December 19, 2014

VIA OVERNIGHT MAIL

Vincent Keenan  
Clerk of the Ohio Senate  
1 Capitol Square, 2nd Floor  
Columbus, Ohio 43215  
(614) 466-4900

Mark Flanders, Director  
Ohio Legislative Service Commission  
77 South High Street, 9th Floor  
Columbus, OH 43215  
(614) 466-3615  
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Brad Young  
Clerk of the Ohio House of Representatives  
1 Capitol Square  
Columbus, Ohio 43215  
(614) 466-3357

Re: Public-Records Request

Dear Custodians of Records:

I am making a request under Ohio's public-records law (see Ohio Rev. Code § 149.43).

For purposes of this request, the term “records” shall mean all materials that are records pursuant to Ohio Rev. Code § 149.011(G). Please be aware that under the public-records law, the term “record” includes information that is maintained electronically, such as data files and unprinted emails.

I request copies of all records regarding the following bills of the 130th General Assembly:

- Senate Bill Number 200, as introduced, as reported by Senate Committee, as passed by Senate, as reported by House Committee, as passed by House, and as enrolled.

- Senate Bill Number 205, as introduced, as reported by Senate Committee, as passed by Senate, as reported by House Committee, as passed by House, and as enrolled.

- Senate Bill Number 216, as introduced, as reported by Senate Committee, as passed by Senate, as reported by House Committee, as passed by House, and as enrolled.

- Senate Bill Number 238, as introduced, as reported by Senate Committee, as passed by Senate, as reported by House Committee, as passed by House, and as enrolled.

The Ohio Democratic Party, et al.,
Case No. 2:15-cv-1802

Defendants' Written Objections to the Admissibility of Plaintiffs' Evidence
Exhibit A
December 19, 2014
Page 2

If a record contains information that is subject to disclosure and information that is not subject to disclosure, I request that you provide the information that is subject to disclosure and delete or redact the information that is not subject to disclosure.

Pursuant to Ohio’s public-records law, I request that you fill the request or notify me of a determination to deny the request in whole or in part and the reasons therefor “within a reasonable period of time.” See Ohio Rev. Code § 149.43(B)(1). If you deny my request in whole or in part, the law requires you to provide a statement, including legal authority, of the reasons for denying the request. Id. § 149.43(B)(3).

Please be aware that the public-records law “is intended to be liberally construed to ensure that governmental records be open and made available to the public subject to only a few very limited and narrow exceptions.” State ex rel. The Miami Student v. Miami Univ., 680 N.E.2d 956, 958 (Ohio 1997) (internal citation, quotation marks, and alterations omitted). The law “provides for full access to all public records upon request unless the requested records fall within one of the specific exceptions listed in the Act.” Id. Because this request does not fall within a specific exception, the request should be granted in full.

If requested records are held by you but are located in, or originated in, another agency, department, office, installation, or bureau, please refer this request or any relevant portion of this request to the appropriate entity and inform me that the request has been forwarded.

Please provide an estimate of the costs of meeting my request before undertaking the task. In addition, an acknowledgement of receipt of this request would be appreciated.

To the extent that the records are readily reproducible in an electronic format, I would prefer to receive the records in that format. However, if certain records are not available in that format, I am willing to accept the best available copy of each such record.

Thank you for your time and consideration.

Very truly yours,

Joseph P. Wenzinger
January 23, 2015

Ohio Secretary of State, Elections Division
Attn: Public Records Officer
180 E. Broad Street, 16th Floor
Columbus, OH 43215

Re: Request Pursuant to Ohio Public Records Act (O.R.C. 149.43)

Dear Sir or Madam:

Pursuant to the Ohio Public Records Act (O.R.C. 149.43), and on behalf of Every Citizen’s Vote, I hereby request the following public information and data:

1. A copy of all information obtained from the national change of address service pursuant to Ohio Revised Code section 3503.21(D) during calendar years 2011 and 2012.

2. A copy of all lists of Ohio voters or other information transmitted to any county board of elections during calendar years 2011 and 2012 pursuant to Ohio Revised Code section 3503.21(D).

3. Any records identifying those Ohio voters who were sent notices during calendar years 2011 and 2012 pursuant to Ohio Revised Code section 3503.21(D).

4. A list of all Ohio voters whose voter registration was restored to “active” status because the voter responded to the Form 10-S confirmation notice or other confirmation notice sent by the county board of elections. See O.R.C. § 3503.21(D); see also Secretary of State Directive 2014-14.

5. A list of all Ohio voters whose voter registration was restored to “active” status because the voter properly updated or confirmed his or her address with a county board of elections or using your office’s online change of address system. See O.R.C. § 3503.21(D); see also Secretary of State Directive 2014-14.

6. A list of all Ohio voters whose voter registration was restored to “active” status because the voter has voted in an election in calendar year 2012, 2013 or 2014. See O.R.C. § 3503.21(D); see also Secretary of State Directive 2014-14.

7. A list of all Ohio voters whose registration has been cancelled pursuant to O.R.C. § 3503.21 and copies of all notices sent to the same pursuant to O.R.C. § 3503.21(F)(1).

8. A list of all Ohio voters whose registration has been cancelled in error pursuant to O.R.C. § 3503.21 and restored pursuant to O.R.C. § 3503.21(F)(2).

Exh. A, p | 6
For each request above, please include the first name, middle name, surname, applicable voter identification reference (County ID and/or Secretary of State ID), address of residence (including city and zip code), and phone number of all individuals. Please also include whether the voter’s registration status is currently listed as active or inactive, or has been cancelled.

The Ohio legislature requires that you must promptly prepare and make available all records responsive to this request. O.R.C. § 149.43(B)(1). Accordingly, if you anticipate being unable to comply with any part of this request, please let us know immediately. If you intend to deny this request in whole or part, please advise us in writing of the particular statutory exemption upon which you are relying, as required by Ohio Revised Code section 149.43(B)(3). If you contend that less than all of the requested records are exempt from disclosure, please produce any portion that you do not contend is exempt, as required by Ohio Revised Code section 149.43(B)(1).

Where applicable, electronic formats (.xls, .xlsx, .csv, .dbf) are preferred. If documents, information, or data can be e-mailed, you may email them to hagenbuch@gmail.com. If documents, information, and data cannot be emailed, please direct your reply by U.S. Mail, FedEx or UPS to Tyler Hagenbuch, Perkins Coie, 700 13th Street NW, Suite 600, Washington, D.C. 20005.

Please inform us of any charges associated with these request and the method of payment requested.

If you have any questions or concerns, please do not hesitate to call Tyler Hagenbuch (202) 654-6248.

Sincerely,

Oren Shur
IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

THE OHIO DEMOCRATIC PARTY, :

PLAINTIFF, :

VS. CASE NO. 2-15-CV-1802 :

JUDGE WATSON :

JON HUSTED, ET AL., :

DEFENDANTS. :

- - - 

Deposition of MATTHEW DAMSCHRODER, a Witness herein, called by the Plaintiff for Examination under the applicable Rules of Civil Procedure, taken before Diane L. Schad, a Professional Reporter and Notary Public in and for the State of Ohio, pursuant to notice, at the State Office Tower, 30 East Broad Street, Room 452, Columbus, Ohio 43215, commencing on Tuesday, October 20, 2015, at 9:08 a.m.

ARMSTRONG & OKEY, INC.
222 East Town Street, Second Floor
Columbus, Ohio 43215-4620
(614) 224-9481 – (800) 223-9481
Fax – (614) 224-5724

The Ohio Democratic Party, et al.,
Case No. 2:15-cv-1802

Armstrong & Okey, Inc., Columbus, Ohio (614) 224-9481

Matthew Damschroder
Matthew Damschroder

MR. VOIGT: In terms of the objections do you want to have a stipulation that objections are preserved for trial except to the form of the question?

MR. KAUL: Yeah, we're fine with that.

MR. VOIGT: Okay.

BY MR. KAUL:

Q    All right. Mr. Damschroder, would you please state and spell your name.


Q    And what's your position currently at the Secretary of State's Office.

A    I'm employed with the Secretary of State's Office.

Q    And how long have you been employed with the Secretary of State?

A    I've been with the Secretary of State since January of 2011 through January of 2011.

Q    And where were you employed before that?

A    I was Deputy Assistant Secretary of State and Director Of Elections from January of 2011 through January of this year. So I've been Assistant Secretary of State and Chief of Staff since January of this year but kind of Director of Elections as well.

Q    Well, let me sort of go over the ground rules for the deposition before we get into any detail.

First, you understand that this is what's known as a 30(b)(6) deposition, is that right?

A    I understand that part, but to the extent you can give me any more information I would appreciate it.

Q    Okay. So you understand that in a 30(b)(6) deposition you're testifying not in your personal capacity but as a representative, in this case, of the Secretary of State's Office?

A    Okay.

Q    And do you also understand that your answers are on behalf of that office not on behalf of yourself?

A    Yes.

Q    Okay. And so if I ask you questions about your knowledge or your position in the context of this deposition, I'm not referring to your personal knowledge or your personal position but rather to the office's knowledge or position.

A    Okay.

Q    So basic ground rules for the deposition which I'll go over.

As you can see, this is being transcribed, so to make the court reporter's life easier it's helpful if you can make a point of answering verbally and saying yes or no rather than uh-huh or huh-uh. Does that make sense?

A    Yes, it does.

Q    Also to make life easier for the transcript, and you're doing a good job of this, if you can wait until I'm finished asking a question before you start answering it. And I will try to do the same with your answers. That helps keep the transcript clear. Okay?

A    Okay.

Q    If I ask you any question and you don't understand it, please just ask me to clarify. I'm happy to do that. But if you do answer a question, I'll assume that you do understand it. Is that fair?

A    Okay.

Q    All right. Let me move into the structure of the elections system in Ohio. I guess, first, can you tell me how your office is structured from an organizational standpoint.

A    The Secretary of State is elected every four years and serves as the chief election official of the State of Ohio. The Secretary of State's Office also has other functions, including business filings and those types of administrative tasks, but the elections component is certainly the most public aspect of what the Secretary of State's Office does.

Q    All right. And on the organizational chart who's below the Secretary of State?

A    On our organizational chart the Assistant Secretary of State, Chief of Staff, me, reports to the Secretary of State.
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Matthew Damschroder

1 directly to the Secretary.
2 Q So you're the number two person in the office?
3 A Correct.
4 Q And then do you have staff that's directly below you in the reporting structure?
5 A Yes. I have a deputy chief of staff who also works with legislation and helps me coordinate things like IT and other administrative functions of the office. We have a finance director, general counsel, business services manager, and then I also supervise the Elections Division.
6 Q Okay. And who are the people in those positions?
7 A Jack Christopher is our general counsel.
8 Craig Forbes is our deputy chief of staff.
9 Veronica Sherman is our finance director.
10 Ray Copeland is our IT director.
11 Allison DeSantis is our business services director.
12 And then in elections Pat Wolfe is our elections administrator.
13 Laura Pietenpol is our elections deputy administrator.

Carrie Kuruc, K-U-R-U-C, is our senior elections counsel.
And then Brandi Seskes is our deputy elections administrator and the elections counsel.
Q And do you have a communications staff also?
A We do.
Q And who's in charge of that?
A Matt McClellan is our director of communications.
Q And I apologize if I mispronounce this, but Halle Pelger is a former employee; is that right?
A Halle Pelger is our former Assistant Secretary of State and Chief of Staff.
Q So you've taken her position?
A Yes.
Q How large is your office overall?
A I think we have 150 employees total.
Q And can you explain what the relationship is between the Secretary of State's Office and the county Boards of Elections?
A So the county Boards of Elections have their own director and deputy directors or is that somebody else?
Q Yes.
A So like, for example, in Franklin County there is a -- when I was there, there was a director and a deputy director and we had 42 full-time employees and then the closer we got to an election we hired -- and those are statutorily called clerks -- and we would hire as many as 100 additional part-time employees to work on a seasonal basis. 4,000 precinct election officials for Election Day.
Q Okay. And how are the directors and deputy director or clerks selected?
MR. VOIGT: I'm just going to put a standing objection to this entire line of questioning because it's outside of the scope of the 30(b)(6). With that said, I'll give you leeway to continue with this line of questioning, but I don't see it in your topics.
MR. KAUL: Okay. I allowed it because this goes to intent and knowledge and that sort of thing. But, anyway, as long as it's a standing objection?
MR. VOIGT: It's a standing objection, and I just don't want to object every time.

MR. KAUL: Understood.

Go ahead.

Q Would you mind repeating the question.

A Yeah. How are the directors and deputy directors selected?

A So at the reorganizational meeting of the Board of Elections when the new set of terms begin the board has to elect a -- select a director, and the director has to have political party affiliation to be a qualified elector of the county.

The board may have -- that person has to be nominated by the same party to which that person belongs and has to receive three votes. The board may then select a deputy director who has to be the opposite political party of the director. Again, three votes to select the person. And then after those two staff positions are selected, the board then selects among itself a member of service chairman has to be the opposite political party of the director of the Board of Elections.

Beyond that there are no partisan affiliation requirements for the full-time clerks of the board who

are not the director or deputy director. But most boards have historically operated such that there are equal numbers of Republicans and Democrats on the staff at the board.

Some boards require that the clerks, the full-time employees, be qualified electors of the county while others have the person to be a qualified elector of the state.

Q And does the Secretary have the authority to remove members of the county Board of Elections?

A Yes, in particular circumstances.

Q All right. And what are those?

A I can't remember all of the particulars of the statute, but it's nonfeasance, misfeasance, malfeasance. Those kinds of things.

Q Okay. And is the Secretary able to remove directors and deputy directors or is that done by the county boards?

A My recollection is that the Secretary has the authority to remove the director and deputy director as well for similar reasons, and that's all prescribed in state law.

Q And does your office keep any statistics on the racial diversity of the members of the county Board of Elections members, for example, are African-American?

A I guess I don't know exactly what you're asking.

Q Do you know what percent of county Board of Elections members, for example, are African-American?

MR. VOIGT: Objection to the extent you're calling for him to speculate.

A I don't know.

Q And is it fair to say you also don't know what percentage is Latino?

A Like I said, we don't keep those statistics so I don't know.

Q Okay. And in the senior staff -- well, first of all, when you were describing the staff of the Secretary of State's Office before is it fair to say that the people you described that's reporting directly to you is it fair to call them senior staff?

A I would say that's fair.

Q Or is there a term that you prefer to use?

A We use "senior staff" broadly so that would be --

Q And are you aware of the percent of the senior staff in your office that's African-American?

A We have two African-American directors.

Ray Copeland our IT director, and Vincent Williams our HR director.

Q And how about Latino?

A That I don't know.

Q By that do you mean you don't know if anybody is Latino?

A Correct.

Q And what about in the Elections Division?

A In the Elections Division there are three African-Americans.

Q How large is the Elections Division?

A I think there's 12 employees in Elections.

Q And do you know if there are any Latinos?

A I don't believe so.

Q I want to switch topics and ask you about, first of all, the 2004 election in Ohio. Actually, before I do that let me ask you, does your office have a way to track the wait times that people have to vote in Ohio?

A Our office does not track the wait times.

Q And does your office have any statistics on the wait times?

A Our office does not track the wait times.

Q By that do you mean you don't know how long people have to wait?

A Correct.
under the settlement agreement with the League of Women Voters. Then Secretary Brunner I think was required to establish a wait time policy and my recollection is that her conclusion was that it was not possible to set uniform statewide expectations for wait times. And then there's the post-election data gathered by various organizations that reports after the elections what wait times seem to be both in Ohio and other states.

Q Okay. First, so Secretary Brunner set up policy or did she find that new policy could be set?

A My recollection is that she said she found that no policy could be set.

Q Is that the current administration's position as well?

A Our position is that Boards of Elections need to allocate the necessary resources so that voters don't have an inordinate wait time to vote. And that even though the settlement agreement -- I guess it was maybe a -- with the League of Women Voters has expired, but we continue to require Boards of Elections to have the backup paper ballots that were called for in that settlement agreement for use by voters on Election Day in the event that there are long lines or machine breakdowns.

Q And in the event there are long lines how are the paper ballots to be deployed?

A Our instructions and I think also the settlement agreement required Boards of Elections to determine that. My recollection is that in the directives that we've issued on that that would require the boards to establish a local wait time. I think most boards my recollection is that they generally have like a 30-minute time frame and then the poll workers are required to announce that there's a paper ballot option for folks who want to -- who want to use that option. I think all of the anecdotal information that we've heard over the years is that at least in Ohio the queues are generally at the signature pollbook portion of the process as opposed to the voting machine process, which is why the Secretary of State worked closely with the General Assembly to appropriate state funds to assist Boards of Elections with purchasing the electronic pollbooks because the data from at least counties in Ohio that have electronic pollbook is that they can cut the voter check-in process by about half to speed up that process. So that should help as well.

Q And let me, I guess, make a point of breaking this into wait times for early voting. And by early voting I mean early in-person voting and Election Day.

A So first when you refer to anecdotal information about the cause of wait times are you talking about both Election Day and early voting?

Q A I would say that's more about Election Day.

Q And have you heard about lines -- anecdotally have you heard about lines caused by DRE machine wait times also?

A I've not heard of lines caused by DREs specifically.

Q And when you say that the lines are the check-in stations; is that right?

A Yes.

Q Do you know whether that's because of the time being spent at the check-in station or rather voters waiting to check in while others are casting their ballots?

A My understanding anecdotally is that it's voters waiting to check in at the signature pollbook.

Q And do you recall who provided you that information?

A My recollection is that the Montgomery County Board of Elections did a really good study a number of years ago when they first started using electronic pollbooks, and I think that's where the data comes from about the check-in time being cut in at least half when they use an electronic pollbook.

Q Is that based on any data from any other counties or just Montgomery County?

A I would say Montgomery County and in my experience Franklin County.

Q All right. And you said that was Election Day, correct?

A Correct.

Q And what about early voting lines?

A I think it's not as well documented from the standpoint that even a county that uses DREs on Election Day may not necessarily use DREs for in-person absentee voting.

Q I think my personal experience from Franklin County voting in-person absentee is that what when I've done it in the past there were more than enough machines available for the voting experience and check in with relative ease.

Q I guess my question was to the extent they are lines what are the source of the lines in early
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In certain instances like a special Congressional election to fill a vacancy, state law requires that the costs of that election be borne by the state. So if that were to happen, we would go to the General Assembly for an appropriation to reimburse the county for those expenses. But overall the vast majority of all the expenses of Boards of Elections are paid for out of that county's general fund.

Q Have you had circumstances in which you've been concerned that the appropriation for a particular county's election mechanics was too low?

A I don't think the Secretary of State's Office has taken a position on individual county appropriations. I think what we have done is to in targeted circumstances issue directives that instruct the Boards of Elections to do certain things and then the boards can go to their commissioners to document that this is instruction from the state to do and therefore they have to have an appropriation.

For instance, in 2012 we issued a directive requiring all county Boards of Elections to train all of their poll workers for the presidential general election. State law has a minimum that's less than every election so we required everyone to do it for...
that election.
So I think in certain instances the boards then used that directive to go to the commissioners to get supplemental appropriations.
Q Just to go back a step.
You mentioned that the Brunner Report had concluded that uniform a wait time standard couldn't be set statewide and you mentioned one of the reasons for that being that allocation decisions are made at the county level. Are there other reasons that you believe that a uniform state standard can't be set for wait times?
A I don't know what all they looked at.
Q And does policy set by the Brunner Administration remain in effect under your administration unless repealed?
A Generally, yes.
Q Okay. So is that report that you referred to by the Brunner Administration is that still the formal policy of the Secretary of State's Office?
A I wouldn't -- I don't know that I would characterize it as a policy. It was a report that was required to be -- a study that was required to be conducted and a report that was required to be issued by the terms of the settlement agreement. And so I think it was at that moment in time the, you know, conclusion based on that review.
A A review was not required to be conducted and hasn't been conducted since, so I don't know.
Q Has the Husted Administration reviewed that report?
A I think we looked at it at the beginning of the administration when we were going back over various things that were related to the terms of the settlement agreement to determine if there was anything outstanding that we needed to still do.
Q And in that review and in the course of that review did you find any points of disagreement?
A Not that I recall.
Q You mentioned training before. Let me follow-up a little bit on that.
What's the standard training process before a presidential election?
A So as I mentioned, the Secretary of State's Office issued a directive in the summer of 2012 requiring all Boards of Elections to train all of its precinct election officials prior to the 2012 general election. A similar directive was issued before the 2014 general election. And I would fully expect for another directive along those lines would be issued in preparation for the 2016 general election.
Q And are you aware of the provisions of Ohio law and the Secretary's directives that are at issue in
A Yes.
Q And you said that many of the counties use their local training class the website and kind of do a number of questions that reflect the material in the Secretary of State's training materials.
It's also open to the public. If any person who's not a poll worker wants to take the training class they're welcome to do so.
Q Do you have a lot of people take you up on that?
A Not as many as I would like but usually find the activity ticking up in a presidential election is mostly for the attorneys who are working as challenges or when they're observers on each side of the aisle and refresh themselves.
Q And is there a set number of hours of training that's required?
A There is not a statutory minimum number of hours. I think we focus more on content than the time.
Q And you said that many of the counties use your content or package it with their own content. The content you're referring is that the statewide training manual?
A Yes.
Q And you mentioned the provisions of Ohio law and the Secretary's directives that are at issue in
this case?

A    At a high level, yes.

Q    To the extent you have questions about that, I'm happy to come back to it. But my general question is, is there any training being conducted that relates directly to those policies that are at issue?

A    It would probably be easier to do them one at a time, if you don't mind.

Q    That makes sense.

MR. VOIGT: To the extent you're calling for a legal conclusion for him to legally interpret your claims, I object.

MR. KAUL: Fair. I won't ask him to do that.

Q    Let me first ask you about the manner in which provisional ballots and absenteeism ballots are counted. Who makes the determination as to whether those count?

A    The members of the bipartisan Boards of Elections.

Q    And are they provided any training on the policies that relate to those, the counting of those ballots?

A    So whenever there's a change in the law or court decision we provide instructions to the Boards of

Elections in the form of directives or advisories, and then we also regularly conduct webinars for board members to participate in, and then also include that content at the Secretary of State's summer conference. And the Ohio Association of Elections Officials, OAEO, holds an annual winter conference that they often provide content, invite us to provide content. And so, generally speaking, before every federal, regular federal general election we do at least a webinar or a conference topic on items such as absentee and provisional voting.

Q    Are the webinars publicly available?

A    I believe that they are.

Q    And where would those be available?

A    On our website.

Q    Now, you mentioned that the decision is made by the bipartisan county Boards of Elections on whether to count those absentee and provisional ballots. What happens in the event of a two to two tie vote?

A    It depends on what the tie was on. So, for instance, in most cases the Secretary of State breaks a tie when the board has a matter of disagreement. But there are certain instances in state law where the law says that the Secretary of State can't break a tie, for instance, in selecting.

So an example would be determining voter intent on an individual optical scan ballot. That has to be three votes of the board. On counting provisional ballots my recollection is that has to be three votes of the board. So there would be examples like that that would not come to the Secretary.

Q    Okay. And when you say the Secretary breaks the tie, were you speaking generally or just with respect to the counting of absentee or provisional ballots?

A    I was speaking generally.

Q    Okay. So most issues are decided by the county board and if there's a two-to-two tie the Secretary of State breaks the tie; is that right?

MR. VOIGT: Objection. Form.

Mischaracterizes his testimony.

A    Would you reask your question. Sorry.

Q    Is it fair to say in most cases if there's a two-to-two tie among the members of the county board in a vote the Secretary of State is the person authorized to break that tie?

A    So I would say that state law says whenever there is a tie vote, the board has to submit it to the Secretary of State to make a decision except in circumstances that are particularly carved out by state law where the Secretary of State is not allowed to break the tie. An example of that would be voter intent on an individual ballot or counting or rejecting a provisional ballot envelope.

Q    So going back to wait times. First let me ask you about 2004.

Is it your office's understanding that in 2004 a number of precincts had wait times that were multiple hours long?

A    Yes. And I think the office was also sued on election night over that.

Q    And do you know what the longest wait times were on Election Day in 2004?

MR. VOIGT: I'm going to place an objection because you're asking for questions related to a prior Secretary of State's term in office and this 30(b)(6) relates to Secretary Husted's time in office. So I guess to the extent that he knows what happened in the prior administration I guess the questions are acceptable, but these are not -- I just want to clarify that Secretary Husted was not the Secretary of State in
MR. KAUL: Okay.

A: Would you ask me the question again. I'm sorry.

Q: Yeah. Do you know what the longest wait time to vote was in 2004?

A: I don't know from the position of the Secretary of State's Office, but I have general recollections about Franklin County wait times from my experience as the director of the Board of Elections there.

Q: Are you aware of evidence that wait time exceeded 10 hours at a precinct in 2004?

A: I don't think I'm aware of that.

Q: Are you aware of long waits at Kenyon College in particular?

A: I do recall that Knox County Board of Elections was also sued on election night because of wait times at a Kenyon College precinct.

Q: And do you know how long wait times at that precinct were?

A: I do not.

Q: And do you know how long wait times were in Franklin County?

A: From the Secretary of State's Office perspective I don't but I do from being director of the Board of Elections.

Q: As part the Secretary State's Office work does the Secretary of State's Office consider previous elections in making decisions about what they'll do?

A: Can you reask the question.

Q: Does the Secretary of State's Office take into account events from prior elections in determining what policies it sets?

A: So I would say that this Secretary is very keen on the idea of continuous improvement and if there are things that we learned in one election about anything that can be helpful in providing information to the public or instructions to the Boards of Elections to make the next election -- the next administration election even better than the last, we want to look at those things and provide that information to the public or the boards.

Q: As part of that effort has your administration considered what took place in the 2004 election? Has the Husted administration?

A: Honestly, I think because the circumstances of elections administration in the State of Ohio are so dramatically different now than they were in 2004, I don't think we would have looked to 2004's experiences as being particularly instructive for current elections.

Q: I think the perfect example is and reason for that would be the advent of no fault absenteeism voting that was enacted at the end of '05 and became effective in the 2006 primary. That significantly impacted the ecosystems of election administration in Ohio.

Q: Now, taking that example, no fault absentee, that was enacted in significant part in response to the 2004 elections, correct?

MR. VOIGT: Objection. Form.

A: So I don't -- I wasn't a member of the General Assembly at the time and am not now so I don't know what all their particular reasons were.

I know, again, Secretary Blackwell had advocated for no fault absentee at the beginning of his first term as Secretary of State and the General Assembly didn't enact it. So it wasn't an idea that was new. It wasn't an idea, a proposal that was put forward just because of the '04 election.

If I can speaking totally for myself for a moment, that was one of the reasons that I advocated for it after the '04 election was to alleviate the potential for long lines on Election Day.

Q: And that was based on the experience in the 2004 general election?

A: Again, speaking solely for myself and not for the office, that was my experience in '04 with long lines and with some long lines in some precincts on Election Day in Franklin County was one of the reasons that I advocated for no fault absenteeism.

Q: And were the long lines in 2004 -- do you know whether the long lines in 2004 were disproportionately in areas that had large student populations?

MR. VOIGT: Objection. Form.

A: From the office's standpoint I don't think we have that data or know the answer to that question from the Secretary of State Office's position.

Q: Do you know whether the long lines were disproportionately in areas that had large student populations?

MR. VOIGT: Objection. Form.

A: I would say the same answer. From the position of the Secretary of State's Office I don't think we have data on that.
Q And going back to a topic we were discussing just a moment ago, specifically to the extent to which your office considers prior elections in setting its policy. To what extent, if at all, do you consider the 2004 election in setting policy currently?

A I would say consistent with my testimony earlier that the statutory, legal, regulatory, whatever you want to call, the ecosystems of elections administration is so different now that looking to '04 I don't think is particularly instructive anymore.

Q Do you ever consider the events of 2004 in setting policy?

A Not from the Secretary of State's Office perspective.

Q Do you know what the longest wait times to vote were in Ohio in the 2008 presidential general election?

MR. VOIGT: Objection. Form. And, again, that was before Secretary Husted's term.

MR. KAUL: Okay.

A I don't think the office -- the office doesn't track that. I don't think we know.

Q And the same would be true for early voting in 2008?

A Uh-huh.

Q Is that a yes?

A I'm sorry. Yes. Yes, it is.

I think there is polling data out there in academia on it but I don't think our office -- I don't remember what it is.

Q Have you looked at any of the academic literature on wait times to vote?

A Yes.

Q Do you have any disagreements with what you've reviewed in that literature?

MR. VOIGT: Objection. Form.

A So I think the academic literature that our office has taken most note of is the data collected by Charles Stewart in the Survey Performance of American Elections, SPAE, that he's conducted in the past, and I think most people look to that as being the most credible data out there.

Q And his data considers average wait time to vote, correct?

A I don't remember his methodology specifically and how he calculates that.

Q Is it fair to say, then, that you also don't know whether he looked at the longest wait time to vote in the 2012 election were?

Q Are you aware of precincts that have wait times that exceeded an hour in the 2012 election?

A Correct.

Q The 2012 presidential general election.

A I think -- no, not for 2012.
So the instructions that our office would give to Boards of Elections in preparing for the fundamentals would be the same, but we would beat the drum more on the resource management issues, preparing for volume and those kinds of things in a presidential election, presidential general, presidential primary, and a gubernatorial general.

Q    There's typically increased volume in terms of number of voters in a presidential election versus all of the other of types of elections, correct?

A    Correct.

Q    That was a wordy way of saying more people vote in presidential elections than other elections? correct?

A    Yes.

Q    Do the additional voters create additional strains on election administration? correct?

A    I wouldn't term it strains, but I would say that it requires Boards of Elections to prepare for additional demands for resources.

Q    Wait times to vote is typically longer in a presidential election than other types of elections, correct?

MR. VOIGT: Objection. Form.

A    I don't know that I would necessarily use the word "typical" because there's different circumstances from one election to the next. And no fault absentee has changed the election data dynamic pretty significantly. But, you know, more people offering themselves to vote on Election Day can cause more demands for those services on Election Day than compared to this November.

Q    And by that you mean the November of 2014 midterm election?

A    Actually, I was referring here to the November 2015 general election.

Q    Okay. And would you agree that the voters who vote in midterm elections tend to be more frequent voters than those who vote in the presidential elections?

MR. VOIGT: Objection. Form.

A    I don't know. I think it's -- I think the question as I would understand the question I'd say that in the presidential election there are some people who only vote in presidential general elections. So I think the frequent voter, I'd even take a step back from a gubernatorial and say that there is some people who even vote just in even numbered years and skip the odd numbered years. And so it's kind of grades I would say.

Q    And just to be clear for the record. Those grades involve people who are less frequent voters are more likely to vote in a presidential election --

MR. VOIGT: Objection.

A -- as compared to the other elections, correct?

MR. VOIGT: I didn't hear your question.

Q    When you're referring to grades is it fair to say that what you mean is the voters who vote in presidential elections on the whole involve more voters who vote -- well, let me withdraw that question and rephrase it.

The voters who vote in odd year elections tend to be the most frequent voters, correct?

MR. VOIGT: Objection.

A    So I would say most of the voters in an odd numbered year election are often the most frequent voters.

Q    And the same would apply to gubernatorial as compared to presidential years, correct?

MR. VOIGT: Objection. Form.

A    So I think similar to that I would say that most of the voters from a grade standpoint, you know,
A    I don't know that it's a large number but there is a number.
Q    And certainly a much smaller number of people who only vote in odd number elections, correct?
A    Correct.
Q    Your office does not track information about the race of voters, correct?
A    That's correct.  We're not statutorily required to do that.
Q    Has your office considered doing that?
A    No.
Q    Why not?
MR. VOIGT: Objection to the extent that your answer would involve any attorney-client communications. Exclude those from your answer, please.

A    So because -- when the statewide voter registration database was established, the State looked at the things that it was required to track. Those are the things they built the system for.
Q    So that's not something that we're required to do. We're not a pre-clearance state where that kind of data is required or necessary for the DOJ to evaluate changes and so it's not something that's necessary.
A    And do you have any way of assessing whether policies disparately impact members of particular racial groups?
MR. VOIGT: Objection. Form.
A    So in my time with the Secretary of State's office I have never once been a part of a conversation where the question was whether we should do something or not do something because it would help or hurt one particular group over another.
Q    Okay. But so do you have any way of assessing whether policies disparately impact members of a particular group?
MR. VOIGT: Objection. Form.
A    So from a policy-making standpoint, no. I think it often comes up in litigation, but because

that's not a -- because we don't -- we don't -- well, I'll just stop there.
Q    All right. And it's the view of your office that voter fraud is rare, correct?
A    Yes.
Q    And does your office have a position as to whether there was any connection between golden week and fraud?
A    I think some of the -- So in the 2012 general election our office issued a directive to the Boards of Elections requiring them to follow the same procedure for a golden week registration as they would for any other voter registration, specifically sending of an acknowledgement card to the person after they have registered to update their address. And we told the boards if the acknowledgement came back as undeliverable from the post office they should follow the same statutory procedure for golden week as they would for any other voter, that being sending a confirmation card by a forwardable mail to the person allowing them to either update or confirm their registration.

So after the election we issued a directive asking Boards of Elections to look at all of the allegations of fraud or suppression with the objective being, because often in a political environment there could be noise on both ends of the political spectrum, and so to try to cut against the height of the political hyperbole on both sides for the boards to look at any credible allegation of fraud or suppression. And my recollection is that at least in a couple instances there were allegations that the board looked at -- that some boards looked at that involved allegations of fraud in the golden week context in 2012.
Q    And was there anything unique to golden week in connection with those allegations of fraud?
A    I think the only thing that was unique to golden week in that context would be that the person -- the allegation would be the person both registered and cast their ballot at the same time, whereas other instances of voter registration fraud would be it would take place outside of the context of contemporaneous casting of a ballot.
Q    Just for the record. When I'm referring to golden week, you understand I'm referring to what used to be the first week of early voting when voters could both register and vote at the same time, correct?
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Exhibit C
risk and so the General Assembly acted to reduce that instance of risk.

Now, I think the Secretary has said consistently that instances of fraud are rare, that we have a good system in Ohio, but that when we do find fraud we do our best to catch people and to -- and to have local county prosecuting attorneys make determinations to hold people accountable.

But I think the General Assembly's view, obviously not speaking for them, but it would appear that there was an edification of a possible potential risk that they sought to close.

Q Does your office view that there is a heightened risk of fraud during golden week relative to others?

A I think our office believed there was a unique risk of fraud in golden week, which is why we issued that particular directive in 2012 about addressing golden week registrants.

Q Okay. When you say "unique" is that different from heightened?

A Probably. I mean I use it as in the sense of there's a particular kind of risk as opposed to other kinds of risk.

Q Is it your office's view that there was a heightened risk during golden week?

A I guess I don't know -- you know, 11 on a scale of 10? I don't know what heightened is. I explained what unique was, so --

Q Yeah. I guess what I'm wondering is does your office think that it was more likely that fraud would be committed by a golden week voter than another voter who cast an absentee ballot?

MR. VOIGT: Objection. Asked and answered.

A I don't think our office quantified it on a voter basis. I think we looked at it from the standpoint of all of the different points along the process there's the potential for risk and this is one where there was a unique potential for a kind of risk and so the General Assembly addressed it.

Q Okay. Do you know whether Secretary Husted stated that your office had discovered that during golden week there were people registering to vote and voting even though they weren't really Ohioans?

A Yes. I remember a particular instance, I think it was reported by the Toledo Blade, where my recollection of the report was that it was a gentleman who lived in another state brought his RV in and parked in a relative's driveway and then registered to vote.

Q And so, first of all, do you know if Secretary Husted was quoted accurately in the article?

MR. VOIGT: Objection. Do you have the article?

MR. KAUL: Well, let me ask the question first.

A I don't know for sure. I don't have a particular reason to not believe he wasn't quoted correctly.

Q Okay. You remember the general comment; is that fair to say?

A I remember the general article. I don't remember the general comment, but I think he was quoted in the article.

Q Did he make a statement to that effect, do you know?

MR. VOIGT: Objection. Form.

A I don't remember for sure but I think -- I remember there was an article.

Q Okay. And that the evidence for that you gave the example of the person in the RV. Are there other instances of which you're aware of that support that?
MR. KAUL: Back on the record.

Q Mr. Damschroder, I'm going to show you some exhibits.

(Exhibit No. 1 was marked for identification.)

Q First, do you recognize Exhibit 1?

A Yes.

Q And what is that?

A It is the 2012 Post-General Elections Statewide Voter Fraud Report.

Q And this is a report put out by your office, correct?

A Yes. They reported on I believe the results of the Secretary of State's instruction to Boards of Elections to conduct review of credible allegations of fraud or suppression.

Q And the -- First, is this the final version of this report, do you know? If you can't tell, I understand.

A I don't know based on this, but --

Q Okay. The first question I have about it is, what role did your office place in creating this? And let me be more specific.

Q Did your office collect an aggregate from the counties and then this report reflects the data that you collected; is that fair?

A I think it's fair to say this is an aggregation of the information that the Boards of Elections reported to us.

Q And the only independent investigation your office conducted was the Interstate Crosscheck portion of this; is that right?

A Yes.

MR. VOIGT: Objection. Form.

Q And what instructions were provided to the counties in their provision of data to you?

A I don't know that we -- I think the total of our instructions were contained in the directive that provided the instructions to the Boards of Elections on what to do.

Q Do you recall what that directive was?

A I think it was either the last directive of 2012 or one of the first ones of 2013. I don't recall what the number was.

Q Now, one of the columns in this report is titled "Irregularities Reported by Counties." Do you see that?

A Yes.
Q: Right.

Now, the -- First of all -- sorry. Let me go back a step to the irregularities.

Was it the county's -- was there a direction that they should report any case of any credible allegation of fraud; is that right?

A: My recollection without seeing the directive my recollection is that we instructed them to use their statutory administrative authority to review any credible cases of fraud or suppression, and then if anything needed further -- warranted further review by the county prosecutor then to refer it to the prosecutor.

MR. VOIGT: I have an objection to form. Are you just referring to this chart in 2012 or are you referring to something broader than that?

MR. KAUL: I'm sorry. I'm just referring to the chart.

MR. VOIGT: Okay.

BY MR. KAUL:

Q: Now, is there a standard that county boards are supposed to follow in deciding what to refer to county prosecutors?

A: So I think the answer to that is that there are statutory definitions of what constitutes election falsification or election fraud and boards would -- what we have instructed boards in the past is that when they get into this I think the phrase is quasi-judicial role or duty of the board that they're supposed to work closely with their prosecuting attorney. And so the elected prosecuting attorney would then advise boards on what warrants further investigation by law enforcement.

Q: Okay. So your office doesn't provide any specific direction to the counties on that; is that right?

A: Correct.

Q: Now, there is no column on this chart for cases that were charged by prosecutors, correct?

A: That's correct.

Q: Do you know how many of the 115 referred cases were charged by prosecutors?

MR. VOIGT: Objection. Form.

A: I don't know.

Q: Do you know if any were?

MR. VOIGT: Objection. Form.

A: I do know that some were.

My recollection is there was some media coverage surrounding some folks who were charged and I think convicted in Hamilton County, but I don't recall whether our office aggregated data from Boards of Elections on whether the cases were -- whether charges were filed and whether there were convictions.

Q: And the cases that you're thinking of, how many particular cases?

A: There's two that come to mind right off the bat.

Q: Do you know of others that were charged besides those two?

A: Not that I remember specifically.

Q: And you tell me if this is incorrect, but is it fair to say that your belief is that those cases led to convictions but you're not certain?

A: So in the two cases that I recall from media reports in Hamilton County, I think one was a precinct election official who had cast absentee votes for other people, and then the other was a person who cast an absentee ballot of a deceased friend. My recollection on that those individuals were prosecuted and that there were convictions.

Q: Okay. And so none of those incidents that resulted in criminal charges involved fraud committed during golden week, correct?

MR. VOIGT: Objection. Form.

A: I don't know for sure.

Q: The two that you described were not incidents of fraud during golden week, correct?

MR. VOIGT: Objection. Form. Asked and answered.

A: I don't believe so but I don't know for sure.

Q: Now, there's also a column for Interstate Crosscheck Cases Referred by the Secretary of State. Do you see that?

A: I do.

Q: And there were 20 in 2012 according to this chart, correct?

A: Correct.

Q: Do you know how many of those cases led to criminal charges?

A: I do not.

Q: Do you know if any did?

A: I don't know for sure.

Q: Is your involvement in Interstate Crosscheck mandated by statute?

A: It is not mandated by statute.

Q: Did your agency consider joining ERIC rather than Crosscheck mandated by statute?
A    Correct. Different from ERIC. There is no membership fee for a state to upload their data or to get potential matches back.
Q    Okay. And what is the cost, if you know, of investigating the results obtained from Interstate Crosscheck?
A    A I would say from our office's perspective, nominal.
Q    Who investigates the results obtained from Interstate Crosscheck?
A    A For the 20 that are listed as referred we sent those 20 names to the Attorney General.
Q    Okay. And how many names did you receive originally, approximately?
A    A I don't remember for sure.
Q    The way Interstate Crosscheck works is you get back essentially everything you put back in and you have to sort through it to decide what you want to do with it because not all states provide last four of social, not all states provide date of birth. There are a great deal of false positives with Interstate Crosscheck so different states do different things.
A    We took probably the most conservative approach in the country to it and kept culling down the data as far as we could to absolute matches on all data we could find, which is why there's only 20, whereas some states referred I think reports from other states tens of thousands and things like that, so...
Q    Okay. And so which matches -- or which data fields matched would vary by person because different states provide different data, correct?
A    A So for purposes of Interstate Cross match purposes different people match for different reasons, but because we took the most conservative approach internally we decided as an IT rule to require it to match on all of the fields that -- or I think four of the five fields that we require for our statewide registration database.
Q    And then you referred the 20 people in 2012 who fit that criteria, correct?
A    A Right, to the Attorney General.
Q    Let me ask you about another document. (Exhibit No. 2 was marked for identification.)
A    A This would be the largest document today. I promise that.
Q    Have you reviewed this document previously?
A    A It appears to be maybe a transcript of the public meeting of the Presidential Commission on
Election Administration in Cincinnati on September the 20th of 2013.

Q    I have not reviewed the transcript but I was present at the meeting.

MR. KAUL:  Yeah.  We can take a longer break.(Exhibit No. 3 was marked for identification.)

Q    The next document, Exhibit 3.  Would you, first of all, just take a look at this and confirm that this is the directive of 2014-15.

A    This appears to be Directive 2014-15 issued on May 21 of 2015.

Q    Now, this is a directive issued by the Secretary of State, correct?

A    Correct.

Q    And first can you explain how the directive process works.

A    So in some cases state law or a court order requires the Secretary of State to issue instructions to Boards of Elections, and instructions from the Secretary to Boards of Elections -- Boards of Elections are required by state law to follow the instructions of the Secretary of State and state law says that the Secretary generally instructs counties through directives, advisories, memoranda.

Q    And so in instances where state law or court order don't compel the Secretary to issue a directive there are other instances where we would issue directives to provide instructions to county Boards of Elections.

If I remember all of your question I think this particular directive was issued to Boards of Elections in preparation for, quote, "from a summary in preparation for the Secretary of State's statewide mailing of absentee ballot applications for the November 4, 2014 general election," end quote.

Q    And let me direct your attention to the bottom of page 1.

A    Okay.

Q    And the first sentence of that paragraph continues on to the second page?

A    Yes.

Q    And according to that sentence -- well, first of all let me go back a step.  This directive relates to the mailing of absentee ballot applications to registered voters in Ohio, correct?

A    Correct, for use at the 2014 general election.

Q    And these are -- the absentee ballot applications were not solicited by those voters.  They were sent to all voters with certain exceptions, correct?

A    Correct.
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1. if the postage was paid or not. I think the data shows
2. a lot of people used the application and voted by
3. absentee ballot.
4. Q Have you reviewed the data from the counties
5. that sent prepaid envelopes to voters prior to 2014?
6. A I don't think our office has that kind of
7. data. And if a previous administration collected it,
8. because the only two times they've been, so during
9. Secretary Husted's administration there have been two
10. statewide mailings on absentee ballots.
11. In 2012, 2014 those have been the only
12. mail-ins, unsolicited absentee mail-ins by government
13. officials to voters, and so to the extent that there's
14. data that would be collected in a previous
15. administration, I don't think we reviewed it.
16. Q Now, going back to that sentence that I
17. directed you to a moment ago. The mailing described in
18. this directive is sent only to voters in the active
19. status. Was only sent to active status as of July 1st, 2014, correct?
20. A At the top paragraph of page 2 it says, "One
21. every registered voter in Ohio an active status as
22. August 1, 2014, and every registered voter in Ohio who
23. voted in the 2010 general elections or the 2012
24. presidential general election."

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1. confirmation card because of a change of address.
2. They're receiving the confirmation card to confirm
3. their address because they had not voted in the last
4. two calendar years included in the federal general
5. election.
6. The other two categories would be a person
7. who had registered to vote or changed their address or
8. name, the board sent an acknowledgement card by
9. non-forwardable mail that was returned to the Board of
10. Elections -- I apologize I'm probably talking too
11. fast -- and the board sent a confirmation card by
12. forwardable mail to the person asking them to either
13. confirm their address or to update their address.
14. And then the fourth reason would be a person
15. who is a first-time registrant by mail under the Help
16. America Vote Act whose information when supplied to the
17. BMV or through the BMV to the Social Security
18. Administration did not match the information that the
19. BMV or Social Security Administration has on file for
20. that person, in which case the board would send them a
21. confirmation card asking them to change their address.
22. It's important to note that the overwhelming
23. majority of the people in the voter file are in an
24. active status and that all of the people -- all

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1. the 2010 or 2012 presidential election that received
2. the application, yes.
3. Q And what is a confirmation status?
4. A So there are four reasons why a person might
5. be in a confirmation status.
6. The reason for which the majority of the
7. individuals would be in a confirmation status would be
8. that the person reported to the post office a change of
9. address and in the state's annual list maintenance
10. program that list was provided to the state by the post
11. office and the Board of Elections sent a confirmation
12. card to the person's new address giving them an
13. opportunity to register to vote either online or by
14. mail, update their address online or by mail.
15. So if a person failed to respond to a
16. confirmation notice updating their address or confirm
17. their address had not changed, they would be in
18. confirmation status.
19. The other three are the less frequently used
20. statuses for confirmation status. That being a person
21. who would be in a confirmation status because of the
22. supplemental process of the list maintenance mailing
23. and those would be individuals who receive a
24. confirmation card but who aren't receiving the

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1. A I would agree that there were some people who
2. were in a confirmation status but had voted in either
3. the 2010 or 2012 presidential election that received
4. their application, yes.
5. Q And what is a confirmation status?
6. A So there are four reasons why a person might
7. be in a confirmation status.
8. The reason for which the majority of the
9. individuals would be in a confirmation status would be
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Defendants' Written Objections to the Admissibility of Plaintiffs' Evidence

Exhibit C
of the individuals who are in a confirmation status are still printed in the pollbook on Election Day and that no one's registration gets canceled for being in a confirmation status except for a four-year period after the board sends them notice, a four-year period that include two federal generals. Again, cancellation can't be within 90 days of the federal election.

Q I do have several follow-up questions. Let me start with this one: Do you know what the return rate is on confirmation mailings?

A Yes.

Q I don't know off the top of my head.

A Would you agree that it's low?

A I don't know what low is characterized at, but it's probably less than half.

Q Okay. Do you believe it's less than 25 percent?

A I don't know.

Q Now, and there's a footnote about this in the document, Note 2 that explains the inactive statuses, correct?

A Correct.

Q Let me start with Status C -- or Category C, which are the voters acknowledgement returned as undeliverable.

A Are you aware of instances in which notices are returned as undeliverable even though a person does reside where the registration indicates?

A I'm not aware of specific voters but I know from my, again, speaking from my experience in Franklin County, yes, that does happen because of error by the post office.

Q Do colleges and universities also sometimes have errors with those sorts of mailings?

MR. VOIGT: Objection. Form.

A I don't know, again, specifically on those kind of error rates. And I probably shouldn't call them error rates; undeliverable rates.

Q Category D refers to the BMV and SSA records.

SSA refers to which agency, please?

A Social Security Administration.

Q And what would be the failure to match between SSA and voter registration? Is that the social security number?

A So under the Help American Vote Act a first time registrant by mail the election official has to send that voting record to BMV to see if it matches.

If the BMV doesn't have it, they send it to the Social Security Administration to see if they have it.

If something doesn't match there in terms of identification, generally that would be the last four digits of social if we're talking SSA or driver's license number if we're checking BMV, and that would trigger the mailing of a confirmation card in that instance.

Q Okay. And so, for instance, a college student who had a driver's license at his or her parents' address but registered at his or her college address would receive a confirmation mailing, correct?

A Only if the person is a first time registrant by mail in Ohio would the record be sent to the BMV. And if ID didn't match if that person used the last four, then it would be sent to the Social Security Administration. But, yeah, if the ID didn't match then it would come back as not a match.

Q Okay. And there is a reference in (A) to a general voter records list maintenance program. Do you see that? And then there's a NCOA process.

A Yes.

Q Is that entirely based on the NCOA process or are there other processes that go into the records list maintenance?

A So (A) would be just the NCOA portion of the list maintenance program as I described earlier. And (B) would be the supplemental part, the look-back for participation in an election in the past two years, including a federal general.

Q Now, everybody in the active confirmation status is eligible to vote you said; is that right?

A So anyone who is in an active active status or an active confirmation status are printed in the pollbooks, considered a qualified elector, and if their information is correct, if their information at the time they present themselves to vote, request an absentee ballot, vote at the polls on Election Day, is consistent with what is in the voter file and then the voter cast a regular ballot.

Q Okay. Now, individuals in active confirmation status are not part of the unsolicited absentee ballot mailing, correct?

A Except for Part 2 of the universe if they voted in the '10 or '12 presidential election. And the purpose for including that second exception or to include that exception would be to bring into the universe of people receiving the mailing anyone who is
in a confirmation status because of -- particularly people in the supplement -- the list maintenance supplemental process, the BMV/SSA mismatch, or the undeliverable acknowledgement card.

Those being the smallest universe of 19 individuals in confirmation status who there is not an additional government record that shows that their address is not what's in the voter file. So if they voted in the last two federal general elections they get an application.

Q All right. Now, your office intends to do a similar mailing for the 2016 election, correct?
A Yes.

Q And do you intend again to send the mailing only to individuals who are either an active status or have voted in one of the two prior even year general elections?
A Our intent is to have the universe be every registered voter at the time of the poll who is in an active active statute, and then anyone in a confirmation status who voted in either 2014 or 2012.

And I would add to that the two components that I'm particularly proud about is that and one of the things that we do for the voter file at that time is in order to get the best postage rates we also have to tell the post office that we did an NCOA comparison, National Change of Address comparison, within 60 days of the mailing or whatever the postal rate is.

So in addition to mailing the applications we also identify anybody from the voter file who has filed a change of address whether they received a confirmation card in the past or haven't, and we send them a postcard encouraging them to update their address.

So not only is this mailing serving as an opportunity to have individuals request an absentee ballot, it's also serving as a reason to contact voters who would potentially otherwise have to cast a provisional ballot on Election Day who might not be eligible to cast an absentee ballot or not because they moved.

And then the other part that I love is that we then after the first mailing anybody who's registered to vote or change their address up until I think the weekend before the close of registration we then do a second mailing to all those people, all those individuals. So we have a supplemental application process to catch anybody who wasn't in the first poll.

1 It's pretty cool.
2 Q Okay. So, first of all, have funds been appropriated for 2016?
3 A Yes.
4 Q And do you know how many voters fall within the active confirmation category?
5 Well, let's take 2014 as an example. Do you know how many voters in 2014 fell into the active confirmation category, registered voters that is, and have not voted in the two prior even year general elections?
6 A I don't know. And the voter files are a very dynamic database, so if we take a snapshot of it today and a snapshot of it tomorrow it will show different numbers because a person will change their address online and then filled out something with the Board of Elections the board has entered. So it's a fluid and dynamic database.

Q Do you know if the number of voters who fall into that category is over a million?
A I do not know.

22 Q Do you know what percentage of eligible registered voters it is?
A I don't know other than to say that the overwhelming majority of the registered voters are in an inactive/active status.

Q And what do you mean by overwhelming majority?
MR. VOIGT: Objection. Form. Asked and answered.
A Bunches. I don't know but it's far more than 50 percent.
Q Why don't you mail voters in -- why do you limit it to certain registered voters and not send it to everybody?
A Sure. So in order for a voter to receive an absentee ballot their application has to have at least five elements that the voter can provide, two of which would be preprinted by the Secretary of State or by the Board of Education initially. So one of the things that has to be accurate or match the voter files is the person's address.

In order to assist Boards of Elections with efficiency in processing applications when we print the applications they are voter specific. So we print the voter's name and address on it. We also print a bar code on it with a voter identification number so the board can just scan them into a -- boards have
different processes, but pulling up -- you know, scanning the bar code allows them to quickly pull the voter record out and check identification and verify signature.

So if we were to mail vast numbers of applications to voters who had filed a change of address with the post office we would be mailing applications to a voter who could not use that application because they would first have to update their address with the Board of Elections in order to properly request an absentee ballot.

That's why we send them the postcard instead telling them that they need to update their address and move it to the website to do so.

Q Is the voter who files a change of address with the post office required to vote from the new location?

A A voter is required to vote -- the voter is required to register from the address of their residence.

Q Right. So let's take the example of the college student who wants his or her mail sent to his college address. Certainly those college students can vote from their parents' residence, correct?

A Well, the state law defines residency for purposes of voting, and broadly it's the address to which a person tends to return whenever they're away where their habitation is fixed.

And so an individual who is raised in New York who comes to The Ohio State University to attend college can register and vote here in Columbus.

A student in Columbus, raised in Columbus who goes to Cleveland, can register to vote from the Cleveland address and participate in their community that way, or they can vote absentee or drive back to Columbus and vote here in the precinct where they were raised so long as wherever they register to vote it meets the statutory definition of fixed habitation, place of intent to return when away and whatever the handful of other statutory rules are.

So it's up to that person to decide where to register to vote, and when they register to vote they can request an absentee ballot for that address.

Q So the student you described from Columbus who attends school in Cleveland, if that student wants to vote in Columbus but is having his mail sent to his Cleveland dorm address, he won't receive an unsolicited absentee ballot application unless he's voted in one of the two prior elections, correct?

MR. VOIGT: Objection. Form.

A So I would say if the person is registered in Columbus and has not filed a change of address with the post office to transfer the mail from the Columbus address to the Cleveland address they'll get an application at the Columbus address.

Q But he has filed a change of address?

A Then that person will instead -- and didn't vote in the last two elections, then that person would instead get a card encouraging them to update their address to the place where they currently reside.

Q And if that student wasn't eligible to vote in the last two elections is that considered as having not voted in the last two elections?

A So in order to get -- in order for a person in confirmation status to get the mail they would have had to have voted in the last two federal generals.

Q I'm sorry. I may be misunderstanding.

So if a student registers at his parents' address and then moves to a college address and files a change of residence and that student hasn't voted, will that student get a confirmation notice?

A So just for ease for me let me communicate it back.

So if a person is registered in Columbus, goes to college in Cleveland, registers in Cleveland?

Q I'm sorry. No, he doesn't register in Cleveland, just wants to get his mail in Cleveland so files a change of address form.

A Okay. So the person is registered in Columbus, moves to Cleveland, files a change of address with the post office and did not vote in the last two federal generals they will not get an unsolicited absentee application from the Secretary of State unless that person then responds to the postcard and updates their address.

But it's also important to note that that person can then appear in person at the Cuyahoga Board of Elections after the close of registration, cast a provisional ballot in person, can cast a provisional ballot at the person's Cleveland polling place on Election Day, or fill out a registration form and change their address to Cleveland before the close of registration.

Q Okay. So why not mail unsolicited absentee ballots to every registered voter?

MR. VOIGT: Objection. Form.
A    Well, I think like I answered earlier because 
the applications are individualized with the voter ID 
number and the voter address. 

Sending an application to a person who has a 
change of address on file with the post office that 
isn't reflected in the voter registration record would 
be sending an application that they couldn't use. 

If they filled it out, the Board of Elections 
wouldn't have it in the file, would have the wrong 
address, so instead we send them something that is 
useful and that's a postcard to tell them change your 
address before the close of registration. 

Q    In the hypothetical we were just discussing 
the college student could use that ballot to vote, 
though, right? 

A    So they actually wouldn't because the post 
office would -- we would not mail a Columbus address to 
Cleveland mailing address. 

So a person who is registered in Columbus who 
has a change of address on file with the post office, 
if we were to change that person's address for the 
purposes of mailing, that person in Cleveland would 
receive an application with their name and their 
Cleveland address when the voter file reflects them 
registered to vote in Columbus, which means the person 
they're intending to vote from a -- they decided 
their residence is in Cleveland they would not be 
legally allowed to use that application to cast an 
absentee ballot in Cleveland. 

Q    But that receiving mail in Cleveland doesn't 
mean that their residence is in Cleveland, right? 

A    Correct, yeah. The person makes the 
determination where their residence is and based on the 
statutory prescription of fixed habitation and, et 
cetera. 

Q    And so couldn't those absentee ballots be 
sent to the address where the person is registered? 

MR. VOIGT: Objection. Form. 

A    So I guess I need more clarity on your 
hypothetical. 

Q    Well, in this case it would be the parents -- 
the address where the parents reside? 

A    And so I guess the question is how would the 
Secretary of State's Office know which people have an 
address change on file with the post office who intend 
to have their residence be other than what the post 
office has for them? 

Q    Well, it's their registered address which
changed their mailing address, they are no longer eligible to vote at the address on their voter registration?

A    I think the assumption is it's less likely that they are no longer there and that's why we do the extra step of including the people who voted in the last two elections to try to cover the people who might still be there.

Q    Because with people who voted in the last two elections you have all of those same concerns you just mentioned, right?


A    Can you restate that question.

Q    You mentioned that you had two concerns with sending absentee ballot applications where a person has, for example, has changed their mailing address, right?

A    Yes.

Q    But those concerns would still apply with somebody who voted in the two prior elections, right?

A    I think in that instance we took the step of trying to err on the side of voters who had voted and hadn't moved, again, primarily for the three other reasons in Footnote 2 B, C and D that aren't related to NCOA.

Q    And why did you err on that side with respect to the people who voted in the prior two elections but not with respect to other voters?

MR. VOIGT: Objection. Forming.

A    I would say because I don't know who the others that you're talking about are and the others in B, C and D can be quantified in the sense that we can put them into the -- we know that if they voted even though they're in confirmation status for that other reason, it's likely they can still get an application that can be used because their address has not changed.

Q    Why do you think that's the case?

A    Because they haven't filed a change of address with the post office.

Q    But a voter who's filed a change of address and taking the 2014 example if a voter who had voted in 2012 and filed a change of address in 2013, that voter would still receive an unsolicited absentee ballot application in 2014, right?

A    Yes.

Q    Okay. So I guess I don't understand how that's different from somebody who filed a change of address in 2013 but hadn't voted in 2012?
the envelope and the voter then needs to do name, address, date of birth, form of identification and signature.

So as I understand your question, I don't believe that the -- my recollection is that the bills in question or the laws in question did not affect address as it relates to the application.

Q  I'm sorry. So on the absentee ballot envelope there is now a requirement that address and date of birth are included when the ballot is submitted, right?

A  So my recollection on that is that the only change related to the five fields for the identification envelope was the date of birth.

Q  Okay. Let's just focus on date of birth for current purposes.

Prior to that change in the law that we're discussing if a date of birth was not included on the identification envelope the ballot was counted, correct?

A  Correct.

Q  Now if a voter submits a ballot that does not include date of birth on the envelope it's not counted, correct?

A  Correct.

MR. VOIGT: Objection. Form.

Q  If the field is left blank, though, the voter can still be counted, right?

A  If they have the correct date and month but the wrong year that does not prevent a ballot from being counted, right?

Q  If the field is left blank, though, the voter goes into the cure process?

A  The voter would get a notification and an opportunity to cure it.

Q  And does your office have a view as to whether or not date of birth should be a required field?

A  So our office has taken the position I think consistent with the General Assembly that there are five fields that are necessary data points in a modern electronic database world for managing voter records. Name, address, date of birth, identification and signature. Those are the same five fields that are used for registration. It makes sense to have those be the same five fields that are used to request an absentee as the same kind of fields pass the absentee in other election transactions.

A  So my recollection is that the statute provides for an exception that if the year is wrong or if the address in the -- if the date of birth in the statewide provision --

THE COURT REPORTER: Please speak slower.

A  So the exception would be, and I think this is in the directive, the exception would be if the year of birth is the part that doesn't match, I think they can still be counted, or if the date of birth in the voter file is 1/1/1800 and that's the reason it doesn't match because 1/1/1800 is the holding point for the date of birth field for people who register to vote before date of birth was required.
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<tr>
<td>1 becomes a very helpful identifier. First name is a tough identifier. Matt versus Matthew, John versus Jack, those kinds of things.</td>
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<tr>
<td>2 So when you have data points, the more pieces of unique information that you can give, the more likely the board is identifying the voter in the records in order to issue the ballot or count the ballot.</td>
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<tr>
<td>3 Q So let's take the case of a voter who supplies everything but date of birth. That means that they've supplied a name that matches a name in the file, correct?</td>
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<tr>
<td>4 A Let me back up and ask. Are we talking about how the driver's license number is a unique identifier you said, right?</td>
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<tr>
<td>5 Q Yes.</td>
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<tr>
<td>6 A Yes.</td>
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<tr>
<td>7 Q But even if the person supplies the driver's license number and the rest of the number information matches, his absentee ballot won't count if he hasn't filled out the date of birth of field, right?</td>
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<tr>
<td>8 A The voter would receive a notification.</td>
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<tr>
<td>9 Q He would go into the cure process?</td>
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<tr>
<td>10 A Correct.</td>
</tr>
<tr>
<td>11 Q And in that circumstance where you have the unique identifier of the driver's license there is no uncertainty as to which voter it is, correct?</td>
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<tr>
<td>12 MR. VOIGT: Objection. Form.</td>
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<tr>
<td>13 A I would say that there's less uncertainty because if the signature on file doesn't match then there's another questionable component. But from a pure data standpoint there's a high level of certainty, yes.</td>
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<tr>
<td>14 Q Well, that was the next thing I was going to ask. The signature is also required to match, right?</td>
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<tr>
<td>15 A Yes.</td>
</tr>
<tr>
<td>16 Q So I guess here's my question. Is it the position of the Secretary that if the name matches, the address matches, the driver's license matches, and the signature matches that date of birth is still required to match in order to make a positive identification of the voter?</td>
</tr>
<tr>
<td>17 A So I think the position of the Secretary of State is the boards need to follow the law and the law says that date of birth is a required element unless the two exceptions are present.</td>
</tr>
<tr>
<td>18 Q So you said your office supports this law, correct?</td>
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<tr>
<td>19 A Our office supports the fact that there are five elements that are necessary for voter listening incentive in an electronic database world and date of birth is one of them.</td>
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<tr>
<td>20 Q And is it your office's position that not counting those ballots is the appropriate remedy if a field is not completed?</td>
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<tr>
<td>21 MR. VOIGT: Objection. Form.</td>
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<tr>
<td>22 A I think our office's position is that those are five fields that are important that Boards of Elections -- the forms are designed so to provide voters use of the steps that are required, that there's a notification process that is missing and that a very, very small percentage of absentee ballots are not ultimately -- that a very small percentage of ballots are rejected.</td>
</tr>
<tr>
<td>23 Q So prior to the requirement that date of birth be supplied how did Boards of Elections determine the identity of the people who cast absentee ballots?</td>
</tr>
<tr>
<td>24 A By the elements excluding date of birth with the exception being that the prescribed form of the application going back as far as I know and of the identification envelope had a blank for date of birth and so most voters provided that information anyway.</td>
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<tr>
<td>4 Q Okay. So the difference now is that if they don't provide it they go into the cure process, right?</td>
</tr>
<tr>
<td>5 A Right. And the exception now would be if they don't provide it they apply -- the exceptions don't apply, they will get a notification and an opportunity to cure.</td>
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<tr>
<td>6 Q And now there's been additional requirement for provisional ballots instituted, correct?</td>
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<tr>
<td>7 A Correct.</td>
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<tr>
<td>8 Q Does the same logic we've just been discussing, the absentee context, apply to the provisional content?</td>
</tr>
<tr>
<td>9 MR. VOIGT: Objection. Form.</td>
</tr>
</tbody>
</table>
| 10 A So I would say that the -- I would suggest a
break.

Q    That's my next suggestion.

MR. VOIGT: Can I ask a clarification. I'm not sure what logic you're asking about.

Q    Do you understand the logic I was talking about?

A    So why don't you repeat the question since I interposed a suggestion to break.

Q    Okay. You were just explaining the reasons that your office has taken the position that it has on absentee ballot -- I'm sorry -- on absentee ballot on identification envelopes requiring date of birth information, right?

A    Correct.

Q    Okay. Does your office also support the provisional ballot, the extra fields being required in a provisional ballot envelope?

MR. VOIGT: Objection. Form.

A    So our office believes, as I've testified earlier, that there are five elements that are important in maintaining updated registration records: Name, address, date of birth, signature, and identification. And so the same five fields that apply to voter registration to require to requesting absentee

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Q    Did you have a chance to look at the transcript that's Exhibit --

A    2.

Q    2. Thank you.

A    Yes, I skimmed through I think the first five pages.

Q    Okay. And just so the record is clear, page 2 there's a very long block that begins the fourth double batch down, I guess. It beings with, "Thank you very much." Do you see that?

A    I do.

Q    And that block is the statement of Secretary Husted, correct?

A    I believe that's the case, yes.

Q    Okay. And you were there when he made these remarks, right?

A    Yes. I was at the Presidential Commission meeting on September 20th, 2003, and I was on the same panel with the Secretary. I think it was the opening session.

Q    It was 2013 just for the record.

A    Oh, I'm sorry. September 20th, 2013.

Q    And does this appear to you to be an accurate transcription of the Secretary's remarks?

A    I haven't read it word-for-word but it appears to be.

Q    And just to be clear, his statement begin on page 2, all of page 4 and the beginning of page 4, right?

A    That appears to be the case.

Q    And then there's a block where someone says, "Thank you, Mr. Secretary," and then there's a subsequent block on page 5 that begins with, "Good morning, Commissioners."

A    Do you see that?

Q    And that block is your statement?

A    It appears to be, yes.

Q    Does that accurately quote you?

A    I believe so. Again, I haven't read it word-for-word.

Q    Let's set that aside.

A    Before we broke I had begun asking you about provisional ballots. Do you remember that?

Q    If a voter has changed his address and includes a different address than the provisional ballot from the one on the voting file does that ballot
count?

A    So if an individual voting provisional ballot
provides an address on the provisional envelope that is
different than the address on file for the voter, as
long as all the other requirements are met that
person's ballot would count.

Q    Does that automatically become a registration
form?

A    It does now, yes.

Q    Okay. Does the voter have to check some sort
of box on the form?

A    I think the -- if I remember the form
correctly, there's a space for the voter to provide
their name, address, date of birth, required
identification and a signature. I don't think there's
a check box is required.

Q    And if the voter fills out four of the five
categories you discussed before but not date of birth
that provisional ballot is not counted, correct?

A    I'm sorry. Can you say that again.

Q    Yeah.

A    Can you ask the question again. I'm sorry.
MR. VOIGT:  Asked and answered again.

Q    Okay. So just to be clear. Since you haven't
talked about it you don't have any reasons for
supporting or opposing that policy; is that right?

A    We have not talked about it.

MR. VOIGT:  Objection.  Asked and answered.
MR. KAUL:  Objection on the form.

Q    And if the failure is a failure to provide an
identification, is the voter informed that the ballot
won't be counted for that reason?

A    I believe they're informed with the notice at
the time they cast the ballot.

Q    The poll workers are supposed to inform them?

A    There's a notice, I think it's called H; I
can't remember for sure what the number is, that gives
them the notification of the federally required
telephone number, the toll-free contact information to
find out if the ballot is counted or not and the
information about what can be cured and the deadline
for doing so.

Q    Okay. The federal number the voter can only
obtain information about whether their ballot has been
counted after a final determination has been made with
respect to the ballot, right?

A    Correct.

Q    Ohio law currently limits counties to one
early voting location per county, correct?

A    I think similar to the absentee there are a
couple of exceptions as it relates to date of birth, but subject to those exceptions the ballot would not
count.

Q    Okay. Provisional ballot voters are not
notified if their ballots need to be cured, right?

A    So a provisional ballot is cast by someone
who there was a question about their eligibility either
because they were -- they're not in the voter roles at
the address where the person says where they say they
live or they were unable to produce identification in
the form of last four of their Social or their driver's
license or a copy of the ballot for identification.

Under the state law the person who casts a
provisional is allowed to cure his identification if they
don't provide an identification at the time they
cast the provisional, and they receive a notice at the
time they cast the provisional of the federally
required toll-free number that they can call to find
out how the ballot was counted or not and the
opportunity to cure the identification if that's not
provided at the time the ballot is cast.

Q    All right. So there is no opportunity to

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<tbody>
<tr>
<td>1 Q Yeah.</td>
<td>1 Q I'm going to show you a few more exhibits.</td>
</tr>
<tr>
<td>2 You haven't had any discussions about reasons</td>
<td>2 This will be Exhibit 4.</td>
</tr>
<tr>
<td>3 that you would either support or oppose counties having</td>
<td>3 (Exhibit No. 4 was marked for identification.)</td>
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<tr>
<td>4 discretion to open additional early voting locations?</td>
<td>4 Q Have you had a chance to review that?</td>
</tr>
<tr>
<td>5 MR. VOIGT: The same objection.</td>
<td>5 A Yes.</td>
</tr>
<tr>
<td>6 A We haven't talked about it and any</td>
<td>6 Q So let me start with the email that was first</td>
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<td>7 conversations about it would have to be -- whether to</td>
<td>7 in time which begins on page 2. Is that a final</td>
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<td>8 support or oppose or anything in between would</td>
<td>8 version of a press release?</td>
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<tr>
<td>9 obviously be subject to actual legislative proposal,</td>
<td>9 A I can't tell from the email.</td>
</tr>
<tr>
<td>10 but to my knowledge no one's ever offered that.</td>
<td>10 Q It's either a draft press release or a final</td>
</tr>
<tr>
<td>11 Q I want to ask you a couple of questions about</td>
<td>11 press release, right?</td>
</tr>
<tr>
<td>12 consolidated books at split precincts.</td>
<td>12 A I believe so.</td>
</tr>
<tr>
<td>13 A Okay.</td>
<td>13 By press release I'd say it appears to be a</td>
</tr>
<tr>
<td>14 Q Your office has recommended that counties</td>
<td>14 guest column as opposed to a press release.</td>
</tr>
<tr>
<td>15 that have split precincts use consolidated pollbooks;</td>
<td>15 Q In the top right of that email it says, &quot;For</td>
</tr>
<tr>
<td>16 is that right?</td>
<td>16 immediate release.&quot; Do you see that?</td>
</tr>
<tr>
<td>17 A In the past our office has recommended that</td>
<td>17 A Yes.</td>
</tr>
<tr>
<td>18 Boards of Elections consolidate their pollbooks in a</td>
<td>18 Q Is that on the guest columns even if they're</td>
</tr>
<tr>
<td>19 multi-precinct location so that a voter presenting</td>
<td>19 not released broadly?</td>
</tr>
<tr>
<td>20 themselves to sign a pollbook gets in line based on the</td>
<td>20 A Yes.</td>
</tr>
<tr>
<td>21 first letter of their last name as opposed to knowing</td>
<td>21 Q And how would you describe this guest column?</td>
</tr>
<tr>
<td>22 that they have to check in in the northwest corner of</td>
<td>22 A I would describe it by saying that it is the</td>
</tr>
<tr>
<td>23 the gym for Precinct 2 as opposed to the east part of</td>
<td>23 Secretary communicating to the voters in Ohio that it</td>
</tr>
<tr>
<td>24 the gym for Precinct B or C or whatever.</td>
<td>24 is easy to vote in Ohio.</td>
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<tr>
<th>Page 114</th>
<th>Page 116</th>
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<tbody>
<tr>
<td>1 So, yes, our office has recommended that, and</td>
<td>1 Q And this is informational in nature. Would</td>
</tr>
<tr>
<td>2 in our election official manual that's currently online</td>
<td>2 you agree with that?</td>
</tr>
<tr>
<td>3 for public comment we're proposing making that a</td>
<td>3 MR. VOIGT: Objection. Form.</td>
</tr>
<tr>
<td>4 directive that all counties do that beginning with next</td>
<td>4 A It does provide information, yes.</td>
</tr>
<tr>
<td>5 year.</td>
<td>5 Q And it provides information about ways in</td>
</tr>
<tr>
<td>6 Q Okay. Beginning with the 2016 election?</td>
<td>6 which individuals can vote specifically, right?</td>
</tr>
<tr>
<td>7 A It would be beginning with the primary</td>
<td>7 A Yes. After the title is &quot;Voting is easy in</td>
</tr>
<tr>
<td>8 election in 2016, yes.</td>
<td>8 Ohio&quot; it talks about three specific options. The first</td>
</tr>
<tr>
<td>9 Q Okay. And what's the process for going from</td>
<td>9 being vote by mail. The second is voting early</td>
</tr>
<tr>
<td>10 where you are now to making it a directive?</td>
<td>10 in person. The third is voting on Election Day.</td>
</tr>
<tr>
<td>11 A Once the public comment period for the</td>
<td>11 Q And this email is from Matthew McClellan,</td>
</tr>
<tr>
<td>12 proposed chapters of the election committee are closed</td>
<td>12 correct?</td>
</tr>
<tr>
<td>13 for public comment then we would issue a directive</td>
<td>13 A Yes.</td>
</tr>
<tr>
<td>14 saying here's the election official manual. That would</td>
<td>14 Q Who is Matthew McClellan?</td>
</tr>
<tr>
<td>15 be the instructions of the Secretary of State.</td>
<td>15 A He is presently our director of</td>
</tr>
<tr>
<td>16 Q And when do you anticipate that a final</td>
<td>16 communications.</td>
</tr>
<tr>
<td>17 decision will be on that issue?</td>
<td>17 Q And at the time of this email was he the</td>
</tr>
<tr>
<td>18 A I don't know for sure but it would be -- it</td>
<td>18 press secretary?</td>
</tr>
<tr>
<td>19 would have to be more than 90 days before the March</td>
<td>19 A Yes, I believe that was his title. Yes.</td>
</tr>
<tr>
<td>20 presidential election. We can't issue a permanent</td>
<td>20 Q All right. Now, the next email in time which</td>
</tr>
<tr>
<td>21 directive in a certain window.</td>
<td>21 is on pages 1 and 2 is from Maggie Ostrowski, correct?</td>
</tr>
<tr>
<td>22 Q Do you anticipate that that directive will be</td>
<td>22 A Correct.</td>
</tr>
<tr>
<td>23 issued?</td>
<td>23 Q Did I pronounce that right?</td>
</tr>
<tr>
<td>24 A I do.</td>
<td>24 A Ostrowski, yes.</td>
</tr>
</tbody>
</table>
Q And who is she?
A She was our communications director at the time.
Q So she would have been Mr. McClellan's direct supervisor?
A Yes.
Q And her email describes possible places to send this guest column, correct?
A Yes.
Q And first she refers to boards. She says, "What do you think about boards?" Do you see that?
A Yes.
Q And then she says, "Or does that just poke bears?"
A Yes.
Q Do you mean what she meant by that?
A I do not.
Q And then she describes poll worker list, right?
A Yes.
Q And then "Legislators" and in paren's she writes, "All or just Rs?" Do you see that?
A I do.
Q And by just Rs she meant just Republicans, right?
A Yes.
Q Do you mean what she meant by that?
A I don't know what Maggie was intending to ask with that.
Q All right. And just briefly, the people on the list in the To line include you, right?
A Yes. I'm sorry. For the Maggie email of March 12 at 11:06?
Q Yes.
A Yes, I'm included in the "To."
Q And then Craig Forbes. Who is that?
A At the time he was our legislative director.
Q And Halle Pelger we just talked about before was the Chief of Staff at the time?
A Yes.
Q And Matt Materson you just explained. And who is Joel Fleeman?
A Actually, Matt McClellan.
Q Oh, I'm sorry.
A Matt Materson was the Deputy Chief of Staff and IT director at the time.
Q And who is Joel Fleeman?
A Joel Fleeman was the military voting coordinator and kind of kept our list of people who wanted to be contacted about things in the office.
Q Okay. And then Halle Pelger responds to Maggie Ostrowski's email, correct?
A Yes.
Q And then Joel Fleeman sends another response; is that right?
A Yes.
Q And he lists some groups that he would send this to. Do you see that?
A I think he says, "Here's the groups that may be good to send this to."
Q Do you know what groups ultimately received this communication?
A I do not.
Q Would you agree that most of the groups listed in Mr. Fleeman's email are conservative groups?
MR. VOIGT: Objection. Form.
A I don't know if that's necessarily the case.
Q One of the entries is actually conservative groups, right?
A Yes, it is.
Q And YR refers to young Republicans, right?
A I don't know for sure.
Q Well, what's your understanding?
A I would presume that's the case but I don't know for sure.
Q I think Tea Party you would agree is a conservative group?
A Yes.
Q Now, minority groups does that refer to racial minority groups?
MR. VOIGT: Objection. Form.
A I do not.
Q And you also don't know you said who this was sent to ultimately?
A Correct.
Q Let me next ask you about a document we'll mark as Exhibit 5.
MR. VOIGT: Objection. Form.
A (Exhibit No. 5 was marked for identification.)
Q First of all, does this appear to you to be a printout of an article from the Columbus Dispatch?
<table>
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<th>Page 121</th>
<th>Page 123</th>
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<tbody>
<tr>
<td>1. A  It appears to be, yes, from Sunday, August 2 the 19th of 2012.</td>
<td>1. A  I think Doug's quote has been circulated, yes.</td>
</tr>
<tr>
<td>2. Q  Are you familiar with this article?</td>
<td>3. Q  Has anyone in your office spoken with Mr. Preisse about this quote?</td>
</tr>
<tr>
<td>4. A  I don't recall it necessarily but I haven't had a chance to read the whole thing.</td>
<td>5. A  Not that I know of.</td>
</tr>
<tr>
<td>6. Q  Do you know a name guy by the name of Doug Preisse?</td>
<td>6. Q  Was any action taken with him with respect to this quote?</td>
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<tr>
<td>9. Q  Preisse. I'm sorry.</td>
<td>9. Q  Does your office endorse the views in the quote?</td>
</tr>
<tr>
<td>11. A  Yes, I do.</td>
<td>11. A  No, we do not.</td>
</tr>
<tr>
<td>12. Q  All right. Who is Doug Preisse?</td>
<td>12. Q  Let me direct your attention to the next page of this article. The fifth full paragraph down begins, &quot;But from a political...&quot;</td>
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<tr>
<td>13. A  He is a friend of mine and chairman of the Franklin County Republican Party and I think -- but he's on the Board of Elections of Franklin County, but I can't remember if he is currently chairman or was chairman.</td>
<td></td>
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<td>14. Q  Is he still on the board, do you know?</td>
<td>15. Do you see that?</td>
</tr>
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<td>17. Q  And he was appointed by Secretary Husted?</td>
<td>17. Q  It says -- and the full paragraph says,&quot;But from a political and perhaps cultural standpoint not all absentee ballots are created equal. Republicans are more likely to mail their absentee ballots, while Democrats, (and African-Americans) prefer to cast their absentee ballots in person.&quot;</td>
</tr>
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<td>18. A  He was first appointed by Secretary Brunner.</td>
<td>19.</td>
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<td>20. He has been recommended for re-appointment by Secretary Husted.</td>
<td>21.</td>
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<td>21. Q  Okay. I would like to direct your attention to the second page of this document. The fifth full paragraph begins with quote, &quot;I guess I really actually feel...&quot;</td>
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<td>22.</td>
<td>23. Do you see that?</td>
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<td>22.</td>
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<tr>
<th>Page 122</th>
<th>Page 124</th>
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<tbody>
<tr>
<td>1. Do you see that?</td>
<td>1. Q  Is that consistent with your office's experience?</td>
</tr>
<tr>
<td>2. A  I do.</td>
<td>2.</td>
</tr>
<tr>
<td>3. Q  Now, this article quotes Mr. Preisse as saying, &quot;I guess I really actually feel we shouldn't contort the voting process to accommodate the urban - voter-turnout machine.&quot; Let's be fair and reasonable.&quot; Do you see that?</td>
<td>3.</td>
</tr>
<tr>
<td>4. A  Not that I know of.</td>
<td>4.</td>
</tr>
<tr>
<td>5. Q  Are you asking him to provide some type of expert testimony here?</td>
<td>5.</td>
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<td>7. Q  He's already testified that his office does not maintain that information.</td>
<td>7.</td>
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<tr>
<th>Page 125</th>
<th>Page 126</th>
<th>Page 127</th>
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<tbody>
<tr>
<td>1</td>
<td>Q Do you recall if your office was aware of this news article?</td>
<td>1</td>
</tr>
<tr>
<td>2</td>
<td>A Yes, we would have seen it.</td>
<td>2</td>
</tr>
<tr>
<td>3</td>
<td>(Exhibit No. 6 was marked for identification.)</td>
<td>3</td>
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<tr>
<td>4</td>
<td>Q All right. Next I have Exhibit 6. And this is a string of emails among members of the Secretary of State's Office, correct?</td>
<td>4</td>
</tr>
<tr>
<td>5</td>
<td>A Yes, it appears to be.</td>
<td>5</td>
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<tr>
<td>6</td>
<td>Q First let me ask you about the very top email on the first page.</td>
<td>6</td>
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<tr>
<td>7</td>
<td>A Yes.</td>
<td>7</td>
</tr>
<tr>
<td>8</td>
<td>Q And Ms. Pelger writes -- she asks whether something should be included in a response article about waiting in line in Ohio being a choice. Do you see that?</td>
<td>8</td>
</tr>
<tr>
<td>9</td>
<td>A Yes.</td>
<td>9</td>
</tr>
<tr>
<td>10</td>
<td>Q Now, first she says, &quot;Because Mags, you and said it and separately I just heard JAH say it.&quot; Do you see that?</td>
<td>10</td>
</tr>
<tr>
<td>11</td>
<td>A Yes.</td>
<td>11</td>
</tr>
<tr>
<td>12</td>
<td>Q And Ms. Pelger writes -- she asks whether something should be included in a response article about waiting in line in Ohio being a choice. Do you see that?</td>
<td>12</td>
</tr>
<tr>
<td>13</td>
<td>A Yes.</td>
<td>13</td>
</tr>
<tr>
<td>14</td>
<td>Q And do you understand Mags to be a reference to Maggie Ostrowski?</td>
<td>14</td>
</tr>
<tr>
<td>15</td>
<td>A Yes.</td>
<td>15</td>
</tr>
<tr>
<td>16</td>
<td>Q And do you understand JAH to be a reference to Secretary Husted?</td>
<td>16</td>
</tr>
<tr>
<td>17</td>
<td>A Yes.</td>
<td>17</td>
</tr>
<tr>
<td>18</td>
<td>Q Do you know what she meant by about waiting in line in Ohio being a choice?</td>
<td>18</td>
</tr>
<tr>
<td>19</td>
<td>A I don't know for sure. I would presume that it's because of the multiple opportunities to participate as were referenced in the Secretary's draft, that there's a vote by mail option and there's a voter early absentee option in addition to Election Day.</td>
<td>19</td>
</tr>
<tr>
<td>20</td>
<td>Q And you would agree that at least some voters who vote early in person absentee have to wait in line, right?</td>
<td>20</td>
</tr>
<tr>
<td>21</td>
<td>A I don't know about have to wait in line but -- given the number of days and hours, but there would be some circumstances where a person presenting themselves to vote in person absentee before Election Day may wait in line, yes.</td>
<td>21</td>
</tr>
<tr>
<td>22</td>
<td>Q Okay. And is this the view of your office that anyone who waits in line in Ohio does so by choice?</td>
<td>22</td>
</tr>
<tr>
<td>24</td>
<td>A I think my previous testimony was that our office's position was there are multiple ways to vote</td>
<td>24</td>
</tr>
</tbody>
</table>
in Ohio and that it's easy to vote here.

Q    Do you have a position on whether waiting in line to vote is a choice?

MR. VOIGT: Objection. Form. Asked and answered.

A    Can you ask the question.

Q    Yeah.

Does your office have a position on whether waiting in line to vote in Ohio is a choice?

MR. VOIGT: You heard the answer to the question.

BY MR. KAUL:

Q    Was the answer yes or no?

MR. VOIGT: He answered the question.

BY MR. KAUL:

Q    Was the answer yes or no?

MR. VOIGT: He answered the question.

BY MR. KAUL:

Q    Can you answer it?

MR. VOIGT: He already answered the question.

BY MR. KAUL:

Q    You can answer.

MR. VOIGT: Do you want him to repeat his prior answer?

A    What is the question?

MR. VOIGT: Can I ask the court reporter to read the witness's answer to the question or the same question that was just read. (Prior requested questions and answers read.)

BY MR. KAUL:

Q    And I am entitled to a yes or no answer to that question and you can give it in whatever context you think is appropriate.

MR. VOIGT: I object to that. Let me be clear. He can answer the question however he feels it's appropriate. Some questions are not yes or no. You're asking the same question again and he's already provided an answer. You're asking for another answer. So I don't know where you're going with this but he's already provided an answer to your question.

BY MR. KAUL:

Q    That's fine. You can answer the question, though.

A    So our office's position is there are multiple ways to vote in Ohio and it's easy to vote here.

Q    Do you think that's responsive to my question?

A    I do.

Q    Okay. Next I'll ask you about Exhibit 7. (Exhibit No. 7 was marked for identification.)

Q    Now, this document contains starting on page 2 a press release from the Democratic Leadership urging Government Kasich to veto Senate Bills 205 and 238; is that right?

A    That appears to be the case, yes.

Q    All right. And S.B. 238 is the provision that eliminated golden week; is that right?

A    That's my recollection.

Q    At the bottom of that page there's a paragraph that begins with "Further..." Do you see that?

A    Yes.

Q    And it says that, "The impact of S.B. 238's cuts to early voting..." And that means the elimination of golden week, right?

A    I believe that's the case, yes.

Q    It says, "will fall disproportionately on women, low-income voters, minority voters and elderly voters."

A    Do you see that?

A    I do.

Q    Now, this was forwarded to Matthew McClellan for comment, right?

A    It appears so, yes, on February the 20th of '14 at 1:25.

Q    So your office was aware of this press release, correct?

A    Yes.

Q    And did you assess the accuracy of that statement?

A    I don't know that we did, no.

Q    Do you have a view as to whether the elimination of same day registration falls disproportionately on women, low-income voters, minority voters and elderly voters?

MR. VOIGT: Objection. Form. He already testified that the Secretary's office does not maintain demographic data.

BY MR. KAUL:

Q    You can answer the question.

A    Our office's position is that it does not.

Q    That it does not disproportionately affect those groups you said?

A    Correct.
Q    What's the basis for that position?
A    Well, as I said earlier, we don't track that
data.

The basis of that would be that my
recollection is that in the previous General Assembly
there was a House Bill that was introduced by two
Democratic members, both in Franklin County, that I
believe also eliminated golden week, proposed to
eliminate golden week.

It surprised me that those Democratic members
would introduce something that would fall
disproportionately on low-income voters, women voters
and elderly voters.

Q    Why would that surprise you?
A    Because knowing those two people as I do
those would be groups that those two representatives
would be particularly careful to protect.

Q    Okay.  So it's the official view of the
Secretary of State that these -- that the elimination
of golden week does not disproportionately fall on
women, low-income voters, minority voters and elderly
voters?

MR. VOIGT:  Objection.  Asked and answered.

MR. KAUL:  We've now gotten two different
answers, right?

MR. VOIGT:  No, I think the answer has been
clear.

A    So I think our office's position is that we
don't track this data.  We don't know as our office,
but that this is a proposal that had been through two
General Assemblies supported by members of both
contemporary parties.

Q    S.B. 238 is not supported by both political
parties, right?
A    I'm sorry.  Correct.  But in the previous
General Assembly different legislation that eliminated
golden week was supported by both political parties.

Q    And was that all that previous legislation
did?
A    I don't recall anything that the previous
legislation did from the earlier General Assembly.

Q    Okay.  The next sentence in that paragraph
says, "During the 2012 and 2008 elections in Cuyahoga
County, African-American voters were 20 times more
likely than white voters to utilize in-person early
voting and 75 percent in-person early voters were
African-American."

Q    All right.  And I would like to direct your
attention to the third page of this document and
there's a signature at the bottom of that page from
Matthew Materson, correct?

A    Yes.

Q    All right.  And this document contains edits
that he has made to a draft of this script prepared by
Maggie Ostrowski, right?

A    It appears to be somebody's edits.  I would
presume that since the earlier version doesn't contain
it that Matt made these edits.

Q    And about half way down the page there's a
paragraph that begins with, "By any measure..."
Do you see that?
A    Yes.

Q    And the first sentence says, "By any measure
it is easy to vote in Ohio." Right?
A    Yes.

Q    And with the cross-out language it says, "We
are a leader in voter access." And then it says ")Show
slide.)" Right?
A    Yes.

Q    And that sentence he deleted the language
after "We are a leader in voter access and we want to
keep it that way!"

A    Is that right?
MR. KAUL: This is a communication involving provisions at issues, which is one of the topics that was noticed, and obviously to the extent the witness doesn't know the answer he can testify to that.

Q    And then the third bullet there's deleted language that originally said, "The effect of these policies? We had record turnout prior to Election Day."

A    Do you see that?

Q    Yes.

A    I do.

Q    Do you know why those two sentences were deleted?

A    Correct.

Q    And as we discussed, there are some exceptions to that, right?

A    Correct.

Q    There's a second bullet that then refers to the fact that Secretary Husted sent an absentee ballot request form to every voter in Ohio, right?

A    Yes.

Q    Do you know why he deleted that clause?

A    Yes.

Q    Do you believe that those two sentences are accurate?

A    I do.

Q    And that was deleted as well, right?

A    Yes.

MR. KAUL: Just briefly going back on the record. As I mentioned to you, I don't have any further questions.

Q    Yes, that's the first bullet point.

A    Correct.

Q    And in the first bullet point he also deleted the sentence, "Including during some weekend and evening hours."

A    Do you see that?

Q    Do you remember what Matt Masterson was thinking at the time he did this, assuming he even did this.

A    I do not know. I do not.

Q    And as we discussed, there are some exceptions to that, right?

A    Correct.

Q    There's a second bullet that then refers to the fact that Secretary Husted sent an absentee ballot request form to every voter in Ohio, right?

A    Yes.

Q    Do you know why he deleted that clause?

A    Yes.

Q    Do you believe that those two sentences are accurate?

A    I do.

Q    And that was deleted as well, right?

A    Yes.

MR. KAUL: And I apologize for that.

Q    So do you know why Mr. Masterson deleted that sentence?

A    I do not know. I do not.

Q    And it specifically highlighted as evidence of that that voting starts 35 days before an election, right?

A    Yes, that's the first bullet point.

Q    And that is no longer true, correct?

A    Correct.

Q    And in the first bullet point he also deleted the sentence, "Including during some weekend and evening hours."

A    Do you see that?

Q    Do you remember what Matt Masterson was thinking at the time he did this, assuming he even did this.

A    I do not know. I do not.

Q    And as we discussed, there are some exceptions to that, right?

A    Correct.

Q    There's a second bullet that then refers to the fact that Secretary Husted sent an absentee ballot request form to every voter in Ohio, right?

A    Yes.

Q    Do you know why he deleted that clause?

A    Yes.

Q    Do you believe that those two sentences are accurate?

A    I do.

Q    And that was deleted as well, right?

A    Yes.

MR. KAUL: And I apologize for that.

Q    So do you know why Mr. Masterson deleted that sentence?

A    I do not know. I do not.

Q    And as we discussed, there are some exceptions to that, right?

A    Correct.

Q    There's a second bullet that then refers to the fact that Secretary Husted sent an absentee ballot request form to every voter in Ohio, right?

A    Yes.

Q    Do you know why he deleted that clause?

A    Yes.

Q    Do you believe that those two sentences are accurate?

A    I do.

Q    And that was deleted as well, right?

A    Yes.

MR. KAUL: And I apologize for that.
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1 Do you have any questions?
MR. VOIGT: I have no additional questions at this time.
MR. KAUL: Thank you.
MR. VOIGT: We would like to read it.

Thereupon, at 1:17 p.m. on Tuesday, October 20, 2015, the deposition was concluded.

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CERTIFICATE
STATE OF OHIO :
COUNTY OF FRANKLIN :

I, MATTHEW DAMSCHRODER, do hereby certify that I have read the deposition given on Tuesday, October 20, 2015, that together with the correction page attached hereto noting changes in form or substance, if any, it is true and correct.

MATTHEW DAMSCHRODER

I do hereby certify that the foregoing deposition of MATTHEW DAMSCHRODER was submitted to the witness for reading and signing; that after he had stated to the undersigned Notary Public that he had read and examined his deposition, he signed the same in my presence on the ______ day of _____________, 2015.

NOTARY PUBLIC - STATE OF OHIO

My Commission Expires:

Page 143

CERTIFICATE

STATE OF OHIO :
SS.
COUNTY OF FRANKLIN :

I, Diane L. Schad, a Professional Reporter and Notary Public in and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within-named MATTHEW DAMSCHRODER was sworn to testify to the truth, the whole truth, and nothing but the truth in the cause aforesaid; that the deposition then given by him was by me reduced to stenotype in the presence of said witness; that the foregoing is a true and correct transcript of the deposition so given by him; that the deposition was taken at the time and place in the caption specified and was completed without adjournment; and that I am in no way related to or employed by any attorney or party hereto or financially interested in the action; and I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28(D).

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Columbus, Ohio on this 25th day of October, 2015.

DIANE L. SCHAD
NOTARY PUBLIC - STATE OF OHIO

My Commission Expires: June 1, 2020

Page 144

36 (Pages 141 to 143)
CERTIFICATE

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COUNTY OF FRANKLIN:

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IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Columbus, Ohio on this 25th day of October, 2015.

DIANE L. SCHAD
NOTARY PUBLIC - STATE OF OHIO

My Commission Expires: June 1, 2020.

- - -

Armstrong & Okey, Inc., Columbus, Ohio (614) 224-9481
Case No. 2:15-cv-1802

Defendants' Written Objections to the Admissibility of Plaintiffs' Evidence
Exhibit D
IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

OHIO DEMOCRATIC PARTY, et al., : Case No: 2:15-CV-1802
Plaintiffs,

v. : Judge Watson

JON HUSTED, et al., : Magistrate Judge King
Defendants.

- - -
DEPOSITION OF JOHN F. WEBER
- - -

Date taken: Wednesday, October 21, 2015
Time: 8:57 a.m.

Location: PNC Building Executive Conference Room
405 Madison Avenue, 4th Floor
Toledo, Ohio

Court Reporter: Chandra N. Whetstone

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1 APPEARANCES:
2 On behalf of the Plaintiffs:
3 PERKINS COIE LLP:
4 Ceridwen B. Cherry
5 700 13th Street, NW
6 Washington, DC 20005 (202)654-6321
7
8 On behalf of the Defendants:
9 OHIO ATTORNEY GENERAL’S OFFICE:
10 Sarah E. Pierce, Assistant Attorney General
11 Brodi J. Conover, Assistant Attorney General
12 30 East Broad Street, 16th Floor
13 Columbus, Ohio 43215 (614)466-2872
14
15 On behalf of the Witness:
16 FULTON COUNTY PROSECUTING ATTORNEY’S OFFICE:
17 Jon H. Whitmore
18 152 South Fulton Street, Suite 240
19 Wauseon, Ohio 43567 (419)337-9240
20
21 JOHN F. WEBER,
22 being first duly sworn, as hereinafter certified,
23 testified and said as follows:
24
25 BY MS. CHERRY:
26 A Good morning.
27 Q My name is Ceridwen Cherry. I’m from the law firm
28 Perkins Coie and I represent the Plaintiffs in this
29 case, which is the Ohio Democratic Party versus
30 Husted. Could you please state your full name for
31 the record.
32
33 1 John Frederick Weber.
34 Q And spell your last name, please.
35 A W-e-b-e-r.
36 Q Have you ever been deposed before?
37 A No.
38 Q So let’s start just with some ground rules.
39 First, I know it’s a really big room. So if you
40 can’t hear me, ask me to speak up, and I will do
41 the same for you. We’re going to try to make a
42 clear record for the court reporter. So I’ll ask
43 questions, please wait for me to finish my question
44 before you answer, and I’ll do the same for you.
45 Please give audible answers rather than gestures or
46 saying uh-huh or -- just so the record is clear.
47 Does that sound fair to you?
48 A Yes.
49 Q Great. If you don’t understand any question that
50 I ask, please just ask me to state it again, and
51 I’ll try to clarify it. If you don’t ask for
52 clarification, I’ll assume that you understand my
53 question; is that fair?
54 A Yes.
55 Q Where are you currently employed?
56 A I’m retired.
57 Q And how long have you been a member?
58 A About five and a half years.
59 Q And how did you get appointed to the board?
60 A I talked with the prosecutor and Mr. Whitmore,
61 researched some numbers of the -- at our office at
62 the Board of Elections, read over my declaration
63 again.
64 Q If you need to take a break at any time, please
65 just let me know. My plan is to probably go for
66 about an hour at a time and than take a break. But
67 if you need a break before then, just let me know.
68 Same rule for anyone else. Is there any reason why
69 you cannot give full and truthful testimony today?
70 A No.
71 Q What did you do to prepare for today’s deposition?
72 A I have skimmed it.
73 Q What portions of it have you read?
74 A I have skimmed it.
75 Q Is that everything that you did to prepare for
76 today?
77 A Yes.
78 Q Where are you currently employed?
79 A I’m retired.
80 Q You’re retired. Okay. And if I understand
81 correctly, you are on the Fulton County Board of
82 Elections?
83 A Correct.
84 Q And how long have you been a member?
85 A About five and a half years.
86 Q And how did you get appointed to the board?
1 A I was recommended by the Republican Party and confirmed by Secretary Husted.
2 Q And are you in your --
3 A Actually, it was Secretary Brunner at the time.
4 Q And are you in the first term on the Board of Elections?
5 A Second.
6 Q Second. Do you have any other experience in election administration?
7 A No.
8 Q And you mentioned you're retired. What did you do before you retired?
9 A I was a human resources director and a plant manager.
10 Q Where?
11 A A company called McCowan Corporation, which is now long gone.
12 Q And was that in Fulton County?
13 A It was.
14 Q And you mentioned you had been appointed by the Republican Party. Are you a member of the Republican Party?
15 A I am.
16 Q And do you hold a position of leadership?
17 A I am the Vice Chairman of the Fulton County Republican Party.
18 Q So 2012?
19 A That would be my -- that would be my assumption.
20 Q Are you aware of other counties that had more people registering and voting during Golden Week?
21 A I'm sure. Lucas has a sordid past. I mean, Lucas County is right down the road from Fulton. So I'm sure Lucas would have had more.
22 Q Are you -- do you speak with the election officials in Lucas County?
23 A Not often, no, not often.
24 Q Did you discuss Golden Week with them at all?
25 A No. Lucas has a sordid past.

1 Q How much did the Fulton County Board of Elections spend on Golden Week?
2 A I couldn't tell you that number. Our departmental budget runs about $325,000 a year. It's a very exacty, but very, very few ever used Golden Week.
3 Q Just sort of as a ballpark, less than 50?
4 A Clearly less than 50.
5 Q Less than ten?
6 A I can't say that. I really just -- I don't have enough knowledge to say that.
7 Q And by used Golden Week, you mean registered and voted during that time?
8 A I would say -- I'm trying to remember exactly the election that we had Golden Week last time. It was probably the presidential.
9 Q So 2012?
10 A That would be my -- that would be my assumption. So we would then -- I would have been talking about early voters in general, but in terms of registering and voting in Fulton County on the Golden Week, then I would say, you know, clearly less than 20.
11 Q Are you aware of other counties that had more people registering and voting during Golden Week?
12 A I'm sure. So we would then -- I would have been talking about early voters in general, but in terms of registering and voting in Fulton County on the Golden Week, then I would say, you know, clearly less than 20.
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24 A I'm sure. So we would then -- I would have been talking about early voters in general, but in terms of registering and voting in Fulton County on the Golden Week, then I would say, you know, clearly less than 20.
25 Q Are you aware of other counties that had more people registering and voting during Golden Week?

21 A I was a human resources director and a plant manager.
22 Q Where?
23 A A company called McCowan Corporation, which is now long gone.
24 Q And do you hold a position of leadership?
25 A I am.

Defendants' Written Objections to the Admissibility of Plaintiffs' Evidence Exhibit D
Q    And do you know what they're paid per hour?
A    I'm thinking it's four.
Q    And how many hours on those days?
A    They work two days a week each.

Q    What's that regular schedule now?
A    They work two days a week each.
Q    And how many hours on those days?
A    I'm thinking it's four.
Q    And do you know what they're paid per hour?
Q And when did you -- did Fulton County purchase their DREs?
A Before I was on. I'm saying the initial round in Ohio, the State of Ohio helped the counties purchase those, and that's when.
Q So you said you --
A I'm guessing -- let's see, I'm guessing maybe '08, something like that. Whenever the State of Ohio assisted in purchasing those machines, that's when we bought them.
Q What kind of maintenance do they receive?
A They have to be charged on a regular basis, you can't just store them. So you have to hook them up to charge them and then unhook them.
Q So you mean plug them into electricity?
A Yeah, plug them in. And we plug them in in banks and we record exactly when they have been charged and how long they have been charged. The batteries have to be checked when we run our L & A testing, for example. And every time they're used, they're L & A tested, logic and accuracy tested, to make sure that everything is recorded correctly and everything is operating correctly. Other than that, you know, every once -- we check the paper rolls and things to make sure that it's recording and rolling up correctly.
Q Have you ever had problems with the DRE machines?
A Sure. I mean, there are a number of problems where you -- we get calls pretty frequently that -- one of the most normal calls is that the paper roll is not rolling up correctly. There's -- if you're familiar with the machines, there's a paper roll that comes out as you check your vote and shows you what you voted and then rolls in on a roll. And, in general, the problems that we would have had would be that take-up roll. Okay. So it's printing and then moving. If it's not moving correctly on the take-up roll, then the elections people will come over and look at it. And if they can't fix it, we'll come and help them. We'll take it out of service and come out and fix it.
Q And how frequently do you have those kind of problems?
A You know, we're a small county. I would say we have one or two every election, but that's -- but the machines are pretty reliable.
Q And when you have these problems, does that ever cause voters to have to wait to vote?
Q    And you said backed things up for a while. How many concern.

A    But we rarely have lines that would be of --

Q    And you just mentioned with the complicated ballot, how long do you think people waited in that election?

A    20, 25 minutes.

Q    long do you think people were waiting in that election?

A    Well, I mean, there are times that people were going in there and taking like 15 minutes to vote. And, in general, we can be having our poll workers tell them to hurry up, but in general we don't do that because we don't want to be in that position.

Q    So you're saying how long in line?

A    From the time that they arrive to the time they actually cast their ballot.

Q    And just talking specifically about the one that you just mentioned with the complicated ballot, how long do you think people waited in that election?

A    20, 25 minutes.

Q    So I was asking specifically about Election Day. Let's talk about early in-person voting. Are there ever lines to vote early in Fulton County?

A    Not that I have seen.

Q    Have you ever waited in line to vote in Ohio?

A    Well, again, I have waited in a line of three or four. So, no, not anything that would be -- would have been of concern to me.

Q    Are you familiar with the early voting location in Lucas County?

A    Wauseon, the county seat, it's in our office.

Q    And where is that location?

A    Wauseon, the county seat, it's in our office.

Q    And how would a voter get to the Board of Elections, is there public transport, would they need to drive a car?

A    They would generally drive a car.

Q    And from the furthest point of the county to the Board of Elections, how long do you think that drive would be?

A    15 miles maybe.

Q    Are you familiar with the early voting location in Fulton County?

A    Yes.

Q    And I'm not very familiar with Ohio geography.

A    Dead center in Fulton County. If you take the county, which is a rectangle, Wauseon is just about dead center.

Q    And where is that location?

A    One.

Q    And you said backed things up for a while. How far do you think people could drive, they could walk, they can take a bus, going in there and taking like 15 minutes to vote.

A    Well, sometimes they, I think -- again, I think -- they vote at their office and sometimes they do not. Sometimes they get a site and then they argue over where the site is going to be.

Q    And by their office, you mean the Lucas County Board of Elections?

A    No, not really.

Q    Do you know where it --

A    I know they have argued over it.

Q    What have they argued about?

A    Well, sometimes they, I think -- again, I think -- they vote at their office and sometimes they do not. Sometimes they get a site and then they argue over where the site is going to be.

Q    And how would a voter get to the Lucas County Board of Elections, is there public transport, would they need to drive a car?

A    Yes.

Q    Do you know where it --

A    I know they have argued over it.

Q    What have they argued about?

A    Well, sometimes they, I think -- again, I think -- they vote at their office and sometimes they do not. Sometimes they get a site and then they argue over where the site is going to be.

Q    And how would a voter get to the Lucas County Board of Elections, is there public transport, would they need to drive a car?

A    They would generally drive a car.

Q    And from the furthest point of the county to the Board of Elections, how long do you think that drive would be?

A    15 miles maybe.

Q    Are you familiar with the early voting location in Fulton County?
SeaGate Reporting Service, Inc.
405 Madison Ave., Suite 900, Toledo, OH 43604

Case No. 2:15-cv-1802
Defendants' Written Objections to the Admissibility of Plaintiffs' Evidence

Q. Would you say it’s more than 100?
A. I would say that in a presidential, sure.
Q. More than 500?
A. I would have to go back and look and see what our turnout percentages were and see exactly what it was.
Q. Do you have a sense of what percentage of the total voters in Fulton County vote using early in-person voting?
A. You know, my estimation would be maybe 1 and a half percent, just an estimation.
Q. And do you have -- let's take a presidential year.
A. Yes. So of the total work that needs to get done --
Q. During early voting?
A. During early voting?
Q. -- during early voting, what percentage of that is
being handled by your full-time staff versus by these two part-time people?
MS. PIERCE: Objection; vague.
A. You can answer.
Q. I'm going to say -- I'm going to answer that in two ways. Okay. First off, our full-time people have to be there. Okay. So they're going to be there 100 percent of the time. There is no early voting hour when our full-time exempt people are not there. So that means that when the part-time people are there, unless our full-time people are busy doing something, the part-time people -- and if they are, could they help the voter in that instance. So it's hit and miss. You understand what I'm saying? So our full-time people are always there every hour of early voting.
Q. Let's look at paragraph 9 of your declaration. In the second sentence, you say we only have two employees that do 99 percent of the early voting work. That seems correct to you?
A. I would say that would be correct.
Q. So you only --
A. Now, we're talking about the early voting work. Okay. So there's a lot of work that goes in for early voting. Yes, that's correct. We basically

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<p>| 1       | 15 miles? |
| 2       | A        | Again, you're talking about numbers. I don't know that they wait a long time to vote in Lucas County. |
| 3       | 4        | I have no personal knowledge of that. |
| 5       | Q        | Also, in paragraph 15, you mention that uniform early voting hours are necessary due to voter confusion; is that correct? |
| 6       | A        | Yes. |
| 7       | Q        | Could you explain that further. |
| 8       | A        | The voters in Fulton County basically watch the television stations from Toledo, which is Lucas, and they read the newspaper, the Toledo Blade, which is Lucas. Those stations tend to report -- when we have separate voting hours, they tend to report the voting hours available in Lucas County. And so we have had people actually walk in in Fulton County and say -- before we were open to receive votes, when we used to do it differently, and then feel disenfranchised when we told them you will have to come back at 9:00 or whatever. We don't -- we are very opposed to having separate hours. In my opinion, if you're an Ohio voter, you should have exactly the same opportunity to vote on that issue hours-wise as any other Ohio voter. |
| 10      | Q        | So you mentioned -- correct me if I misunderstood -- that voters had come to the Board of Elections to try to vote during hours that you were not open; is that correct? |
| 11      | A        | Yes. |
| 12      | Q        | How many voters? |
| 13      | A        | One. |
| 14      | Q        | One voter? |
| 15      | A        | One in particular that I was there when he came in. |
| 16      | Q        | But if the Board of Elections was closed, why were you there? |
| 17      | A        | Why was I there? Because I go in frequently to check on their setup and talk to the employees. I just -- I'm overzealous. |
| 18      | Q        | And what was the name of that volunteer? |
| 19      | A        | I don't know. |
| 20      | Q        | Did you make any record of that? |
| 21      | A        | No. |
| 22      | Q        | Did you talk about it with the staff? |
| 23      | A        | We would have discussed it with the staff at the time probably, but -- |
| 24      | Q        | Are you aware of other voters who expressed this type of confusion? |
| 25      | A        | Not that I would be personally aware of. |</p>
<table>
<thead>
<tr>
<th>Page 30</th>
<th>Page 31</th>
<th>Page 32</th>
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<tbody>
<tr>
<td>1</td>
<td>additional early voting location, but was not</td>
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<td>2</td>
<td>required to open an additional early voting</td>
<td>2</td>
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<tr>
<td>3</td>
<td>location, would that harm the county at all?</td>
<td>3</td>
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<tr>
<td>4</td>
<td>MS. PIERCE: Objection; vague.</td>
<td>4</td>
</tr>
<tr>
<td>5</td>
<td>A Would it harm the county?</td>
<td>5</td>
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<tr>
<td>6</td>
<td>Q Let me rephrase that.</td>
<td>6</td>
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<tr>
<td>7</td>
<td>A You mean would opening another one harm the</td>
<td>7</td>
</tr>
<tr>
<td>8</td>
<td>county?</td>
<td>8</td>
</tr>
<tr>
<td>9</td>
<td>Q No. If --</td>
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<tr>
<td>10</td>
<td>A Or would the choice, simply having the choice,</td>
<td>10</td>
</tr>
<tr>
<td>11</td>
<td>harm the county?</td>
<td>11</td>
</tr>
<tr>
<td>12</td>
<td>Q Exactly. Would simply having the option to open</td>
<td>12</td>
</tr>
<tr>
<td>13</td>
<td>an additional early voting location have any effect</td>
<td>13</td>
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<tr>
<td>14</td>
<td>on Fulton County?</td>
<td>14</td>
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<tr>
<td>15</td>
<td>A We would not open an additional location. So I</td>
<td>15</td>
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<tr>
<td>16</td>
<td>guess the option would be -- you know, unless we</td>
<td>16</td>
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<td>17</td>
<td>were mandated to do so. And the problem is the</td>
<td>17</td>
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<tr>
<td>18</td>
<td>cost is just incredible for us. We would literally</td>
<td>18</td>
</tr>
<tr>
<td>19</td>
<td>have to hire instantly in order to open a second</td>
<td>19</td>
</tr>
<tr>
<td>20</td>
<td>location. That would be the first problem. And so</td>
<td>20</td>
</tr>
<tr>
<td>21</td>
<td>what we're charging back to these entities who put</td>
<td>21</td>
</tr>
<tr>
<td>22</td>
<td>issues on a special ballot would go crazy because</td>
<td>22</td>
</tr>
<tr>
<td>------------------------</td>
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<td></td>
</tr>
<tr>
<td>The Ohio Democratic Party, et al.,</td>
<td>Defendants' Written Objections to the Admissibility of Plaintiffs' Evidence</td>
<td></td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>Q</th>
<th>And what kind of training does your part-time staff receive?</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>It's in-house training, although there are also courses from the Secretary of State, I'm sure that we use, and there are webinars that the Secretary of State provides.</td>
</tr>
<tr>
<td>Q</td>
<td>And of that $325,000, taking a presidential year as an example, let's say 2016, what percentage of that will you spend on early voting?</td>
</tr>
<tr>
<td>A</td>
<td>It would be relatively small, but I have no idea.</td>
</tr>
</tbody>
</table>

**Page 35**

<table>
<thead>
<tr>
<th>Q</th>
<th>So as I understand it, because you have to pay those full-time staff anyway --</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Right.</td>
</tr>
<tr>
<td>Q</td>
<td>-- whether there's early voting or not, the cost wouldn't change for those people?</td>
</tr>
<tr>
<td>A</td>
<td>They're considered exempt employees so we pay them x-amount per month whether they work 40 hours a week, 50 hours a week, 60 hours a week, or 20 hours a week.</td>
</tr>
</tbody>
</table>

**Page 36**

<table>
<thead>
<tr>
<th>Q</th>
<th>Is that something that the staff at the Board of Elections has mentioned to you as a problem?</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Currently?  Rephrase that.  The problem, you mean people of the same name or --</td>
</tr>
<tr>
<td>Q</td>
<td>Yes.  Has the staff at the Board of Elections ever mentioned to you that they have had difficulties as a result of having more than one voter with the same name?</td>
</tr>
<tr>
<td>A</td>
<td>Not specifically.</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>Q</th>
<th>Has the staff at the Board of Elections ever mentioned that as something that they have encountered?</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>No.  I mean, it's just like saying, well, how many have the same driver's license number.  You know, it's -- currently, they use methods to identify voters and in general -- they do have a number that are the same name, I'm well aware of that.</td>
</tr>
<tr>
<td>Q</td>
<td>Are you familiar with the requirements under current law to verify an absentee ballot?</td>
</tr>
<tr>
<td>A</td>
<td>Generally.</td>
</tr>
</tbody>
</table>

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The Ohio Democratic Party, et al.,
Case No. 2:15-cv-1802

419-241-2070  Fax: 419-241-4718  888-419-2070

Electronically signed by Chandra Perry (401-386-936-5818)
de6bbd8b-b401-4870-b5f2-09547b766f30

 Defendants' Written Objections to the Admissibility of Plaintiffs' Evidence
Exhibit D
Q: Have you or members of your staff had problems verifying the identity of voters using absentee ballots?
A: Not with the information that's on there now.
Q: Say, thinking back to 2012, did you have absentee ballots where the Board of Elections had difficulty verifying the identification of the voter?
A: Again, I have not been told of that. I have no personal knowledge of that.
Q: Do you know what happens if the information that the voter fills out on their absentee ballot is correct, but it doesn't match the information that's in the voter registration because there was some kind of error in entering it, for example, the election worker just mistyped the number or transposed two numbers?
A: Could you be a little more specific.
Q: Yes. So just say I'm a voter and I fill out an absentee ballot application.
A: Okay.
Q: And I fill it out correctly, everything on it is truthful and accurate.
A: Okay. Which means you're providing this information.
Q: Exactly. And I submit it to the Board of Elections and the Board of Elections matches that information to what's in the voter registration database, but there's an error in the database, just through, for example, someone entering the information in wrong, they hit the wrong number. Would that ballot be counted?
A: Well, we could certainly allow that person to vote a provisional ballot and then I'm sure it would depend -- or depending on when we got the ballot, I mean, we might have time to resolve that. But, in general, they could vote a provisional ballot.
Q: So if I understand correctly, they submit this absentee ballot, you would notice that there was some discrepancy between --
A: Well, that's your hypothetical.
Q: Right.
A: If the clerk notices that there was --
Q: Right. So, in that scenario, the clerk would contact the voter?
A: I wouldn't see why they could not.
Q: And you said that they could vote a provisional ballot. Would the --
A: Depending on what -- and if it's a clerical error, they could probably void a ballot and redo it. But if it's an error in the database which would indicate that their identity would be different than the -- you know, whatever, then they may, under circumstances, have to vote a provisional ballot.
Q: And how would the clerk at the Board of Elections know that it was an error in the database, rather than an error on the absentee ballot?
A: It's your hypothetical, it's not mine. How would they know it's an error in the database? I guess it would depend on the nature of the error.
Q: And you said that they could vote a provisional ballot. That would be presuming that the clerk had recognized it as some kind of error in the database?
A: Let me just try to start over. If you walk into the polls on Election Day and you have a problem with your data, with the data you provide matching up with the database, perhaps you moved or something, you know, you could be allowed to vote a provisional ballot. If you're sending in an absentee ballot -- and, again, on your hypothetical, the clerk notices there's a problem and there's a reasonable amount of time, I don't know why the clerk couldn't contact the person and say there's a problem here, let's try to get it resolved. Again, that's -- it's your hypothetical, it's not mine.
Q: Is it the practice of your office that if they notice the information on the absentee ballot doesn't match the database, that they would contact the voter?
A: You know, it's a small county and I'm sure they have contacted the people before. But in that particular case, again, it's your hypothetical. I don't know of --
Q: Are you aware that, under current law, voters who cast a provisional ballot must provide their date of birth and their current address?
A: Yes.
Q: Again, that is a somewhat recent change in the law. Prior to the current law, how did you verify the identity of people casting provisional ballots?
A: I don't -- I would have to go back and get a -- you know, for example, they cast the provisional ballot when they walk in the polls. Then the poll workers are certainly free to verify their identity via a driver's license or whatever at the time they give them the provisional.
Q: How frequently do you reject -- or does the Board of Elections reject a provisional ballot because
<table>
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<th>Page 42</th>
<th>Page 43</th>
<th>Page 44</th>
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<tbody>
<tr>
<td>1. they're not able to verify the identity of a voter?</td>
<td>1. A Not specifically that I can recall.</td>
<td>1. Q What does the Board of Elections or your staff do --</td>
</tr>
<tr>
<td>2. MS. PIERCE: Objection. Are we talking pre-2014 or after?</td>
<td>4. A Let me just add one thing there.</td>
<td>4. Q Yeah.</td>
</tr>
<tr>
<td>3. Q Current, in 2014.</td>
<td>6. A In a small county, the Board of Elections is much more inclined to know the voters and to be able to assist the voters. Okay. It's much easier to do than it would be in Cuyahoga County.</td>
<td>9. Q So in your county, do you think, do your staff need these five requirements on the provisional ballot to be able to verify it or, as you said, because they know most of the voters --</td>
</tr>
<tr>
<td>4. A Currently, it happens now and then. But, again, the provisionals are -- you have a period of time to straighten those things out and provide whatever ID is required.</td>
<td>10. A Yes.</td>
<td>14. A Yes.</td>
</tr>
<tr>
<td>5. Q So if there is information --</td>
<td>11. Q Why do they need that?</td>
<td>15. Q Why do they need that?</td>
</tr>
<tr>
<td>6. A So what you're saying in your hypothetical -- I don't mean to interrupt you -- but in your hypothetical, you're saying we get the provisional ballot, we sit on it for ten days, and then the voter fails to provide the required ID. In that case, we would then have no choice but to --</td>
<td>7. A Why do they need them? There are, again, at least two John Webers that I know of. There are a number of Ruppys and Ruppys around Archbold that would be -- you know, and the other thing that I will point out is when they request this absentee ballot, that's exactly the data they provide. So they have already provided us that data. So now you're saying it's missing on the second time around.</td>
<td>16. A Why do they need them?</td>
</tr>
<tr>
<td>7. Q Let's talk about a slightly different situation.</td>
<td>8. You know, could our people go back and look it up? I guess that's a possibility. But the other side is what this is telling me is I'm writing down here and swearing that I'm the person who cast that ballot. I may not be the person that -- you know, the other one is I'm the person that requested the absentee ballot. Now I'm the person who filled this ballot in and is submitting it.</td>
<td>17. Q So, if I understand you, are you aware of situations where you have not been able to verify the ballot just because the date of birth was missing? So, for example, they had the same name, the same ID, maybe the last four digits of the Social Security, and the same address. So the only information that would allow you to distinguish between two voters was the date of birth.</td>
</tr>
<tr>
<td>8. A Then my -- again, the Secretary of State requires that this information is on there. So my opinion would be that that would not be -- now, again, it's a provisional ballot you're saying, so there is time for them to update that information. If they don't update it, then the ballot is not counted.</td>
<td>9. MS. PIERCE: Objection; vague.</td>
<td>18. A Yeah, I can't say that I have a particular knowledge of a case in which that -- I just don't have the individual knowledge of that. Certainly, there are a number of provisionals that don't get counted because various information is not provided.</td>
</tr>
<tr>
<td>9. Q So if you receive a provisional ballot that's missing the date of birth, but all of the other information is correct and it's been verified, is it the practice of your office to contact that voter and allow them to procure the missing date of birth?</td>
<td>10. Q And the date of birth would be one of those?</td>
<td>19. A Could be one of those, sure.</td>
</tr>
<tr>
<td>10. A It happens very, very rarely, but my opinion is that we would do that, yeah.</td>
<td>11. A That a vote was counted that you say that I don't think should have been counted?</td>
<td>20. Q You mentioned that your staff helps voters. What do they do to help voters who are illiterate or</td>
</tr>
<tr>
<td>11. Q Thinking back to, say, 2012, when the address and date of birth were not required on the provisional ballot, how many times, in your opinion, was a provisional ballot that was cast in Fulton County counted that you did not believe should have been counted?</td>
<td>12. A Not specifically that I can recall.</td>
<td>21. Q And the date of birth would be one of those?</td>
</tr>
<tr>
<td>12. A How many times was one counted that I personally don't believe should have been counted?</td>
<td>13. Q Before the address and date of birth was required.</td>
<td>22. Q You mentioned that your staff helps voters. What do they do to help voters who are illiterate or</td>
</tr>
<tr>
<td>13. Q You know, obviously, the board would make that decision. So, personally, I don't have a number for you.</td>
<td>14. Q That a vote was counted that you say that I don't think should have been counted?</td>
<td>23. A Could be one of those, sure.</td>
</tr>
<tr>
<td>14. Q Can you think of any instances?</td>
<td>15. Q (Indicating.)</td>
<td>24. Q You mentioned that your staff helps voters. What do they do to help voters who are illiterate or</td>
</tr>
<tr>
<td>15. A That's a possible. I mean, obviously, we try to assist the voters. Okay. It's much easier to do than it would be in Cuyahoga County.</td>
<td>16. Q (Indicating.)</td>
<td>25. Q (Indicating.)</td>
</tr>
</tbody>
</table>
perhaps struggle with literacy?

A  Well, we have a number of things. And, again, it's not -- we're talking about Ohio law here, we're not talking about the local. You are able to assist a voter and our people would certainly point that out. If you have a voter that has a problem they may have an assist from a relative or something to assist them to vote. Certainly we go out to nursing homes and things, where some of the people may or may not be literate. We have -- the machines have recordations where you could literally plug in and listen to one of our clerks reading the issues into the machine. So there are a lot of things that they could do.

Q  If there's a voter who is illiterate and wanted to request and fill out the absentee ballot request application, would your staff help them fill that out?

A  They're not going to go to their home and help them fill it out, no.

Q  If they came into the office?

A  If they came and said -- they would, sure.

Q  So now let's say that same voter has received their absentee ballot and they need to fill out the identifying information on it. Would your staff assist them in filling that out?

A  You know, if they were to call in and say I don't understand what you're asking for here or do I have to fill this out or that out, then certainly they would. But they're not going to say, well, your Social Security number is blank.

Q  But if they were illiterate, would they be able to come into the office and have someone on your staff fill out the form for them?

A  If they were illiterate and came into the office, we would probably -- I'm sure we would help them.

Q  In your declaration, you talk a lot about special elections?

A  Yes.

Q  Just so I understand, your concerns about special elections are related to the existence of early voting generally, not specifically just Golden Week?

A  No, early voting generally and the expansion of it. And, basically, there are a number of reasons why in -- the small counties, they are very different than the large counties, very, very different. Again, we talked about the geography of Fulton County. If we put -- for example, if we expand the hours from where they are now, if we add a location from what we are required now, we're going to incur costs that are going to knock the Commissioner's socks off because, in these special elections in particular, it's not always the taxpayer directly who is paying for this. We charge those back.

So if I'm Swanton School District and I put a levy on -- or let's go to the Swanton Parks, which is this last special election in May of '15, they put a levy on the ballot. We're going to charge them what our costs are related to that early voting and the Election Day. Lucas County is going to charge them also because part of that falls in Lucas County.

Lucas County's charge will be way more than ours will because Lucas County is hiring people to staff that facility, wherever it is. They have staff that's working there that are billable, they're non-exempt or hourly or whatever, and they're billable to that entity. We had -- in the last special election, we had two entities that were going to put something on the ballot and pulled it off because they found out they were going to be charged, even at our low rate.

So you have to understand that the taxpayers of the school district, for example, are paying -- the Swanton School District, they're paying a lot of money to get that on the ballot, especially as it relates to Lucas County because of the way Lucas County -- and I'm not saying they should. I don't think they have a whole lot of choice. But because of the way they handle the election is vastly different from the way we do it, we -- our exempt -- and I don't want to -- I'm not going to preach here.

Our exempt employees, as I have said, work every one of those hours. Okay. So that means that by the time we get to counting votes on the night of the election, they have been up at 3:30 that morning. They worked from 3:30 all the way through the day and we're getting up to maybe 9:00 at night by the time we have got everything back in and we're starting to count. They've worked on the Monday before the election, they've worked on the Sunday before the election, they've worked on the Saturday before the election, probably a total of 63 hours in that week.

So now we're taking these people who you just dragged through a knothole backwards and said count the votes. We don't think that's a great position.
Q    Poll book.
A    No, we have the poll books currently by precinct, although we are looking at -- the State of Ohio now is going to provide funds to buy electronic poll books. And when we go to that, we will have virtually all of the machines in the location will be set up to take anybody that comes into that location. Now, currently, in some instances, we have that.

Q    By that, you mean the consolidated --
A    The ability of machines to take two or three precincts.
Q    And what's the advantage of having a consolidated poll book?
A    Well, a consolidated polling place?
Q    Poll book.
A    Poll book. Well, there are a lot of advantages to the electronic poll books. I mean, obviously, you're going to come in and, depending on what style you buy, the poll book will basically identify the voter, allow them to pick a party in the primary. It will do everything, including setting the card that he takes to the machine. And then it will allow him to vote virtually -- because we'll set it up that way -- in any of the machines that are available, which, again, would cut down -- if you go back to the example I gave where I vote, where they have a split, they have one machine for Evergreen and one for Swanton Schools, et cetera, if ten people come in at the same time that have to vote for Swanton
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405 Madison Ave., Suite 900, Toledo, OH 43604

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1 you're in the wrong location, you vote at this
2 location, and print out directions to go to that
3 location.
4 Q Have you ever had a situation where a voter has
5 come into one of these polling locations that has
6 more than one precinct and has voted the wrong
7 ballot because they voted in the wrong precinct?
8 A I'll give you an example where they voted the
9 wrong ballot. If you go into the primaries, we had
10 a gentleman come in very distraught a long time ago
11 in one of the older elections. But he got an
12 issue only ballot in the primary and that's
13 because that's what he requested. And he went and
14 voted it and went all the way through and hit cast
15 ballot. And, of course, for us, once you cast the
16 ballot -- then he went back and complained that he
17 didn't have any candidates. Well, once you cast
18 the ballot, you have voted. So if you -- have we
19 had people who have come in and -- would you go
20 over that again just --
21 Q Yes. So I'll state my example again. Just say I
22 come in, I'm a voter, and I don't know which
23 precinct I'm supposed to vote at. Is it possible
24 that I might vote in the wrong precinct because I
25 got that wrong?

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1 A Well, we would either guide you to the correct
2 precinct or if you went to the precinct and we
3 checked the poll books at the precinct and you're
4 not in there, then you could vote provisional.
5 Theoretically, you could vote provisional if you
6 have all of the other qualifications.
7 Q Are you aware of any times when someone voted the
8 wrong ballot because of this precinct -- voting in
9 the wrong precinct issue, especially in one of
10 these locations where there's more than one
11 precinct?
12 A No, because we're checking you against the poll
13 book. And if you're not in that poll book, you're
14 going to vote provisional or you're going to find
15 your precinct.
16 Q And just say -- just so I understand, if these
17 precincts are all at the same location --
18 A Yeah.
19 Q -- how would it be set up or is there a different
20 desk for --
21 A Each location currently would have a poll book.
22 So I walk up and say I'm in Swanton 3 and we look
23 through that poll book. If your name is in there,
24 then you can -- then you will vote there. If your
25 name is not in there, we're going to try to

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1 find out where you should vote. And we're going to
2 say, well, okay, you're in Swanton 2 over there or
3 whatever. And if that doesn't work and we're
4 convinced that you're an eligible voter, you can
5 vote provisionally.
6 And, of course, one of the things -- I'll go
7 back to the time constraints on our staff. After
8 they're done voting on the last day before the
9 election, all the books have to be updated before
10 the morning because, when the polls open and you
11 walk in, I have to know whether you voted an
12 absentee ballot. Okay. So that all has to be
13 updated.
14 So when you come there and you say my name is
15 John Smith and you're not -- you may not be in the
16 book or you may be in the book and it may indicate
17 that you voted an absentee ballot. If it indicates
18 that, you may still be able to vote a provisional
19 ballot because you may say I requested that ballot,
20 but I never filled it out. So we may still allow
21 you to vote provisional. Then we'll allow enough
22 days after the election for all of the other
23 mailed-in ballots to clear. And then if a person
24 has not voted the absentee ballot, then that
25 provisional probably -- unless there's some other

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1 problem with it, that provisional is probably the
2 way he ends up voting.
3 Q So if I come in and just say I think I'm in
4 precinct 1, I would stand in the line for
5 precinct 1 or go to the table --
6 A Yes.
7 Q -- and they would say, no, you're not there.
8 A Right.
9 Q Then we would go through the process of finding
10 out --
11 A Then they would ask them where they live and try
12 to figure out where they -- you know, where they
13 are. And then we would make sure that they, in
14 fact, are eligible to vote. And I'm sure the first
15 thing they would ask is have you moved recently,
16 have you -- you know, because most people that do
17 that, they'll say, well, I voted here before. And
18 it may be four years since they have voted or
19 whatever and maybe they have moved in the meantime
20 or whatever. So we'll try to locate for them
21 whatever we can in terms of where they are, in
22 fact, eligible to vote.
23 Q So the advantage of having these consolidated poll
24 books would be you walk in --
25 A You know, that would be done instantly. It's a

15 (Pages 54 to 57)
Q    Can you tell me about those.
A    We successfully prosecuted a case a couple years ago, I think.  We just caught it by luck and good clerical work.  The person voted -- as I recall, they called in and wanted to change their address to an address in, I think, South Carolina, I believe.
MR. WHITMORE:     Yes.
A    The clerk talked to him for quite a while and just happened, in general conversation, asked him how long they had been down there or something and he said six, eight years, long time.  So after the conversation, the clerk is saying, you know, that's kind of strange they never updated whatever, let's check the voting records and see if he votes up here.  Yeah, he does, he votes up here by absentee ballot.  And the farther they went, the stranger it got.
So they called down there and -- to make a long story short -- they said, yes, he votes down here, has voted in three or four national elections and a number of local elections.  We then thought it could be an ID problem, stolen identity or something.  So we retrieved the signatures from the poll books in South Carolina, matched them to the signatures on the absentee ballot request from Fulton County.  Those were an exact match.
Fulton County.  Those were an exact match.
We then proceeded to -- we called the federal authorities first since the person had voted in -- obviously voted at least in two different states in a federal -- number of federal elections.  Believe it or not, they declined to prosecute.  So we called the Ohio Attorney General's office and Mr. DeWine said I have a person in the area and they can be there tomorrow.  And so we ended up prosecuting that person.  And, I mean, that's one -- the State of Ohio, to my knowledge, does not exchange information with South Carolina.  So had the clerk not been vigilant, there would have probably been no way we would have caught that.
Q    So just to make sure I understand, this was a voter who was registered in Fulton County, was --
A    Correct.
Q    -- voting by absentee --
A    Correct.
Q    -- in Fulton County, and also voting in person in --
A    South Carolina in person.
Q    -- South Carolina?  And when did this take place?
MR. WHITMORE:     Do you recall?
A    A couple years ago, three or four years ago.

1  great service to the voter.  And we may, in fact, have to call back into the office to say I have so-and-so here who says he's whatever and we can't find him, you know, what do you show there.
2  Q    Sorry.  Having the consolidated poll book would save time for the voter and for the staff?
3  A    It saves a lot of time for the voter, it's more convenient for the staff.  And, again, the big savings for the voter is the fact that they could now go to virtually any machine in the place the way it will be set up.  So, again, in my example, I walked into the Fulton precinct, they don't have to put me on machine 2 because that's got the Evergreen split where I vote, they just simply hand me the card.
The poll books that we're looking at, the card is set right in the poll books.  So they just take your information, they pull it out and give it to you, and you go right there.  There are concerns with the electronic poll books, don't get me wrong, but --
Q    Are you aware of any cases of voter fraud in Fulton County?
A    Yes, ma'am.
Q    Can you tell me about those.

1  Fulton County.  Those were an exact match.
2  We then proceeded to -- we called the federal authorities first since the person had voted in --
3  obviously voted at least in two different states in a federal -- number of federal elections.  Believe it or not, they declined to prosecute.  So we called the Ohio Attorney General's office and Mr. DeWine said I have a person in the area and they can be there tomorrow.  And so we ended up prosecuting that person.  And, I mean, that's one -- the State of Ohio, to my knowledge, does not exchange information with South Carolina.  So had the clerk not been vigilant, there would have probably been no way we would have caught that.
4  Q    So just to make sure I understand, this was a voter who was registered in Fulton County, was --
5  A    Correct.
6  Q    -- voting by absentee --
7  A    Correct.
8  Q    -- in Fulton County, and also voting in person in --
9  A    South Carolina in person.
10  Q    -- South Carolina?  And when did this take place?
11  MR. WHITMORE:     Do you recall?
12  A    A couple years ago, three or four years ago.
13  MR. WHITMORE:     I would say it was 2012, 2013.
14  A    Yeah, maybe '13, '12 or '13.
15  MR. WHITMORE:     He voted in the presidential primary in 2012.
16  THE WITNESS:      I remember that.  But whether that was when we caught it or whether that was --
17  MR. WHITMORE:     Well, the primary was in March and so I think it was caught maybe in June.
18  Q    Are you aware of other cases of voter fraud in Fulton County?
19  A    No.  I mean, I would have to say if I was aware of -- specifically of a case in Fulton County, I would -- we would prosecute it.
20  Q    And this case that we just talked about with the voter who voted in South Carolina, that didn't take place during Golden Week?
21  A    Well, he voted in person in South Carolina and he voted absentee by mail in Fulton.
22  Q    So it did not take -- he didn't register --
23  A    No.
24  Q    -- or change his address during Golden Week?
25  Okay.  And you said Ohio does not, that you're
A Caucasian.

Q Do you know if Ohio exchanges information with any other states?
A We do. And you're going to get me into a pet peeve on elections. We, for example, do not exchange information with Michigan. And from where you're sitting, Michigan is, what, 10 miles to the north. We don't exchange information. We have a lot of people that live in the Wauseon area and have a cottage at one of the lakes, Devils Lake, Round Lake, Southern Michigan, Hillsdale area. And it's quite possible they could be voting in both. We do not exchange information.

We do not exchange with -- we do exchange with several states. And that -- to me, that's one of the huge problems in the election system that we have. I think they should be required to have data that can be exchanged between any state, at least have it in the form that any state can use it if they want to do that.

Q I think I'm almost done here. For the record, what is your race?
A Caucasian.

1 Q And how many members of the Fulton -- how many members are on the Fulton County Board of Elections?
2 A We don't ask that on here. Okay. How many --
3 Q How many members are there of the Fulton County Board of Elections?
4 A There are four members, two Democrats, two Republicans.
5 Q And how many of those members are African American?
6 A None.
7 Q How many of the members of the Fulton County Board of Elections are Latino?
8 A None that I know of.
9 Q What is the race of the director of the Fulton County Board of Elections?
10 A Caucasian.
11 Q What is the race of the deputy director of the Fulton County Board of Elections?
12 A Caucasian.
13 Q You mentioned two part-time staff. What is the race of each of those?
14 A Caucasians.
15 Q Are there any African-American elected officials that you know of in Fulton County?
16 A None.
A    If you're a large county, you're hiring staff. So
2    if you're the director or deputy director, you are
3    a manager or a supervisor. In other words, your
4    skill is in directing and organizing and motivating
5    people and getting them to accomplish something.
6    Okay. If you're a director in a small county,
7    you're a technician, you do the work. You're the
8    one counting the votes, you're the one doing
9    virtually everything.
10   You have to be much more technically oriented
11   in a small county because that's your skill, you're
12   a technician. Now, you may also direct poll
13   workers and things. I'm not saying that they don't
14   do any of that. But they have to be much more
15   technically oriented than the large counties, which
16   would be managerially oriented.
17   Q    Do large counties have problems with election
18   administration that you don't have in a smaller
19   county?
20   MS. PIERCE:       Objection; speculative.
21   A    Yeah, that would be speculative. Although, I
22   would say certainly Lucas County has been in the
23   press for many years about problems on the Board of
24   Elections in Lucas County.
25   Q    You mentioned that you spoke with someone in the

1    Attorney General's office because they were looking
2    for small -- people from small counties. Why do
3    you think they were looking for people from small
4    counties?
5    A    Because they understand, to some extent, that the
6    problems are different and the effects are
7    different in small counties and large counties.
8    Q    Did you write the first draft of your declaration?
9    A    Yes.
10   Q    What do you mean by that?
11   A    I verbalized it.
12   Q    So you dictated it?
13   A    Yeah.
14   Q    Who did you dictate it to?
15   A    An attorney at the Attorney General's office.
16   Q    Were there just one draft?
17   A    Yes.
18   Q    And then you e-mailed back your edited --
19   A    Yes.
20   Q    Do you still have those e-mails?
21   A    The first draft of it, I don't think so, no.
22   Q    And you mentioned earlier that you had skimmed the
23   complaint in this case. How did you decide what to
24   put in your filing until after that.
25   A    That I didn't include? Not -- I can't say that

1    and then I signed it and then sent it to him.
2    Q    So when you said he sent it to you, he e-mailed it
3    to you?
4    A    Yes.
5    Q    And then you e-mailed back your edited --
6    A    Yes.
7    Q    Do you still have those e-mails?
8    A    Yes.
9    Q    Were there any topics that were in the complaint
10   that you read about that you didn't include in your
11   declaration?
12   A    That I didn't include? Not -- I can't say that
13   there are offhand.
14   Q    Were there -- sorry. When you dictated the
15   declaration over the phone, were there --
16   A    Let me just revise that. I don't think I had much

17   THE WITNESS:      Okay.
18   Q    in my declaration about the IDs on these things,
19   et cetera, et cetera.
20   A    Correct, and -- yeah.
21   Q    And why was that not in your declaration?
22   A    I don't know. I just -- I wasn't really aware
23   that was in your filings until after that.
24   MS. CHERRY:       In the complaint. Okay.
25   Q    Let's just go off the record for one

1    second while I look at my notes, but I
2    think I might be done.
3    Q    (Discussion held off the record.)
4    MS. CHERRY:       Back on the record.
5    A    Those are all the questions that I have
6    for you at this time. Thank you.
7    THE WITNESS:      Okay.
8    - - -
9    EXAMINATION
10   BY MS. PIERCE:
11   Q    I have just a couple questions.
12   A    Okay.
13   Q    We'll get you out of here real soon, I promise.
14   A    Not a problem.
15   Q    Mr. Weber, we talked -- or you talked earlier in
16   your deposition about how, during Golden Week,
voters can both register and vote early in-person at the same time; is that right?

Q    Golden Week is also a week that the board is open for early voting generally; is that right?
A    Well, it depends on the current court case. You know, I think we have been and then I think currently we're not. But, again, the current ruling, as I understand it, the election hours would vary some based on the type of election.

Q    I'm sorry, that was an unclear question. Back in 2012, for example, when Golden Week still existed, it was also a week where the board was open for early voting generally?
A    Yes.

Q    So any registered voter could come in and vote in person, right?
A    Yes.

Q    And any registered voter could also request and send in an absentee ballot by mail, correct?
A    Yes.

Q    And sitting here today, Mr. Weber, is your declaration still true and accurate?
A    Yes.

MS. PIERCE: That's it for me. Thank you.

MR. WHITMORE: Do I have an opportunity to ask him a couple of questions to clarify a couple things that he said from the perspective of the County?

MS. CHERRY: Sure.

MS. PIERCE: Sure.

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EXAMINATION

BY MR. WHITMORE:

Q    Mr. Weber, you had mentioned that these e-mail drafts, you had composed those or received those. That was outside the scope of your duties as a member of the Board of Elections; is that correct?
A    Correct.

Q    So by deleting them, you're not destroying public records, correct?
A    No.

Q    And as a member at the Board of Elections, you said there are four members?
A    Correct.

Q    How many votes do you have?
A    One.

Q    So any questions that pertain to purchasing, you have no unilateral authority to make major
decisions regarding purchasing; is that correct?
A    No.

MR. WHITMORE: That's all I have.

(Discussion held off the record.)

(Deposition concluded at 10:32 a.m.)

JOHN F. WEBER

---

CERTIFICATE

STATE OF OHIO SS.

COUNTY OF LUCAS SS.

I, Chandra N. Whetstone, Notary Public for the State of Ohio, do hereby certify that JOHN F. WEBER was first duly sworn; that the testimony given was reduced to stenotype; that the foregoing is a true and correct transcript of the testimony so given; that this deposition was taken at the time and place in the foregoing caption specified.

I do further certify that I am not a relative, employee, or attorney of any of the parties or counsel employed by the parties hereto or financially interested in this action, nor am I or the court reporting firm with which I am affiliated under a contract as defined in Civil Rule 28(D).

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal of office at Toledo, Ohio, this 26th day of October, 2015.

CHANDRA N. WHETSTONE, nee PERRY

Notary Public in and for the State of Ohio

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

OHIO DEMOCRATIC PARTY, et al.,
Plaintiffs,
vs.
JON HUSTED, et al., Defendants.

THE DEPOSITION OF DANIEL TROY
FRIDAY, OCTOBER 23, 2015

The deposition of DANIEL TROY, called by the
Plaintiffs for examination pursuant to the Federal
Rules of Civil Procedure, taken before me, the
undersigned, Lynn A. Regovich, Notary Public within
and for the State of Ohio, taken at the offices of
Cady Reporting Services, 1468 West 9th Street,
Suite 440, Cleveland, Ohio, commencing at
2:10 p.m., the day and date above set forth.
APPEARANCES:

On behalf of the Plaintiffs:
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sarah.pierce@ohioattorneygeneral.gov
tiffany.carwile@ohioattorneygeneral.gov

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DANIEL TROY of lawful age, called by the Plaintiffs for examination pursuant to the Federal Rules of Civil Procedure, having been first duly sworn, as hereinafter certified, was examined and testified as follows:

MR. PAL: Mr. Troy,
thanks again for coming down. I know you're very busy and I appreciate your time. You've been sworn in so I'm just going to start with some background questions.

EXAMINATION OF DANIEL TROY

BY MR. PAL:

Q  Could you please state your full name for the record?
A  Daniel Patrick Troy.

Q  And what is your address?
A  31600 Lake Shore Boulevard, Willowick, Ohio 44095.

Q  And Mr. Troy, have you ever been deposed before?
A  Yes.

Q  Can you tell me the details?
A  I think I've been deposed twice by the Attorney General's office on suits. I've been deposed in, oh, an annexation suit as a county commissioner. So several times. Yeah.

Q  So you're familiar with these proceedings?
A  Right.

Q  So then what I'm about to tell you is probably old hat, but obviously every word you say is being recorded today and so we'd like to keep as clean a record as possible.
A  Sure.

Q  I'm going to ask you some questions, give you time to answer. I'd appreciate it if you let me finish my question before you begin your answers. If you can make your answers verbal, no gestures, no abbreviations. As clear a record as possible for the court reporter. If I ask you anything that you don't understand, feel free to point that out and I'll clarify it.
A  Okay.

Q  If you don't ask, I'll assume you understood my question. If at any point you want to talk to your counsel or you need a break, just let us know. I'll just ask that if there's a question pending that you complete your answer before we break.

The Ohio Democratic Party, et al.,
Case No. 2:15-cv-1802

Defendants' Written Objections to the Admissibility of Plaintiffs' Evidence
Exhibit E
Deposition of Daniel Troy, taken October 23, 2015

Q   So just to clarify, you reviewed your declaration --
A   Reviewed my declaration.
Q   -- in preparation? I understand.
A   And other than your counsel have you discussed this litigation with anyone else?
Q   Just the Lake County Prosecutor's Office because I know there had been some communication with them regarding the date and time of this deposition, and they indicated to me, do you want us to accompany you, you know, provide legal counsel. And I said, I don't think that's necessary.
Q   Okay. Fair enough. Thank you.
A   I'd like to talk a little bit about your professional background. Can you describe your educational background for the record?
Q   I'm a graduate of the University of Dayton with a degree in political science, and that's --
A   Bachelor of Arts is the highest level of my degree.
Q   Okay. And when did you graduate?
A   1970.
Q   And moving to your professional background, can you tell us where you're currently employed?
A   Currently employed by the County of Lake, Ohio as an elected county commissioner.
Q   And how long have you been a member of the Lake County Commissioners?
A   This is my 17th year. I was elected in 1998 and have been re-elected four additional times.
Q   And prior to your election to the Commission what did you do?
A   I was a member of the Ohio General Assembly for 14 years, seven two-year terms in the Ohio House representing a district that comprised approximately half of Lake County, Ohio.
Q   Okay.
A   And prior to that I was a part-time city councilman and council president in the City of Willowick.
Q   Which is also in Lake County?
A   Lake County. Correct. And my private employment, which was during the city council days, the first couple years of legislature I was employed by a company called Professional Balance Company, which was technical engineering and adjustments in the building trades industry.
Q   Thank you. I'd like to learn a little bit about your time in the General Assembly. Could you tell us what committees you served on?
A   I served on -- of the 14 years I was there I served 12 years on the Finance and Appropriations Committee. I served all 14 years on the Ways and Means Committee of the House. I was chairman of the House Ways and Means Committee just for two years, '93 and '94.

   When I was on the Finance and Appropriations Committee I chaired the education budget subcommittee of the Ohio House Finance and Appropriations Committee. I did that for two terms, 1980 and 19 -- no, 1989, '90, '91 and '92. Correct. And that was the subsection of the Finance and Appropriations Committee that dealt with all funding for primary, secondary and higher education.
Q   And while you were in the General Assembly, do you recall dealing with or discussing any issues relating to elections or voting?
A   Yes. I was -- actually my freshman year I was vice chairman of a committee that was at the time called the Elections and Townships Committee. How or why those two were put together I'm not sure.

The Ohio Democratic Party, et al.
Case No. 2:15-cv-1802

Defendants' Written Objections to the Admissibility of Plaintiffs' Evidence Exhibit E
**Deposition of Daniel Troy**, taken October 23, 2015

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| 1. together as two germane subject matter I don’t know, but that was the committee elections call. So I was vice chairman of that committee for two years.  
I believe as a member of the General Assembly there were numerous pieces of elections, legislation that took place. I believe, you know, there was always a consideration of voting hours. I know there were -- I think the 7:30 polling hour close was in effect when I became a member. Every once in a while someone introduced a measure to roll that back to 6:30. Those were discussed at committee.  
I believe -- one particular piece of legislature I do remember when then Secretary of State Taft, I think it was Senate Bill 8, and that was in the early, oh, 1990’s, you know, and I don’t remember the particular aspects of that particular legislation except that it did update a lot of Ohio election laws in terms of limitations on that, and, again, a myriad of issues I think were contained in that particular legislation. It was fairly omnibus in terms of some of the matters it dealt with.  
Q Did you ever sponsor any legislation related to voting issues or elections?  
A Yes. I think a couple -- I do remember sponsoring legislation that would restrict when renewal levies could be placed on the ballot. It was brought to my attention by my Board of Elections, one being a Democrat, one being a Republican. So apparently partisanship descended to that level too, so.  
| 1. remember that one. And did with that compromise successfully get that enacted.  
I’m trying to remember if I had any other -- I mean, I did have a constitutional amendment, which was placed before the voters, it was approved basically creating a mechanism for replacing the office of Lieutenant Governor should that office become vacant, because prior to that if the office of Lieutenant Governor became vacant there was no mechanism to fill that. And we went through a couple of periods where there was no sitting Lieutenant Governor.  
So, I mean, that was a joint resolution I wrote and sponsored and submitted and it received the necessary 60 votes, 60 percent of both houses, got to the ballot and was approved by the voters.  
I -- I think the only other thing election law related was there’s a mechanism in Ohio law called the Data Board at the county level which determines technological issues in terms of what computers to buy, what particular software and all that, and it’s made up of representatives of various entities, and one of them was the Board of Elections, and I believe I carried legislation because there was a concern by the Board of Elections who their representative would be.  
So in the interest of fairness, the legislation designated -- there were two representatives on the Data Board from the Board of Elections, one being a Democrat, one being a Republican. So apparently partisanship descended to that level too, so.  
Q Other than those --  
A Nothing that I can recall at this point.  
Q Okay. Do you recall any specific legislative efforts discussing or dealing with issues related to voter access?  
A Just -- just I think the hours of voting, and that was when we were still in the no fault absentee -- or we had the fault absentee ballot. The only early voting we had was absentee ballots, but you had to have a reason amongst the -- a list of reasons. You had to be out of the county on election day, you’re going to be hospitalized, you’re disabled, unable to get to the polls, etcetera.  
So no, I don’t remember anything other than that.  

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**Deposition of Daniel Troy**, taken October 23, 2015

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<td>1. than occasional attempts to -- I believe it was</td>
<td>1. properly prosecuted through the prosecutor's</td>
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<td>2. a representative from Cincinnati area that</td>
<td>2. office, adjudicated through the court system</td>
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<td>3. would introduce this legislation and did it for</td>
<td>3. and then, if necessary, incarcerated in a</td>
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<td>4. a couple of sessions in a row basically arguing</td>
<td>4. county facility.</td>
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<td>5. that the voter turnout between the hours of</td>
<td>5. So, and again, these are things that</td>
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<td>6. 6:30 and 7:30 p.m. was relatively minimal, so</td>
<td>6. happen whichever county seat you go into, and</td>
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<td>7. you know, why don't we reduce the hours the</td>
<td>7. so -- so it's pretty much the commissioner's</td>
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<td>8. poll workers have and just go back to 6:30</td>
<td>8. job to make sure that we work as harmoniously</td>
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<td>9. because are we really, you know, are we really</td>
<td>9. as possible with the separately elected</td>
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<td>10. accommodating a lot of people between that last</td>
<td>10. officials that had a lot of those departments</td>
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<td>11. hour and all that.</td>
<td>11. to make sure that the wherewithal to do</td>
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<td>12. But that -- and the Secretary of State's</td>
<td>12. everything is there.</td>
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<td>13. office usually would come in and, you know,</td>
<td>13. And obviously, one of them, since we're</td>
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<td>14. pose that on the basis that it's limiting</td>
<td>14. on this subject, includes that we are</td>
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<td>15. existing voter access. So that really never</td>
<td>15. responsible for funding the cost and operation</td>
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<td>16. went anywhere,</td>
<td>16. of conducting elections through the elections</td>
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<td>17. Q Let's talk a little bit about your role with</td>
<td>17. board system, which exists in all 88 counties.</td>
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<td>18. the Commission. Can you describe your</td>
<td>18. Q Okay. And I'll turn to your role with the BOE</td>
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<td>19. responsibilities as a commissioner?</td>
<td>19. in a second, but just quickly, how many</td>
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<td>20. A Well, you know, everything we do is basically</td>
<td>20. commissioners are there?</td>
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<td>22. creatures of statute as to what we do. You</td>
<td>22. Q So you mentioned your responsibility in terms</td>
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<td>23. know, we're basically in charge of the budget</td>
<td>23. of funding the elections?</td>
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<td>24. for all of the county operations. We are</td>
<td>24. A Uh-huh.</td>
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<td>25. responsible for making sure that the</td>
<td>25. Q Is one of your responsibilities setting the</td>
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<td>1. budget for the Lake County Board of Elections?</td>
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<td>2. provided, whether it's the treasurer's office,</td>
<td>2. A Absolutely. We have to enact an annual budget,</td>
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<td>3. recorder's office, engineer's office,</td>
<td>3. calendar year budget by April the 1st of every</td>
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<td>4. prosecutor's office, the courts, the</td>
<td>4. year, indicating the authorized spending for</td>
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<td>5. wherewithal, the necessary resources and, you</td>
<td>5. all of the departments within the county.</td>
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<td>6. know, the necessary equipment is in place, you</td>
<td>6. Q Can you describe how that process comes to be?</td>
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<td>7. know, to perform those particular functions.</td>
<td>7. Do you originate the budget or does the BOE</td>
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<td>8. And then we have certain appointing</td>
<td>8. recommend a budget to you?</td>
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<td>9. authorities to certain county boards of</td>
<td>9. A No. Our budget personnel will start in the</td>
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<td>10. commission, whether it's ADAMHS Board, or</td>
<td>10. fall, and actually we'll start in maybe mid</td>
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<td>11. Developmentally Disabled Board. We have a</td>
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<td>12. community college, we appoint six of the nine</td>
<td>12. from all the various departments and asking</td>
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<td>13. members of the Community College Board of</td>
<td>13. them to, you know, justify any significant</td>
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<td>15. that's -- that's pretty much -- we manage the</td>
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<td>16. -- I've always said the county government is</td>
<td>16. replaced or needs to be acquired indicating --</td>
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<td>17. really not so much a local government as it is</td>
<td>17. some cases asking them to indicate, okay, what</td>
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<td>18. do you foresee needing in a year or two in</td>
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<td>19. If you go to 88 different counties,</td>
<td>19. terms of equipment, stuff like that.</td>
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<td>20. they're pretty much all performing the same</td>
<td>20. And then they will -- they will prepare</td>
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<td>21. -- the budget people will prepare a budget for</td>
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<td>22. elections, and recording and valuing and</td>
<td>22. the Board of County Commissioners that suggest</td>
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<td>23. collecting taxes on property, making sure the</td>
<td>23. a budget. Obviously having to live within the</td>
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<td>24. county roads and bridges are taken care of,</td>
<td>24. certificate of resources, which is the dollar</td>
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<td>25. making sure that those who run afoul are</td>
<td>25. amount that the county auditor certifies to the</td>
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Deposition of Daniel Troy, taken October 23, 2015

1. commissioners is available for appropriation.
2. And with -- as with anything else, if our
3. significant resources is $60 million, for
4. example, we don't want to budget 59.9 million.
5. We always like to leave about a, you know, 3 to
6. 5 percent carryover into the next year.
7. And a lot of that isn't absolutely
8. necessary because you have expenditures
9. starting on the first of the year, but you
10. don't have tax settlements coming in that
11. quickly so you really have to have that
12. carryover balance.
13. And so if the departments are not --
14. rather than having budget meetings with
15. everybody, we've kind of developed a policy the
16. last few years if the departments are not happy
17. or have some concerns about what has been
18. proposed by the budget director to the Board of
19. County Commissioners, they are asked would you
20. like to have a budget hearing, you know, and
21. then they will come in.
22. And normally every year we do have a
23. budget hearing regardless of the Board of
24. Elections because of the significant changes
25. that have been taking place lately. You know,

Q   And do you know how many registered voters you

A   Population is approximately 230,000.

Q   Can you tell me a little bit about Lake County?

A   Well, when we get -- when we get -- when we
20. hopefully buy our new electronic poll books and
21. get 85 percent of those reimbursed by the State
22. of Ohio, I think that will be the first actual
23. infusion of state money into the local election
24. process. I mean, they do -- they do -- when
25. our state issues are on the ballot and there
26. are advertising costs that have to be incurred
27. by the local election, I believe the state now
28. does pick up those advertising costs, but in
29. terms of the general operation of elections
30. you know, it's -- it's pretty much the
31. responsibility of the county's general fund.
32. Q   Can you tell me a little bit about Lake County?
33. What's your population?
34. A   Population is approximately 230,000.
35. Q   And do you know how many registered voters you
36. have?
Deposition of Daniel Troy, taken October 23, 2015

Q The sense of experience you've had overseeing budgets and understanding sort of the requirements of funding and putting on an election. Other than that do you have any experience with election administration or observing elections?
A Well, not directly observing elections. You know, I do work very closely with our Board of Elections. I have appeared and spoken to regional and statewide conference of the Ohio Association of Election Officials. A lot of that results from the fact that I was president of the County Commissioners Association in Ohio in 2008 and that's right around the time where there was a lot of change taking place in the election process. Right around the time of a change to no fault absentee balloting, a change which really is what early voting is.
I mean, a lot of people, all early voting is absentee balloting because you still have to fill out the absentee ballot form to early vote. But you know, and the -- you know, the Board of Elections becoming, you know, more of an early voting center.
So, you know, observing that, but from the perspective of the County Commissioners Association has always said, you know, we don't -- we don't run elections, we don't administer elections, we really don't have a desire to do that, but we do have to pay for them.
And so, you know, I always like to say that like any other element of my budget, if all of a sudden something is costing me more money every year, I need to know, why is that? What is driving that? And then what is the cost versus benefit ratio of that? I mean, what -- what has it proved as a result of the additional expenditure of money.
And so, again, as president of the County Commissioners Association I was hearing a lot of that from commissioners throughout the state that there were concerns about certain aspects of election spending, you know, and that ranged from, you know, the cost of, you know, being open for early voting, primarily a lot of increase in postage costs because the -- the early voting process, you know, obviously drives a lot of increased postage cost because so many more people requesting the absentee ballot that weren't eligible before because

Q And do you know what the median income is?
A I really don't know. I know that we used to be fairly high. We used to be in the top ten in the state. I think we're probably more in the mid teens right now. I'm thinking, you know, somewhere -- somewhere between 45 and 55,000.
But you know, I could find that data quickly, but I mean it's -- yeah.

Q And do you know what percentage of your population is below the poverty line?
A More than it used to be. We used to have one of the lower poverty rates in the State of Ohio. Probably in the area of 10 percent.
Q And what's your largest city?
A Largest city is City of Mentor. 40 -- approximately 48,000 people.
Q And how big is Painesville?
A Painesville is about 19,000 people.
Q So we talked a little bit about both your time in the General Assembly and now as a commissioner?
A Right.

THE OHIO DEMOCRATIC PARTY, et al.
Case No. 2:15-cv-1802

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Defendants' Written Objections to the Admissibility of Plaintiffs' Evidence Exhibit E
they didn't have a legitimate reason.

So that has really inflated the budget, at least from the postage area, and that's a roller coaster. So that's going to be a lot higher in an even number year than an odd number year.

So various concerns about that, I mean, not so much on voter, but even I know the commissioner from Tuscarawas County was always concerned because, you know, the statutory pay that is prescribed for poll workers on election day is set in state law. There's a minimum and there's a maximum you can pay poll workers. But then, you know, he was concerned because, you know, his Board of Elections said, yeah, we can't increase the pay, but where my county pays 20 or $30.00 to show up for training session, he was concerned because his Board just said, well, we'll pay them $100 for training session or something like that. You know, so that training area was not regulated. So it was just concerns by, you know, members of my association being brought to my attention as the president saying that, you know, we've got -- we've got things out there that are, you know, problematic in terms of -- and I know in Lake County, I'm right next door to Cuyahoga County here, and I start hearing from poll workers I know, they say, hey, how come those folks down in Cuyahoga County get $75 for showing up for their training session and, you know, we only get 25 or 30 here in Lake County. And, you know, I have -- I have no other response except saying, well, they probably have more money down there. I don't know.

Q So just to be clear --
A Yeah.

Q -- all those issues also are related to either fiscal issues or budgetary issues?
A Well, fiscal issues, budget issues, right, and then -- yeah, but I think it goes back to the fact that, you know, when I see increased expenditures, increased, you know, and I can say, and if we have to spend this money, you know, is the voting experience improved, does it generate additional access to the polls by people who normally would not access the polls. You know, and that -- that's where I've been having a problem, you know, with a lot of these things over the years and that's why, you know, I've spoken up on them and that's why I've testified on various issues in front of the legislature.

I did testify on the measure that eliminated the February special election because I said, you know, we had an election in Lake County where we had a 6.1 percent turnout. You know, that's not what democracy is supposed to be about. And you know, for whatever reason that was, and especially when it's property tax issues I say, you know, you can't collect the money until next year anyway, so you could very easily go to the ballot in May or go to the ballot in November but, you know, the response I usually get is, you know, but if it fails we can go back again. I said, well, I wish I had that opportunity when I'm running for election, but they won't let me go back and retry.

So yeah, that particular aspect, but I did testify and I know it's -- I think it's become an issue again, there was a 2006 law that was passed that indicated you needed to purchase so many DRE machines for every I think it was 175 registered voters. It was a statute enacted in '06.

No fault absentee balloting came after that fact. So we weren't getting as much pressure on the -- on election day in terms of lines, in terms of needing equipment because so many of the folks had taken advantage of the early voting opportunity, but that law was still in effect that would have said by the end of 2013 my county would have had to buy 200,000 more dollars in voting machines, which we absolutely didn't need.

And so there was a law change proposed, I think it was an amendment to a bill in the Senate, I did go down and testify in the House and the Senate on that and basically said, you know, it's -- it's a law that maybe made sense under the circumstances in '06, but it's not needed in '08, you know, and, you know, I get questions like, well, don't you see, you know, long lines occurring as a result of this being repealed? And I said, "No."

And I don't think there's any empirical evidence that, you know, that reinstating that has any impact. It's just basically asking me to spend an additional 200 to $250,000 out of...
Deposition of Daniel Troy, taken October 23, 2015

Q Let me ask you a little bit about that. In your time in Lake County, to your knowledge have voters ever had to wait in line to vote on election day?

A Well, yeah, there's -- there's always lines.

Q -- a lot of it depends on the timing, you know, there's certain -- there's certain peak voting times. Usually between maybe, you know, 6:30 and 7:30 people voting, you know, before they go to work. You see peak voting times, you know, right after -- right around rush hour, people coming in.

A It's just -- but, you know, nothing -- the only -- the longest lines I remember were in 1992. 1992 when -- that was a presidential election. That was -- was the race between George Bush, the first, and Clinton and Ross Perot and that was then.

Q The other time I have seen or experienced long lines in my particular voting locations, if there are a significant number of issues on the ballot, charter amendments, maybe state constitutional amendments, and some voters must read all of the language in there on the ballot.

A So, you know, it depends -- a lot of times long lines are created, again, this is just opinion, my opinion, is it the facilities available, is it the access available, or is it the ballot design? In other words, if there's a significant menu that the voter has to go through, that's going to extend the time that they are in the voting booth, you know, that, you know, that may have an impact. But nothing where I've heard that, you know, people left.

Q I mean, I have had people say, I went by there on the way to work, I saw it was lined up so I said, I'll stop by after work. So I don't know of any -- but I've never heard of anybody saying the lines were so long I said the heck with it and I went home.

A Okay.

Q So, but nothing that I can recall, you know, anyone saying, you know, I stood in line for three, four, five hours, or anything like that. I mean, I'm sure there were times over the years, I haven't noticed them lately with the early voting, it's really -- I mean, the longest lines that I've seen in the last few years in Lake County have been the day before an election, the early voting lines that are lining up in the Board of Elections to take advantage of the early voting because they don't want to stand in line the next day at the polls.

A Well, I have news for them. If they show up at the polls the next day there are no lines because they were all there yesterday.

Q So no, I don't sense that taking place election day. I've never really, you know, heard, you know, anyone, again, there are certain times, you know, if you go shopping on Black Friday, you know, there's probably going to be long lines, but you're not limited to just shopping on that day.

A And I think Ohio's done a great job, I think we're one of the top ten states in the nation in terms of we've got really expanded opportunities for people to access the polls.

Q Do you recall whether Lake County had long line problems on election day in 2004?

A I don't recall any long lines on election day 2004 in Lake County.
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counterparts and colleagues from across the state --

A Right.

Q -- have you heard of problems that voters in other counties may have had in terms of standing in long lines at elections?

A You know, may have briefly heard of that from I think -- actually, I've heard of it more in terms of, again, the early voting opportunities. Not election day, you know, I know they -- in talking to, you know, Commissioner O'Grady in Franklin County, you know, I think when we had early voting over at the Veterans Memorial Auditorium there, you know, there were significant line problems there. But again, that was part of the early voting process. That wasn't part of the, you know, election day process.

So, again, you know, occurring in presidential election years. But I -- I don't specifically hear, you know, more times I hear the other stories is that my Board of Elections Commissioner O'Grady in Franklin County, you know they -- in talking to, you know, counterparts and colleagues from across the state --

Q Yes. Yes.

A Golden Week meant that the early voting -- voter registration deadline in Ohio is 30 days before the election, and the previous statute indicated that you could start early voting 35 days before the election. So technically you had a five-day period in there where you could register and vote at the same time.

Q And do you know when Golden Week started?

A Not specifically. I think it was the '08 -- I think -- I'm trying to think. I think it was '08.

Q Okay.

A Okay.

Q Do you know how many people took advantage of Golden Week in Lake County in 2012?

A No. No, I do not. I do know that there was -- well, I also teach part time a political science course at Lakeland Community College, state and local government, and I know one of the key things is why is there voter registration, and the primary reason there's voter registration is to guard against fraud.

Make sure that, you know, people can vote but can only vote once and all that.

So -- and I tended to agree with the Ohio Association of Elections Officials that, you know, having a situation where you register and vote at the same time, you know, could be a little bit problematic because sometimes voter registrations have to be checked for authenticity that they're not registered somewhere else, that they're not -- that they do in fact live at the address they state and all that.

So, you know, there's a reason we have voter registration and I think -- I don't disagree with the folks who say it was somewhat compromised by the fact that voter registration and actual voting could take place at the same time.

Q What is your understanding of the process of how those ballots were counted when they were cast during Golden Week? In other words, somebody comes in to register and they cast a ballot, what is your understanding of how that registration was processed and when that ballot was counted?

A I really don't know. You know, again, they may be -- I don't know exactly if they are required to vote provisionally, or if they just basically vote a ballot like any other early voter coming in, filling out an absentee ballot form and getting the ballot for their particular precinct to vote on it.

(Plaintiffs Exhibit No. DT1 was marked.)

Q Mr. Troy, I'm giving you a document that's been marked as Exhibit DT 1. Can you take a moment to look that over?

A Okay.

Q And if I could --

A Oh, is there more on the back?

Q Yeah.

A Okay. Okay.

Q You can hold onto that.

Mr. Troy, what I have handed you is Directive 2012-36 from the office of the Secretary of State. Does this document spell out the process by which registrations and ballots cast during Golden Week are to be
Deposition of Daniel Troy, taken October 23, 2015

1. Understanding that ballots cast during Golden Week are segregated?
2. A It does. It does point out in fairly convoluted process.
3. Q If I could draw your attention to the last paragraph on the front page and footnote 1.
4. A Yeah.
5. Q I believe you said earlier that Lake County uses DRE machines?
7. Q So if I could draw your attention to footnote 1, that spells out the process for Boards that use DRE machines. Is it your understanding --
8. A They don't -- well, let me just -- we use DRE machines on election day, okay? We do not use them, opti-scan ballots. Absentee voting process is they are given a ballot and then they are told to color in the circle next to the candidate or their vote yes or no on a particular issue.
9. Q In that case can I point you to the last paragraph on page 1?
10. A Uh-huh.
11. Q So looking at this paragraph, is it your understanding that ballots cast outside the jurisdiction of the State of Ohio will not be processed? And you know, and then it basically, you know, sends out a card to someone. And if it hasn't been returned and it's, you know, if it hasn't been returned as undeliverable by the tenth day before the election, then basically it says, well, this is a legitimate vote. Is that what I read in the third point? "If the acknowledgment card so marked has not been returned as undeliverable by the tenth day before the election, the otherwise complete and valid identification envelope shall be opened and the ballot included in the unofficial canvass."
12. Q That's the third bullet. And if you look at the first bullet and read that.
13. A Okay. "If the confirmation card is returned to the Board of Elections by the voter confirming the address provided at the time of registration is the voter's residence, then the otherwise complete and valid identification envelope shall be opened and the ballot included in the unofficial canvass." Q So is your understanding that this provides a period of time before the ballot is counted --

1. Case No. 2:15-cv-1802
3. The Ohio Democratic Party, et al.,
4. Defendants' Written Objections to the Admissibility of Plaintiffs' Evidence
5. Exhibit E

11 (Pages 38 to 41)

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Deposition of Daniel Troy, taken October 23, 2015

1. know, and then to, you know, they -- they are recorded by some process that they voted to ensure that, you know, nobody votes again. I don't know what would happen, you know, if -- and I'm not -- but I mean, if there were no voter registrations and, you know, everybody was an honor system to vote, I mean, unfortunately there's usually a lot at stake in the political process and so who knows what behavior might ensue.

Q. You referred to a situation that you know of where somebody registered in a different county and attempted to vote in Lake County. I believe you said also somebody voted in Lake County and lived in a different state?

A. Yeah.

Q. Do you recall when those were?

A. I think there was one in the '14 election, but I think it got cleared up, you know, again, there were, you know, maybe a half a dozen incidents in Lake County and all that. I don't know if any of them have been recommended for progression or anything like that.

So I don't think -- I don't think voter fraud is -- in my opinion I don't think voter fraud is a problem because I think a good registration process should be in place to prevent that.

Q. Okay. We spoke a little bit earlier about the use of DRE machines in Lake County?

A. Right.

Q. When did you start using those?

A. Which time? We have a little unique history in Lake County. We had -- we had the lever machines. I mean, these just take up a huge amount of space. And we started having some problems right around the time between when I was in the legislature and becoming commissioner where we had -- we had mis-recording of votes, et cetera, because the way these -- when the day was done, the poll workers would go behind the machine, there was a mechanism they unlocked and they would slide a door and it would be like an odometer reading and they would read how many votes for each issue.

There was an instance in one of my elections where instead of getting 988 votes in a particular precinct I got 008 because it just was recorded improperly. We actually had a commissioners election where as three different machines from a precinct were added up somebody didn't carry the 1, and instead of someone winning by 55 votes they lost by 45 votes because it changed by 100 and all that.

So when I got elected in '99, or whenever, I said, it's time. We need to upgrade our equipment here in Lake County. I convinced my colleagues that we would put together whatever general fund we have in bond out and told our Board of Elections go out and find state-of-the-art equipment.

They went out and checked a lot of equipment. They decided on bringing in these -- Sequoia was the manufacturer, electronic machines, they were great machines because they had like the old phone -- the old phones with the button that you would indent to -- they had every candidate, every issue had an indentation next to their name, and when it was pushed, it lit up. And of course if you pushed another button in that same race it would un-push that one. So it guarded against any over-voting or really, well, yeah, you could vote -- you couldn't -- you couldn't I guess negate your ballot by, you know, vote for no more than two by voting for three, because it just wouldn't let you do that.

And it was very well accepted by the citizenry, especially the senior citizens because it was a nice transition from what they had before. And we -- so we put about 800,000 on that and then we bonded out 2.2 million, we bought $3 million worth of machines, everybody loved them, they were -- we were done with counting elections by quarter to 9:00. Hour and 15 minutes after the polls ended and all that.

And then they passed the HAVA act because of the results of the Florida and other area presidential election in 2000. I remember going to Congressman Ney and saying, can I get funding to reimburse me for the machines that I was progressive enough to buy a year before everything hit the fan? And they basically said, no, you can't do that. So, okay. So we lost there.

Well, when HAVA was proceeding through the Ohio General Assembly implementation they added a provision that said there had to be a...
Deposition of Daniel Troy, taken October 23, 2015

1. Q. When you say, "The new machines," those are still electronic DRE machines?
2. A. DRE machines. Yeah. These are now -- I think ES&S is the manufacturer on these. They're not -- they're -- yeah. Yeah. They're a little different. The poll workers, the voters did not think they were as user friendly as the ones that we had to get rid of. And so, you know, so we basically were a victim of the old machines would have qualified under HAVA except the state put a stipulation in there that, you know, we couldn't administer with these machines. So that's why we had to basically chuck them and buy new machines.

3. Q. Again, just to clarify --
4. A. That's why when I get people saying that we got a new law where you're going to have to buy new machines, I get pretty upset.

5. Q. Just to clarify, the -- what you said you were not able to retrofit was to upgrade the machines to incorporate the --

7. Q. What is your understanding why that requirement was put in?
8. A. Apparently, my opinion, to guard against the conspiracy that the machine would not record what you had actually asked the machine to record in terms of your preferences for candidates or issues.

9. Q. What I gather from that, you know, if someone -- if someone can jimmy the machine to do that, I'm sure they can jimmy the verifiable paper audit trail mechanism to do the same thing and all that. I mean, it's just, it's there, you hear it whirring after you cast your ballot and all that. I probably can count on two hands the number of people I've talked to that actually have ever looked at it, but it's there.

10. Q. Aside from the scenario, to use your word, somebody jimmying the machine --
11. A. Yeah.

12. Q. -- are there any other reasons by which a machine tally may be different than what the voter intended?
13. A. I -- you know, again, I'm not aware of that.

14. Q. You know, there -- you know, you're basically getting a warranty from the manufacturer as to what the machine, you know, it is -- they are --
15. A. -- they are tested, you know, prior to election by our Board of Elections personnel. They are randomly tested to, you know, basically, you know, run kind of a mock election for them just to try and, you know, determine if there is -- and I have not heard of any -- any, you know, any situation where they have not recorded what they tried to do.

16. Q. About the only thing that ever, you know, again, is voters -- these particular machines don't guard as well against under vote and over vote. I do know they indicate, when I'm done, is that you have not voted in every race, you know, do you wish to go back to the ballot.

17. Q. So it let's you know that you've missed some races there, and obviously, for whatever reason, candidate running unopposed to something, you know, you just don't choose to vote for in an unopposed race or something like that. And then in terms of the over voting, again, I don't know, I've never personally tried to over vote to see what the machine tells me.

18. Q. So, you know, but no, I haven't -- you know, if anything it's, you know, the only...
Deposition of Daniel Troy, taken October 23, 2015

Q You mentioned the manufacturer's warranty and the testing of the machines prior to their use?

A Yeah.

Q To your knowledge did the old tank machines that you earlier testified mis-recorded votes, were those also under manufacture warranty and were those tested?

A You know, not -- not that I know of. I don't know if, you know, machinery was -- it was that closely regulated by the State of Ohio at the time. I mean, these things went back to, you know, World War II days and all that.

And again, it was basically, you went in and you took this big lever and the curtain closed behind you and then you pulled down these levers. And then when you were done you went back and I guess was a little bit of faith that, you know, what was -- but there was the complication then of the problem of the -- and a very -- I've seen -- they were very tiny letters and, you know, poll workers tend to be of the aged end of our population and so some difficulty in terms of that.

So a lot of this has been, you know, we've not heard any -- since we have been doing DRE's we have not heard any complaints about, you know, that something went wrong, something -- I know they tested an electronic voting machine before we went to the DRE's back in the mid '90s for just a special election in one community, but it was one of these push button machines where you pushed the screen.

And there was a significant number of voters -- it was one issue, or one race, significant number of voters who voted, but nothing was recorded. So there was a -- and that's why when we went to the electronic machines we went to the push button because what it was is senior citizens, you know, are not used to making choices on a screen. So they may have gone boom boom, and if you boom you vote and you take the vote off again and all that.

So, you know, we try to make sure these things are as user friendly as possible.

Q I guess my question is is it possible that machine malfunction would be another reason why you would need a paper audit?

A I'm really, you know, again, not knowing what the machine malfunction would be and what the, you know, again, the paper audit trail is coming out of the same piece of machinery. So, again, I don't know, you know, how these things are manufactured, how they're tested to make sure that these are operating totally independent of each other, so.

Q But when the paper audit is generated, does that give the voter an opportunity to make sure that what it says on the paper is what the voter intended?

A If the voter chooses to. Again, I don't know if more than a dozen voters I've ever talked to since that's been in place in Lake County almost ten years have indicated to me that they even look at it. A lot of times, what is that thing that's whirring down there in the lower left-hand corner. So yeah.

Q Okay. Do you know of any other problems, breakdowns, maintenance issues that Lake County has encountered with their DRE machines?

A No. Because I think the proper maintenance is done. I mean, we -- whether we need them or not, periodically we at the request of Board of Elections expend dollars to replace all the batteries in case there is, you know, a public utility electronic meltdown and all that. But no, no -- no instances where, you know, the machine's jamming up or something. You know, there may be a case for whatever, you know, and usually they'll have a couple of them at every polling place and all that. And if for some reason there's a problem with one machine they'll just take it out of commission right at the beginning there, so.

Q You referred earlier to the machines getting older. Do you know if the maintenance costs go up as the machines get older?

A Well, the problem is the warranty -- the warranty on the equipment by the manufacturers, I mean, they, you know, they're only going to -- they're not going to make replacement parts and things on that after a certain period of time.

Again, I'm not doing this. I -- we have a joint committee between the County Commissioners Association, which I'm on with...
**Deposition of Daniel Troy**, taken October 23, 2015

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<td>1. <strong>Commissioner Metzger, Commissioner Lee, and I think Commissioner Lieberman, and it's a joint</strong></td>
<td>1. 2016 is basically what they're saying.</td>
<td><strong>Elections has indicated that she would like to</strong></td>
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<td>2. <strong>committee with representatives of the Ohio</strong></td>
<td>2. That doesn't mean that they're going to</td>
<td><strong>start an equipment replacement fund in the next</strong></td>
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<td>3. <strong>Association of Elections Officials, and again,</strong></td>
<td>3. be, you know, temporarily wiring these things</td>
<td><strong>budget. I said, well, you know, we understand</strong></td>
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<td>4. <strong>they're on the frontline. They're saying, you</strong></td>
<td>4. up so that they work. I mean, I -- again, this</td>
<td><strong>where you're coming from. I think that, you</strong></td>
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<td>5. <strong>know, they think that the present machinery</strong></td>
<td>5. is a very bipartisan group. It's as bipartisan</td>
<td><strong>know, we're going to strive to do that,</strong></td>
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<td>6. <strong>they have, you know, with paper clips or bubble</strong></td>
<td>6. as you can get. It's 3 D's, 3 R's from every</td>
<td><strong>obviously we're going to see what help we can</strong></td>
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<td>7. <strong>gum or whatever, they will be able to get</strong></td>
<td>7. county, a deputy director, director, four board</td>
<td><strong>get from the state and the federal government.</strong></td>
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<td>8. <strong>through the 2016 election, but, you know, after</strong></td>
<td>8. members, and they seem to be, you know, <strong>I said, you know, traditionally</strong></td>
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<td>9. <strong>that they don't know.</strong></td>
<td>9. basically, you know, on the same page on this.</td>
<td><strong>commissioners don't like to set up separate</strong></td>
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<td>10. <strong>And that's why the County Commissioner's</strong></td>
<td>10. <strong>And I think very conscientious that for</strong></td>
<td><strong>funds in separate entities because it's -- it's</strong></td>
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<td>11. <strong>Association and the OEA -- Ohio Association of</strong></td>
<td>11. <strong>some reason these things are questionable,</strong></td>
<td><strong>frustrating sometimes as commissioners that certain</strong></td>
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<td>12. <strong>Elections Officials I know had a meeting last</strong></td>
<td>12. <strong>they're not -- they're not going to allow the</strong></td>
<td><strong>departments have special funds and then</strong></td>
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<td>13. <strong>week with the Secretary of State. We're having</strong></td>
<td>13. usage, you know, on the election process. If</td>
<td><strong>when they make a request, you say, well, why</strong></td>
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<td>14. <strong>a meeting I think next week with the state</strong></td>
<td>14. necessary, they will -- they will replace them</td>
<td><strong>don't you use that special fund you have, you</strong></td>
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<td>15. <strong>budget director, Mr. Keen, to basically make a</strong></td>
<td>15. with, you know, whatever less modern mechanism,</td>
<td><strong>know, and they'll say, no, that's my fund for</strong></td>
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<td>16. <strong>big ask in an upcoming state capitol bill in</strong></td>
<td>16. <strong>whether that's paper ballots or whatever is</strong></td>
<td><strong>other stuff and all that.</strong></td>
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<td>17. <strong>2016 for, you know, funding for replacement of</strong></td>
<td>17. <strong>necessary because they've indicated and I, you</strong></td>
<td><strong>So, you know, it tends to -- it tends to,</strong></td>
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<td>18. <strong>this particular machinery, along the same line</strong></td>
<td>18. <strong>know, I really accept their statement that all</strong></td>
<td><strong>you know, impact the budget, the budgetary</strong></td>
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<td>19. <strong>of the dollars that we got on the electronic</strong></td>
<td>19. <strong>we want to do is get it right.</strong></td>
<td><strong>process. No, we've had that discussion.</strong></td>
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<td>20. <strong>poll books, which were approved in the budget</strong></td>
<td>20. <strong>Q And have you had the same conversation within</strong></td>
<td><strong>Right.</strong></td>
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<td>21. <strong>where there will be a chair. It will be a</strong></td>
<td>21. <strong>Lake County with respect to replacing your</strong></td>
<td><strong>Q So is your objection to the use of a separate</strong></td>
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<td>22. <strong>match between the state, but asking the state</strong></td>
<td>22. <strong>machines?</strong></td>
<td><strong>designated fund or to the objective of</strong></td>
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<td>24. <strong>So, again, I'm -- they're saying that the</strong></td>
<td>24. Q And what is the plan in Lake County?**</td>
<td>A No. Just the objective of setting up a -- in**</td>
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<td>25. <strong>machines and the technology, et cetera, is</strong></td>
<td>25. A Well, the plan is the director of the Board of</td>
<td><strong>other words, start a fund and start depositing</strong></td>
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The Ohio Democratic Party, et al.,


Case No. 2:15-cv-1802

Defendants' Written Objections to the Admissibility of Plaintiffs' Evidence

Exhibit E
money into it and all that.
I mean, we're not -- we're not in that position financially where when we get to that point where, you know, we should have been putting money away in a rainy day fund for this replacement. I mean, when the time comes we'll address the issue. But we've certainly --
certainly and through the state, so you know, a lot of counties are not in -- a lot of counties don't have a lot of revenue streams. You know, we still have 88 counties in this state and some do very well, like Delaware, and some -- some are really struggling financially and all that.
So, you know, I think as an association we're looking at, you know, whatever external help we can get, you know, to address this and try and impress upon the General Assembly as I've always said that, you know, the core of our democracy is what happens on election day.
This is -- this is what we're all about.
This is where people determine who makes the decisions for them, this is where people determine what the rules are constitutionally or charter wise in your city and who makes the decisions on the state and the local level and federal level and all that.
So, you know, it's -- it's worthy of a state investment, you know, to address these particular issues. And so that's -- that's kind of where -- so no, I'm not disputing the fact that, you know, at some point down the road -- but my particular Board of Elections is not saying we're in a critical state, we're concerned about the reliability of these machines on election day.
I think it's like everything else with technology. I mean, I'm kind of old school, and I have people come to me at budget time and say, we need to replace all our computers. And I say, well, we just bought you a whole slew of them eight years ago and all that. They look at you like, well, that's the last century, you know, in terms of technology and all that, so.
Q  So when you say, you know, financially some counties do well and some counties struggle, and that would be one reason why it would be helpful to have state funding, would it also be fair to say that for those counties that struggle, that there may be more opportunity for them to make those investments sooner if they had state funding?
MS. PIERCE: Objection. Confusing.
A  Yeah, I really -- you know, again, I don't know at what, you know, yeah. I don't think anybody is saying right now -- I should maybe restate that. I don't think that anybody is saying right now, my God, if we had a bunch of money right now, you know, we certainly wouldn't be operating this equipment we're operating today.
I don't think anybody is saying that.
They're just saying that we are forecasting that, you know, due to the fact that the replacement parts and mechanisms and the warranties from the manufacturers are not going to cover certain things after a certain date, you know, we're going to -- we're going to need something down the road, you know, to address this particular issue, so.
Q  Okay.
A  And the poor counties are going to need probably more help than others when they get to that point.
Q  Right. That was my question --
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1. tired of these whiny local government officials coming in here every two years with their hand out. And our argument has been, if you don't want to give us the money, then take away the responsibilities, because as long as we have the responsibility -- so that's.

2. And again, you know, it goes back to this whole issue that, you know, since it is difficult sometimes to meet all these responsibilities and you're scrambling for the proper dollars to do that, I mean, speaking as this commissioner, please prove to me that this additional expenditure, this additional expense actually has any resultant benefit other than the fact that I've spent more money.

3. Q When you refer to within the 88 counties, the differential between the 88 counties and positioning them to have I think you said the wherewithal --

4. A Yeah.

5. Q -- to meet requirements imposed by the state, am I correct in understanding that the challenge that you articulate is that some states ask for more, I think you said every year, and other states have the same requirements? Is that -- am I understanding what you're saying?

6. A No, I don't think I mentioned other states.

7. Q I'm sorry. Not other states. Other counties.

8. A There are a lot of states that fully fund the cost of elections.

9. Q I don't mean other states. I was trying to understand what you meant by -- I think you said either when you were in the General Assembly or somebody came to the General Assembly was referring to the differential in the counties and people coming with their hand out. Can you explain that?

10. A Well, the fact is that the General Assembly -- the state budget is pretty much an 85 percent pass through. You know, about 85 percent of the state money flows out, you know, flows to Jobs and Family Service Departments for, you know, Medicaid, Medicaid funding, TANA funding, et cetera, it flows to developmentally disabled boards, to ADAMHS boards, to things like that.

11. So it really -- it's kind of a pass through. So I think the main idea of the General Assembly is at budget time, most of the people they're hearing from, school districts, colleges and universities throughout the state are for people saying, you know, I want a better shake in this coming up two-year budget.

12. So the perception is, and I think kind of wrongly, is that, well, you know, they're all in there with their hand out and all that, but that's what your budget does. So you have to make sure that that system takes place.

13. Now, as I've said when I was president all along is that if you do not want to properly fund or give us the resources to perform the statutory functions that you want us to do, then rather than, you know, then we have to reform or we have to do some reform on the service model. And that's been frustrating because nobody ever wants to change anything.

14. I mean, do we still need 88 counties and, you know, 88 county coroners and all that, or --

15. Q Clarify what you mean by service model.

16. A The service model is the method by which we deliver, you know, the statutory services that are required.

17. The county government -- county government structure was basically adopted in the late 1800's and it really hasn't changed except for two counties in this state, Cuyahoga and Summit, which passed charter -- which passed charter county provisions on the ballot, in both cases, you know, probably primarily drawn by significant corruption that influenced the voters to change that and all that.

18. So the structure pretty much is the same as it was, you know, back in the late 1800's and so, you know, is there a way to modernize the structure, is there a way to modernize the way that we, you know, they always said there's 88 county seats in Ohio because everybody needed to be one day and back by horseback to their county seat.

19. You know, that doesn't exist today. You know, it's -- can whatever change is necessary -- is there a way to look at the overall way in which we conduct elections, you know, should it be centralized or should it be decentralized on a county-by-county basis and all that.

20. Q And what is your opinion on that?

21. A You know, I -- you know, I think as the technology advances, just like we're looking with electronic poll books, it used to be you
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Q. Mr. Troy, you obviously have some interesting experience having served both in the General Assembly and now for quite awhile at the county level?

A. Right.

Q. Do you think your experience now as a county commissioner, do you have a better sense of the various obligations and funding expenditure requirements at the county level than you did when you were in the General Assembly?

A. Yeah. I think you learn more every, you know, when I was teaching at Lakeland Community College I learned -- every class I would learn things. Yeah, you learn. People ask me, you know, what did you like better, being a state legislator or county commissioner. I said, being a legislator. You got up every morning and said, there ought to be a law. As county commissioner, you have to actually make things work.

So no, I think you get a better understanding of it, you know, but I mean, you know, should we have a statutory requirement that before becoming a state legislator, you know, you should be a county -- I was a councilman before I was down there, council president.

So again, yeah, it's, you know, you get a better understanding and that's why you try -- and when I testify down there I think, in front of standing committees, I'm able to say, you know, I've had your job, I understand, I understand the demands of that job, and I just want to point out how I've discovered that when I was down here, yeah, county government was just another local government, you know, it's just like my cities, my villages and my townships.

And I said, no, it's not because everything we do in, you know, when we have a case in our court house, it's not Lake County versus, it's Ohio, State of Ohio versus. In other words, we're carrying the freight for a lot of state functions. You don't record property statewide. We record it in every county, we value it in every county and we collect the taxes on it in every county and all that.

Now, and again, it's not an issue, but maybe that's one of the things that people need to look at is it essential to do that in 88...
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1. locations anymore, you know, with electronic recording. You know, do you need a separate recording office in every county in the state. I don't know.
2. But so it's just trying to, you know, understand that, again, I think it all goes down to in terms of elections, I really, and I think my Board of Elections people will tell you that, you know, there's no commissioner that's taken more interest in that. Like I said, I'm the one that said we need new voting machines, I'm the one that said, let us hit the maximum pay possible on poll workers. I said, let's increase the training amount they get. Let me go down there and testify as to why I don't think we should spend 200 to $250,000 in additional machines we don't need.
3. So, I mean, I take the process of elections very seriously and all that, and again, if I think that people are being discouraged from voting, are being suppressed from voting and stuff like that, I mean, I -- I certainly do not -- do not, you know, agree with that.
4. But on the same hand, from a bunch of attorneys' perspective, I said, well, if you're going to ask me to spend this much more money to do this, to be open this many more hours, to be open this many more days and just so that, you know, in case somebody occasionally strays in and decides that's the time they want to vote, we have to be available for them, I just, you know, sometimes say we need to balance these things off.
5. We need to balance off the overall, you know, public good and the cost of elections. Just make sure that when we spend dollars, it makes sense what we're spending them for.

Q To what --
A Ms. Pierce: We have been going for over an hour. Do you need to take a break for a couple minutes or are you okay to continue?

THE WITNESS: I'll have more coffee.

MR. PAL: Sure.

MS. PIERCE: Can we take a few minutes?

MR. PAL: Yeah. Off the record.

(Question was interrupted by an attorney's request to adjourn temporarily.)

(Recess taken.)

(Plaintiff’s Exhibit No. DT2 was marked.)
A   I'm, you know, again, there's -- there's a
25 to have a particular reason to do that.
24 Q   -- and wondering whether your expenditures were
23 A   Right.
22 Q   -- and wondering whether your expenditures were
21 A   Yeah.  To a degree.  What I was basically
20 saying is that, you know, I mean, it's
19 frustrating that, you know, we don't get the
18 turnout that, you know, we should be getting
17 for elections, you know, in this country and in
16 this state, in this county, and especially when
15 we are spending a significantly increased
14 amount of money to make that experience more
13 accessible.  Used to be you had one day to vote
12 and if you don't want to vote on that day you
11 could request an absentee ballot, but you had
10 to have a particular reason to do that.
9 We also I know in my time in the General
8 Assembly created the concept of provisional
7 voting, which I know some people have said, you
6 know, is suppressing voters.
5 And I actually say, no, it's the opposite
4 because the purpose of that particular
3 provisional voting was that if for some reason
2 someone didn't change their address before
1 election day and they used to live in Rocky
2 River but now they live in Mentor, it was a
1 process by which you could go ahead and vote
2 here on a provisional basis, even though you
1 have not updated your registration, you're in
1 Lake County, we just need to make sure that you
2 do live here in Lake County and that you were
1 registered to vote over in Rocky River and
2 we're going to count your vote so it actually,
1 you know, allowed I think more access, more
2 enfranchisement of votes than previous, you
1 know, would have existed.
2 In the old days they just said, you can't
23 vote here, but you can go back to Rocky River,
22 even though you don't live there, you can go
21 back in and vote for your mayor and council
20 people in Rocky River and, again, it allowed a
19 process by which for whatever reason there was
18 some questions about a voter's eligibility.
17 So that has been added to what is
16 allowable in elections in Ohio.  Obviously the
15 no fault absentee balloting, the extended hours
14 in early voting centers, which primarily are
13 Boards of Elections, and evening and some
12 weekend hours and all that, and -- and as I say
11 here, it's frustrating to hear that turnout is
10 dropping, that, you know, I was -- I ran for
9 re-election in November of 2014.  There were --
8 there were 10,000 less votes, you know, than
7 there was in 2010.  And the turnout I think in
6 my particular race was like 75,000 -- 75 to
5 80,000 in 2014 and -- or in 2010 and it dropped
4 about 10,000 votes in 2014.  It wasn't falloff
3 from the ballot.  It was just 10 percent less
2 voters showing up.
1 So again, it's frustrating that, you
know, we're trying to spend money saying we
want to make it easier for more people to get
out there and vote, and what's occurring is the
exact opposite.  We're getting less people
voting.

Q   To your knowledge has voter turnout gone up in
10 any other counties in Ohio?
A   Right.
Q   In the last sentence you say, "It's
frustrating to hear that turnout is dropping in
spite of the fact that we're spending a lot
more money to theoretically achieve the
opposite."  And right before we went to break
you also said something similar in terms of
seeing a decline --

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1 significant number of factors can drive voter turnout. Obviously interest in a particular race, you know, a particular issue. You know, if there's a feeling by the voters that there's not a, you know, that very well may have been why my vote total was down in 2014 next to 2010, perception by people that the highest race, the race for governor, was a foregone conclusion, it was not a very competitive race.

So I think those are factors. You know, the interest in the candidates, the interest in the issues can have an impact on turnout.

Q My question was whether you referred to the drop-off in turnout in Lake. My question was do you know if turnout stayed steady or went up in any other counties in Ohio?

A I'm not aware of any turnout going up in any other counties in Ohio. Now, again, given any particular election in a municipality, in a county, you know, there -- voter interest for whatever reason, hotly contested race, very -- very controversial issue in front of voters, you know, that can have an impact on the local turnout.

Q What about turnout among subgroups of the voters? Do you know whether voter turnout may have gone up with any particular demographic group, for example, the African/American group?

A It's hard to tell my county because it's, you know, it's traditionally been a less desirable turnout. It should be higher. I know when I ran for senate in 1996 Ashtabula County was part of that senate district and I know, you know, did extremely well in the -- the African/American areas of the City of Ashtabula. However, I did extremely well on a 39 or 40 percent turnout.

So, you know, the turnout -- the turnout has always been, you know, less than desired in some of those particular areas. But I really can't tell in Lake County because it's a relatively small minority population. I don't -- don't see any difference in turnout in the City of Painesville, which probably has the largest African/American component of the county there, so.

Q And have you heard anything about other counties in Ohio, whether they had seen this type of increase in turnout among, for example, the African/American demographic?
So I just don't like to spend money
unless I can show that it actually drove the intended benefit.

Q  Do you know whether some of these mechanisms that we have been talking about, Golden Week, early voting, whether some of these mechanisms are more predominantly used by particular demographic groups than others?
A  The only thing I've noticed in my Board of Elections over the last couple of weeks, since early voting started, is that, you know, a lot of seniors coming in there to vote. Now, they are always, say, good demographic for showing up to vote on election day, but I think the fact that a lot of them are retired, have the same, the ability to come in and get this over with on an early basis, I've seen them, you know, taking more advantage of the early voting process. But again, this is a demographic that obviously we're -- we always used to say the trouble with senior citizens is they're chronic voters.

Q  So for counties that have other demographic breakdown different from Lake County, for example, counties that have a more significant minority demographic breakdown, if, for example, the African/American population takes greater advantage to come out and vote during Golden Week, would you see a correlation there between that mechanism and the African/American turnout?
A  If in fact the, you know, the data showed that, and again, you know, it shows that, you know, again the but for thing because a lot of folks, obviously when I say the senior citizens are coming in voting in my Board of Elections, they're not voting then because they wouldn't vote otherwise, they're doing it because it's there. I mean, if you can -- you know, it's -- yeah.

So again, you know, there are some people that feel, you know, one of the problems with Golden Week or having early voting too far out from the election day is that, you know, is there -- has there been ample time for that particular voter to get a good understanding of the candidates or the issues. So -- in terms of, you know, how choices are presented to them to decide on.

So yeah, the -- again, it's difficult sometimes to say that, you know, in other words, if this Golden Week opportunity was not available to you to register and vote between 35 and 28 days before an election, can it be assumed that you would not participate in this process at all.

And again, that was one of the arguments I heard when I was in the legislature when somebody said, you know, we need to roll the hours back from 7:30 to 6:30, and the chairman, and I was surprised he said that because he actually said, you know, he said, I tend to like the idea of this because the only people I know that vote between 6:30 and 7:30 are people like my wife, and the reason she votes then is because she can.

You know, so it's -- you know, again, it's hard to tell, you know, who's utilizing what, you know, and would not, you know. So I suppose, you know, to answer to your question, if someone can prove to me that without this particular mechanism, this individual from 28 days out with weekend voting opportunities, with evening voting opportunities, with vote by mail opportunities would have been unable to participate in our political process unless this was particularly available, then I'd say, well, then it makes sense. But I don't know if anybody can prove that.

Q  Are you familiar with the term soles to the polls?
A  No, not directly. I mean, okay.
Q  Have you heard the term?
A  Vaguely, but I don't -- have I ever -- what does it mean? I don't know.

Q  Soles to polls is a type of get out the vote effort organized by churches oftentimes in the African/American community that takes voters after church services on Sundays to polls.
A  Okay.

Q  And is a mechanism that is used fairly commonly in the African/American communities.
A  Right.

Q  Do you know if you have soles to polls efforts in Lake County?
A  I'm not aware of any in Lake County. I mean, there's a couple of, you know, African/American population churches in Painesville, but I'm not aware of any, you know, soles to the polls.

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Case No. 2:15-cv-1802

Defendants' Written Objections to the Admissibility of Plaintiffs' Evidence

Exhibit E
Q One thing we haven't talked about is the impact of geography. When you've got a large county that's spread out, are there unique challenges in administering elections in a county like that? As compared to a more compact county?

A Over the years I've watched Cuyahoga County have significant challenges in its elections. I mean, they've gotten a lot better, but for quite awhile they were not the poster child on how to operate an election.

Q Can you elaborate on that?

A Well, I think they just -- they just had, you know, they didn't have problems, you know, finalizing reporting requirements and all that. Every once in a while you'd read about, you know, ballots found in the trunk of a car, you know, a week or two after the election. I mean, just, again, you know, whether that had anything to do with the size of the county or the personnel, I think that -- I think that the law -- you know, I can see adaptations in the law to maybe address some of that. You know, I think the law right now says each county can only have one early voting center, you know,
Q And just to clarify, when you say, "We," you mean the counties?
A Counties. Yeah.
Q So you think that counties having the
discretion or the flexibility based on their
unique needs is a better approach than
uniformity?
A Well, you know, again, it depends, you know,
there has to be parameters on that too. If
this county says, I want to have early voting
for 75 days, and another county says, well, I
want to have it for three days, I mean, you
can't sit there and say, okay, you guys can do
what you want. You know, there has to be
something, you know, something that, you know,
there has to be some level of standards,
uniform standards but, you know, totally on
that, again, this is my opinion on that, so.
Q But within -- within certain reasonable
parameters?
A Yeah. And again, we were talking about voting
locations and things like that. You know,
again, I'm not saying I would agree the same
needs to be in terms of -- just as I said on
early voting, I don't think that you should
say, well, this county should be allowed to
have early voting a lot earlier than this
county has it. But in terms of facilities,
opportunities to get there, you know, again, I
think it's -- if the county itself comes
forward and says, I need four, you know, early
voting locations and here's why, now, on the
other hand, I don't want somebody from Columbus
to say, Lake County, you're going to have to
have four early voting locations out there
because that's the law. And I'm going to say
why? You know, geographically we're 88th in
size of 88 counties in the State of Ohio, why
do I need four early voting centers because
there's been no -- yeah.
Q Is that right, Lake County is the smallest?
A Yeah. We're the smallest geographically.
Q Geographically?
A We're 88th in size and 11th in population.
Q Interesting. Okay. Point you to paragraph 10
of your declaration, page 3. About three
quarters of the way through there you talk
about the challenge of straightening out the
voter books before election day?
A Yeah.
Deposition of Daniel Troy, taken October 23, 2015

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Q Do you see that?

A Uh-huh.

Q I was a little curious about that because in the context of Golden Week, we're talking about five days at the beginning of the period, so at the end of Golden Week you wouldn't need to straighten out -- you still have the early voting period prior to election day?

A Well, I think there was more along the lines of the, you know, 'Expense for straightening out the voter books into the wee hours of election eve' -- the fact that I think -- and I think it was a settlement in the last case that for awhile there early voting -- well, absentee voting before you had no fault absentee voting I think always used to close off on Saturday at noon. And then I think under the no fault absentee ballot there it was rolled back. It used to be on Sunday and Monday. It was rolled back to Saturday noon or sometime on Saturday and all that.

And in discussing that with election officials in my county, and from both sides of the aisle, you know, they felt that was important because they do have to record, you know, who's requesting absentee ballots.

There's gotta be a point where they draw a line in the sand and say, okay, these people have requested an absentee ballot so you cannot allow them to vote on election day, and/or they voted -- to get the books in shape so that -- and the fact is that you now have early voting going into the day before election means there's a lot of personnel and scurrying and additional expenditures because, you know, these polls open at 6:30 a.m. the next morning, they have to get this material out to the precinct judges. So that's what I meant there is that, you know, yeah, it's -- you'd like to give people up until the last minute the opportunity to vote early, but there's gotta be a point where -- to protect the process and make sure that it's a legitimate process that, you know, the record keeping is current and all that.

Sure.

Q That's what that was about.

A No, it's not about Golden Week. No. That's an example of all the additional expenditures that I have seen being added to an election, to election costs as a commissioner because of these changes.

Q With early voting in general?

A Yeah. Meaning the change to allow -- yes, Sunday voting and Monday voting the day before an election, you know, is a greater expense because you have to have personnel there to handle the early voting, but again, the additional expense of people having to get precinct records for 162 precincts in order to be shipped out so, you know, the process can be done accordingly on election day and, you know. And then, you know, the poll workers running the problems out there on election day. You know, people show up and they won't let them vote, and they say, because you requested an absentee ballot. And they say, well, but I didn't send it in. They said, we can't -- I mean, yeah.

Q Earlier you mentioned an E poll book system and state funding?

A Right.

Q Has Lake County purchased one?

A No. Not yet. I've discussed this with my Board of Elections director saying that, you know, they're actually -- they are actually vetting the various manufacturers, the Board of Elections determining which one, I think there's a list of eligible E poll book manufacturers that have been designated by DAS, and then what will happen is DAS, Department of Administrative Services, will handle the actual transaction so it does not require on each county level an open bid process and all that.

But as I've indicated, or my understanding is we're going to have to appropriate 100 percent of the money and then request reimbursement for 85 percent of it from the state because the state doesn't want to have ownership of the machines.

Q So is it currently in your next year's budget?

A Yeah. It will be. In other words, we're -- in other words, we have not passed next year's budget. Initially she had indicated to me she would like to have these in place for tryout for the 2015 general election, which of course is in less than two weeks, but nothing -- nothing processed that quickly through the state. So no, it will be -- it will be in next

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25 (Pages 94 to 97)
Deposition of Daniel Troy, taken October 23, 2015

Q   Which paragraph?
A   The last paragraph of -- I'm sorry, not --
Q   -- that's either below or above my pay grade.
A   -- that's either below or above my pay grade.
Q   25.
A   Yeah.  There is a -- let's see.  There's a council member in Madison Village, there is a
Q   25.
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<th>Page 102</th>
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<tr>
<td>1. -- well, there was a councilman in Painesville, but he did not run for re-election. And, yeah, I don't think there's an African/American elected official in Painesville. There have been on occasion, two or three, but other than that there are I think two African/American members of the Painesville City Board of Education elected. I just, you know, can't -- yeah.</td>
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<td>Q: How about Latinos?</td>
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<td>A: No. Not that I'm aware of.</td>
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<td>MR. PAL: Okay.</td>
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<td>Mr. Troy, that's all I have for you.</td>
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<td>MS. PIERCE: I do have some questions for you, but --</td>
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<td>THE WITNESS: Go ahead.</td>
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<td>MS. PIERCE: Do you need to take a break before we begin?</td>
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<td>THE WITNESS: No. I'm fine.</td>
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<td>MS. PIERCE: You're fine?</td>
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<tr>
<td>Okay.</td>
<td></td>
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<tr>
<td>THE WITNESS: Yeah.</td>
<td></td>
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<tr>
<td>MS. PIERCE: All right.</td>
<td></td>
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<tr>
<td>THE WITNESS: I told them don't look for me coming back to the office today. I live between here and there. So why would I go there.</td>
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<th>Page 103</th>
<th>Page 105</th>
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<tr>
<td>1. Cuyahoga County is at their Board of Elections. I assume Cuyahoga County is at their Board of Elections.</td>
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<td>2. assume Cuyahoga County -- I know our early voting centers are Board of Elections. I assume Cuyahoga County is at their Board of Elections. I don't know.</td>
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<td>3. I do know that you are allowed to designate another area, but then if you designate another area you cannot also have it at your Board of Elections. So yeah.</td>
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<td>Q: So you mentioned that counties can designate another location to have early voting. Is that the only difference between early voting centers between counties that are -- that's allowed to occur?</td>
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<td>A: My understanding is you are only allowed to have one early voting center per county. Is that -- I can't --</td>
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<td>4. Q: But could a county have a larger voting center, larger than Lake County's for example?</td>
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<td>A: Oh, yeah. If Cuyahoga County designated the Cleveland Browns Stadium as an early voting center and the law says you can designate one and that would be it, I mean, it would be large but, you know, it might not, you know, I think the idea is for more convenience.</td>
<td></td>
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<td>In other words, you know, okay, if you want to early vote in Lake County right now you have to come to -- if you want early vote in-person, all it is basically you stand at the counter, you fill out an absentee voter request, you give it to one of the clerks. He or she will dig out the ballot for your particular locality, precinct, and all that, and then give that to you in the envelope and you're done. Fill it out, put it in here, sign your name and then put it in the envelope, sign it and take it and all that.</td>
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<td>And so I assume that, you know, if a larger county wanted to have that taking place in more than one location, at their call, their call, in other words, not the state saying every county must have multiple early voting locations and all that, I think maybe allow that up to the -- again, the county -- and the county understanding that, okay, if I choose to do that, I'm expending additional dollars to do that, I'm -- this is a willful decision on my part.</td>
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Deposition of Daniel Troy, taken October 23, 2015

The Ohio Democratic Party, et al.,
Case No. 2:15-cv-1802

Q So there is flexibility for counties in designing their early voting centers though?
A I don't think there is flexibility now, is there?
Q In designing their single --
A Oh, designing, yeah. There isn't flexibility in having more than one though. Right. Okay.
Q You mentioned also I believe that there still needs to be some parameters in which counties should work. For example, when it comes to early voting, one county can't have 75 days and one county can't have three. What sort of parameters would you envision for opening up early voting centers to multiple locations?
A Well, I would think that, you know, whatever formula, you know, the General Assembly or the Secretary of State through a directive wants to come up with in terms of, you know, what qualifies you as a county to have additional early voting centers and all that. I really --

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Q But you would agree that if counties were given the discretion to have more than one early voting location, there would need to be some kind of parameters set on that?
A Well, I think along the lines that, you know, you can't -- you can't have any hours different than what we, you know, these are the permissible early voting hours that you have, because I do know they have several weekend nights, several weekends, they do have weekday nights and all that. I think they would have to go along with that parameter.

But just the fact that you all don't have to show up at one location no matter how small or how large it is, instead if you want to have one in western Cuyahoga County, eastern Cuyahoga County near downtown and southern Cuyahoga County, you know, I can't -- from my personal opinion I don't see where that's a problem. But again, you know, it should be up to the local officials. Don't force it on them and say, you will have four early voting locations, because there's a cost involved, you know.

And I know, you know, and I can remember when Commissioner Hagan, when they still had commissioner form of government here in Cuyahoga County, and this was back in the early 2000's and he said -- he grabbed me because he knew I was on the CCAO Board, "We gotta push for all mail voting" -- M A I L -- "in Ohio," which, you know, I think Oregon was doing for awhile or something like that.

And I said, "My God, Tim," I said, "the expense of that." you know.

And he said -- he said -- and he basically said, "I think we should because, you know, we can't run an election on election day in Cuyahoga County." I mean, he was admitting that they have problems here in Cuyahoga County running elections and all that.

So, I mean, that was -- that was the case of where, you know, he's saying, I don't care how much it costs, you know, I'll spend that much to avoid the problems and all that.

So, again, I think with the early voting centers if, you know, they say, I don't care how much it costs, I think it reduces some problems for us and it's probably, you know, a little more user friendly.
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<th>Page 110</th>
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<tr>
<td>1 back to the beginning, that some of the poll</td>
<td>1 we are geographically, that's why.</td>
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<td>2 workers in your county had questions about how</td>
<td>2 Q Okay. But differences in the election process</td>
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<td>3 much they were getting paid for their training</td>
<td>3 do bleed over county lines, that is voters in</td>
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<td>4 sessions versus how much the poll workers right</td>
<td>4 one county can be aware of the voting situation</td>
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<td>5 next door in Cuyahoga County were getting paid.</td>
<td>5 in the county next door; is that right?</td>
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<td>6 A Yeah.</td>
<td>6 A I -- in terms of what do you mean? How come --</td>
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<td>7 Q Could you envision a similar situation amongst</td>
<td>7 how come our voting opportunities here in</td>
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<td>8 your voters if Cuyahoga County had 75 early</td>
<td>8 Willowick are different than Euclid right</td>
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<td>9 voting locations and Lake County just had the</td>
<td>9 across the Cuyahoga County line? I don't know</td>
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<td>10 one?</td>
<td>10 how they're -- I mean, how would they be</td>
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<td>11 A Well, you know, everybody likes convenience. I</td>
<td>11 different?</td>
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<td>12 mean, you know, you know people that, you know,</td>
<td>12 Q How about if one county had more -- going back</td>
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<td>13 people still like to have their neighborhood</td>
<td>13 to the early voting hours, if one county had</td>
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<td>14 schools where the kids could walk one block.</td>
<td>14 more early voting hours than a county next door?</td>
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<td>15 But I mean, it's not -- first of all, I don't</td>
<td>15 A That may be one of the parameters that should</td>
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<td>16 see where Cuyahoga County would have 75 early</td>
<td>17 not be varied. I just said on locations. More</td>
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<td>17 voting centers because these are all at county</td>
<td>18 than one location. I did not say that, you</td>
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<td>18 expense and I would find hard pressed to</td>
<td>19 know, it made sense to maybe say your early</td>
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<td>19 be able to justify that particular expenditure.</td>
<td>20 voting hours you can stay open to midnight in</td>
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<td>20 No, I -- I just think, you know, the</td>
<td>21 this county but you can close at 4:00 p.m. in</td>
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<td>21 difference on what I referred to was the poll</td>
<td>22 this county.</td>
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<td>22 worker training is that the law is very clear,</td>
<td>23 I think there should be, you know,</td>
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<td>23 here's the minimum a poll worker can get paid,</td>
<td>24 uniformity there. You can say, listen, every</td>
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<td>24 here's the maximum a poll worker can get paid,</td>
<td>25 voter has had the same opportunity in this</td>
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<td>25 and so you have to be somewhere within that</td>
<td>29 (Pages 110 to 113)</td>
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<td>1 range. And then it's adjusted I think for</td>
<td>1 state, the same number of hours, you know, to</td>
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<td>2 inflation every so often and all that.</td>
<td>2 take advantage of voting opportunities, 28 days</td>
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<td>3 So once you hit the maximum, very shortly</td>
<td>3 minus a couple non-business days, a few</td>
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<td>4 you're not at that maximum because it has gone</td>
<td>4 evenings, a few weekend days and all that, and</td>
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<td>5 up and -- but the poll worker training is just</td>
<td>5 within certain hours and all that. It's -- and</td>
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<td>6 I think they were getting $10.00 for training</td>
<td>6 again, as I've said earlier, I don't think what</td>
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<td>7 session when I first come and I said to the</td>
<td>7 we have right now is overly restrictive --</td>
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<td>8 director of Board of Elections, I said, &quot;Geez,</td>
<td>8 Q Okay.</td>
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<td>9 how long are they here?&quot;</td>
<td>9 A -- in terms of doing that.</td>
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<td>10 He said, &quot;Two hours.&quot;</td>
<td>10 Now, if you sat there and said, but if</td>
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<td>11 I said, &quot;Can't we give them 20?&quot;</td>
<td>11 you want to do that in person, you obviously</td>
</tr>
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<td>12 He said, &quot;If you guys authorize it.&quot;</td>
<td>12 can do it by mail, every two years you're going</td>
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<td>13 So I said, &quot;All right. We'll authorize</td>
<td>13 to get something from the Secretary of State</td>
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<td>14 the budget expenditure to do that.&quot;</td>
<td>14 that you can fill out send in and they're going</td>
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<td>15 And so -- but there's -- that's not</td>
<td>15 to mail it to you, or you can bring that or go</td>
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<td>16 regulated by law. The poll worker pay for a</td>
<td>16 in the Board of Elections and vote in process</td>
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<td>17 day at -- election day is regulated by law, but</td>
<td>17 there to say that in large counties there's</td>
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<td>18 the training expense is not regulated by law</td>
<td>18 three, four, five, six locations that you can</td>
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<td>19 and so should it be regulated by law? I don't</td>
<td>19 go in and conduct that process, you know, I</td>
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<td>20 know. Again, it becomes -- yeah.</td>
<td>20 don't have a problem with that flexibility.</td>
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<td>21 I don't worry about, you know, I wouldn't</td>
<td>21 But to say Lake County you can't -- you</td>
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<td>22 worry that people in Lake County would say, how</td>
<td>22 can't early vote on this particular Sunday but</td>
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<tr>
<td>23 come Cuyahoga County has four or six or eight</td>
<td>23 over in Cuyahoga County they can vote on this</td>
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<td>24 early voting locations and we only have one and</td>
<td>24 particular Sunday, I think that's problematic.</td>
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<td>25 I said, because they're seven times as big as</td>
<td>25 Q Okay. And why do you feel that the flexibility</td>
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Deosition of Daniel Troy, taken October 23, 2015

Q Yeah. I mean, I'm sure. I mean, I mean, uniformity is important. But, you know, to what degree and on what aspects of that, you know, I mean, you know, does everybody -- does everybody wear a tie to high school or does everybody wear a blue tie to high school and all that. I mean, how specific is your uniformity and all that.

So yeah. Yeah. Reasonable minds can differ. I suppose on how we define, you know, 12 uniformity. But again, yeah. I think it's just, you know, you're, I'm -- I've been doing this a long time. I mean, I've been elected in office for 40 years. You know, most things get done, unfortunately not these days, but they get done by compromise, consensus, a little give and take. I'll meet you halfway on this, halfway on this, but we're kind of in a little bit more. I'm going to stand my ground and not compromise my principles. And so, as you can see, we're getting a lot done these days.

Q Mr. Troy, you mentioned the OEAO is a bipartisan organization. Is the County Commissioners Association bipartisan, as well?

A Yeah, it's bipartisan. I mean, it's -- 70 percent of the county commissioners in the state, at least 70 percent are Republican. And you know, even when we put together our board of directors, you know, when I first came in there was an emphasis that it be as balanced as possible. And I even said, hey, you know, you can't do that because, you know, we gotta sign up about half the people on my side to get on the board in order to have it balanced.

So, no, it's bipartisan, but I'd say right now the board is 35 members and it's probably, oh, it's probably, you know, 23 -- 23 Republicans, 12 Democrats, you know. But that's -- that's kind of the makeup of the state. You know, your larger counties have a tendency to have three democratic commissioners and, you know, but population wise, you know, the 12 Democrats probably represent more people in the State of Ohio than the 23 Republicans on the board because of the demographics of each of the counties.

So yeah, it's bipartisan. And really, we've been -- on these election issues we've pretty much all been, you know, on the same page in terms of where we're at.

And again, I get the impression that the Ohio Association of Elections Officials, whether Democrat or Republican, seem to be, you know, I'm sure it's like anything else, there might have been a dissenting vote or two, but my understanding that they were strongly in favor of the 28-day window rather than the 35 day.

I don't know where they're at on early voting centers, how many per county and all that, but I know the one thing they were really insistent on and they don't have right now is can't we -- can't we draw that line in the sand on Saturday afternoon so we can get these poll books in order to go out there and all that.

So yeah.

Q Okay. And is all the information you contained in your declaration, is that all true and accurate?

A Yeah. I mean, I read it before I signed it and, you know, it's, you know, might be in some cases a little fussent, but, yeah, it's all -- there's nothing in here that I can't -- in
fact, I did say earlier that when we ended up selling the voting machines for about 40 --
actually, that's -- I do see that's right, we did get $28,700 for them. I said less than 30,000 in scrap value. Yeah. Yeah.

MS. PIERCE: That is all for me. Anything else?
MR. PAL: Nothing for me.

MS. PIERCE: You're done.
MR. PAL: Thank you very much. Appreciate your time driving down.
THE WITNESS: Okay.
(Deposition concluded at 4:38 p.m.)
THE STATE OF OHIO,  
COUNTY OF CUYAHOGA, 

I, Lynn A. Regovich, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that DANIEL TROY, was first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by him was by me reduced to stenotypy in the presence of said witness, afterwards transcribed on a computer/printer, and that the foregoing is a true and correct transcript of the testimony so given by him as aforesaid.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified. I do further certify that I am not a relative, counsel or attorney of either party, or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio, on this 27th day of October, 2015.

Lynn A. Regovich, Notary Public
within and for the State of Ohio
Commission expires June 14, 2018.

CARY REPORTING SERVICES, INC. - 216.861.9270
www.cadycounseling.com
IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

THE OHIO DEMOCRATIC PARTY, et al.,

Plaintiffs:

vs.

JON HUSTED, et al.,

Defendants:

VIDEOTAPED DEPOSITION
of MATTHEW M. DAMSCHRODER, taken before me, Valerie J. Sloas, a Notary Public in and for the State of Ohio, at the offices of the Ohio Attorney General, 30 East Broad Street, Room 452, Columbus, Ohio, on Thursday, October 29, 2015, at 9:37 a.m.

ARMSTRONG & OKEY, INC.
222 East Town Street, Second Floor
Columbus, Ohio 43215-4620
(614) 224-9481 - (800) 223-9481
FAX - (614) 224-5724

STIPULATIONS

It is stipulated by and between counsel for the respective parties that the deposition of Matthew M. Damschroder, a witness called by the Plaintiffs under the applicable Rules of Civil Procedure, may be reduced to writing in stenotype by the Notary, whose notes thereafter may be transcribed out of the presence of the witness; and that proof of the official character and qualification of the Notary is waived.

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Cross-Examination by Mr. Spiva

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Matthew Damschroder

1 - - -

THE VIDEOGRAPHER: This is the videotaped deposition of Matthew Damschroder taken in the matter of the Ohio Democratic Party versus Jon Husted, et al., for the United States District Court, for the Southern District of Ohio, Eastern Division, Case No. 2:15-CV-1802.

This deposition is being held at 30 East Broad Street in Columbus, Ohio on October 29th, 2015, at 9:37 a.m.

My name is Kristen Colombo. I am the videographer. The court reporter is Valerie Sloas.

Counsel will now introduce themselves.

MR. SPIVA: Bruce Spiva for the Plaintiffs.

MR. McTIGUE: Donald McTigue for Plaintiffs.

MS. RICHARDSON: Ryan Richardson for the Secretary of State.

THE VIDEOGRAPHER: The court reporter will now swear in the witness.

MR. SPIVA: Actually, we still have a few minutes ago. My name is Bruce Spiva. I’m with Perkins Coie, and I realize that you had your -- usually I -- my first question is have you ever been deposed before, and I know that you’ve been deposed at least once, last week; is that right?

A. Correct.

Q. Okay. And you understand that deposition was what is known as a 30(b)(6) deposition, so in that deposition you were testifying on behalf of the Secretary of State’s Office. This deposition is a little different in that it’s more a typical deposition here. You’re testifying as yourself.

A. Yes.

Q. Okay. Have you ever been deposed before that, before last week?

A. Yes.

Q. How many times?

A. I don’t know for sure, but several.

Q. Okay. And can you give me a brief description of what that was -- what those times were in connection with?

A. All of them were related to my official duties either with the Secretary of State’s Office or with the Franklin County Board of Elections.

Q. Okay. Well, you probably don’t need this, but just for the record, I’ll go over some of the rules of the -- the road. I’m going to ask you questions, and you’re, of course, obligated to answer them truthfully and fully, to the best of your ability. When you’re answering a question, I’ll try my best not to do what we do in normal conversation and jump in with another question or comment until you get your answer out, and if you could do the same with me, I’d appreciate it, just so the court reporter can -- can get everything down.

A. Okay.

Q. And then, as you know, verbal responses. Okay is good, yes, no, or further explanation, but the court reporter won’t be able to catch our heads shaking and nodding, which -- which I sometimes tend to fall into myself.

If you need a break at any time, just let me know or your counsel know, and we can do that.

The one exception is if there’s a question pending on the floor, I’d ask that you go ahead and answer the question and then we can take a break.

A. Okay.

Q. If any of my questions aren’t clear or you don’t understanding them, please let me know and I’ll do my best to try to clarify them. If you answer the question, I’ll assume that you -- you -- that it’s clear.

A. Okay.

Q. Fair enough? So I know that -- that you went through some of this last week, but I want to...
Q. Okay. But you -- I mean, you were six months as Executive Director?
A. That's correct.
Q. Okay. And how long have you been in that role, the Chief of Staff role?
A. I've been Chief of Staff and Assistant Secretary of State since January of this year.
Q. Okay. And prior to that you were the State Elections Director and Deputy Assistant Secretary of State; is that correct?
A. Correct.
Q. And you were in that role from January 2011 until you became the Chief of Staff?
A. Correct.
Q. And prior to that, prior to January 2011, you were the -- you were with the Franklin County Board of Elections immediately prior to starting with the Secretary of State's Office?
A. That's correct.
Q. And what role did you have at the Franklin County Board of Elections immediately prior to being the Secretary of State; is that right?
A. I was Deputy Director immediately prior.
Q. Okay. And -- and from what period of time did you hold the Deputy Director role?
A. From the board's reorganization in 2008 until -- until I went to the Secretary of State's Office I was Deputy Director.
Q. Okay. And prior to that, prior to January 2011, you were the -- you were with the Franklin County Board of Elections; is that right?
A. Correct.
Q. Okay. And prior to that, prior to January 2001 I was the Political Director.
A. In the summer of 2000 through fall of 2001 I was the Political Director.
Q. Okay. And prior to that, what -- what were you doing?
A. Yes.
Q. Had you -- did you have any other roles with the Franklin County Republican Party before you became the Executive Director?
A. So I was at the county party as the Political Director in -- I think in June or July of 2000 through, I think, the fall of 2001.
Q. Okay. Any other roles with the Franklin County Republican Party?
A. I was an appointed member of the Executive Committee for a while.
Q. And from what period of time was that?
A. I don't remember.
Q. All right. Do you have any role currently with the Franklin County Republican Party?
A. No.
Q. And tell me again, what was the -- the first role that you had with the -- with the Republican Party, the Franklin County Republican Party.
A. In the summer of 2000 through fall of 2001 I was the Political Director.
Q. Okay. And prior to that, what -- what were you doing?
A. I was -- prior to that, I was in the State Treasurer's Office.
Q. What was your role in the State Treasurer's Office?
A. I was kind of the legislative liaison.
Q. Uh-huh. And just briefly, what -- what what -- what responsibilities did that entail?
A. I worked with the -- the Director of -- Legislative Affairs, and then there was also kind of -- another person who did legislation. I would go over and -- and sit with the committee and just kind of track what was going on in matters that had to do with the State Treasurer's Office.
Q. Were you there during the same time period that Mr. Pat McDonald was in the Treasurer's Office?
A. No.
Q. I take it you know Mr. McDonald?
A. I do.
Q. How long have you known Mr. McDonald?
A. I don't remember when we first met. Probably in 2000 or 2002, would be my guess.
Q. What -- how did you meet him?
A. I don't remember for sure how we met.
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Q. Was there any change, other than not meeting one of the statutory reasons, to that period, that one-week period prior to the close of books, was there any change as a result of the legislation that passed in -- in late 2005?

A. No.

Q. Okay. So in your understanding, there was basically continuity in terms of Golden Week between kind of the pre-2006 period and the post-2006 period; is that fair?

A. So the constitution, the state's constitution ended -- ends registration for an election 30 days before that election, and at the time, both pre-2006 and at the time in two thousand -- you know, the beginning of 2006, when no-fault absentee was adopted, absentee ballots were available 35 days before the election; so both before the change in 2006 and then afterwards, in 2006, a person, during that overlap period, could both register to vote and cast an absentee ballot.

Q. I'm going to refer to that period, as we have been, I think, as the period right before the close of books, that seven-day period as Golden Week. Were there -- were there problems that -- that Golden Week created for the administration of elections?

A. So I don't know that -- I would use the word challenge, as opposed to "problems." There is a challenge for the county election official in -- at the time a person who is both registering to vote and requesting an absentee ballot, there is a logistical challenge to getting the person into the county voter registration system in order to then immediately get that person the correct ballot style, the ballot style being the combination of questions and candidates for where they live. So there's a unique challenge there.

There's also the communication challenge of notifying if the person has moved from one county to another, registering in that new county, quickly notifying the other county that that person has moved, etc.

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changed their registration, so it can be canceled in
the other county, and then, I think like I testified
previously, previously being last week's deposition,
that there is a -- a unique risk of -- of a potential
for -- for election falsification, where a person who
would not -- who might not be eligible to register
and vote in Ohio could come in, register and cast
their ballot at the same time.

Q. Okay. Any of those risks that you just
identified or challenges, were -- were they any
different prior to the changes in laws we've talked
about? Prior to the 2006 change, were they different
before or after those changes?

MS. RICHARDSON: Objection.

A. I think the -- the logistical and the
unique risk challenges were still present. I would
say that, you know, because of the change from
allow -- from allowing only individuals who were
qualified under the dozen or so reasons to being --
to no-fault absentee, you know, potentially increased
the -- the potential scale of unique kind of risk and
the logistical challenges.

Q. But I take it that the challenge of
getting them the correct ballot style, that was a
challenge that the Board of Elections faced both
before and after the changes that were made in 2006?

MS. RICHARDSON: Objection.

A. So the challenge, that logistical
challenge still exists, but because more people were
eligible to cast an absentee, the -- this -- the
scale of the challenge increased.

Q. Okay. And would you say the same is
ture in terms of notifying the other county that the
person had moved, notifying them in time?

MS. RICHARDSON: Objection.

A. So similar to -- to my previous answer,
that the scale of the challenge increased.

Q. Uh-huh. Okay. Let me ask you about the
risk of election falsification that you -- you
mentioned. As I understand it, ballots cast during
Golden Week are not counted during Golden Week; is
that correct?

MS. RICHARDSON: Objection.

A. Yes. State law does not permit the
tabulation of any ballot prior to the close of polls
on Election Day.

Q. And they are kept segregated as are
other absentee -- other types of absentee ballots; is
that -- is that correct?

MS. RICHARDSON: Objection.

A. So absentee ballots can't be opened or
scanned until the 10th day before the election, so
the board would certainly begin making the
determinations of which ballots can be opened or not,
which envelopes can be opened or not based on the
information on the envelope prior to the 10th --
before the 10th day and certainly immediately after
the ballot has been cast, but they're not opened and
the ballot separated from the envelopes until at
least the 10th day.

Q. Okay. And as I understand it, SB 238
repealed Golden Week --

MS. RICHARDSON: Objection.

Q. -- is that correct?

A. So Senate Bill 238 changed the start of
nonmilitary and overseas absentee voting until the
day after the close of registration.

Q. An individual still can register to vote
during that seven-day period prior to the close of
books; is that correct?

A. Yes.

Q. And that same person who registers in
the seven days prior to the close of books can then
vote even in the early voting period after the close
of books; correct?

A. Yes.

Q. Okay. And so the -- the challenge with
respect to election falsification, that -- that's --
to the extent that exists, it still exists with --
with respect to someone who registers that close to
the close of books --

MS. RICHARDSON: Objection.

Q. -- is that fair?

A. So the challenge becomes different. You
know, there's still -- the challenge would still
exist to get the registration form kind of in the
front of the line, so to speak, of all of the other
registrations that are coming in, so that the
absentee ballots are ready to go out the door the day
after the close of registration, so the challenge
still exits. It becomes a different kind of
challenge --

Q. Uh-huh.

A. -- certainly than if the person is
standing right in front of you at the same time.

Q. Uh-huh. Are you aware of any instances

Armstrong & Okey, Inc., Columbus, Ohio (614) 224-9481
of fraud that were attempted in connection with --
with Golden Week?

A. So, in 2008, I would say we had our --
our biggest struggle in Franklin County with -- with
allegations of fraud. There were a number of college
students who came to Franklin County in an effort to
help turn people out for the presidential election.
They were a great group of young -- young folks,
mostly all law students, and they formed, I think, a
nonprofit organization to receive funding to help pay
for them to do voter registration drives and get
people to -- to the early vote center. Many of them
registered in Ohio and cast an absentee ballot during
that Golden Week period and -- but fully intended to
go back to their home or to their college. They were
only in Ohio temporarily.

A number of those students, as the
various allegations in the media started to come to
light about Golden Week, came forward to the county
prosecutor and said hey, listen, you know, we may not
have, you know, fully and properly understood Ohio
law, and so, you know, can we withdraw our
registration and withdraw our ballots. We did that.
And so -- and there were -- there were other media
reports.

We worked with our county prosecutor
to -- to have his folks -- when we mailed out an
acknowledgment card after a person registered and it
came back as undeliverable, in some cases we asked
the prosecutor to kind of go out and check, and the
prosecutor would -- the investigator would go out,
you know, find an empty house, talk to the landlord,
you know, has there been a lease on the house for a
number of -- you know, for a number of years.

In the end, Director Stinziano and I
with -- advised our board, for all of those ballots
that had not been withdrawn, advised our board to
count those ballots because the -- the fact that an
acknowledgment card had come back as undeliverable
and that a person had not then responded to the
confirmation card that we sent was not a valid reason
under state law for rejecting their ballot, and so we
counted those ballots.

I think it's important, you know, to
note, and my guess is you'll probably ask me soon,
the scale of those problems, they're not huge.
It's -- it's the balance between, you know, we want
to make it easy to vote in Ohio and at the same time
hard to cheat in Ohio, and we think that there is --
that we -- you know, that the State of Ohio has
achieved that balance.

Q. I take it that you receive returned
validation cards probably fairly frequently even not
in connection with Golden Week; is that accurate?

A. Yes.

MS. RICHARDSON: Objection.

Q. Okay. And I assume the practice, unless
you have reason to believe that it's fraudulent, is
to count those ballots whether it's received during
Golden Week or sometime before that; is that fair?

MS. RICHARDSON: Objection. And if I
may, I just want to make sure that we're clear about
whether we're asking questions about his time during
the Secretary of State's Office or at Franklin
County, because I think the questions have been
discussing both.

MR. SPIVA: I'm asking about in his
experience.

BY MR. SPIVA:

Q. To the extent you have experience in
either capacities, I'm not limiting it to -- to one
or the other.
During my time in Franklin County, I
think we had a dozen or so total absentee-ballot
related prosecutions, some of which resulted in --
in -- in felony convictions, others which were -- you
know, resulted in, you know, plea deals with
misdemeanors, and I think there was one that I recall
that was related to -- to -- to Golden Week
registration.

Q. And were the others related to mail-in
absentee ballots?

MS. RICHARDSON: Objection.

A. Yes, those were related to -- to mail-in
absentee ballots, and I -- I think there were also
some that were in-person Election Day prosecutions.

Q. Uh-huh. And do you recall how many
in-person Election Day prosecutions --
A. I lumped all those together. I'm sorry.
For clarity purposes, I lumped all those different
things together in my earlier number.

Q. All right. But that, the 12 that you
mentioned, that's during the period from
approximately 2000 through 2011, when you were with
Franklin County?

A. It would be during 2003 to 2010, when I
was with Franklin County.
when that passed?

Q. When Senate Bill 238 was passed, yes, both chambers were Republican majority.

A. That's correct.

Q. Do you know how many Democrats voted for Senate Bill 238?

A. I don't. Was it any?

Q. Was it any?

A. I don't.

Q. And you mentioned that there were a group of legislators -- legislators back in the 2009 to 2010 period, you said there were some Democrats and some Republicans. Do you recall the Democrats who favored eliminating Golden Week?

A. My recollection is that the two primary sponsors of the -- of the House bill were Danny Stewart here from Franklin County and also Tracy Heard from Franklin County.

Q. Anybody else that you can recall?

A. Those are -- those are the two that I remember.

Q. And what happened to the legislation that passed out of the House?

A. So there were -- there were two bills.

One that passed out of the House, one that passed out of the Senate, and my recollection is that there was kind of a -- a working group that consisted of -- my understanding was Dan Stewart from the House and Bill Seitz, Republican State Senator from the Senate, and then Secretary Brunner and then also her Legislative Affairs person, Mike Stinziano, that the four of them kind of formed the primary working group to kind of negotiate a compromise between -- between the two, the two bills.

Q. Uh-huh, uh-huh. And Mr. Stinziano, he -- he was a State Representative?

A. Yes.

Q. Okay. Actually, I don't know if you --

A. Right. So I should probably -- for clarity purposes, there's two Mike Stinzianos.

Q. Okay.

A. There's Mike Stinziano, Sr., who worked for Secretary Brunner as -- as her Legislative Director. He was a State Senate -- or a State Representative -- Don would know better than me -- from the 1970s to, I think, the early 1990s --

Q. Uh-huh.

A. -- and then his son, Michael Stinziano, also worked for Secretary Brunner before he came to work with the Franklin County Board of Elections, and he is now a State Representative and will, in a couple weeks -- I guess next week likely win a seat on Columbus City Council.

Q. Uh-huh, uh-huh. And I take it that the Stinzians are -- are Democrats?

A. Correct.

Q. And -- and Secretary Brunner was also a Democrat; correct?

A. Correct.

Q. And so this group, they formed a working group, and then what -- what came of that?

A. I don't know for -- for sure all of the -- all of the things that transpired kind of in the room. I wasn't a part of the working group, but ultimately, no legislation was passed in that General Assembly. I think time just ran out.

Q. Okay. To your knowledge, did former Secretary Brunner support Senate Bill 238, the bill in the past?

MS. RICHARDSON: Objection.

A. Correct.

Q. And how about the -- I think you had mentioned Mr. Stewart and Ms. Heard, I think were two Democrats in Franklin County that you said had been part of this earlier effort, did either of them support 238?

A. I think --

MS. RICHARDSON: Objection.

A. I think at that point they had been term limited out of the General Assembly.

Q. And what involvement, if any, did you have in this earlier -- these earlier discussions about potentially eliminating Golden Week?

MS. RICHARDSON: Objection.

A. I don't recall any -- any role at all.

Q. Is this just something you became aware of in your role at the Franklin -- I guess at that period you were still at the Franklin County Board of Elections?

A. Correct.
Q. Did you actively promote a change in the law, and I'm -- not in connection -- I'm not asking you in connection with the -- the group that you just described, but in any connection to -- to eliminate Golden Week?

MS. RICHARDSON: Objection.

A. So during my period at the Board of Elections I thought that that was a reasonable change to Ohio law, as were I think a number of the things that were in both the House version and the Senate version.

Q. And why did you think it was a reasonable change to Ohio law?

A. I think based on the experience that I described earlier from our experience in Franklin County in 2008.

Q. Uh-huh. Are you talking about the situation with the students?

A. Yeah, the situation with our -- our -- our incidents with -- with alleged allegations of -- alleged election falsification related to the -- the overlap period.

Q. And I may have -- I may either have forgotten or missed it, but other than the students, were there -- were there other instances of alleged falsification connected to Golden Week in the 2008 period?

MS. RICHARDSON: Objection.

A. Yes. So with my earlier testimony, we had -- there were people who registered during the Golden Week period and cast a ballot. We mailed out the acknowledgement card. It came back as undeliverable, and the -- we asked the prosecutor's investigator to -- to go out. There were a couple of instances where, you know, the house was empty, no current lease on the property; so there were some of those instances.

I also failed to -- to recall until now that there were also some McCain operatives who had done the same thing, who had registered and -- and cast a ballot, and then -- I think at the same time frame or so as the -- the students. I think the -- the papers called them the Brownlee 13. There were also some -- some McCain operatives who had done the same thing, who then came forward and asked for their ballots to be withdrawn.

Q. Okay. So with respect to the students, whether it was the McCain students or the Obama students, I take it all -- as far as you know, all of them recanted and -- and none of their ballots were actually counted?

MS. RICHARDSON: Objection.

A. Yeah. My recollection is that all of those individuals from -- the students from the nonprofit group and the McCain operatives all requested that their registration and ballots be withdrawn and no charge be filed related to that, and we did that, but the ballots from -- there were other ballots from individuals whose registrations -- whose acknowledgement cards came back as undeliverable, who, when the prosecutor went and looked at it, you know, they couldn't validate that anybody indeed lived -- did live there, those ballots did count.

Q. Okay. And -- but no prosecutions were -- were initiated with respect to those individuals that -- where the card came back as undeliverable and the prosecutor went out and saw that the house had been empty?

MS. RICHARDSON: Objection.

A. I can't speak to the specifics about what the prosecutor did or didn't do. After -- after they did an initial investigation, I don't know whether they did indictments and just couldn't find people. I don't -- I don't -- I don't know what they did.

Q. You're not aware of any indictments having resulted from that?

A. Not -- not that I know of.

Q. And you were never, I assume, called to testify in a -- in a criminal case prosecuting fraud based on these individuals that had the return cards?

MS. RICHARDSON: Objection.

A. That's my recollection.

Q. Okay.

A. I was called to testify on other -- on at least one other absentee-related, double-voting kind of thing, but I don't remember for sure if that had a Golden Week implication or not.

Q. Were there any other reasons that in this 2009, 2010 time frame that you thought -- putting aside what you've already testified about, the potential for falsification, were there other reasons why you thought eliminating Golden Week would be a reasonable change in Ohio election law?

MS. RICHARDSON: Objection.

A. So I think consistent with my earlier
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<td>1. testimony, I think just the -- to me, the primary</td>
<td>1. were other at least I think contemplated changes, if</td>
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<td>2. issues there were the election administration</td>
<td>3. not, I guess, other changes that actually became law.</td>
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<td>3. challenges.</td>
<td>4. Can you tell me about what other changes you were --</td>
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<td>4. Q. Uh-huh.</td>
<td>5. you were referring to?</td>
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<td>5. MS. RICHARDSON: Excuse me.</td>
<td>6. MS. RICHARDSON: Objection.</td>
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<td>6. MR. SPIVA: Bless you.</td>
<td>7. A. So if I understand your question</td>
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<td>7. MS. RICHARDSON: Thank you.</td>
<td>8. correctly, you're talking about during my period at</td>
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<td>8. BY MR. SPIVA:</td>
<td>9. Franklin County and the House and the Senate bills</td>
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<td>9. Q. And those challenges, I think -- other</td>
<td>10. that were kind of going through at the same time?</td>
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<td>10. than what you've already testified about in terms of</td>
<td>11. Q. Exactly.</td>
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<td>11. the correct ballot style and notifying a county if</td>
<td>12. A. Yeah, I don't remember specifically all</td>
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<td>12. someone had moved, were there -- was there anything</td>
<td>13. the different things that were -- that were involved</td>
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<td>13. else?</td>
<td>14. with -- with those two proposals, so I don't remember</td>
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<td>14. MS. RICHARDSON: Objection. Asked and</td>
<td>15. for sure what else was in those two, those two</td>
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<td>15. answered.</td>
<td>16. different bills.</td>
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<td>16. A. Yeah, those were the challenges I was</td>
<td>17. Q. Okay. At the time that you were at the</td>
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<td>17. referring to.</td>
<td>18. Franklin County Board of Elections, did you have any</td>
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<td>18. Q. Okay. And outside of those challenges</td>
<td>19. knowledge concerning the demographics of people</td>
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<td>19. and the falsification issue, was there any other</td>
<td>20. who -- of the people who used Golden Week?</td>
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<td>20. reason you thought it would be reasonable to</td>
<td>21. MS. RICHARDSON: Objection.</td>
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<td>22. MS. RICHARDSON: Objection. Asked and</td>
<td>23. Q. Did you have a general sense of that?</td>
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<td>24. A. Not that I -- not that I had.</td>
<td>24. A. So, you know, because registration in</td>
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<td>1. Q. And what did you do, if anything, to try</td>
<td>1. Ohio isn't tracked by race, you know, we're not able</td>
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<td>2. to promote that change in the law to eliminate Golden</td>
<td>3. to -- to run a report or anything like that, so -- so</td>
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<td>3. Week?</td>
<td>4. no, I don't -- I don't -- you know, I don't think</td>
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<td>4. MS. RICHARDSON: Objection.</td>
<td>5. we -- we knew, you know, who uses it and who doesn't,</td>
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<td>5. A. During which period are you speaking?</td>
<td>6. those kinds of things.</td>
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<td>6. Q. Why don't we start with kind of this</td>
<td>7. Q. Uh-huh. How about for the early voting</td>
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<td>7. 2009, 2010 period, when you -- you said you first</td>
<td>8. period in general, did you have a sense of the</td>
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<td>8. became aware of that.</td>
<td>9. demographics of people who used -- not just focusing</td>
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<td>9. A. So during my period with the Franklin</td>
<td>10. on Golden Week, but the whole early voting period.</td>
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<td>10. County Board of Elections, it's likely that I</td>
<td>11. Did you have a sense of the demographics of people</td>
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<td>11. testified in committee in -- in both Houses on the</td>
<td>12. who used the early voting period?</td>
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<td>12. specific legislation that was going through, but I</td>
<td>13. MS. RICHARDSON: Objection.</td>
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<td>13. don't remember specifically that I did or what I</td>
<td>14. A. No.</td>
</tr>
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<td>14. said, but it would -- it would -- it would not be</td>
<td>15. Q. Did you have a sense of whether Golden</td>
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<td>15. unlikely that I would have done that.</td>
<td>16. Week was used by one party or the other more or less?</td>
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<td>16. Q. Uh-huh. Okay. And then after that,</td>
<td>17. In other words, did you have a sense that, say,</td>
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<td>17. were there -- after that time period when -- after</td>
<td>18. Democrats used Golden Week more than Republicans?</td>
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<td>18. you moved to the Secretary of -- Secretary of State's</td>
<td>19. MS. RICHARDSON: Objection.</td>
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<td>19. Office, were there other ways in which you promoted</td>
<td>20. A. No. My sense was, based on the numbers</td>
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<td>20. the change in the law that ultimately eliminated</td>
<td>21. that we looked at, at the time it was -- actually, as</td>
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<td>21. Golden Week?</td>
<td>22. a percentage of -- of the whole of who was voting, it</td>
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<td>22. MS. RICHARDSON: Objection.</td>
<td>23. was actually a very small percentage of people who</td>
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<td>23. A. No.</td>
<td>24. were registering to vote for the first time and</td>
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<td>24. Q. You mentioned a minute ago that there</td>
<td>25. casting a ballot or even slightly more, but still</td>
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very few changing their address and casting a ballot at the same time.

Q. Did you have a sense in terms of the whole early voting period, whether one party or the other utilized it more than the other?

A. No, not really.

Q. And you mentioned that the numbers of individuals who either changed their registration or registered for the first time during Golden Week was relatively small.

A. Uh-huh.

Q. Did you view the number of people who used Golden Week, whether or not they were first-time registrants or people who were changing their registration, did you view that number as relatively small?

MS. RICHARDSON: Objection.

A. Would you mind restating that? I'm sorry.

Q. Yeah.

A. I lost you.

Q. Taking the whole number of people who voted, who -- who -- who voted during Golden Week, whether or not they registered or -- or changed their registration, what was your sense of the magnitude of those numbers?

A. So if I understand your correct -- your question correctly, are -- are you asking whether the percentage of people who cast a ballot, regardless of their registration status, during the Golden Week period was -- you know, what my characterization of that number is relative to the entire 35-day period?

Q. Yes.

A. So I would say of the five weeks, it was relatively low related to -- to the whole.

Q. Uh-huh. Did you have a sense in terms of whether that number between presidential elections, whether that number was growing or not?

A. I don't know that I have a sense of that other than to say that overall voter participation in a presidential is greater than in a gubernatorial, greater than a municipal election, and so at least in my time in Franklin County, after no-fault absentee started and we were mailing out absentee ballot applications, that the percentage of the people voting absentee remained relatively stable over the type of election, but that the percentage of absentee who were voting in person was larger in a presidential than in a gubernatorial, than in a municipal.

Q. Okay. And let's say just comparing 2008 to 2012, would it be accurate to say that the number of people, just focusing on Golden Week for the moment, that the number of people voting during Golden Week was much larger in 2012 than it had been in 2008?

MS. RICHARDSON: Objection.

A. Excuse me. I don't know -- I don't know that that's the case.

Q. You don't know one way or the other whether that's the case?

A. I don't.

Q. Okay. And how about with respect to the whole early voting period, comparing 2012 to 2008, do you have a sense of the relative numbers, and I'm not asking for the specific number, but in terms of whether it was growing or not?

A. My recollection is that at least statewide there were more absentee ballots cast in 2012 than in 2008.

Q. And you mentioned that the numbers of individuals who either changed their registration or people who were changing their registration status, during the Golden Week moment, that the number of people voting during Golden Week was much larger in 2012 than it had been.

A. Excuse me. I don't know -- I don't know that that's the case.

Q. Okay. And how about with respect to the whole early voting period, comparing 2012 to 2008, do you have a sense of the relative numbers, and I'm not asking for the specific number, but in terms of whether it was growing or not?

A. My recollection is that at least statewide there were more absentee ballots cast in 2012 than in 2008.

Q. And I take it in that you're including both mail absentee ballots and in-person absentee ballots?

A. I am.

Q. Do you have a sense of whether in-person absentee voting grew between 2008 and 2012?

A. As I sit here right now, I don't remember. It may be in my Declaration. I can't remember for sure.

Q. Okay. Actually, it may be a good time now to -- there are some documents I want to show you and ask you some questions about, so maybe we'll mark our first exhibit. Let me give you what will be marked as Damschroder 1.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MR. SPIVA: Sorry, I only have one copy.

I -- I mean, I only have one extra copy. I've got my own and the witness'.

BY MR. SPIVA:

Q. Mr. Damschroder, if you could just take a look at that for a minute and let me know -- I have a few specific questions about it. Just tell me when you're ready.

A. I'm sorry. Yes, I'm ready.
Q. Okay. Just -- just for the record the Bates number on this is SE1007454, and I can represent to you that that was produced by Senator Seitz' office. This appears to be an e-mail from you, Mr. Damschroder, to John Husted and Jim Hughes dated December 6th, 2009; is that correct?

A. Yes.

Q. Okay. And at the time in 2009 I take it that you were still, I guess, a Deputy Director at the Franklin County Board of Elections?

A. Yes, I was.

Q. Uh-huh. And the "subject" is, "Additional Suggestions for Sub SB 8." Can you explain what that -- what SB 8 is or was?

A. I think "Sub" is Substitute. "SB" is Senate Bill 8, was, if my recollection serves, the Senate version of the bill that I was discussing earlier.

Q. So which bill were you discussing earlier?

A. So when we talked earlier about that there were two different bills in the General Assembly, a House Bill and a Senate bill, this Sub -- Substitute Senate Bill 8 I think is the Senate Bill I was referring to earlier.

Q. Okay. Were there any hearings on SB 8?

A. I -- I believe there were. I don't know for sure, but I would imagine that there were.

Q. And do you recall whether there was any debate on the floor of the Senate over SB 8?

MS. RICHARDSON: Objection.

Q. I don't know why you would have access to your work e-mail from -- from home?

A. I think that's right.

Q. Okay. And you -- you say in the first sentence, "Following is a list summary of the items that are suggestions for enhancing Sub SB 8 (the detail information including section references and bill line numbers is contained in the attached document)." Is that -- first of all, did I read that correctly?

A. Yes. So it says, "Following is a list summary of the items that are suggestions for enhancing Sub Senate Bill 8."

Q. These were -- these were changes that you were proposing to make to -- to Sub 8?

MS. RICHARDSON: Objection.

Q. SB 8. Sorry.

A. So yes, I think these were a list of -- of suggestions that I was making.

Q. Do you know why you would have communicated with them via your personal e-mail?

A. Well, at least in this instance it was on a Sunday evening, so I think that's probably -- that's what I had at home probably.

Q. Okay. At that point you didn't have access to your work e-mail from -- from home?

A. I think that's right.
1 broken by the Secretary of State, that those kind of
2 issues should be resolved by the bipartisan county
3 Board of Elections, and so there was a bill, I don't
4 remember the number, that went through the
5 legislature at the end of 2008 to require a
6 supermajority of the Board of Elections for days and
7 hours and those kinds of things, and then Governor
8 Strickland ended up vetoing that legislation. And so
9 it's my recollection that either as a part of either
10 Senate Bill 8 or the House version, that there was
11 a -- there was discussion -- I can't remember if it
12 was actually in the legislation or something that was
13 proposed that would have allowed Boards of Elections
14 to create multiple in-person absentee voting sites,
15 in the context that the county commissioners, who
16 ultimately fund the operations of the Board of
17 Elections out of the county general fund from sales
18 tax revenue, that the county commissioners would have
19 to sign off on that funding in advance of the
20 election, just like they do poll worker pay
21 increases, and that the decision to -- whether to
22 establish multiple would require a supermajority of
23 the bipartisan Board of Elections and that the
24 elected Secretary of State wouldn't allow -- be

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1 a reasonable thing to do.
2 Q. And on the Franklin County Board of
3 Elections -- first let me just make sure I -- let me
4 clarify one thing. When you were saying that part of
5 the proposal was to require a supermajority, you're
6 talking about of the -- the -- the individuals on the
7 Board of Elections itself; right? Not the county
8 commissions; correct?
9 A. So, as I recall, one of the ideas was
10 because of the issue in 2008 of the Secretary of
11 State breaking ties as it related to hours and days
12 for in-person absentee voting, that the conversation
13 here was that there would be a supermajority, three
14 votes of the four member bipartisan county Board of
15 Elections whether to ask the commissioners for
16 funding to establish it the year before.
17 Q. Right. So in order to -- to pass a -- a
18 regulation establishing multiple sites, the Board of
19 Elections would have to do that by a supermajority
20 vote -- majority vote, sorry, but that essentially
21 would be a majority vote of the -- it could only be
22 done by a majority vote of the Board of Elections;
23 correct?
24 MS. RICHARDSON: Objection.

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1 A. So -- so I think you're asking kind of
2 the same question as before. So it was if -- if the
3 proposal made it into the legislation, the
4 legislation passed, and that it would then require
5 three affirmative votes of the four-member bipartisan
6 Board of Elections to submit it to the commissioners
7 for the funding request the year before in order for
8 the Board of Elections to do it.
9 Q. Right. In other words, because if
10 there's -- the makeup is two/two, right, in terms of
11 party split on the Board of Elections?
12 A. Correct.
13 Q. And so basically it would take the power
14 to break a tie out of the Secretary of State's hands
15 and put it with one party or the other in terms of
16 how the decision would be made?
17 MS. RICHARDSON: Objection.
18 A. So, yeah, there are -- there are
19 certain -- there are a number of areas of -- of
20 election law where the Secretary cannot break a vote,
21 so it requires three votes from the two Rs and
22 two Ds on the county Board of Elections to do
23 something.
24 Q. And if -- and if they can't reach an
agreement, they're deadlocked, in those instances what happens?

A. I think it depends on what the status quo is, but I think the status quo in those kind of instances would -- would be unchanged.

Q. Uh-huh. Okay. Your Point 8 here is, "Clarify what information is mandatory on the application for absent voter's ballot." What -- what were you proposing?

A. So I -- I think this was also one of the items that was in the legislation that passed in '08 that -- that Governor Strickland vetoed, but I can't remember that for sure. We had an issue in 2008. So for -- I'll use the phrase time immemorial. For a very long time, even before the advent of no-fault absentee voting, the identification envelope for an absent voter's ballot had a -- a line, a blank, as a part of all of the fields on the envelope where the voter would fill out the information, you know, name, address, signature, those kinds of things. There's a line for date of birth, and so Boards of Elections all across the state considered date of birth that was on the form a mandatory field in order for the absentee ballot to be opened and the ballot extracted and counted.

In 2008, a law professor at Ohio State called then Director Stinziano, my Democratic counterpart at the Franklin County board and said hey, I'm filling out my absentee ballot application and -- or the envelope and it has the citation on it, and so, you know, because I'm a law professor I looked up the cite, and I'm reading it and it doesn't say date of birth is a required field, do I have to fill in the date of birth, and I remember Director Stinziano said yes, you know, it's on the envelope, you have to fill it out.

And she said well, I don't -- I don't see it in the statute.

So we kind of got into this -- this interesting conversation, and it ended up coming up out -- and I think then Secretary Brunner, I think, issued an advisory or directive clarifying that even though it's a line on the envelope, state law doesn't actually require date of birth as -- as a field for determining, at that time, whether the ballot counts or not, and so it was -- it was one of the -- one of the issues that became a -- an item that -- that people wanted to say hey -- because I remember

MS. RICHARDSON: Objection.

Q. And so --

A. That was a long way of answering your question. I apologize.

Q. No. I -- I appreciate it. I think -- let me just make sure I have it right. You're saying that the proposal, then, would be to make date of birth mandatory?

MS. RICHARDSON: Objection.

A. So I think the proposal was to clarify, because the line was there. The statute prescribed the form of the envelope. It had a line for date of birth, but the other section that says -- actually, kind of two sections that have different parts of what's required and what isn't. It didn't mention date of birth, and so it's a question do -- do we want to have it, do we not want to have it. The Senate and the House in '08 had said five fields, so

we just needed clarification, are we doing -- are we doing date of birth or are we not doing date of birth, because if we're not doing date of birth, it should come off the form.

Q. Okay. At that point in time, when you wrote the e-mail, did you actually -- were you actually making a proposal as to whether date of birth should be mandatory or not?

MS. RICHARDSON: Objection.

A. So my recollection is that I supported the concept of -- of the same five fields for registration as to request an absentee, as to cast an absentee, as to cast a provisional, but I think here I'm just saying this is something we need to decide one way or the other.

Q. Okay. Prior to the recent changes with -- with SB 205 and SB 216, were ballots being rejected when they didn't have the date of birth on them?

MS. RICHARDSON: Objection.

A. So my recollection is that after the clarification in '08, up until the -- the passage of Senate Bill 205 or 216, I don't remember which, which bill did what, that absentee -- or the date of birth
was not a required field on the identification envelope. It was clear in statute that it was a required field on the application.

Q. And that's for the absentee ballot?
A. Correct.

Q. Okay.
A. In person or by mail.

Q. Okay. And the clarification you mentioned that Secretary Brunner issued, was that a directive or some other type of --
A. I don't remember for sure whether it was a directive or advisory. It may have also just been an e-mail to -- to Michael and myself, "Michael," Director Stinziano and myself.

Q. Prior to her issuing whatever the form it took, the clarification, to your knowledge, were -- was the practice in Franklin County to reject absentee ballots that didn't include the date of birth information on them?
A. Yes, it was.

Q. Do you know whether that was the practice in other counties as well?

MS. RICHARDSON: Objection.

A. I don't know for certain.

Q. We were only talking about eight, but I -- I think -- I think you actually were covering both.

A. I -- I -- yeah. Thank you. I think I was -- so the -- the issue that I brought up for 2008 about the requirement for date of birth was specific to the identification envelope, the ballot itself, not the application.

Q. Uh-huh.

A. The issue with the application was there was a controversy in 2008 about -- I think the Ohio Supreme Court adjudicated it. It was an issue of what was required on the absentee application itself. I think the McCain campaign, I think, sent out an application that had as a design feature kind of open bullets or open boxes for, you know, for each of the required elements, and the person next to the box would say, you know, name and then a blank, and Secretary Brunner, I think, issued an advisory or a directive or something saying because those are boxes they have to be checked in order to be valid. I think the Republican Party or somebody sued, and the court said no, that there's no such thing as a checked box in the statute, and so, you know, the issue -- the issue for No. 8 was clarifying are there checked boxes, are there not checked boxes.

There's also a statement that's required to be in there that says, you know, I affirm I'm a qualified electorate of the State of Ohio. That has to be preprinted on the application. I think Don's probably saved a ton of campaigns by making sure that that line is on the applications. So I think the issue there was what -- and I think generally for a lot of these -- for a lot of these items, you know, what were the matters of controversy in 2008 and how can we solve those controversies before the next federal election, whether it be '10 or '12 or even a municipal election, so we don't have these same kind of controversies again.

Q. Okay. In your No. 10 you say, "Exclude from the precinct size calculation voters who have voted by absent-voter ballot in the last two gubernatorial elections." What are you referring to there?

A. So in -- in Franklin County, after the advent of no-fault absentee application -- no-fault absentee voting, we saw our total absentee numbers go up to, you know, 30, 40, I think -- I think it was even 45 percent. I think it was either in the '08 or...
2010 general election. Again, that's all absentee, in person and by mail -- 

Q. Uh-huh.

A. -- and so one of the issues there was, you know, we would have Election Day precincts, which is great, where, you know, you'd have 50 people show up the entire day or a hundred people show up because, you know, a third, half, more, had voted absentee ahead of time, and so there are certain fixed costs related to opening a precinct on Election Day, and so to the extent that already boards are allowed -- Boards of Elections are allowed to exclude from the cap of registered voters in a precinct, anyone who has not responded to a confirmation card, in an inactive status. It could make sense for a Board of Elections to exclude also from that cap people who have demonstrated a -- a propensity to vote by absentee again, either in person or by mail, in at least two of the last essentially three or four federal elections, from a resource, financial cost savings for the county perspective.

Q. When you said "precinct size" here, were you referring to the amount of equipment at the precinct?

MS. RICHARDSON: Objection.

A. No. So I think it's -- the issue there, precinct size is -- and I think I was talking in my testimony previous, a statement about it, that there's a cap of -- and I can't remember whether it's 1,200 or 1,400 now, registered voters in the precinct; so when I talk about size in that context, it's number of registered voters in state law. So state law imposes a cap and excludes current law, at that time excluded from the cap, and I guess still does, excludes from the cap anyone who has not responded to a confirmation card mailing is in inactive status.

Q. So really number of -- of voters per precinct is what you're referring to in terms of precinct size?

MS. RICHARDSON: Objection.

A. Yes. So when I talk about precinct -- when I talked about the precinct size in No. 10 in this e-mail from 2009, I guess it was, number of -- number of voters.

Q. Okay. And then in No. 11 you say, "Require that provisional ballots contain the same identification information as is required for voter registration and absent voter balloting in order to be validated." Is that -- are you proposing that date of birth and address information be included on provisional ballots?

MS. RICHARDSON: Objection.

A. So -- so here I was talking about again that same legislation that was passed in '08 that Governor Strickland vetoed, I think it was in -- in at least Senate Bill 8 and maybe even in the House version, of you having the same five fields that are required to register to vote, all be used for requesting and casting an absentee and for casting a provisional.

Q. Prior to the time that you were writing the e-mail, had provisional ballots -- I take it provisional ballots had not required those same five -- five fields?

MS. RICHARDSON: Objection.

A. I --

Q. Is that correct?

A. Yes. Going back to when -- when provisional voting started I think in 1990 or 1992, all of those same five fields were not required, I think date of birth being the -- the big one that was -- that was not there.
THE VIDEOGRAPHER: On the record at 11:07.

BY MR. SPIVA:

Q. Mr. Damschroder, have you had a chance to look at what's been marked as Damschroder 2?

A. I'm looking at it now.

Q. Okay. Just tell me when you are ready for me to ask you a couple of questions.

A. Okay.

Q. All right. This is an e-mail that is from you dated August 11th, 2010; is that correct?

A. Yes.

Q. And it's not clear from the e-mail, although I think, based on the name up top, this was -- who it was sent to. Was it sent to Erika Cybulskis? And I'm sure I owe her an apology for pronouncing her name.

A. I -- I believe so.

Q. Okay. Who is Erika Cybulskis?

A. I -- I believe so.

Q. Okay. Who is Erika Cybulskis?

A. I think she was Senator Seitz' either administrative assistant or legislative aide or something in his office.

Q. Okay. And it was sent -- you sent it on August 11th, 2010. I take it at that point you were

the Deputy Director of the Franklin County Board of Elections --

A. Yes.

Q. -- correct?

And I -- I notice this one is sent on a Wednesday, but it's still from your Hot Mail account.

Do you know why you were sending an e-mail about the Board of Elections from your Hot Mail account?

MS. RICHARDSON: Objection.

A. Don't know specifically.

Q. You say in here that -- the "subject" is, "In-Person Voting Hours for Franklin County," and then you say, "Doug Preisse asked me to provide the following information to you." Who is Doug Preisse?

A. Preisse.

Q. Preisse. Sorry.

A. No. That's fine. He was the, at that time, the Chairman of the Franklin County Board of Elections and also Chairman of the Franklin County Republican Party.

Q. Okay. And so do I gather correctly from what you said about your recollection of who Ms. Cybulskis worked for, Senator Seitz, that Mr. Preisse was asking you to provide this information to Mr. Seitz; is that correct?

MS. RICHARDSON: Objection.

A. I don't remember for sure, but based on the -- the first line, that, "Doug Preisse asked me to provide the following information to you," that's -- that's my belief.

Q. Okay. And then you go on -- I'm not going to read the whole thing, but I -- I think you can read the next sentence, "Earlier today, the Franklin County Board of Elections met in special session to determine in-person absentee voting hours for the 2010 general election." Then you say, "The bipartisan board voted unanimously as follows," and then you set forth several dates and times. Do you see that?

A. Yes.

Q. And below the dates and times you state, in the paragraph right below that, that, "It should be noted that this schedule is a significant departure from the position advocated by the Democrat board members on Monday of this week and that had we not reached a compromise that included some weekend and evening hours, we would have simply deadlocked, with the matter being thrown to the Secretary of State, who would then break the tie in favor of the Democrat Party position, as she did in 2008."

I take it that -- do I gather correctly that the Democratic board members wanted greater evening and weekend hours than ultimately was -- was adopted?

MS. RICHARDSON: Objection.

A. I don't -- I don't specifically recall what -- what they were advocating for prior to the unanimous decision, whether it was extra evening hours or extra weekend. I -- I don't remember for sure.

Q. Okay. And this doesn't refresh your recollection where it says, "...had we not reached a compromise that included some weekend and evening hours" -- "evening hours, we would have simply deadlocked"?

MS. RICHARDSON: Objection. Asked and answered.

A. Well, I -- it does include some weekend and some evening hours, and so I -- I -- I would infer from that statement that they had been suggesting more or that they had been pressed to suggest more.
Q. Okay. Is that -- is that your recollection actually of what happened?
A. I don't actually remember for sure at all.

Q. Okay. And do you recall whether that was, as a general matter, whether that was an issue of debate among the -- the board members, the extent to which there would be evening and weekend hours during the early voting period?

MS. RICHARDSON: Objection.

A. So I don't know that I would -- I would term it a debate. I know that Bill Anthony, as -- well, at this point in time -- at this point in time, in 2010, he was the Director of the Board of Elections, but even before, when he was a member of the board and Chairman for a while, you know, he and Doug would have conversations, because it was always our goal to reach a bipartisan compromise at the board level on the days and hours, and -- and so I -- I -- and I do remember on several occasions Bill saying, you know, that he was being pressed, you know, either by -- he never said who specifically, but I remember him saying that he was being pressed to ask for even more than -- than he was interested in actually voting for, and so it was always our goal to -- to have a bipartisan decision locally and not have to have one side or the other win over the other with the Secretary of State. Sometimes we reached a compromise and then Bill would get pushed and have to come back and break the compromise and vote again.

Q. Who -- who was pushing him?
A. Like I said earlier, I don't know for sure, but he was just -- he would say from time to time I'm getting a lot of pressure or I'm getting pushed to do more than even I think we need to do.

Q. Who was the other Democratic board member at that time?
A. So in -- at this time, in 2010, the other two Democrat board members were Zach Manifold and I don't remember for sure if in 2010 he was still on staff with the county Democrat Party. I can't remember for sure.

Q. You do know it's the Democratic Party; right?
A. I'm sorry. Yes. I'm sorry. Thank you. And -- and then Kim Marinello was also one of the Democratic board members and the -- and I think she was the treasurer of the party at the time.

Q. And you mention in here that if you hadn't "reached a compromise that included some weekend and evening hours" -- that "we would have simply deadlocked, with the matter being thrown to the Secretary of State." What would have been the problem at that time with the matter having been thrown to the Secretary of State?

MS. RICHARDSON: Objection.

A. So I don't know that there is a -- a problem per se other than -- because that would be the statutory process for the tie vote to go to the Secretary of State. I think in -- in 2008 we had two different tie votes, including one during the -- after absentee voting had actually started, where Bill, then on the board in '08, had advanced an addition -- an addition to the hours, and then we tied, and it went to the Secretary of State, and she broke the tie in favor of -- of Bill's proposal.

Q. And what was Bill's proposal at that point?
A. I don't remember for sure. I remember we had tied in 2008 at the beginning -- or before the absentee voting period began, and then when I think we tied again, Bill brought a proposal for, I think it was either the Thursday or Friday before Election Day, to --

Q. I should clarify. Bill is --
A. I'm sorry.

Q. Well, it's fine for you. I just don't call him Bill because I don't know him well.
A. Well, no, and there's too many Bills and too many Matts and -- so in speaking of 2008, Bill, in that context, is Bill Anthony, a member of the Board of Elections.

Q. Got it.
A. We had -- we had tied before the early voting period started, and Secretary Brunner broke the tie in favor of the Democratic board members' position, and then after early voting had started, I think it was either the Thursday or Friday before the election, Bill Anthony brought another proposal to the board to expand the hours beyond what the Secretary had previously broken the tie on and beyond what we had advertised on television and in print, and -- and Secretary Brunner broke -- broke the tie in favor of Bill's proposal that -- that Friday evening, I think.

Q. Was it your view that extended hours or
Q. So the board -- the board -- you weren't -- weren't there for the board's discussion of -- of the proposal?

A. So I think as I -- as I testified earlier, this -- the board did adopt the days and hours at a public special meeting of the board, but it would not be -- it would not be atypical for Bill, as -- I think he was still Chairman of the Democratic Party in 2010, I can't remember for sure, but it would not be unusual for Bill and Doug to kind of get together over lunch and kind of say hey, you know, let's -- what do we want to do for this election.

Q. Uh-huh, uh-huh. A. Which, as an election official, you know, always created challenges from one election to the next when we have you, a few more hours here, fewer hours there. You know, we don't change the Election Day hours from one election to the next. So, you know, having some continuity from election to election on the days and hours I think is a positive thing.

Q. Outside of -- of this e-mail, do you recall anything about the discussions in this kind of context?

A. Not that I recall.

Q. And can you describe for the record what Senate Bill 194 is?

A. Senate Bill 194 was legislation that was introduced in 2011, I believe. It looks like it was passed that -- that spring and summer, that had a whole bunch of changes to -- to Title XXXV and other -- Title XXXV being the -- primarily the section --

Q. Uh-huh. A. -- that deals with election law in Ohio -- and other sections of state law.

Q. Uh-huh. And you said -- did you say that it was -- it was a referendum against SB 194?

A. So a referendum would -- would repeal a piece of legislation, so a referendum seeking to propose a ballot issue to the voters of the state on whether or not the bill, as passed by the General Assembly, should become law or not.

Q. Uh-huh. Okay.

A. So referendum of, referendum against. Q. Uh-huh, uh-huh, uh-huh.

A. The proposed function would be to -- to not have the legislation adopted by the General Assembly become law.

MS. RICHARDSON: Objection.

Q. Let me -- let me give you what will be marked as Damschroder 3.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. Damschroder 3, while you're looking at it, I just want to state for the record that it was produced to us by the Secretary of State's Office, has Bates numbers -- well, there's -- the first page is SEC004963, and then there's what appears to be an attached document that's -- that is sequentially Bates numbered 4964 through 4968. My first question would be just do you recognize the document?

A. I don't know that I recognize the -- the first page.

Q. Uh-huh.

A. But the second page of the -- the exhibit, which is labeled Page 1, I think is a copy of -- and I don't know whether it's one of the initial 1,000 signature petitions or whether it's one of the other petitions that were filed as a referendum against Senate Bill 194.

MS. RICHARDSON: Objection.

Q. Outside of -- of this e-mail, do you recall anything about the discussions in this kind of context?

A. No.

Q. And so why -- why do you say in this e-mail that -- that she would break the tie in favor of the -- of the Democratic Party?

MS. RICHARDSON: Objection.

Q. Outside of -- of this e-mail, do you recall anything about the discussions in this kind of context?

A. No.

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Matthew Damschroder

1. Q. Uh-huh, uh-huh. And did -- did SB 194 become law?

2. A. It did not.

3. Q. And do you know why?

4. A. My recollection is that the General Assembly repealed House Bill 194 at some point after the petition process began. I don't remember if it was after the petitions were filed or -- or what -- when in the time line it was, but the General Assembly repealed it.

5. Q. Was there some concern that you were aware of that the petition process would be successful and that 194 would be repealed through referendum -- referenda?

6. A. I don't -- I don't remember for sure why the General Assembly repealed it.

7. Q. And do you know why?

8. A. I don't -- I don't remember for sure.

9. MS. RICHARDSON: Objection.

10. Q. No recollection at all?

11. A. I don't -- I don't remember for sure.

12. MS. RICHARDSON: Objection.

13. Q. Uh-huh. Let me -- I know you said that you didn't specifically recognize the -- the first page of the Exhibit 4963. That's the number on the bottom right-hand corner. Let me just see if this -- if you have any awareness of -- of what the document is talking about. At the top it says, "Item Senate Would Like to Address Prior to 2012," and then if you look down under, "Bill No. 1, Early Voting," it has, "Eliminate Golden Week (22 Days), Five Fields on Absentee Ballots, Observer Language, End Voting Saturday Before Election Day, Provisional Voting - 4 Reasons to Cast a Provisional, Uniform Application for Absentee Application Postage." Do you have any -- does that refresh your recollection at all as to what, you know, what -- what the issues are that this -- this document is addressing?

14. A. So, again, I can't -- I don't -- I don't remember ever seeing this document, but those -- those concepts that are listed there are -- are concepts that, you know, I think as we -- as I testified earlier, some, you know, went back to a legislation that was -- that was passed in '08 and -- and vetoed. I think some or all of them were items that were in -- in 194 --

15. Q. Uh-huh.

16. A. -- again, similar to some of the things that I testified earlier about specific -- addressing specific controversies from 2008. This refreshes my memory on the observer language, that state law, when it talks about allowing observers in polling places, it speaks generally about Election Day in-precinct observers and observers during the canvass, and there was a question in '08 about whether that extended to observers during the in-person absentee period, and there was litigation over that, and so I think -- so these were kind of topics. Some of these -- the observers specifically is the one I remember in that context, of clarifying the statute, to either put into the statute things that the courts had ruled or to clarify items that were -- that were still kind of

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controversies.
Q. Okay. And were those things that you were aware of that the Senate wanted to address prior to 2012?
MS. RICHARDSON: Objection.
A. I don't have a specific recollection of -- of who and by time frame. I mean, that's -- that's what the -- the title across this particular exhibit is.
Q. Okay. And do you know whether -- I take it -- if you could first just turn to the -- if you turn to the next page briefly, the -- I notice the referendum is issued -- or was issued July 15th, 2011. Is that consistent with your recollection of the time frame?
A. I'm sorry, can you restate that?
Q. Is that consistent with your recollection of the time frame in which the referendum was -- was issued?
A. So I -- I think -- if you can point to me where on -- you're talking about a specific date.
Q. Right at the top there. It's in handwriting actually.
A. Oh, okay. So my -- my guess is that the "Date Issued: July 15, 2011" here is the date that this particular circulator received this particular part petition.
Q. Uh-huh, uh-huh.
A. I don't remember for certain when the entire referendum petition documents were filed with the Secretary of State's Office.
Q. Okay. Stepping away from the document -- I mean, you're welcome to look at the document if it -- if it helps refresh your recollection. Was there -- to your knowledge, was there -- were there items that the Senate wanted to address prior to the 2012 presidential election?
MS. RICHARDSON: Objection.
A. So I think, consistent with my earlier testimony, that not that I have a specific recollection of. I mean, I think this -- the first page of the document says that, so I would imagine, if that is the case, that the Senate or someone in the Senate wanted to address these or some of these items prior to 2012, based on this, how the document is titled.
Q. Uh-huh. And were you aware of any discussions or were you involved in any discussions at that point with individuals in the Senate or who worked for the Senate about these being priority items prior to the 2012 election?
MS. RICHARDSON: Objection.
A. So I -- I don't have any, like I said, specific recollection of that related to the time frames.
Q. Do you have a general recollection?
A. I mean, I -- I'm -- I'm -- I'm sure that if -- if the Senate was drafting something, they -- you know, we had conversations about different -- different -- those different things, but I don't -- I don't have a specific recollection of having a conversation about specific items and specific time frames.
Q. Uh-huh. Were you aware of whether there were Senators who wanted to implement the changes that are discussed in this document, eliminating Golden Week, five fields on the absentee ballots, et cetera, in order to gain advantage in the 2012 general election?
MS. RICHARDSON: Objection.
A. As I understand your question, no, I'm not aware of anyone wanting to enact any legislation for the purpose of, you know -- I can't remember what -- what words you used, but gaining an advantage in the election.
Q. Okay. Were you ever privy to any conversations among Republican Senators that it would be advantageous to eliminate Golden Week prior to the 2012 general election?
MS. RICHARDSON: Objection.
A. Well, I think -- I think the history is that at least some legislators wanted to eliminate Golden Week as -- as early as -- as '09 and -- and '10, but I don't think it was -- and I can't remember how -- how you characterized the question, but I don't think, if I understand it as being similar to your previous question, I don't think it was for the purpose of -- of gaining an advantage in the election.
Q. Yeah. And my question actually is -- is a little bit different --
A. Okay.
Q. -- which is, did you ever -- did you ever hear any Republican Senators state that they wanted to eliminate Golden Week because they thought...
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22 (Pages 85 to 88)
The Ohio Democratic Party, et al.,
Case No. 2:15-cv-1802
Defendants' Written Objections to the Admissibility of Plaintiffs' Evidence
Exhibit F
that would give the Republican Party an
advantage in the 2012 general election?

MS. RICHARDSON: Objection. Asked and
answered.

A. I think consistent with my earlier
testimony, no.

Q. Did you ever -- were you ever privy to
any conversations with any Republicans, whether they
were in the Senate or not, that they wanted to
eliminate Golden Week prior to the 2012 general
election because they -- they thought it would be
advantageous to the Republican Party?


A. No.

Q. Let me hand you what will be marked as
Dam scholar 4.

(Exhibit Marked for Identification.)

A. Correct.

Q. And while you're taking a look at it,
I'll just note for the record that the document,
Dam scholar 4, that I've handed you has Bates Nos.
SEC003599 through -- through 3600.

A. Okay.

Q. All right. So, Mr. Dam scholar, there
are three e-mails here, and the -- I believe the
first one in time is on the second page, which is
from Valerie Bunting to a number of people, and
you're cc'ed on the e-mail. Do you see that?

A. I do.


So at that point in time you would have been in the
Secretary of State's Office?

A. Correct.

Q. Okay. And -- and at that time Secretary
Husted was, by that time, was the Secretary of State;
correct?

A. Correct.

Q. And it says -- the "subject" is,
"Cuyahoga County - Tie Vote Regarding In-Person
Absentee Voting Hours," and it says, "Please see the
attached tie vote letter from Secretary Husted." I
don't actually have the attachment here with me, and
I don't know whether that's because it wasn't
produced or whether we just -- we failed to attach
it, but my question is -- is whether you have any
recollection of what -- what this entailed.

A. So my recollection is that in 2012, the
Cuyahoga County Board of Elections tied on days and
hours for in-person absentee voting, and the

Secretary broke that tie.

Q. Uh-huh. And -- and he broke that tie in
favor of the Republican board members in Cuyahoga
County?

MS. RICHARDSON: Objection.

Q. Is that correct?

A. I don't remember what -- what the
content of the tie vote decision was.

Q. Did he -- what was the end result if
the -- the hours were not extended in the way that
the -- the that had been proposed?

MS. RICHARDSON: Objection.

A. So, again, I don't know specifically
what -- what the tie vote -- what the -- what the
different proposals were, but the Secretary, at the
statewide conference of elections officials, I think
it was in June of 2012, the Secretary informed all
the county Boards of Elections that it was his
preference that all counties work together in a
bipartisan manner at the local level to establish
their in-person absentee voting days and hours, in a
bipartisan manner, and that he would not be
entertaining tie votes, but that if they could not
reach agreement, he would break the tie in favor of
their normal business hours, whatever they were.

Q. So he, at that speech -- you said it was
in June of 2012?

A. Yes. I think it was actually in
response to a question. I don't think it was a --
prepared remarks.

Q. Okay. But at that point in time he was
saying that he wanted each county Board of Elections
to -- the board to work together to establish the
hours for that particular county?

A. Correct. So at that point in time there
was not legislation or a settlement agreement like
there is now on -- that governs uniform days and
hours. I think that's always been the Secretary's
preference, but at that time in 2012, he communicated
to all the boards I want you to figure this out
locally and that if you don't figure it out, I'm not
going to pick, you know, one slightly more over
something else slightly more, I'm just going to go to
your normal business hours, whatever has been
proposed.

Q. And I take it, though, the normal
business hours would have -- that would have been the
position of the -- of the Republican Party in the
Q. Uh-huh. And in this instance in Cuyahoga County, the breaking in favor of regular business hours meant breaking it in favor of the -- the two Republican board members; isn't that right?

A. I think like -- like I testified earlier, I don't know -- I don't recall what the actual two different proposals were, and it's -- it's possible -- I have a recollection that at least in one county the Secretary -- there were different proposals, and the Secretary broke it in favor of -- of regular business hours, but that wasn't either of the proposals. So the Secretary laid down a marker for all the counties in June of 2012 and -- and acted consistent with that marker.

Q. Do you recall the Secretary ever breaking -- first of all, were there other tie votes in other counties concerning in-person absentee voting hours in 2012?

A. I believe that there were.

Q. And do you recall, sitting here today, of the Secretary ever breaking a tie in favor of the Democratic board members?

MS. RICHARDSON: Objection.
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<td>A. I don't remember specifically any of the specific proposals from either party's representatives on any of the boards that tied, but I do know that the Secretary acted consistently with the statement he had made in June of that year, that he would break the ties in favor of the regular business hours.</td>
<td>1 historically come to rely on extended hours for in-house, in-person voting. I observed many of the persons who voted in-house, in-person during the 2008 presidential election. They were primarily people of color, and they will be significantly affected by the decision to eliminate extended in-person voting hours.</td>
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<td>Q. Right, and my question is a little different. I'm not asking for you to remember the specific different proposals. I'm just asking if you recall him ever breaking a tie in favor of the Democratic board members with regard to a proposal for early -- I'm sorry, in-person absentee voting hours?</td>
<td>Do you recall Ms. Chappell expressing that concern in July of 2012?</td>
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<td>MS. RICHARDSON: Objection. Asked and answered. A. And I think consistent with my earlier testimony, I'm not aware of any of the specific proposals, but I think he always broke it in favor of the regular business hours.</td>
<td>A. Apart from reading it, you know, here again today, I don't have a specific recollection of it, but reading it here, she did say that, yes.</td>
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<td>Q. Okay. Yeah, I -- I understand that. And I -- but I'm not asking you about the specific proposals right now.</td>
<td>Q. Okay. There's another e-mail at the top from Halle Pelger. I believe Miss Pelger, I guess, had -- had your current job before you did? She was the Chief of Staff?</td>
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<td>A. Okay.</td>
<td>A. In '13 and '14 she was the Chief of Staff, yes.</td>
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<td>Q. I may and I have at certain points, but right now I'm actually -- my question is different, which is do you recall the Secretary ever breaking a tie in connection with early voting hours in favor of the Democratic board members in a -- in a given county?</td>
<td>forwarding the e-mail that we were just talking about, &quot;In case Marilyn hears something.&quot; First of all, do you know who Marilyn is?</td>
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<td>MS. RICHARDSON: Objection. It's been asked and answered several times, and he's described the process and his position. A. Can you ask the question again? I'm sorry.</td>
<td>A. I think that would be Marilyn Jacobcik, who was the Secretary's regional liaison in kind of the north central, northeast Ohio.</td>
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<td>Q. Sure. Can you read it back, please?</td>
<td>Q. And meaning Cuyahoga County?</td>
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<td>THE WITNESS: That would be great. (Question read back.)</td>
<td>A. Yeah. Her region included -- she lived -- lives in Lorain, and her region included Cuyahoga.</td>
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<td>MS. RICHARDSON: Same objection. A. And I don't -- I don't -- I don't remember specifically.</td>
<td>Q. Uh-huh. Okay. All right. Let me -- let me give you what will be marked as Damschroder 5. (EXHIBIT MARKED FOR IDENTIFICATION.)</td>
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<td>Q. In the last paragraph of Ms. Chappell's e-mail she says, &quot;On a final note, I would be remiss if I did not express my deep concern about the disparate impact that this ruling will have on thousands of African-American and other voters in Cuyahoga County, who have chosen and have</td>
<td>Q. And I can -- well, why don't I first, for the record, this -- Damschroder 5 has got Bates Nos. SEC002408 through 2409, and I'm only going to have a couple of very brief questions for you on this, but obviously feel free to read as much as of it as you want to.</td>
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<td>Q. Okay. So on the second page there is -- at the bottom of the second page there's an e-mail from Secretary Husted dated May 13th, 2012, to Halle Pelger, cc'ing you. Do you see that?</td>
<td>A. I think I'm ready.</td>
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Defendants' Written Objections to the Admissibility of Plaintiffs' Evidence Exhibit F
Matthew Damschroder

1 A. I do.
2 Q. Okay. And the "subject" is, "When does early voting start in most states," and then in the body of the e-mail it just says, "If you could please send it to me at the earliest opportunity. Need it for media response." Do you have any recollection of what the Secretary was referring to in that e-mail?
3 A. Other than, you know, what he says, "When does early voting start in most states," that he wanted it as quickly as possible for media response, I don't -- beyond that, I don't remember.
4 Q. Okay.
5 A. I really don't know.
6 Q. And you don't recall why he wanted to know the answer to that question?
7 MS. RICHARDSON: Objection.
8 A. I -- I don't know for sure --
9 Q. Okay.
10 A. -- but I -- I would presume, based on his statement, that it was -- he had gotten a call from the media or something and wanted to have information.
11 Q. Okay. And I assume the same answer with -- looking at the first e-mail from Ms. Pelger.
12 Q. Okay. And it appears to forward an article regarding a -- a number of things, but I guess the Secretary is proposing to fire two Democrats in Dayton -- I'm reading now from the third -- the fourth paragraph -- "because they voted to open up the voting booths on the weekend." This is a quote or purports to be a quote from the Chairman of the Ohio Democratic Party. Do you see that?
13 A. Yes.
14 Q. And it goes on to say, "Nearly 29,000 voters in Dayton and Montgomery County voted during extended hours in 2008, and that's one reason Barack Obama is president today and running for reelection." Do you see that?
15 A. I do.
16 Q. Okay. And do you recall receiving this article at the time?
17 MS. RICHARDSON: Objection, and I'm going to have an objection only to the characterization of this as an article. According to the record, it seems to be a statement from the Democratic Chairman, not an article.
18 You can answer.
19 A. Like I said earlier, I don't -- I don't specifically recall this e-mail or this particular article, op-ed, blog post, whatever it is. I don't specifically remember it, but I -- I remember the circumstances at the time.
20 Q. What do you remember about the circumstances?
21 A. So after -- in -- so there were number of tie votes, like we talked about earlier, where the Secretary broke the tie in -- in favor of -- I'm sorry. I'm getting hungry, so I'm -- I'm breaking up here. So the Secretary broke the tie in favor of regular business hours on a number of occasions, and then some counties came to bipartisan decisions to have extra hours, regular business hours, and it was starting to kind of be a patchwork...
around the state of all kinds of different hours.
Q.  Uh-huh.
A.  And so my recollection is that at this point, the Secretary issued a directive for uniform days and hours for the whole state, and in Montgomery County the two Democrat board members, at a meeting, made a motion to treat the instructions of the Secretary of State in the directive as a floor and voted to do additional hours.

We communicated to the board members at that time that no, this isn't a -- a -- this isn't a minimum. This is -- these are the days and hours uniform for the entire state and instructed them to come back at another meeting and -- and rescind their -- their previous motion and follow the -- the directions of the Secretary of State, and the board members declined to do so, and so the Secretary -- because the -- the board members there in Dayton, in Montgomery County had declined to follow the instructions of the Secretary of State, the Secretary sent them a notice that they needed to appear before a Hearing Officer to talk about it, with the intent of -- of removing them for failure to follow the instructions of the Secretary of State.

Q.  And what was the outcome of that?
A.  They -- the Secretary removed them from the board. They filed a -- a lawsuit and -- that was about their removal, and the -- the Federal Court in that instance found that the -- I don't remember the -- the legal term, but I'll use the phrase that Secretary abused his discretion --
Q.  Uh-huh, uh-huh.
A.  -- in -- in his removal of those two board members for violating the instructions of the Secretary of State on the directive.
Q.  I notice that this also -- it was sent from what appears to be a personal e-mail account and that almost all of the individuals who it was sent to also appear to be using their personal e-mail account. Do you know why that is?
MS. RICHARDSON:  Objection.
A.  I don't -- I don't know why Matt chose to do that.
Q.  But Mr. McClellan is employed by the Secretary of State's Office?
A.  He is.
Q.  Okay.  And -- and is Mr. Borgemenke --
A.  Of State's Office?
Q.  And I know Miss Pelger was as well; correct?
A.  Yes.
Q.  Were all the people on this e-mail employed by the Secretary of State's Office?
A.  Yes.
Q.  So this was official business of the Secretary of State's Office?
MS. RICHARDSON:  Objection.
A.  It was definitely information about an official act of the Secretary of State's Office, yes.
Q.  The last paragraph of the e-mail says, "Meanwhile, a group of Ohio Black leaders have asked to meet with Husted on his decision to end weekend voting hours. In Florida a court threw out plans to" -- I won't read the rest of that because it's about Florida, but I wanted to ask you about the sentence about the Ohio Black leaders. Are you aware of whether that meeting took place?
A.  I don't know whether this specific meeting that's referenced in this, whatever it is, took place, but the Secretary did, on at least one occasion that I was -- I'm aware of, I was not in the meeting, did meet with -- with a group of African-American leaders.
Q.  Uh-huh.  And when was that, approximately?
A.  I don't remember, but it was in -- in late summer, early fall of 2012, but I don't remember a specific date.
Q.  And -- and was the subject of that meeting early voting?
MS. RICHARDSON:  Objection.
A.  Like I said, I wasn't in the meeting, but I believe that that was a -- a topic of conversation.
Q.  Uh-huh.  So this is -- this is probably an obvious question given what we've been discussing, but I take it these two Democratic members of the Montgomery County Board of Elections did not -- supported extending early voting hours in -- in Montgomery County?
MS. RICHARDSON:  Objection.
A.  So I think consistent with my previous testimony, they voted to go beyond the hours established, the uniform hours established by the
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<td>directive --</td>
<td>specifically remember whether, at that point in time, Franklin County had made a decision on days and hours yet or if the Secretary had broken a tie one way or the other. I don't remember.</td>
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<td>Q. Uh-huh.</td>
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<td>A. -- and that's why they -- they were removed for -- for violating the instructions of the Secretary of State.</td>
<td>Q. Okay. What about Hamilton, Hamilton County, had they made a decision to have extended hours beyond what the Secretary's directive ultimately permitted?</td>
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<td>MS. RICHARDSON: Objection.</td>
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<td>Q. Okay. But before the directive came out, I take it that they also, like Cuyahoga County, had -- had -- had a stalemate over extending early voting hours?</td>
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<td>MS. RICHARDSON: Objection.</td>
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<td>A. Excuse me. Actually, my recollection is that the Montgomery County board had come to a bipartisan agreement before the directive for uniform hours had been issued.</td>
<td>A. I don't remember for sure whether they had or not. The same thing as Franklin.</td>
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<td>Q. I see. And so the -- the directive for uniform hours was overruling what the -- would have had the effect of overruling what the board, Montgomery County board had -- had decided?</td>
<td>Q. Do you recall whether they had a deadlock over whether to extend hours?</td>
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<td>MS. RICHARDSON: Objection.</td>
<td>MS. RICHARDSON: Objection.</td>
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<td>A. It had the effect of establishing uniform hours for the entire state, and so any county that had -- where the Secretary had either broken a tie in favor of fewer or more hours than the uniform directive or where a county had made a decision for fewer or more hours than the directive, that directive superceded any local decision that had been made up to that time.</td>
<td>A. Like I said, I don't remember for sure.</td>
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<td>Q. In Montgomery County, I take it that they had -- actually, if you want to break for lunch, we can. Let me just ask this question and then if -- in Montgomery County, I take it, though, that the -- the board had come to a decision for more hours than what the directive provided for?</td>
<td>Q. Same question with respect to Summit County, do you have any recollection there?</td>
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<td>MS. RICHARDSON: Objection.</td>
<td>MS. RICHARDSON: Objection.</td>
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<td>A. My recollection is that Summit County did tie.</td>
<td>A. My recollection is that Summit County did tie.</td>
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<td>Q. Uh-huh. And which way did the Democratic members vote in Summit County?</td>
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<td>MS. RICHARDSON: Objection.</td>
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<td>A. So I think similar to my testimony on Cuyahoga, I don't remember what -- what each party's representatives had proposed, but consistent with the Secretary's decision in -- in the announcement in June, he broke the tie, all of those ties. I think were two or three. I can't remember specifically what county, Cuyahoga for sure, I think Summit. He broke all of those in favor of the board's normal business hours.</td>
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<td>Q. And did all of those ties that the Secretary had to break break down along party lines?</td>
<td>Q. And did all of those ties that the Secretary had to break break down along party lines?</td>
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<td>MS. RICHARDSON: Objection.</td>
<td>MS. RICHARDSON: Objection.</td>
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<td>A. On what -- I -- I think in all those counties the Democrats were on the same side of their proposal, and the Republicans were on the same side of their proposal.</td>
<td>A. On what -- I -- I think in all those counties the Democrats were on the same side of their proposal, and the Republicans were on the same side of their proposal.</td>
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<td>Q. And in each of those instances, did the Secretary break the tie in favor of the proposal that the Republican board members had --</td>
<td>Q. And in each of those instances, did the Secretary break the tie in favor of the proposal that the Republican board members had --</td>
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<td>MS. RICHARDSON: Objection.</td>
<td>MS. RICHARDSON: Objection.</td>
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<td>Q. -- decided?</td>
<td>Q. -- decided?</td>
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<td>MS. RICHARDSON: I'm sorry. Objection.</td>
<td>MS. RICHARDSON: I'm sorry. Objection.</td>
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<td>A. So I think consistent with my earlier testimony, I don't remember for sure. My -- my -- my vague reference and part of the reason why I'm -- why</td>
<td>A. So I think consistent with my earlier testimony, I don't remember for sure. My -- my -- my vague reference and part of the reason why I'm -- why</td>
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The Ohio Democratic Party, et al.,
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Defendants' Written Objections to the Admissibility of Plaintiffs' Evidence Exhibit F
I'm not being entire direct is my recollection is that at least in one instance the Secretary didn't choose either side and went with the normal business hours of the board; so because I can't remember specifically each of the different ties and who was on what side of what, that's -- that's why I'm saying I don't remember specifically what the proposals were or where -- except for the Secretary always broke the tie, up until he issued the directive, broke the tie in favor of the board's normal business hours.

Q. Do you recall whether in Lucas County there was a tie among board members?

A. I don't remember if there was a tie on days and hours in Lucas County. In 2012 I remember they couldn't find a location to do their early voting, and we ended up doing a field trip to go up there and look at all three of the different possibilities that were being floated around.

Q. Okay. All right.

Well, why don't we break for lunch, if this is good for you. Thanks.

THE VIDEOGRAPHER: One moment. Off the record at 12:08.
(Lunch recess taken.)

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THE VIDEOGRAPHER: On the record at 12:53.

BY MR. SPIVA:

Q. All right. Good afternoon, Mr. Damschroder. Let me hand you what will be marked as Damschroder 7.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. And while you're taking a look at it, I'll just identify it as having Bates No. SEC005297.

And, Mr. Damschroder, because I deposed him yesterday, I can represent to you that the "from," the "PMcdo100042@aol.com" is -- is Mr. Pat McDonald. This appears to be an e-mail from him to Secretary Husted and you, dated October 10th, 2012, "Subject: Cuyahoga County." Do you see that?

Q. I do.

A. Yes.

Q. Do you recall Mr. McDonald sending you an e-mail about a 26-percent increase in Golden Week turnout between 2012 and 2008?

A. I don't -- I don't specifically recall this e-mail, but I see that he did send it to me.

Q. Okay. Sent it to you and Secretary Husted?

A. Yes.

Q. Okay. So as of this point in October of 2012, he made you aware that at least in Cuyahoga County there had been a significant increase in turnout between 2008 and 2012 on Golden -- in Golden Week?

A. That's what -- that's what the e-mail says, yes.

Q. Okay. And it says, "Also, we received 10,798 voter registration cards today - it has been a record amount of voter registration cards over the last six week - much greater than 2008." Do you see that as well?

A. I do.

Q. Okay. And then you -- by the way, do you -- Mr. McDonald is the Director -- Executive Director of the Cuyahoga County Board of Elections; correct?

A. He -- he is now, yes.

Q. And was he in 2012?

A. My recollection is that in 2012 he was the Deputy Director.

Q. Okay. And that's -- that's probably right. You forward -- do you know why Mr. McDonald wrote to you and Secretary Husted from his personal e-mail to both Secretary Husted and your personal e-mails?

MS. RICHARDSON: Objection.

Q. And then you appear to forward this on to several other employees of the Secretary of State's Office; is that correct?

A. Yes.

Q. And you forward it from your personal e-mail to all -- all of them at their respective personal e-mails; correct?

A. Yes.

Q. Do you know why you were apprising them of the Cuyahoga County -- strike that. You were -- you were providing them this information that -- that Mr. McDonald had provided you, that is the Cuyahoga County Golden Week turnout in 2012?

A. Yeah, I was forwarding that information
Case No. 2:15-cv-1802

The Ohio Democratic Party, et al.

Matthew Damschroder

along.

Q. Okay. Let me give you what will be marked as Damschroder Exhibit 8.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Bates No. SEC006355 and 6356. This is an e-mail from Matthew McClellan to a number of people in the Ohio Secretary of State's Office, including yourself; is that correct, Mr. Damschroder?

A. Yes.

Q. And it was sent January 23rd, 2013?

A. That's correct.

Q. Okay. And the title of what appears to be an article that Mr. McClellan is forwarding is, "Report: Ohio Secretary of State's Restrictive Voting Hours Hurt Urban Voters." Do you recall what publication this comes from?

MS. RICHARDSON: Objection.

A. I don't have any recollection of where this came from at all.

Q. Okay. Do you know who Aviva Shen is?

A. I do not.

Q. Do you recall receiving this information during this time period in 2013?

A. I don't specifically recall receiving this, but I see that I did.

Q. Okay. And you received it along with other employees of the Secretary of State's Office?

A. Yes.

Q. And this one is sent to those individuals' work e-mails, it appears?

A. Yes.

Q. Okay. Let me -- let me just ask you a couple of more questions about this one. The second sentence of the article says, "Husted banned evening and weekend voting hours in all 88 Boards of Election, in spite of multiple counties' requests to stay open to accommodate people who could not leave their jobs to vote."

Do you recall receiving complaints about Secretary Husted banning weekend and evening hours in all 88 Boards of Elections?

MS. RICHARDSON: Objection.

A. So I remember that there were news reports that either cited objections or made objections to -- to that. My recollection is that there were, in 2012, some evening and weekend hours that ultimately were included in the general election, but that not everybody agreed with either the hours that were set or that they were uniform across the state.

Q. Do you recall that Secretary Husted eliminated the final three days of early voting for all voters except for military voters, at least initially did that by directive?

MS. RICHARDSON: Objection.

A. So I recall that the General Assembly enacted a law. I think it was House Bill 224 or Senate Bill 224, I can't remember for sure, I may have the number wrong, but that -- and that might have been the bill that -- that repealed 194, but I can't remember for sure. But anyway, the General Assembly, by law, set the close of in-person absentee voters for non -- the General Assembly set the hours for non-UOCAVA absentee voting to end at six p.m. the Friday before the election, and because they did not also end the in-person absentee voting hours for UOCAVA voters, almost all UOCAVA voters, because of their situation being overseas or uniformed services, vote by mail, but because the law did not cut -- end in-person absentee voters for the UOCAVA voters, that's why the Secretary instructed boards that at six p.m. on Friday was the end of non-UOCAVA in-person absentee voting, and ultimately, the federal courts overturned that, and there was in-person absentee voting on that Saturday, Sunday, and Monday before the election.

Q. Right. You're referring to the outcome of the OFA v Husted suit?

A. I am. Thank you.

Q. And -- but you're saying that the Secretary had initially eliminated the final three days based on an understanding that that was what was required by state statute?

MS. RICHARDSON: Objection.

A. So I think the Secretary -- the General Assembly passed a law that ended non-UOCAVA in-person absentee voting at six p.m. the Friday before the election in law, and that's what the Secretary instructed boards to do.

Q. Okay. Do you see in the second paragraph of this article, it says, "A new report by the Northeast Ohio Voter Advocates" -- first of all, are you aware of that organization, Northeast Ohio Voter Advocates?

A. Not specifically. There's a gentleman I
Do you recall receiving complaints such as this, about long lines in urban areas that weren't experienced in rural areas?

MS. RICHARDSON: Objection.

Q. -- in 2012?

A. I don't think that I recall that in 2012, but I think statements like these were made after the 2012 general election.

Q. Uh-huh.

A. I don't necessarily know that -- that this is factual.

Q. Uh-huh, uh-huh. But do you recall hearing that that had -- had occurred, that there had been these long lines in 2012 in urban areas?

MS. RICHARDSON: Objection.

A. So like I said -- or like I testified a moment ago, I don't think that we had specific information about long lines, urban versus rural versus suburban counties in two thousand -- in 2012, at the time of the election, but that there were these kind of reports afterwards.

Q. It goes on to say, in the second paragraph to the bottom, "The report calls for greater flexibility in voting hours based on each county's needs. Husted initially stepped in to break the partisan tie over expanding early voting hours in Ohio's largest counties, creating a discrepancy between limited hours in traditionally Democratic counties and expanded hours in their Republican counterparts. After public outcry, Husted issued his directive restricting hours in all counties. He was ultimately forced to open the last weekend before the election to early voters by a court order."

Q. Do you recall receiving complaints such as that at -- in this time frame about the 2012 election?
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<td>1. business hours. That was an announcement he made at the summer conference. That wasn't a directive he issued. Then later on he did issue a formal directive to the counties saying -- setting uniform hours and days statewide.</td>
<td>1. you have any -- and this e-mail is later forwarded on to you and other people. Do you have any recollection of why he was saying it would be important to know how many people actually register and vote during Golden Week?</td>
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<td>2. Q. Do you know whether that, the uniform hours that he set statewide were based on any studies of the particular needs of -- of the individual counties?</td>
<td>2. A. I don't.</td>
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<td>MS. RICHARDSON: Objection.</td>
<td>MS. RICHARDSON: Objection.</td>
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<td>3. Q. Are you aware of any such studies?</td>
<td>4. Q. And you see that Ms. Pelger then forwards on that e-mail to Mr. Masterson and -- and yourself and says, &quot;I never remember if this is one we know or one we don't.&quot; That's an e-mail that she sent to you and Mr. Masterson on February 13th, 2014?</td>
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<td>4. A. I'm -- I'm not.</td>
<td>5. A. Yes. She even says, &quot;I never remember if this is one&quot; -- that -- &quot;we know or one we don't.&quot;</td>
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<td>5. Q. Uh-huh. Okay. Let me ask you just about the last paragraph or sentence. It says, &quot;When the directive was implemented, one Republican official in Columbus freely admitted that the restricted voting schedule would hinder 'urban - read African-American' voters.&quot;</td>
<td>6. Q. Uh-huh. And then you -- and then you reply and attach &quot;the reports Forbes gave to Stinziano (and I think LSC) last summer/fall when they asked for the same data.&quot; First of all, who's Forbes?</td>
</tr>
<tr>
<td>Were you familiar with such a statement by -- by a Republican official in Columbus?</td>
<td>7. A. Forbes would be Craig Forbes, who was our Director of Legislative Affairs.</td>
</tr>
<tr>
<td>MS. RICHARDSON: Objection.</td>
<td>8. Q. And I take it Stinziano is a -- is a reference to -- which Stinziano?</td>
</tr>
<tr>
<td>9. A. So I think the quote there, the quote &quot;urban - read African-American&quot; comes from a statement that Doug Preisse made I think to the</td>
<td>9. A. Fair question. In this case Stinziano</td>
</tr>
<tr>
<td>Who is LSC?</td>
<td></td>
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<td>Q. This is Bates No. 005334, and this appears to be a series of e-mails. There are some attachments that I don't -- I don't have here with me. I don't know if I have them, but the bottom e-mail is from Mr. Kevin DeWine. First of all, who is Mr. Kevin DeWine?</td>
<td>Q. -- in the House of Representatives.</td>
</tr>
<tr>
<td>A. He's a former State Representative and former Chairman of the Ohio Republican Party.</td>
<td>Q. And you said, &quot;...(and I think LSC)...&quot; Who is LSC?</td>
</tr>
<tr>
<td>Q. Uh-huh. And did he hold either of those roles in -- in 2014?</td>
<td>A. The Legislative Service Commission.</td>
</tr>
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<td>10. A. I don't believe so in '14.</td>
<td>Q. Okay. And do you recall why they were asking those individuals in the -- in the Legislative Service Commission were asking for the same data last summer/fall?</td>
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<tr>
<td>11. Q. Uh-huh. And it's to Halle Pelger, who I know you testified earlier is -- was in the Secretary of State's Office, and it's dated February 13th, 2014, and Mr. DeWine says, &quot;Do you know how many people actually register and vote during Golden Week? Seems that would be an important figure to know.&quot; Do</td>
<td>12. A. I don't remember for sure.</td>
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<td>12. 13. Q. Okay. Let me give what you will be marked as Exhibit 9, Damschroder.</td>
<td>13. Q. Okay.</td>
</tr>
<tr>
<td>14. Q. Okay.</td>
<td>15. Q. And you said, &quot;...(and I think LSC)...&quot;</td>
</tr>
<tr>
<td>15. 16. A. He's a former State Representative and former Chairman of the Ohio Republican Party.</td>
<td>Who is LSC?</td>
</tr>
<tr>
<td>17. A. I don't believe so in '14.</td>
<td>Q. Okay. And do you recall why they were asking those individuals in the -- in the Legislative Service Commission were asking for the same data last summer/fall?</td>
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<td>18. Q. Uh-huh. And it's to Halle Pelger, who I know you testified earlier is -- was in the Secretary of State's Office, and it's dated February 13th, 2014, and Mr. DeWine says, &quot;Do you know how many people actually register and vote during Golden Week? Seems that would be an important figure to know.&quot; Do</td>
<td>19. A. Correct.</td>
</tr>
<tr>
<td>19. Q. Uh-huh. And it's to Halle Pelger, who I know you testified earlier is -- was in the Secretary of State's Office, and it's dated February 13th, 2014, and Mr. DeWine says, &quot;Do you know how many people actually register and vote during Golden Week? Seems that would be an important figure to know.&quot; Do</td>
<td>20. Q. And, again, these are all exchanged through personal e-mail addresses?</td>
</tr>
<tr>
<td>20. A. Yes, it is.</td>
<td>21. A. Yes, it is.</td>
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<td>21. Q. Okay. And in the e-mail you say,</td>
<td>22. Q. Okay.</td>
</tr>
<tr>
<td>22. 23. A. Correct.</td>
<td>23. A. Yes, it is.</td>
</tr>
<tr>
<td>23. Q. And, again, these are all exchanged through personal e-mail addresses?</td>
<td>24. Q. Okay.</td>
</tr>
<tr>
<td>24. A. Yes, it is.</td>
<td>24. Q. Okay. And in the e-mail you say,</td>
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Q. Okay. And you say, "I think he's comfortable with the directive thing." He thinks Sandy and prosecuting attorney are going to try to make a big deal about directives and advisories generally. Pat's thinking is 1) Husted put everyone on notice that OAOE hours were the only recommendations out there, that the GA should adopt them but didn't; and in the absence of legislative activity (and with no one making any other recommendations, let alone bipartisan ones) the SOS acted; 2) the second directive is within the 90 days; 3) instructions of the SOS, regardless of whether they are directives or advisories, have to be followed," and it continues, but that's the part I wanted to ask you about. I take it that "Sandy" is a reference to Sandy McNair?

A. I believe so, yes.

Q. Okay. Who is -- was and is a member of the Cuyahoga County Board of Elections?

A. Correct.

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Page 131

Q. Okay. And do you recall what you were referring to in this e-mail in terms of your conversation with Mr. McDonald?

A. Well, I think there were a couple of things that were being communicated. You want to go line by line, if that's easiest?

Q. Well, I guess what -- maybe -- maybe I'll try to make it a little more direct --

A. Sure.

Q. -- just to make it go a little faster.

A. As long as it's with a clear record.

Q. What were you referring to when you said that he was "comfortable with the directive thing"?

A. I don't know for sure what we were talking about for purposes of that sentence.

Q. Uh-huh. Okay. And what were you referring to when you said the "OAOE hours were the only recommendations out there"?

A. So after the 2012 election, where the Secretary had issued uniform hours, as we talked about earlier, there was the Obama for America, OSA case that reinstated the last three days in the -- as a part of the -- I think the preliminary injunction for the 2012 election. I think in summer of '13 was the -- was the permanent injunction or final decision, whatever the --

Q. Uh-huh.

A. -- the phrase is in OFA, and in that, as I recall, the court instructed that, you know, that we needed to have uniform hours, and so the Secretary kind of put a call out, again kind of like he did in 2012, kind of put down a marker and said, you know, that the General Assembly, as the law-making body of the State of Ohio, should enact legislation that has uniform days and hours and put it in law. There had been an OAOE, Ohio Association of Elections Officials, committee, bipartisan, equals numbers of Ds and Rs, board Directors, Deputy Directors, board members, who made a recommendation to the Secretary and at that point in time, as my recollection is, no one had introduced legislation proposing hours, and at that point in time OAOE was really -- was really the only body that had put on paper here is -- here is what the state should do.

Q. Right.

A. And so I think that's what I was talking about, about the -- in that line.

Q. You mention that the OAOE has an equal number of Democrats and Republicans I guess on -- in its governing body. I think it's called the trustees; is that right?

A. So any county Board of Elections which is inherently bipartisan because there's two Rs, two Ds, can -- and it's a separate entity from the Secretary of State's Office, so any -- any county can pay dues and be -- county Boards of Elections can pay dues and become a member, and then there are trustees of -- of the OAOE, equal number of Rs and Ds, and then from time to time I think they have special committees. I think there's a Legislative Committee that has equal numbers of Ds and Rs, and they vote on the official position of the OAOE for recommendations or endorsement of legislation and those kinds of things, so -- and in this case, the trustees, I think, my recollection is the trustees established a special working group or special committee to make recommendations for the days and hours, and it was -- they were bipartisan membership with that.

Q. And -- and Mr. McDonald was a -- was a trustee at that time of the OAOE?

A. I don't remember for sure if he was a trustee, but I think he was on the absent -- or the
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<td>1 committee that was looking at recommendations for</td>
<td>1 the -- one point underneath the paragraph I just</td>
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<td>2 days and hours.</td>
<td>read, and I'm not going to read both of them, but it</td>
</tr>
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<td>3 Q. Mr. McDonald is a Republican; correct?</td>
<td>says two other items: &quot;1) Pat said Turner, Budish,</td>
</tr>
<tr>
<td>4 A. He is.</td>
<td>et cetera and 11 churches are having a rally at the</td>
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<tr>
<td>5 Q. To your knowledge, were there any</td>
<td>Cuyahoga Board of Elections on Saturday to highlight</td>
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<td>6 Democratic trustees that considered the proposal</td>
<td>the need for more weekend and evening voting.&quot;</td>
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<td>7 regarding the hours for early voting from any of the</td>
<td>That -- I take it that was something</td>
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<td>8 five largest counties in Ohio?</td>
<td>that Mr. McDonald made you aware of in his phone</td>
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<td>9 MS. RICHARDSON: Objection.</td>
<td>conversation with you --</td>
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<tr>
<td>10 A. I wasn't a member of the -- of the</td>
<td>MS. RICHARDSON: Objection.</td>
</tr>
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<td>11 committee. I didn't attend any of their meetings, so</td>
<td>12 Q. -- that there were these 11 churches and</td>
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<td>12 I don't know what all they considered.</td>
<td>these other individuals holding a rally in support of</td>
</tr>
<tr>
<td>13 Q. Uh-huh.</td>
<td>more weekend and evening early voting?</td>
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<td>14 A. My recollection is that there were --</td>
<td>MS. RICHARDSON: Objection.</td>
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<td>15 there were two dissenting votes on the committee that</td>
<td>16 Q. -- that then are part of the Secretary</td>
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<td>16 made the recommendation. One was a Republican, who</td>
<td>of State's Office?</td>
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<td>17 thought it was too many hours, and one was a</td>
<td>18 A. Yes.</td>
</tr>
<tr>
<td>18 Democrat. I think it was Zach Manifold from Franklin</td>
<td>19 Q. Okay. And you're in turn informing</td>
</tr>
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<td>19 County who said it wasn't enough hours, but with</td>
<td>these other individuals who are part of the Secretary</td>
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<td>20 the -- I think with the exception of those two, I</td>
<td>of State's Office?</td>
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<td>21 I guess those two bipartisan objections, that ended up</td>
<td>20 A. I don't remember specifically, but I see</td>
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<td>22 being the recommendation of the -- of the study</td>
<td>that I did receive it.</td>
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<td>23 committee and the trustees.</td>
<td>Q. Uh-huh. It starts out at the beginning,</td>
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<td>24 Q. Okay. Let me just ask you briefly about</td>
<td>&quot;Cuyahoga County Executive Ed FitzGerald today called</td>
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<td></td>
<td>on Secretary of State Jon Husted to explain a new</td>
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<td>report that suggests his administration gave priority</td>
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<td>to political allies and comparably little regard for</td>
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<td>minority constituents while deciding to cut early</td>
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<td>voting days in Ohio for the 2014 general election.&quot;</td>
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<tr>
<td>1 SEC005087 through 5088, and it appears to be two</td>
<td>complaints about Secretary of State Jon Husted</td>
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<tr>
<td>2 e-mails, both forwarding an article or a news release</td>
<td>showing &quot;little regard for minority constituents</td>
</tr>
<tr>
<td>3 about a Salon.com post or article. The top e-mail is</td>
<td>while deciding to cut early voting days in Ohio&quot;?</td>
</tr>
<tr>
<td>5 A. He's our Director of Legislative Affairs.</td>
<td>6 A. I think similar to my -- to my earlier</td>
</tr>
<tr>
<td>7 Q. Okay. And it's dated -- his e-mail is dated 5/6/14, and it's to Matt McClellan, and then it</td>
<td>testimony, I don't remember this specifically, but I</td>
</tr>
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<td>8 cc's a number of people in the Secretary's --</td>
<td>do remember that after the 2012 election I think</td>
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<td>9 Secretary of State's Office, including yourself?</td>
<td>there were -- there were people who -- who took that</td>
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<td>10 A. Yes.</td>
<td>position.</td>
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<td>11 Q. Okay. And I'm not going to read the article, but I'll just ask you if you remember -- do you remember this, this being circulated?</td>
<td>Q. Uh-huh. And this appears to be talking about, I guess, the 2014 general election; is that correct?</td>
</tr>
<tr>
<td>12 A. I don't remember specifically, but I see that I did receive it.</td>
<td>A. Well, the -- the e-mail was sent in 2014, so I don't -- I don't know whether they're talking about -- I don't know if the press release is talking about the prospective hours for '14 or what people said happened in 2012.</td>
</tr>
<tr>
<td>13 Q. Uh-huh. It starts out at the beginning, &quot;Cuyahoga County Executive Ed FitzGerald today called on Secretary of State Jon Husted to explain a new report that suggests his administration gave priority to political allies and comparably little regard for minority constituents while deciding to cut early voting days in Ohio for the 2014 general election.&quot;</td>
<td>Q. Uh-huh. Well, it says that --</td>
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<tr>
<td>14 Do you recall reading or hearing</td>
<td>A. I'm just catching up on reading it. I'm sorry.</td>
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<tr>
<td>15 complaints about Secretary of State Jon Husted showing &quot;little regard for minority constituents while deciding to cut early voting days in Ohio&quot;?</td>
<td>Q. Sure. If you'll just read the first paragraph, you can read as much as you want, but in terms of the time frame that it appears to be talking about.</td>
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Matthew Damschroder
A. So it says -- it looks like it's a press release from the Cuyahoga County Executive Ed FitzGerald, who I think was a candidate for governor at that time, that a report from Salon indicates, "New report from Salon indicates Secretary of State made minimal effort to inform minorities of early voting cuts." I don't know whether that Salon article was talking about prospective days and hours or whether it was talking about something that happened in the past, but it sounds like, from the -- the first paragraph, that Mr. FitzGerald was talking about the Secretary's adoption of the OAEO recommended days and hours for the 2014 election cycle.

Q. I know you've testified that you don't remember any of the kind of specific documents and articles that -- that I've shown you, but do you remember as a general matter that there was a fairly large degree of media and attention around this issue of cutting early voting hours?

MS. RICHARDSON: Objection.

A. I remember that there was, both in, obviously, '12 and again in '14, when the Secretary did issue uniform hours, there was a lot of -- there was publicity about that decision and allegations of whether it was a cut or whether it wasn't and who would be, you know, here talking about, alleging a little regard for minority constituents.

Q. Fair to say there was -- there was a lot of complaining that the -- that the change in policy was unfair to the minority community? I'm not asking you to agree with it. I'm just saying that there was a lot -- there was a lot of -- there were a lot of complaints made in the media and perhaps directly to the office itself that this was unfair to the minority community?

MS. RICHARDSON: Objection.

Mischaracterizes his testimony.

Q. And I'm really just asking you, you know, is that fair to say, that there was -- there were a lot of complaints?

A. There -- there were objections to the Secretary's decision to issue uniform hours, days and hours in 2014, yes.

Q. Okay. And was that true particularly in the minority community?

MS. RICHARDSON: Objection.

1. A. I think that that was one of the allegations that was made, was the -- the impact on -- on minority voters.

2. Q. Uh-huh. And are you aware of any efforts by the Secretary to take that -- that sentiment into account or to address that sentiment?

3. MS. RICHARDSON: Objection.

4. A. So I think like I testified earlier, the -- the final -- the final decision in OFA versus Husted -- you know, we've talked about uniform hours.

5. The Secretary called on the General Assembly, as the -- the law-making entity of the state, to issue those hours. They did not. The Ohio Association of Elections Officials proposed a bipartisan set of hours. We didn't receive anything from anybody else in terms of a proposal for specific days and hours, and the Secretary adopted the OAEO hours.

6. Q. Is that really true, that there wasn't anything specific? Because there were all these counties that we talked about where there actually were proposals for -- for hours for that county; isn't -- isn't that right?

7. MS. RICHARDSON: Objection.

8. A. So I would say that's not right.

Q. -- it doesn't sound like there were any Democrats from large counties that -- that agreed with the recommendation of the OAEQ.

MS. RICHARDSON: Objection. Asked and answered.

A. So I would say that the OAEQ does have representative Democratic members from urban counties, in large counties.

Q. That agreed with the recommendation?

A. And I don't know who was on the committee, and I don't know who voted for it. I do know that one Democrat and one Republican voted against it. The one Democrat that I know of voting against it was from Franklin County.

Q. Uh-huh. And you've mentioned several times that the Secretary said that if there was a tie, he would just go with the normal business hours.

A. Normal office hours being in each county the set of hours that the boards had already agreed to locally for their normal business hours. What was his basis, to your knowledge, for using normal business hours as the appropriate time frame for early voting?

MS. RICHARDSON: Objection. Asked and answered.

A. So when he put that marker down at the conference in 2012, that was for the 2012 general election, and the intent of that was to avoid Boards of Elections tying and having the acrimony and the perception of, you know, the Secretary of State deciding ultimately what the hours are going to be by tie vote, by controversy, and he wanted boards to solve the issue locally in a bipartisan fashion.

Normal office hours being in each county the set of hours that the boards had already agreed to locally for their operations, and so that seemed to be a reasonable place to -- to start, and to tell the counties here's your default, if you can't -- I want you to work it out, if you want more, you can have more, but you have to decide locally.

Q. Was there any analysis, to your knowledge, of whether the boards -- whether any board's normal operating hours would serve as a reasonable basis for whatever need the county had in terms of early voting hours?

MS. RICHARDSON: Objection. Asked and answered.

A. So I think like I testified to, it was the -- the hours that the board had already -- what had boards had already adopted for their normal business operations, and so that seemed to be a reasonable default given that the Secretary was trying to get the counties to address, at a local, bipartisan level any days and hours that they wanted to do beyond that.

Q. But why would that be a reasonable default that these are hours for normal operating purposes? Why is that a reasonable default for early voting purposes?

A. And I would say it was reasonable because that's what the board had already decided for their normal business hours.

Q. For operating purposes, not for early voting purposes; correct?

A. Well, arguably the board is open for operations during their early voting period, and so, you know, when the Secretary was trying to urge counties to come up with bipartisan decisions, he decided that that was the default that he was going to do if -- if they couldn't do it.

Q. I'm going to hand you what will be marked as Damschroder Exhibit 12.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. And this has Bates Nos. SEC00765 --

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I'm going to ask all of you to step back. I'm just going to ask you to take a two-minute break.

MR. SPIVA: Sure, yeah.

THE VIDEOGRAPHER: Off the record at 24.

Sorry, 7065 and 7066, and the e-mail on the bottom of the first page is from Pat McDonald to a number of individuals. It appears that that e-mail was not initially addressed to you. It's dated September 5th, 2014. It appears that he forwarded that e-mail on to you, but I'm going to read a little bit of this one just for context for the -- for the question.

It says, "Attached per Sandy's request is a calendar that lists the early voting hours for the 2010 general election and for the 2014 general election per Secretary Husted's Directive 2014-17, as well as how Judge Economus' order will affect those hours," and then --

Are you okay?

Q. I apologize. Can we just take a two-minute break?

MR. SPIVA: Sure, yeah.

THE VIDEOGRAPHER: Off the record at 24.
Matthew Damschroder

13:40.

(Recess taken.)

THE VIDEOGRAPHER: On the record at 13:44.

BY MR. SPIVA:

Q. Okay. I apologize, but I think I have to start at the beginning of that paragraph there, so, "Additionally, the deadline to finalize the language for the VIC is Monday in order to be able to have it to the post office by October 20th. If the early voting hours are not finalized by Monday" -- "Monday, our options can include: Listing the hours set by Directive 2014-17 but also" -- nothing -- "noting that the hours and days are subject to change due to pending litigation and instructing voters to check" -- out -- "check our Website for updates."

That's one of the options he lists. The second option he lists is, "Not listing any hours or days for early voting and simply instructing voters to check our Website. We can discuss this further during New Business at our meeting on Monday afternoon."

Then on the first page Mr. McDonald forwards that e-mail from his Cuyahoga County e-mail address to his personal e-mail address and then further forwards it from his personal e-mail address to your personal e-mail address, in an e-mail dated September 6th, 2014. Is -- is that an accurate description of the -- of that flow as it's reflected here?

MS. RICHARDSON: Objection.

A. Yes. It starts with an e-mail to Pat's board members, and ultimately he forwards it to me.

Q. Okay. One thing you -- I think you -- did you say past board members?

A. To -- I think I said to Pat's board members, and then ultimately forwards it to me.

Q. Thank you. And then the "subject" is still "Early Voting Hours," and he says, "Hi there" -- this is in his e-mail to you -- "Any advice for my Monday's board meeting? Sandy is going to go for additional hours or at least the final weekdays while awaiting SOS decision. What do you think the time frame will be with JH's appeal? Any insight or direction you can give me will be beneficial prior to our meeting. Thanks Matt."

What is Mr. McDonald asking you in this e-mail?

MS. RICHARDSON: Objection.

A. I don't -- I don't know for certain other than for "advice for my Monday's board meeting." I -- I infer from -- from this that this was in the time frame -- I think it was -- this is the time frame where there was the NAACP versus Husted on the -- on the uniform days and hours directive the Secretary had issued for this election, and I think based on this, I would have inferred that the district court had made a decision and -- and that Pat was going to know whether we were appealing or not.

Q. Uh-huh, uh-huh. Do you understand this sentence about Sandy, and so I -- you understand that to be Sandy McNair, a board member of the Cuyahoga County Board of Elections?

A. I do.

Q. Okay. It says, "Sandy is going to go for additional hours or at least the final weekdays while awaiting SOS decision." Do you take that to mean that Mr. McNair was going to seek additional hours as a result of the judge's -- the district court judge's decision in the NAACP v Husted suit?

MS. RICHARDSON: Objection.

A. So I don't know precisely what it was, because I can't for sure remember what the district court's decision was, whether it was put on hold or struck down, the directive, which would have left it to counties to make, so I don't -- I don't know for sure what -- what Pat was communicating to all the board members --

Q. Do you recall --

A. -- with that first e-mail.

Q. I'm sorry. Go ahead.

A. I don't remember specifically -- I don't know what -- what Pat was specifically trying to communicate to his board members.

Q. Uh-huh. But in terms of what he was asking you, let me ask you did you -- do you recall giving him advice for his Monday board meeting?

A. Not that I remember.

Q. Okay. Do you remember giving him advice at all concerning early voting hours?

MS. RICHARDSON: Objection.

A. No.

Q. I see the top part of this e-mail is redacted. Did you forward this e-mail on to someone else?

MS. RICHARDSON: Objection.
Matthew Damschroder

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1. A. I don't know for sure based on -- I don't know what was redacted there.

2. Q. Okay. Do you know whether you sought advice of counsel in connection with this e-mail?

3. MS. RICHARDSON: Objection.

4. A. I don't -- I don't know for sure what -- what's redacted there.

5. Q. Okay. So when you say "for sure," I -- I'm sorry. I do not know why this is redacted.

6. Q. Uh-huh. Okay. And I take it you don't know whether you sought the advice of counsel in connection with this e-mail?

7. MS. RICHARDSON: Objection. I'll remind you that any -- any advice that you may have received from counsel is privileged. I would instruct you not to answer it to the extent it would require you to describe information that was provided to you by counsel.

8. BY MR. SPIVA:

9. Q. My -- my question right now is not what the advice was but whether you sought advice of counsel in connection with this e-mail?

10. A. I've had conversations with others to prepare myself for it. In terms of preparing myself for it, but not anything really need to ask you about most of it, because most of it is attachments to your report. Maybe just take a minute and look and just see if you recognize the -- the document.

11. Q. It appears to be my Declaration, yeah, filed in this case.

12. A. Many aspects of it are components that have been used in -- in previous matters, and then I

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1. Q. Okay. And who drafted the Declaration?

2. MS. RICHARDSON: Objection.

3. A. I don't know what's redacted, and I don't remember whether I sought legal counsel or not based on this e-mail from Pat.

4. Q. Okay. Let me give you what will be marked as Exhibit 13, and it's your Declaration that was attached to Mr. Trendy's report. I believe you -- I think I'm going to take the exhibit -- the cover page off of it, because I worry that it's going to cause confusion because this is exhibit number that it was with the report, and it's going to have a new exhibit number now.

5. (EXHIBIT MARKED FOR IDENTIFICATION.)

6. Q. And it's thick, but I actually don't really need to ask you about most of it, because most of it is attachments to your report. Maybe just take a minute and look and just see if you recognize the -- the document.

7. A. It appears to be my Declaration, yeah, filed in this case.

8. Q. Okay. And who drafted the Declaration?

9. MS. RICHARDSON: Objection.

10. A. Many aspects of it are components that have been used in -- in previous matters, and then I

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1. drafted much of it myself.

2. Q. Uh-huh. In previous matters, for instance, did you submit a Declaration in connection with the NAACP v Husted suit?

3. A. I believe I did, yes.

4. Q. Okay. And do many components of this come from -- from that Declaration?

5. A. That's my recollection, yes.

6. Q. And -- and who drafted those portions?

7. A. I think I drafted most of them.

8. Q. Uh-huh. Okay. Just stepping away from the document for a minute, the question I was going to ask you at the beginning, which is, what did you do to prepare for your deposition today?

9. A. I had a deposition last week, and I read through part of my Declaration last night during the baseball game.

10. Q. Other than your counsel, have you had conversations with anybody else about your deposition or depositions?

11. A. I've had conversations with others to the extent that I was being deposed, but not anything in terms of preparing myself for it.

12. Q. Okay. Did you have any conversations with any other individuals in the Secretary of State's Office?

13. A. Not as it relates to today's deposition.

14. In preparation for my earlier deposition there were attorneys in the room.

15. Q. Uh-huh. Okay. And then did you have any conversations with Mr. McDonald before either this deposition or the deposition last week?

16. A. No.

17. Q. Let me ask you to turn to Page 3 of your Declaration, Paragraph 19. In Paragraph 19 you say, "Despite the many convenient ways for voters to cast ballots, in-person voting on Election Day is still the most widely utilized means of voting in Ohio. Of the 5,773,777 ballots cast during the 2008 general election, only 1,744,743 - less than a third - were cast by absent-voter ballot, and the overwhelming majority of these were by mail. In-person absentee voting is the least-utilized means of casting a ballot in Ohio."

18. Do you -- are you aware of what the demographics are of individuals who cast ballots by mail, what the demographic breakdown is of -- of those individuals? And let's focus on 2008 since

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Armstrong & Okey, Inc., Columbus, Ohio (614) 224-9481

Case No. 2:15-cv-1802

Defendants' Written Objections to the Admissibility of Plaintiffs' Evidence Exhibit F
Q. And are you aware of whether -- strike that. Are you aware of what the number of early in-person voters was in 2008? MS. RICHARDSON: Objection.
A. I don't know -- I don't remember for sure, but it was less than the 1.7 million.
Q. Uh-huh. But you don't know how much less?
A. I don't -- I well, I think I used the phrase "the overwhelming majority...were by mail," so it was -- I would say it was significantly less than the 1.7 million, but I don't remember the exact number.
Q. Okay. And do you know -- I assume the answer would be the same with respect to -- you have similar statements regarding the 2010 election, general election in Paragraph 20 and the 2012 general election in Paragraph 21. I assume the answer would be the same, that you don't know the specific number of -- or the approximate number of early in-person voters in either of those elections?
A. Correct.

Q. And you don't know whether that number was -- was going up or down?
A. I don't remember for sure.
Q. Are you aware of whether there are any differences in the use of early in-person voting in the large urban counties than in the smaller, more rural counties in Ohio?
MS. RICHARDSON: Objection.
A. I don't know whether that's true.
Q. Do you have a general sense of that?
A. Well, I mean, I think there -- you know, because there are more total registered voters in the larger counties, you know, even if you assume a constant percentage, that would be more actual people doing -- you know, either by mail or in person.
Q. How about as a percentage? Do you have a sense of whether early in-person voting is more heavily used as a percentage of population in the larger counties than it is in the smaller counties?
A. I --
MS. RICHARDSON: Objection.
A. I don't know.
Q. Okay. Turning to the section that starts on Page 3, Section B, which is titled, "The Use of Direct Recording Electronic Machines," or DREs, and turning your attention specifically to Paragraph 26, you say, "In 2006, the State of Ohio, using one-time federal funds, purchased new voting equipment to comply with the requirements of the federal Help America Vote Act of 2002," or HAVA. Do you see that?
A. I do.
Q. Has that equipment, to your knowledge, been replaced in Ohio?
MS. RICHARDSON: Objection.
A. So there was statewide implementation of new systems in 2006, I think with the exception of maybe I think Lake and maybe Mahoning, because they had recently purchased of their own right beforehand.

I think that -- I do know that some counties, since 2006, have -- have replaced their systems. Cuyahoga switched from DREs to precinct-count optical scan, and I think a couple other counties have -- have changed since then as well.
Q. Okay. But there are still a number of counties that are using the DRE machines that were purchased in 2006?
MS. RICHARDSON: Objection.
A. I would say that most counties are still using the voting equipment, whether DRE or precinct-count optical scan that was purchased in '06.
Q. That -- that equipment is getting pretty old at this point?
MS. RICHARDSON: Objection.
A. So one of the challenges of post-HAVA equipment is that it's essentially IT equipment, and so I think, you know, I think there's the -- I don't even know that the iPhone was invented in 2006 or at least publicly available in 2006, when counties were first starting to buy this equipment, so I think they're -- you know, from an IT lifecycle standpoint, you know, counties are talking about upgrading.
systems, and the Secretary has -- has brought attention to that as well.

Q. Okay. These are -- these are basically ten-year old computers?

MS. RICHARDSON: Objection.

A. They definitely have computer components. I would say that the DRE is -- is more of a computer per se than the precinct-count optical scanner, but certainly all of it is backed up and supported by, you know, software systems and applications.

Q. Okay. Would you say that equipment that's nearly ten years old, that that's more prone to breaking down?

MS. RICHARDSON: Objection.

A. I don't know that it's -- I wouldn't agree with the characterization that it's more prone to breaking down. I -- I think the issue is that it's just outdated software and things like that, that as -- as companies start to stop support of old operating systems and those kinds of things, that it -- it becomes a necessity to upgrade.

Q. Uh-huh. In Paragraph 26 you say, "At that time" -- referring back to 2006 -- "the number..." 2006 -- "the number of DREs purchased was 1 to 175 registered voters," and then you cite Section 514.03 of Amended Substitute House Bill No. 66. Are you --

A. I'm sorry, can I interject?

Q. Sure.

A. Are you talking about Paragraph 26 or Paragraph 27?

Q. 26.

A. Okay. Thank you. I apologize.

Q. No, no. It's all right. What was the basis at the time of the 1-to-175 ratio for DRE machines?

MS. RICHARDSON: Objection.

A. So in 2006 -- it started before 2006, but the -- the state did a -- kind of a unified bid, because HAVA ordered the funds to the chief election official of the state to control, and so then Secretary Blackwell did a -- kind of a -- a master contract, a master bid, and that was the number the Secretary of State's Office arrived at.

Q. Uh-huh.

A. I don't know why they arrived at that, but that was the number that they did.

Q. Okay. And you say in here that, "Some counties, including Franklin County, decided to use local taxpayer funds to purchase additional quantities of DREs." First of all, were you still with -- or with the Franklin County Board of Elections at the time that they decided to use funds to purchase additional DREs?

A. Yes. In 2006, I was still the Director of the Franklin County Board of Elections.

Q. And why did Franklin County decide to purchase more -- rather additional quantities of DREs than was required by the 1-to-175 ratio?

A. Because we had a shortage of voting machines in 2004 and an exceptionally long ballot in 2004, high turnout in 2004, that all resulted in long lines in 2004 --

Q. Uh-huh.

A. -- and I swore that we would never have long lines again on Election Day in Franklin County, and so I went to the county commissioners and said I want to buy more machines, and they said okay.

Q. Uh-huh.

A. Can I just take a two-minute break?

THE VIDEOGRAPHER: One moment. Off the record at 14:05.

40 (Pages 157 to 160)
additional machines with the county funds?
A. I don't remember for sure, but I want to
say it was 1 to 145 or 1 to 150, but I can't remember
for sure.
Q. And did you experience long lines again
after 2004 in Franklin County?
MS. RICHARDSON: Objection.
A. Not on Election Day.
Q. I take it, though, you did experience
long lines sometimes during the early voting periods?
MS. RICHARDSON: Objection.
A. So we had in -- when I was still at the
Franklin County Board of Elections, we did have long
lines for early voting during the 2008 general
election when we did not use the DREs.
Q. Okay. What was the equipment you were
using for -- for those elections -- for that
election?
A. So for the 2008 general election we used
DREs for Election Day, but the Secretary of State, in
2008, instructed us to use central-count paper
ballots in the -- for in-person absentee voting, and
in the City of Columbus, which is 70 to 75 percent --
70 percent of all the registered voters in Franklin
County, there were I think it was either eight or ten
bond issues on the ballot in 2008, as there were in
2004, and so, in Franklin County, in the 2008 general
election, when we used central-count, we had to print
a four-page, double-sided ballot for every voter that
came in the door, as opposed to just entering them
in -- checking them in the voter register system and
then giving them a DRE. We had actually purchased
additional DREs for -- to prepare for the 2008
general election for in-person absentee voting, but
when the Secretary of State told us we had to use
delivered paper, that -- that holdup at the check-in station to
print four double-sided pieces of paper for every
voter -- took -- so time, we had lines.
Q. Do you know what your peak lines were
during the early voting period in 2008?
A. I don't -- I don't -- we did not
track --
Q. Uh-huh.
A. -- those lines from a timing standpoint.
The only thing I remember in terms of that is the
last voter who cast their in-person absentee ballot
in the -- on the Monday before the general election
did so about 1:30 a.m. on Election Day, about six --
five hours before the polls opened, and I remember --
I remember that specifically because, A, it was late
and we still had to run the -- the poll lists for all
the precincts of who had voted absentee, but also, as
the person walked out, they said I probably could
have just walked -- walked to my polling place in
five hours and not had a line, and I think we had
been opened until nine p.m. for -- for in-person
voting that Monday before the election.
Q. I see. I don't want to ask you too much
about this because I think you covered it last week,
but in terms of the 2004 lines, before the -- the
purchase of DRE machines, Election Day lines, what
were your peak lines like then?
A. Again, we didn't -- in Franklin County
we didn't -- we didn't track time, time to vote in
2004. We had -- part of our challenge in 2004 was we
had the older technology voting machine that was kind
of a -- almost a hybrid between the old lever
machines and the new DREs. It was a full-face
electromechanical system, and, again, we had those
bond issues, and so because of the nature of Franklin
County, where we have annexation, you could have in
the same polling place the City of Columbus voters
and township voters, township voters who didn't have
the -- the bond issues but had to have their own
machine, and so you would have a long line at the
Columbus machine and no line at the township machine
in the same polling place; so that was our scenario
in 2004, and we did have long lines.
Q. And did you have a similar scenario in
terms of the closing time, you know, people who ended
up -- the last voter who had gotten in time before
the -- the polling closed? What time did the -- the
last voter leave?
A. So, again, the example I used earlier
was for early voting in 2008. We didn't have --
Q. Sure.
A. -- any lines really to speak of for
in-person absentee in 2004 as it was before --
Q. Sure.
A. -- no-fault absentee and you had to have
the -- one of the 12 reasons or so. My
recollection -- because I remember we reviewed the --
the paper tapes from the machines, and everything --
the polls closed at 7:30. My recollection is that
everything had to close before midnight on all the
machines that -- that were out.
Q. Is it -- is it fair to say, based on your experience in Franklin County, that different counties may have different needs in terms of the appropriate ratio of equipment to voters? And I'm focusing on the DRE counties.

MS. RICHARDSON: Objection.

A. So when you -- when you say "needs," I'm -- I'm inferring from that that -- or answering the question with -- that because counties have different sizes, counties have different complexity based on split congressional districts, split House districts. Columbus is particularly challenging because of the annexation component, the size of the population, number of voters. There -- there are a number of kind of inputs that -- that change the complexity from -- from one county to another in terms of the administration of the election.

Q. Uh-huh, uh-huh. And -- and would it -- would -- would you have said in your Paragraph 26 that, "Some counties, including Franklin County, decided to use local...funds to purchase additional quantities of DREs." I assume you would agree that no county would -- would spend taxpayer funds for additional quantities of DREs unless they thought it was necessary to avoid long lines?

MS. RICHARDSON: Objection.

A. So I don't know what the thought process was in other counties that did. In -- in our county, I think as I testified previously, I didn't know for sure whether it was going to be necessary, but I wasn't -- because I didn't know, I was going to ask for more so that I could say that I asked for more.

Q. Uh-huh, uh-huh. Okay. I take it different counties have different abilities to -- have different budgetary situations; is that -- is that correct?

MS. RICHARDSON: Objection.

A. So the -- the county commissioners of each county make the appropriation for the necessary and proper expenditures of the board. The Board of Elections can sue the county commissioners for funding in Common Pleas Court, if needed, and so different counties have differing, you know, tax bases, ability to levy sales tax, and those kinds of things, and so there are different economic situations in each county as it relates to the commissioners' ability to -- to raise general appropriations and to raise general funds and appropriate it for the Boards of Elections.

Q. Now, later on in Paragraph 30 you're talking about the revised formula for determining whether a county that uses DRE machines has the right number of machines, and you say that, "This revision to the calculation formula makes sense. The minimum number of machines in inventory establishes a baseline to make sure that there are sufficient machines to accommodate in-person voters on Election Day. Given that many voters in Ohio are choosing to vote before Election Day by absentee ballot, it only makes sense that the calculation needed to be adjusted."

And I guess my question would be if a county determined that there is a lesser need for DREs, machines, why -- why would they -- and there's a -- and there's a lower requirement for those machines, why would they -- why would they maintain a higher ratio in their inventory?

MS. RICHARDSON: Objection.

A. I don't think I understand your question. I apologize.

Q. Okay. No. That's all right. So, you know, earlier we -- we talked about the fact that Franklin County decided to -- to use additional funds to purchase additional quantities of DREs, so that it essentially had a ratio which was -- was a better ratio than 1 to 175, and -- and you explain in Paragraph 30 that it made sense to adjust the 1-to-175 ratio by taking a count of the -- what at least there seemed to be likely absentee voters; is that -- is that fair?

MS. RICHARDSON: Objection.

A. So the change in the law would allow a Board of Commissioners in future procurement to exclude from the -- from the denominator, if you will, individual registered voters who had voted absentee in one of the exceptions in the statute, and that seems reasonable, I think, similar to my testimony earlier today that a board can exclude from its calculation for purposes of the cap of the number of registered voters in a precinct, that they can exclude an individual in confirmation status because that person hasn't responded to a confirmation card confirming that they live in that precinct and would utilize the services of that precinct on Election Day. Similar here, for purposes of the inventory formula, it seems that if a -- if a -- if the...
No fault absentee voting, which coincided with the implementation of DREs in Franklin County, during my tenure there, we always used the DREs for in-person absentee voting, and I believe that continues to be the case, with the lone exception of the 2008 general election when the state told us we had to use central count optical scan paper ballots, and in the -- in 2008, in preparation for planning to use DREs in the general election, before we were told not to, Denny White, who was my Deputy Director at the time, he and I went out and -- and asked for funding from the commissioners to purchase I think an additional 100 machines, again for the same reason that we had before, so we could have more for in-person absentee, and then we ended up not being able to use those.

Q. Uh-huh, uh-huh. Because of the directive that you use the the optical scan?
A. Yeah, because of the instructions from the Secretary of State then to -- to use paper for in-person absentee voting.
Q. And -- and I take it, though, for the elections where you were permitted to use DREs for both early in-person and for Election Day voting,
that you simply did acquire additional machines to do that?

MS. RICHARDSON: Objection.

A. We acquired the -- the additional machines in the two thousand election -- in the 2008 general election for the purpose of having additional machines.

Q. Uh-huh.

A. I don't know whether Franklin County has -- has used those for Election Day or has used those for in-person or not since that time.

Q. Uh-huh, uh-huh. But if I understand your testimony correctly, other than that one time when you were required to use the optical scan for the early voting, you used the DREs for both -- "you" being Franklin County -- for both early voting and for Election Day voting?

A. Yes. So with the exception of the '08 general election, we used our DREs, "we," Franklin County, used our DREs for both in-person absentee voting and Election Day voting. For purposes of clarity, we didn't use the same individual DRE unit for in-person absentee that we used for Election Day, because when you program a DRE for early voting, you're programming that machine for all the ballot styles in the entire county, whereas for an Election Day DRE, you program the DRE for only the ballot styles that are available in that particular polling place.

Q. Uh-huh. In those elections in which you used both -- you used DREs for both early voting and -- early in-person voting and Election Day voting, did you have to reduce the number of Election Day DREs that you -- that you -- that you used?

MS. RICHARDSON: Objection.

A. I don't remember the exact number that Franklin County deployed. We certainly didn't jettison any of our inventory. I mean, we still had our -- our inventory, but because we had purchased additional machines, we had more than ample number of -- of voting machines for in-person absentee and Election Day.

Q. Okay. And that was in 2010, I take it?

A. Yes.

Q. Let me ask you to turn to Page 7, Section D of your Declaration, "Provisional Ballot Information," and feel free to take a look at that section for a minute. I'm going to have a couple of questions first on Paragraph 49.

A. Okay.

Q. So, first of all, I think you are -- in Paragraph 49, where you talk about "the additional information," that you're -- you're talking about the additional information required by 3505.183, et cetera, which you recite up above in Paragraph 48?

A. Yes.

Q. And that's the -- "the additional information" is date of birth and address information that has to be put on provisional ballots as a result of the -- those -- of that statute?

A. Yes.

Q. And you say that, "The additional information (date of birth and address) will assist the boards during the process where they endeavor to identify the voter in their registration books. There are many individuals in Ohio who share the same name, and there are also individuals who share the same last four digits of their Social Security numbers." I take it that since the passage of 3505.183, that even where the board is able to identify the voter in their registration books, if they leave off the address or date of birth information from their provisional ballot, that ballot will not be counted; correct?

MS. RICHARDSON: Objection.

A. So the change, I think we kind of talked about earlier, institutes the -- the same five fields for registration as to the same five fields for requesting an absentee, casting an absentee and casting a provisional. I think the biggest thing to note with provisional ballots is that the majority of these ballots are casts -- are cast on Election Day when a person has moved and not updated their address, and because the provisional ballot also serves as a means to update the person's registration, a form of registration, a registration form, it's reasonable to have the same -- the same fields for registration as for provisional, and specifically as it relates to date of birth, the -- you know, because there are some people who share last names, maybe a first initial, last four of Social, because a person doesn't actually have to write a form of identification on the envelope, they can show the poll worker a bank statement that has their name and address on it or other qualifying information.
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| forms of identification. Having date of birth can help the Board of Elections identify the voter in the voter file, determine their eligibility necessary to count the ballot, and then update the person's registration. I think to your question, if -- if a person, after the enactment of these laws, were to leave off the date of birth and address, the person's provisional ballot would not count subject to, of course, the exceptions in the law for date of birth, when it's allowed to not match, and the person's -- Q. Actually put it down, but it's the wrong -- A. Yes. Q. -- date of birth? A. Thank you for clarifying. Q. Uh-huh. A. But the -- the ballot would not count in those -- in those instance, subject to the exception, and the person's registration would not be updated for the next election. Q. Uh-huh. But prior to the change that this law made, if a person did not put their date of birth or address on their provisional ballot but the board was able, nonetheless, to identify the voter, that provisional ballot would have counted? MS. RICHARDSON: Objection. Q. Isn't that right? A. So, you know, a similar issue with the provisional envelope as we talked about earlier with the absentee envelope, where state law wasn't clear on what was required but what isn't, but the law prescribed the form of the envelope, similar to the absentee -- Q. But it became clear after 2008, didn't it? THE REPORTER: I'm sorry, your question again? Q. It became clear after 2008; right? I mean, I think you testified to that earlier, that it became -- that it got clarified in 2008? A. As related to -- MS. RICHARDSON: And I'm going to object and ask that he be allowed to finish his answer to the question. MR. SPIVA: Well, it's just -- I mean, you know, we talked at length earlier about the fact that it was clarified in 2008. All right. So I don't want to hear a lengthy answer talking about how it was unclear in 2014. MS. RICHARDSON: Well, you asked him a question that has already been answered, and so he is repeating the answer that he gave previously. MR. SPIVA: It has not been answered. It deserves an answer, but it has not been answered. BY MR. SPIVA: Q. And so I don't want the record to go off track here, and so I just want to clarify that in 2008, there was no confusion after that as to whether date of birth or address information was required on the provisional ballot envelope; isn't that correct? MS. RICHARDSON: I'm going to object, and I'm going to object in particular to the badgering of the witness, and I'm going to repeat again that I will ask that he always be allowed to answer his question -- MR. SPIVA: You can make your objections for the record. MS. RICHARDSON: I am making my objections for the record. MR. SPIVA: But speaking objections and the coaching of the witness are uncalled for and inappropriate, and you know it and I know it. MS. RICHARDSON: I absolutely have not been making speaking objections. I have been simply stating objection. At this point in time you are interrupting the witness. It's on the record. It's on the video. You're now interrupting me. I am simply asking that he be allowed to give whatever answer he believes is a truthful, complete answer, and you may then ask whatever question you choose to after he finishes his answer and after I make whatever objections are appropriate for the record. MR. SPIVA: Are you done? MS. RICHARDSON: I am finished. Thank you. MR. SPIVA: Okay. You get the last word. BY MR. SPIVA: Q. All right. My question is this, prior to the enactment of 3505.183, a voter who did not put his or her address or date of birth on the provisional ballot envelope yet the board could verify that voter's identity and the fact that they were a registered voter, that voter's ballot would...
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<td>count; correct?</td>
<td>Q. No problem. And -- and prior to that,</td>
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<td>A. The form prescribed by the statute had a</td>
<td>prior to the 2014 change in the law, if a person had</td>
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<td>blank for date of birth, and there was confusion</td>
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<td>prior to 2008 on provisionals. I was testifying</td>
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<td>we removed, &quot;we,&quot; the Secretary of State's Office,</td>
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<td>MS. RICHARDSON: Objection.</td>
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<td>provisions because the statute did not have a</td>
<td>A. In Franklin County, prior to the change</td>
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<td>reason to reject a provisional. So, in 2012, a</td>
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<td>in 2012 as related to date of birth for the</td>
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<td>provisional envelope. That was clarified in the --</td>
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<td>in legislation that was passed in 2004, that resulted</td>
<td>Q. And that was true even after the</td>
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<td>in the new Section 3505.183, where date of birth was</td>
<td>clarification that you testified about earlier in</td>
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<td>by the board because it did not satisfy the</td>
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<td>Q. Okay. And so a person who casts an</td>
<td>requirements of the law that all five fields be</td>
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<td>absentee ballot prior to the change in the law</td>
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<td>Q. Okay. And -- but after the change in</td>
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<td>address, would have had their ballot counted?</td>
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<td>MS. RICHARDSON: Objection. Asked and answered.</td>
<td>absentee ballots, a person who did not put their date</td>
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<td>A. After the -- for purposes of absentee,</td>
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<td>board can verify that they were registered voters,</td>
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<td>put their date of birth on the identification</td>
<td>that ballot would not count; correct?</td>
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<td>envelope for an absentee ballot, it would have</td>
<td>MS. RICHARDSON: Objection. Asked and answered.</td>
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<td>counted.</td>
<td>A. After the law changed, if a person did</td>
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<td>Q. Okay. And -- but after the change in</td>
<td>A. And for purposes of the record, the</td>
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<td>the law concerning the information required on</td>
<td>clarification I was talking about earlier as in,</td>
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<td>absentee ballots, a person who did not put their date</td>
<td>like, before the lunch break had to do with the</td>
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<td>of birth or address on the envelope, even if the</td>
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| 1. Q. Right. But I think you also testified that in 2012 that the date of birth field was taken off --  
2. A. Correct.  
3. Q. -- correct, the provisional ballot?  
4. A. By Secretary Husted.  
5. Q. Okay. And after that point, if somebody did not put their date of birth on, assuming that they could be verified as a voter, their provisional ballot would have counted?  
6. MS. RICHARDSON: Objection.  
7. A. So because the date of birth was removed from the envelope, there wouldn't have been a place for a person to provide the date of birth, so it wouldn't have been relevant in the board's consideration of whether to count the ballot or not.  
8. So the board would have had to identify the voter based on the information on the envelope, and date of birth would not have been one of the components for finding the voter in the voter file.  
9. Q. And assuming they were able to identify the voter, the ballot would have counted; correct?  
10. MS. RICHARDSON: Objection. This has been asked and answered and asked and answered.  
11. A. That's correct.  
12. Q. Thank you. Let me ask you about Paragraph 56 of your Declaration. You have here, "Ohio law requires the absentee ballot application to contain the voter's (a) name, (b) address, (c) date of birth, (d) signature, (e) one of the following: driver's license number or state identification number; (2) the last four digits of the voter's Social Security number; (3) a copy of a current and valid photo identification, military identification, current utility bill, bank statement, government check, paycheck, or other government document showing the voter's address."  
13. "The statute also requires the application to contain a statement identifying the election for which the absent voter's ballot is requested, a statement that the person requesting the ballot is a qualified elector (both of which are frequently preprinted on the application), the voter's party affiliation if the request is for a partisan primary election, and the address to which the ballot shall be mailed, if different from the voter's registration address."  
14. My question is that given that all of this information is required on the application for an absentee ballot, what is the purpose of requiring those same five fields on the envelope of the actual absentee ballot?  
15. MS. RICHARDSON: Objection.  
16. A. Well, I think the key there is for the election official -- you know, the election officials that match up the application with the envelope when it comes back, those are the fields that the General Assembly decided to -- to have, to require, and, you know, I think they -- they speak to different components, but those are the same fields, and then I don't think it's unreasonable for the same five fields to be -- have requirement -- for there to be a requirement for the same five fields for the application as for -- on the envelope.  
17. Q. But what is the need of that, that -- those same five fields on both the application and -- and the envelope of the ballot?  
18. MS. RICHARDSON: Objection.  
19. A. Well, the Boards of Elections review the identification envelopes when they come back in to determine the qualifications of the elector separate from the review of the application that caused the ballot to be issued, and all of those -- all of those different components, you know, go to a different part of the election process, date of birth, you know, age eligibility of the voters, address, is the person, you know, registered at the address in which they reside, casting the correct ballot style, identification envelope, form of identification, is the person, you know, that they say they are, the signature, an attestation to the form; so I think they all have a different -- a different kind of function.  
20. Q. Uh-huh, uh-huh. Isn't it correct that in the vast majority of cases the boards were able to verify the identity and eligibility of the absentee voter before those additional information requirements?  
22. A. So for purposes of Paragraph 56, the only additional requirement for the absentee application would be the date of birth. It was on the envelope before, and we talked about it. I apologize. Now, I don't want to -- just reference it, but most absentee ballots did indeed count.
Q. In Paragraph 84 -- I just want to turn
to a different topic, which is from your Section G,
"Preparing for Elections," and in Paragraph 84 you
say, "In order to facilitate additional evening and
weekend in-person absentee voting, Boards of
Elections must ensure adequate staffing during those
hours. This can be burdensome and costly for boards
that are already operating under tight budgetary
restrictions. In addition, these staff cannot
complete other necessary tasks while tending to
in-person absentee voters."
Do you know what the incremental cost of
Golden Week was prior to its elimination?
A. I don't know that there was ever a
specific cost requested of boards to track or -- so I
don't know that there's a known number on that.
Q. Uh-huh. And are you aware of specific
counties that -- for which Golden Week posed a -- a
burdensome cost given their budget -- budgetary
restriction?
A. So I think because to my knowledge
there's never been a -- you know, boards didn't track
the cost of absentee voting by week, so I don't know
that -- that, you know, there's an answer to
that other than to say that I think boards from --
for an absentee -- in-person absentee voting
generally there is a -- a different and unique cost
associated with that, different than the rest of the
election operations.
Q. Is that early voting or Golden Week?
A. I'm sorry. The whole thing.
Q. Uh-huh.
A. And then a portion of that would be the
costs related to Golden Week, but like I said, I
don't think anyone's ever studied it specifically.
Q. Right. Okay. Are you aware that in
Cuyahoga County the cost of Golden Week was actually
a pretty minor percentage, it was a pretty minor
percentage of -- of their budget?
MS. RICHARDSON: Objection.
A. I don't know what the costs were in any
counties related to just Golden Week.
Q. Okay. Are you aware that -- strike
that. In Section I you -- you talk about wait times,
and in Paragraph 88 you reference a -- I believe a
study by Charles Stewart and -- and other --
actually, just Charles Stewart, and you say that,
"The mean wait time for early in-person voting in
Ohio decreased from 21 minutes...to 7.7 minutes...for
the 2008 and 2012 presidential elections
respectively. Thus, while the number of absentee
ballots cast increased from 2008 to 2012, the two
most recent presidential elections, wait times for
early in-person voting decreased."
I take it that, obviously, during both
the 2008 and 2012 elections Golden Week was still
part of the early in-person voting period?
A. It was.
Q. And the averages that you're citing from
the Stewart study, are those statewide averages?
A. So I -- I recall, based on a
conversation with Professor Stewart, that this came
from his Survey of the Performance of American
Elections data, which I think is a -- is a poll, and
so I think the -- the observations from the poll
were -- were statewide.
Q. Uh-huh. And you mentioned a
conversation with Professor Stewart. You had a
comparison with him about -- about wait times in
Ohio?
A. Not specific -- I did not have a
conversation with Professor Stewart specifically
about wait times. I've had conversations with --
with Professor Stewart on several occasions about a
number of things. In this particular instance, I had
asked Charles if he had data on wait times in 2008
and 2011.
Q. Okay. And then in Paragraph 89 you say,
"Based on data analyzed from Professor Stewart,
Election Day voting wait times dropped from 12.3
minutes...to 11.2 minutes.. from 2008 to 2012." And
again, is that referencing statewide wait times?
A. So it would be the -- the statewide
observations from -- from his FP -- SPAE survey.
Q. Uh-huh. Are you aware of what the
average wait time was in -- in either 2008 or 2012 on
Election Day in Franklin County?
A. I'm not.
Q. How about in Cuyahoga County?
A. I'm not.
Q. Do you know what it was in Hamilton
County?
A. No.
Q. Do you know what it was in any specific
Matthew Damschroder

1 county?
2 A. No.
3 MR. SPIVA: Can we go off the record for just a couple of minutes? I think I may be done.
4 THE VIDEOGRAPHER: One moment. Off the record at 15:02.
5 (Recess taken.)
6 THE VIDEOGRAPHER: On the record at 15:10.
7
8 BY MR. SPIVA:
9 Q. All right. Mr. Dylan, I just have a few more questions -- sorry. Mr. Damschroder.
10 A. It is late in the afternoon. It's all right.
11 Q. So in your capacity when you were Assistant Secretary of State, Director of Elections, did you have occasion to advise Secretary Husted on how to break tie votes among Boards of Elections concerning early voting hours?
12 A. I don't -- because the Secretary -- I don't recall any tie votes on early voting hours prior to the summer of 2012, when the Secretary had put down the marker in the summer, and so there really wasn't any conversation about those tie votes.

Q. Let me ask -- let me ask about both. I don't want to -- just so we get a clean record, I'll -- I'll just do them one at a time.

A. Okay.

Q. I take it from what you said a minute ago, you did experience some long lines during early in-person absentee voting in 2008; is that correct?

A. Yes, we had long lines in Franklin County in '08 for in-person absentee voting over at Vets Memorial.

Q. Okay. And in 2008 did you experience long lines on Election Day in Franklin County?

A. So in 2008, in Franklin County, I don't remember significant -- I don't remember reports of specific places where we had long lines.

Q. Was there -- were there -- were there -- do you recall anything about long lines at Ohio Union?

A. So in 2008, in Franklin County, the only...
thing I remember about Ohio Union is that they were running low on provisional ballot envelopes and paper ballots, but I don't remember anything about long lines to wait to vote to use the voting machines for -- to cast a regular ballot.

Q. And how about in 2012, did -- I take it you were in the Secretary of State's Office by the 2012 general election?

A. Yes.

Q. But did you have any knowledge of long lines in Franklin County -- why don't we first start with early -- during the early in-person voting period?

A. So the only recollection I have of long lines in Franklin County in 2012 for early voting, I think it was the Monday before the election, the board, I can't remember if it was Bill or Dana or who called, "Dana" being Dana Walsh, "Bill" being Bill Anthony, called because their -- they had lost the connectivity for -- to their server --

Q. Uh-huh.

A. -- for about an hour, and I think they had some lines during that time frame while they were waiting for the connectivity to come back up for the check-in, but there wasn't a machine problem. It was the check-in with the county software system for registration.

Q. Okay. And did you become aware of what kinds of lines were developing as a result of that situation in terms of the length of the wait?

A. I don't -- I don't think they ever informed us about quantity or people who -- who were -- the number of people who were waiting. My recollection is it was -- it was resolved, like, within an hour or an hour and a half and they were back up and connected; so I don't remember -- I don't -- I don't remember them ever saying how many people were in line.

Q. Okay. And then in terms of long lines on Election Day in 2012, did you become aware of any problems in Franklin County with long lines in 2012?

MS. RICHARDSON: Objection.

A. So in Franklin County, 2012, again, Election Day, no, not that I'm aware of.

Q. And how about at the -- on the OSU campus?

A. Not that I'm aware of, but at the Secretary of State's Office we wouldn't necessarily become aware of a -- of a particular line length at a particular polling place in the state.

Q. Okay. I don't think I have anything else.

MS. RICHARDSON: No questions.


(Thereupon, the deposition concluded at 3:17 p.m. Signature not waived.)
CERTIFICATE

State of Ohio : SS:
County of Franklin :

I, Valerie J Sloas, Notary Public in and for the State of Ohio, duly commissioned and qualified, certify that the within named Matthew M Damschroder was by me duly sworn to testify to the whole truth in the cause aforesaid; that the testimony was taken down by me in stenotype in the presence of said witness, afterwards transcribed upon a computer; that the foregoing is a true and correct transcript of the testimony given by said witness taken at the time and place in the foregoing caption specified and completed without adjournment.

I certify that I am not a relative, employee, or attorney of any of the parties hereto, or of any attorney or counsel employed by the parties, or financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Columbus, Ohio, on this 2nd day of November, 2015.

___________________________
Valerie J Sloas, Registered Professional Reporter and Notary Public in and for the State of Ohio

My commission expires June 8, 2016

(VJS-79564)
CERTIFICATE

State of Ohio : SS:
County of Franklin :

I, Valerie J. Sloas, Notary Public in and for the State of Ohio, duly commissioned and qualified, certify that the within named Matthew M. Damschroder was by me duly sworn to testify to the whole truth in the cause aforesaid; that the testimony was taken down by me in stenotype in the presence of said witness, afterwards transcribed upon a computer; that the foregoing is a true and correct transcript of the testimony given by said witness taken at the time and place in the foregoing caption specified and completed without adjournment.

I certify that I am not a relative, employee, or attorney of any of the parties hereto, or of any attorney or counsel employed by the parties, or financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Columbus, Ohio, on this 2nd day of November, 2015.

Valerie J. Sloas, Registered Professional Reporter and Notary Public in and for the State of Ohio.

My commission expires June 8, 2016.

(VJS-79564)
IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

OHIO DEMOCRATIC PARTY,
  et al.,

Plaintiffs,

vs.

JON HUSTED, et al.,

Defendants.

- - - - -

THE VIDEOTAPE DEPOSITION OF PAT MCDONALD
WEDNESDAY, OCTOBER 28, 2015
- - - - -

The videotape deposition of PAT MCDONALD,
called by the Plaintiffs for examination pursuant
to the Federal Rules of Civil Procedure, taken
before me, the undersigned, Lynn A. Regovich,
Notary Public within and for the State of Ohio,
taken at the offices of Cady Reporting Services,
1468 West 9th Street, Suite 440, Cleveland, Ohio,
commencing at 9:00 a.m., the day and date above set
forth.

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www.cadyreporting.com
Deposition of Patrick McDonald, taken October 28, 2015

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ALSO PRESENT:

Keith McGregor, Videographer

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MR. SPIVA  4

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VIDEOGRAPHER: We're on the record. This is the videotape deposition of Patrick McDonald taken on October 28th, 2015. The time is approximately 9:17 a.m. We're located at 1468 West 9th Street, Cleveland, Ohio where we're here on the matter of the Ohio Democratic Party, et al., versus Jon Husted, et al., Case No. 2:15-CV-1802. It is to be heard in the U.S. District Court for the Southern District of Ohio, Eastern Division.

My name is Keith McGregor I am the court reporter, and our court reporter is Lynn Regovich.

Will the court reporter please swear in the witness.

PAT MCDONALD of lawful age, called by the Plaintiffs for examination pursuant to the Federal Rules of Civil Procedure, having been first duly sworn, as hereinafter certified, was examined and testified as follows:

MR. SPIVA: Good morning, Mr. McDonald.

THE WITNESS: Good morning.

MR. SPIVA: We met a minute ago. My name is Bruce Spiva. I'm with Perkins, Coie and I represent the plaintiffs in this matter. As I'm sure your attorney has told you, we're here to take your deposition today, and my first question I guess is have you ever been deposed before?

THE WITNESS: I have.

MR. SPIVA: Okay. Well, you probably are familiar with how this works, but I'll just briefly go over some of the ground rules. You know, I'll ask questions and I'd appreciate it if you would try to answer them fully to the best of your ability. Because the court reporter is taking down everything we say, if you can wait until I get the whole question out before responding, and I will also try to wait until you get your whole answer out before asking you another question. Does that seem fair?

THE WITNESS: Sure.

MR. SPIVA: And then it's also important in ordinary conversation we say uh-huh or we shake our heads or nod to get out verbal answers. So if you can say yes or no or elaborate as the case may be, I'd appreciate...
Deposition of Patrick McDonald, taken October 28, 2015

Q   Were you deposed in connection with the NAACP v. Husted case?
A   I was not.
Q   And you mentioned that two of the three times were election related issues. Can you just briefly describe what those cases were? If you remember the title of the case, great, but if not, maybe just a brief description of what the matter was.
A   I do not remember the title of the case. It was basically dealing with voter registration and the NCOA purge issues that the Board of Elections go through and both of them were similar depositions.
Q   And about when did those occur?
A   Would have been at least four years ago.
Q   Both of them occurred at least four years ago.
A   Yeah.
Q   Let me ask you a few questions about your background and just to speed things up to some of these I'll just ask you leading questions where I know the answer and then we can have a more -- more of a discussion, but as I understand it you are currently the director of the Cuyahoga County Board of Elections.
A   Correct.
Q   And you were appointed in January of 2013?
A   Correct.
Q   Who appointed you?
A   The board members, four board members of the Board of Elections.
Q   And prior to that you served as the deputy director of the Cuyahoga County Board of Elections?
A   Correct.
Q   And approximately how long were you the deputy director?
A   Five, five and a half years.
Q   So you were appointed approximately 2007 to the deputy director position?
A   Correct.
Q   And prior to that you were the deputy state treasurer, is that an appointed position? In other words, did you have to be confirmed by the Ohio legislature, or was it just something -- was it a non-confirmable position?
A   Non-confirmable position. I was appointed by her or hired by her.
Q   And prior to that you were the assistant director of the Ohio Department of Commerce; is that correct?
A   That's correct.
Q   Who was your boss when you were the deputy state treasurer?
A   Treasurer Jeannette Bradley.
Q   And the sitting board members, are they the ones that you serve as a deputy director?
A   Correct.
Q   And that was approximately 2005 to 2006?
A   Correct.
Q   And you held that position from approximately 1999 to 2005?
A   Correct.
Q   And who was your boss in that position?
A   There was two different directors at the time. The first one was Gary Suhadolnik, and then the second one was the Lieutenant Governor Jeanette Treasurer.
Q   Were you deposed in connection with the NAACP case?
A   No.
Q   And you are currently the director of the Cuyahoga County Board of Elections?
A   And you are currently the director of the Cuyahoga County Board of Elections.
Deposition of Patrick McDonald, taken October 28, 2015

1. Bradley before she was state treasurer.
2. Q And prior to that you were the finance director for the Ohio Secretary of State between 1991 and 1999; is that correct?
3. A That's correct.
4. Q And who was the Secretary of State when you had that role? And if it changed, just let me know.
5. A No, it was one person for the full eight years, Bob Taft.
6. Q And what party is Mr. Taft?
7. A He is a Republican.
8. Q And you are also a member of the Ohio Association of Elections Officials; is that correct?
9. A I am.
10. Q Until recently you were a trustee of that organization?
12. Q What does that entail, being a trustee of the OAEO?
13. A Basically the main responsibility is to vote on legislation and legislate initiatives that the association would want to put forward.
14. Q And when you say, "Vote on legislation," you mean this is legislation that they would want to propose to the Ohio General Assembly?
15. A Correct.
16. Q And how long were you trustee?
17. A I would say two to three years.
18. Q And is that kind of the term for a trustee?
19. A Yes.
20. Q And approximately what timeframe was that?
22. Q Okay.
23. A Give or take a year.
24. Q And you also are a member of the Ohio Lottery Commission; is that correct?
25. A I am.
26. Q And you are the current chair of that commission?
27. A Correct.
28. Q You have been a member of the Ohio Lottery Commission since 2006?
30. Q 2007. Okay. And who appointed you to the lottery commission?
31. A At the time Governor Bob Taft. Then I was re-appointed by Governor Strickland and re-appointed by Governor Kasich.

1. Q How long are those terms?
2. A Three years.
3. Q Your current position as director of the Cuyahoga County Board, I take it that is a nonpartisan position?
4. A It's a bipartisan position.
5. Q Okay. Fair enough. But it's a -- in your role as director you don't represent one party or the other?
7. Q And I assume that was true in your role as deputy director, as well?
9. Q Let me ask you a little more about the Ohio Association of Elections Officials, and I'll try to shorten it by calling it OAEO, if I can remember the acronym correctly. During the time that you were a trustee what sorts of legislative initiatives did the OAEO put forward?
10. A We discussed or put forward as main initiatives issues such as voting by mail, voting early, trying to make compromises with uniformity throughout the state. One of my main issues was electronic filing with campaign finance reports. That I took the lead on. Other issues dealt with basically legislation to clean up old language that was in the Code that no longer made sense or was no longer relevant to current practices and policies.
11. Q And with respect to the changes in voting early, can you describe what changes the OAEO addressed while you were a trustee?
12. A One of the changes we were wanting to add optical scan counties, we were hoping to be able to scan the ballots to perform in-house voting as opposed to really what they are as absentee ballots currently. So we wanted the voters to be able to scan them.
13. Q Okay. And what happened with respect to the optical scan issue and early voting?
14. A That is still pending. Yeah. No legislation has been passed to change that.

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Case No. 2:15-cv-1802

Defendants' Written Objections to the Admissibility of Plaintiffs' Evidence Exhibit G
Deposition of Patrick McDonald, taken October 28, 2015

Q Okay. So in the next election, early voting will still be done with paper ballot?
A Yeah. Correct. Let me clarify. It always would have been done with the paper ballot, but somebody who comes in to early vote, they're basically really voting absentee, they're just coming in. So what we were proposing is to let them actually scan their ballots that day, not put in an I.D. envelope and wait for it.

Q Okay. And then with respect to uniform hours, what were the proposals that were put forward for uniform hours, early voting hours by the OAEO?
A I don't remember. I know they weren't as expanded as they are currently, they've evolved over the last, you know, years. So I don't remember what our actual proposal was at that point, but it wasn't as expansive as they are now.

Q As I understand it, there was a uniform hour directive put forth by the Secretary of State in I believe 2014; is that correct?
A That's correct.

Q And was that directive an adoption of the proposal that the OAEO had made?

A I'm pretty sure it is. At that point in time I'm pretty sure he mirrored what the association was proposing at the time because I think I recall him stating that at the annual conference.

Q And as a trustee during the period that this was being considered, trustee of the OAEO, did you favor the proposal that the OAEO made with respect to uniform hours?
A Unfortunately I wasn't at the retreat that voted for those hours, so I wasn't a part of the actual official vote in endorsing those hours.

Q Okay. So you didn't actually vote on the proposal --
A Correct.

Q -- one way or the other? Okay. Were you in favor of them?
A I would say yes.

Q And you mentioned a minute ago that the hours were more expansive than the OAEO had originally proposed. Is that as a result of the settlement of the NAACP settlement?
A It ended up -- the result of the NAACP settlement ended up expanding even further than the expanded hours that the Secretary State did previously in his directive, which mirrored at that point the association's, I think, recommendation at that point. So yes, it would have been more expansive, and now the NAACP is more expansive than that, as well.

Q Okay. And one thing I should have mentioned at the beginning, because I think the question I just asked was not the greatest of questions in terms of clarity. If I ask you anything that isn't clear, you know, feel free to please let me know and I'll attempt to rephrase it. Your answer was clear, my question just wasn't that great.

Was the secretary's directive, was it more expansive than the proposal by the OAEO?
A It is my -- it's my understanding that his original -- his original directive mirrored the OAEO's directive in 2014.

Q Okay. Fair enough. And so the expansion that took place really was a result, it sounds like, of the NAACP settlement with the secretary; is that correct?
A That's correct.

Q You mentioned that also under consideration while you were a trustee of the OAEO is this -- or changes to voting by mail. Can you describe those changes or proposed changes to me?
A Well, it -- we bantered back and forth at the time that some counties did not like voting by mail, they did not like -- and I say "us," Cuyahoga County, in terms of sending out vote by mail applications with return postage, and at one point I think we even had postage for the ballot. A lot of counties couldn't afford that so there was a lot of consternation with Cuyahoga and some of the larger counties against some of the smaller counties.

So we were -- we went back and forth on that to continue that practice. And it was then the end result that we would be in this task group, task force group that we would support that those counties could continue to send out vote by mail applications and pay for the postage for those applications and returns.

Q And so was that proposal ultimately put forward -- well, strike that. Let me back up. So was there a proposed change from what had been the current practice by the -- did the OAEO propose a change with respect to the
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<td>ability of county boards to mail out absentee applications?</td>
<td>Golden Week in return for the county's retaining discretion to send out absentee ballots?</td>
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<td>A No. What it was was just basically support of that we would support those counties that wanted to continue that practice, and those counties that didn't want to or couldn't afford to didn't have to, but it was basically the uniform that we would continue the practice that the state was taking forth.</td>
<td>MS. COONTZ: Objection.</td>
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<td>Q Okay. And at some point did the Secretary of State issue a directive regarding whether counties could continue to use their discretion as to whether they would send out absentee applications?</td>
<td>Q She or your attorney may make objections for the record, but unless they instruct you not to answer you can still answer the question. I'm going to though -- I just want to add one thing to the question, so I'm going to restate it.</td>
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<td>A Yes.</td>
<td>Was the proposal for the compromise that you mentioned that Golden Week would be eliminated in exchange for the counties that wanted to retain discretion to send out absentee ballots; is that accurate?</td>
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<tr>
<td>Q And can you describe that change?</td>
<td>A They -- the discussion, all of that was coming together and was merging in all of that discussion of early voting and elimination of Golden Week and vote by mail, and the early hours was discussed at the same time. I can't recall if the end results since I was not at that final meeting, if the end result was a true compromise. I just know that it was discussed at the time and we were bantering it back and forth from county to county.</td>
<td></td>
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<tr>
<td>A The change was in lieu of a compromise that Secretary of State Husted and at the time</td>
<td>Q Were you involved in any committee work,</td>
<td></td>
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<td>Cuyahoga County Executive Ed Fitzgerald had issue with, and so they -- they didn't -- they discontinued the ability for counties to send out vote by mail applications in 2011 and the Secretary of State said that he would then issue those in 2012 from their office.</td>
<td>that and so every two years a gubernatorial presidential general election, that the state based off of appropriate funding would send out the applications themselves, and counties, therefore, would not be able to mail them out in other election years.</td>
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<td>So that is state legislation has changed</td>
<td>Q And you mentioned an acronym, I think a funding source, and I'm wondering if you could for the record state what that was? Maybe it wasn't an acronym, but you said --</td>
<td></td>
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<td>A I said provide.</td>
<td>A We basically talked about the uniformity issue, we talked about mailing out the applications, postage, paying for that and basically coming up with a uniform policy for the association to adopt.</td>
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<tr>
<td>Q Oh, provide.</td>
<td>Q One question I think I neglected to ask you at the beginning is when did you first become a member of the OAE?</td>
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<td>A Provide appropriate funding. That's what the legislation says.</td>
<td>A When I was originally appointed I was on the absentee task force.</td>
<td></td>
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<tr>
<td>Q Thank you. I just misheard you. Did the OAE discuss or consider any changes to what has been known as Golden Week during the time that you were a trustee?</td>
<td>Q Okay. And what was the role of the absentee task force?</td>
<td></td>
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<td>A Yes. They did, and I -- I don't want to be quoted on this 100 percent, but I'm pretty sure the compromise was that they would eliminate Golden Week if they could continue the practice of voting by mail, sending in vote by mail applications.</td>
<td>A We basically talked about the uniformity issue, we talked about mailing out the applications, postage, paying for that and basically coming up with a uniform policy for the association to adopt.</td>
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<tr>
<td>Q So the proposal from the OAE was to eliminate committee of the OAE that considered these changes?</td>
<td>Q One question I think I neglected to ask you at the beginning is when did you first become a member of the OAEO?</td>
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<td></td>
<td>A You did ask me that. Let's see, I think it was approximately around 2000 -- I might have been off by two years. Around -- I've always been a member of it. Since 2007 as deputy director I've been a member of the association, but as a trustee it was closer to 2010.</td>
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<td></td>
<td>Q Okay. So just to make sure the record is clear, this association, its membership is comprised of, I take it, deputy directors and directors of the county boards of elections in Ohio?</td>
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<td>Page 22</td>
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<td>A As well as board members.</td>
<td>Q And in terms of those discussions, what was the rational discussed for wanting to eliminate Golden Week?</td>
<td>Q And what was your view on that?</td>
</tr>
<tr>
<td>Q As well as board members. Okay. And so -- and</td>
<td>4 A Most people -- most counties, county officials thought it was unnecessary that the 28 days -- by eliminating the 28 days. In the discussion they bantered back and forth different amount of days. Some wanted it even less than that, like 17 days. Some wanted it, you know, like 22 days. But so they -- the discussion was basically saying that it needed to be revisited, that there was plenty of time -- 28 days or approximately around there was enough time for voters to vote, and so that most people thought it was unnecessary to have that -- extend that, that week, and for whatever reasons that it was just not utilized or needed.</td>
<td>Q Why don't we start with then and then if it's evolved we'll talk about that.</td>
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<tr>
<td>1 I take it it has an absentee task force; is that correct?</td>
<td>5 Q The hurricane is competing with us today.</td>
<td>6 Q So was there any discussion within the task force about the same-day registration aspect of Golden Week?</td>
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<td>2 A It did at the time.</td>
<td>7 A I don't think the -- it would have to be because if we were trying to reduce it, we would have had to discuss the possibility of that it would then eliminate those people from registering and vote on the same day.</td>
<td>8 Q And as I understand it under Ohio law, it's not permissible to register and vote within 30 days of the election day; is that correct?</td>
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<td>3 Q Okay. Is that no longer operative?</td>
<td>9 A Most people -- most counties, county officials thought it was unnecessary that the 28 days -- by eliminating the 28 days. In the discussion they bantered back and forth different amount of days. Some wanted it even less than that, like 17 days. Some wanted it, you know, like 22 days. But so they -- the discussion was basically saying that it needed to be revisited, that there was plenty of time -- 28 days or approximately around there was enough time for voters to vote, and so that most people thought it was unnecessary to have that -- extend that, that week, and for whatever reasons that it was just not utilized or needed.</td>
<td>10 Q And in terms of those discussions, what was the rational discussed for wanting to eliminate Golden Week?</td>
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<tr>
<td>4 A As far as I know it is not.</td>
<td>11 A Most people -- most counties, county officials thought it was unnecessary that the 28 days -- by eliminating the 28 days. In the discussion they bantered back and forth different amount of days. Some wanted it even less than that, like 17 days. Some wanted it, you know, like 22 days. But so they -- the discussion was basically saying that it needed to be revisited, that there was plenty of time -- 28 days or approximately around there was enough time for voters to vote, and so that most people thought it was unnecessary to have that -- extend that, that week, and for whatever reasons that it was just not utilized or needed.</td>
<td>12 Q Why don't we start with then and then if it's evolved we'll talk about that.</td>
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<td>5 Q Was the task force part of some kind of committee of the association, or just an independent task force?</td>
<td>13 A Most people -- most counties, county officials thought it was unnecessary that the 28 days -- by eliminating the 28 days. In the discussion they bantered back and forth different amount of days. Some wanted it even less than that, like 17 days. Some wanted it, you know, like 22 days. But so they -- the discussion was basically saying that it needed to be revisited, that there was plenty of time -- 28 days or approximately around there was enough time for voters to vote, and so that most people thought it was unnecessary to have that -- extend that, that week, and for whatever reasons that it was just not utilized or needed.</td>
<td>14 Q Why don't we start with then and then if it's evolved we'll talk about that.</td>
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<td>6 A I cannot say for sure that that was -- that was a proposal that came out of it. I know it was a discussion within, but I can't say for a fact that that was a proposal.</td>
<td>15 A Most people -- most counties, county officials thought it was unnecessary that the 28 days -- by eliminating the 28 days. In the discussion they bantered back and forth different amount of days. Some wanted it even less than that, like 17 days. Some wanted it, you know, like 22 days. But so they -- the discussion was basically saying that it needed to be revisited, that there was plenty of time -- 28 days or approximately around there was enough time for voters to vote, and so that most people thought it was unnecessary to have that -- extend that, that week, and for whatever reasons that it was just not utilized or needed.</td>
<td>16 Q And in terms of those discussions, what was the rational discussed for wanting to eliminate Golden Week?</td>
</tr>
<tr>
<td>7 Q And I think you said, I just want to make sure, you don't recall whether there was discussion about whether eliminating same-day registration would be a desirable thing to do or not within</td>
<td>17 A Most people -- most counties, county officials thought it was unnecessary that the 28 days -- by eliminating the 28 days. In the discussion they bantered back and forth different amount of days. Some wanted it even less than that, like 17 days. Some wanted it, you know, like 22 days. But so they -- the discussion was basically saying that it needed to be revisited, that there was plenty of time -- 28 days or approximately around there was enough time for voters to vote, and so that most people thought it was unnecessary to have that -- extend that, that week, and for whatever reasons that it was just not utilized or needed.</td>
<td>18 Q Why don't we start with then and then if it's evolved we'll talk about that.</td>
</tr>
<tr>
<td>8 Q And do you recall in terms of the counties that were represented on the task force, who those counties were, which counties?</td>
<td>19 A I do not recall all of the counties. I know Madison County had a representative, at the time Butler County did and Allen County did.</td>
<td>20 Q Why don't we start with then and then if it's evolved we'll talk about that.</td>
</tr>
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<td>9 A Independent task force.</td>
<td>21 Q And I guess Cuyahoga, as well?</td>
<td>22 A Correct.</td>
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<td>10 Q How many members, approximately, did the task force have?</td>
<td>23 Q And I take it you were the representative for Cuyahoga on the absentee task force?</td>
<td>24 A Correct.</td>
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<td>25 A Correct.</td>
<td>25 A Correct.</td>
<td>25 A Correct.</td>
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**Deposition of Patrick McDonald, taken October 28, 2015**

**Case: 2:15-cv-1802-MHW-NMK Doc #: 109-7 Filed: 12/22/15 Page: 7 of 36 PAGEID #: 5826**

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The Ohio Democratic Party, et al.,  
Case No. 2:15-cv-1802

Defendants’ Written Objections to the Admissibility of Plaintiffs’ Evidence

Exhibit G
Deposition of Patrick McDonald, taken October 28, 2015

Q    this absentee task force?
A    I don't recall, but -- specifically, but I know
we would probably -- it would have probably
touched on it at some point, you know, because
it would have been a change or would have had
an effect by reducing the number of days, but I
don't remember it being a major sticking point
in terms of our discussions.
Q    And then kind of similar question to what I
asked you a minute ago when we were talking
more generally about early voting, what was
your view of how the desirability or lack of
desirability of eliminating the same-day
registration aspect of Golden Week?
A    I don't really have an opinion on that because
it's not really a big factor for us in Cuyahoga
County. There's a distinction between, you
know, those that register -- newly register and
vote as opposed to those that update their
registration and vote. And so we have very
little, you know, of those that are newly
registered that vote in the big scheme of
things.
Q    Okay. Do you recall in 2012 how many people
registered and voted during Golden Week?
A    Ask you to clarify. You say newly registered?
Q    Thank you for that. I -- I first want to ask
about all people who either newly registered or
updated their registration. So let me -- I'll
ask it again so it's clear.
Do you recall how many people in Cuyahoga
County either registered or updated their
registration and voted during Golden Week in
2012?
A    There was approximately 9,000.
Q    And of that 9,000, how many people newly
registered?
A    It was less than 500. I'm trying -- I'm
thinking around 200 and something.
Q    Okay. Maybe we'll get some documents later and
I know this is not a memory game or test, so we
can get to that. But I just wanted to get a
general sense for the --
A    You know, okay. The clarity here now is
hitting. 9,000 people voted in 2012. Of that,
close to 2,000 people either updated or --
either updated or were newly registered. And
of those, approximately 200 were new
registered.
Q    Okay.
A No.
Q So an individual who came to vote during Golden Week and, for instance, had moved and needed to update their address, if the same person came during the current early voting period, they would not be able to vote?
A That's correct.
Q And so if an individual didn't --
A Let me clarify that.
Q Sure.
A When you're talking about those that updated the registration, if they -- if they came after they can still vote provisionally. If they have moved, you know, if that was the reason, they could still vote within any time up and until election.
Q Okay.
A Okay.
Q They can cast a provisional ballot?
A Correct.
Q And what would they need to do to get that provisional ballot counted? And let me just --
A So the record is clear, because there were a lot of kind of undefined days in there.
Q So an individual who needed to update their address came during the current early voting period, I think you discussed that they could cast a provisional ballot, what would such a person as that need to do to have that provisional ballot counted?
A They would have to show I.D., they would have to, you know, fill out the provisional envelope that they would have a printed name, a signature, and a date of birth. I'm sorry, not the date of birth. The last four digits of the Social Security number. And now the current professional envelope has been amended to add the date of birth.
Q And if they did all of that, the voter that --
A They would --
Q --
A -- would just have to find them as a registered voter that lives in that precinct.
Q Okay. Now, let me just go back to something we were discussing a minute ago. I think you had said it was your view that 28 days was enough days and that someone could still come and register prior to the 30 days and still vote early, as long as they did it within the existing early voting period; is that fair?
A Correct.
Q But a person who, say, registered now under current law, during the period that would have been Golden Week, under the prior law, they would have to come back to vote during the early voting period; is that fair?
A Correct.
Q So essentially they would need to make two -- they would have to make two stops in order to actually cast a ballot?
A Or they could vote by mail.
Q Fair enough. But assuming they were going to vote early, they would need to register on one day and then vote on another?
A Correct.
Q Okay. Let me go back to the OAEO and just ask you, I know you said you didn't recall whether the task force had actually specifically recommended eliminating Golden Week, but I take it at some point the Ohio Association of Elections Officials did actually make such a recommendation?
A Right.
Q -- where these decisions were finalized?
A Correct.
Q And when approximately was that retreat, by the way?
A It was right after I was director in the winter of I'd say 2013.
Q Let me just ask you a couple more questions about the task force. Do you recall whether there were any African/Americans on the task force?
A I cannot recall.
Q And did you all meet in person, by the way? I should have asked you that first.
A We did.
Q Do you recall whether there were any minorities represented on the absentee task force --
MS. COONTZ: Objection.
Deposition of Patrick McDonald, taken October 28, 2015

1 Q -- during the time period that you were considering the changes to Golden Week?
2
3 MS. COONTZ: Objection.
4
5 Q The first question was with respect to African/Americans and the second question is do you recall if there were any minorities at all?
6 So not limiting it to African/Americans.
7 A No, I don't recall.
8 Q What is the leadership structure of the OAEIO?
9 A It is they rotate between parties. Every year there is a, you know, new president. So you have the president of the association, you have the first vice president, who's of the opposite party. Then you have the second vice president, who's of the opposite party of that person. And then you have the treasurer and the secretary. So it's a succession plan, you know, where the second vice president gets elected every year depending on what party is up.
10 Q So they kind of move up through the -- I'm violating one of the rules here because I'm gesturing, which neither the camera nor the record can see, but I take it that they -- essentially the first vice president replaces the next year the first vice president replaces what had been the president, and then the next year -- and the second vice president moves up to first vice president, is that how it works?
11 A Correct.
12 Q Okay. And so the presidency rotates between the two parties?
13 A Correct.
14 Q And is there some type of an election that initially selects or ultimately selects these individuals?
15 A They're selected by the trustees of their party.
16 Q I'm sorry. When you say, "Trustees of their party," can you explain what you mean?
17 A The trustees of the association.
18 Q Okay.
19 A So you have the officers, then you have the governing body, which is the trustees of the association, which is made up of an equal number of Republicans and Democrats. So when there's an election time for that particular party, the Republicans of that -- of the trustees would vote on their member and the Democrats would vote on their member.
20 Q I'm sorry. One thing that I might have -- the trustees are made up of equal numbers of Democrats and Republicans; is that accurate?
21 A Correct.
22 Q And I take it you were one of the Republican trustees when you were a trustee?
23 A Correct.
24 Q And how are the trustees selected?
25 A They are appointed by the officers. Like by the president at the time. So the president and the first vice president of the opposite party basically get together and they appoint the trustees. And then -- yeah, that's --
26 Q Okay. And is there any requirement in the association's bylaws, or whatever governing document that they use, for there to be some type of balance and representation between large population counties and the smaller population counties?
27 A Yes, there is. I don't know what the formula is, but there is, you know, ratio of, you know, from large county versus small counties, as well.
28 Q Is there -- are there issues on which the association votes as a preliminary body? In other words, are there issues in which all members vote regardless of whether they're a trustee or an officer?
29 A All the members after the new -- after the new second vice president is elected by the particular party as a trustee, then the full membership will vote for that individual at the end of the annual meeting.
30 Q And what about for legislative proposals like the ones we were talking about earlier in the deposition, is that only done by the trustees or is there a preliminary decision that's made on those, as well?
31 A I'm pretty sure to the best of my recollection it is just the trustees, that they're empowered to do that for the whole association. We don't go back out to, you know, the 500 people members and have a discussion and vote there.
32 Q I want to turn to questions about the Cuyahoga County Board of Elections budget. In your declaration I think you said the Cuyahoga County budget, Board of Elections budget is approximately $14.5 million per year; is that...
Deposition of Patrick McDonald, taken October 28, 2015

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1. correct?
2. A That's an average. Yes.
3. Q Okay.
4. A For example, next year, the presidential election, 16 million, and the 2017 election is 13 million.
5. Q So the budget for the Cuyahoga County Board of Elections for 2016 will be approximately $16 million?
7. Q And for 2017 it'll be approximately $13 million?
9. Q And that is because there are -- there's less turnout during off -- non-presidential election years?
10. A That is probably -- if you drill it down to, you know, to that level, yes. That's the root of it, and then it escalates from that.
11. Q And tell me a little bit more about what you mean by that.
12. A So with less turnout there's less in-house voting operations, we have less temporary people that we have to hire, less interest in vote by mail so then we have to pay for postage. It would be also less ballots that we have to print.
13. Q What is the budget this year, actually?
14. A This year's budget we will end up spending I think approximately 12.8 million.
15. Q And in 2014 approximately what was the budget?
17. Q And in 2013 what was it approximately?
18. A I can't recall.
19. Q Do you recall what it was in 2012?
20. A It was 17 million.
21. Q And was the 2012 budget, that was different from the 2008 budget?
22. A I can't recall because we had different -- different issues then. We had new voting equipment in 2008. I don't know when the actual expenditures came out. If we paid the bills in 2008 or '9 that would affect the budget.
23. Q Generally I take it the budget does this kind of going up and down, you know, on a yearly basis based on whether there's a presidential election or a -- I guess a federal election on the ballot?
24. A Our budget is affected by a four-year election cycle. So we compare, you know, those -- those years against each other as we start with the presidential election, then you have a municipal election the following year, which would incorporate the mayor's race in the City of Cleveland into it. Then the third year you have the gubernatorial election. And then the fourth year you have another municipal election but doesn't include the City of Cleveland into it. So we take all of those and compare those from a four-year election cycle on budget needs.
25. Q And basically it sounds like from what you're saying before that it's roughly calibrated to the level of expected turnout in each of those cycles?
27. Q All right. I realize at the beginning I forgot to ask you, and I just want to know kind of briefly what you did prior to 1991 when you were -- became the finance director for the Ohio Secretary of State.
28. A Prior to that I was a budget analyst under the Celeste administration for the Ohio Department of Development, and then I was a legislative liaison for the state and local government commission. And then prior to that I was the executive director of the Mercer County residential services for the mentally retarded and developmentally disabled.
29. Q And before that were you in college?
30. A Before that I just received my Master's Degree and my undergraduate degree.
31. Q And where did you get your undergraduate and Master's Degree?
32. A Both at the University of Dayton.
33. Q Okay. So I'll go back to the budget discussion. I just realized I had forgotten to -- the budget, the Cuyahoga County Board of Elections budget, where does that funding come from? Does it come from the county, the state, some combination of both?
34. A No. It comes solely from the county.

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13. A No. It comes solely from the county.

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11 (Pages 38 to 41)
Deposition of Patrick McDonald, taken October 28, 2015

1. Q. Does the state contribute any funds towards election administration in Cuyahoga County?
2. A. I would answer that and say, no, but it doesn't mean that we have never received pass through funding for a specific thing such as electronic poll books that we're currently dealing with, or, you know, a stipend for training individuals online. So it's more of a specialty situation where they might have hollow money for or grants for, but as far as election administration and applications, no.

12. Q. And I take it that's true of all the counties in Ohio, that their budgets are largely funded by county funds?
13. A. Correct.
14. Q. And I understand that the Cuyahoga County Board of Elections currently has a surplus; is that correct?
15. A. We do.
16. Q. And how much is that?
17. A. It's approximately 2 million.
18. Q. And is that -- how can those funds be used?
19. A. They will revert back to the general revenue fund of the county, but we will be using some of those funds for like end of the year capital expenses such as E poll books.

20. Q. And I take it from what you said about electronic poll books, that Cuyahoga County is intending to use electronic poll books in the 2016 general election?
21. A. It is a preliminary intention. We are still in the pilot stages of testing them and working with various vendors to look at the possibility of implementing them sometime in 2016.
22. Q. Okay. The $2 million surplus, that relates to fiscal year 2015?
23. A. Correct.
24. Q. Was there a surplus in 2014?
25. A. There was, but I don't recall what the amount was.
26. Q. Does $500,000 sound right?
27. A. It could be.
28. Q. And how about in 2013, do you recall if there was a surplus?
29. A. I do not.
30. Q. Has there been a time since you have been either deputy director or director when the Cuyahoga County Board of Elections has not had a surplus of funds?
31. A. No.

1. Q. Now, I understand from your declaration, and I will -- again, it's not a memory test, but there's some general questions I want to ask that I don't think you need it to have in front of you, but I will give it to you in a minute, but I just want to kind of move things along. First ask them generally.
2. A. I understand from your declaration that in 2012 the Cuyahoga County Board of Elections spent a little over $222,000 for the entire early in-person voting period, does that sound right?
3. A. That sounds right.
4. Q. And do you know what percentage of the budget that was in 2012?
5. A. I don't.
6. Q. But it would be whatever -- whatever the percentage of 222,000 out of 17 million is, correct?
7. A. Correct.
8. Q. And since I certainly wouldn't want to do that in my head I won't ask you to either.
9. A. And I take it from your declaration that Cuyahoga County spent approximately -- well, $41,984 on Golden Week in 2012; is that accurate?
10. A. That's pretty close.
11. Q. I think there might have been another couple of thousand that was spent in connection with some costs related to Golden Week that was separately broken out?
12. A. Okay.
13. Q. We can take a look at that.
14. A. Okay.
15. Q. So I take it that Golden Week, costs of Golden Week were not materially greater than any of the other weeks of the early voting period; is that fair?
16. A. That's fair.
17. Q. Okay. And would you agree that the cost of Golden Week in 2012, the roughly $42,000 or so, was a small percentage of the county's overall budget in 2012?
18. A. Correct.
19. Q. In 2014 there was no Golden Week, correct?
20. A. There was not.
21. Q. In 2008, if you know, were the percentages in terms of percentage cost of Golden Week to the whole budget of the county, were they roughly the same as in 2012?

Deposition of Patrick McDonald, taken October 28, 2015

1 A They were roughly the same.
2 Q Do you know how much the board -- I'm sorry, I'm going to skip back to 2014 for a minute so it's probably confusing here because I realize I forgot a question about 2014.
3 A How much did the board spend on the early in-person voting period in 2014, approximately?
4 Q That's because the turnout in 2014 was a lot lower than 2012, a presidential year?
5 A Correct.
6 Q How much has the county budgeted for early in-person voting in 2016?
7 A It would be roughly similar to what we did in 2012.
8 Q Has the county budgeted less money for early in-person voting due to the fact that under current law there is no Golden Week?
9 A We did. We did not request funding for that additional week.
10 Q If the county -- state and therefore the county were required to reinstitute Golden Week for the 2016 general election, would the costs of doing that be similar to what they were in 2012?
11 A Correct.
12 Q And have you or has the Board of Elections done an analysis of comparing the -- let me ask a better question.
13 Have you or the board done any analysis of what the cost of reinstituting Golden Week would be in 2016?
14 A No.
15 Q I take it that you have some familiarity with the NAACP versus Husted lawsuit in your role as the director of the Board of Elections?
16 A I -- limited knowledge of it.
17 Q Okay. But you understand that it, among other things, it called for the reinstatement of Golden Week? That was one of the types of relief sought in the case?
18 A Correct.
19 Q Did you or the Board of Elections do any contingency planning in the event that the NAACP suit had continued, had not settled and been successful and Golden Week be ordered to be reinstated?

1 Q There was a time, I take it, in 2014 in which the lower courts had ordered that Golden Week actually be reinstated, correct?
2 A Correct.
3 Q And that was ultimately stayed by the Supreme Court?
4 A Correct.
5 Q During the time that there was a court order that Golden Week be reinstated, did you do any planning to be able to do that?
6 A No, we did not. Basically, you know, we stick to the same plan, we just would have upped it a week and decided to just move our time frames up by a week. So it wasn't really a difficult task.
7 Q Okay. And so if that order had stayed in place, that's something that you could have accomplished? You could have reinstated golden --
8 MS. COONTZ: Objection.
9 Q Let me -- she can object for the record. I just want to make sure the record is clear. I'll ask the question, I'm sure she'll object again, and then you can answer.
10 A Based off of when that court decision is.
11 Q If it were soon enough, not too close to the election I take it?
12 A Yes.
13 Q And if the court were to order as a result of this lawsuit that Golden Week be reinstated in the 2016 general election, is that something that the Cuyahoga Board -- Cuyahoga County Board of Elections could accomplish?
14 MS. COONTZ: Objection.
15 Q You can answer.
16 A Yes.
17 Q If it were soon enough, not too close to the election I take it?
18 A Yes.
19 Q And is there a timeframe that you have in mind that would be too close to the election to be able to accomplish it?
20 A I would say anything past January 1st would be too close for us to -- I wouldn't say accomplish it, but it would cause a lot of conflict and basically, you know, a lot of

13 (Pages 46 to 49)

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## Deposition of Patrick McDonald, taken October 28, 2015

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<tbody>
<tr>
<td>Q Let me -- I'm going to switch gears a little bit and still talk about early voting, but a little less about budgeting. I take it that early voting in Ohio was first instituted in 2005; is that correct?</td>
<td>A That sounds close.</td>
<td>Q Was it in part in response to long lines in the 2004 general election?</td>
<td>A I don't know.</td>
</tr>
<tr>
<td>Q And do you think early voting was first adopted?</td>
<td>A It was my understanding that once the state did away with or discontinued no fault voting, you know, they were able to -- they basically -- in those years you had to be out of the county, you had to be in the hospital or in a nursing home to vote absentee, and once they did away with that, it then -- it created early voting.</td>
<td>Q Okay. Have you done any studies of the demographics of individuals who use early in-person voting? And here I'm including the whole period, and maybe let's focus it in on the period before Golden Week was eliminated. So the whole period of early in-person voting, have you done any studies on the demographics of who uses that period?</td>
<td>A No.</td>
</tr>
<tr>
<td>Q And are you aware of any studies or information about who uses early in-person voting most in terms of demographics?</td>
<td>A I'm not aware of any materials out there. I'm just aware of the media reports of how a particular party reports it.</td>
<td>Q Okay. And what's your understanding of how they report it?</td>
<td>A That the Democrats like to utilize in-house voting as opposed to Republicans.</td>
</tr>
<tr>
<td>Q So you think that Democrats utilize it -- utilize early in-person voting would you say disproportionately to Republicans?</td>
<td>A Yes.</td>
<td>Q And do you think that's accurate?</td>
<td>A Yes.</td>
</tr>
<tr>
<td>Q And are you aware of any studies or information that the early voting center, the Board of Elections is in downtown Cleveland. So I would say it's disproportionately that's where the Democrats live around so I think they utilize it because it's in their neighborhood. So I think that's -- yes, it's disproportionately used.</td>
<td>A In Cuyahoga County I would say yes for the fact that the early voting center, the Board of Elections is in downtown Cleveland. So I would say it's disproportionately that's where the Democrats live around so I think they utilize it because it's in their neighborhood. So I think that's -- yes, it's disproportionately used.</td>
<td>Q Okay. And is there a ratio component to that? Do you have information that African/Americans, for instance, use early in-person voting disproportionately to, say, white Americans?</td>
<td>MS. COONTZ: Objection.</td>
</tr>
<tr>
<td>Q You can answer.</td>
<td>A I don't have any --</td>
<td>Q Can I go back for a second?</td>
<td>A I don't have any information on that.</td>
</tr>
<tr>
<td>Q And do you perceive that to be also the, say, the narrative that you hear either in the media or from the Democratic party?</td>
<td>Q And do you think that narrative is accurate?</td>
<td>Q You can answer.</td>
<td>A Yes.</td>
</tr>
<tr>
<td>Q And do you think that Democrats utilize it -- utilize early in-person voting would you say disproportionately to Republicans?</td>
<td>A Yes.</td>
<td>Q Do you think that's -- yes, it's disproportionately used.</td>
<td>MS. COONTZ: Objection.</td>
</tr>
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<td>A Yes.</td>
<td>Q Yes.</td>
<td>Q You can answer.</td>
<td>Q Can I go back for a second?</td>
</tr>
<tr>
<td>Q Do you think it reduces the cost of election day?</td>
<td>A No.</td>
<td>Q You can answer.</td>
<td>A I don't have any information on that.</td>
</tr>
<tr>
<td>Q What do you if any -- let me ask it a different way. Are there problems in Cuyahoga County caused by early in-person voting?</td>
<td>A I would say it costs more. It's more pressure on the staff to do that and prepare for the election. I would say there are problems with, you know, in terms of preparing for it, you know, with our parking situation, security situation, but I would say it's limited to that.</td>
<td>Q Can I go back for a second?</td>
<td>A Yes.</td>
</tr>
<tr>
<td>Q Okay. Have you, and when I say &quot;you&quot; I really mean, you know, as director, or deputy director, so really I'm including your office and the board --</td>
<td>A Can I go back for a second?</td>
<td>Q And do you think that narrative is accurate?</td>
<td>MS. COONTZ: Objection.</td>
</tr>
<tr>
<td>Q Sure.</td>
<td>Q You can answer.</td>
<td>A Yes.</td>
<td>MS. COONTZ: Objection.</td>
</tr>
<tr>
<td>Q When you said problems, I would hate for that to be misconstrued. I would say challenges of what I just stated.</td>
<td>Q And do you think that narrative is accurate?</td>
<td>A Yes.</td>
<td>MS. COONTZ: Objection.</td>
</tr>
<tr>
<td>Q Fair enough. Thank you.</td>
<td>Asked and answered.</td>
<td>14 (Pages 50 to 53)</td>
<td>14 (Pages 50 to 53)</td>
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</tbody>
</table>
Deposition of Patrick McDonald, taken October 28, 2015

1 Q You can answer.
2 A Yes.
3 Q Let me just focus on Golden Week. During the period that Golden Week was in place, and maybe let's focus on the 2012 election, have there been any studies either done by the Board of Elections or that you are aware of of the demographics of who used Golden Week the most?
4 A No.
5 Q Do you have the same perception that you have with respect to the early voting period -- early in-person voting period -- I'm not going to be able to say this right. Let me start over.
6 Do you have the same perception that the media and the Democratic party narrative that Democrats used Golden Week disproportionately when it was in effect?
7 MS. COONTZ: Objection.
8 Q Compound question. Calls for speculation.
9 A It is not the same as the previous question.
10 Q Okay.
11 A That because of the length of that and what we hear within news stories throughout the year, you know, at that time 35 days of voting you would have that. I would not be able to give you an answer on that one -- for that particular week.
12 Q Okay.
13 A If somebody does it disproportionately to the other in terms of party or race.
14 Q Okay. So with respect to race or party?
15 A Correct.
16 Q Okay. One of the things I want to do when we take a break is try to print out some testimony I think you provided to the Presidential Commission on Elections. Do you recall having provided testimony to that --
17 A I do.
18 Q Okay.
19 A I do remember, but I would have to look at it.
20 Q Okay. And I'm not going to ask you much about it, but one thing that you may be able to answer without having it in front of you, I think as part of that you, in your role as director, called for vote centers I think; is that correct?
21 A Correct.
22 Q And can you describe for the record what the concept of a vote center is?
23 A The concept was that if we would go away from -- the ultimate goal would be to go away from precinct based voting and have vote centers out in the county, so that we save the county thousands, if not millions, of dollars by not having to have that many precincts or have the precincts in the county, as well as we would reduce the number of poll workers we had, as well as we would be able to increase the efficiency of voting in the county.
24 Q And how would vote centers operate differently from say precincts? Are they bigger, are they staffed differently?
25 A They would be much bigger. You would be able to -- you would be able to do a lot more with a lot less people. There would be people that would be seasoned and, you know, that would be experienced temporary workers throughout the county, as opposed to those that are just hired maybe work one or two times a year. And so they would be staffed by, you know, experienced personnel.

26 Q And how would this impact, if at all, the -- you're familiar with the terminology right church wrong pew issue?
27 A Correct.
28 Q And just for the record, that's when somebody goes to a polling location but ends up voting in the wrong -- in a multi-precinct polling location and they end up voting in the wrong precinct; is that a fair definition?
29 A Yes. Correct.
30 Q What effect would these voting centers have, if any, on the right church wrong pew issue?
31 A Well, the vote centers would eliminate that because we would do county wide voting at that point. We would have electronic poll books that could look up the database for the whole county. It would be more costly for us, but we would have ballot on demand printers that would be able to print the ballot of a particular voter, regardless of where they live.
32 Q And this is an aside. I take it that if Cuyahoga County adopts electronic poll books, whether or not -- irrespective of the whole issue of vote centers, that that would address the wrong church -- sorry, right church wrong pew issue?
33 A It would address it, but as we found out in a pilot we did a year ago, in 2014, because we
Deposition of Patrick McDonald, taken October 28, 2015

1. have paper ballots, somebody has to physically hand that voter the paper ballot and they still could do human error and give them the wrong ballot.  
2. Q Okay. So that could still be an issue even if the electronic poll books are adopted?  
3. A It should minimize that issue, but it still could be an issue.  
4. Q Okay. Whereas the vote centers, I take it, they would eliminate it? Would the vote centers eliminate --  
5. A Yeah. In my opinion it would eliminate it because of the fact that we're actually -- we're not going to be handing them a ballot from a ballot wall, from a table, we would be printing that ballot off the -- off the printer that would be tied into and directly connected to the electronic poll books. So the right precinct would appear on the ballot.  
6. Q Okay. And this was one of the suggestions I think that you had for the presidential commission that was studying the issue of long lines was that -- I'm sorry, just to be clear because I'm shifting back to the vote center issue, this was one of the recommendations you had was that at least in Cuyahoga County to adopt the vote center model?  
7. A It's one of the recommendations of food for thought items that I wanted, you know, I think needs to be vetted out and discussed and I think there needs to be a form for that.  
8. Q Okay.  
10. Q And had you gotten as far in your thinking as to how many vote centers Cuyahoga County would require, you know, given its size?  
11. A In my thinking, and you know, bantering that with other people, in a formal setting it was my original thought if we could have 11, one for each legislative district in the county.  
12. Q And I take it part of your proposal was that these vote centers would operate both as election day centers and as centers for early voting?  
14. Q I'm going to turn to your declaration now. Did you need a break now or are you still good to go?  
15. A I'm still fine.  
16. Q All right. Just let me know.  

MR. SPIVA: So I'm going to have this marked as Exhibit 1, or is it possible to mark McDonald 1 because we're not doing consecutive. The reason I'm pausing is this was attached to the -- an expert report in this case and so it has an exhibit face page on it. I'm kind of tempted to rip off the -- because it's going to cause confusion.  

MS. COONTZ: Whatever. It doesn't matter.  

MR. SPIVA: You guys don't care about his declaration -- not declaration, but --  

MS. DOYLE: Right. As long as it's on the record and you're clear about it.  

Q Yeah. It was Exhibit 30 to the Sean Trende expert report. I'm going to take that page off just so it doesn't cause confusion later. And then I'll ask the court reporter if we can label this as McDonald Exhibit 1.  

(Plaintiff's Exhibit No. McDonald 1 was marked.)

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The Ohio Democratic Party, et al.,  
Case No. 2:15-cv-1802  
Defendants' Written Objections to the Admissibility of Plaintiffs' Evidence  
Exhibit G
Deposition of Patrick McDonald, taken October 28, 2015

1 A I did.
2 Q How did you come to submit a declaration in this case? Sorry. Go ahead.
3 A Okay. I'm trying to think the first one. This one I typed out solely myself. The other one I think was more that I was -- I was answering questions on the phone and it was drafted in the Attorney General's office.
4 Q Okay.
5 A I'm not positive, but I do think there was that difference.
6 Q Okay. And how did you come to submit a declaration in this case?
7 A I was asked by the Attorney General's office.
8 Q Who asked you?
9 A I think Sarah Pierce.
10 Q And when did you have a discussion with her?
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14 Q And when did you have a discussion with her?
15 A I think Sarah Pierce.
16 Q And what did Mr. Voigt say to you?
17 MR. DOYLE: For this case.
18 MR. SPIVA: For this case.
19 Yeah. Thanks.
20 A I really don't recall a date on that. I mean, I submitted it September 17th, so it was probably a couple weeks before that.
21 Q Okay. And did you have any discussions with anyone else at the AG's office other than Sarah Pierce about this case?
22 A I did. A gentleman. But I can't recall his name.
23 Q Was it a Mr. Voigt, Steve Voigt?
24 A Yes.
25 Q And what did Mr. Voigt say to you?

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Deposition of Patrick McDonald, taken October 28, 2015

1. election, as well.
2. So the people of Cuyahoga County got used
3. to receiving that and knew not only it was
4. election time, but it gave them the opportunity
5. of voting by mail. And we also then would pay
6. for their vote -- the return envelope of the
7. vote by mail application.
8. Q And that -- the paying for the return envelope
9. and sending it out, I take it that is no longer
10. permissible under the current directives under
11. the law?
13. Q And when did that change again?
15. Q Do you have any information concerning the
16. demographics of people who use voting by mail?
17. A Absentee ballots voting by mail?
18. A It's uniformly used by the majority of the
19. county in terms of demographics. I don't -- I
20. mean, the only thing, and I've opined on with
21. staff and other people in the media I think
22. before, is that say dealing with demographics
23. is I've noticed that the African/American
24. community is more likely not to utilize vote by
25. mail because they have the fear factor of it

1. being delivered to us and, therefore, we need
2. to educate them more in the community that we
3. do -- that we do get the vote by mail and we do
4. count them, the first count, in order to give
5. them a comfort level.
6. Q And what efforts have been undertaken to do
7. that, to educate the community, the
8. African/American community about absentee
9. ballots and the fact that they will be counted?
10. A Our community outreach department is out in the
11. African/American community, you know, trying to
12. tout, you know, alleviate their concerns and
13. refute this myth that the votes aren't counted.
14. So we do it that way and we do it through our
15. corporate partners, and basically like putting
16. out e-mails, press releases and so forth in our
17. outreach.
18. Q I understand that as a result of changes that I
19. believe were brought about by directives, or a
20. directive of the Secretary of State, that
21. people who are deemed as inactive voters don't
22. receive the absentee ballots, the applications,
23. rather, you know, from the Secretary of State?
24. A That is my understanding too. What he has done
25. was put it to all active registered voters and

1. those voters that voted in the last two
2. elections. And so not inactive voters.
3. Q In other words, if there is a voter who didn't
4. vote -- I'm sorry, when you say the last two
5. elections, is that statewide elections or any
6. election?
7. A Statewide elections. So in 2014 he went back
8. to those that voted in the presidential
9. election.
10. Q Okay.
11. A I think it was just limited to the previous
12. election of that one.
13. Q Are there any statewide elections during odd
14. years in Ohio?
15. A There could be. It could have state issues
16. like this year we have three state issues and
17. that's a statewide issue -- election.
18. Q So if someone didn't vote, say, in the election
19. that's going to happen I guess in a few days,
20. and they hadn't voted in 2014, they would not
21. receive an absentee ballot application for the
22. 2016 general election?
23. A If he limits it to -- if he limits it to just
24. to the gubernatorial election that would be
25. correct. But I'm pretty sure, I'm getting a

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The Ohio Democratic Party, et al.,
Case No. 2:15-cv-1802

Defendants' Written Objections to the Admissibility of Plaintiffs' Evidence

Exhibit G
Deposition of Patrick McDonald, taken October 28, 2015

1. voted early in-person in 2012 as compared to
2. 2008?
3. A   It was pretty similar --
4. Q   Okay.
5. A   -- in 2012 to '8. '12 actually had less though
6. 7. than '8, but it was pretty comparable
8. percentage. I think you could break it down to
9. almost that same percentage.
10. Q   But were the actual numbers, and I can show you
11. a document if you need to refresh, but the
12. actual numbers of people using early in-person
13. voting, did that increase substantially in 2012
14. over 2008?
15. A   No, it actually decreased. And we're talking
16. about in-house voting, correct?
17. Q   Correct. The final weekend we had in 2012
18. and vote.
19. A   Monday it went back to normal even though it
20. was a steady flow, but we didn't have long
21. lines because they had longer hours to come in
22. and vote.
23. Q   And similarly, were there long lines at the
24. beginning of the early voting period in 2012?
25. A   No, nothing of this level.

A   The Ohio Democratic Party, et al.,
defendants' written objections to the
admissibility of plaintiffs' evidence

Q   Okay. And with respect to the final three
days, are you familiar with the term soles to
the polls?
A   Correct.
Q   And did that play a role in the long lines that
you saw in the final three days of the 2012
election?
A   In my opinion it has a small effect. I think, you
know, regardless -- it's overrated. You
know, those people are going to come and vote
anyway. I mean, those long lines we had a lot
of people voting there. Soles to the polls,
they bring -- they bus down people, but it's
not to the magnitude that people think it is.
So if soles to the polls wasn't there, we still
would have had that kind of participation the
final weekend.
Q   Okay. And did you -- and you mentioned in your
declaration though that this was -- this was
something that was kind of built into the
board's expectations, the board was expecting
to have a surge kind of in the last three days;
is that correct?
A   Correct.
Q   Did you observe anything about the demographics

19 (Pages 70 to 73)
Deposition of Patrick McDonald, taken October 28, 2015

1 of the people who were coming in the final
2 three days?
3 A I need some clarity.
4 Q I mean, was it predominantly black,
5 predominantly white?
6 A It was mixed. Yeah. Mixed.
7 MR. SPIVA: How close are
8 we to the end of tape?
9 VIDEOGRAPHER: We have five
10 minutes.
11 MR. SPIVA: If you can
12 give me a two-minute warning, we'll take a
13 break.
14 Q Pardon the pause, but I'm skipping through a
15 lot of stuff that we've already talked about
16 basically.
17 A Okay.
18 Q So in the end it will save some time.
19 Let me ask you about paragraph 22 of your
20 declaration. There you talk about I guess the
21 new information requirements on provisional and
22 absentee ballots; is that accurate?
23 A Yes.
24 Q And I guess on the information that is required
25 now, since the changes in the law includes

1 address, is that one of the things?
2 A That is.
3 Q That didn't use to be required?
4 A Correct.
5 Q Okay. Date of birth, that's another change?
6 A Correct.
7 Q That's required now, but wasn't before?
8 A Correct.
9 Q The final four digits of the Social Security
10 number, is that also a change from prior law?
11 A It's my understanding that that was already set
12 in law.
13 Q Okay. Anything else that was added other than
14 the address and the date of birth?
15 A Not that I'm aware of.
16 Q Okay. In your declaration you indicate that
17 requiring that information helps distinguish
18 between voters with the same name; is that
19 right?
20 A That's correct.
21 Q Was there an issue in identifying voters
22 previously when they didn't have the same name?
23 A There has been issues, especially with the
24 provisional voting, if they didn't have -- and
25 like didn't have the address there we will not

1 be able to tell if two individuals from the
2 same -- with the same name who was the voter,
3 you know, at the same address.
4 So by this it gives you a little bit more
5 ability to root down to really find the person
6 and make sure you have the correct voter.
7 Q Okay. What -- prior to the change in the law
8 that required the address, when you had a
9 situation like that where someone hadn't put
10 their address down, what steps, if any, did the
11 board take to try to determine whether -- to
12 identify the voter?
13 A We would -- we would, you know, we would start
14 with just the county wide search, you know, try
to get a name match. Then from the name match
15 we would try to look at the precinct and
16 location match, and then basically, you know,
17 hopefully we had the address and then were able
18 to vibe through the previous voter register
19 database is to match the current signature of
20 that provisional ballot or absentee
21 identification envelope to what's in the voter
22 registration system.
23 Q And if you were able to do that and actually
24 determine a match, I take it that that

1 provisional ballot would count?
2 A Correct.
3 Q Okay. Under the law as it was before the
4 changes?
5 A Correct.
6 Q Okay. And I realize I -- give me just one sec.
7 What is the statute that created the
8 requirement that address and date of birth
9 information has to be placed on provisional
10 ballots?
11 A The current one?
12 Q Yes.
13 A I'm not -- I don't recall offhand.
14 Q Okay. I just wanted to -- one sec. I just
15 want to make sure the record is clear because I
16 realize I kept saying the changes, and that may
17 be a little unclear.
18 MR. SPIVA: You know, why
19 don't we -- we're probably getting pretty close
20 to the tape end so let's take a little break.
21 THE WITNESS: Okay.
22 VIDEOGRAPHER: We're going
23 off record. The time is 11:05. We're off the
24 record.
25 (Recess taken.)

20 (Pages 74 to 77)
Deposition of Patrick McDonald, taken October 28, 2015

BY MR. SPIVA:

Q Okay. I think, Mr. McDonald, when we broke we were talking about the new information requirements and I think we were focusing in on provisional ballots. And I just wanted to clarify the record because I was referring to changes in the law and I just want to clarify what I was referring to, which is that SB 216, which was enacted, created requirements for date of birth and address information on the provisional ballot envelope. Is that your understanding?

A That is correct.

Q Okay. And so when I was referring in my questioning to changes in the law, at least with respect to provisional ballots, that is what I was referring to. I assume that wouldn't change your answers in any respect?

A No.

Q And I think where we were is you had mentioned prior to that change, prior to SB 216, the county went through processes when it had a provisional ballot that it -- where it couldn't, for instance, where there were two people with the same name to try to find the address and verify that the voter was registered and was the correct voter; is that accurate?

A Yes.

Q And in those instances where the county could verify that it was a registered voter entitled to vote in the precinct that they were voting in prior to SB 216, that provisional ballot would count, correct?

A Correct.

Q Since the change created by SB 216, if the address, for instance, is missing on the provisional ballot, that ballot can't be counted, correct?

A That's correct.

Q And it can't be counted even if you can verify that it is a lawfully registered voter?

A Correct.

Q In turning to SB 205, which my understanding was the bill that was enacted that created changes in the information requirements for absentee ballot envelopes, is that your understanding?

A I would have to see it, you know, but I'll go with it.

Q Okay.

A It sounds familiar.

Q Just to make it easy, I mean, you understand that there were changes in the law that created a requirement that address and date of birth information be put on the absentee ballot envelope?

A Yes.

Q Okay. And if the absentee ballot doesn't include the envelope or the absentee ballot doesn't include address and date of birth, since those changes in the law, which I'll represent to you is SB 205, that ballot would not be counted, correct?

A If -- if a voter never -- what we would do is send out a challenge notice to that voter to let them know that they are missing a piece of information and they can correct their I.D. envelope. If they never did correct it, it would not be challenged.

Q Would not be counted?

A Would not be counted. Right.

Q But if they did come and provide the information within the prescribed time, it would be counted?

A Correct.

Q And the prescribed time is seven days?

A Yes.

Q And that is a shortening of the cure period from what had been the case prior to the change in the law? It had been ten days?

A Correct.

Q And it was then seven days; is that correct?

A Correct.

Q With respect to provisional ballots, stepping back to that for a minute, is there any similar type of notice that is provided to the voter if they do not include the new information, either address or date of birth?

A There isn't from the county level, but the state provides a provisional voting hotline that they can call to see if their provisional vote was counted.

Q But there wouldn't be a notice that would be sent out from either -- let me start -- from the county there wouldn't be a notice sent out
Deposition of Patrick McDonald, taken October 28, 2015

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1 to say, your provisional ballot is defective
2 because you haven't provided this --
3 A No.
4 Q -- address information?
5 Okay. But in the case of an absentee
6 ballot, there would be a notice sent out from
7 the county stating that there's something
8 missing in terms of address or date of birth
9 from the ballot envelope?
10 A Yes.
11 Q And I take it with respect to provisionals, the
12 same is true that the state doesn't send
13 anything to the voter to say that your
14 provisional ballot is defective?
15 A Correct.
16 Q Do you know why there's a difference in the way
17 absentee and provisional ballots are treated in
18 that respect?
19 A I would just be speculating. You know, there's
20 probably multiple reasons you would provisional
21 -- a person if they don't provide their address
22 and just sign and put their name on it, how
23 would we ever find out who they are. You know,
24 at least we have it bar coded on the I.D.
25 envelope from the original voter registration

Page 83

1 day for the absentee voters, but I don't, you
2 know, I would have to really look at it and
3 give you a thorough answer.
4 Q And why is it that you have it from the
5 original application for the absentee voter?
6 A Because they submitted an application, and then
7 we would have matched that application up with
8 their actual voter registration I.D. number.
9 Q And their absentee ballot application actually
10 had to provide that information, address
11 information and date of birth information; is
12 that correct?
13 A It is -- it's not a requirement, but it is on
14 our forms.
15 Q Okay. I'm going to have another document
16 marked as an exhibit, so if we could mark this
17 McDonald 2. Thanks.

(Plaintiff's Exhibit No. McDonald 2 was marked.)

20 Q Let me ask you -- have you had a chance to look
21 at it?
22 A Yes.
23 Q Okay. I just have a couple of questions.
24 Q First, there appears to be the first page of
25

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1 this, which has been marked McDonald 2 and it
2 has a Bates number, SEC002847, and then it goes
3 through SEC2848, which means that it was
4 produced to us from the Secretary of State.
5 The first page appears to be two e-mails. The
6 bottom one it appears to be from you, says,
7 Pat McDonald, sent Tuesday, November 4th, 2014,
8 to Matthew Damschroder, subject early voting
9 report, and it says, "Matt, here is the early
10 voting report comparing previous elections to
11 November, 2014 general election. Thanks, Pat."
11 First of all, does this appear to be an
12 e-mail that you forwarded to Mr. Damschroder?
13 A It appears to be that.
14 Q You don't have any reason to think that it's
15 not, you know, a genuine e-mail -- an actual
16 e-mail that you sent?
17 A No.
18 Q And just for the record, the top e-mail appears
19 to be an e-mail from Mr. Damschroder forwarding
20 your e-mail onto Ms. Halle Pelger. And just
21 one question. Why were you forwarding this
22 information to Mr. Damschroder?
23 A I can't recall.
24 Q Okay. Do you recall whether he requested it?

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1 A I can't recall. I could have just, you know,
2 arbitrarily sent him this, or he could have
3 requested it, you know, to be truthful.
4 Q What does the attachment show, spreadsheet
5 attached titled, "In House Voting Comparison
6 Primary and General Elections, Cuyahoga County
7 Board of Elections 2008 through 2014"?
8 A I think it appears to be a snapshot of all our
9 voting history for early voting that can
10 compare from, you know, 2008 to 2014 based off
11 of days out. And then it indicates the hours
12 that we were open for extended voting.
13 Q And I take it from this one can determine how
14 many people had voted during Golden Week in the
15 various elections that occurred between 2008
16 and 2014 in Cuyahoga County?
17 A Yes.
18 Q Let me -- and of course you can also -- well,
19 you could tell how many people voted during the
20 final three days of the early voting period, as
21 well, from the attachment?
22 A Yes.
23 Q I'm going to mark another document as
24 McDonald 3.

22 (Pages 82 to 85)
Deposition of Patrick McDonald, taken October 28, 2015

<table>
<thead>
<tr>
<th>Page 86</th>
<th>Page 87</th>
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<tbody>
<tr>
<td><strong>A</strong> Yes.</td>
<td><strong>A</strong> Yes.</td>
</tr>
<tr>
<td><strong>Q</strong> At this time you were the deputy director of the Board of Elections, correct?</td>
<td><strong>Q</strong> Was she the only African/American member in 2012?</td>
</tr>
<tr>
<td><strong>A</strong> Correct.</td>
<td><strong>A</strong> Yes.</td>
</tr>
<tr>
<td><strong>Q</strong> And Ms. Chappell, she's the only African/American member of the Board of Elections?</td>
<td><strong>Q</strong> What is she expressing concern about in this e-mail? Let me ask you --</td>
</tr>
<tr>
<td><strong>A</strong> Yes.</td>
<td><strong>MS. COONTZ:</strong> Can I see the copy?</td>
</tr>
<tr>
<td><strong>Q</strong> Was she the only African/American member in 2012?</td>
<td><strong>Q</strong> Does it appear that Miss Chappell is expressing concern over a decision to eliminate extended hours for early voting in Cuyahoga County in 2012?</td>
</tr>
<tr>
<td><strong>A</strong> Yes.</td>
<td><strong>A</strong> It does appear that.</td>
</tr>
</tbody>
</table>
| **Q** Do you recall this at all? | **Q** And you see on the bottom paragraph she says, "On a final note, I would be remiss if I did not express my deep concern about the disparate impact that this ruling will have on thousands of African/Americans and other voters in Cuyahoga County who have chosen and have historically come to rely on extended hours for in-house, in-person voting. I observed many of the persons who voted in-house, in-person during the 2008 presidential election. They were primarily people of color and they will be significantly affected by the decision to eliminate extended in-person voting hours."

Is that -- is that an accurate reading of what Ms. Chappell stated in her e-mail to you and others in this e-mail? |
| **A** Correct. | **A** Correct. |
| **Q** And do you recall having any discussions with other members of the Cuyahoga Board of Elections also went to a number of people in the Secretary of State's office? | **Q** And did you have any discussion with anybody in the Secretary of State's office at that time about Ms. Chappell's concerns? |
| **A** Not that I recall. | **MS. COONTZ:** I'm going to object to this entire line of questioning. This relates to hours in 2012. Uniform hours are now in effect. |
| **Q** And do you recall having any discussions with Miss Chappell about it? | **Q** You can still answer it. |
| **A** No. | **A** Not that I recall. |
| **Q** I'll give you what will be marked as McDonald Exhibit 4. | **Q** And I take it he broke the tie by eliminating the extended hours? |

23 (Pages 86 to 89)
Deposition of Patrick McDonald, taken October 28, 2015

1  (Plaintiff's Exhibit No. McDonald 4 was marked.)
2  - - - -
3  Q While you're reading it I'll just note that
4  McDonald 4 has the Bates number SEC005297,
5  produced by the Secretary of State's office.
6  A  Okay.
7  Q All right. So this appears to be two e-mails,
8  one at the bottom is from I believe you, it's
9  got an e-mail address pmcd010042@aol.com. I
10  take it that that's your personal e-mail
11  address?
12  A  Correct.
13  Q Okay. And it is sent to jonahusted@gmail.com,
14  mattdamshroder@hotmail.com, it's dated
15  October 10th, 2012. Was this an e-mail that
16  you sent to Mr. Husted and Mr. Damschroder?
17  A  I assume so.
18  Q And the subject is Cuyahoga County. First, let
19  me ask you, do you communicate with the
20  Secretary of State's office through your
21  personal e-mail?
22  A  No. It's through my business.
23  Q And the e-mail says that, "3,748 people came in
24  and voted today. This totals 9,050 for Golden
25  Week, which is a 26 percent increase over 2008
26  (without having a weekend). So much for the
27  voter suppression the Democrats tout."
28  A So first of all, I take that it is
29  accurate to say from -- that the percentage --
30  that the number of people voting who had joined
31  Golden Week in 2012 was a 26 percent increase
32  over 2008?
33  A According to what I wrote.
34  Q You have no reason to doubt the accuracy? And
35  what were you referring to when you said, "So
36  much for the voter suppression that the
37  Democrats tout"?
38  A I -- I'm guessing at that time, we're probably
39  talking about eliminating Golden Week
40  potentially. Or no, that wouldn't have been
41  right. 2012. Whatever I'm comparing is that
42  we had a good week, you know, of voting and
43  registering cards today, so it must be I'm
44  speculating that it was probably that people
45  were -- the Democratic party or members of the
46  Democratic party were touting about voter
47  suppression with boards of elections, so forth.
48  So I'm countering those claims.
49  Q And noting that Golden Week was -- there was a
50  big increase in the use of Golden Week in 2012
51  over 2008?
52  A Correct.
53  Q Okay. And did Mr. Husted or Mr. Damschroder
54  request that you provide them this information?
55  A No.
56  Q But it's fair to say that as of October 12th --
57  October 10th, 2012, they were aware that there
58  was an increase in use of Golden Week in
59  Cuyahoga County between 2008 and 2012?
60  A I would agree with that.
61  Q The second sentence in your e-mail is, "Also,
62  we received 10,798 voter registration cards
63  today. It has been a record amount of voter
64  registration cards over the last six weeks,
65  much greater than 2008."
66  A So do I understand correctly that you
67  reporting to Mr. Husted and Mr. Damschroder
68  that during Golden Week that on this day,
69  Golden Week, October 10th, 2012, that you
70  received 10,798 voter registration cards?
71  A Over the previous six weeks.
72  Q Okay. Because I guess -- maybe I misunderstood
73  your e-mail because it says, we received 10,798
74  registration cards today.
75  A No. You're correct. I didn't see the word
76  today. Yeah. So if I wrote that we would have
77  received 10,798 that day, and then it has been
78  a record amount over the previous six weeks.
79  Q And in fact, much greater than in 2008?
80  A According to what I wrote.
81  Q And it appears that Mr. Damschroder -- first of
82  all, who is Mr. Damschroder?
83  A He was the chief of elections at the time for
84  Secretary of State Husted.
85  Q Okay. And Mr. Damschroder appears to forward
86  your e-mail onto a number of people,
87  masterson@gmail.com. Who is Matt Masterson?
88  A He used to be the former assistant Secretary of
89  State.
90  Q Was he the assistant Secretary of State at this
91  time in 2012?
92  A No, I don't think he was. He had another role
93  with the Secretary of State. I think more of a
94  technology role.
95  Q And then also he forwards it onto Halle Pelger
96  at her hot mail account. Was Miss Pelger
97  Mr. Husted's chief of staff at that time?
98  A No. Scott Borgemenke was. I don't know who
99  Halle is that I can recall.

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The Ohio Democratic Party, et al.,
Case No. 2:15-cv-1802

Defendants' Written Objections to the
Admissibility of Plaintiffs' Evidence
Exhibit G
Deposition of Patrick McDonald, taken October 28, 2015

Q: He also forwards it to Maggie Ostrowski. Who is she?
A: She was in his communications office.

Q: And Matt McClelland, who is he?
A: He's the chief of communications.

Q: And Scott Borgemenke, apologies for his name, but I assume you said he was the chief of staff for Mr. Husted?
A: Correct.

Q: Obviously the Mr. Husted we're referring to is the Secretary of State of Ohio?
A: Correct.

Q: Were you providing this information as part of your official role as, at that time, I guess deputy director of the Board of Elections?
A: I don't know what's the difference between that or another role. I'm just basically giving them the information of how well we were doing up in Cuyahoga County.

Q: Well, just because of the personal e-mail accounts. I thought maybe this was something outside of your official duties.
A: Yeah. I was a central committee representative for the Republican Party.

Q: Have you had any other roles for the Republican Party since then?
A: I'm on the central committee for Cuyahoga County Republican Party.

Q: First was the Republican Party.
A: Okay. Yes.

Q: How did I meet him?
A: How did I meet him?

Q: Yeah.
A: Probably I was involved in the Republican Party down there so him being the executive director I would just have interactions with him.

Q: In what way were you involved in the Republican Party at that time back, you know, 20 years ago?
A: Yeah. I was a central committee representative for the Republican Party.

Q: Have you had any other roles for the Republican Party since then?
A: That I would say probably since 2005.

Q: Currently?

Q: Okay. Let me give you what will be marked as McDonald Exhibit 5.
A: McDonald Exhibit 5.

Q: This is Bates numbered SEC007065 through 7066. Ready for me to ask a few questions about it?
A: Sure.

Q: Okay. I think the first e-mail, which is the last on the -- it begins on the bottom of the first page, it appears to be an e-mail from you dated September 5th, 2014, and it is to a number of people, including Anthony Perlatti, an e-mail address that I believe is, or I'm assuming is board member McNair, Cuyahoga County Board of Elections member McNair; is that correct?
A: Yes.

Q: And there's a Miss Chappell, I believe that's the board member we were talking about a minute ago?
A: Yes.

Q: And Mr. Damschroder, how long have you known him?
A: At least probably 20 years or so. 15, 20 years or so.

Q: How did you meet him?
A: I met him when he worked for the Franklin County Republican Party and then when he went to the Franklin County Board of Elections.

Q: And in what connection did you meet him when he was with Franklin County -- you said Board of Elections, that's where you first met him?
A: Correct.

Q: How about known him personally.
A: How about known him personally.

Q: Okay. When you say, "Both of them," you mean Mr. Husted and Mr. Damschroder, that you're friends with both of them?
A: Yes.

Q: How long have you known Mr. Husted?
A: Gosh, I have -- known him personally or known of him?

Q: How about known him personally.

Q: And how did you meet him?
A: He was a state representative at the time or state senator at the time I think. So I met him -- he went to the same university I did and he was -- he was just a known public official and I was an employee down in government for 20 years down there. So I had often opportunities to run into him, and then we finally got to know each other and become friends from that point on.

Q: And Mr. Damschroder, how long have you known him?
A: At least probably 20 years or so. 15, 20 years or so.
### Deposition of Patrick McDonald, taken October 28, 2015

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<th>Page 100</th>
<th>Page 101</th>
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<tbody>
<tr>
<td>1. A I would prefer if you just read it.</td>
<td>1. A Yes.</td>
<td>1. e-mail address?</td>
<td>1. A That's correct.</td>
</tr>
<tr>
<td>2. Q Okay.</td>
<td>2. Q And those are going to be up for discussion at</td>
<td>2. Q Do you know why you forwarded it to him at his</td>
<td>2. Q And forwarded the two e-mails below?</td>
</tr>
<tr>
<td>3. A Correct.</td>
<td>a board meeting I take it?</td>
<td>personal e-mail address?</td>
<td>A Yes.</td>
</tr>
<tr>
<td>4. Q Okay. And it's cc'd to Mr. Doyle. And you --</td>
<td>4. A Correct.</td>
<td>5. A I do not.</td>
<td>5. Q Okay. And this one I will read because it's</td>
</tr>
<tr>
<td>5. I don't want to read the whole thing, but maybe</td>
<td>5. Q Okay. And then that appears to have been</td>
<td>6. Q But you did send this e-mail dated</td>
<td>short. It says, &quot;Subject: Forward: Early</td>
</tr>
<tr>
<td>you can just summarize what you were discussing</td>
<td>forwarded, if you go up from that message on</td>
<td>September 6th, 2014, 11:28 p.m. to Matt</td>
<td>Voting Hours. Hi there. Any advice for my</td>
</tr>
<tr>
<td>in that September 5th, 2014 e-mail.</td>
<td>the first page of this, Exhibit 5, so it's got</td>
<td>Damschroder?</td>
<td></td>
</tr>
<tr>
<td>6. A It looks like we were ready to discuss</td>
<td>SEC7065 at the bottom, if you go up one from</td>
<td>9. A Yes.</td>
<td>9. Q Okay. And that was on September 6th, 2014. Do</td>
</tr>
<tr>
<td>additional voting hours at a meeting, an</td>
<td>that it seems to be forwarded from you to what</td>
<td>10. Q Okay. But you did forward that e-mail to your</td>
<td>you recall why you forwarded it to your</td>
</tr>
<tr>
<td>upcoming board meeting.</td>
<td>I believe is your personal e-mail; is that</td>
<td>personal e-mail?</td>
<td>personal e-mail?</td>
</tr>
<tr>
<td>7. Q Okay. Oh, go ahead.</td>
<td>correct?</td>
<td>11. A I did.</td>
<td>11. Q Okay. And then up at the top it looks like you</td>
</tr>
<tr>
<td>8. A And I'm asking Matt if he has any advice for me</td>
<td>8. A Yes.</td>
<td>12. Q Okay. And this one I will read because it's</td>
<td>from your personal e-mail then I guess</td>
</tr>
<tr>
<td>to discuss at the board.</td>
<td>9. Q Okay. And forwarded the two e-mails below?</td>
<td>short. It says, &quot;Subject: Forward: Early</td>
<td>forwarded both of those e-mails below to</td>
</tr>
<tr>
<td>9. Q I'm sorry. I want to talk about that one in a</td>
<td>9. A Yes.</td>
<td>Voting Hours. Hi there. Any advice for my</td>
<td>Matt Damschroder; is that correct?</td>
</tr>
<tr>
<td>minute, but I actually just wanted to focus on</td>
<td>10. Q Okay. But you did forward that e-mail to your</td>
<td>12. Q Okay. And this one I will read because it's</td>
<td>12. A Yes, that is correct.</td>
</tr>
<tr>
<td>the one at the bottom for --</td>
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</tr>
<tr>
<td>10. A Okay.</td>
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<td>Voting Hours. Hi there. Any advice for my</td>
<td>you recall why you forwarded it to your</td>
</tr>
<tr>
<td>11. Q When you were forwarding -- I'm sorry, when you</td>
<td>you recall why you forwarded it to your</td>
<td>board meeting I take it?</td>
<td>personal e-mail?</td>
</tr>
<tr>
<td>were sending it to the board members and other</td>
<td>personal e-mail?</td>
<td>14. A Yes.</td>
<td>14. Q Okay. And that was on September 6th, 2014. Do</td>
</tr>
<tr>
<td>people. You say, &quot;Good afternoon. Attached</td>
<td>12. Q Okay. But you did forward that e-mail to your</td>
<td>15. Q Okay. And that was on September 6th, 2014. Do</td>
<td>you recall why you forwarded it to your</td>
</tr>
<tr>
<td>per Sandy's request,&quot; and you go on from there?</td>
<td>personal e-mail?</td>
<td>Voting Hours. Hi there. Any advice for my</td>
<td>personal e-mail?</td>
</tr>
<tr>
<td>12. A Yes.</td>
<td>13. Q Okay. But you did forward that e-mail to your</td>
<td>board meeting I take it?</td>
<td>13. Q Okay. And that was on September 6th, 2014. Do</td>
</tr>
<tr>
<td>13. Q Can you describe what you're discussing in that</td>
<td>personal e-mail?</td>
<td>you recall why you forwarded it to your</td>
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<td>14. A It appears that -- can I have a second here?</td>
<td>15. Q Okay. And that was on September 6th, 2014. Do</td>
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The Ohio Democratic Party, et al.,
Case No. 2:15-cv-1802

Defendants' Written Objections to the Admissibility of Plaintiffs' Evidence
Exhibit G
1. seek at the board meeting additional early
2. in-person voting hours; is that correct?
3. A. That's my understanding.
4. Q. And when you refer to at least the final
5. weekdays, you mean the final three days before
6. the election; is that correct?
7. A. I -- I'm assuming so.
8. Q. Okay. And it says, "While awaiting SOS
9. decision" -- I assume SOS refers to Secretary
10. of State?
11. A. Yes.
12. Q. And witnesses, who are you referring to?
13. A. I can't recall.
14. Q. And, "What do you think the timeframe will be
15. with JH's appeal." I assume JH refers to
16. John Husted?
17. A. Correct.
18. Q. And I assume the appeal, you're talking about
19. his appeal of Judge Economus's order?
20. A. Yes.
21. Q. Okay. And then you say, "Any insight or
22. direction you can give me will be beneficial
23. prior to our meeting." What sort of direction
24. or insight are you looking for from
25. Mr. Damschroder or Mr. Husted?

26. A. I'm assuming that I'm looking for to be able to
27. tell the board if -- tell the board what the
28. status of -- what the likely status would be of
29. the appeal because in this mail I'm referring
30. to things that we will need to do to
31. accommodate the judge's decision here. So if
32. it was an appeal, I'm assuming that I was
33. asking for any insight or advice on how I
34. can explain either what's likely to come to the
35. board or changes to the board based if it is
36. appealed.
37. Q. Okay. And any reason, again, why you wouldn't
38. just ask for that guidance from your official
39. county Board of Elections --
40. A. No.
41. Q. -- e-mail?
42. A. No.
43. MR. SPIVA: Go off the
44. record. Let me just take what will hopefully
45. be five minutes.
46. VIDEOGRAPHER: Off the
47. record. The time is 12:14.
48. (Recess taken.)
49. VIDEOGRAPHER: We're back on
50. the record. The time is 12:14.

BY MR. SPIVA:
Q. Okay. Thanks, Mr. McDonald. I'm just going to
give you what will be marked as McDonald 6.

(Plaintiff's Exhibit No. McDonald 6 was marked.)

Q. Just while you're taking a look at it,
Mr. McDonald, this exhibit, which has been
marked McDonald 6, has a Bates number
SEC005512. Have you had a chance to read it?

A. I'm reading it.

Q. Take your time. Just let me know when you're
done.

A. Okay.

Q. All right. This appears to be an e-mail from
matthewdamschroder@hotmail.com and it's to a
number of people, some of whom we've already
talked about, Halle Pelger. I don't believe I
have asked you about jlctwo@hotmail.com. Do
you recognize that e-mail address?

A. I do not.

Q. Okay. It's also addressed to Matthew
Masterson, and who is that?

A. He -- at the time he might have been the
assistant Secretary of State.

Q. Okay. And I don't know if I said it, but the
e-mail is dated April 28th, 2014, and it also
is addressed to Craig Forbes at gmail.com. Who
is Craig Forbes?

A. I do not know.

Q. Okay. You're not on this e-mail, I take it?

A. None of these e-mail addresses belong to you?

Q. None.

Q. Mr. Damschroder says, "Talked with Pat McD via
phone." Is that a reference to you?

A. I'm assuming, but I can't say for a fact.

Q. Okay. It says, "I think he's comfortable with
the directive thing. He thinks Sandy and
prosecuting attorney are going to try and make
a big deal about directives and advisories
generally. Pat's thinking is, 1, Husted put
everyone on notice that OADE hours were the
only recommendations out there, that the GA
should adopt them but didn't, and in the
absence of legislative activity (and with no
one making any other recommendations let alone
bipartisan ones) the SOS acted; 2, the second
directive is within the 90 days; 3,

instructions of the SOS, regardless of whether

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Q. When you refer to hours, you refer to hours for early in-person voting?
A. Yes.

Q. And let me ask you, how frequently do you speak with Mr. Damschroder either by phone or in person?
A. Probably once every three months.

Q. And below where I read before it says, "Two other items: 1, Pat said Turner, Budish, et cetera and 11 churches are having a rally at the Cuyahoga BOE on Saturday to highlight the need for more weekend and evening voting." Do you recall telling Mr. Damschroder that?
A. I do not recall.

Q. Do you recall that happening, that Turner, Budish, et cetera --
A. I do.

Q. -- and 11 churches. Okay.

A. They were leading -- they were -- what I was doing is I'm assuming informing them that --

Q. And I'm sorry, who is Turner?
A. Nina Turner was a state senator then.

Q. And who is Budish?
A. He is the county exec now and he was state representative at the time.

Q. He's Cuyahoga County executive?
A. Yes.

Q. And why would you have the need to inform Mr. Damschroder that they and the 11 churches were having a rally at the Cuyahoga County Board of Elections?
A. Just probably I was on the phone with them so I could see logically just telling them what was going on.

Q. Okay. And the last thing in the e-mail is point 2 under the two other items, it says, "FYI only, Greenspan thinks that if we do not mail English/Spanish absentee applications that Cuyahoga County prosecuting attorney will use that as a reason to mail absentee apps in Cuyahoga with return postage. (Argument goes that the SOS violated the DOJ consent agreement with Cuyahoga by not mailing bilingual election materials so Cuyahoga must mail them and they must be postage prepaid because it would be close to the election.) I think there's several things flawed in that reasoning, but I think it's good to know that it is out there." Do you know what that reference is to?
A. He -- if I remember correctly Greenspan thought --

Q. Who is Greenspan?
A. David Greenspan, he's a county council member.

He thought if we didn't -- that if we had a consent decree with the Hispanic community, or DOJ via Hispanic community about bringing all the voting materials in English and Spanish and then the Secretary of State was to -- was to send out the vote by mail applications, they would not be in Spanish. So there was a concern that we would be violating the consent decree.
Deposition of Patrick McDonald, taken October 28, 2015


1. decree if we didn't, you know, if it wasn't sent out in Spanish.
2. Q   I see.
3. A   But that was alleviated because it's not our document.
4. Q   Okay. I see. And I take it the Secretary of State didn't -- well, strike that.
5. A   Let me -- let me give you what will be marked as McDonald 7.
6. -----
7. (Plaintiff's Exhibit No. McDonald 7 was marked.)
8.  -----
9. MR. SPIVA: Can I get one of those back from you? Do you all mind sharing? I think I gave you my last copy.
10. Thanks.
11. MS. COONTZ: Do we have a copy?
12. MR. SPIVA: I think so.
13. Oh, sorry. I don't know how that happened. I thought I made an extra, but do you mind reading over his shoulder, I can --
14. MR. DOYLE: You read it.
15. MR. SPIVA: I got one other option. You know what, never mind. I
16. can look at it electronically. You guys can use it. Thanks.
17. Q So Mr. McDonald, this Exhibit 7 is titled, "Written Testimony from Cuyahoga County Board of Elections' Director Pat McDonald," and I will represent to you that I pulled this down from the website of the Presidential Commission on Election Reform, and take your time in looking at it, but I only have a couple questions.
18. A   Okay.
19. Q One of which is is this the testimony that you submitted to the presidential commission?
20. A   Yes, it is.
21. Q   Okay. And again, take your time, but my only other kind of question about this is really about pages 4 and maybe carrying over into 5 where you're talking about the vote center concept that we discussed earlier.
22. A   Okay.
23. Q   And really my only question is that is this -- in your testimony here are you discussing the vote center proposal -- well, let me back up and get a better question here.
24. Earlier we talked about this concept of a vote center and how that might help the administration of elections. Are you discussing in this testimony to the presidential commission that concept of a vote center?
25. A   I guess I'm presenting that concept of a vote center to them.
26. Q   Okay. And you're presenting that as something that would bring about a positive change in the administration of elections?
27. A   Yes.
28. Q   And you also say in here that vote centers would be limited to two different forms, election day vote centers and early vote centers; is that correct?
30. Q   And would there be the same number under this proposal of vote centers for early voting as for election day voting?
31. A   There would be.
32. Q   And has your view on the -- this concept, desirability of this concept of using vote centers, has that changed in any way since the testimony you submitted to the presidential commission?
33. A No, but I guess the only thing I would add to that question would be the feasibility of it because of the implementation due to the cost. But outside of that I still believe that this would be a good thing to do.
34. Q Do you think it would ultimately save money in election administration?
35. A   Possibly.
36. MR. SPIVA: Give me maybe three minutes. I think I may be done.
37. VIDEOGRAPHER: Off the record. The time is 12:29.
38. (Off the record.)
39. VIDEOGRAPHER: We're back on the record. The time is 12:33.
40. BY MR. SPIVA:
41. Q Mr. McDonald, earlier when we were talking about Golden Week, I think you had discussed the potential cost of having another week of in-person early voting. Putting aside cost, is there any other interest or reason by Cuyahoga County in not having Golden Week other than the cost, potential cost implications?
42. A I guess like if you read in my declaration, any expanded services there is, you know, there's
Deception of Patrick McDonald, taken October 28, 2015

1 not only the cost, but there's the effort for
2 the resources in terms of the planning to put
3 into that, the people that we would need to do
4 that. You're taking them away from the other
5 events or activities or job responsibilities
6 that they could do. So, I mean, you could
7 weigh the pros and cons of does that extra week
8 really matter when they can come for the 28
9 days after that. So in that week we still have
10 the preparation, we're still preparing for the
11 big event, you know, four weeks down the road.
12 Q Right. But other than that resource type
13 issues or cost type issues, are there any other
14 interests that the county has in not having a
15 Golden Week?
16 A No.
17 Q And are you aware of -- this is probably
18 obvious from some of the discussion earlier,
19 but I assume the state did not provide the
20 funds to implement Golden Week when it wasn't
21 in place?
22 A That's correct.
23 Q Are you aware of any interest that the state
24 has in not having Golden Week?
25 MS. COONTZ: Objection.

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1 Calls for a legal conclusion.
2 A No, I'm not.
3 Q And then let me just ask you a couple of
4 questions about 2008 and 2012. What is your --
5 with respect to 2008, I take it you were the
6 deputy director in 2008 during the period that
7 the general presidential election occurred?
8 A Yes.
9 Q What was your impression of the lines, let's
10 say, during the early voting period in 2008?
11 A It was similar to 2012. I mean, we basically
12 were able to accommodate the people that were
13 -- that came to vote. There was probably more
14 early lines -- I'm sorry, there was -- we had
15 of course the final weekend that was the big
16 push, and that was similar in both 2008, as
17 well as 2012, but I do remember just more
18 weekday lines. Not that they weren't
19 manageable, but we saw them more. We were able
20 to get more parking garages in '12 and put up
21 more work stations I think in '12 to
22 accommodate -- to alleviate the lines comparing
23 the two elections.
24 Q And during the early voting period in 2008 were
25 there peak either days or times when the lines

Page 116

1 were the longest?
2 A Outside of the final weekend when it was, you
3 know, from beginning to end of early voting it
4 was crowded, but the peak times would be right
5 at the beginning of the morning, a little at
6 lunch time, and then afternoon, you know, drive
7 time.
8 Q And what were the longest lines that you either
9 observed or measured during the early voting
10 period in 2008?
11 A Excluding that weekend, or --
12 Q Any time during the early voting period.
13 A Okay. The final weekend they were probably an
14 hour to an hour and a half in line, but outside
15 of that it was -- it was less than 10, 15
16 minutes.
17 Q Okay. And on election day in 2008 what is your
18 impression of the lines that formed, if any, in
19 2008 election day?
20 A The only time that we really got any inside or
21 I guess any calls on the lines in a negative
22 capacity was at early -- right when the polls
23 would open. So of course, you know, when you
24 don't have -- when you close and you open, the
25 first voter, the second voter is going to form

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a line. So that's where we heard at the
beginning of the day there was lines. But none
of them were over -- nobody was standing in
line over 20, 25 minutes.
Q And at the end of the day on election day were
there any precincts in Cuyahoga County in 2008
that had to remain open past the closing time
in order to accommodate people who had gotten
line prior to closing?
A Not that I'm aware of. I mean, for the lines.
If they were -- if they were in the building to
vote, you know, of course we would, you know,
if there was -- if there was a short line. I
can't say for sure, I just can't recall I
guess. It could have been.
Q Okay.
A But there wasn't any complaints about it or it
wasn't a long wait by any means.
Q Okay. And then in 2012 with respect to the
early voting period, what is your impression of
the situation with lines during the early
voting period in 2012?
A We had no difficulty in 2012 except for the
final weekend.
Q Okay.
## Deposition of Patrick McDonald, taken October 28, 2015

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
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<td><strong>Q.</strong> Are the peak lines probably between an hour, hour and a half? <strong>A.</strong> Correct.</td>
<td></td>
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<td><strong>Q.</strong> Hour and a half being the top I would assume. <strong>A.</strong> Correct.</td>
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<td><strong>Q.</strong> And on election day in 2012 did you experience any issues with lines in Cuyahoga County? <strong>A.</strong> Again, we've had similar to 2008, just at the beginning of the day.</td>
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<td><strong>Q.</strong> Okay. Has your office done any analysis or study of potential lines, issues with lines in the upcoming 2016 presidential election? <strong>A.</strong> No, we have not.</td>
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<td><strong>Q.</strong> And you described it I believe as a festive atmosphere, correct? <strong>A.</strong> Correct.</td>
<td></td>
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<td><strong>Q.</strong> And bands were playing, correct? <strong>A.</strong> Correct.</td>
<td></td>
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<td><strong>Q.</strong> Going to this concept of vote centers, I believe you indicated that your proposal of a vote center would contemplate the same number of vote centers on election day as for early voting, correct? <strong>A.</strong> Correct.</td>
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<tr>
<td><strong>Q.</strong> Now, how many precinct voting locations are there in Cuyahoga County? <strong>A.</strong> Approximately 970 -- voting there's 975 precincts, there's approximately 400 voting locations.</td>
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<tr>
<td><strong>Q.</strong> Okay. How many vote centers would you contemplate? <strong>A.</strong> I don't want to put too much into this, it's not like we've done research on it or anything, it was just in this testimony that I did, but if you -- if you kept things in line with the -- like a state representative house or a county council seat it would be easy math to do to -- you divide it up in the state and make it equitable for everybody so you would -- with that concept I would anticipate 11.</td>
<td></td>
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<td><strong>Q.</strong> So 11 vote centers on election day, correct? <strong>A.</strong> Correct.</td>
<td></td>
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<td><strong>Q.</strong> And that is fewer polling locations than currently exist under Ohio law in Cuyahoga County on election day; is that correct? <strong>A.</strong> That's correct.</td>
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**THE WITNESS:** You're welcome.

**MS. COONTZ:** My name is Bridget Coontz and I'm with the Attorney General's office and I'm just going to have some follow-up questions based on what Mr. Spiva asked you this morning in your deposition.

**BY MS. COONTZ:**

**Q.** We will go straight to what we discussed regarding the 2012 election. You mentioned that the last week before the election there was approximately an hour to an hour and a half wait during the last weekend?

**A.** Correct.

**Q.** Okay. Now, is that the weekend that you also testified about that people were there to stand in line?

**A.** Correct.

**Q.** Okay. People were actually invited to come to the early voting center, correct?

**A.** Absolutely.

**MR. SPIVA:** Objection.

**Q.** And you described it I believe as a festive atmosphere, correct?

**A.** Correct.
Deposition of Patrick McDonald, taken October 28, 2015

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<td>1. make sense to have 11 locations of early voting open in the county on that sole -- with that reasoning or with that concept. That would just be an overkill.</td>
<td>1. Q Okay. What about computer network connectivity issues?</td>
</tr>
<tr>
<td>2. But with the feasibility, I think you have to look at -- you would have to look at the cost, you would have to look at the equipment, you would have to look at the staffing needs, you would have to look at finding those locations, and how you determine what location -- what locations or where the locations are. I think it would be very controversial.</td>
<td>3. Q What currently goes into that process of finding polling locations?</td>
</tr>
<tr>
<td>7. Q Okay. Have you looked into issues with respect to just temporarily being able to get a location for the 30-day early voting period?</td>
<td>8. A We have. We have -- we started that process and we have worked closely or tried to work closely with C.S.U. and to see if there was any interest of us having early voting over there and if they could accommodate us for the whole time period, we wouldn't have to move because they already have the venue on the schedule. So we have talked to them but we've found that it's not going to work because the final weekend they are not able to keep us in the same location.</td>
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<tr>
<td>13. Q So have you thought about how you would implement this procedure for voting centers for the Democratic Party and then they are dropped off -- well, a drop off location. So we have various drop off locations throughout the county. So once they leave the polling location, they go to the drop off location, and then a sheriff's officer and bipartisan member of that party or not -- partisan member of whatever the sheriff's affiliation is drives along down with the sheriff's officer and then drops the ballot boxes off at the Board of Elections warehouse on East 4th Street.</td>
<td>14. A They're used -- well, they're used for our voter registration system and voting modular. So you know that basically if somebody comes in, you know, to vote we can look them up and make sure where they vote at and we can mark it right there that they voted.</td>
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<tr>
<td>21. Q So have you thought about how you would implement this procedure for voting centers for 30 days of early or 28 days of early voting?</td>
<td>22. A We have not.</td>
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Deposition of Patrick McDonald, taken October 28, 2015

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<tr>
<td>1 Q Okay. Would it require some statutory changes do you think?</td>
<td>1 A Correct.</td>
<td>1 voted in the previous gubernatorial and presidential election?</td>
<td>1 A There's, you know, there's positivities in them, for example, if we have an overlapping election with other counties and we do that, you know, with state school boards, with congressionals, with some state reps and state senate seats, so when the jurisdiction overlap from county to county, if -- I'm sorry. Did you say positives?</td>
</tr>
<tr>
<td>2 A I think it would.</td>
<td>2 Q That's correct?</td>
<td>2 Q Are you support treating all Ohio voters the same?</td>
<td>2 A Uniformity. I lost track here.</td>
</tr>
<tr>
<td>3 Q Okay. Now, we also talked about absentee and provisional voting, and I just want to clear up the difference between an absentee vote and a provisional vote. An absentee vote, the voter is actually registered to vote, correct?</td>
<td>3 A Yes.</td>
<td>3 MR. SPIVA: Objection by the way just for -- A I'm going for the negative. I thought I was thinking positive. So with the uniformity, you know, we wouldn't -- we could then be open different hours than they could be. We could like in Cuyahoga County have extended hours, as Lake and Lorain County have restricted hours. People could get confused thinking we're out there marking, we're open this time and that time and, you know, so the surrounding counties they think their county is open, or as well as give them to -- does it give somebody an unfair advantage that there's more opportunity to vote</td>
<td></td>
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<tr>
<td>4 A Correct.</td>
<td>4 Q So the Secretary of State mailed out more absentee ballot applications than the Cuyahoga County Board of Elections did?</td>
<td>4 Q OK. Okay. And that captured more voters, correct?</td>
<td>4 A I do.</td>
</tr>
<tr>
<td>5 Q With a provisional vote, is the board able to verify that registration when the voter comes in to vote?</td>
<td>5 A I did, but we do now, and I can't say when we started the practice, we'll go back for the last two years if they voted.</td>
<td>5 Q Now, you mentioned equal treatment of voters. Do you support treating all Ohio voters the same?</td>
<td>5 A I do.</td>
</tr>
<tr>
<td>6 A No.</td>
<td>6 Q Okay.</td>
<td>6 MR. SPIVA: Objection.</td>
<td>6 A Correct.</td>
</tr>
<tr>
<td>7 Q For the most part. Usually not if their name is not in the poll book, and that is why they would have to vote provisionally if they're not able to verify at that point in time, unless they were already marked must vote provisionally because one of our mandated mailings has been returned to us as undeliverable or they don't live at that residence. So then we will mark the book that they must vote provisionally, or show an I.D. or something like that because we've received</td>
<td>7 A Correct.</td>
<td>7 Q Okay. And are there positives to uniformity in Ohio's election laws?</td>
<td>7 A Sure.</td>
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<td>8 A For the most part. Usually not if their name is not in the poll book, and that is why they would have to vote provisionally if they're not able to verify at that point in time, unless they were already marked must vote provisionally because one of our mandated mailings has been returned to us as undeliverable or they don't live at that residence. So then we will mark the book that they must vote provisionally, or show an I.D. or something like that because we've received</td>
<td>8 MR. SPIVA: Objection.</td>
<td>8 Q What are they?</td>
<td>8 A Sure.</td>
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<td>9 Q What are they?</td>
<td>9 MR. SPIVA: Objection.</td>
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</tr>
<tr>
<td>10 A And I don't know if I just adopted that off of Jon Husted's policy or if we've already done that. Q Now, you mentioned equal treatment of voters. Do you support treating all Ohio voters the same?</td>
<td>10 A Correct.</td>
<td>10 Q Okay.</td>
<td>10 MR. SPIVA: Objection.</td>
</tr>
<tr>
<td>11 Q Okay. Now, you also discussed the voters to whom the Secretary of State mailed unsolicited ballot applications. Do you recall testifying that the Secretary of State mailed them to all active voters and all inactive voters who had</td>
<td>11 A Correct.</td>
<td>11 Q Okay.</td>
<td>11 MR. SPIVA: Objection.</td>
</tr>
<tr>
<td>12 A It did, but we do now, and I can't say when we started the practice, we'll go back for the last two years if they voted. Q Okay.</td>
<td>12 A I do.</td>
<td>12 Q Okay.</td>
<td>12 MR. SPIVA: Objection.</td>
</tr>
<tr>
<td>13 Q Correct?</td>
<td>13 Q Okay.</td>
<td>13 Q Okay.</td>
<td>13 MR. SPIVA: Objection.</td>
</tr>
<tr>
<td>14 Q If someone registered on election day, do you think?</td>
<td>14 A Yes.</td>
<td>14 Q Okay.</td>
<td>14 MR. SPIVA: Objection.</td>
</tr>
<tr>
<td>15 Q Some is it fair to say this provisional process is designed to give voters the benefit of being able to vote when they otherwise are not --</td>
<td>15 A Uniformity. I lost track here.</td>
<td>15 Q Okay.</td>
<td>15 MR. SPIVA: Objection.</td>
</tr>
<tr>
<td>16 A Absolutely.</td>
<td>16 Q Okay. And are there positives to uniformity in Ohio's election laws?</td>
<td>16 A I do.</td>
<td>16 MR. SPIVA: Objection.</td>
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<td>17 Q -- registered?</td>
<td>17 A Correct.</td>
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<td>17 MR. SPIVA: Objection.</td>
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<td>18 MR. SPIVA: Objection.</td>
<td>18 Q Okay.</td>
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<td>19 A Yes.</td>
<td>19 A I do.</td>
<td>19 A I do.</td>
<td>19 MR. SPIVA: Objection.</td>
</tr>
<tr>
<td>20 Q Now, we also talked about the Cuyahoga County Board of Elections mailing of absentee ballot applications. This occurred in 2008 and 2010, correct?</td>
<td>20 A Correct.</td>
<td>20 Q Okay.</td>
<td>20 MR. SPIVA: Objection.</td>
</tr>
<tr>
<td>21 A It occurred in '8 and then each election subsequently until -- until 2010. Q Now, which voters did the Cuyahoga County Board mail applications to?</td>
<td>21 A Correct.</td>
<td>21 Q Okay.</td>
<td>21 MR. SPIVA: Objection.</td>
</tr>
<tr>
<td>22 A We mailed them out to all active registered voters. Q Okay. Now, you also discussed the voters to whom the Secretary of State mailed unsolicited ballot applications. Do you recall testifying that the Secretary of State mailed them to all active voters and all inactive voters who had</td>
<td>22 A Correct.</td>
<td>22 Q Okay.</td>
<td>22 MR. SPIVA: Objection.</td>
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</table>
Deposition of Patrick McDonald, taken October 28, 2015

1. in one county than the other.
2. So you have to look at you have a county
3. and you have an elected official or somebody
4. running for office that's from the county,
5. that's not what -- if it's not open, it's kind
6. of like it's not really treating him or her
7. equally.
8. Q So in this instance of cross county issues on
9. the ballot, could a lack of uniformity
10. contribute to voter confusion?
12. Q And you mentioned your outreach efforts in the
13. community to educate voters about early voting.
14. How does a lack of uniformity affect your
15. ability to educate voters?
16. A I think uniformity gives a county like ours the
17. opportunity to go out there and we do strong
18. marketing with them. So if we were open, if we
19. did not have -- if we were open certain hours,
20. we would be marketing those hours. We have a
21. strong relationship with the media and what we
22. call the corporate end outreach partners so
23. that we have the ability to let the public know
24. when we're open through our website and through
25. robo calls and other different things than

other people might not have the opportunity.
So can create voter confusion.
Q You mentioned marketing. Is this on
television?
A Well, we have in the past. We do a lot PSA's
marketing in terms of direct mail, we do a
voter information guide that we send out to all
registered -- all our active registered voters
and let them know we're open for hours -- these
are the voter opportunities.
Q These PSA's, do they reach across Cuyahoga
County lines?
A They would.
Q So how do you think that would impact voter
confusion if, say, in Lake County you mentioned
they had different hours. Would a lack of
uniformity in the message Cuyahoga County is
sending contribute to confusion for Lake County
voters?
A It could. I think people would be, you know,
looking, you know, that it's Cuyahoga County
specifically. You know, they're thinking, oh, yeah, come down and vote these hours.
Q And I just have a couple more questions. The
OAEO that we talked about, that is a bipartisan
group, correct?
A Correct.
Q Are you aware of any other days and hours
planned put forth in Ohio by a bipartisan group
such as the OAEO?
A No.
Q And we referenced and we talked about your
declaration, which I believe is Exhibit 1. Is
there anything in your declaration that you
feel needs to be changed?
MR. SPIVA: Objection.
You can answer.
A I do not.
Q And is everything in this declaration true?
A Yes, it is to the best of my knowledge.
MS. COONTZ: Thank you. I
have no further questions.
THE WITNESS: Thank you.
MR. SPIVA: Nothing
further for me. I assume -- do you have any
questions?
MR. DOYLE: No questions.
VIDEOGRAPHER: This concludes
the deposition. The time is 12:55. We're
going off the record.
(Deposition concluded at 12:55 p.m.)

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The Ohio Democratic Party, et al.,
Case No. 2:15-cv-1802

Defendants' Written Objections to the
Admissibility of Plaintiffs' Evidence
Exhibit G
THE STATE OF OHIO,    )     SS:
COUNTY OF CUYAHOGA. )

I, Lynn A. Regovich, a Notary Public within
and for the State of Ohio, duly commissioned and
qualified, do hereby certify that PAT MCDONALD, was
first duly sworn to testify the truth, the whole
truth and nothing but the truth in the cause
aforesaid; that the testimony then given by him was
by me reduced to stenotypy in the presence of said
witness, afterwards transcribed on a
computer/printer, and that the foregoing is a true
and correct transcript of the testimony so given by
him as aforesaid.

I do further certify that this deposition was
taken at the time and place in the foregoing
caption specified. I do further certify that I am
not a relative, counsel or attorney of either
party, or otherwise interested in the event of this
action.

IN WITNESS WHEREOF, I have hereunto set my
hand and affixed my seal of office at Cleveland,
Ohio, on this 1st day of November, 2015.

Lynn A. Regovich, Notary Public
within and for the State of Ohio
Commission expires June 14, 2018.

THE STATE OF )    SS:
)    
COUNTY OF )    

Before me, a Notary Public in and for said
state and county, personally appeared the
above-named PAT MCDONALD, who acknowledged that he
did sign the foregoing transcript and that the same
is a true and correct transcript of the testimony
so given.

IN TESTIMONY WHEREOF, I have hereunto
affixed my name and official seal at
this day of
, 2015.

PAT MCDONALD
Notary Public
My Commission expires:
Deposition of Patrick McDonald, taken October 28, 2015

THE STATE OF OHIO,       )
COUNTY OF CUYAHOGA.     )

I, Lynn A. Regovich, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that PAT MCDONALD, was first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by him was by me reduced to stenotypy in the presence of said witness, afterwards transcribed on a computer/printer, and that the foregoing is a true and correct transcript of the testimony so given by him as aforesaid.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified. I do further certify that I am not a relative, counsel or attorney of either party, or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio, on this 1st day of November, 2015.

Lynn A. Regovich, Notary Public

within and for the State of Ohio
Commission expires June 14, 2018.