

In The Matter Of:
One Wisconsin Institute, Inc., et al. vs.
Gerald C. Nichol, et al.

Deposition of MARIBETH WITZEL-BEHL
April 22, 2016

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1 United States District Court for the
 2 Western District of Wisconsin
 3 =====
 4 One Wisconsin
 5 Institute, Inc., et al,
 6 Plaintiffs, Case No. 15-CV-324
 7 -vs- Gerald C. Nichol, et al,
 8 Defendants.
 9 =====
 10 Deposition of:
 11 MARIBETH WITZEL-BEHL
 12 Madison, Wisconsin
 13 April 22nd, 2016
 14
 15 Reported by: Paula Thompson
 16
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 18
 19
 20
 21
 22
 23
 24
 25

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1 DEPOSITION of MARIBETH WITZEL-BEHL, called as
 2 a witness, taken at the instance of the Defendants,
 3 under the provisions of Chapter 804 of the Wisconsin
 4 Statutes, pursuant to Notice, before Paula Thompson,
 5 a Notary Public in and for the State of Wisconsin, at
 6 Perkins Coie, LLP, One East Main Street, Suite 201,
 7 City of Madison, County of Dane, and State of
 8 Wisconsin, on the 22nd day of April, 2016, commencing
 9 at 8:00 a.m.
 10
 11 A P P E A R A N C E S
 12
 13 STEVEN BRIST, Attorney,
 14 OFFICE OF THE CITY ATTORNEY
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 17 Wisconsin 53703-3345, appearing on behalf of
 18 Maribeth Witzel-Behl.
 19 sbrist@cityofmadison.com 608-266-4511
 20
 21 JOSHUA KAUL, Attorney,
 22 PERKINS COIE
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 25 the Plaintiffs.
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 18 Mr. Kawski and copies provided to all
 19 counsel)
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1 MARIBETH WITZEL-BEHL,
 2 called as a witness, being first duly
 3 sworn, testified on oath, as follows:
 4 EXAMINATION
 5 BY MR. KAWSKI:
 6 Q Good morning, Ms. Witzel-Behl. My name is Clay
 7 Kowski. I'm an Assistant Attorney General from
 8 the Wisconsin Department of Justice. We're here
 9 today for your deposition; and it's in case
 10 number 15CV324, One Wisconsin Institute, Inc.,
 11 versus Gerald C. Nichol. It's in the United
 12 States District Court for the Western District of
 13 Wisconsin. Before I get into the questions of
 14 the deposition, I'm just going to talk about the
 15 basics of a deposition, like some ground rules.
 16 A Okay.
 17 Q And have you been deposed before?
 18 A No.
 19 Q Okay. Have you -- do you know what a deposition
 20 is?
 21 A A little bit because I asked Steve.
 22 Q Okay. And Steve's your attorney?
 23 A Uh-huh.
 24 Q And Mr. Kaul who is also in the room with us, is
 25 he also your attorney?

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1 A No.

2 Q Okay. So as we go through the deposition today,

3 it's important that the court reporter makes a

4 good record of it; so we don't want to talk over

5 each other. If I ask a question, I would ask

6 that you would please let me finish it. And, if

7 you're giving an answer, I will try and do the

8 best to let you finish your answer before I ask

9 the next question. This also allows your counsel

10 to object to what, you know, he might perceive is

11 inappropriate questioning. So do you understand

12 all of that?

13 A Yes.

14 Q Another important thing that you're already doing

15 is verbally answering questions so -- for the

16 court reporter to transcribe things and pick up

17 on it -- it's a very difficult job. And, if you

18 just nod your head, she might not catch it; so

19 you need to give oral responses.

20 A Okay.

21 Q Is there any reason you would not be able to

22 testify truthfully today such as you're on

23 alcohol or some kind of medication?

24 A No.

25 Q And then, if you need a break at any time during

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1 the deposition, you can ask for one. But I would

2 ask that you please don't ask for a break in the

3 middle of a question, so you want to answer the

4 question and then ask for a break. Okay?

5 A Okay.

6 Q Okay. I think that's -- those are the basic

7 things. Like I said, if you need a break, just

8 -- just ask for one. So what did you do to

9 prepare for the deposition today?

10 A I talked to Steve about it -- Steve Brist about

11 it a couple of times, and I talked to -- I forgot

12 your name --

13 MR. KAUL: Josh.

14

15 A -- with Steve Brist just about what a deposition

16 is like, what to expect.

17 BY MR. KAWSKI (CONTINUING):

18 Q Okay. Did you read anything in preparation for

19 today?

20 A I read over my affidavit.

21 Q Okay. Anything else?

22 A I glanced over the election statistics that we

23 have, but I was told that I didn't need to bring

24 those along with me or commit those statistics to

25 memory.

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1 Q Okay. And when you glanced at those statistics,

2 what in particular were you looking at?

3 A Just the past few elections and the statistic --

4 statistics we've gathered at those elections.

5 Q So the April and February 2016 elections?

6 A Right.

7 Q You're familiar with the statistics of those?

8 A Yes.

9 Q Okay. Did you look at any -- any others?

10 A Not in preparation for this.

11 Q Okay.

12 A No.

13 Q So you didn't look at, for example, 2014 or

14 twenty six -- or 2012?

15 A Not this past week.

16 Q Okay. But you're maybe generally familiar with

17 those?

18 A Yes.

19 Q Okay. Did you read or look at anything else in

20 preparation for the deposition?

21 A No.

22 Q Did you speak with anyone else in preparation for

23 the deposition?

24 A No. I -- I told my daughter that I'd have a

25 deposition today because she thought that was

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1 kind of interesting, but that's it.

2 Q Do you know any of the plaintiffs in this case?

3 A I guess I don't really know who the plaintiffs

4 are.

5 Q Okay. Okay. I guess the -- the main plaintiff

6 is One Wisconsin Institute, Inc. Are you

7 familiar with that organization?

8 A They served us with a subpoena. It was, I think,

9 the end of 2015 or else the beginning of 2016; so

10 I've -- I saw their name at that point.

11 Q And that subpoena was a subpoena for documents?

12 A Yes.

13 Q Let's talk a little bit about that.

14 A Okay.

15 Q So you got the subpoena. And what did you do

16 when you got it?

17 A I called our city attorney's office and said we

18 have this subpoena, and then Steve Brist followed

19 up on that subpoena for us.

20 Q Okay. And did you end up having to gather up

21 some documents?

22 A No.

23 Q No. You had no documents that were responsive to

24 it?

25 A It was such a large subpoena for basically any

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1 document related to elections in the state, that
 2 after our attorney talked to some other municipal
 3 attorneys and they had talked to whoever prepared
 4 the subpoena, it was determined that the
 5 plaintiffs would be willing to send an attorney
 6 to talk to me to just ask me questions of what
 7 they were looking for.
 8 **Q And did that happen?**
 9 A Yes.
 10 **Q And so were you at that point able to gather up**
 11 **documents that the attorney wanted?**
 12 A I -- you know, I don't know that they got any
 13 documents. We had a discussion about all sorts
 14 of aspects of election law and its
 15 implementation, and I referred them to the
 16 information we have on the city website. We have
 17 an open data website, so a lot of the information
 18 they were looking for they could obtain through
 19 that website or they could obtain through the
 20 Government Accountability Board; so I remember
 21 referring them to those two places.
 22 **Q Do you remember the name of the attorney?**
 23 A I am not good with names.
 24 **Q Was it Joe Wenzinger?**
 25 A I don't know.

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1 **Q Okay. Was it Josh Kaul?**
 2 A I don't remember.
 3 **Q Okay. That attorney that spoke to you, he wasn't**
 4 **representing you? He wasn't your attorney?**
 5 A No. But I had my attorney with me.
 6 **Q I see. Okay. And so do you remember what --**
 7 **you've already say -- said what you directed them**
 8 **to. Anything else you told them about election**
 9 **law?**
 10 A I don't remember exactly what I told them, but we
 11 had a discussion about implementing the election
 12 laws. I recall that it was a lengthy discussion
 13 about various changes in state law over the past
 14 few years.
 15 **Q Okay. And I'm sure those are maybe the laws that**
 16 **we're going to talk about today at least a little**
 17 **bit.**
 18 A Sure.
 19 **Q Okay. And the -- and the ones that you actually**
 20 **wrote about in the declaration too?**
 21 A Right.
 22 **Q Okay. Did you -- and you said you didn't bring**
 23 **anything with you today to the deposition?**
 24 A I brought water.
 25 **Q Okay.**

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1 A That was it.
 2 **Q No notes or anything like that?**
 3 A No.
 4 **Q Okay. I want to talk to you just about your**
 5 **background, and this is just to get a sense for**
 6 **who you are and what you do and what you have**
 7 **done. So tell me about your education history.**
 8 **Well, where did you go to school?**
 9 A UW-Eau Claire.
 10 **Q Okay. What was your degree in?**
 11 A Journalism and political science.
 12 **Q Okay. And were you a journalist after you**
 13 **graduated?**
 14 A Yes.
 15 **Q Okay. Where did you work?**
 16 A Iowa.
 17 **Q Okay. Which newspaper?**
 18 A It wasn't a newspaper. It was a magazine.
 19 **Q Okay. Which one?**
 20 A Midwest Streams and Trails.
 21 **Q Okay. Interesting. And so what did you do**
 22 **there?**
 23 A I wrote articles, took pictures, edited freelance
 24 articles, designed spreads for the magazine,
 25 processed subscriptions, tried to sell

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1 subscriptions, and then designed ads for the
 2 parent company, the Directors Journal.
 3 **Q Are you from Iowa originally?**
 4 A No.
 5 **Q Okay. So how did you end up in Iowa?**
 6 A I got a job there.
 7 **Q Okay. And so how long were you with that**
 8 **company?**
 9 A It was just under two years.
 10 **Q Okay. Then what did you do for a job after that?**
 11 A Then I worked at the State Capitol.
 12 **Q Okay. Who did you work for?**
 13 A Senator Chvala.
 14 **Q Okay. What time period did you work for Senator**
 15 **Chvala?**
 16 A Middle of 1997 until I went to work for the city
 17 which was 2004.
 18 **Q Okay. And what did you do in the Senator's**
 19 **Office?**
 20 A I answered constituent letters about all sorts of
 21 things.
 22 **Q Okay. Did you deal with or have any**
 23 **specialization in election law issues?**
 24 A No.
 25 **Q No. Did you nonetheless run into some election**

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1 **law issues in your work at the Capitol?**
 2 A It was mostly tax issues and dealing with state
 3 agencies. Like, the Department of Workforce
 4 Development was one of my areas, unemployment,
 5 insurance. But I don't think we really were
 6 contacted with people who had election law
 7 issues, but that wasn't my area to deal with.
 8 Q **Okay. And so what year did you leave the Capitol**
 9 **then?**
 10 A 2004.
 11 Q **2004. And what was the reason you left?**
 12 A I got a job in the city clerk's office as their
 13 liquor licensing clerk.
 14 Q **Okay. And did you feel you left the Capitol on**
 15 **good terms?**
 16 A Yes. I -- after I started working for the city,
 17 I got several offers to work in the offices in
 18 the Capitol; but I wanted to stay with the job I
 19 had taken with the city.
 20 Q **Okay. And so that first job with the city, how**
 21 **long did you have it?**
 22 A Two years.
 23 Q **Okay. And then what was next for you in terms of**
 24 **employment?**
 25 A City clerk of the City -- City of Madison.

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1 Q **Okay. And was that appointed? You were just**
 2 **hired by the city, or were you elected?**
 3 A Appointed by the mayor. Confirmed by the
 4 council.
 5 Q **Okay. And that position is -- is it something**
 6 **that you have to be elected to maintain the**
 7 **position or you just had the job?**
 8 A No. You had five-year contracts.
 9 Q **Okay.**
 10 A So I'm finishing up my second contract this year.
 11 Q **Okay. And so does that result in another**
 12 **appointment at the five-year time cutoff?**
 13 A I'm not sure how you would legally classify it.
 14 If the mayor isn't going to recommend my contract
 15 for renewal, then he has to notify me within a
 16 certain time period of the contract expiring.
 17 Q **Okay. So have you received notification that you**
 18 **were going to be renewed?**
 19 A No, I haven't received any notification.
 20 Q **Okay. When would you expect that to happen?**
 21 A Sometime this summer.
 22 Q **Okay. And you don't anticipate any reason you're**
 23 **not going to be removed?**
 24 A I hope not.
 25 Q **Okay. In other words, you want to keep working**

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1 **there?**
 2 A Right.
 3 Q **Okay. Have you ever done at any point in your**
 4 **life any work as a poll worker?**
 5 A No, I have never been a poll worker.
 6 Q **Okay. So prior to the time you became city**
 7 **clerk, what familiarity did you have with how**
 8 **elections worked?**
 9 A The two years as licensing clerk, I had to also
 10 work on elections' tasks in the city clerk's
 11 office; and the deputy city clerk who was my
 12 supervisor in the office showed me a lot of what
 13 she was doing in preparing for the elections.
 14 Q **Okay. And so did you have to take some training**
 15 **from that individual, or did you get other**
 16 **training to get up to speed?**
 17 A I did take training from the deputy clerk; but
 18 then I also completed 100 hours of training with
 19 the UW-Green Bay Institute for Municipal Clerks
 20 and training through the Government
 21 Accountability Board, which is ongoing because
 22 the law keeps changing.
 23 Q **Okay. So to -- to date, you have to do some**
 24 **regular training?**
 25 A Yes.

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1 Q **How much?**
 2 A I think the legal requirement is that, every two
 3 years, clerks get six hours of election training;
 4 but I try to get all of the training I can as
 5 things change.
 6 Q **And how do you get that training?**
 7 A Through the Wisconsin Municipal Clerks
 8 Association conferences each year, they always
 9 have sessions run by the Government
 10 Accountability Board and then the Government
 11 Accountability Board webinars that are offered
 12 frequently through their website.
 13 Q **And did you have to attend some those very**
 14 **recently for the April election?**
 15 A For the February election.
 16 Q **You did? Okay.**
 17 A Yes.
 18 Q **But for the April election, there was no, like,**
 19 **specific training for that election?**
 20 A No. It's not that the state says, We have a new
 21 training for the upcoming election. They'll say,
 22 We have a new webinar that we're offering. And
 23 it isn't necessarily associated with an election.
 24 So, for example, I imagine this summer they'll
 25 have a lot of trainings just on reviewing

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1 procedures, like nursing home voting and issuing
 2 absentees.
 3 **Q Okay.**
 4 A That won't be associated with any election.
 5 **Q Okay. And -- and is it your understanding that**
 6 **training is driven by what new things there are**
 7 **to learn whether they have a session?**
 8 A No. They go over old things.
 9 **Q Okay.**
 10 A And do a review maybe from a little different
 11 perspective.
 12 **Q How -- what is your level of satisfaction with**
 13 **the training that GAB provides?**
 14 A Well, if I don't find material on their website
 15 or through a webinar of what I'm trying to figure
 16 out, then we call them; and we always receive a
 17 call back.
 18 **Q Okay. Is the call, like, timely, like you're**
 19 **getting useful information timely?**
 20 A Well, if we don't get a call back right away,
 21 then I just call and ask to talk to somebody
 22 else.
 23 **Q Okay.**
 24 A So we make sure we get the information we need,
 25 even if we have to walk over to their office.

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1 **Q Okay. So -- but do you feel that the training**
 2 **they provide is adequate to allow you to learn**
 3 **the things you need to to administer an election?**
 4 A I -- I think their webinars are very helpful. I
 5 wish we would receive more notice from them that
 6 something's coming up and that we wouldn't have
 7 to dig for it. But my understanding is that they
 8 receive a lot of complaints from clerks that did
 9 not like hearing so much -- or hearing from the
 10 GAB so often, and so they will periodically send
 11 out reminder e-mails to check the GAB website.
 12 My preference would be that they just include all
 13 of the information right in the e-mail, but I
 14 guess it was very controversial with other clerks
 15 who did not like receiving a lot of e-mails from
 16 them.
 17 **Q Okay. Have you talked to any other municipal**
 18 **clerks about this case?**
 19 A No. I did hear -- at the time that the subpoena
 20 went out, I did hear some other clerks maybe
 21 grumbling that they had received a subpoena. I
 22 had not received a subpoena at that point. I
 23 don't know if we were the last to receive a
 24 subpoena or if they were phased in, but I had
 25 heard that the clerk's office received a

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1 subpoena.
 2 **Q Okay. Are you in any kind of regular contact**
 3 **with any clerk's offices throughout the state**
 4 **such as Milwaukee?**
 5 A We call each other -- well, we call each other
 6 every so often, Milwaukee and our office. For
 7 example, if we are experiencing the problem in
 8 the State's Voter Registration System, we often
 9 will call Milwaukee to find out if they're having
 10 the same difficulty or if it might be something
 11 specific to our computers or our servers.
 12 Sometimes around election time, Neil and I will
 13 send each other a message saying, Hang in there,
 14 or something along those lines.
 15 **Q Okay. So you know Neil Albrecht?**
 16 A Yes.
 17 **Q Do you know he's also submitted a declaration in**
 18 **this case?**
 19 A I didn't know he submitted a declaration.
 20 **Q Okay. When's the last time you talked to him?**
 21 A Just yesterday.
 22 **Q Okay. What did you talk about?**
 23 A I asked him how many provisional ballots the City
 24 of Milwaukee had, and he said they had 45; and he
 25 asked me if we were experiencing any exodus of

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1 poll workers, which we were not. But I guess
 2 that's an issue in Milwaukee.
 3 **Q Okay. What did he mean by that, that they're**
 4 **losing volunteers or paid people?**
 5 A That there are people who have signed up to be
 6 poll workers -- I don't know whether they're all
 7 paid or volunteer -- that they've decided the
 8 law's become to complicated, and they've started
 9 to quit.
 10 **Q Okay. We're going to talk about who you employ**
 11 **to help with an election and administer it later.**
 12 **But is it correct to use the term "poll worker"?**
 13 **Is that the common term?**
 14 A That's one of the common terms. We also use the
 15 term "election official," but they're
 16 interchangeable.
 17 **Q Okay. I just want to make sure I use the term**
 18 **that you would like to use. But you -- you said**
 19 **you have not worked as a poll worker. But you**
 20 **are a voter; correct?**
 21 A That's correct.
 22 **Q And you're registered here in Madison?**
 23 A Yes.
 24 **Q Where do you vote?**
 25 A Well, now that I am clerk, I vote absentee.

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1 **Q Okay.**
 2 A Because I can't necessarily get out of the office
 3 on election day.
 4 **Q Okay. Let's talk about your most recent time you**
 5 **voted. Did you vote in the April election this**
 6 **year?**
 7 A Yes.
 8 **Q And did you vote absentee?**
 9 A Yes.
 10 **Q In person?**
 11 A Yes.
 12 **Q What day of the week did you do it?**
 13 A I did it on the last day we could have absentee
 14 voting, so that was a Friday.
 15 **Q And what time of day?**
 16 A At the end of the day. I was the last voter. I
 17 stood at the end of the line --
 18 **Q Very interesting.**
 19 A -- and then --
 20 **Q Neil Albrecht said the exact same thing. He --**
 21 **he did the exact same thing. So what is the**
 22 **reason you did that?**
 23 A Somebody has to stand at the end of the line, and
 24 I just had not had a chance prior to that to set
 25 aside time to stand in line. I was working until

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1 midnight most every night.
 2 **Q Okay. And so you were the last person in line.**
 3 **What time do you recall that you actually voted?**
 4 A I got into line with two minutes to go, and I was
 5 in line for 15 minutes; so that must've been
 6 7:13.
 7 **Q Okay. And then, after that, you had to work**
 8 **more?**
 9 A Yes.
 10 **Q How -- how late did you work that last night of**
 11 **absentee voting?**
 12 A It was after 10:00 p.m. It may have been around
 13 10:30. I'd have to check.
 14 **Q Okay. So what -- what keeps you in the office**
 15 **that late during the absentee voting?**
 16 A Once we have absentee ballots in the office, we
 17 have to sort them according to ward; and then we
 18 double-check and triple-check that we have the
 19 right ballots going to the right polling place,
 20 and we seal the ballots in a carrier pack and
 21 record the seal number that we used.
 22 **Q So do you do that for every day of absentee**
 23 **voting? You would do --**
 24 A Yes.
 25 **Q -- the ballots for that day?**

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1 A Yes.
 2 **Q Okay. And is that -- that's, like, an**
 3 **aspirational goal, or do you absolutely have to**
 4 **do it for some reason?**
 5 A No. If we have ballots that still need to be
 6 sorted the next day, we'll sort those ballots the
 7 following day. It's just that when we have some
 8 quiet time in the office without the phone
 9 ringing tends to be very late at night.
 10 **Q Okay. Do you also come in very early in the**
 11 **morning during the absentee voting period?**
 12 A We started our work day at 7:30 during those two
 13 weeks.
 14 **Q Okay. So during those two weeks, what was your**
 15 **schedule like every day?**
 16 A It was generally from 7:30 in the morning until
 17 as late as 3:00 the following morning. My goal
 18 was always to finish up by midnight, but that
 19 didn't always happen.
 20 **Q Okay. Did you have to work on the weekend during**
 21 **that two-week absentee voting period?**
 22 A Yes.
 23 **Q How much on the weekend?**
 24 A As many hours as I could push myself to work.
 25 **Q So how many did you, in fact, work in April of**

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1 **this year?**
 2 A I tried to limit myself to 12-hour days on
 3 Saturdays. That didn't always happen. And then,
 4 Sundays, I tried not to work in the morning but
 5 would end up working in the afternoon and
 6 evening.
 7 **Q And on the weekend, were you the only one in the**
 8 **office working?**
 9 A No, not at all.
 10 **Q Who else -- or how many other employees of the**
 11 **city were there working?**
 12 A Up to all seven of us employed by the clerk's
 13 office; but, quite often, three, four, or five.
 14 **Q Okay. So we're going to talk about how the**
 15 **absentee -- in-person absentee period has**
 16 **changed. Can you contrast this 10-day period and**
 17 **the work that goes into that with what it used to**
 18 **be when the period was longer, say a thirty -- a**
 19 **30-day period?**
 20 A When the in-person absentee voting period was
 21 longer, we'd have some of that time for absentee
 22 voting more spread out; so we wouldn't have to
 23 try to push as many people as possible to the
 24 counter every minute of absentee voting. It
 25 would generally start kind of quietly, a more

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1 soft opening to absentee voting, which was nice
 2 because we could then troubleshoot if we were
 3 having trouble running labels. But it would pick
 4 up every day. Every day, there'd be more and
 5 more absentee voters; and so we didn't have to
 6 try to avoid having other activities outside of
 7 the office during absentee voting time. This
 8 past election and the election before that, we
 9 had to try to avoid having election official
 10 training during those two weeks because we needed
 11 every body possible in the office; and, even
 12 then, it wasn't enough. So when we're recruiting
 13 election officials to work at the polls, that
 14 goes through the week before the election; and we
 15 like to give them options for training because we
 16 require everybody to complete training before
 17 working at the polls. So we had to push people
 18 to attend the Saturday training that weekend,
 19 which had over 100 people per session; and then
 20 we had trainings all day long on Monday, which
 21 were standing room only.
 22 **Q Okay. So -- so back when the absentee voting**
 23 **period was longer than 10 days, were you working**
 24 **the very lengthy hours for like the last 10 days**
 25 **of the absentee voting period?**

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1 A I have always worked very lengthy hours for
 2 elections, but my staff has not worked the
 3 lengthy hours they've worked this year until this
 4 year.
 5 **Q Okay.**
 6 A Previously to this year, they could go to doctor
 7 appointments, get their dogs to the veterinarian,
 8 take their children to the dentist. They could
 9 plan personal things around election time; but,
 10 this year, they sacrificed a lot personally. And
 11 I think it made -- my sense is that it made them
 12 quite angry, but there was so much work to be
 13 done in such a tight time frame that they did
 14 choose to prioritize their job over their
 15 personal lives.
 16 **Q So in the lead up to the end of absentee voting**
 17 **back when the period was longer than 10 days --**
 18 **A Yes.**
 19 **Q -- did you end up staying until midnight**
 20 **regularly?**
 21 **A Not regularly.**
 22 **Q No. Not as much as now?**
 23 **A No.**
 24 **Q Okay. Did you end up working weekends regularly**
 25 **in -- back then?**

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1 A Yes.
 2 **Q You did. Okay. And same type of 12-hour days on**
 3 **Saturdays and --**
 4 **A Yes. But on different things. In the past, I**
 5 **was able to do things like press releases of**
 6 **information we wanted to communicate to voters.**
 7 **My Saturdays during in-person absentee voting**
 8 **were spent packing our supply kits that we send**
 9 **to each polling place. For 87 polling places, we**
 10 **have a box that will contain all of the election**
 11 **day signage, the small supplies that they have**
 12 **like pens and paperclips, all of the tools that**
 13 **we give our officials like a copy of the**
 14 **statutes, the State's election day manual. There**
 15 **are over 100 pieces to go in each of these kits,**
 16 **and we used to have staff available who could**
 17 **work on that during the regular work day; so that**
 18 **wasn't my task to complete, but there was nobody**
 19 **to complete the task. So instead of doing things**
 20 **like press releases and analyzing statistics to**
 21 **make sure we had enough ballots on hand, I had to**
 22 **do things like packing the supply totes; and that**
 23 **was pushed into more -- more of the tasks that**
 24 **regular staff typically took care of.**
 25 **Q Do you prepare, like, a checklist of what goes**

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1 **into those kits?**
 2 **A Yes.**
 3 **Q Do you have a copy of it?**
 4 **A Not with me but --**
 5 **Q But you do have it?**
 6 **A -- I do have it. Mm-hmm.**
 7 **Q You wouldn't happen to have a prepared kit that**
 8 **was, like, left over, would you?**
 9 **A I have one -- I have an extra one. I have the**
 10 **kits from election day returned that they all**
 11 **look like a tornado has gone through them**
 12 **because, you know, they were used at the polls on**
 13 **election day.**
 14 **Q If your attorney were okay with it, would you be**
 15 **willing to let me see what that kit looks like?**
 16 **A Yes.**
 17 **Q I think it would be helpful for me to understand,**
 18 **you know, what goes into putting it together and**
 19 **what goes out to the -- the boots on the ground**
 20 **people.**
 21 **A Sure.**
 22 **Q So I guess we're still just talking about your --**
 23 **your background. We'll come back to some talking**
 24 **about more specifics about the April election.**
 25 **A Okay.**

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1 **Q But have you ever -- you said you were involved**
2 **in politics and that you worked at the Capitol.**
3 A Yes.
4 **Q Have you been involved in politics in any other**
5 **respect?**
6 A I vote. But that would be it.
7 **Q Okay. Oh. Back to your voting, you had to show**
8 **ID to vote absentee?**
9 A Yes.
10 **Q What ID did you use?**
11 A My Wisconsin driver's license.
12 **Q And when's the last time you had to renew your**
13 **driver's license?**
14 A Well, I know it was at election time because I
15 almost was not able to renew it. I had to take
16 time off from work to get to the DOT, but I don't
17 know what year that was.
18 **Q Okay. Do you remember the process? Or, like,**
19 **was it convenient when you got to the DMV; or was**
20 **it inconvenient to you?**
21 A There -- I know there was a snowstorm that day,
22 and I remember sitting at the DMV. That's all I
23 recall about it.
24 **Q Did it take a long time?**
25 A I don't remember how long it took.

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1 **Q Okay. And when's the last time you had to change**
2 **or update your voter registration?**
3 A 2007.
4 **Q Okay. And so did you -- do you remember what you**
5 **had to do for that?**
6 A I filled out a registration form.
7 **Q And did you have to -- well, how did you prove**
8 **where you resided?**
9 A I don't remember which document I used as proof
10 of address. It was a long time ago.
11 **Q Okay. But since then, you haven't had to update**
12 **it?**
13 A No.
14 **Q Okay. Have you been involved in any political**
15 **campaigns?**
16 A No. I stay away from politics.
17 **Q Okay. Have you run for office?**
18 A No.
19 **Q Do you have any intent to?**
20 A No.
21 **Q Why not?**
22 A I like what I'm doing in the city clerk's office.
23 **Q Okay. What is your understanding of what this**
24 **case we're here for today is about?**
25 A I think it involves recent changes to state

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1 elections law just based on the questions I've
2 been asked about, the implementation.
3 **Q And do you have -- do you have personal feelings**
4 **about those laws?**
5 A I think "feelings" is a pretty --
6 **Q Loaded term?**
7 A -- strong word. Yeah. I -- I wouldn't say I
8 have any feelings. You know, the law is the law;
9 and we implement the law, whatever that may be.
10 Some laws are a lot more difficult to implement
11 than others. But whatever the law is, that's
12 what we're going to follow.
13 **Q Okay. Why don't we look at your declaration in**
14 **this case, and that will be the first exhibit**
15 **we're going to mark.**
16 **MR. KAWSKI:** I only brought one extra
17 copy.
18 **MR. BRIST:** I've got one.
19 **MR. KAWSKI:** You've got one? Okay.
20 Josh, this will be 1 for the witness, Exhibit 1.
21 (Exhibit 1 was marked.)
22 **BY MR. KAWSKI (CONTINUING):**
23 **Q All right. Here. Take a look at Exhibit 1.**
24 **Look through the whole thing, and make sure it's**
25 **complete. And when you're done looking at it,**

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1 **let me know if you know what that is. All right?**
2 A So this is my affidavit.
3 **Q And I guess how -- how is this document prepared?**
4 A I had a meeting with this attorney and Steve
5 Brist and was asked a lot of questions about the
6 implementation of various election laws, and then
7 I was given a draft based on what I had said; and
8 I made quite a few changes to it. And then I was
9 given another draft, and I think I made even
10 further changes. And then this is what the final
11 version was that I signed.
12 **Q Do you still have copies of those drafts?**
13 A I don't think so.
14 **Q No. Were they provided to you in a hard copy or**
15 **electronically?**
16 A I am not sure.
17 **Q Okay. Do you remember looking at them on paper?**
18 A I -- I don't know.
19 **Q Okay. But you didn't do any typing to create the**
20 **draft?**
21 A No.
22 **Q Someone else filled in what you -- the changes?**
23 A What I had said.
24 **Q Okay. And then, on the last page, that's your**
25 **signature?**

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1 A Yes.
2 Q You executed -- or you signed it January 29th?
3 A Yes.
4 Q And do you remember, was it, like, January when
5 you were communicating back and forth about the
6 content of what would be in the declaration?
7 A Yes.
8 Q Okay. All right. I just want to talk about a
9 few statements in here. You know, it'll be kind
10 of like a miscellaneous grab bag. We're not
11 going to go through the whole thing in detail.
12 We already talked about how you are the city
13 clerk. And you've been in that position for 10
14 years?
15 A This is my tenth year.
16 Q Okay. And when -- in paragraph two where you say
17 you were staff in the city clerk's office, that
18 was the liquor license job?
19 A Yes.
20 Q Okay. All right. Let's talk about how many
21 staff work at election in Madison. First, let's
22 talk about the in-person absentee period. In
23 your office, how many staff are there for that
24 voting period?
25 A How many staff are located right in the office at

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1 that time?
2 Q Yes.
3 A Okay. That is during the time that we also have
4 the public test of election equipment, and we
5 deliver the election equipment to polling places;
6 so those activities remove one or two people from
7 our office during those two weeks. And so we
8 have -- I have six full-time employees during.
9 Those two weeks, I have four full-time employees.
10 And then there are three employees that we can
11 borrow at times from the Finance Department, but
12 there's no guarantee that we'll have them. So,
13 if, for example, some -- somebody calls in sick
14 at a front desk at another agency, that takes
15 priority over helping out the clerk's office.
16 Q Okay. So is it fair to say then you have -- you
17 have six full-time employees in your office?
18 A Yes.
19 Q Most -- for the 10-day absentee voting period,
20 four are usually available full-time?
21 A Yes.
22 Q And then you're perhaps able to draw upon the
23 services of three other full-time employees but
24 only at times?
25 A That's right.

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1 Q Okay. Do you have any part-time employees that
2 work during the absentee voting period?
3 A For a November election, we will be able to hire
4 some part-time help.
5 Q But not for April of this year?
6 A No. We had no funding for additional employees.
7 Typically, that's just something we can get
8 funding for for a November election; and I don't
9 even know that we get that every November
10 election. If there are injured bus drivers on
11 workers' comp, we can get some help from them
12 signing absentee envelopes as witnesses; but they
13 have been harder to come by in recent years.
14 Q Fewer injuries to bus drivers?
15 A Fewer -- fewer injuries.
16 Q Okay. So that's a good thing. So how would --
17 how would your office obtain additional funding?
18 For example, for the April election of this year,
19 how would you ask for that?
20 A It would have to be included in the city's
21 budget.
22 Q So did you make a request for additional funding
23 for April 2016?
24 A Not for April.
25 Q No. Have you made a request for additional

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1 funding for November of this year?
2 A Yes.
3 Q And what did you request in terms of how many
4 additional staff the funding would cover?
5 A I'm just going on memory here from a year ago. I
6 think it's six part-time helpers.
7 Q Okay. And for what period would those part-time
8 helpers be available?
9 A They would start in late October and then go
10 through November.
11 Q To the end of November?
12 A Yes.
13 Q Okay. And how do you end up hiring those people?
14 What's the process?
15 A It goes through the Human Resources Department.
16 They will post a job opening, and then they give
17 us lists of candidates to interview.
18 Q And do you -- do you set the wage for them, or
19 does HR set the wage?
20 A Human Resources sets the wage.
21 Q Okay. Do you know what the wage is for those
22 folks?
23 A The last I can recall, it was something like \$14
24 an hour.
25 Q Okay. And during the time period they're

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1 employed in October and November, do they work
2 full-time during that period?
3 A No. They would work maybe 20 to 24 hours a week.
4 Q And is that due to the nature of their position
5 and how it's approved?
6 A It -- I think that's how it's posted -- how the
7 job is posted, that it would be part-time,
8 hourly, 20 to 24 hours a week.
9 Q How did you determine that that would be a
10 sufficient number for November of -- of new
11 part-time employees?
12 A That is the most we have ever been granted by the
13 Common Council.
14 Q Okay. Have you ever asked for more?
15 A I have asked for more employees in the clerk's
16 office and been turned down.
17 Q How many have you asked for?
18 A I would have to go through each budget. I've
19 asked for -- funding for deputy clerk for a
20 presidential election year and had that turned
21 down. This past year, we asked to turn a half
22 position into a full position. That was turned
23 down. I -- I would have to go through every
24 single budget for the past 10 years to figure
25 that out.

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1 Q Have you regularly, though, made requests for
2 addition staff and been turned down?
3 A Not always.
4 Q No. Sometimes you've been granted those
5 requests?
6 A Yes. So, for example, we were granted six
7 part-time helpers for this November's election.
8 Q When you have been turned down, has there been
9 some reasoning provided to you?
10 A Yes. The shared revenue cuts. So city agencies
11 have not been getting all of the positions that
12 they've been requesting.
13 Q Okay. So, if the Common Council does not approve
14 it, is that the end -- end of the process for
15 making a request? You can't get a second chance?
16 A I'm not sure what you mean by that.
17 Q I mean, they -- they kind of run the final say?
18 A Yes. The Common Council sets the budget.
19 Q Okay. And how -- I mean, how did that make you
20 feel when you were rejected for a request that
21 was made?
22 A I'm not really one for bringing feelings into my
23 work. I know other agencies have supplemental
24 requests each year that also cannot be granted.
25 Q Okay. But you do continue to make requests as

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1 needed?
2 A Yes.
3 Q Okay. And for this year, you made a request for
4 six and were granted six?
5 A Yes.
6 Q Okay. But you made no requests for April?
7 A No.
8 Q Or February?
9 A No.
10 Q Okay. And then, in addition to the -- the paid
11 employees, are there volunteers that help on
12 election day?
13 A Are you talking about poll workers?
14 Q Yes.
15 A I -- I don't know that I'd call them volunteers.
16 They are paid employees.
17 Q Okay. And the reason I ask is, I learned from
18 Neil Albrecht that sometimes the paid -- paid
19 poll workers decide to be volunteer. Does that
20 happen in Madison too?
21 A We have a small number who say that they don't
22 need to be paid, but most of our election
23 officials want to be paid.
24 Q Okay. Does that -- is it common for at least
25 some to say that they would volunteer and not --

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1 and choose not to be paid?
2 A I don't know that I would call that common.
3 There are a small number who have said they would
4 be volunteers. It's an option on the payroll
5 sheet.
6 Q Okay. Do you have the ability to recruit true
7 volunteers who are not hired by the city?
8 They're not employees of the city?
9 A I'm -- I'm not sure what you mean by that.
10 Q I guess, can you have poll workers that are not
11 employed by the city?
12 A Yes. We -- we go through the State's appointment
13 process for poll workers, which is a list
14 submitted by the mayor to the Council. The
15 Council approves it every other year. And on
16 that list, there are some people who are willing
17 to be a volunteer; but most of those individuals
18 prefer to be paid.
19 Q Okay. So for the April election, you said you
20 had six full-time people working; right? Were
21 there any volunteers who were not city employees
22 working to help with the election for absentee
23 voting, for example?
24 A Yes. After the first few days of absentee
25 voting, I realized that we just did not have

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1 enough hands in the office. I was answering the
2 phone full-time from the moment I got into the
3 office until the end of absentee voting, and we
4 were dropping a lot of calls; so then the voters
5 would call the mayor's office upset that they
6 weren't able to get through to the clerk's
7 office. So I asked League of Women Voters if any
8 of them would be willing to come into the office
9 to volunteer to do some light tasks, so they --
10 they would not have access to the State's voter
11 registration system; but they helped with handing
12 out voter registration forms in the line, helped
13 with controlling the line of voters, letting
14 voters know when a new station was open at the
15 counter, signing as witnesses, small tasks like
16 that.

17 **Q And so, during the April election, what is the**
18 **greatest number of those volunteers you had at**
19 **any one time?**

20 A I didn't even have time to count how many people
21 showed up at one time, but they came and went all
22 day long every day of the final week of absentee
23 voting; and then -- I don't recall what day it
24 was of the first week of absentee voting that I
25 first put out the request.

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1 **Q Okay. Could you describe for me the set up of**
2 **your polling place for in-person absentee voting?**

3 A Well, it's not really a polling place. It's a
4 city clerk's office. And we have a long counter
5 with some computers there that we use to process
6 the voter registrations and the absentee
7 requests, and then we fill our front lobby with
8 voting booths.

9 **Q Okay. How many voting booths?**

10 A I didn't count how many. It was as many as we
11 could fit.

12 **Q Okay. And at the front counter, how many staff**
13 **are there that would be assisting voters?**

14 A There were between two and four at any time. We
15 tried to take at least five-minute lunch breaks,
16 so then sometimes it would get us down to two
17 people at the front counter. At the same time,
18 we had people coming in to submit license
19 applications; so not everybody at the counter is
20 able to help voters all of the time. We have
21 other city business that we need to take care of.

22 **Q Can the counter -- what is the maximum number of**
23 **staff that the counter could actually reasonably**
24 **accommodate?**

25 A In the past, we've had six stations sit up there.

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1 **Q Okay. Are what are the various stations? What**
2 **are -- are they doing different things at each**
3 **station?**

4 A It's just whatever the customer needs.

5 **Q Okay. So, for example, if someone needs to**
6 **register, that person would be able to register**
7 **with the same city employee who was also helping**
8 **to get them a ballot?**

9 A Yes.

10 **Q Okay. Is that -- do you -- do you know if other**
11 **municipal clerk offices do it the same way, or do**
12 **they set up different stations?**

13 A I don't know what others do.

14 **Q Okay. Do you have the space to set up different**
15 **types of stations?**

16 A I don't know that that would be the most
17 efficient way to do things because we could have
18 five bartenders -- bartender applicants walk in
19 at the same time; and, if all stations are
20 available, they might as well each step up to a
21 station.

22 **Q What are the two biggest bottlenecks for**
23 **in-person absentee voting that slow down the**
24 **process?**

25 A The slowness of the State's new voter

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1 registration system would be the biggest
2 bottleneck.

3 **Q Okay.**

4 A It can take up to 10 minutes to process the voter
5 registration.

6 **Q Let's -- let's talk about that. Do you mean the**
7 **computerized system? Or what -- what about it?**

8 A It's the computerized system. It is incredibly
9 slow.

10 **Q Okay. And is it a technology problem, or it --**
11 **is it something about the process that requires**
12 **so many more steps than it used to?**

13 A There are more steps, but the system doesn't move
14 quickly through those steps.

15 **Q Okay. So you're noticing, at least for the most**
16 **recent elections, a change and a bottleneck due**
17 **to that registration system?**

18 A Yes.

19 **Q Okay. And there was no such bottleneck prior to**
20 **this year?**

21 A Right. The system is new this year.

22 **Q Okay. What is -- do you know what the system is**
23 **caused?**

24 A WisVote.

25 **Q Okay. Do you remember, like, for what election**

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1 **it first went online?**
2 A February.
3 **Q Okay. And prior to February, you had not noticed**
4 **this problem?**
5 A Prior to February, I could process 100 voter
6 registrations in an hour. Now, I can process
7 about 20 in an hour.
8 **Q Okay. And, again, what -- what is the reason why**
9 **there's a difference?**
10 A It is incredibly slow. I don't know the
11 technical reason behind that, but it is -- you
12 are sitting and staring at the computer while the
13 little circle goes around.
14 **Q Okay. So it's -- you have to go through multiple**
15 **screens to enter information?**
16 A Not necessarily.
17 **Q No?**
18 A No.
19 **Q Okay. So I don't know -- I don't know -- I don't**
20 **know technology that well either. But is it that**
21 **you enter one piece of information, you tab**
22 **through to the next one, and it needs to think a**
23 **little bit before it allows you into the next**
24 **piece?**
25 A No. It is that, if you are registering to vote

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1 at an address where nobody currently is
2 registered to vote and that goes right down to
3 the apartment number, then that address needs to
4 be validated in the system and found on a map and
5 needs to be given a district combination code;
6 and that takes forever.
7 **Q Okay. So that -- you said that that new**
8 **registration system is the number one bottleneck**
9 **for in-person absentee voting.**
10 A Yes.
11 **Q What would you say is the second?**
12 A Voter ID.
13 **Q Voter ID. Okay. What about voter ID?**
14 A There are voters who assume that they have an ID
15 that is not the -- an ID that would be
16 acceptable, but it is not the biggest issue we
17 have. There is out-of-state IDs. And then, when
18 the voter finds out that we cannot accept that,
19 they get very irate; and that stops the line. We
20 also have voters who go the opposite way, and
21 they realize they need an ID; and so they bring
22 in all documents they can think of that could
23 possibly apply, including their birth
24 certificate. And so they're showing us all of
25 this documentation.

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1 **Q So when they're waiting in line, if there is a**
2 **line, there must be signage that tells them what**
3 **are valid IDs; right?**
4 A There is. And we had League of Women Voters
5 talking to people, but it doesn't always sink in
6 while somebody's in line if they're playing with
7 their cell phone.
8 **Q So that -- is that a -- in your 10 years, I'm --**
9 **I'm sure you've seen more people with cell phones**
10 **in line; right?**
11 A I -- I don't count how many people have a cell
12 phone.
13 **Q But, I mean, that's more of a regular thing these**
14 **days than it was 10 years ago?**
15 A Probably.
16 **Q So people are distracted by the phones and aren't**
17 **really paying attention to the signs around**
18 **the --**
19 A Right. And some people are reading books.
20 **Q Okay. So that's the -- you say voter ID is the**
21 **number two thing that causes bottlenecks. I**
22 **don't know -- you said that sometimes the**
23 **registration can result in like a ten-minute**
24 **delay. Can you describe what kind of delay voter**
25 **ID could create or an average of how much more**

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1 **time it creates for someone to vote?**
2 A For in-person absentee voting?
3 **Q Yes.**
4 A I haven't done timing on that in our office
5 compared to the old way.
6 **Q Okay. What about on election day? Have you**
7 **compared with the new voter ID procedure to prior**
8 **to the procedure how much extra time it takes?**
9 A Yes. It doubled the amount of time --
10 **Q Okay.**
11 A -- checking in at the poll book.
12 **Q Okay. So when you say "doubled the amount of**
13 **time," how much time are we talking about?**
14 A It used to be that -- under the old rules, it
15 would be about 20 seconds to check-in at the poll
16 book; and now it is almost a minute depending on
17 the polling place. So between 40 and 60 seconds.
18 **Q And so, if I show up and hand them my ID, you're**
19 **saying it takes 40 seconds now?**
20 A Yes.
21 **Q Why is that?**
22 A There's more to -- more involved in checking the
23 ID; and there is, along with that, the
24 requirement for the signature on the poll book.
25 So when the rules changed, we did some mock

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1 elections to time the new rules and to try to
2 figure out what the most efficient way would be
3 to try to check voters in.
4 **Q So the signature requirement, how much time does**
5 **that add?**
6 **A I don't have it broken down to just the signature**
7 **because this was implemented at the same time --**
8 **Q Okay.**
9 **A -- we did our mock election testing both the**
10 **signature and the voter ID together.**
11 **Q Okay. So you can't estimate then how much more**
12 **time the signature creates or how much more time**
13 **the voter ID requirement creates?**
14 **A No. I would just be speculating.**
15 **Q Okay. So it's possible the signature requirement**
16 **creates fif -- 30 extra seconds; the voter ID**
17 **creates 10?**
18 **A I don't know.**
19 **Q Okay. You didn't -- and you didn't do that**
20 **analysis?**
21 **A No.**
22 **Q Okay. What -- what problems, if any, can the**
23 **signature requirement create?**
24 **A Finding the right box on the poll book.**
25 **Sometimes a voter will sign the wrong box, and**

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1 then the poll workers need to stop everything and
2 get that documented in then the inspector
3 statement. It is a -- not at a good level for
4 the voter. The voter has to lean over and --
5 **Q Is it like --**
6 **A -- like, we're AUDIO at a standing table for the**
7 **voter to sign.**
8 **Q Is there also an issue in that the poll book is**
9 **facing one way for the poll worker and another**
10 **way for the voter so it's kind of upside down?**
11 **A I -- I don't know that that's an issue.**
12 **Q Okay.**
13 **A That's how the poll book is set up.**
14 **Q Okay. Okay. All right. In your declaration,**
15 **you've talked about -- paragraph four. And this**
16 **is -- extends from the first page over to the**
17 **second page. You talk about, at some point,**
18 **there being lines in a 2012 general election that**
19 **were two city blocks long. And do you see that**
20 **it's the last sentence of paragraph four?**
21 **A Yes.**
22 **Q So when did that occur again? That was the**
23 **November 2012?**
24 **A Yes.**
25 **Q Okay. So what was the cause of that?**

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1 **A There were so many people voting absentee, over**
2 **1,000 voters a day voting absentee in our office.**
3 **Q Okay. And do you remember what day of the week**
4 **there -- that -- that kind of line, the two-block**
5 **long line --**
6 **A I don't remember what day of the week that was.**
7 **Q Okay. Was it a weekend day?**
8 **A That was during the workweek. I remember that**
9 **because I was hoping that the fire marshal would**
10 **not stop by.**
11 **Q Could it have -- or do you recall if it was on**
12 **the last day of absentee voting that there was**
13 **such a long line?**
14 **A No, because I remember having that concern**
15 **several days. And one day, the fire marshal did**
16 **stop by; and I had to send a lot of the voters**
17 **outside of the building to wait outside in the**
18 **cold.**
19 **Q Did you have that issue arise in April of this**
20 **year with concerns about fire safety?**
21 **A We did reach a point where I was concerned**
22 **because we were going all of the way down --**
23 **Q Right.**
24 **A -- the hallway.**
25 **Q Right. So I -- I walked by your polling location**

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1 **at about 4:20 p.m. on April 1st to see what the**
2 **line was like, and I saw it was down the hallway.**
3 **Correct?**
4 **A Yes.**
5 **Q Is that the longest it had been during the**
6 **absentee period this year, or was it longer than**
7 **that?**
8 **A I don't know how long it got because, as I said,**
9 **I was answering the phone nonstop. I hardly had**
10 **a chance to use the bathroom during the day; and**
11 **that is when I see how long the line is, when I**
12 **sneak out to take a bathroom break.**
13 **Q Okay. So when it's to the end of the hallway in**
14 **your building, how long does that take the last**
15 **person to get up to vote?**
16 **A It depends. It depends on how many stations we**
17 **have at the counter that are going, how long the**
18 **ballot is, which determines how quickly a new**
19 **voting booth might free up, and how many voters**
20 **we can get through at the counter in a minute.**
21 **Q Okay. So it just really depends? I mean, it**
22 **wasn't --**
23 **A It really --**
24 **Q -- like, you could say it was three hours or**
25 **something like that?**

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1 A It really varies.
2 **Q Okay. Can you say, though, what is, do you**
3 **think, during this most recent absentee voting,**
4 **what is the longest wait time that a voter would**
5 **have had?**
6 A I don't know what the longest is that somebody
7 would have had, but I did have a voter yelling at
8 me from the front counter because she was in line
9 for nearly two hours.
10 **Q Okay. Do you remember what day that was?**
11 A No.
12 **Q Was it the last day of absentee voting period?**
13 A No, it wasn't.
14 **Q Okay. Did she say why she was in line for so**
15 **long, like what the reason was?**
16 A She said that I should get off the phone and
17 start helping at the counter myself.
18 **Q So what was her issue, that she had to register**
19 **and had some voter ID problems? She didn't say?**
20 A She didn't specify.
21 **Q Okay.**
22 A She -- she was upset that she had been in line
23 for a long time, and she expressed her anger to
24 me.
25 **Q Okay. So what do you think makes -- drives**

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1 turnout then? What makes so many people show up?
2 A I don't try to figure out why people are voting.
3 I just am happy that they do vote; but I -- I
4 don't ask people at the counter, Why are you
5 here.
6 **Q Could it be that there's a lot of interest in the**
7 **election?**
8 A There could be interest in the election. There
9 could be people who vote in every election. I
10 think for each voter it might be a different
11 reason that they're voting, so I don't want to
12 generalize this.
13 **Q Okay. And in this most recent election, did you**
14 **see that turnout was very high?**
15 A It was the highest turnout that we've had for an
16 April election.
17 **Q Ever?**
18 A As far back as our record goes.
19 **Q Okay. Did that surprise you?**
20 A Well, I look at the absentee requests we receive
21 and use that to try to project what turnout will
22 be. So as the absentee requests kept pouring
23 into our office, I kept increasing our ballot
24 order; so I wasn't surprised.
25 **Q Okay. Did you -- does your office do like an**

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1 estimate ahead of time of what you predict the
2 turnout will be?
3 A Yes.
4 **Q And what did you estimate this -- for this April**
5 **election in 2016?**
6 A 67 percent.
7 **Q And do you know what it actually was?**
8 A 66 percent.
9 **Q Very good estimate. So when you said that you**
10 **estimate based on the number of absentee requests**
11 **coming in, you mean mail-in absentee requests?**
12 A Yes.
13 **Q And I guess what I mean by that is absentee**
14 **ballots that people wanted to vote by mail?**
15 A Right. They send their ballot through the mail.
16 Correct.
17 **Q And I know in your declaration you talk about how**
18 **the changes in the law have encouraged people to**
19 **use that option. Have you --**
20 A Yes.
21 **Q Have you seen more and more people using the**
22 **mail-in absentee option?**
23 A Yes.
24 **Q Do you have a sense or can you say, has it like**
25 **doubled or tripled over your time period in the**

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1 clerk's office?
2 A I haven't had time to analyze those statistics
3 down to that level.
4 **Q Okay. In the declaration -- we can talk about**
5 **that because I think it's paragraph eight. You**
6 **talk about the costs for your office as of 2013**
7 **of an absentee ballot cast by mail. Do you see**
8 **where in paragraph eight you address that?**
9 A Yes, I do.
10 **Q And what -- and what did you say is the cost for**
11 **absentee -- ballot casts by mail versus casting**
12 **one in person?**
13 A \$4.79 by mail. \$0.55 in-person.
14 **Q Okay. And so how did you make those**
15 **calculations?**
16 A I took our printing costs for everything that
17 goes into what we mail out with an absentee
18 ballot, so the outside envelope, the inside
19 return envelope, the postage on the inside return
20 envelope, the uniform instruction letter, the
21 instruction letter from the clerk's office, and
22 then the insert we put in reminding voters to
23 make sure their signatures are on the envelope,
24 and then calculated the staff time that we spend
25 assembling those. I also included the costs of

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1 the labels that we put on them, and then I
2 calculated the cost of the -- one envelope we use
3 at the counter, the cost of the one label there,
4 and the staff time at the counter.
5 **Q Okay. What was driving you to do these**
6 **calculations?**
7 A A clerk that I know in Germantown -- I think she
8 was with a different municipality at the time --
9 had calculated it for her municipality. Her --
10 her mail cost was higher than what mine came down
11 to, but she had mentioned it to me; and I thought
12 -- I wondered what it was for our municipality.
13 **Q Okay. So is the mail option a convenient option**
14 **for a voter?**
15 A I guess it would depend on the voter.
16 **Q Okay. And what would -- what would make it**
17 **depend, I guess?**
18 A I think convenience depends on the person; so I
19 don't want to just generalize what's convenient
20 for other people --
21 **Q Sure.**
22 A -- people other than myself.
23 **Q Would it be a way, though, to avoid the lines**
24 **that are on -- during the absentee voting period?**
25 A You know, it really would depend. I talked to a

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1 number of voters on all of those phone calls I
2 was taking at election time who did not want to
3 send us a copy of their ID because they were
4 concerned about identity theft or somebody
5 getting a hold of their ID through the mail, and
6 so they were not going to be using the option of
7 voting by mail because of that ID requirement.
8 So it's -- it's just --
9 **Q So do you --**
10 A -- depending on the voters' own personal
11 preferences.
12 **Q Do you kind of discourage voting by mail?**
13 A I don't discourage voting of any type.
14 **Q Do you encourage voting by mail-in ballot?**
15 A I don't encourage it but I don't discourage it.
16 **Q Okay.**
17 A But, if somebody is able to vote at the polls, I
18 think that's the safest way to make sure your
19 ballot is counted because, if you mark an
20 overvote on your absentee, you don't have a
21 chance to correct that at the polls. Part of the
22 danger with the absentee by mail option is that,
23 if you don't have your signatures on the
24 envelope, it will be rejected; and then there's a
25 timing component with the post office, which has

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1 become more complicated now that our mail is
2 sorted in Milwaukee. It's taking longer for
3 voters to get their ballots in the mail and then
4 to get the ballots back to us.
5 **Q Is that a recent change about the mail being**
6 **sorted in Milwaukee --**
7 A Yes.
8 **Q -- versus Madison? When -- when did that change**
9 **occur?**
10 A Recently. I don't know exactly when that
11 happened but --
12 **Q But -- but that change that the federal**
13 **government made or whoever, I guess the post**
14 **office, is creating delays?**
15 A Delays in the mail.
16 **Q Okay. But that's not something the city is**
17 **responsible for?**
18 A I have people calling and swearing at me about
19 it, so voters think that somehow the city clerk
20 can control the mail; but that's not true.
21 **Q And I should say, it's not something the state is**
22 **responsible for either.**
23 A No.
24 **Q What type of delay are we talking about that's**
25 **created by this change of having the mail sorted**

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1 **in Milwaukee?**
2 A We used to be able to put a ballot in the mail,
3 and the voter would receive it the next day. Now
4 we're hearing from voters who three days later
5 still have not received their ballot.
6 **Q Okay. Perhaps someone should contact the federal**
7 **government and get them straightened out. So**
8 **have you yourself ever used the mail-in absentee**
9 **option?**
10 A No. I vote absentee in the office because I
11 think, as long as I'm there, I might as well save
12 the taxpayers that money.
13 **Q Okay. And, I mean, is your office concerned**
14 **about saving money; and that's why, you know,**
15 **you're not actively encouraging the -- the**
16 **mail-in absentee option?**
17 A I -- I don't know why we would actively encourage
18 any one option over the other. The voter has a
19 choice to vote at the polls, to vote absentee
20 in-person, or to have a ballot sent to them
21 through the mail. And it's up to the voter what
22 they'd like to do, so we don't push the voter
23 into one option or another.
24 **Q But it's not like a cost -- a budgetary measure**
25 **to make sure that -- you know, that more people**

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1 **show up in-person absentee versus mail-in?**
2 A The number of voters who show up in person,
3 that's the number it is. The number who want
4 ballots by mail, that's the number we send out.
5 We don't try to influence that in any way.
6 **Q And -- and I don't even know how you would**
7 **necessarily.**
8 A No.
9 **Q Let's see. Let's talk absentee voting on the day**
10 **before the election when that was allowed. How**
11 **did that effect the work you had to do to prepare**
12 **for election day?**
13 A It was like any other day leading up to the
14 election.
15 **Q So does it -- does it save you any time to not**
16 **have to do absentee voting in person that day?**
17 A I -- I wouldn't say that it saves time. We -- we
18 either are helping voters on the phone, or we're
19 helping them at the counter; or we're responding
20 to their e-mails. We're -- we -- we have work to
21 do no matter what, so I don't know what you mean
22 by saving time.
23 **Q I guess you wouldn't be able to do that work if**
24 **you were also processing absentee ballots that**
25 **day?**

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1 A If we were processing absentee ballots, then we
2 would be shifting some resources around just like
3 anything else.
4 **Q But you agree, though, that taking the absentee**
5 **balloting out of the equation on the Monday**
6 **before an election allows you to do other work on**
7 **that Monday?**
8 A I have a lot of voter complaints to deal with on
9 that day of people who need to go visit their
10 dying mother or have suddenly been called away
11 for business, and I have to tell them that I
12 can't issue them an absentee ballot. And they're
13 very angry about that; and those discussions take
14 a long time to resolve, to have them let me go.
15 **Q Okay. So you don't agree then that you're able**
16 **to divert resources to other activities on the**
17 **Monday before the election now that there is no**
18 **absentee voting? You do not agree with that**
19 **statement?**
20 A There really is nothing else to be done at that
21 point. Everything that we had to do to prepare
22 for having our polling places set up had to have
23 been done the previous week.
24 **Q Okay. So -- and what -- at what point prior to**
25 **election day are the polling places all ready to**

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1 **go for election day?**
2 A The Saturday before the election is when
3 everything is picked up and dispersed to the
4 chief inspectors.
5 **Q Okay. So who does that dispersing?**
6 A Staff in the clerk's office. We train the chief
7 inspectors the Saturday before the election, and
8 then the chiefs pick up their supply totes.
9 **Q So now that you don't have absentee voting the**
10 **Saturday before the election, that frees up time**
11 **to do that work; correct?**
12 A It's not done by the same people.
13 **Q Okay. But it frees up time for someone to do**
14 **that work; correct?**
15 A I was always doing that work every election so --
16 **Q Okay.**
17 A And I'm not usually the one at the front counter,
18 so it's the same as it always was for the chief
19 inspectors.
20 **Q But you don't have to deal with issues relating**
21 **to absentee ballots on the Saturday before an**
22 **election anymore?**
23 A We no longer have voting the Saturday before the
24 election.
25 **Q And so you're able to use that time to do other**

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1 **things?**
2 A At that point, everything else is done.
3 **Q So you -- you just take that day off?**
4 A I train the chief inspectors in the morning, and
5 then I have nothing else to do.
6 **Q So, during the absentee ballot period, would you**
7 **still have been training the election inspectors**
8 **that morning?**
9 A Yes.
10 **Q Okay. So, for you, nothing has changed?**
11 A For me, nothing has changed.
12 **Q For other employees in your office, though, do**
13 **they get the day off now?**
14 A They -- all but a couple get the day off. Like I
15 mentioned before, we did add some other training
16 on that Saturday because we weren't able to train
17 during the week; so I had two employees in the
18 office. Each training groups of over 100.
19 **Q Okay. But some of your employees were able to**
20 **take the day off?**
21 A Yes.
22 **Q And Sunday too; correct?**
23 A Yes.
24 **Q And that was not the way it worked before the**
25 **changes to the absentee ballot period; correct?**

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1 A Right.
2 **Q They did not get Saturday and Sunday off?**
3 A They could have had Saturday and Sunday off. It
4 was optional to work those overtime hours.
5 **Q Okay. And they were paid overtime?**
6 A Yes.
7 **Q Time and a half?**
8 A Yes.
9 **Q Okay. Going back to paragraph five, you talk**
10 **about offering in-person absentee voting after**
11 **7:00 p.m. for high-turnout elections in the past?**
12 A Yes.
13 **Q So what -- how late would you have offered**
14 **absentee?**
15 A 8:00 p.m.
16 **Q That was the latest?**
17 A Yes.
18 **Q Never beyond 8:00 p.m.?**
19 A No.
20 **Q Okay. Why -- why choose 8:00 p.m.?**
21 A Well, the polling places close at 8:00 on
22 election day. So it was similar to the time that
23 the polling places would close on election day,
24 and it's easier to find parking downtown after
25 6:00 p.m.

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1 **Q Wouldn't it have been convenient for a lot of**
2 **people to offer it as late 9:00 or 10:00 p.m.?**
3 A I don't know.
4 **Q But you never -- you never did that?**
5 A No.
6 **Q Did you ever consider it?**
7 A No.
8 **Q Why not?**
9 A I don't know how many people want to travel
10 downtown that late at night for visiting a city
11 facility. I think, if you're traveling downtown
12 that late at night, you probably have other
13 plans.
14 **Q Okay. I hope so. Let's shift gears to another**
15 **topic, election observers. Do you have a lot of**
16 **election observers at your polling place?**
17 A It depends on the election. It depends on the
18 polling place.
19 **Q Let's talk about April 2016. Did you have a**
20 **number of observers?**
21 A We did have some observers.
22 **Q About how many?**
23 A I haven't gone through the sign-in sheets to
24 count out how many there were.
25 **Q Anecdotally, do you remember how many you saw?**

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1 A I only took time to look at one sign-in sheet
2 because an observer -- an observer there had to
3 be thrown out of the polls, and there were two
4 observers who had checked in at that point.
5 **Q Okay. Explain to me that situation where someone**
6 **was thrown out.**
7 A There was an observer who was supporting a
8 candidate for county board, and they refused to
9 stay in the designated observer area; so they
10 were given one warning. And then, when they
11 tried to walk around the polling place again,
12 they were told they had to leave.
13 **Q And who -- who makes that order?**
14 A The chief inspector.
15 **Q Okay. Not you?**
16 A No.
17 **Q Okay. So the chief inspector ordered that person**
18 **to leave?**
19 A Yes.
20 **Q Was there security that helped with that?**
21 A After the person left the polling place, she saw
22 him looking through the windows; so she did call
23 the police.
24 **Q Okay. And then that person -- the observer**
25 **dispersed?**

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1 A I know that the police did talk to the observer.
2 **Q Okay. Do you remember what group the observer**
3 **was with?**
4 A It was -- the observer was with a candidate.
5 **Q Okay. Do you remember which candidate?**
6 A Michelle Ritt.
7 **Q Okay. Do you know the observer's name?**
8 A Paul Rusk.
9 **Q Okay. Is that a regular observer?**
10 A I don't know how often he observes.
11 **Q But someone you've seen before?**
12 A I don't -- I don't know if I've seen him in
13 person or not. I know the name.
14 **Q Why do you know the name?**
15 A He is my county supervisor.
16 **Q Okay. And so do you know what time of day that**
17 **happened?**
18 A It was toward the end of the night.
19 **Q Okay. On which day of absentee voting, or was it**
20 **on election day?**
21 A Election day.
22 **Q It was on election day. Okay. All right. Any**
23 **other problems with observers either during**
24 **absentee or election for April 2016?**
25 A I'm not aware of any other observer issues for

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1 April.

2 **Q Could you describe for me, if you know, the --**

3 **the observer space at your location, Downtown**

4 **Madison? Where -- where is it set up?**

5 A It is right inside the door of the office facing

6 our front counter.

7 **Q Okay. About how many feet is it from where**

8 **voters are?**

9 A About three feet.

10 **Q Okay. In this law -- or, in this lawsuit, you**

11 **understand that -- that's -- there -- that's**

12 **being challenged, that statute about where**

13 **observers can stand; right?**

14 A Well, I -- I know it's in the affidavit as --

15 **Q Okay.**

16 A -- an issue.

17 **Q So what is your understanding about what the**

18 **chief election inspector can tell people about**

19 **where they can stand?**

20 A We have them designate an observer area within

21 three to eight feet of the area that they're

22 observing, and they -- the observer needs to stay

23 in that area; and they need to be able to hear

24 the names and addresses of the voters who are

25 checking in.

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1 **Q Do -- is the area marked off with tape or**

2 **something else?**

3 A That's what we have suggested to our poll

4 workers, that they tape it off.

5 **Q Okay. And do they, in fact, do that?**

6 A I know a lot of them do.

7 **Q Okay. And I -- I guess what polling place are**

8 **you most familiar with where you actually have**

9 **personal knowledge of what occurs?**

10 A Are you talking about being in the space itself?

11 **Q Yeah. I'm wondering -- I mean, you seem to be**

12 **talking generally about polling places.**

13 A Yes.

14 **Q But is there one particular one where you know**

15 **what occurs?**

16 A On election day, I am on the phone with the

17 polling places all day long troubleshooting.

18 **Q Okay.**

19 A And I'm not able to get out to the polling sites

20 on election day.

21 **Q Okay.**

22 A In case something like a bomb threat comes in, I

23 need to be right there in the clerk's office; so

24 I have staff going out and visiting each polling

25 location throughout the day.

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1 **Q Okay. And so, if the chief election inspector**

2 **says, Okay, three feet is too close for this**

3 **polling place. I want him to stand four feet**

4 **away. Is that permissible under the law?**

5 A Yes.

6 **Q Okay. What if they say, I want him to stand six**

7 **feet away?**

8 A They can. They still need to be able to hear the

9 names and addresses of people.

10 **Q And -- and further away is getting to be more of**

11 **a problem to hear the names and addresses?**

12 A Right.

13 **Q Okay.**

14 A Depending upon the acoustics of the polling

15 place.

16 **Q But the law doesn't, as far as you know, mandate**

17 **that they must stand within three feet?**

18 A No. It's three to eight feet.

19 **Q Okay. I think there's some confusion out there**

20 **about that, perhaps even by the plaintiffs in**

21 **this lawsuit. They don't understand how the law**

22 **works.**

23 **MR. KAUL: Objection.**

24 **BY MR. KAWSKI (CONTINUING):**

25 **Q Let's talk about residency rules. So you -- you**

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1 **understand that there's a 28-day duration**

2 **residency requirement in Wisconsin?**

3 A Yes.

4 **Q Why do we have a durational residency**

5 **requirement?**

6 A For any of the laws, I don't speculate why they

7 were passed. It's just the requirement that we

8 have.

9 **Q Okay. So it doesn't really matter to you whether**

10 **it's 28 or 10 days. Just -- you just follow the**

11 **law?**

12 A Right.

13 **Q Okay. But you're critical of the 28-day**

14 **requirement in your declaration; right?**

15 A Yes. They -- they -- we have had issues with

16 voters trying to register on election day and

17 they have moved within 28 days of the election.

18 **Q Did you ever have issues of voters who have --**

19 **when the old requirement was ten days, did you**

20 **ever have voters show up that had just moved nine**

21 **days ago?**

22 A I'm sure we did, but the language on the

23 registration form was also different at that

24 time.

25 **Q Okay. When did that language change?**

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1 A It's gone through a number of changes, so I can't
 2 tell you definitely what year each change was
 3 made. You'd probably have to find that out from
 4 the GAB.
 5 **Q Okay. And, in the declaration, you talk about**
 6 **that form and kind of complain about the language**
 7 **in it, right, or criticize it, I guess?**
 8 A I'm just passing on the -- the difficulty we have
 9 in explaining to voters that they can register --
 10 use that form for the address they were at
 11 28 days ago, even though they clearly have intent
 12 to move from that address because they've already
 13 done so.
 14 **Q So when -- when did that requirement change again**
 15 **from 10 to 28 days?**
 16 A You know, elections tend to run together for me
 17 because they happen so frequently; so I don't
 18 recall exactly which election that change took
 19 place.
 20 **Q But have you yourself expressed this concern**
 21 **about the form being misleading to the GAB?**
 22 A I did call the Government Accountability Board on
 23 election day the first time this came up to ask,
 24 What does a voter do if they do have intent to
 25 move and they need to register at their previous

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1 address? And the person I spoke with at the GAB
 2 said, Well, they just sign it. The voter was not
 3 happy with that advice because they were
 4 certifying under penalty of election fraud that
 5 they have lived at this address with no present
 6 intent to move.
 7 **Q Have you had more than one voter lodge that**
 8 **complaint with you?**
 9 A Yes.
 10 **Q A lot of voters that have lodged that complaint**
 11 **or --**
 12 A More than I can count.
 13 **Q Okay.**
 14 A And there may be voters expressing concerns to
 15 the chief inspectors that are resolved at the
 16 polling place, but these have been situations
 17 where the chief inspector reaches a point that
 18 they call the clerk's office, ask to speak to me,
 19 and put the voter on the phone.
 20 **Q So they're complaining about the -- the form**
 21 **being -- the language of the form. They're not**
 22 **complaining about the 28 days necessarily?**
 23 A I have been sworn about -- at over the 28 days as
 24 well. The voters have told me, you know, Not
 25 only do I not intend to ever live in this old

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1 district anymore, I intend to stay at the
 2 district where I'm moving; so why can't I vote
 3 for people who are going to represent me?
 4 **Q And so has the complaint -- or has the issue,**
 5 **when it's been raised with the GAB, fallen on**
 6 **deaf ears?**
 7 A I don't want to jump to assumptions on what
 8 they've done with information from the calls that
 9 we make to them.
 10 **Q Have you made that call recently, like in the**
 11 **last year about that?**
 12 A Not in the last year.
 13 **Q No. Do you know if other clerks that you've**
 14 **spoken with have the same issue with the form?**
 15 A I don't know whether other clerks have talked to
 16 the GAB about this or not.
 17 **Q Have you talked to Neil Albrecht about the form**
 18 **and this problem?**
 19 A No.
 20 **Q Okay. I -- I think he brought it up in his**
 21 **declaration too. Okay. Back to observers. I**
 22 **forgot one thing. You talked in paragraph ten**
 23 **about Ardis Cerny?**
 24 A Yes.
 25 **Q What's your familiarity with Ms. Cerny?**

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1 A Well, I try to attend GAB board meetings when I
 2 can when I know they're talking about something
 3 that's going to maybe give us guidance on
 4 election law; and I recognize her from her
 5 testimony. Every meeting I've gone to, she's
 6 testified there. And then, when a chief
 7 inspector called me to notify me of a problem he
 8 was having with an observer, he told me her name;
 9 and I recognized that name.
 10 **Q Okay. So have you had some chief election**
 11 **inspector calling you more than once about her?**
 12 A There were a couple of polling places that called
 13 me about her on this particular day. The second
 14 call I got was an election official who was
 15 calling in about something else and said, By the
 16 way, we had difficulty keeping an observer in the
 17 observer area earlier; but she left. Since then,
 18 she had been kicked out of Capitol Lakes polling
 19 place.
 20 **Q Okay. And when was that?**
 21 A I don't remember which election that was.
 22 **Q Was it maybe presidential 2012, November?**
 23 A I don't know for certain which election it was.
 24 **Q Okay. But you said she had been kicked out of a**
 25 **polling place in Madison?**

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1 A Yes.
2 Q Okay. Have you had any other issues with her
3 recently?
4 A Not that I'm aware of.
5 Q Okay. Any other issues with observers of anyone
6 that might be affiliated with her or in the same
7 group as her?
8 A Not that I'm aware of.
9 Q Okay.
10 MR. KAUL: Clay, if you're going to
11 switch topics -- we've been going for about an
12 hour and a half -- do you want to take a break?
13 MR. KAUSKI: Yep. Let's take a break.
14 I'm going to go through my notes. I don't have a
15 lot left.
16 MR. KAUL: Okay.
17 MR. KAUSKI: Off the record, please.
18 (Recess.)
19 MR. KAUSKI: Okay. Back on the record,
20 please.
21 BY MR. KAUSKI (CONTINUING):
22 Q Let's talk about voter registration. If you want
23 to turn to, like, paragraph 17, page six.
24 A Okay.
25 Q You're familiar with that. You can use

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1 electronic documents to prove your residence
2 currently?
3 A Yes.
4 Q Do you know about when that change came in to
5 being?
6 A I remember the Government Accountability Board
7 meeting where they made that change. I don't
8 remember what year it was, but I remember being
9 at that meeting.
10 Q Has it been a helpful change?
11 A Yes.
12 Q Okay. In what way?
13 A A lot of people now pay their bills
14 electronically and have gone paperless where they
15 can, so they now receive those documents online.
16 Q Do you see a lot of people using electronic
17 documents to register?
18 A Well, the registrations that I deal with the most
19 are the ones that come in through the mail; and
20 so there may be some that have been printed from
21 an online source. But I wouldn't know whether,
22 you know, it came from straight from the bank or
23 it's a printout from an attachment to their bank
24 website.
25 Q Okay. In paragraph 17, you talk about, the

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1 clerk's office has received a couple thousand
2 voter registration forms without documentary
3 proof of residence?
4 A Yes.
5 Q Over what time period?
6 A For as long as I can remember, but it's become
7 greater and greater in the past two years that we
8 receive the federal registration form or a state
9 registration form that was mailed out by some
10 group trying to be helpful. And they fill out
11 the form, mail it to us, but they don't include
12 any proof of residence.
13 Q The -- so you said it's as far back as you
14 remember is the count of a couple thousand. So
15 does that mean like 10 years?
16 A Well, I would say, this past month, it was at
17 least 300 that I prepared a letter for those
18 voters to let them know we can't process your
19 registration without proof of address; and that's
20 a pretty typical month.
21 Q Okay.
22 A So it's hundreds every single month.
23 Q Okay. And so you mean for, like, the month of
24 April or the month of March?
25 A Month of March.

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1 Q Okay. In paragraph 18, you talk about using the
2 corroboration option, which is no longer
3 available?
4 A Right.
5 Q You say it was often used by couples?
6 A Yes.
7 Q Can you quantify that?
8 A We have number of couples who, when they move --
9 and I'm -- by couples, I mean married couples who
10 move; and everything gets set up in the name of
11 one person. One person takes care of the move
12 and puts the utility bills in their name and gets
13 everything set up, and then the other member of
14 that couple finds they don't have anything in
15 their name.
16 Q So I guess how many times do you see that happen?
17 A We see it happen frequently. Just on election
18 day in April, I talked to somebody who called us
19 from the polling place. And they had moved to a
20 new address, and everything was set up in the
21 wife's name; and the husband didn't have anything
22 in his name.
23 Q So maybe you get one call like that per election?
24 A I got one call this past April. Some elections,
25 it's more than one call; and then I don't always

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1 hear from those voters, either I've talked to
2 election officials who have had to deal with
3 that --
4 **Q I mean, I guess I'm trying to find out from you**
5 **if it's a very serious issue or if you only get a**
6 **handful of calls per election.**
7 **A Well, it's a very serious issue if there's one**
8 **person who's eligible to vote and I have to tell**
9 **them, No, you can't. I would view that as a very**
10 **serious issue for this man who wasn't able to**
11 **register because everything was set up in his**
12 **wife's name.**
13 **Q Couldn't he have planned ahead, though, and got**
14 **something set up in his name?**
15 **MR. KAUL:** Objection. Answer to the
16 extent you know.
17 **THE WITNESS:** I'm sorry. I didn't
18 understand the last sentence.
19 **MR. KAUL:** My objection is to the
20 foundation, but I'm not going to AUDIO -- but I
21 would instruct the witness to answer to the
22 extent they know.
23 **A I wouldn't know what his personal circumstances**
24 **are, so I try not to judge voters when they have**
25 **issues come up. We don't know what their story**

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1 is and what else they're dealing with.
2 **BY MR. KAWSKI (CONTINUING):**
3 **Q I have a similar question. Skipping ahead to**
4 **paragraph 25 on page eight --**
5 **A Right.**
6 **Q -- you talked about a count of 500 voters who**
7 **used the form from a landlord.**
8 **A Yes.**
9 **Q During what time frame was that count made?**
10 **A That was the month leading up to a November**
11 **election, so that was in mid-October until**
12 **November.**
13 **Q Of 2012?**
14 **A Then -- it may have been 2012. I don't think it**
15 **was 2008. I think it was 2012, but I don't know**
16 **for sure. You know, perhaps it was 2010. It was**
17 **a November election.**
18 **Q And why were you doing that count?**
19 **A There was a city ordinance that was passed that**
20 **required landlords to provide voter registration**
21 **forms and a letter from the clerk's office with**
22 **instructions to new tenants, and I was just**
23 **curious. I wondered if we're going to be getting**
24 **these forms back, and so I put a little star on**
25 **those that I made available to the landlords just**

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1 to see; so I was just curious. That's why we
2 counted.
3 **Q Okay. In the next section of the declaration,**
4 **you talk about absentee voting and -- and**
5 **e-mailing and faxing ballots; right?**
6 **A Yes.**
7 **Q And so you say, Madison sent more ballots via**
8 **e-mail to voters who were overseas than any other**
9 **municipality in Wisconsin; correct?**
10 **A That's correct.**
11 **Q I guess how do you know that Madison sends more?**
12 **A That's what I found out from the Government**
13 **Accountability Board.**
14 **Q Okay. How did you find that out?**
15 **A In a conversation with Kevin Kennedy.**
16 **Q Okay. And how many -- I guess, how many and over**
17 **what time period do you send these? Or did you,**
18 **I should say.**
19 **A I'm not -- I'm not quite following.**
20 **Q So, for example, if you looked at the**
21 **November 2012 presidential, how many ballots did**
22 **you send voters by e-mail?**
23 **A I don't have that number with me.**
24 **Q 10,000?**
25 **A Not 10,000.**

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1 **Q 5,000?**
2 **A I don't know how many.**
3 **Q 100?**
4 **A I don't know. I'm not the one who personally**
5 **sends those out.**
6 **Q Okay. Five?**
7 **A Definitely more than five.**
8 **Q Ten?**
9 **A More than that. I know, for a November election,**
10 **it is dozens a day --**
11 **Q Okay.**
12 **A -- that we would be sending out via e-mail; but I**
13 **don't have a separate statistic on that.**
14 **Q Okay. I'm just trying to pin down if this --**
15 **again, if this is, like, a problem that you're**
16 **identifying of some magnitude or not really?**
17 **A I would -- I would say that it is of magnitude**
18 **because, if the voter doesn't get their ballot,**
19 **then we're not allowing them to exercise their**
20 **right to vote. And we have voters who are in**
21 **many, many, many countries. We send ballots all**
22 **over the world, and my understanding is that the**
23 **overseas mail system is not exactly reliable.**
24 **Q Is it very costly to send those ballots?**
25 **A Yes. We have to send them with special postage.**

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1 **Q Okay. So, I mean, what's the most expensive one**
2 **you can remember sending?**

3 **A** I don't put the postage on myself. I have to --
4 we have to separate those ballots for the mail
5 room to put the extra postage on. I don't have a
6 separate figure for that.

7 **Q Okay. Paragraph 29, you talk about receiving an**
8 **incredible number of phone calls from voters who**
9 **do not know the forms of ID?**

10 **A** Yes.

11 **Q Could you estimate how many phone calls you**
12 **received about that topic?**

13 **A** Thousands.

14 **Q Thousands?**

15 **A** Yes.

16 **Q In what time frame?**

17 **A** Just this year, I've received thousands of phone
18 calls.

19 **Q 2016?**

20 **A** Yes.

21 **Q Okay. And so are you the only one that handles**
22 **those calls?**

23 **A** No.

24 **Q Okay. How -- how many other staff handle those**
25 **calls?**

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1 **A** Everybody in the office will be handling phone
2 calls.

3 **Q So is the phone just ringing off the hook**
4 **constantly?**

5 **A** At election time, yes.

6 **Q Okay. And are most of the calls about voter ID**
7 **topic or a variety of things?**

8 **A** A variety of things.

9 **Q Okay. So, in paragraph 30, you tried to estimate**
10 **the additional costs of the voter ID law; right?**

11 **A** Yes.

12 **Q I guess I'm trying to understand why you have to**
13 **hire election inspectors specifically to check**
14 **the ID and why they can't do two things at once?**

15 **A** They could do two things at once if we were
16 willing to accept lines that are hours long.

17 **Q Okay.**

18 **A** And then we also need to have a station for
19 provisional ballots, issuing provisional ballots.

20 **Q Okay. So how many provisional ballots did you**
21 **issue in April 2016?**

22 **A** 123.

23 **Q Okay. So you need a separate line just for that,**
24 **even though it's such a small number?**

25 **A** We need a separate station designated for that

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1 because that's a whole separate process, and then
2 we need to make sure that that voter does not
3 sneak their provisional ballot into the tabulator
4 because it's not to be counted on election day.

5 **Q So how many total ballots cast in April 2016?**

6 **A** I don't know that number for certain off the top
7 of my head.

8 **Q Could you estimate it?**

9 **A** It was something like 118,000.

10 **Q And, again, how many provisionals issued?**

11 **A** 123.

12 **Q Do you know what that is as a percentage of the**
13 **total ballots issued?**

14 **A** No.

15 **Q Would you agree it's very, very, very small?**

16 **A** I think it was a high percentage of the
17 provisionals cast throughout the state.

18 **Q Okay. But you agree it's a very small number --**
19 **A** Well --

20 **Q -- of the total ballots cast?**

21 **A** If -- if you're looking at that percentage. But
22 I think 123 is a lot of provisional ballots. To
23 me, that's a lot of provisionals.

24 **Q Of those provisionals, do you recall how many**
25 **voters came back and showed their ID on -- by**

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1 **Friday?**

2 **A** 41.

3 **Q Okay. 41. So then what happened to the rest?**

4 **A** They were rejected.

5 **Q Okay. Did you have any of those ones that were**
6 **rejected that tried to come back and were**
7 **unsuccessful in showing ID?**

8 **A** What do you mean by that?

9 **Q I guess, say that there are about 80 that were**
10 **rejected. Did you have some of that number of 80**
11 **people who tried to come back to your office to**
12 **show an ID but did not have a qualifying form?**

13 **A** We did have somebody in our office showing us
14 some other type of ID, if that's what you mean.
15 I don't know if there were any who were trying to
16 get to our office and weren't able to do so.

17 **Q I guess I'm talking about specifically the 80**
18 **provisional ballots that were rejected. Did you**
19 **have someone in that group who had come to your**
20 **office with a form of ID and you said, I'm sorry.**
21 **This is not a qualifying ID?**

22 **A** No.

23 **Q Okay. So the people just -- in that group of 80**
24 **about --**

25 **A** Yes.

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1 **Q -- just did not come back to the office?**
2 A Right.
3 **Q Okay. And do you have a way of tracking down --**
4 **do you know who those voters are by name?**
5 A We know their names.
6 **Q Okay. Do you try and contact them?**
7 A We will be trying to contact them before the next
8 election to make sure they know what ID they can
9 use in the next election and how to go about
10 obtaining a Wisconsin ID if they need one.
11 **Q I mean, do you do that by letter?**
12 A Yes.
13 **Q Okay. Have you done that in past elections?**
14 A In the last election -- in February, we got some
15 help from the League of Women Voters for those
16 that we knew needed an ID; and they helped get
17 those voters to the DMV.
18 **Q So you provided those names to the League of**
19 **Women Voters?**
20 A Yes.
21 **Q Okay. Going back to the second issue about the**
22 **set up of a polling place, you said that there**
23 **would have to be separate check-in tables to**
24 **address the ID issue, to check IDs; is that**
25 **right?**

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1 A There aren't separate tables.
2 **Q There are separate stations?**
3 A I think you're referring to the provisional
4 ballot station. Is that what you mean?
5 **Q No. So I guess, in paragraph 30, you talk about,**
6 **again, like, having two additional inspectors for**
7 **each of two shifts at each polling place just to**
8 **inspect IDs. So are you saying that there are**
9 **inspectors dedicated only to that task?**
10 A Yes. At the poll book table.
11 **Q Okay. And, at the poll book table, they are**
12 **doing other things, checking voters in, not just**
13 **checking IDs; correct?**
14 A Yes. We have -- we have three people per each
15 half of a poll book.
16 **Q Okay. So they're -- they're not just looking at**
17 **IDs and doing nothing else; correct?**
18 A They're also handing the voter slip to the voter.
19 **Q And are they marking the poll book as well?**
20 A No. The person next to them is marking down in
21 the poll book.
22 **Q So you have -- at a -- a station for a part of a**
23 **poll book, you have one election inspector**
24 **looking at IDs and another marking the poll book?**
25 A Two others marking the poll book.

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1 **Q Okay.**
2 A You have identical copies of the same poll book.
3 **Q I see. So to -- to mark a segment of the poll**
4 **book, you have two inspectors marking that**
5 **segment of the poll book and a third inspector**
6 **checking ID?**
7 A Right.
8 **Q Okay. And so, at that station, there would be a**
9 **total of nine inspectors if you broke the poll**
10 **book into three parts?**
11 A If you broke the poll book into three.
12 **Q Is that typical for election day?**
13 A We break the poll book into two parts for the
14 typical election.
15 **Q Okay.**
16 A For November, there will be poll books that we
17 need to break into three.
18 **Q Okay. Do you ever go beyond breaking it beyond**
19 **three?**
20 A We haven't. We have not in the past gone beyond
21 breaking it into two to start the day; but, in
22 November, our larger polling places will have the
23 poll book broken into three.
24 **Q And do you do that ahead of time before election**
25 **day; or do you do it, like, on the day of as --**

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1 **as election's occurring?**
2 A We do it ahead of time.
3 **Q Okay. So you have to make a judgment call about**
4 **whether to break it into two or three?**
5 A Yes.
6 **Q Okay. And when do you make that call?**
7 A When we are sending the poll books to be printed.
8 **Q Okay. So sometime like in October or before**
9 **that?**
10 A Yeah. It's shortly after the close of
11 registration.
12 **Q Okay. What is your understanding of when**
13 **absentee ballots must be mailed for the**
14 **August 9th election this year?**
15 A 47 days in advance.
16 **Q Okay. So sometime in June?**
17 A Yes.
18 **Q Okay. In paragraph 31 -- we already talked about**
19 **this. But you talked about data, and you were**
20 **talking about the mock elections for voter ID?**
21 A Yes.
22 **Q Have you tried to replicate that kind of study**
23 **with an election that actually required voter ID?**
24 A You mean taking statistics at the polling place
25 itself?

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1 **Q Yeah.**
2 A Yes. We have been doing some timing of scenarios
3 at the polling place on election day and sharing
4 that data with UW-Madison where a professor is
5 using that data to help us figure out how to set
6 up for November, what we can do to make sure we
7 don't have long lines.
8 **Q Which professor is it?**
9 A Professor Mayer.
10 **Q M-A-Y-E-R?**
11 A Yes.
12 **Q Ken -- Ken Mayer?**
13 A Yes.
14 **Q Okay.**
15 A And one of his students. I don't recall the
16 student's name.
17 **Q Okay. Do you know he's an expert witness in this**
18 **case?**
19 A I -- I know he has expertise in elections and is
20 very interested in doing this data for us --
21 **Q Okay.**
22 A -- doing the study.
23 **Q Did he do the study at the April 2016 election?**
24 A I still have the data to give to him from the
25 April election. We haven't had a chance to meet

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1 yet after the April election.
2 **Q Okay. But you're going to meet with him?**
3 A Yes.
4 **Q Who was doing the timing?**
5 A We had poll workers doing the timing at the
6 February election. We asked the greeter to just
7 periodically time different scenarios. For this
8 past election, we had some people from the
9 clerk's office go to certain polling places to
10 time just a couple of scenarios that he had asked
11 that we look at some new data that he wanted.
12 That way, we're thinking the timing might be a
13 little more consistent with exactly what they're
14 recording.
15 **Q How long have you been working with Dr. Mayer on**
16 **this project?**
17 A Not that long. It was before the February
18 election that we first met.
19 **Q Okay. So sometime -- did you meet with him in**
20 **2015?**
21 A No.
22 **Q Okay. And do you have any sense -- so this**
23 **project will continue on through November?**
24 A I hope the project continues on because, the more
25 data and information we have, the better we can

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1 be prepared.
2 **Q Do you know if he's going to offer you**
3 **suggestions -- you said he's going to try and**
4 **offer you suggestions for making it more**
5 **efficient for November?**
6 A Yes.
7 **Q Okay. But he hasn't yet?**
8 A Well, he's given us some information; that their
9 initial finding is that, if it takes 65 seconds
10 to check-in at the poll book, that's when you
11 have lines that are hours long. So that's all we
12 know so far.
13 **Q Okay. But he hasn't made any suggestions about**
14 **how to remedy that?**
15 A It's splitting the poll book into three at
16 polling places that have a certain number of
17 voters; but we're still going to be talking about
18 other things, voting booths, a number of
19 tabulators, things like that.
20 **Q Okay. And is he -- is he doing this for his own,**
21 **like, research; or is he, like, consulting with**
22 **you? What is the arrangement?**
23 A He's consulting with us. The County Clerk
24 actually is funding this study; so, so far, I
25 think they've paid \$500 to have this data

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1 compiled and looked into.
2 **Q Okay. And you said it started in February of**
3 **this year?**
4 A Yes.
5 **Q Okay. And, again, you don't know if he's, like,**
6 **using it for his own academic work?**
7 A I -- I don't know what his academic work
8 involves. I know he's trying to get some funding
9 to be able to continue this study.
10 **Q Okay. And has -- has his research assistant been**
11 **part of the timing, or just your staff has been**
12 **part of the timing of the --**
13 A I -- I don't know that his research assistant has
14 done any timing. Maybe he has.
15 **Q Okay.**
16 A But not through me.
17 **Q Okay. Do you know the name of the research**
18 **assistant?**
19 A Not off the top of my head.
20 **Q Okay. When's the last time you talked to**
21 **Dr. Mayer?**
22 A After the February election. A couple weeks
23 after the election. I don't remember exactly
24 when.
25 **MR. KAWSKI:** Okay. Well, why don't we

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1 take a quick break. I'll just look through my
2 notes. I think we're close to done.
3 **MR. KAUL:** Sure. I'm going to have,
4 like, literally three or four minutes worth of
5 questions. There are just two very brief
6 comments.
7 **MR. KAWSKI:** Okay.
8 **MR. KAUL:** But I can roll with that
9 whenever.
10 **MR. KAWSKI:** Okay. Great. I'll just
11 quickly go through this. We don't have to go
12 anywhere. I'm just going to flip through.
13 **THE WITNESS:** All right.
14 (Recess.)
15 **MR. KAWSKI:** Let's go back on the
16 record. I have no further questions at this
17 time.
18 **MR. KAUL:** I have just a couple of quick
19 things I want to follow up with you on very, very
20 briefly.
21 **EXAMINATION**
22 **BY MR. KAUL:**
23 **Q You spoke earlier about the trials you had done**
24 **with the mock elections to determine how much**
25 **time was added to the check-in process. Do you**

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1 **recall that?**
2 A Yes.
3 **Q And I think you testified that you didn't know**
4 **from that study how much of that time was**
5 **attributable to ID checking versus sign-in poll.**
6 **Is that right?**
7 A Right.
8 **Q Have you, in dealing with in-person absentee**
9 **voting at the clerk's office, made observations**
10 **about how the showing the ID and how signing the**
11 **poll book impacts the time of the process?**
12 A Well, you're not signing the poll book in the
13 clerk's office. You're just showing the ID, and
14 it depends on the voter digging for their ID.
15 You do have voters who are digging for their ID.
16 Some have it out and ready to show it to you, but
17 it's another step in that process for the person
18 behind the counter looking at the voter in the
19 system.
20 **Q Based on those observations, are you able to make**
21 **a judgment about whether a significant portion of**
22 **the increased time at check-in is due**
23 **specifically to showing the ID?**
24 A It -- it has increased the time at check-in.
25 Now, are you talking about the polls; or are you

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1 talking about the clerk's office, or just both
2 overall?
3 **Q Just based on what you've seen in your direct**
4 **experience.**
5 A I think, in our office, it -- I have seen it add
6 some time to each interaction with the customer
7 at the counter. At the polls, we don't
8 necessarily have as good lighting as we have in
9 the clerk's office. We are stuck with whatever
10 room the facility is willing to give us, and so I
11 have heard a lot of complaints from people
12 working at the polls that they're struggling with
13 reading the expiration date. It's hard to read
14 the expiration date at the polling place.
15 **Q Okay. The other topic I was going to ask you**
16 **about very briefly is, you had been asked at the**
17 **beginning of the deposition about a subpoena and**
18 **your response to it. Do you remember that?**
19 A Yes.
20 **Q And I think you said you didn't personally deal**
21 **with that but that others did. Is that right?**
22 A When we received the subpoena, we called the city
23 attorney's office right away to deal with it.
24 **Q And I don't want to ask about any conversations**
25 **you had with the city attorney's office. But did**

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1 **the city attorney's office coordinate the effort**
2 **to respond to that subpoena?**
3 A Yes, they did.
4 **Q Okay. And do you know specifically whether there**
5 **were documents produced in response to that**
6 **subpoena or not?**
7 A I don't know.
8 **Q Okay. And you mentioned some discussions you had**
9 **with lawyers about the subpoena? Do you remember**
10 **that or not? I'm sorry. Lawyers -- lawyers from**
11 **my firm.**
12 A Yes. Yes.
13 **Q Those -- those were different conversations from**
14 **any conversations you would have had with me**
15 **about the declaration; is that right?**
16 A Yes. We had a special meeting about everything
17 that's in this declaration.
18 **MR. KAUL:** Okay. That's all I was going
19 to ask.
20 **THE WITNESS:** Yes.
21 **MR. KAWSKI:** I have a follow up relating
22 to the time -- time issue with voter ID.
23 **FURTHER EXAMINATION**
24 **BY MR. KAWSKI:**
25 **Q So what are the things that you have to do if**

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1 **you're a voter when you show up? What -- what**
2 **are the steps you take?**
3 A And are you talking about at the polls or at the
4 clerk's office?
5 Q **Let's talk about at the clerk's office if I want**
6 **to vote absentee.**
7 A Okay. You have to state your name and address
8 and then find you and check that you're
9 registered, and then we ask to see your ID. We
10 check the picture on the ID. We check the name
11 on the ID compared to the name on the voter
12 registration. We check the type of ID, that it's
13 an acceptable type, and the expiration, that the
14 expiration date is acceptable. We give that back
15 to the voter, and then we generate a label for
16 their absentee envelope and give them a ballot.
17 Q **So my last name is Kowski. Can you spell that?**
18 A No. But what voters typically do, just like if
19 you're checking in at the doctor's office or
20 something, they'll state their name; and then
21 they'll start spelling their last name. And then
22 we find it, and then we ask them to state their
23 address.
24 Q **So, if I stated my name Kowski to you and handed**
25 **you my ID that showed my name, wouldn't that save**

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1 **you a little time and me time in stating my name?**
2 A It doesn't save any time in typing because we're
3 typing with two hands.
4 Q **Okay.**
5 A So to hold your ID and type your name is not as
6 fast as you spelling it and us typing the name.
7 Q **Okay. So you'd prefer to have the voters spell**
8 **out their last name?**
9 A Yes.
10 Q **Okay. But, if they hand you the ID, that shows**
11 **you the spelling of their name; correct?**
12 A It does. But there's no real good way to have
13 that name in front of you and typing. It's not
14 like we have an ID holder right in front of the
15 computer.
16 Q **Would that be a good idea to have that?**
17 A I don't want to have IDs falling off of it and
18 getting lost.
19 **MR. KAWSKI:** Okay. All right. I have
20 no further questions. Thanks.
21 **MR. KAUL:** Thank you guys for coming in.
22 (Adjourned at 10:01 a.m.)
23
24
25

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1 STATE OF WISCONSIN)
2 COUNTY OF DANE) ss
3
4 I, Paula Thompson, a Notary Public in and for the
5 State of Wisconsin, do hereby certify that the
6 foregoing deposition was taken before me at
7 Perkins Coie, LLP, One East Main Street, Suite 201,
8 City of Madison, County of Dane, and State of
9 Wisconsin, on the 22nd day of April, 2016; that it
10 was taken at the request of the Defendants, upon
11 verbal interrogatories; that it was taken in
12 shorthand by me, a competent court reporter and
13 disinterested person, approved by all parties in
14 interest and thereafter converted to typewriting
15 using computer-aided transcription; that said
16 deposition is a true record of the deponent's
17 testimony; that the deposition was taken pursuant
18 to Notice; that said Maribeth Witzel-Behl before
19 examination was sworn by me to testify to the truth,
20 the whole truth, and nothing but the truth relative
21 to said cause.
22
23 Dated April 29th, 2016.
24
25
Notary Public
In and for the State of Wisconsin

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