
12 the Secretary adopted the OAEO recommendation as a directive  
13 for all counties to follow.

14 Q. I would like to show you a calendar from October of  
15 2014. Does this reflect the early in-person voting hours that  
16 were established as a result of the directive you just  
17 described for October?

18 A. Yes, it does, for October of 2014.

19 Q. We'll take a look at November.

20 And is this also the early in-person voting hours that  
21 were established by the directive that you just described?

22 A. Yes.

23 Q. And is this the schedule that was recommended by the  
24 Ohio Association of Election Officials?

25 A. Yes.



1 Q. Did this schedule ultimately change again?

2 A. It did. In 2014, the NAACP and the League of Women  
3 Voters, represented by the ACLU, sued the Secretary of State  
4 over golden week, you know, over Senate Bill 238 that  
5 eliminated the golden week period, and also, you know, sought  
6 to get rid of the Secretary's schedule.

7 I can't remember whether the complaint had asked for a  
8 floor, or what the specifics of the complaint were. But,  
9 anyway, that litigation ended up in a settlement agreement  
10 between the Secretary of State, the Attorney General, and the  
11 State of Ohio, who had also -- I think had been a co-defendant,  
12 and with the -- with the NAACP and the League of Women Voters,  
13 again represented by the ACLU, that established a uniform set  
14 of days and hours for in-person absentee voting for all  
15 different election types. And that settlement agreement is  
16 binding through the end of the Secretary's term.

17 Q. And if you would take a look, in the binder in front of  
18 you, at Exhibit 14K, have you seen this document before?

19 A. I think I have the wrong binder.

20 Q. I'm sorry.

21 MS. RICHARDSON: Your Honor, may I approach?

22 THE COURT: You may.

23 BY MS. RICHARDSON:

24 Q. I have 14K. Thank you. Have you seen this document  
25 before?

1 A. Yes. It is the settlement agreement between the  
2 plaintiffs and Secretary Husted, the NAACP/Husted settlement  
3 agreement.

4 Q. And that's the settlement agreement you were just  
5 describing?

6 A. Yes, it is.

7 Q. If you turn to page 4 of this exhibit, did the  
8 settlement agreement include an agreed schedule for early  
9 in-person voting across the State of Ohio?

10 A. Yes, it does.

11 Q. And is that what is reflected beginning on page 4 of  
12 this document?

13 A. Yes. Part A, on page 4, applies -- is the days and  
14 hours -- are the days and hours for presidential general  
15 elections.

16 Q. And does that schedule, then, continue onto the next  
17 page?

18 A. Yes, it does. Part B, at the bottom of 4 and at the top  
19 of 5, sets the hours for presidential primary elections and  
20 gubernatorial general elections. And then, part C at the  
21 bottom of 5 and top of 6, is the uniform schedule for all other  
22 election types.

23 Q. And so you mentioned that this was the settlement  
24 agreement that all parties to that lawsuit agreed to?

25 A. Yes.

1 Q. So the parties, including the NAACP, approved of the  
2 schedule that was included in this settlement agreement; is  
3 that fair?

4 A. That's correct.

5 Q. Are the hours reflected in this settlement agreement  
6 consistent with the hours that will ultimately be in place for  
7 the 2016 election?

8 A. They are the hours that will be in place for the 2016  
9 election.

10 Q. And if we can take a look at the calendar for 2016, does  
11 this reflect the early in-person voting hours that will be  
12 offered in 2016 for October?

13 A. Yes.

14 Q. And does this reflect the hours that will be offered in  
15 November prior to the election?

16 A. Yes.

17 Q. These hours -- do these hours come directly from the  
18 NAACP agreement that we've just reviewed?

19 A. They do.

20 Q. Does the schedule that was agreed to in the NAACP case  
21 include the period that was formerly referred to as "golden  
22 week"?

23 A. It does not.

24 Q. Did the NAACP agree to the schedule notwithstanding that  
25 it did not include golden week?

1 A. That's correct.

2 Q. Taking a look at the calendar for 2016, do you know how  
3 many weekends will be offered for early in-person voting in  
4 that election?

5 A. It will include two Saturdays and two Sundays for the  
6 2016 general election.

7 Q. And, again, under this directive, will the hours be  
8 uniform across the State of Ohio?

9 A. Under the terms of the settlement agreement, the hours  
10 and days are uniform across the state.

11 Q. You've described, now, election day voting, voting by  
12 absentee both by mail and in person. Could you describe the  
13 relative usage of those various methods of casting a ballot in  
14 Ohio?

15 A. Sure. I mean, election day voting is still the most  
16 widely used form of voting, absentee being, obviously, the  
17 smaller part. And then absentee would be, you know, in two  
18 categories, more people choosing to vote by mail than in  
19 person. So I think, in the 2012 election, a third of the  
20 ballots were cast by an absentee method, and then two-thirds,  
21 obviously, on election day. I don't remember the subset of the  
22 third that were in-person, versus by mail.

23 Q. And was that consistent, generally, with the usage rates  
24 in the 2014 election, as well?

25 A. I don't remember for certain. I think it was a little

1 bit less absentee than in 2010, or -- I'm sorry -- in 2012, but  
2 I can't remember for sure. But election day was still the  
3 largest percentage that voters used.

4 Q. I'd like to switch topics and talk about some of the  
5 various programs that have been initiated in Ohio with respect  
6 to voting during your time at the Secretary of State's Office.  
7 In your view, has the Secretary of State's Office initiated a  
8 variety of innovative new programs to make voting easier in the  
9 state?

10 A. Yeah. We have moved on a number of things. You know,  
11 we talked about the absentee ballot application mailing. You  
12 know, we talked about the mailing to voters who needed to  
13 update their voter registration address; you know, of course,  
14 the supplemental mailing. You know, the Secretary has also  
15 issued a directive to all counties requiring them to have a  
16 lookup on their website where all voters can, you know, find  
17 out the status of their voter registration; are they registered  
18 or are they not; are they registered at the right address; the  
19 ability to find their polling place on each county board of  
20 election's website, in addition to, on the Secretary of State's  
21 website; the ability on the county website to see the sample  
22 ballot before election day. Some counties were doing that  
23 before, but Secretary Husted issued a directive, this year,  
24 requiring all counties to do it.

25 And then the fourth part of that directive from earlier

1 this year that did these things required all boards to have a  
2 lookup function on their local website where a voter could look  
3 up and track the status of their absentee ballot, the date it  
4 was mailed by the board, the date the board received it back.  
5 So, those are some innovations.

6 The other is the online voter registration change-of-  
7 address tool that the Secretary created and launched in the  
8 summer of, or early fall of, 2012. I think 110,000 people  
9 updated their address online in the first, you know, 45 or 60  
10 days that that was available in 2012 prior to the close of  
11 registration.

12 So, a number of, I think, things that we're proud of.

13 Q. And has the Secretary of State's Office, during your  
14 time, also increased the accessibility of training for boards  
15 of elections and election administration officials?

16 MR. SPIVA: Objection. Leading, Your Honor. Leading.

17 MS. RICHARDSON: I can rephrase.

18 THE COURT: Thank you.

19 BY MS. RICHARDSON:

20 Q. Are there other initiatives that the Secretary of  
21 State's Office has taken during your time to increase training  
22 opportunities?

23 A. So, on our website, we have an online poll worker  
24 training function so that any precinct election official in the  
25 state can get online, in addition to the training that the

1 board of elections provides them, and get supplemental training  
2 on the rules and procedures of elections.

3 We provide a quick reference guide, flip chart, to all  
4 the counties for use in each polling place on election day that  
5 the poll workers can use in addition to whatever materials the  
6 boards of elections provide.

7 Q. And earlier you were referring to a directive about  
8 access to voter information. Was that Directive 2015-02?

9 A. I believe so, yes. It was issued this year.

10 Q. And if we could take a look at that directive, is this  
11 the directive that you were referring to?

12 A. Yes.

13 Q. And, under "Instructions," is that the beginning of the  
14 topics that are now required to be provided by the boards of  
15 elections?

16 A. Yes. There is four specific instruction types.

17 Q. And does that then continue onto the next page of the  
18 exhibit?

19 A. Yes.

20 Q. And, so, at the top of this page, it says "Absentee  
21 Ballot Status"?

22 A. Correct.

23 Q. Does this set forth the various items with respect to  
24 absentee ballots that you were just describing?

25 A. Yes, it does.

1 Q. And what other things are listed here?

2 A. Well, in addition to being able to look up the voter's  
3 absentee ballot status, including, you know, the date that the  
4 board received the ballot, the date the board mailed it, the  
5 date the board received it back, it also required boards to  
6 have a sample ballot lookup, and also a polling place lookup.

7 Also, in the directive, you know, we instructed boards  
8 to, you know, pay attention to making sure their websites were  
9 accessible to voters with disabilities, making sure that they  
10 used keywords to make sure that, you know, when somebody looked  
11 up, you know, the Mercer County Board of Elections on Google or  
12 Yahoo or Bing or whatever, that -- you know, that it would be  
13 one of the, you know, top search results, so that voters  
14 wouldn't have to dig through several pages of search engine  
15 results to find the right information.

16 Q. And is that instruction provided on page 3 of this  
17 directive?

18 A. Yes, it is.

19 Q. And if you could just read the first line next to the  
20 bullet point in terms of what the Secretary of State was  
21 instructing the boards to keep in mind.

22 A. The first bullet point, in black, that each board of  
23 elections must build its website and these baseline online  
24 voter information access tools with the end-user, the voter, in  
25 mind. And then we give three specific things to think about.



1 Q. And are those the things you were just describing in  
2 terms of making sure that the information would be accessible  
3 for voters?

4 A. Yes.

5 Q. I'd like to talk now about some of the laws that are  
6 challenged in this case. Are you aware of whether one of the  
7 claims in this case relates to the formula in Ohio for  
8 allocating DRE machines?

9 A. Yes.

10 Q. What does Ohio law currently require with respect to DRE  
11 machines?

12 A. So, after the enactment of the law, boards are required  
13 to, when they purchase new DRE systems, to have a minimum  
14 inventory of one machine for every 175 registered voters,  
15 except for they can back out from that denominator a voter who  
16 cast an absentee ballot in the last presidential election.

17 Q. And what was the ratio that was required before the  
18 change in the law?

19 A. I think it was just 1 to 175 of total registration.

20 Q. What's the ratio that's required now under the new law?

21 A. It's 1 to 175 of registered voters, minus anybody who  
22 voted in the last presidential election by absentee.

23 Q. So did the new law change the bottom-line ratio in Ohio?

24 A. So the law didn't change the 1 to 175. It just changed  
25 the denominator that the boards could look at.

1 Q. And do you have a view as to whether this change and how  
2 the ratio would be calculated makes sense?

3 A. The Secretary of State's Office didn't ask for the law  
4 change. The County Commissioner Association did, but it seems  
5 reasonable.

6 Q. Why do you say that?

7 A. Well, because the -- the machine allocation is primarily  
8 for election-day machine inventory. And it seems reasonable  
9 for a board to be allowed to exclude from any future purchases  
10 of voting machines that happen to be DREs, you know, voters who  
11 have, you know, demonstrated a willingness to vote absentee  
12 before election day and not use -- not need to use the service  
13 of a DRE on election day.

14 Q. And, before we go further, let me just ask you, are all  
15 counties in the State of Ohio DRE counties?

16 A. No.

17 Q. And we'll take a look at a map here entitled "Voting  
18 Systems for Ohio's 88 Counties."

19 A. Yes.

20 Q. Are you familiar with this document?

21 A. I am.

22 Q. What does it represent?

23 A. The different colors indicate the different types of  
24 voting systems used in the counties around the state.

25 Q. And so, in counties reflected on this map that do not

1 use DRE machines, how does a voter cast a ballot?

2 A. So, for a non-DRE county, that would be a precinct count  
3 optical scan county where the voter would go into the polling  
4 place. The board -- the precinct election officials would give  
5 them an optical scan paper ballot. The voter would mark the  
6 ballot and then feed it into a precinct count tabulator at the  
7 polling place, the purpose of which is to tabulate the ballot  
8 there at the precinct, but also to -- it would reject the  
9 ballot back to the voter if the voter had overvoted a contest,  
10 voted for more than the candidates allowed for a particular  
11 contest.

12 Q. So does the DRE law that's challenged in this case  
13 impact only those counties that actually use DRE machines?

14 A. Yes, it would impact only a county who chose to use a  
15 DRE system for their election day voting system.

16 Q. Does the county have the discretion to determine whether  
17 it will use DRE machines as compared to the other optical scan  
18 options you described?

19 A. Yes. Currently, under state law, only counties can  
20 choose the type of voting system they use.

21 Q. And was that true before the change in the formula?

22 A. Yes.

23 Q. Is it still true now, under the existing law?

24 A. Yes.

25 Q. If you would turn to Exhibit 26 in the binder in front

1 of you -- it may be in a different binder.

2 MS. RICHARDSON: If I may approach?

3 BY MS. RICHARDSON:

4 Q. Would you like me to move these?

5 A. No. I've got it. A balancing act.

6 Q. Do you have it in front of you?

7 A. I have Exhibit 26 here, yes.

8 Q. And what is that document?

9 A. Exhibit 26 is a directive on uniform days and hours for  
10 in-person absentee voting.

11 Q. Maybe I have the wrong exhibit number. It should be  
12 Directive 2015-15.

13 A. That's not what I have here.

14 Q. Let's try Exhibit 27.

15 A. Exhibit 27 is Directive 2015-15, Ballot Quantities for  
16 the November 3, 2015, General Election.

17 Q. Perfect. And does this directive provide instructions  
18 to the counties with respect to the use of DRE machines under  
19 the new law?

20 A. So, this directive gives all counties, regardless of  
21 whether they use optical scan or DREs, instructions about  
22 ballot quantities -- so paper-ballot quantities -- or the  
23 allocation of DREs for use in this most recent state general  
24 election.

25 Q. And if you turn to the section marked II, can you

1 describe, generally, what this instruction means?

2 A. So this section would be the instructions for a county  
3 that uses DREs on election day of the minimum allocation  
4 requirements of the DREs, and also the requirement to have  
5 backup paper ballots and allocations for provisional -- paper  
6 ballots for provisional ballot usage.

7 Q. And does this directive instruct the boards that, on  
8 election day, they should deploy at least one DRE voting  
9 machine for every 175 registered voters in a precinct or voting  
10 location at which the DREs are programmed to allow any voter in  
11 the location to vote on any machine in the location?

12 A. Yes, it says that.

13 Q. And so does that mean that, on election day, there will  
14 be one voting machine for every 175 registered voters in the  
15 precinct or location?

16 A. Yes.

17 Q. Going into the next paragraph --

18 THE COURT: Which we will be happy to do after lunch.

19 MS. RICHARDSON: Thank you, Your Honor.

20 THE COURT: 1:30.

21 (A recess was taken at 12:00 p.m.)  
22  
23  
24  
25

1 Wednesday Afternoon Session,  
2 December 02, 2015.  
3 1:30 p.m.

4 - - -

5 THE COURT: I need to break at 3:00 to take a call and  
6 we'll come back.

7 MS. RICHARDSON: Thank you, Your Honor. I would  
8 expect to be done well in advance of that.

9 THE COURT: Very well.

10 BY MS. RICHARDSON:

11 Q. Good afternoon, Mr. Damschroder.

12 A. Good afternoon.

13 Q. Before we took the break, we were discussing the change  
14 in formula for calculating the ratio of DRE machines per  
15 county. Do you recall that?

16 A. I do.

17 Q. And we were looking at a directive that provided some  
18 guidance to the counties with respect to this calculation. And  
19 do you still have that in front of you?

20 A. Directive 2015-15?

21 Q. That's correct.

22 A. Yes.

23 Q. And can you just generally describe, I think we were  
24 about ready to look at what's in the second box on this page  
25 here in the demonstrative on the screen beginning with the

1 paragraph, in determining the number of registered voters.

2 A. Yes.

3 Q. And can you just read into the record what that  
4 instruction states?

5 A. In determining the number of registered voters, a board  
6 does not have to count electors who failed to respond within 30  
7 days to any confirmation notice. It may also exclude from the  
8 count any registered voter who has requested an absent-voter  
9 ballot, by mail or in person, for the November 3rd, 2015  
10 general election as of the date the allocation decision is made  
11 by the board.

12 Q. Can you describe what that instruction means?

13 A. Similar to the instructions that the Secretary of State  
14 provides to boards of elections as to the minimum number of  
15 paper ballots for a precinct-count optical-scan county that the  
16 county must provide per precinct or polling place, this  
17 instructs the boards what the minimum number of voting machines  
18 to provide in a precinct or polling place for the most recent  
19 state general election.

20 Q. And I believe you testified earlier that the change in  
21 formula for calculating the minimum ratio of DRE machines  
22 permits counties to exclude voters who had voted in a previous  
23 election absentee; is that right?

24 A. Correct. For purposes of the inventory when the board  
25 buys a new system in the future.

1 Q. So does the provision that you just read in this  
2 directive mean that a county can exclude a voter twice?

3 A. No. These are the instructions for the machine  
4 allocation for the board for this particular election.

5 Q. And so why would that not result in a voter being  
6 removed from the calculation two times?

7 A. Because the calculation would be based on actual  
8 individual voters, not total numbers. In this instance we're  
9 talking specifically about voters who requested an absentee  
10 ballot for this particular election.

11 Q. And so is this instruction referring to something  
12 completely separate than what the overall count for the county  
13 refers to?

14 A. Yes. These instructions are about the actual machine  
15 allocation of the board's inventory for purposes of this  
16 particular state election.

17 Q. So that the county -- the statute that's at issue in  
18 this case permits the exclusion from the minimum ratio from the  
19 county of certain voters who had voted in a previous election;  
20 is that right?

21 MR. SPIVA: Objection. Leading, Your Honor.

22 THE COURT: Rephrase it.

23 BY MS. RICHARDSON:

24 Q. Can you remind us what the statute that's at issue in  
25 this case does with respect to excluding voters?



1 A. So the new law's ratio, or the ratio -- the new ratio in  
2 the law is that the board can exclude voters who cast a ballot,  
3 an absentee ballot in the last presidential election from the  
4 denominator when making an inventory purchase decision in the  
5 future for DREs, which is different than this directive which  
6 are specific instructions for allocation for a specific  
7 election.

8 Q. So what we're reading here in this directive refers to  
9 the allocation of those machines to various precincts on  
10 election day. Am I understanding that correctly?

11 A. That's correct.

12 Q. And if a county wanted to read this directive and  
13 exclude from the overall minimum calculation for the county, a  
14 voter who -- let me restate that.

15 Could, based on this instruction, could a county  
16 double-count, essentially, a voter who had voted previously in  
17 an election absentee and had also requested to vote absentee in  
18 the upcoming election?

19 A. So for purposes of this directive on election-day  
20 allocation of machines, the only voters that the board is  
21 allowed to exclude from the denominator in the ratio are  
22 inactive or confirmation-status voters and a voter who  
23 requested an absentee ballot, quote, any registered voter who's  
24 requested an absent-voter ballot by mail or in person for the  
25 November 3rd, 2015 general election as of the date the

1 allocation decision is made by the board, end quote.

2 Q. And based on your experience and understanding as the  
3 number-two person at the Secretary of State's Office, do you  
4 believe that the counties understand that they are not to  
5 double-count voters for purposes of calculating the minimum for  
6 the counties?

7 A. Yes, they do. I think they understand they're supposed  
8 to follow this directive as it relates to allocation of both  
9 paper ballots and absentee ballots for a particular election.

10 Q. And I'll ask you to take a look at another Directive,  
11 2014-16. I'm sorry, 2014-03, and that's Exhibit 14BB in the  
12 binder. It will be the first binder, probably, that we took a  
13 look at today.

14 THE COURT: BB?

15 MS. RICHARDSON: Yes, Your Honor.

16 BY MS. RICHARDSON:

17 Q. Do you have it in front of you, Mr. Damschroder?

18 A. I do, thank you.

19 Q. What is the purpose of this directive?

20 A. This is an advisory describing for the boards the  
21 changes that resulted from Amended Substitute Senate Bill 200.

22 Q. And on page two of this directive, does it refer to the  
23 change in the calculation for electronic voting machines that  
24 we've been discussing?

25 A. Yes.

1 Q. Can you describe generally what the instruction with  
2 respect to the minimum number of direct recording machines  
3 states to the counties?

4 A. It tells them that when they're buying DRE voting  
5 systems that the minimum number they have to have is 1 to 175  
6 of a ratio where they can exclude from denominator absentee  
7 ballots cast and counted at the last presidential election.

8 Q. Is that exactly the change in the law that we've just  
9 been discussing?

10 A. Yes.

11 Q. If you take a look at the bottom paragraph there where  
12 it says note next to it?

13 A. Yes.

14 Q. What does that instruct the counties?

15 A. It tells them if they have more machines -- if they  
16 currently have more machines than the new ratio to not throw  
17 any good machines away.

18 Q. So under this directive, is a county required to  
19 maintain its current inventory with respect to DRE machines  
20 notwithstanding the change in the minimum calculation?

21 A. They're not supposed to -- they're not supposed to  
22 divest themselves of any equipment.

23 Q. Have you reviewed data regarding the current inventory  
24 of DRE machines in those counties that use DRE machines?

25 A. Boards of elections report that data to us every January

1 or so.

2 Q. And do you recall, generally, what that inventory would  
3 look like currently?

4 A. I don't remember for sure what the current number is for  
5 DREs or for precinct count optical scan.

6 Q. Is that something that you described in the declaration  
7 you submitted in this case?

8 A. I think so.

9 Q. Would it refresh your recollection to take a look at  
10 what you describe in your declaration?

11 A. Yeah.

12 Q. If you will turn to Exhibit 14Z. And does paragraph --  
13 first of all, what is this document?

14 A. This is the declaration that I submitted in this case.

15 Q. Did you prepare and review this document in connection  
16 with this case?

17 A. I did.

18 Q. And did you sign this document?

19 A. I did.

20 Q. And is it true and accurate to the best of your  
21 knowledge?

22 A. Yes.

23 Q. And based on your personal knowledge?

24 A. Yes.

25 Q. If you take a look at paragraph 36.

1 A. Okay.

2 Q. Does that paragraph describe the data you reviewed  
3 regarding the current inventories the counties possess with  
4 respect to DRE machines?

5 A. Yes. It says there are 29,519 DREs, 2,171 AutoMarks,  
6 and 4,659 precinct count optical scanners, and then 79  
7 high-speed optical scanners for absentee.

8 Q. And based on the directive that we were just reviewing,  
9 are the counties required to maintain that inventory?

10 A. Yes. They're not supposed to get rid of any of the  
11 29,519 DREs.

12 Q. You testified a few moments ago in looking at the  
13 directives to the counties regarding allocation of DRE machines  
14 on election day that the counties are required to maintain a  
15 ratio based on precinct or individual voting location; is that  
16 correct?

17 A. Yes. The directive provides instructions for  
18 election-day allocation, right.

19 Q. And by removing from that calculation, voters who are  
20 likely to vote absentee or who have already indicated that they  
21 will vote absentee, does that likely free up some of the  
22 machines that might otherwise be required to be used in a  
23 particular voting machine?

24 A. So what that instruction allows a board to do is, for  
25 that particular election, to exclude from the denominator a

1 person who has requested an absentee ballot for that election.  
2 So based on that, if you had a precinct where 50 percent of the  
3 people in the precinct had already, you know, requested an  
4 absentee ballot for that election, that would kind of  
5 conceivably allow the board to, again, not -- not get around  
6 the minimum requirements but they could allocate additional  
7 machines above the minimum to other precincts where maybe there  
8 wasn't the same kind of absentee ballot demand.

9 Q. So just to break that down a little bit further. Under  
10 the previous law, if a precinct had what was the minimum under  
11 prior law, could those voting machines be moved to another  
12 precinct or another voting location?

13 A. So because the law only talked about inventory purchases  
14 and not election allocation, we, the Secretary of State's  
15 Office, have pretty much kept the allocation instructions  
16 static over time with the exception, I think, in the  
17 presidential we say it's a minimum of three DREs at a precinct  
18 or polling place as opposed to two. So with that, boards have  
19 that flexibility when they're making their allocation decision  
20 for a particular election.

21 Q. Based on your experience both at the Franklin County  
22 Board of Elections and the Secretary of State's Office, are you  
23 familiar with the fact that some precincts may have different  
24 needs in a particular election than other precincts in terms of  
25 expected voter turnout?

1 A. Yes.

2 Q. And can you describe some of the reasons that might  
3 occur?

4 A. Well, I think in the present context with the directive  
5 it would be if a number of -- if a certain percentage or a  
6 number of people have already requested an absentee ballot for  
7 that particular election, if they had requested an absentee and  
8 they show up at the polling place, they have to vote  
9 provisional. So they're not going to need the services of the  
10 DRE.

11 Other circumstances that boards often take into  
12 consideration would be the number of, you know, the issues on  
13 the ballot, whether something is particularly a hot local issue  
14 like maybe a school levy or something of that nature. So  
15 boards should take into account those kinds of things.

16 Q. And so in the situations that you describe, would a  
17 county have discretion to move more of its voting machines to  
18 the precincts where it expects a higher turnout for some of the  
19 reasons that you've described?

20 A. Sure. The boards have that discretion to, you know, we  
21 set here the minimum number of machines for use on -- for  
22 allocation on election day and then they can move the machines  
23 around above that, you know, based on their determination.

24 Q. So you mentioned that the numbers that we've been  
25 discussing in terms of ratios represent the minimum number

1 required under the law; is that right?

2 A. That's correct.

3 Q. So I think you just testified that that means that the  
4 counties have the discretion to exceed that minimum if they  
5 choose to do so; is that right?

6 A. Yes.

7 Q. And based on your experience, are you aware that some  
8 counties do, in fact, exceed the minimum if they determine  
9 their county needs justify it?

10 A. Yes.

11 Q. And can you describe some examples?

12 A. Well, I think the example that I have is from my  
13 experience in Franklin County when we purchased or when the  
14 federal government, the state purchased voting machines for us  
15 using one-time federal money. The state was purchasing based  
16 on an allocation of 1 to 175 of current registration by the  
17 county and we wanted to have more and so we used local money to  
18 buy more.

19 Q. And the changes in the --

20 THE COURT: We Franklin County?

21 THE WITNESS: I'm sorry. We, Franklin County Board of  
22 Elections.

23 BY MS. RICHARDSON:

24 Q. The changes in the calculation for the DRE ratio minimum  
25 would not take away that discretion, would they?



1 A. I'm sorry. Would you say that again?

2 Q. Sure. Under the new law that we've been discussing,  
3 would counties possess that same discretion to exceed the  
4 minimum as it's newly calculated?

5 A. Yes.

6 Q. Are you aware that Plaintiffs are also challenging the  
7 minimum or, I'm sorry. Are you aware that Plaintiffs are also  
8 challenging the restriction in Ohio law on the number of  
9 early-voting sites?

10 A. Yes.

11 Q. Under existing law, how many early-voting centers is a  
12 county allowed to have?

13 A. One.

14 Q. Has that always been true?

15 A. Yes.

16 Q. Do you have a general understanding of where many of the  
17 voting centers are located in their respective counties across  
18 the state?

19 A. To my knowledge, most of them are at the board of  
20 elections which are generally kind of in the county government  
21 complex, courthouse square or something in the county seat.

22 Q. And while a county may not have the discretion to add a  
23 new voting center, does a county have discretion to expand the  
24 resources at the center it does have?

25 A. Yes. So if, for instance, the board decides that their

1 board of elections facility is not adequate for in-person  
2 absentee voting then they can select an alternate location.  
3 Franklin County has done that since the 2008 general election.  
4 I think Delaware does it. And so they can pick that alternate  
5 location.

6 Additionally, the boards have discretion to, you know,  
7 how many voting booths to have, how many seasonal or full-time  
8 staff to have for processing voters in that in-person absentee  
9 environment.

10 Q. And if a county did have the discretion to add  
11 additional early-voting centers, could that present certain  
12 administrative burdens, in your view?

13 A. I think having multiple locations for in-person early  
14 voting can introduce a number of administrative challenges and  
15 logistical challenges. Where are the locations going to be?  
16 Are you going to just rent them for the two months a year? Is  
17 that going to result in moving from election to election? The  
18 IT issues are significant to make sure that if you have  
19 multiple locations that when a voter checks in at one location,  
20 it populates the voter file for all the locations so that the  
21 person can't then turn around and go to the next location.  
22 Staffing, resource allocation, all of those things are  
23 challenges.

24 Q. When you were at the Franklin County Board of Elections,  
25 what was your view about the possibility of adding additional

1 early-voting centers?

2 A. So when I was in Franklin County, we had had -- there  
3 were a number of election kind of controversies, I think as we  
4 mentioned earlier, about the days and hours. And there was  
5 also a little bit of controversy about moving the --  
6 establishing an alternate location in 2008 when the board moved  
7 over to Vets Memorial.

8 So my view at the time at the board was that if boards  
9 were allowed to have more than one location, as long as it was  
10 an even number, because boards of elections are inherently  
11 bipartisan with two R's and two D's on the board, an even  
12 number would give the boards a lot of flexibility to come up  
13 with a bipartisan solution for where to place additional  
14 early-voting locations. So aware of the logistical challenges  
15 but interested in solving that one particular part of the  
16 controversy.

17 Q. And so at that point in time did you indicate that you  
18 would be in favor of adding some additional early-voting  
19 centers if you had the option to do so?

20 A. I think I communicated that, yes.

21 Q. Now that you have had experience at the Secretary of  
22 State's Office, has your view on that issue evolved?

23 A. Well, I think my view has not evolved as it relates to  
24 the understanding of the logistical challenges that are  
25 inherent in having multiple locations and things that boards

1 would have to do. As Director of Elections for the Secretary  
2 of State or Assistant Secretary of State in my current  
3 capacity, my responsibility is to advise the Secretary on  
4 policy for all the boards of elections; whereas, when I was in  
5 Franklin County, my only concern was Franklin County Board of  
6 Elections. So I had to take into account the challenges that  
7 all the boards would have and whether or not other boards would  
8 be able -- would be capable of challenging that.

9 So the other thing that has not evolved in my view is at  
10 the time when I thought at Franklin County that we should have  
11 multiple -- an even number of multiple in-person locations, my  
12 view was that it should be done legislatively. To the extent  
13 that that would happen in the future, I think that should be  
14 done legislatively as well.

15 Q. And based on the work that you have done with smaller  
16 counties across the state of Ohio during your time at the  
17 Secretary of State's Office, do you have a view as to whether  
18 adding an additional early-voting center could be a real  
19 hardship for some counties in the state?

20 A. I think the logistical challenges for multiple locations  
21 would be particularly acute for smaller counties.

22 Q. And based on your experience both at the county board of  
23 elections and at the Secretary of State's Office, do you have a  
24 view as to whether just giving county boards of election the  
25 discretion to add an additional site might result in

1 controversy in the boards across the state?

2 A. I think it opens the door for controversy because, you  
3 know, you could potentially have a scenario where boards were  
4 tying and then a Secretary of State from one party or the other  
5 was breaking the tie. Those tie votes could change from  
6 election to election and so, yes, I think it makes sense to  
7 have it in state law and have it be a number as opposed -- have  
8 it be an even number as opposed to it just having discretion.

9 Q. And could giving the county boards of election the  
10 discretion to move beyond the single center allowed under  
11 current law result in the same kind of patchwork situation you  
12 saw with respect to early-voting hours where there was  
13 discretion?

14 A. I would say yes because you would have, I think like my  
15 example from earlier, about the Delaware County voter in the  
16 same congressional district as the Franklin County  
17 congressional district voter. Delaware might not choose to  
18 have multiple locations or Delaware might choose to have  
19 multiple locations and Franklin County might not. And so then  
20 voters wouldn't have, even within the same district or  
21 political subdivision, have the same opportunities to request  
22 or vote an absentee ballot in person.

23 Q. I'd like to switch topics and discuss now the  
24 elimination of golden week. Is it your understanding that  
25 that's an issue in this case as well?

1 A. Yes.

2 Q. And the Court has heard a lot of testimony on what  
3 golden week was but could you just briefly remind us  
4 specifically what golden week referred to under Ohio law?

5 THE COURT: I think I don't need that.

6 MS. RICHARDSON: Thank you, Your Honor.

7 THE COURT: I've heard it about twelve times.

8 BY MS. RICHARDSON:

9 Q. Are you aware of whether the Ohio Association of  
10 Election Officials took a position with respect to the  
11 elimination of golden week?

12 A. My recollection is that they did and they recommended  
13 getting rid of the overlap period.

14 Q. And this was the bipartisan task force that you referred  
15 to earlier in your testimony?

16 A. That's correct.

17 Q. And earlier you also referred to the NAACP settlement, I  
18 believe; is that correct?

19 A. Yes.

20 Q. And I believe you testified earlier that the NAACP also  
21 agreed to a schedule that involved the elimination of golden  
22 week; is that correct?

23 A. That's correct.

24 Q. And have you had an opportunity to review data regarding  
25 the extent to which golden week was utilized in Ohio?

1 A. Not on a statewide basis. In preparation for the NAACP  
2 litigation I had asked Franklin County to run the numbers to  
3 see people who had voted during golden week in one election,  
4 what was the likelihood that they would vote in that same  
5 golden-week period in a future election. So I looked at the  
6 Franklin County numbers that they gave me.

7 Q. And in the course of your duties at the Secretary of  
8 State's Office, do you routinely consider election data that's  
9 compiled by the various boards of election across the state?

10 A. We regularly require boards to send us data and I have  
11 occasion to look at that.

12 Q. And do you recall, sitting here today, what the data  
13 that you reviewed for Franklin County revealed with respect to  
14 the usage of golden week?

15 A. I don't remember the specific number but I remember it  
16 was very few people who voted in one golden week voted in that  
17 same time frame in a future election. I don't remember the  
18 exact number.

19 Q. And was that something that you also discussed in the  
20 declaration that you submitted in this case?

21 A. I believe so.

22 Q. And would taking a look at the description you provided  
23 in your declaration refresh your recollection as to the  
24 specific numbers that you reviewed?

25 A. Yes.

1 Q. If you would take a look at paragraph 86 of your  
2 declaration. And is this the paragraph that describes the data  
3 that you reviewed with respect to the use of golden week in  
4 Franklin County?

5 A. Yes.

6 Q. And can you just generally describe what you found based  
7 on your review of that data?

8 A. Yes. There were -- of the 259 -- I'm sorry. Of the  
9 8,534 in-person absentee voters during the '08 golden-week  
10 period, only 259 of them also voted during golden week in 2012.  
11 And that there were only 61 electors, again, this is just  
12 Franklin County, who voted in person absentee during golden  
13 week for each of the '08, 2010 and 2012 general elections.

14 Q. And based on what you reviewed and just described in  
15 that paragraph, did you reach a conclusion about the likelihood  
16 that a voter who voted in golden week in a previous election  
17 would necessarily do so in a future election?

18 A. I think my conclusion from this was that very few people  
19 only voted during the golden week time period.

20 Q. And, again based on your experience both at Franklin  
21 County and at the Secretary of State's Office, do you have a  
22 view as to whether golden week presented unique challenges for  
23 the boards of election?

24 A. Yes. I think some of the challenges related to the  
25 golden-week voter, particularly as it relates to the



1 golden-week voter who was registering to vote or changing their  
2 address at the same time, they were requesting and casting an  
3 absentee ballot, is the unique challenge of getting that voter  
4 into the voter file, making sure that they get the correct  
5 ballot based on their -- on their residential address and then  
6 making sure that's communicated to -- if the person is moving  
7 from one county to another, timely communicated to the other  
8 county so that that registration can be canceled in the other  
9 county.

10 Because that's still a voter registration event, the  
11 board still has to send an acknowledgment card to the voter and  
12 if the confirmation card comes back as undeliverable, that is  
13 the confirmation card, that can create a question in the mind  
14 of some boards about whether or not the person who both  
15 registered and voted at the same time during the golden-week  
16 period is indeed a qualified elector or resident of the address  
17 where they registered.

18 Q. And did that present a unique risk for voter fraud, in  
19 your view?

20 A. Yes. I think it presented a unique risk for voter fraud  
21 where a person could, at one event, at one moment, both  
22 register to vote, request an absentee ballot and cast an  
23 absentee ballot and then disappear. I think it should be noted  
24 that that is rare in that we're proud that we have good laws in  
25 Ohio and that voter fraud, as a result of that, is rare. But

1 it did indeed result in a unique kind of risk of potential  
2 voter fraud.

3 Q. And are you aware of some specific examples of fraud  
4 that occurred during golden week?

5 A. So in Franklin County, in my experience there,  
6 particularly in the 2008 election, we kind of had two groups of  
7 potential problems with golden week. One is that we had a  
8 group of college students who came to Franklin County  
9 specifically from other states with the purpose, and they set  
10 up a nonprofit, they were great kids, and they were involved in  
11 getting out the vote particularly, getting people to the  
12 early-vote center to vote absentee.

13 Many of them registered to vote during golden week, many  
14 of them cast a ballot either during golden week -- during  
15 golden week. And as the time went on, they, as well as there  
16 was some McCain operatives who did the same thing, they came to  
17 the conclusion that, you know, they weren't registered, they  
18 weren't residents of Ohio and so they asked the board to -- if  
19 they could withdraw their registration and withdraw their  
20 ballots.

21 My recollection is that all the ballots, with the  
22 exception of one, were able to be successfully withdrawn.  
23 That's kind of one category of the experience with Franklin  
24 County. Those individuals came forward.

25 The other was, you know, we did have some

1 confirmation -- some acknowledgment cards that were sent after  
2 the person registered and came back as undeliverable and we  
3 worked with the prosecuting attorney who assigned us an  
4 investigator who went out and tried to ascertain was there  
5 somebody associated with these ballots, and there were a few  
6 instances where he went out and found an empty apartment or an  
7 empty house with no, you know, owned by a local landlord with  
8 no current lease on the property.

9 So there were some ballots, you know, that were  
10 questionable in Franklin County. You know, we took the  
11 position that, those questions notwithstanding, the return of  
12 acknowledgment card as undeliverable, for that sole reason, was  
13 insufficient for us not for count the ballot. So we erred on  
14 the side of the voter and counted those absentee ballots even  
15 though they were in question.

16 Q. And let me ask you, does the process of investigating  
17 suspicious circumstances like those you just described take a  
18 lot of time for board of elections officials?

19 A. It can. And I think part of the challenge for most of  
20 the boards, and it was certainly a challenge for me when I was  
21 at the board as director or deputy director, is most of the  
22 elections officials in the state, including board members,  
23 aren't attorneys and don't have experience in conducting those  
24 kind of investigations.

25 So a lot of the weight falls on county prosecuting

1 attorneys. In many counties, that's working to conducting  
2 investigations for the board of elections is not the  
3 prosecuting attorney's objective or highest and best use. So  
4 sometimes there's a conflict between, you know, the prosecuting  
5 attorney, the sheriff and the board of whose job is it. So  
6 sometimes things just don't get followed through with.

7 Q. And with respect to the members of the boards of  
8 election specifically, are they responsible for a number of  
9 different tasks during the last week of voter registration?

10 A. Yes. So everything, once you get into that election  
11 window, becomes particularly busy for the boards. They're  
12 entering voter registrations because they're coming in towards  
13 the end of the close of registration period pretty quickly and  
14 you have to get all those entered into your voter-registration  
15 system before the 14th day before the election. You're  
16 recruiting poll workers and training poll workers. You're  
17 getting your absentee ballots ready to mail. So there's a lot  
18 of things going on at the board of elections at that time  
19 period.

20 Q. And are the boards at that point in time also preparing  
21 for the actual upcoming election?

22 A. Yes.

23 Q. And can you just describe very briefly some of the  
24 responsibilities that the boards of election have as they  
25 prepare for an upcoming election?

1 A. Sure. So like I mentioned, they're hiring poll workers,  
2 they're training poll workers, they're programming voting  
3 machines, they're making any last-minute adjustments to polling  
4 place assignments, they're delivering equipment. So there's a  
5 lot of activity in preparation for election day.

6 Q. And from your standpoint, if a voter is able to  
7 inappropriately cast a vote or perhaps cast two votes, is it a  
8 problem from an election administration perspective even if the  
9 voter did not commit the fraud intentionally?

10 A. I think from a board of elections standpoint, it's still  
11 a violation of the election laws and the board needs to do its  
12 best to prevent those kind of circumstances from happening.  
13 And if they do happen, to get the information and provide it to  
14 the prosecuting attorney.

15 Q. Is election integrity, to you, an important  
16 consideration behind many of the decisions that boards of  
17 election have to make?

18 A. It is. And I think, you know, in that context, you  
19 know, election integrity includes a lot of different things. I  
20 mean, it's the board getting the blocking and tackling right,  
21 doing the things that they're supposed to do. It includes, in  
22 my view, minimizing controversy to the extent that you can,  
23 which means setting rules as early as you can before the  
24 election so there's not changing of the rules after the game's  
25 already started.

1           There's a lot of perception. Voter education, I think,  
2 goes into, and voter confusion, goes into the view that the  
3 election is run with integrity. So any of those things that  
4 elections officials can do to reduce voter confusion, reduce  
5 controversy, to know the rules of the game ahead of the start  
6 of the election all support the idea of an election that the  
7 integrity of the election is not just an issue of is there  
8 fraud or is there not fraud.

9           Q. And is the voter's perception of the integrity of the  
10 voting system also an important consideration?

11          A. It is. Perception's a hard thing to take care of but,  
12 like I mentioned, I think by having the rules set ahead of  
13 time, by having well-trained poll workers, a lot of the things  
14 that I've read through the years is that one of the primary  
15 things that a voter uses to judge whether or not the election  
16 was run properly is their experience at the polling place. Was  
17 the poll worker courteous? Was there a problem finding my name  
18 in the poll book?

19           All of those things are important. That's kind of the  
20 blocking and tackling that I talked about. Making sure that  
21 the voter has a good experience so that they perceive, they  
22 believe that the election was well run.

23          Q. And we've been talking specifically about voter fraud.  
24 Are you also aware of examples of registration fraud?

25          A. Yes, I am.

1 Q. And can you describe a couple of examples of  
2 registration fraud, based on your experience?

3 A. So in Franklin County, our first large experience with  
4 alleged voter fraud was in 2004 where we received hundreds of  
5 voter registrations with people's moving already-registered  
6 voters from one address to another, different names -- correct  
7 names, correct addresses but different last four of a social  
8 and a different signature. So registration fraud is of the  
9 kinds of fraud, I would say, is the most prevalent that the  
10 boards of elections have to work against.

11 We've had allegations of voter registration fraud even  
12 this year. We issued a directive to boards of elections in  
13 June instructing them to pay particular attention to voter  
14 registrations that were coming in associated with a statewide  
15 petition drive because boards were reporting, hey, we're  
16 getting registration forms for people's names but I remember  
17 there's one in Delaware County where a registered voter had  
18 their address changed on them. All of the information on the  
19 form, you know, name, date of birth, last four of social was  
20 correct but they just moved the person to a different address  
21 and then it had a corresponding signature on the petition.

22 More recently there was an item in Columbiana County  
23 where the board was -- received registration forms from Ohio  
24 Organizing and the board, as they were entering them into the  
25 voter-registration system, found that the person's information

1 matched individuals who had died and so the board contacted the  
2 sheriff who contacted BCI. They contacted OOC who turned over  
3 all of the information on the paid circulator to the board of  
4 elections. And the sheriff and BCI are conducting an  
5 investigation on it.

6 Q. You mentioned Ohio Organizing. Is that The Ohio  
7 Organizing Collaborative?

8 A. Yes.

9 Q. And do you know whether The Ohio Organizing  
10 Collaborative was previously a party in this litigation?

11 A. I believe so.

12 Q. Does removing golden week eliminate all possibilities of  
13 fraud in the state of Ohio?

14 A. No. It just eliminates that one particular type of risk  
15 of -- that one risk of a particular type of fraud.

16 Q. And is eliminating that risk of fraud an important  
17 benefit, in your view?

18 A. I think it's the -- it's a key benefit from eliminating  
19 golden week.

20 Q. Apart from the issues related to fraud that we've just  
21 been discussing, are you aware of other election-administration  
22 benefits associated with eliminating golden week?

23 A. Well, I think the -- there is something to be said for  
24 doing things neatly and in order, as my mom always told me as a  
25 kid. And so I think there is value in having a registration



1 period and having that registration period ending, and then  
2 having a voting period start and then having that period ending  
3 and then having election day. So that you have blocks of times  
4 that people can understand this is registration time. All  
5 right, everybody, registration time has ended. Now we're in  
6 voting time. And so then we do that and then voting time has  
7 ended and now it's election day. At 7:30 p.m. voting has  
8 ended.

9 So I think there's value to having clear, defined times  
10 for the public to understand what they're allowed to do during  
11 specific time periods and boards -- I think for boards --  
12 boards are going to be busy whether there's golden week or not.  
13 They're going to have all those things to do whether they have  
14 golden week or not. But it just takes that one more thing off  
15 of their shoulders during that one week.

16 Q. And did golden week, based on your experience, also  
17 create some confusion for voters as to when the registration  
18 deadline actually took place?

19 A. Yeah. There was a little bit -- I mean, I can, from my  
20 experience in Franklin County, we had some voters who would  
21 come in later on who just thought it was unfair. If I had come  
22 two weeks ago you mean I could have registered to vote? Right.  
23 Or if I had come two weeks ago during golden week I could have  
24 changed my address and not had to vote provisionally? Right.  
25 So that's part of having distinct periods helps everybody

1 understand, this is what I can do during each particular  
2 period.

3 Q. Switching gears a little bit. Have there also been some  
4 changes to the requirements with respect to absentee ballots  
5 and provisional ballots that are challenged in this case?

6 A. Yes.

7 Q. And so starting with absentee ballots, what is your  
8 understanding of the change in the law that's being challenged  
9 here?

10 A. My recollection is that it has to do with the  
11 requirement that the voter place their date of birth on the  
12 identification envelope when casting the ballot.

13 Q. And does the law that's being challenged here also  
14 require voters to put their address on absentee-ballot  
15 envelopes?

16 A. Yes, it does.

17 Q. And so collectively, the law imposes two new  
18 requirements with respect to these identifiers; is that  
19 accurate?

20 A. I believe that's the case, yes.

21 Q. I'll ask you to take a look at Exhibit 14C in your  
22 binder. What is this document?

23 A. This is Directive 2014-27 regarding contacting voters  
24 with incomplete absentee-ballot identification envelopes.

25 Q. And if you take a look at the paragraph that's been

1 highlighted here beginning with boards of elections are  
2 instructed.

3 A. Yes.

4 Q. Could you read that paragraph, please?

5 A. It says, boards of elections are instructed to preprint  
6 the voter's name and address (at which the voter is registered  
7 to vote) on the voter's identification envelope prior to  
8 providing it to the voter. This will eliminate any chance that  
9 a voter's absentee ballot may be rejected for the sole reason  
10 that the voter did not provide the voter's name and address on  
11 the identification envelope.

12 Q. And so what does this instruction mean?

13 A. It means the board's required to preprint the voter's  
14 name and address on the identification envelope.

15 Q. As a result of this instruction, is the only new  
16 information that a voter is required to put on an  
17 absentee-ballot envelope the voter's birthdate?

18 A. Yes.

19 Q. And with respect to the instruction to preprint the name  
20 and address, can you describe generally how this instruction  
21 came about?

22 A. Yes. So the law, as I recall, permitted boards to  
23 preprint the name and address. Many boards already were.  
24 Including when I was at Franklin County we'd been doing it for  
25 a number of years. And we were contacted by my friend Don

1     McTigue and we had a series of meetings about how to set up a  
2     uniform system for boards for both preprinting and particularly  
3     for the curing of absentee ballots. And so we -- we, the  
4     Secretary, issued a directive to the county saying, hey,  
5     everybody should preprint the name and address. And most were  
6     already in some fashion.

7           Q.     And now based on this instruction, all boards of  
8     election are required to preprint the name and address; is that  
9     accurate?

10          A.     Correct.

11          Q.     And with respect to the birthdate, what happens if a  
12     voter fills out the information regarding birthdate but gets it  
13     wrong?

14          A.     Well, if it's wrong-wrong, then the board has to contact  
15     the voter, giving them an opportunity to cure. But if it's  
16     wrong subject to one of the two statutory exceptions, I think  
17     the exceptions are that the month and day are correct but the  
18     year is wrong or that the voter's date of birth in the voter  
19     file is 1/1/1800 which is kind of just a data holding figure,  
20     that if those two are the exception then there would not be a  
21     need to contact the voter and they could just count the ballot.

22          Q.     And so if I understand you correctly then, all that a  
23     voter is actually required to put correctly on the  
24     absentee-ballot envelope is their birthdate month and day; is  
25     that correct?

1 A. As it relates to date of birth.

2 Q. Yes. Thank you for clarifying. With respect to  
3 birthdate specifically, they're only required to put the  
4 birthday month and day?

5 A. Right. If they put the month and day but the wrong  
6 year, that's one of the exceptions in the statute and the board  
7 can count it.

8 Q. And I think you mentioned that if they fail to put any  
9 information there, the board would have to reach out to the  
10 voter. Did I understand that correctly?

11 A. That's correct.

12 Q. What are you referring to there?

13 A. So if, let's say, the voter just leaves the date of  
14 birth requirement blank or if it they don't sign the envelope  
15 or if they don't, you know, provide the identification, then  
16 the board sends a notice to the voter and by completing the  
17 notice, that cures -- by completing the notice and returning it  
18 to the board, that cures the deficiency on the envelope.

19 Q. So if they forget to put their birthdate on the envelope  
20 or make another error on the envelope that would require the  
21 absentee ballot not to be counted, they will be contacted by  
22 the board. Did I understand that correctly?

23 A. That's correct.

24 Q. And how does the board actually reach out to the voter  
25 to contact them?

1 A. They use Secretary of State form 11-S and they mail that  
2 to the voter.

3 Q. Could the board reach out to the voter by phone or  
4 e-mail?

5 A. E-mail address and telephone number aren't required  
6 elements for voter registration or for requesting an absentee  
7 ballot and so most boards don't have any of that information  
8 for any voters. They might have it for some. And so we  
9 instruct them to use the method of contact that the board has  
10 for every voter, which is address, and so to send them  
11 something by mail.

12 Q. If the board were permitted to reach out to a voter by  
13 phone or e-mail, would that mean that that particular voter  
14 might get a form of contact that would not be available to  
15 other voters who had made the same type of mistake?

16 A. Yes. If they were -- if someone got a phone call and  
17 another voter didn't have a phone number on file with the  
18 board, the voter without the phone number would get it by mail.  
19 My personal opinion is I think there's also something to be  
20 said for using the mail for these kind of things because I  
21 think if I were a voter and omitted my date of birth on my  
22 envelope and got a telephone call from somebody purporting to  
23 be from the board of elections, I would not be very likely to  
24 give them my date of birth over the telephone.

25 Q. And in your view, do the additional requirements of

1 address and birthdate provide assistance to the boards in  
2 identifying voters?

3 A. Yes. So I think this is where, you know, there's been a  
4 lot of talk going back to 2008 about the five fields and that  
5 there's five fields required for voter registration: Name,  
6 address, date of birth, form of identification, like the last  
7 four of your social or your driver's license number, and your  
8 signature. And that it makes sense to have those same five  
9 elements you use to register to vote be the same five elements  
10 you use to request an absentee, be the same five elements you  
11 would use to cast an absentee.

12 Q. In your view, does that eliminate some confusion for the  
13 boards of election in terms of their election administration?

14 A. Yes.

15 Q. Does it eliminate confusion regarding counting ballots?

16 A. Yes. And I can speak to my own experience in Franklin  
17 County in 2008. The form prescribed by the Secretary of State  
18 at the time for identification envelope had a blank for date  
19 and so we, at the board of elections, would always then contact  
20 a voter saying, hey, you didn't fill out your date of birth and  
21 that's required for identification envelope.

22 And in 2008, we received an identification envelope from  
23 an OSU law professor who then was contacted about providing the  
24 date of birth and the professor called the board and said, well  
25 I checked the statute and date of birth isn't actually

1 required. Huh. So we all kind of looked at it and we  
2 contacted the Secretary of State's Office and they're like, no,  
3 date of birth is required. We looked at it and, no, date of  
4 birth is not required. It was on the form.

5 Boards, I think, had been rejecting absentee ballots for  
6 not having a date of birth or at least were certainly  
7 contacting a voter and so there was not a clear understanding,  
8 I think, from one board to the other about whether that was a  
9 required element before the law was changed.

10 Q. And does the new law requiring birthdate and address  
11 ease the confusion that you saw previously regarding whether or  
12 not those were required fields?

13 A. I think that under the new law there could be no  
14 confusion that the same five fields that are required for voter  
15 registration are the same five fields to request and cast an  
16 absentee and to cast a provisional.

17 Q. And prior to the change in the law requiring birthdate  
18 of address, were the boards able to make a successful  
19 identification for some voters even without the birthdate?

20 A. Yes. Boards still counted a lot of ballots but I think  
21 in the data world that we live in, you know, having more  
22 information is helpful to specifically hone in on a particular  
23 voter in the voter file. There can be lots of John Joneses who  
24 may have the same last four social or don't have a social in  
25 the voter file. And so we don't have a unique identifier



1 that's required like a full social or a driver's license  
2 number. Having multiple different data elements to kind of  
3 triangulate, if you will, against to find the right person,  
4 those additional elements can be helpful in finding more  
5 people.

6 Q. Are there voters in the database who share not only the  
7 first and last -- the same first and last names but also the  
8 same last four digits of their Social Security numbers?

9 A. There are, but I don't remember what the number is. I  
10 remember when we looked at it, it was larger than I would have  
11 expected.

12 Q. And I'd like to talk briefly about provisional ballots  
13 as well. Before we talk about the new identification or the  
14 new identifiers, excuse me, for provisional ballots, can you  
15 just describe generally what a provisional ballot is in Ohio?

16 A. So a provisional ballot is available to a voter whose  
17 eligibility to cast a regular ballot is in question. This is,  
18 most often, a ballot that's used by a voter who did not update  
19 their address with the board of elections prior to the close of  
20 registration and this gives them -- the provisional ballot  
21 gives them the opportunity to cast a ballot based on their new  
22 residential address. And it will also update their address.

23 The other smaller universe of people would be a voter  
24 who comes to the polls on election day and doesn't have one of  
25 the qualifying forms of physical identification and they can

1 cast a provisional and just write the last four of their social  
2 as their identification envelope. Basically the provisionals  
3 aren't counted on election night. The boards then have a  
4 period of time after the election before the start of the  
5 official canvass to review all the information on the  
6 provisional envelopes to confirm the eligibility of each voter  
7 before they can count a provisional. With provisionals, the  
8 boards have to confirm the eligibility of all the provisionals  
9 before they can count any of them.

10 Q. And can you just generally clarify the time frame during  
11 which that process takes place for the boards?

12 A. So the boards are not permitted to begin the official  
13 canvass until the eleventh day after the election. So there's  
14 at least a ten-day period there where the boards are checking  
15 information on each of the provisional envelopes and putting  
16 them in different piles based on, you know, what they believe  
17 are valid provisionals, what has some element missing. And  
18 they also, if they find a voter who is registered to vote  
19 somewhere else in the state, they also have to contact that  
20 other county to make sure that that person didn't also cast a  
21 ballot in the other county before they count this provisional.

22 So after they've done all that, the board then has to  
23 have a public meeting to determine the categories of ballots  
24 that can count and the ones that cannot count. Then they have  
25 to open the envelopes, run them through the scanner and then

1 the board does the final certification.

2 Q. And during this time period in which the provisional  
3 ballot validation process takes place, are the boards of  
4 election responsible for a number of other tasks?

5 A. So after the election, the postelection period is a  
6 little bit less tense than the period before the election but  
7 there's still a number of things that are going on. They're  
8 getting the voting machines back from the polling places,  
9 they're compiling the roster of precinct election officials who  
10 worked and processing the payroll. There's still some absentee  
11 ballots that are going to come in. And they're reviewing all  
12 of the records, getting ready -- getting everything ready to  
13 conduct the canvass and then the postelection audit. So  
14 there's still a lot of activity at the board of elections after  
15 election day.

16 Q. And the law that's being challenged in this case, does  
17 that impose the same two new identifiers that we just discussed  
18 with respect to absentee ballots?

19 A. Yes. It requires the provisional voter to provide their  
20 address and their date of birth. And, again, date of birth  
21 would be subject to the same exceptions.

22 Q. So do some of the same considerations that support  
23 adding those identifiers for absentee ballots also apply for  
24 provisional ballots?

25 A. Yes, they do. And, again, with the provisional, because

1 the ballots being cast because the voter's eligibility is in  
2 question, having additional data elements to search, first, the  
3 county voter file and then the statewide voter file to find  
4 that needle in the haystack, so to speak, to confirm the  
5 voter's eligibility so that the board can count the ballot.

6 The other is that the voter has to -- the provisional voter has  
7 to cast the ballot in the correct precinct or polling place and  
8 so address on the provisional envelope helps the board  
9 determine that yes indeed the voter cast the correct ballot  
10 style in the correct precinct and the correct polling place.

11 Because so many of the provisional voters who are voting  
12 their provisional because they have moved and did not update  
13 their address, the provisional envelope also serves to change  
14 their address. And so without an address, that would be hard  
15 to assign them to a new polling place. And so that's helpful.  
16 If a person isn't registered but they cast a provisional then  
17 the provisional envelope with the name, address, date of birth,  
18 identification and signature serves to register that person for  
19 future elections.

20 Q. And have you reviewed Ohio's rejection rates for  
21 provisional ballots?

22 A. I have had occasion to do that, yeah.

23 Q. Do you know generally what those rates are?

24 A. I don't remember the specific numbers. My recollection  
25 is that in 2014, the acceptance rate of provisionals was more

1 than 90 percent and that that was a higher percentage of  
2 acceptance rate in '14 than in the similar 2010 general  
3 election.

4 Q. So after the implementation of the laws challenged in  
5 this case, the rejection rate for provisional ballots actually  
6 went down?

7 A. Correct. The acceptance rate increased and so the  
8 rejection went down.

9 Q. And you also mentioned that provisional ballots that are  
10 rejected because a voter has not registered to vote can serve  
11 as a registration. Can you just clarify what you mean by that?

12 A. So if a person is not registered to vote but they  
13 presented themselves at a polling place on election day and  
14 they complete a provisional envelope with the five fields that  
15 are required for voter registration, then that envelope has all  
16 of the same required elements for voter registration and now in  
17 the law it specifically says that it serves as voter  
18 registration for future elections. So that person who wasn't  
19 registered, therefore not eligible to vote in that election,  
20 will be eligible to vote in future elections.

21 Q. I want to ask you about a public records request that  
22 your office received. Did you receive a public records request  
23 from Perkins Coie before this litigation actually began?

24 A. We did.

25 Q. And do you recall generally the time frame in which you

1 received that request?

2 A. It was either the end of December of last year or  
3 beginning of January, in the end of year/beginning of year time  
4 frame.

5 Q. Did the Secretary of State's Office actually respond to  
6 that request?

7 A. We did.

8 Q. Do you know generally when that time frame was?

9 A. I think it was either that January or February  
10 immediately after receiving the public records request.

11 THE COURT: '15?

12 THE WITNESS: Yes.

13 BY MS. RICHARDSON:

14 Q. Are you aware that there have been allegations of voter  
15 suppression in Ohio?

16 A. Yes.

17 Q. And did your office actually issue a directive on that  
18 subject?

19 A. Yes. So after the 2012 and also the 2014 general  
20 elections, Secretary Husted issued a directive to boards  
21 basically saying, you know, there can be a lot of hyperbole in  
22 a politically-charged environment and so the public deserves to  
23 know what actually happened as it relates to voter fraud and  
24 allegations of voter suppression. So the Secretary instructed  
25 the boards of elections to review any credible allegations of

1 either fraud or suppression that the boards were aware of and  
2 then report back to us their findings. And the boards reported  
3 back a handful of credible allegations of voter fraud and no  
4 credible allegations of voter suppression.

5 Q. And with respect to the voter fraud, has the Secretary  
6 of State's Office actually referred some cases of alleged voter  
7 fraud to the Ohio Attorney General's Office for investigation?

8 A. We have.

9 Q. Can you describe the circumstances of that referral?

10 A. So the referrals fall into, I think, two different  
11 categories. One is that Ohio participates in what's called the  
12 Interstate Crossmatch program which is secretaries of state or  
13 state -- chief state election officials in a number of states  
14 all send their voter file with voter history to one secretary  
15 of state who kind of matches it and sends back the potential  
16 matches. States use that data for a lot of different things.  
17 Some states use it to cancel voters, some use it to notify  
18 voters, to change addresses.

19 We didn't think that the data that resulted from that  
20 was valuable for those purposes so we took the most  
21 conservative look at the data that we could and just kept  
22 boiling it down to see if there was anybody who was registered  
23 to vote in Ohio and registered to vote in another state and  
24 cast a ballot both in Ohio and in the other state. My  
25 recollection is there were three from the 2012 election that we

1 referred to the AG for potentially having been, you know,  
2 having voted in more than one state as a result of the  
3 crossmatch program.

4 The 2014 data that we got back from the interstate match  
5 program was largely useless. There were a ton of false  
6 positives so we didn't use it for anything.

7 The other category of the referrals, we looked at the  
8 statewide voter registration database of registered voters and  
9 compared it to the BMV file and in doing so, found that there  
10 were a number of registered voters who had provided information  
11 to the BMV that they were a legally present noncitizen and so,  
12 again, we took a very conservative approach to that data. A  
13 person who is a legally present noncitizen, whenever their  
14 driver's license expires, they have to physically appear at the  
15 board of -- at the BMV and again provide documentation of proof  
16 of legal presence and the BMV records that transaction.

17 And so what we took a look -- we took a look to see if  
18 anyone provided that information to BMV then had a voter  
19 registration event in the voter file and then afterwards also  
20 presented proof of legal presence to the BMV so that the  
21 voter-registration activity was bookended with two BMV  
22 transactions because we didn't want to have anybody who  
23 presented information at the BMV then was naturalized and  
24 registered to vote perfectly legally.

25 So we took that list of very few people, I think it was



1 just over 100 people, sent them all a letter saying, hey, a  
2 comparison of the state voter file to the BMV seems that you  
3 might be a noncitizen. If you're a noncitizen and registered  
4 to vote, you can cancel your registration. So a number of  
5 people canceled their registration and the remaining folks that  
6 we either couldn't contact or they didn't respond were referred  
7 to the AG for a follow-up.

8 Q. Mr. Damschroder, throughout your testimony today you  
9 have described a number of interests and  
10 election-administration benefits related to the various laws  
11 that are at issue in this case. Could you just summarize  
12 generally the interests that you've described today?

13 A. Yes. So I think the election-administration benefits  
14 are clear and uniform rules. Also that a voter has the same  
15 access to vote from one election -- depending on, regardless of  
16 where they live. And also the idea of reducing voter confusion  
17 by having clear, consistent, uniform rules. All of those -- as  
18 well as reducing fraud. And, again, fraud is rare. But I  
19 think that's because we have good laws. So I think all of  
20 those are important election-administration elements that are  
21 present in the laws that are subject here.

22 MS. RICHARDSON: Just one moment, Your Honor.

23 BY MS. RICHARDSON:

24 Q. Just a couple more questions, Mr. Damschroder. I can't  
25 remember if I asked you this and so if I already did, I

1 apologize.

2 Can you describe the deadline for counting a ballot,  
3 absentee ballot?

4 A. So boards of elections aren't allowed to begin opening  
5 absentee-ballot envelopes until the tenth day before the  
6 election and any absentee ballot that the board receives by the  
7 close of polls on election day has to be included, tabulated  
8 and included in the unofficial canvass that the board does  
9 election night. An absentee ballot that's received after  
10 election day through the tenth day after the election but has a  
11 postmark the day before the election, the board is allowed to  
12 count that in the official canvass.

13 Q. And so with respect to the first category that you  
14 described, those absentee ballots that are received prior to  
15 the close of election -- of the polls on election day, are they  
16 required to have any type of postmark?

17 A. No.

18 Q. We spoke at length earlier about allocation of DRE  
19 machines. Do you know what the process is for the counties in  
20 making decisions for allocation of DREs?

21 A. Well, I think there's two. One is statutory. They have  
22 to make the allocation decision at a public meeting of the  
23 board. And the other is that they have to follow the  
24 instructions of the Secretary of State. And that would be  
25 discussed in the directive we talked about earlier. Beyond

1 that, the board should look at, you know, issues on the ballot,  
2 absentee voting rates and those kind things to make allocation  
3 decisions from one precinct to the next.

4 Q. Is this allocation decision required to be made during  
5 an open, public meeting of the board of elections?

6 A. Yes, it is.

7 Q. With respect to the DRE machines specifically, is there  
8 a programming process that has to take place before the DRE  
9 machine can be used for a particular election?

10 A. There is. I'm trying to think how best to boil it down.

11 Basically the board creates a central database of all  
12 the different ballot styles for the whole county. Then when  
13 the board makes the allocation decision of DREs per precinct or  
14 per polling place, the board puts the serial number of the  
15 voting machines that they've decided to allocate for each  
16 polling place or precinct into the central tabulating system  
17 that then programs -- then they program a kind of external  
18 media like a flash card or something like that for each voting  
19 machine, for each polling place, for only the specific ballots  
20 that the voters in that polling place or precinct are going to  
21 be eligible to vote on. And then they program and they use  
22 that card to program the machines for that polling place. Then  
23 they conduct a logic and accuracy test, an L and A test, to  
24 make sure that all of the contests and candidates that are  
25 supposed to be on the machines for all the ballot styles in

1 that polling place are indeed there.

2 Q. And because of that programming process that has to take  
3 place, is it accurate to say that a DRE machine that is  
4 programmed for early voting can't be used again on election day  
5 in that same election?

6 A. Not only for the programming reasons but also each  
7 voting machine has in it a triple-redundant internal memory  
8 that has to be retained for a certain number of days after the  
9 election. And so it would not be a best-elections practice to  
10 take a DRE used during the early-voting period, wipe its memory  
11 and then use it on election day.

12 Q. And we spoke about both absentee ballots and provisional  
13 ballots. In your view, is a provisional voter similarly  
14 situated to an absentee voter?

15 A. So the Secretary likes to talk about provisional ballots  
16 being a second chance, not a second-class ballot. I think  
17 where they are particularly different from one another,  
18 provisional and absentee, is that the absentee voter's  
19 eligibility has been confirmed by the board of elections  
20 through the application process before the voter even gets a  
21 ballot. Which is different from the provisional process where  
22 there is a front-end question about the voter's eligibility but  
23 they still get a ballot. And then the eligibility is confirmed  
24 after the ballot is cast.

25 So I think it's two different processes for two

1 different kinds of voters.

2 THE COURT: Is the provisional an absentee?

3 THE WITNESS: A provisional is not --

4 THE COURT: Is it the same form?

5 THE WITNESS: The ballot is printed in a different run  
6 and has a different serial number. And the envelope is  
7 different but it would have the same five fields now.

8 THE COURT: Thank you.

9 MS. RICHARDSON: Mr. Damschroder, I have no further  
10 questions. Thank you.

11 Thank you, Your Honor.

12 THE COURT: Thank you.

13 Mr. Spiva, before you start, I'm going to break, take my  
14 call and we'll come back maybe 3:30.

15 MR. SPIVA: Thank you, Your Honor.

16 (A recess was taken at 2:50 p.m. until 3:40 p.m.)

17 THE COURT: You may cross.

18 - - -

19 CROSS-EXAMINATION

20 BY MR. SPIVA:

21 Q. Good afternoon, Mr. Damschroder. Good to see you again.

22 A. Good afternoon.

23 Q. I think you said on your direct that no-fault absentee  
24 voting was adopted in 2006; is that right?

25 A. I think the law was enacted at the end of 2005 and the

1 first election for which it was in place was 2006, correct.

2 Q. That's right. I think you said that it was actually  
3 enacted in 2005 but went into effect in 2006.

4 Did it go into effect in the primary in 2006 or the  
5 general election?

6 A. My recollection is that it became effective kind of  
7 either right at the beginning or kind of in the middle of the  
8 absentee-voting period for the 2006 primary election.

9 Q. In the adoption of no-fault absentee voting in 2006,  
10 you'd agree with me that that was at least partially in  
11 response to the long lines that Ohio experienced on election  
12 day in 2004; isn't that correct?

13 A. Yes. I believe so.

14 Q. And you would agree, in terms of golden week, that voter  
15 fraud is rare, correct?

16 A. Yes.

17 Q. And that is the position of the Secretary of State's  
18 Office as well; isn't that right?

19 A. That's correct. The Secretary says it's rare, but when  
20 it happens, we catch people and refer them to the appropriate  
21 law enforcement authority.

22 Q. And ballots cast during golden week, when it existed,  
23 they weren't actually counted on the day that they were cast;  
24 isn't that right?

25 A. No absentee ballot can be separated from its envelope

1 until the tenth day before the election. So at least in 2012,  
2 Secretary Husted issued a directive requiring boards of  
3 elections to kind of put those golden-week ballots in a special  
4 pile and then make a specific determination to count them or  
5 not count them.

6 Q. Not until the tenth day before the election?

7 A. That's correct.

8 Q. In S.B. 238, that was the bill that became law and  
9 eliminated golden week, correct?

10 A. That's correct.

11 Q. But it didn't change the 30-day registration period; is  
12 that right?

13 A. That's correct.

14 Q. An individual still can register to vote during the  
15 five-day period prior to the close of books, prior to the close  
16 of the registration period. Am I right about that?

17 A. That's correct also.

18 Q. In fact, the 30th day before the election is always a  
19 Sunday, isn't it?

20 A. Yes.

21 Q. And so, in fact, under Ohio law, as has been long  
22 interpreted by the Secretary of State's Office, an individual  
23 can actually register to vote on the 29th day before the  
24 election; isn't that correct?

25 A. That's correct.

1 Q. And the in-person early voting period post S.B. 238  
2 begins 28 days prior to the election, correct?

3 A. My recollection of the bill is that it says that it  
4 starts the day after the close of registration because there  
5 are even some instances where the day after the 30th day is a  
6 holiday which means the close of registration would then extend  
7 to the Tuesday.

8 Q. Okay. So that that would mean that it would be --  
9 normally it would be on the 28th. If the 29th were the close  
10 of registration or the last day to register then the early end  
11 voting period would start on the 28th day before?

12 A. That's correct.

13 Q. And so the same person who, say, registers on the 29th  
14 day before election day could get then -- they could come in  
15 and register at 4:00 p.m., I take it, on the 29th day before  
16 election day?

17 A. Correct.

18 Q. And then they could come back the next morning on the  
19 28th day before the election and cast an in-person absentee  
20 ballot, correct?

21 A. That is correct.

22 Q. And in such a scenario, the county board of elections  
23 would have no more time to process the person's registration  
24 form and verify their address than if that person had  
25 registered and voted on the 29th day, correct?



1 A. They would have a little bit more time in that it  
2 wouldn't be at the exact same time where the person is standing  
3 in front of them having to key it in at that same moment and  
4 key in the absentee. But, yes, the scenario is possible where  
5 the person could register the last day of registration and come  
6 in the next day and request an absentee ballot.

7 Q. They have about 16 hours more, I guess?

8 A. Sure.

9 Q. And most of those hours would be in the nighttime,  
10 right?

11 A. Right.

12 Q. You mentioned some, I think a couple of specific  
13 incidents of fraud or potential fraud that occurred during  
14 golden week on your direct. Do you recall that?

15 A. From my experience in Franklin County?

16 Q. Yes.

17 A. Yes.

18 Q. And one of them was I think there was some students,  
19 some were, I guess, Obama for America students and some were  
20 McCain for America or I think his organization was called  
21 something else, but McCain students, that they had registered  
22 in Ohio when they shouldn't have; is that right?

23 A. That's right. There were some McCain operatives and  
24 then some other students who had created a nonprofit to help  
25 get out the vote.

1 Q. But to your knowledge, none of those students ended up  
2 casting a ballot that was actually improperly counted; is that  
3 right?

4 A. Actually my recollection is that I think there was one  
5 ballot that the Franklin County board was not able to hold back  
6 because it had -- it was after the tenth day before the  
7 election so it had already been separated from the envelope.  
8 But most of them, because those students came forward and said,  
9 hey, we'd like to withdraw our registration, our ballots, most  
10 of them were withdrawn.

11 Q. That one ballot, is that something that you recollected  
12 or found out about after your deposition, the deposition that  
13 we had together?

14 A. That is my recollection since then, yeah. I didn't look  
15 into it or anything like that but as I thought about it some  
16 more, yeah.

17 THE COURT: How did those come to light? Did they  
18 self-report?

19 THE WITNESS: They did.

20 THE COURT: All right. Go ahead.

21 BY MR. SPIVA:

22 Q. If those individuals had not self-reported, the system  
23 had checks in it to detect that type of fraud; is that right?

24 A. If they hadn't have come forward, we would have presumed  
25 the validity of their registration and of their absentee and

1 they would have counted.

2 Q. So you're saying that there's some possibility that the  
3 system wouldn't have detected this improper voting?

4 A. That's correct.

5 Q. And so even today, though, under the scenario we were  
6 discussing a minute ago, students could do or anybody could do  
7 the same thing, I take it, and register during that same period  
8 and cast a ballot during the early in-person period and that  
9 same possibility of the vote being counted still exists under  
10 the existing system. Fair?

11 A. That's correct.

12 Q. You mentioned also that there were some other incidents  
13 where these acknowledgment cards had gone out and been returned  
14 and then the prosecutor went out to check it out and they found  
15 a vacant house. You recall that?

16 A. Yes.

17 Q. You're not aware of any indictments that results from  
18 any of those situations, are you?

19 A. I am not.

20 Q. And you've never been called to testify in a criminal  
21 case prosecuting fraud based on individuals with returned  
22 acknowledgment cards, have you?

23 A. I don't think so.

24 Q. And you were with the Franklin County Board of Elections  
25 either as the director or the deputy director from about 2003

1 to 2011; is that right?

2 A. That's correct.

3 Q. Would you agree that golden week helps reduce  
4 registration fraud because the voter comes into the office in  
5 person to register?

6 A. I don't know that -- I don't think I necessarily agree  
7 with the fact that the unique aspect of golden week does that  
8 because, just like we were talking, the voter can still come in  
9 in person and register. So I don't think that the uniqueness  
10 of being able to register and vote at the same time uniquely  
11 lends itself to that benefit.

12 Q. Okay. Now, if someone actually doesn't -- isn't trying  
13 to commit fraud but they make some type of an error, I guess  
14 coming in in person might provide them the opportunity to get  
15 assistance that would prevent them from making that error; is  
16 that fair?

17 A. I think that if a registrant needs assistance completing  
18 the application, yes, that's correct.

19 Q. I think you mentioned on direct that the boards have a  
20 lot of other things to do and so it's maybe a little bit taxing  
21 for them to actually investigate fraud. But they do have a  
22 statutory duty to investigate any irregularities and violations  
23 of the election code; is that correct?

24 A. That's correct.

25 Q. Mr. Damschroder, you've been involved in efforts to

1 eliminate golden week dating back at least to 2009; is that  
2 correct?

3 A. I think at least going back that far as the legislature  
4 has considered it. I've testified that it's a reasonable  
5 legislative change to make.

6 Q. And you've worked with Mr. Husted on efforts to  
7 eliminate golden week and make other changes to the election  
8 code since the time that he was a senator, a state senator; is  
9 that correct?

10 A. Yes.

11 THE COURT: He was Speaker of the House. Was he a  
12 senator, too?

13 THE WITNESS: Yes. He was elected to the senate in  
14 2008.

15 THE COURT: Okay. I just live here.

16 BY MR. SPIVA:

17 Q. Let me show you a document that we've labeled  
18 Plaintiffs' Exhibit 97 which is a document that was produced to  
19 us by defense counsel but is apparently from Senator Seitz's  
20 office. This will show up on your screen or you can look at it  
21 in your book if you want, Mr. Damschroder, whichever is most  
22 comfortable.

23 This is an e-mail that you sent to Mr. Husted and  
24 Mr. Hughes on Defendant 6, 2009, correct?

25 A. That's correct.

1 Q. And at that time Mr. Husted was, I guess, State Senator  
2 Husted and I take it that Mr. Hughes was also a state senator  
3 as well?

4 A. Yes.

5 Q. And there's some other people who are copied on here  
6 including an Aaron Ockerman. Is that somebody from the OAE --  
7 I may be getting the acronym wrong.

8 A. Yeah, he is the executive director and the legislative  
9 liaison for the OAE.

10 Q. That's the organization that's been -- people have been  
11 talking about as being a bipartisan organization. I'm not  
12 going to get it right.

13 A. Yes. It is a bipartisan organization.

14 Q. In the e-mail, you talk about a summary of items that  
15 are suggestions for enhancing something called Sub. S.B. 8. I  
16 take it that S.B. 8 was an earlier bill that would have  
17 eliminated golden week; is that correct?

18 A. I don't remember the specifics of Sub. S.B. 8 but I  
19 believe that's probably the case.

20 Q. And let's just take a look at the second page of this  
21 document. I'm not going to go through all of this, but fair to  
22 say this is a list of items or suggestions from you for  
23 additional measures that you wanted to suggest to include in  
24 S.B. 8; is that right?

25 A. Correct.

1 Q. And at this time you were the deputy director of the  
2 Franklin County Board of Elections?

3 A. Yes.

4 Q. And one of the changes that you proposed is in, I think  
5 it's proposal number 2 here, is require a county board of  
6 elections to notify its county commissioners by 10/1 of the  
7 prior year before establishing multiple in-person voting  
8 locations. This would mean no multiple in-person voting  
9 locations in 2010.

10 Am I right that this is a reference to the possibility  
11 of county boards of elections establishing more than one  
12 early-voting center, in-person early-voting center?

13 A. Yes.

14 Q. And so this proposal was meant to forestall the  
15 potential, I guess a potential change in the law that might  
16 allow county boards of elections to adopt multiple in-person  
17 voting centers?

18 A. I don't agree necessarily with your characterization  
19 that it was intended to forestall. The 10/1 date is similar to  
20 a date in the law for boards of elections when they want to  
21 increase poll-worker compensation and the issue there is to  
22 give the commissioners, who ultimately have to vote to provide  
23 the appropriation, the time to come up with the money.

24 So to the extent that forestalling would mean to give  
25 the board time to decide whether to do it and to give time to

1 give the commissioners notice so they could fund it. I guess  
2 that's forestalling. But for purposes of the official  
3 administration of elections.

4 Q. Fair enough. Now, this was an e-mail that around the  
5 same time there was a house bill that might have eliminated  
6 golden week that was also being proposed and I guess ultimately  
7 was passed out of the House; is that correct?

8 A. I think that's right.

9 Q. And that bill also would have given county boards the  
10 ability or the authority to adopt up to four early-voting  
11 centers in their county. Do you recall that?

12 A. I think I recall that, yeah.

13 Q. Let me just zoom in on a couple other things. Eight,  
14 nine and ultimately I just want to quickly talk about eleven.

15 In 8 you say, clarify what information is mandatory on  
16 the application for absent-voter's ballot. In 9 you say,  
17 clarify what information is mandatory on the absent-voter's  
18 ballot identification envelope. And in 11 you say, require  
19 that provisional ballots contain the same identification  
20 information as is required for voter registration and  
21 absent-voter balloting in order to be validated.

22 Would it be fair to interpret those as kind of the  
23 precursors to the additional informational requirements that  
24 came about in 2014 on provisional ballots and absentee ballots,  
25 the five fields that you talked about in your direct



1 examination?

2 A. I think the exact precursor was legislation as I recall  
3 that the General Assembly passed at the end of 2008 and that  
4 ultimately Governor Strickland vetoed. My recollection is that  
5 these items were in that legislation. So I think it was an  
6 idea that had been around after the 2008 election.

7 Q. Okay. But these are -- the basic idea, though, is the  
8 same five fields would have meant adding the date of birth  
9 requirement and the address requirement to the  
10 provisional-ballot envelope, for instance?

11 A. Correct.

12 Q. And it also would have added those two items to the  
13 absentee-ballot envelope as well?

14 A. Correct.

15 Q. Let's turn from that. Let me just show you Plaintiffs'  
16 Exhibit 98. And let me -- this is an e-mail from you to --  
17 dated August 11 of 2010, correct?

18 A. That's correct.

19 Q. And you sent this to Erika Cybulskis, who I'm sure I owe  
20 an apology, who was a legislative aide to Senator Seitz at the  
21 time?

22 A. Yes.

23 Q. And you were still the deputy director of the Franklin  
24 County Board of Elections at the time?

25 A. Yes.

1 Q. In here, the title or the subject of this is in-person  
2 voting hours for Franklin County. And you say that, Doug  
3 Preisse asked me to provide the following information to you.  
4 Am I correct interpreting that that Doug Priesse -- Doug  
5 Preisse, first of all, was a board member of the Franklin  
6 County Board of Elections at that time, correct?

7 A. That's correct.

8 Q. And he asked you to provide the information in this  
9 e-mail to Senator Seitz, correct?

10 A. It appears so, yeah.

11 Q. And you say here, earlier today, the Franklin County  
12 Board of Elections met in special session to determine  
13 in-person absentee voting hours for the 2010 general election.  
14 And then you have a schedule that you set forth below there.  
15 You say, the bipartisan board voted unanimously as follows.  
16 I'm not going to read the schedule, but there's a schedule that  
17 you have there; is that correct?

18 A. Yes.

19 Q. And then under the schedule you say that, it should be  
20 noted that this schedule is a significant departure from the  
21 position it advocated by the democrat board members on Monday  
22 of this week and that had we not reached a compromise that  
23 included some weekend and evening hours, we would have simply  
24 deadlocked with the matter being thrown to the Secretary of  
25 State who would then break the tie in favor of the democrat

1 party position as she did in 2008.

2 So am I correct in interpreting this that basically  
3 you're telling Senator Seitz that the board was able to reach a  
4 compromise that had fewer evening and weekend hours than the  
5 democratic board members had wanted originally?

6 A. I would assume that when I use the phrase significant  
7 departure, it was about evenings and weekends, I guess.

8 Q. And at that time I guess the Secretary of State was  
9 Secretary of State Brunner, a democrat, and so the concern was  
10 that she would break the tie in favor of more evening and  
11 weekend hours; is that correct?

12 A. That she would break the tie in favor of the position  
13 advocated by the democratic board members.

14 Q. And that was in favor of more evening and weekend hours,  
15 correct?

16 A. I don't remember for sure what the proposal was but I  
17 believe that's the case based on this.

18 Q. Let's turn away from this document and let me just ask  
19 you, do you recall H.B. 194?

20 A. Yes.

21 Q. And that passed the General Assembly in 2011?

22 A. I think that's right.

23 Q. And that actually eliminated golden week?

24 A. I believe that's right.

25 Q. And that would have ended voting the Saturday before the

1 election day; is that correct?

2 A. I don't remember for sure. I don't remember for sure.  
3 It maybe would have been 6:00 p.m. the Friday before.

4 Q. Okay. Let me show you, this may help just to refresh  
5 your recollection. It may not. Let me put up Plaintiffs'  
6 Exhibit 99. Actually turn to the second page.

7 This is actually, I guess, a referendum petition to  
8 repeal H.B. 194; is that correct?

9 A. Yes.

10 Q. Actually, if we can flip back to the first page, there  
11 are a list of items. The document is titled Items Senate Would  
12 Like to Address Prior to 2012. And then bill number 1, early  
13 voting. It says, eliminate golden week (22 days). It says,  
14 five fields on absentee ballots, observer language, end voting  
15 Saturday before election day, provisional voting-four reasons  
16 to cast a provisional, and uniform application for  
17 absentee-application postage.

18 Does that at all refresh your recollection about what  
19 194 contained?

20 A. It doesn't refresh my memory specifically to 194.

21 Q. Okay.

22 A. But I think these were -- it appears these were items  
23 the senate wanted to address prior to 2012. So whether it was  
24 in 194 or some other bill.

25 Q. Okay. And did the General Assembly ultimately end up

1       repealing H.B. 194?

2           A.    They did.

3           Q.    Why was that?

4           A.    My recollection is that the General Assembly didn't want  
5   to have the referendum go forward on the ballot so they just  
6   repealed the law.

7           Q.    And why didn't the General Assembly want the petition to  
8   go forward on the ballot?

9                   MS. RICHARDSON:  Objection, Your Honor.  To the extent  
10  he's being asked to testify about the motivation of the General  
11  Assembly.

12                   THE COURT:  He can answer if he knows.

13                   MS. RICHARDSON:  Thank you, Your Honor.

14                   BY MR. SPIVA:

15           Q.    What's your understanding, if any, of why the General  
16  Assembly didn't want the petition -- the referendum to go  
17  forward?

18           A.    I don't know for certain.

19           Q.    Do you have a general sense?

20           A.    I don't know.  I don't know.  I could speculate, you  
21  know, but I don't know.

22           Q.    Okay.  But you were pretty involved in it at that time  
23  in working with members of the General Assembly in putting  
24  forth a number of the ideas that were in 194 and some of these  
25  other bills; is that fair?

1 A. When we were doing 194, yes, I was one of the people  
2 from our office who gave information to the Senate and the  
3 House on things that they could do.

4 Q. Did you testify in favor of 194?

5 A. I think that I did.

6 Q. But you're not sure why they decided to repeal it the  
7 same year that they passed it?

8 A. Other than they, you know, didn't want it to go on the  
9 ballot. But beyond that, I don't know.

10 Q. Was there a concern that the referendum was going to  
11 result in the repeal of 194?

12 MS. RICHARDSON: Objection, Your Honor. He has  
13 testified that he doesn't know beyond just speculating as to  
14 what the intent is beyond what he's already testified to.

15 MR. SPIVA: I can move on, Your Honor.

16 MS. RICHARDSON: Thank you.

17 THE COURT: So just for the record, Ms. Richardson,  
18 sustained.

19 MR. SPIVA: I was too late.

20 BY MR. SPIVA:

21 Q. Let me show you a different document, Mr. Damschroder,  
22 Plaintiffs' Exhibit 100. And this is dated -- I actually want  
23 to focus in on the bottom e-mail for a minute.

24 This is an e-mail that is dated 7/13/2012. By that date  
25 you were in the Secretary of State's Office, correct?

1 A. That's correct.

2 Q. You were the director of elections at that point?

3 A. That's correct.

4 Q. This is an e-mail from Inajo Davis Chappell, who I  
5 probably also owe an apology to for pronouncing her name wrong.  
6 But she is one of the democratic members of the Cuyahoga County  
7 Board of Elections, correct?

8 A. Correct.

9 Q. And the only African-American, I guess, board member on  
10 the Cuyahoga County Board of Elections; is that right?

11 A. Yes.

12 Q. And she sends this to a number of people including some  
13 of her are fellow board members and she CCs a number of people  
14 including yourself, correct?

15 A. Correct.

16 Q. And this is an e-mail that you received, right?

17 A. I don't specifically -- you know, we talked about it at  
18 deposition so, yeah, I remember it.

19 Q. And the subject of this one is tie vote regarding  
20 in-person absentee voting hours. And in the -- and in the  
21 e-mail, Ms. Chappell complains that Mr. Husted has broken a tie  
22 in favor of the republican members of the board without hearing  
23 the democratic members' point of view.

24 Actually we can highlight so he can actually see it.  
25 Let's kind of make the text bigger.

1 Is that accurate?

2 MS. RICHARDSON: Your Honor, we object to this  
3 document being read in as hearsay.

4 MR. SPIVA: I'm not asking him to read it in. I  
5 actually just wanted to ask him if that characterization was  
6 correct.

7 MS. RICHARDSON: He's still being asked --

8 THE COURT: I don't know what took place in the  
9 deposition. What did take place?

10 MR. SPIVA: I asked him about this. He said he had  
11 received it and this is -- it was received in his role in the  
12 Secretary of State's Office from a county board of elections  
13 member.

14 THE COURT: And your question posed now is what?

15 MR. SPIVA: First I was just trying to lay a  
16 foundation and I said that, you know, in the e-mail she  
17 complains that Mr. Husted broke a tie in favor of the  
18 republican members of the Cuyahoga County Board of Elections  
19 without hearing the democratic members' point of view on the  
20 subject of early in-person voting hours.

21 MS. RICHARDSON: Same hearsay objection, Your Honor.

22 THE COURT: I'm going to sustain that. I've got a  
23 note here. I'll read it.

24 MR. SPIVA: Okay.

25



1 BY MR. SPIVA:

2 Q. Now, let me ask you, Mr. Husted (sic), apart from the  
3 document, you do recall that Mr. Husted broke a tie vote of the  
4 Cuyahoga County Board of Elections concerning early in-person  
5 voting hours?

6 A. Yes. Cuyahoga was one of, I think, four counties where  
7 we broke a tie on.

8 Q. And in June of 2012, Mr. Husted announced at a  
9 conference of elections officials that if a board could not  
10 reach agreement on their in-person absentee voting days and  
11 hours that he would break the tie in favor of their normal  
12 business hours; is that right?

13 A. That's correct. He wanted boards to make that decision  
14 locally.

15 Q. But if they ended up deadlocking, he would break the tie  
16 in favor of normal business hours?

17 A. That's correct.

18 Q. And he informed all of the county boards of elections  
19 that this would be his policy regarding the breaking of tie  
20 votes, correct?

21 A. Correct.

22 Q. Now, normal business hours, the board of elections, by  
23 definition, would not include extended hours; is that fair?

24 A. Generally they would not include evenings or weekends or  
25 extended hours outside of the normal board business operation

1 hours.

2 Q. Right. So the Secretary was really telling the boards  
3 of elections that if they deadlocked, he would break the tie  
4 against evening and weekend hours, correct?

5 MS. RICHARDSON: Objection. That mischaracterizes the  
6 testimony.

7 THE COURT: It says what it says. So it will speak  
8 for itself.

9 MR. SPIVA: I will note, Your Honor, he was the  
10 30(b)(6) representative for the Secretary of State's Office  
11 which is why I'm asking him what the Secretary of State's  
12 position was. I'm not trying to quote from a document. I just  
13 wanted to make clear what the policy was.

14 THE COURT: Reask your question.

15 BY MR. SPIVA:

16 Q. So when the Secretary told the boards of elections that  
17 if they deadlocked, he would break the tie in favor of normal  
18 business hours, he was telling them that he would break the tie  
19 against evening and weekend hours for early voting, correct?

20 A. He was telling them that he would break it in favor of  
21 their already-established normal business hours and if those  
22 hours did not already include extended evening and weekend  
23 hours then those would not be a part of what he would decide in  
24 favor of.

25 Q. Right. And none of the 88 counties had normal business

1 hours that included evening and weekend hours, correct?

2 A. Not to my knowledge.

3 Q. Now, after this announcement, some of the smaller  
4 counties voted to provide extended in-person early-voting  
5 hours, correct?

6 A. I think it was more medium-size counties but smaller  
7 than Franklin and Cuyahoga, right.

8 Q. And do you recall, for instance, if Butler and Warren  
9 Counties voted for evening and weekend early-voting hours in  
10 2012?

11 A. I do.

12 Q. Would it be fair to characterize those as  
13 republican-leaning counties?

14 A. Yeah. I think so.

15 Q. But in each of the five largest counties in Ohio, the  
16 board of elections deadlocked in 2012 along party lines over  
17 the issue of whether to extend -- to have extended or weekend  
18 and evening early-voting hours; is that correct?

19 A. I don't believe that that's necessarily true. My  
20 recollection is that Montgomery County had earlier, in 2012,  
21 adopted, on a bipartisan basis at the county level, a schedule  
22 that included some evening and weekend hours. So I think the  
23 tie -- the tie that I remember for sure was Cuyahoga. I think  
24 there were a total of four ties.

25 Q. Okay. All right.

1 THE COURT: Do you recall the other three?

2 THE WITNESS: I don't, but they are all on our  
3 website.

4 MR. SPIVA: I'm actually going to go through them  
5 right quick, Your Honor.

6 BY MR. SPIVA:

7 Q. Let me just show you PX39. Just ask you if you can  
8 confirm for me, just to take a look at it, that this is  
9 Secretary Husted's tie-vote letter breaking the tie of the  
10 Cuyahoga County Board of Elections over early in-person --  
11 extended early in-person voting hours?

12 A. It's the tie vote regarding in-person absentee voting  
13 hours from the Secretary for Cuyahoga County.

14 Q. And in the letter, Secretary Husted is breaking the tie  
15 in favor of normal business hours, correct?

16 A. I'm looking to make sure but I believe that's the case,  
17 yes.

18 Q. So at this point on July 13th, 2012, the Secretary  
19 advises them, and you can look down to the second to last  
20 paragraph, that essentially there will be no weekend or evening  
21 early-voting hours in -- we can also get you a hard copy.  
22 Would you prefer a hard copy?

23 A. No. I'm all right. I'll just look down and try not to  
24 mutter.

25 Q. Mr. Damschroder, you can just confirm for me that

1 Mr. Husted was breaking the tie in favor of no evening or  
2 weekend hours for early voting in Cuyahoga County in 2012; is  
3 that fair?

4 A. He broke the tie in favor of the board's existing  
5 business hours that did not include any evenings or weekends.

6 Q. Thank you. Let me just show you Plaintiffs' Exhibit 41.  
7 And if you can confirm for me that this is Secretary Husted's  
8 letter to the Franklin County Board of Elections. And here  
9 this is a tie-vote letter breaking the tie of the Franklin  
10 County Board of Elections; is that correct?

11 A. That's correct.

12 Q. And here, again, he's breaking the tie in favor of the  
13 board's normal business hours, correct?

14 A. That's correct.

15 Q. And, again, that would not include evening or weekend  
16 hours?

17 A. That's correct.

18 Q. Let me show you Plaintiffs' Exhibit 42. And if you can  
19 just confirm for me that this is Secretary Husted's  
20 tie-vote-breaking letter breaking the tie vote over  
21 early-voting hours in Lucas County; is that correct?

22 A. Correct.

23 Q. And again here, similar to the others, he was breaking  
24 it in favor of the normal business hours of Lucas County?

25 A. That's correct.

1 Q. And that would not include evening or weekend hours in  
2 2012?

3 A. Correct.

4 Q. And let me just show you Plaintiffs' Exhibit 43. And if  
5 you can confirm for me that this is the tie-vote-breaking  
6 letter for Secretary Husted for Summit County in 2012.

7 A. Yes.

8 Q. And here, again, he's breaking the tie in favor of  
9 Summit County's normal business hours?

10 A. Yes.

11 Q. And he -- and the normal business hours here, again,  
12 would not include evening or weekend hours, correct?

13 A. That's correct.

14 Q. What happened with Hamilton County? I must be missing a  
15 letter.

16 A. We went through four. I remembered four. So I don't  
17 remember if they had come to a bipartisan agreement ahead of  
18 time or if they just hadn't voted yet.

19 Q. Okay. And then as you recalled a minute ago, Montgomery  
20 County was a little bit different. They had already adopted --  
21 they had already come to an agreement, I guess, and adopted  
22 evening and weekend hours earlier in the year?

23 A. That's correct.

24 Q. There did come a time when the Secretary, in the summer  
25 of 2012, did issue a directive which did establish uniform

1 hours for the whole state; is that correct?

2 A. That's correct.

3 Q. And that was a directive, I think it was 2012-35. And I  
4 can pull it up if that would --

5 A. I don't remember the exact number but it was in August  
6 of 2012.

7 Q. Okay. And did that come out the day after the *New York*  
8 *Times* had run an editorial criticizing Mr. Husted for treating  
9 republican-leaning counties differently from large democratic  
10 counties?

11 A. I don't remember that editorial so I don't know whether  
12 it was -- if the directive came out at the same time as that  
13 editorial but there was, as the Secretary was breaking these  
14 ties, and as Warren and Butler, Montgomery were able to come to  
15 bipartisan agreement, the patchwork of different counties doing  
16 different things was growing and I think we -- it appeared to  
17 us that we were going to get tie votes from people as opposed  
18 to people trying to work together in a bipartisan fashion at  
19 the local level to come up with what they wanted to do. So the  
20 Secretary issued a directive establishing uniform statewide  
21 days and hours for early voting for all counties.

22 Q. Okay. Why don't we pull up Plaintiffs' Exhibit 40. If  
23 we could turn, first, to, I think it's the second or third page  
24 which I believe has Directive 2012-35. It may be the next  
25 page. My apologies. Let me see if -- I believe this is it

1 actually here.

2 Is this the directive that he issued on August 15th,  
3 2012, and when I say he, the Secretary of State, establishing  
4 uniform early-voting hours for all counties in 2012?

5 A. It is.

6 Q. And if we can turn to the next page. Am I right that  
7 the uniform hours that he established did not include any  
8 weekend hours; is that correct?

9 A. That's correct.

10 Q. And I guess with the exception of Tuesday, October 9th,  
11 it doesn't really include any evening hours either, does it?

12 A. Well, it would go to 7:00 p.m. Monday through Friday the  
13 last two weeks of early voting but not past 7:00 p.m.

14 Q. All right. Fair enough.

15 And so let's turn back to the first page because I know  
16 you had mentioned that Montgomery County was a little  
17 different. And let me just ask you, this is a tie-vote letter  
18 regarding Montgomery County. Let me ask if you can confirm  
19 that for me, first of all, that this is a tie-vote letter  
20 regarding Montgomery County?

21 A. Can you put up the second page?

22 Q. Yes. Absolutely.

23 Let me ask a better question. I think -- and you can  
24 confirm or tell me this is wrong, but Montgomery County, I  
25 guess, after the directive came out, they had a tie vote in



1 which two of the members wanted to still maintain weekend hours  
2 after the Secretary's directive came out. Do you recall that?

3 A. That's correct.

4 Q. And so this is a tie-vote letter with the Secretary  
5 saying, no, you can't do that. You have to follow the  
6 directive I just issued.

7 A. That's correct.

8 Q. In fact, I think the two democratic members who were  
9 trying to maintain the weekend hours, the Secretary ultimately  
10 began proceedings to remove them from their positions from the  
11 board of elections; is that correct?

12 A. Right. So after the board first voted to add additional  
13 hours to the uniform directive the Secretary had issued, we  
14 sent a communication to the board saying, no, you can't  
15 supersede the directive. You need to come back. Because there  
16 was a question about whether they understood what the directive  
17 was doing.

18 We explained what the directive was doing and said, come  
19 back and vote consistent with the directive and they came back  
20 and the two board members reaffirmed their vote to not follow  
21 the directive. So the Secretary began removal proceedings for  
22 not following instructions of the Secretary of State.

23 Q. Were they ultimately removed from office?

24 A. They were.

25 Q. And I take it that was because the Secretary of State's

1 Office felt it important to enforce the directives that it  
2 issued?

3 A. Correct.

4 Q. And it was the duty of the boards of elections to follow  
5 the directives of the Secretary of State?

6 A. Correct.

7 Q. And obviously, this is an obvious point, but the  
8 Secretary of State obviously has authority to remove board  
9 members under certain circumstances?

10 A. That's correct.

11 Q. Let me ask you -- we can take the document down.

12 The final weekend of early voting in 2012, that was  
13 ultimately restored, correct?

14 A. That's correct.

15 Q. And that was restored due to the *Obama for America v.*  
16 *Husted* litigation?

17 A. That's correct.

18 Q. You mentioned the Secretary has the authority to remove  
19 board members. He also has the power, he or she has the power  
20 to remove directors and deputy directors of boards of elections  
21 under certain circumstances; is that correct?

22 A. That's correct.

23 Q. You are aware, Mr. Damschroder, that in August of 2012,  
24 *The Columbus Dispatch* reported a comment by Doug Preisse who  
25 was a member of the Franklin County Board of Elections at the

1 time?

2 MS. RICHARDSON: Objection, Your Honor.

3 THE COURT: Where are we going with this?

4 MR. SPIVA: It happened right around the same time.

5 This is the Preisse comment about urban voters.

6 THE COURT: Do we have an understanding between you  
7 about that, how that's coming in, if it's coming in?

8 MR. SPIVA: We have a declaration from Mr. Preisse but  
9 he has an awareness of the comment. And the point that I  
10 wanted to make with this line of questioning is that the  
11 Secretary of State's Office didn't do anything to investigate  
12 it, didn't take any action to remove Mr. Preisse, and so in  
13 some ways it's apart from the truth of the matter.

14 MS. RICHARDSON: We still object to the hearsay  
15 element of the statement as we have objected throughout.

16 MR. VOIGT: Your Honor, I'm sorry to interrupt, but  
17 Mr. Spiva did mention the declaration. We do object to that  
18 declaration as well on the basis of hearsay, relevance and the  
19 statement doesn't show legislative intent.

20 MR. SPIVA: The other thing is I think that it's now  
21 established that the board members and the director and deputy  
22 directors of these boards are managing agents of the Secretary  
23 of State and so just as I think their deposition designations  
24 should come in, I think their statements are actually -- are  
25 essentially statements of a party opponent.

1           He has the power to remove them and has actually used  
2 that power. He issues directives to them. They're obligated  
3 to comply with those directives. It's essentially -- and some  
4 case law which I cited the other night that they're essentially  
5 an arm of the state even though they're funded by the counties.

6           MS. RICHARDSON: And we would object to the  
7 characterization that these would qualify as admissions of a  
8 party. And particularly with respect to this statement. It  
9 was a statement that appeared in a newspaper article and  
10 there's been no testimony that the statement was even made by  
11 Mr. Preisse in any type of official capacity.

12           MR. SPIVA: I think -- in his deposition he testified  
13 that he was aware of the statement and the Secretary was aware  
14 of the statement. Really at this moment all I want to do is  
15 just establish that they didn't do anything to investigate it.  
16 So it's actually not really being offered for the truth of the  
17 matter. It was reported widely; they heard it.

18           I think our argument is that they had an obligation, as  
19 having supervisory powers over him, to investigate it and  
20 potentially do something about it.

21           THE COURT: I question whether the boards are --  
22 statements by individual board members are admissions of a  
23 party opponent. Mr. Preisse is not a party in this. Franklin  
24 County Board of Elections is not a party in the case. But I'll  
25 allow you to elicit that testimony and then I want to see the

1 declaration.

2 MR. SPIVA: Okay. Will do, Your Honor.

3 MS. RICHARDSON: Thank you, Your Honor.

4 BY MR. SPIVA:

5 Q. Mr. Damschroder, you were aware that *The Columbus*  
6 *Dispatch* reported a comment by Doug Preisse, a member of the  
7 Franklin County Board of Elections in August of 2012?

8 A. I remember reading that, yeah.

9 Q. And it was reported that Mr. Preisse e-mailed a reporter  
10 the following comment explaining his vote against weekend  
11 voting hours. Quote, I guess I really actually feel we  
12 shouldn't contort the voting process to accommodate the  
13 urban -- read African-American -- voter-turnout machine. Let's  
14 be fair and reasonable.

15 You recall that?

16 A. I do.

17 Q. And the Secretary of State's Office did not talk to  
18 Mr. Preisse to determine whether he had, in fact, sent that  
19 e-mail, did it?

20 A. Not to my knowledge.

21 Q. And you never talked to Mr. Preisse about it?

22 A. Correct.

23 Q. And the Secretary of State's Office became aware of this  
24 statement either when it was printed in the newspaper or from a  
25 call from a reporter beforehand, correct?

1 A. I don't remember if there was a call from a reporter  
2 beforehand but I think we became aware of it when we read it in  
3 the paper. At least that's when I became aware of it.

4 Q. And you would agree, though, that this statement was  
5 circulated fairly widely in the press at the time?

6 A. If it was -- it was in *The Columbus Dispatch*, yes. It  
7 was circulated at least within their distribution. I don't  
8 remember if anybody else picked it up.

9 Q. And I think this flows from what you just said, but I  
10 take it that there was no disciplinary action initiated against  
11 Mr. Preisse?

12 A. That's correct.

13 Q. Let me show you Plaintiffs' Exhibit 56. This is an  
14 e-mail. The top e-mail is an e-mail from you to a number of  
15 people in the kind of senior staff of the Secretary of State's  
16 Office; is that correct?

17 A. That's correct.

18 Q. And that's -- and you're basically forwarding an e-mail  
19 that you received, you and Mr. Husted received from Pat  
20 McDonald, the Director of the Cuyahoga County Board of  
21 Elections?

22 A. Correct.

23 Q. And in that e-mail, Mr. McDonald is reporting that 3,748  
24 people came in and voted today. This totals 9,050 for golden  
25 week which is a 26 percent increase over 2008 without having a

1 weekend. So much for the voter suppression that the democrats  
2 tout.

3 MS. RICHARDSON: Your Honor, I'm sorry.

4 MR. SPIVA: I was going to read the rest of it.

5 MS. RICHARDSON: We object, again, on hearsay grounds  
6 of the reading into the record of this document which  
7 Mr. Damschroder did not author.

8 MR. SPIVA: It was sent to him and he forwarded it on  
9 to the whole senior staff of the Secretary of State's Office.  
10 It would be, at the very least, a business record but, again,  
11 Mr. McDonald was either the director or deputy director at the  
12 time this was sent of the Cuyahoga County board.

13 MS. RICHARDSON: This is, on its face, an e-mail, not  
14 an official record by the Secretary of State's Office. It's an  
15 e-mail from not Mr. Damschroder. And Mr. Damschroder is not  
16 being asked about his knowledge or recollection. Instead, the  
17 actual document itself is being read into the record.

18 MR. SPIVA: It does, Your Honor, to that point, it  
19 does go to the knowledge of the Secretary of State's Office  
20 prior to proposing and working for the elimination of golden  
21 week. That's both the relevance and I think also one of the  
22 bases for admitting it.

23 MS. RICHARDSON: Again, to the extent that he plans to  
24 ask about the content and substance of what is contained in  
25 this document, it's --

1 THE COURT: Mr. Damschroder is not the author of any  
2 of the language in this document.

3 MR. SPIVA: Can I say one more thing, Your Honor?

4 THE COURT: It was sent to his private e-mail.

5 MR. SPIVA: That's an issue too, Your Honor. He  
6 talked about it at his deposition and confirmed that he  
7 received it and then forwarded it on.

8 THE COURT: It's obvious that he did. And I've read  
9 it. So press on.

10 MR. SPIVA: All right.

11 THE COURT: I don't know that it represents everything  
12 that you think it represents but maybe, you know.

13 MR. SPIVA: I just wanted to ask one question about it  
14 and maybe this will --

15 BY MR. SPIVA:

16 Q. So at this point in October of 2012, Mr. McDonald made  
17 you and Mr. Husted aware that, at least in Cuyahoga County,  
18 there had been a significant increase in turnout during golden  
19 week between 2008 and 2012, correct?

20 MS. RICHARDSON: Same objection, Your Honor. And we  
21 would just note that they had the opportunity to bring in  
22 Mr. McDonald if they wanted to elicit testimony regarding the  
23 meaning of this document and what these numbers are based upon.

24 MR. SPIVA: I'm not actually asking for the meaning.  
25 We did ask -- Mr. McDonald actually testified to this document



1 that he sent it in his deposition, which is also admissible.  
2 But all I'm asking him is whether Mr. McDonald made him aware  
3 of these facts in October. It speaks for itself. I'm not  
4 planning to ask him about the meaning of it.

5 THE COURT: So your question is, did Mr. McDonald make  
6 you aware of the substance of this e-mail?

7 MR. SPIVA: Yes. I could actually ask it a different  
8 way which is, did you receive this e-mail?

9 THE WITNESS: It appears I received the e-mail and  
10 forwarded it.

11 BY MR. SPIVA:

12 Q. You forwarded it on to the senior staff of the Secretary  
13 of State's Office?

14 A. I did.

15 Q. And this was about official business of the Secretary of  
16 State's Office and the Cuyahoga County Board of Elections, was  
17 it not?

18 A. It was about the number of people voting in Cuyahoga  
19 County, yes.

20 Q. But all of the e-mail addresses on here are personal  
21 e-mail addresses, correct?

22 A. Yes.

23 Q. Let me show you what has been marked Plaintiffs'  
24 Exhibit 60.

25 MR. SPIVA: Just I think we may have a similar issue

1 here so I'm just going to ask him if he received it, Your  
2 Honor, and not intending to go much further than that.

3 BY MR. SPIVA:

4 Q. This is an e-mail from Sonia Gill of the Lawyers'  
5 Committee to you dated October 8th, 2012 regarding or subject,  
6 early-voting study; is that correct?

7 A. That's correct.

8 MS. RICHARDSON: Your Honor, before we go further.

9 THE COURT: This is the first time I've heard this  
10 name. Who is Sonia Gill?

11 BY MR. SPIVA:

12 Q. Mr. Damschroder, do you know who Sonia Gill is?

13 A. Yes. Sonia is one of the attorneys with the Lawyers'  
14 Committee. I've known her going back to 2004 or so.

15 THE COURT: Okay. What's the Lawyers' Committee?

16 MR. SPIVA: Lawyers' Committee for Civil Rights Under  
17 Law, Your Honor. I'm sorry.

18 THE COURT: I'm asking. Somebody tell me.

19 MR. SPIVA: Yes. It's a national network. They  
20 have -- it's an organization that --

21 THE COURT: All right.

22 MR. SPIVA: -- lawyers do pro bono civil rights work.

23 THE COURT: And I'm sorry, the objection is?

24 MS. RICHARDSON: The objection is again based on  
25 hearsay grounds. The reading into the record of another e-mail

1 that Mr. Damschroder did not author.

2 THE COURT: I'm going to sustain that.

3 MS. RICHARDSON: Thank you.

4 BY MR. SPIVA:

5 Q. There was an attachment to that e-mail. Did you review  
6 the attachment for the e-mail?

7 A. Not that I recall.

8 Q. Let me ask you if we could pull up Plaintiffs'  
9 Exhibit 89. This also is e-mails among members of the  
10 Secretary of State's senior staff; is that correct?

11 A. It appears there's a couple different e-mails but it  
12 would include senior -- each of them would include senior staff  
13 of the Secretary of State's Office.

14 Q. Let me ask you about the second page. There's an e-mail  
15 from Matthew McClellan. He is the -- what was his role in the  
16 Secretary of State's Office?

17 A. In 2014, he was the press secretary.

18 Q. And he attaches a guest column by Secretary of State  
19 Husted; is that correct?

20 A. Yes.

21 Q. Let me ask you about the e-mail up from there. So we  
22 have to go back to the first page. And this is an e-mail from  
23 Maggie Ostrowski. Is she in the Secretary of State's Office?

24 A. She was the director of communications in 2014.

25 Q. And this e-mail is to you and other individuals in the

1 Secretary of State's senior staff; is that correct?

2 A. Yes.

3 Q. You received this e-mail, correct?

4 A. I believe so. I'm on the distribution list.

5 Q. And the question being discussed in this e-mail is who  
6 to send the press release from the Secretary of State on the  
7 previous page; is that right?

8 MS. RICHARDSON: Your Honor, we're going to -- excuse  
9 me. I'm going to again object on hearsay grounds. I don't  
10 dispute that he has a right to talk to Mr. Damschroder about  
11 his knowledge and memory and understanding of various things  
12 but, again, to read into the record an e-mail that he didn't  
13 author, which it seems like we might be about to do, is  
14 objectionable.

15 MR. SPIVA: These are e-mails among senior staff of  
16 the Secretary of State's Office. They're clearly statements of  
17 party opponents and they're just not hearsay.

18 MS. RICHARDSON: It's actually hearsay within hearsay.  
19 There are multiple people being referenced within an e-mail and  
20 the e-mail is being read into the record when Mr. Damschroder  
21 didn't author it.

22 MR. SPIVA: I'm not asking him to read it into the  
23 record but the e-mails among the Secretary of State senior  
24 staff are -- constitute admissions or statements, at least, of  
25 the party opponents and also business records, frankly.

1 MS. RICHARDSON: We would disagree that this document  
2 would qualify as a statement by a party against interest.  
3 Again, our objection here is that these are people that they  
4 could have called if they wanted to lay the foundation for the  
5 actual e-mails or get into the content of the e-mails  
6 themselves. We don't dispute that he can ask Mr. Damschroder  
7 generally about his understanding or the various subjects that  
8 may also be contained. But to the extent that he's using this  
9 document to get that information in, we would object on hearsay  
10 grounds.

11 MR. SPIVA: I didn't say statement against interest, I  
12 said statement of a party opponent, which is a different thing.  
13 The other thing is, this was discussed at his 30(b)(6)  
14 deposition where he was a representative of the Secretary of  
15 State's Office. I think it would be enough that he is on these  
16 e-mails but beyond that, he was the representative of the  
17 Secretary of State's Office to discuss things like these  
18 e-mails.

19 THE COURT: Because of the distribution list and  
20 because of who sent it and reserving on whether or not it  
21 represents the business of the Secretary of State's Office,  
22 I'll admit it as a statement of the office.

23 MS. RICHARDSON: Thank you, Your Honor.

24 MR. SPIVA: Thank you, Your Honor.  
25

1 BY MR. SPIVA:

2 Q. So let me first ask you, Mr. Damschroder. The press  
3 release, these e-mails are discussing who to send the press  
4 release on the previous page; is that fair?

5 A. That appears to be the case.

6 Q. Is the press release a release that the Secretary issued  
7 after the passage of S.B. 238? If you need to see it again, I  
8 can flip to the other page.

9 A. Well, it's a press release the Secretary issued on March  
10 the 12th of 2014. I don't specifically remember when 238 was  
11 passed or became effective.

12 Q. Okay. Let's go back to the previous page. There's a  
13 question from Maggie Ostrowski in her e-mail to you and others.  
14 The Secretary of State is asking me who else we are sending  
15 this to other than the media. And she says, what do you think  
16 about boards (or does that just poke bears)? Do you know what  
17 she meant by that? Actually I should ask you what was your  
18 understanding of what she meant by that?

19 A. I don't know what she meant by that. I just took it as  
20 Maggie saying something. I don't know.

21 Q. Okay. Fair enough. Let's go up to the e-mail above  
22 which is -- sorry. The one at the top.

23 Who is Joel Fleeman?

24 A. Joel Fleeman was one of our regional representatives and  
25 worked with our military voting program. He's since left the

1 office to become a Navy Seal.

2 Q. And he writes -- he sends this e-mail to you and other  
3 people within the Secretary of State's Office on March 12th; is  
4 that correct?

5 A. My guess is he just hit reply all, but yes.

6 Q. And, again, he's asking or he's suggesting groups that  
7 it might be good to send the Secretary of State's guest column  
8 to?

9 A. That appears to be the case.

10 Q. And he lists a number of groups in here, FOP/LE groups.  
11 Is that Fraternal Order of Police and law enforcement groups?

12 A. FOP I believe would be Fraternal Order of Police. I  
13 would assume based on FOP that LE means law enforcement but I  
14 don't know for sure.

15 Q. Okay. And then firefighters, hunting/2A groups, farm  
16 bureau/agriculture groups, NFIB. Do you know what that is?

17 A. National Federation of Independent Business.

18 Q. Right to life/faith/family groups, tea  
19 party/conservative groups/YR. Do you know what YR means?

20 A. Probably young republican.

21 Q. And then minority groups is one of them, pastors,  
22 realtors, local government groups, and then regional reps from  
23 other state/congressional/senate offices.

24 Do you have any understanding of why the column is being  
25 distributed to these groups in particular?

1       A.    I don't know that the column was distributed to those  
2 groups and my guess is that Joel was just making a list of  
3 people whose contacts he, you know, had gathered over time or  
4 people who had contacted the office.

5       Q.    Do you recall the Secretary of State's Office receiving  
6 criticism at this time for sending out this information to  
7 these groups and not other groups?

8       A.    I don't know. I don't remember the timing relative to  
9 this but I remember there was an article that appeared in I  
10 think an online column or something.

11            THE COURT: RealClearPolitics, by any chance?

12            THE WITNESS: I don't remember. I think it was slate  
13 but I can't remember for sure.

14       BY MR. SPIVA:

15       Q.    Salon.com?

16       A.    That might be. I can't remember for sure. So I don't  
17 remember if that was in the exact same time frame or not.

18       Q.    Fair to say the Secretary of State's Office was being  
19 criticized for targeting mainly conservative groups as opposed  
20 to a broader array of groups with its information?

21       A.    I think that was the accusation in the article.

22       Q.    Let me ask you about Plaintiffs' Exhibit 51. Strike  
23 that. I thought you were on this one. We'll keep moving.

24            You mentioned earlier, I think on your direct, a number  
25 of strides, I think, that Ohio had taken in terms of ease of



1 voting. I just wanted to ask you about that. The evening and  
2 weekend hours that Ohio has in early voting now, that really is  
3 a result of the NAACP litigation, correct?

4 A. The evening and weekend hours are in the agreement, yes.

5 Q. And the evening and weekend hours did not exist to the  
6 extent they do now until that agreement was reached, correct?

7 A. I don't remember for sure. I remember -- so after the  
8 2012 election there was some OAEO recommendations and then the  
9 Secretary issued a directive. I can't remember for sure if  
10 that directive included some evening and weekend hours.  
11 Obviously weekend after OFA.

12 My recollection is that there was some evening or some  
13 weekend hours in OAEO recommendation that would have been in  
14 place for the 2014 general election. But certainly the  
15 settlement agreement between the Secretary and NAACP and the  
16 League of Women Voters includes evening and weekend voters and  
17 included, I think, two Saturdays and two Sundays in a  
18 presidential general.

19 Q. I think counsel on direct said that the NAACP had agreed  
20 to the elimination of golden week. Do you recall that?

21 A. So I think as a part of the settlement agreement, one of  
22 the things that was in the NAACP's complaint, as I recall, was  
23 the issue of Senate Bill 238 and the elimination of golden  
24 week. And so as a part of the settlement agreement that  
25 adopted uniform days and hours for all kinds of different

1 elections, including evenings and weekends, the NAACP and the  
2 League dropped their -- all of the claims in the lawsuit.

3 So I would say as a part of the settlement agreement, it  
4 included the plaintiffs there agreeing not to advance the  
5 claims on golden week.

6 Q. As part of the settlement they essentially dropped the  
7 claim that they had made to reinstate golden week, fair?

8 A. Yeah.

9 Q. And then the three final days, I think we discussed this  
10 already but the three final days of early voting for  
11 nonmilitary individuals, that was achieved through the OFA  
12 versus Husted case; is that correct?

13 A. Right. A law had been passed ending all nonmilitary  
14 absentee voting at 6:00 p.m. the Friday before the election.

15 Q. Was that H.B. 194?

16 A. So my recollection is it was a convoluted legislative  
17 history. 194 was passed and then 224 was passed and 194 was  
18 repealed and so part of 224 still included the 6:00 p.m. and so  
19 it was just kind of that thing that was kind of hanging out  
20 there.

21 Q. I won't test you on that.

22 A. But it still became law. That's my recollection of how  
23 we got the 6:00 p.m. cutoff, that it still existed.

24 Q. But the reinstatement of the three days, that was a  
25 result of the OFA versus Husted litigation?

1 A. That's correct.

2 Q. You're familiar with the term right church, wrong pew?

3 A. I am.

4 Q. And that's when somebody goes to the right polling  
5 location but they end up in the wrong precinct in a  
6 multiprecinct polling location?

7 A. Just because I spaced out for a second, let me just  
8 restate.

9 Q. Sorry. Long question.

10 A. No, it wasn't. I apologize.

11 If a person, in a multiprecinct polling place if a  
12 person went in and instead of going to the table in the  
13 northwest corner of the gym went to the corner -- the southeast  
14 corner of the gym, that would be right church, right polling  
15 place, wrong pew, wrong table.

16 Q. And the discretion that counties have to consolidate  
17 poll books, that was achieved as a result of *SEIU v. Husted*; is  
18 that fair?

19 A. So the SEIU lawsuit that ultimately the Secretary did  
20 not appeal required boards of elections to count provisionals  
21 cast in the wrong precinct of the right polling place but the  
22 issue of consolidating the poll books, some boards have been  
23 doing that beforehand and a law was passed affirming that  
24 discretion for boards. But I wouldn't characterize it as a  
25 result of the SEIU lawsuit.

1 Q. Right. I think I got it wrong actually. My colleague  
2 just corrected me. It's the requirement that a ballot that's  
3 cast in the, I guess in the wrong pew but the right church, be  
4 counted if it's a result of poll-worker error. That was the  
5 result of *SEIU v. Husted*, correct?

6 A. Right. So SEIU at the District Court level said that a  
7 provisional ballot cast in the wrong precinct of the same  
8 polling place had to be counted, or at least the portion of the  
9 ballot that would otherwise be eligible to be counted, and  
10 Secretary Husted didn't appeal that portion of the decision.

11 THE COURT: Mr. Damschroder, give me an example of the  
12 type of poll-worker error that would be implicated here.

13 THE WITNESS: So I think that the particular type  
14 of -- the particular scenario that was in SEIU is you have  
15 multiple precincts, the voter walks in, doesn't know that I'm  
16 in Columbus 60B as opposed to Columbus 60C. I stand in the  
17 line. The poll worker looks them up in the poll book and  
18 they're not in the poll book because they're just at the wrong  
19 table. They're in the right poll booker for the other table.  
20 Instead of the poll worker directing the voter to say, no, you  
21 just need to go to the next table, the poll worker would just  
22 hand them a provisional ballot for the wrong precinct of the  
23 wrong polling place.

24 THE COURT: Okay. Thank you.

25

1 BY MR. SPIVA:

2 Q. And the requirement that paper ballots be available as  
3 backups at polling locations, that was a result of post-2004  
4 litigation; is that correct? Is that your understanding?

5 A. I wouldn't agree with that entirely. So there was a  
6 settlement agreement that Secretary Brunner entered into in  
7 2009, I believe, with the League of Women Voters that settled  
8 litigation in the fall of 2004 election. One of the  
9 requirements was backup paper ballots. A number of counties,  
10 including Franklin County, had been doing backup paper ballots  
11 for the DREs as early as 2006.

12 MR. SPIVA: Give me just one second.

13 BY MR. SPIVA:

14 Q. Can we pull up Plaintiffs' Exhibit 51. Let me ask  
15 you -- actually if we can turn to the second page.

16 I believe you were on -- this is what threw me a minute  
17 ago. You were on the e-mails prior to the one at the top and  
18 that's what I want to ask you about.

19 There's an e-mail, it's the middle e-mail, so I guess  
20 it's the second e-mail in the chain. And this one is from  
21 Maggie Ostrowski who I think you confirmed was part of the  
22 Secretary of State's senior staff?

23 A. That's correct.

24 MS. RICHARDSON: Your Honor, we object to the use of  
25 this document. Again, we would raise hearsay grounds. And in

1 addition to the fact that Mr. Damschroder did not author this  
2 e-mail. He was asked about this at his deposition and if I  
3 recall correctly, he indicated that he did not remember the  
4 specific content or motivations behind what is actually  
5 depicted in the e-mail. So to the extent that counsel intends  
6 to read into the record the e-mail, we would object.

7 THE COURT: He probably just intends to point out the  
8 fact that am is the appropriate word instead of I have; is that  
9 correct?

10 MR. SPIVA: That is exactly right.

11 MS. RICHARDSON: No objection then.

12 MR. SPIVA: Actually I hadn't noticed that. My eyes  
13 were distracted elsewhere.

14 Your Honor, I guess we're having the same discussion.  
15 It's a statement of a party opponent. We talked about it at  
16 his deposition. He received them.

17 THE COURT: Is it an official statement of the office,  
18 though?

19 MR. SPIVA: Well, they are editing a statement that  
20 the Secretary of State --

21 THE COURT: Based on some work, it's a working draft,  
22 right?

23 MR. SPIVA: But the drafting is sometimes telling. So  
24 I think that it can still be a business record if that's the  
25 business they're in, essentially, of making statements to the

1 public. It's also -- whether it's a draft or not, it's still a  
2 statement of a party opponent.

3 MS. RICHARDSON: We disagree.

4 THE COURT: Who's the audience here?

5 MR. SPIVA: You mean among these people?

6 THE COURT: Well, the statement's audience, who would  
7 it be going to?

8 MR. SPIVA: I would need to ask Mr. -- I believe it's  
9 election officials, Your Honor, but I could also ask  
10 Mr. Damschroder to confirm.

11 THE COURT: Script draft for Canton. What was going  
12 on in Canton?

13 THE WITNESS: I don't remember in 2013.

14 THE COURT: I'm going to sustain the objection.

15 MS. RICHARDSON: Thank you, Your Honor.

16 BY MR. SPIVA:

17 Q. I think you mentioned on direct, actually changing  
18 course here, changing topics to e-poll books for just a minute.  
19 And I think you mentioned that Hamilton County had adopted  
20 e-poll books this year?

21 A. If we talked about e-poll books on direct, I don't  
22 remember. But the General Assembly appropriated almost  
23 \$13 million to help offset the cost for counties to move  
24 forward with e-poll books and Hamilton County was one of the  
25 counties that moved forward in the November -- actually they

1 did it in August 2015 special.

2 THE COURT: Which our first witness told us about  
3 today.

4 MR. SPIVA: Right.

5 BY MR. SPIVA:

6 Q. And there were some problems in the recent election in  
7 Hamilton County with the e-poll books; is that correct?

8 A. There were some problems within the limitation of the  
9 e-poll books, yes.

10 Q. Do you know how many counties in Ohio adopted the e-poll  
11 books in 2015, approximately?

12 A. I don't remember for sure. I think there were ten  
13 counties that were using e-poll books before the General  
14 Assembly enacted or provided money. I think Richland being the  
15 county that's used it the longest going back to '05.  
16 Montgomery County has used them for a number of years.

17 I think there are 30 or 40 counties that have at least  
18 selected a vendor. I don't know for sure that all of those  
19 counties moved forward in this past general election, but a  
20 number of counties did.

21 Q. Do you know how many counties will be adopting e-poll  
22 books in 2016?

23 A. I don't. The money is available until the summer of  
24 2017.

25 THE COURT: They're not going to try them for the



1 first time in the general of '16, are they?

2 THE WITNESS: I don't believe so. That would be  
3 imprudent.

4 THE COURT: That's half the counties, right?

5 THE WITNESS: Right.

6 THE COURT: All right.

7 MR. SPIVA: Your Honor, I don't know if now would  
8 be -- I was going to switch topics again and I don't know if  
9 now would be a good time to break or if you want me to press  
10 on. I could do either. I've got a little bit more to go.

11 THE COURT: We can come back in the morning and do it.

12 MR. SPIVA: All right. I apologize, Mr. Damschroder.

13 THE COURT: Matthew, I'm sorry.

14 THE WITNESS: It's all right.

15 THE COURT: Nine o'clock.

16 MR. SPIVA: Great. Thank you, Your Honor.

17 (The proceedings were adjourned at 5:00 p.m.)

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We, Lahana DuFour and Denise Errett, 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 us in shorthand and transcribed by us or under our supervision.

s/Lahana DuFour  
Lahana DuFour, RMR, CRR  
Official Federal Court Reporter

s/Denise Errett  
Denise Errett, FCRR  
Official Federal Court Reporter