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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

THE NORTHEAST OHIO COALITION)
FOR THE HOMELESS, et al.,)
Plaintiffs,)

vs.

CASE NO. 2:06-CV-00896

JON HUSTED, in his official)
capacity as Secretary of)
State of Ohio, et al.,)
Defendants.)

TRANSCRIPT OF BENCH TRIAL - VOLUME 12
BEFORE THE HONORABLE ALGENON L. MARBLEY, JUDGE
THURSDAY, MARCH 31, 2016; 8:45 A.M.
COLUMBUS, OHIO

APPEARANCES OF COUNSEL:

FOR THE PLAINTIFFS:

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VOLUME 12

DEFENDANTS' WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS	F. RED.
MATTHEW DAMSCHRODER	--	6	72	86	87

- - - -

1 (In Columbus, Franklin County, Ohio, Thursday, March 31,
2 2016, 8:45 a.m, in open court.)

3 THE COURT: Good morning, everyone.

4 Mr. Damschroder, you may resume the stand. You're still
5 under oath, as you know.

6 THE WITNESS: Yes, sir.

7 THE COURT: Mr. Chandra, please continue.

8 MR. CHANDRA: Good morning, Your Honor. And thank
9 you.

10 Plaintiffs would like to move -- I think I didn't do
11 this yesterday for the admission of Plaintiffs' Exhibit 11,
12 which was the exchange of e-mails shown Mr. Damschroder. And
13 so we'd move for that admission, Your Honor.

14 THE COURT: Any objection, Ms. Richardson?

15 MS. RICHARDSON: We do object, Your Honor.

16 THE COURT: All right. Do we need a side-bar for
17 this?

18 MS. RICHARDSON: If I may.

19 THE COURT: Yes.

20 MS. RICHARDSON: That would be helpful. Thank you,
21 Your Honor.

22 (Thereupon, the following proceeding was held at side-bar.)

23 THE COURT: Ms. Richardson, what have you got?

24 MS. RICHARDSON: Your Honor, we object. This is a
25 series of e-mails that includes hearsay. We certainly don't

1 object --

2 THE COURT: The e-mails are from --

3 MS. RICHARDSON: They are from various organizations.

4 THE COURT: To Mr. Damschroder?

5 MS. RICHARDSON: To Mr. Damschroder. And we don't

6 object, and did not object yesterday, to Mr. Chandra eliciting

7 testimony regarding those conversations and interactions. But

8 the e-mail itself is hearsay. And so we do object to the

9 admission of that e-mail.

10 THE COURT: Okay.

11 Mr. Chandra?

12 MR. CHANDRA: Sir, the document and the statements in

13 it are not being introduced for the truth of the matter

14 asserted. They're being introduced for the impact on Mr.

15 Damschroder and on the State of Ohio's mind with respect to

16 warnings about testing, with respect to warnings about

17 literacy. He's already testified about it and authenticated

18 it. For that reason, we think it's relevant.

19 THE COURT: Let me ask you this. Well, let me ask you

20 or -- either of you can answer this question. Did Mr.

21 Damschroder receive these e-mails in his capacity as the Deputy

22 Assistant to the Secretary of State?

23 MS. RICHARDSON: Yes, Your Honor.

24 THE COURT: Why is this not an 803.6 exhibit? Do all

25 803.6 exhibits have to be created by the declarant, or can they

1 be received in the regular and ordinary course of business?

2 MS. RICHARDSON: It would be our position that they
3 would need to be made by the declarant in order to qualify for
4 that exception.

5 MR. CHANDRA: And I disagree with that, Your Honor. I
6 think, when you're talking about public records and records
7 that are kept in the ordinary course of business
8 communications, these are all fair game. These are -- If we
9 had requested these documents, for example, under Ohio's Public
10 Records Act, they would have to be produced, because they
11 document the business of the entity.

12 THE COURT: Okay. I'm going to overrule your
13 objection. I'm not certain that it's not not hearsay. You'll
14 excuse me. It's still early. But I'm not sure this is being
15 offered for the truth of what the sender said to Mr.
16 Damschroder. It's not being offered for its truth. But Mr.
17 Damschroder testified, I recall -- for instance, in questioning
18 by me, he testified that there are avenues for various boards
19 of elections to contact him to make suggestions and/or
20 complaints. They, you know, then incorporate to try to make
21 voting more efficient and effective. And, you know, for all I
22 know, this could be about that about which he's already
23 testified.

24 I think that Mr. Chandra is right that this could also
25 qualify as a public record because he received them in his

1 capacity as a public official, although we get to the point
2 that you raise. He didn't create these records, but they were
3 sent to him in his capacity as a public official.

4 So I think the records come in on multiple bases. I
5 think it comes, certainly, as a business record. I think it
6 comes in not -- as something other than hearsay because it's
7 not being offered for its truth, and it may even come in as a
8 public record. But I'm going to allow it.

9 MS. RICHARDSON: Thank you, Your Honor.

10 (The following proceedings were had in open court.)

11 - - -

12 MATTHEW DAMSCHRODER,

13 HAVING BEEN PREVIOUSLY DULY SWORN, FURTHER TESTIFIED AS

14 FOLLOWS:

15 CROSS-EXAMINATION

16 (Continued)

17 BY MR. CHANDRA:

18 Q. Mr. Damschroder, good morning again.

19 A. Good morning.

20 Q. And what I'd like to do is continue where we left off
21 and continue to show you demonstrative exhibits, charts, of the
22 various ways in which Boards of Elections around the State are
23 implementing Senate Bills 205 and 216.

24 So, going to the next big issue, will the ballot be
25 counted if the address field on the form or envelope has -- and

1 the first variation is a wrong or missing street number.

2 You'll see that Allen County says yes, Meigs County says yes.

3 And then the counties that say no are Cuyahoga and Franklin.

4 Do you see that?

5 A. I do.

6 MS. RICHARDSON: Objection.

7 MR. CHANDRA: I just want to make sure you can see it.

8 MS. RICHARDSON: Your Honor, we have a continuing
9 objection to the use of this demonstrative.

10 THE COURT: All right. Your continuing objection is
11 noted but overruled.

12 MS. RICHARDSON: Thank you, Your Honor.

13 BY MR. CHANDRA:

14 Q. Are you able to see it?

15 A. I am.

16 Q. Okay. So, you were not here to hear the testimony being
17 referred to, correct?

18 A. That's correct.

19 Q. And you've already testified that you didn't read the
20 depositions of these various counties, correct?

21 A. That's correct.

22 Q. All right. So, I'm asking you to assume that the record
23 reflects what I'm representing to you. Now, based on that
24 assumption, would this also trouble you with respect to
25 uniformity on the application of Senate Bills 205 and 216

1 across Ohio?

2 A. Yes.

3 Q. Okay. Now, the next item is whether there is a wrong or
4 missing street name. And, again, four counties testified.

5 Allen, Butler, Franklin and Meigs, four counties, said yes.

6 Now, Butler said that only with respect to whether it's a wrong
7 street name. And then the counties that said no were Butler if

8 it's a missing street name, Cuyahoga in general, Delaware,

9 Lorain and Summit. Are you able to see that on the screen?

10 A. I am.

11 Q. Now, again, assuming that I have accurately represented
12 the nature of the testimony and evidence in this case, would

13 this concern you, as well, that there is a lack of uniformity

14 across Ohio with respect to the implementation of Senate Bills
15 205 and 216?

16 A. Yes.

17 Q. Similarly, for the next item, a wrong or missing zip
18 code or city, you see a difference between Meigs County, which

19 says, yes, they will count the ballot, and Cuyahoga and

20 Franklin County, that say no. Do you see that?

21 A. I do.

22 Q. Assuming that that is an accurate reflection of the

23 testimony in this case, would that concern you, as well, that

24 voters are being subjected to nonuniform applications of Senate

25 Bills 205 and 216?

1 A. Yes.

2 Q. And with respect to the last item here in the list of
3 will the ballot be counted if the address field on the form or
4 envelope has a wrong handwritten address where the correct
5 address is on a pre-printed label -- do you see that?

6 A. I do.

7 Q. -- Cuyahoga County testified, assume, yes, that ballot
8 will be counted, whereas Franklin and Lorain County
9 representatives from those boards testified no. Would that
10 concern you, as well, as to the uniform application of Senate
11 Bills 205 and 216 across Ohio?

12 A. Yes.

13 Q. Let me ask you this. With respect to this concept,
14 because -- You testified earlier that, with regard to each of
15 the five fields, there are various permutations by which voters
16 could get that wrong, correct?

17 A. Correct.

18 Q. So, with respect to just the demonstrative exhibit I
19 showed you and the four bubbles on it as to different ways a
20 person could mess up the address field, and then the different
21 ways in which boards are responding, wouldn't you agree with me
22 that that kind of nonuniform application was actually
23 predictable at the time that Senate Bill 205 and 216 went into
24 law?

25 MS. RICHARDSON: Objection.

1 THE COURT: Basis?

2 MS. RICHARDSON: Argumentative. Calls for speculation
3 and vague.

4 THE COURT: Well, it certainly doesn't call for
5 speculation. Mr. Damschroder is in the position to answer the
6 question.

7 Do you understand the question, Mr. Damschroder?

8 THE WITNESS: I think so.

9 THE COURT: All right. Your objection is overruled.
10 You may answer.

11 MS. RICHARDSON: Thank you, Your Honor.

12 THE WITNESS: So, I don't know what was in the mind of
13 the General Assembly. I think it definitely points out areas
14 where we, "we" meaning the Secretary of State's Office, can
15 provide better and more instructions to counties. I think some
16 of those things might have been anticipatable, though.

17 BY MR. CHANDRA:

18 Q. Mr. Damschroder, my question was: Was it predictable?

19 MS. RICHARDSON: Objection.

20 THE COURT: Sustained.

21 MS. RICHARDSON: Thank you, Your Honor.

22 BY MR. CHANDRA:

23 Q. All right. So, on the next slide here, the question is:
24 Will the ballot be counted if the date-of-birth field on the
25 form or envelope has -- and now we have various bubbles -- a

1 wrong day and/or month.

2 Meigs County says yes. Lorain County says no. Do you
3 see that?

4 A. I do.

5 Q. Okay. Assuming that's correct, would that cause you
6 concern about uniformity in the application of Senate Bills 205
7 and 216 across Ohio --

8 A. Yes.

9 Q. -- and voters being subjected to different standards?

10 A. Yes.

11 Q. Similarly, a wrong year but correct day and/or birth --
12 I'm sorry. Let me just clarify.

13 I'm sorry. That word should read "month." Let me fix
14 that.

15 Okay. Correcting the demonstrative, a wrong year but
16 correct day and/or month, Franklin County, Lorain County, Meigs
17 County testified yes; Miami County says no. That, too, would
18 cause you concern about different standards being applied
19 non-uniformly to Ohio's voters, correct?

20 A. Yes.

21 Q. And the next variation, a missing date of birth, Meigs
22 County says yes; Butler and Richland Counties say no. That,
23 too, would cause you concern about nonuniform standards being
24 applied to Ohio's voters across the counties, correct?

25 A. Yes.

1 Q. Now, the next item on which counties vary: Can three
2 members of the Board of Elections vote to count a ballot where
3 all the other information is correct and the date-of-birth
4 field has a wrong date of birth?

5 You see Cuyahoga testifies yes. Delaware says yes.
6 Franklin says yes. Lucas says yes. And saying no are Butler,
7 Lorain, Miami, Summit and Warren. Would that cause you concern
8 about nonuniformity in the application of Senate Bill 205 and
9 216 standards to Ohio voters?

10 A. Yes.

11 Q. And with respect to whether three members of the Board
12 can vote to count a ballot where all the other information is
13 correct and the date-of-birth field has a missing date of
14 birth, where Delaware and Franklin County say yes, Cuyahoga and
15 Lorain County say no, that, too, would cause you concern about
16 the nonuniform application of Senate Bill 205 and 216 standards
17 to Ohio voters, correct?

18 A. Correct.

19 Q. Now, this, too, given the number of ways demonstrated on
20 this demonstrative exhibit in which Ohio's voters can get the
21 date-of (sic) field wrong, this, too, would have been, based on
22 your experience on how small changes can result in bad
23 outcomes, this, too, would have been predictable at the time
24 Senate Bill 205 and 216 were passed, correct?

25 MS. RICHARDSON: Objection.

1 THE COURT: Basis?

2 MS. RICHARDSON: Argumentative and vague.

3 THE COURT: Overruled.

4 MS. RICHARDSON: Thank you, Your Honor.

5 THE WITNESS: I think -- Similar to my earlier answer,
6 I think it would -- certainly, those things were anticipatable.
7 And I think my personal view is, in this instance with date of
8 birth with the exceptions, people were trying to anticipate
9 some of those things. But I think we need to do -- there is
10 more room for us to do education for the Boards.

11 BY MR. CHANDRA:

12 Q. Mr. Damschroder, the binder that you now send to Boards
13 of Elections that collects all the information from the
14 directives to provide guidance to Boards is already a few
15 inches thick, correct?

16 A. Correct.

17 Q. And, so, to provide guidance to Boards of Elections in
18 the hope that they would apply that guidance uniformly across
19 Ohio with respect to all the potential variations on all five
20 fields would significantly increase the thickness of that
21 binder, wouldn't it?

22 A. I don't think it would significantly increase it, but
23 there would be a number of things that we could add, yes.

24 Q. Well, wouldn't you have to -- would you agree with me
25 that you'd have to try to anticipate every potential variation

1 by a voter?

2 A. I don't think we'd have to anticipate every fact
3 specific. I think we could give more guidelines for the Boards
4 for them to exercise their role.

5 Q. But you, yourself, testified that Ohio's 88 Boards of
6 Elections, you said on direct, have varying degrees of
7 competence and skill in their ability to administer elections,
8 correct?

9 A. Yes.

10 MS. RICHARDSON: Objection.

11 THE COURT: Overruled.

12 BY MR. CHANDRA:

13 Q. And so you would be burdening those counties that don't
14 have lawyers, that don't have a lot of staff with even more
15 rules about how to deal with every potential variation. Is
16 that fair?

17 MS. RICHARDSON: Objection.

18 THE COURT: Basis?

19 MS. RICHARDSON: Argumentative.

20 THE COURT: Overruled.

21 MS. RICHARDSON: Thank you, Your Honor.

22 THE WITNESS: I don't believe that it would be a
23 burden for us to provide additional instructions to Board of
24 Elections on these subjects.

25 BY MR. CHANDRA:

1 Q. A burden to whom? You or the Boards?

2 A. To the Boards.

3 Q. But you would then have to hope, assuming you did do
4 that, that they're able to follow that guidance, correct?

5 A. That would be our expectation, yes.

6 Q. And, yet, if the testimony that I've presented you in
7 the demonstrative exhibits is correct, the Boards are already
8 demonstrating that they can't follow the guidance they have
9 now, correct?

10 MS. RICHARDSON: Objection.

11 THE COURT: Overruled.

12 MS. RICHARDSON: Thank you, Your Honor.

13 THE WITNESS: Based on what you've told me, that
14 appears to be the case.

15 BY MR. CHANDRA:

16 Q. All right. Let me show you the next slide. Will the
17 ballot be counted if the identification field on the form or
18 envelope has a wrong ID?

19 Yes say Allen and Meigs Counties. No say Butler,
20 Franklin and Miami Counties.

21 If the identification field has a missing ID?

22 Yes say Meigs County -- says Meigs County. No say
23 Cuyahoga and Franklin Counties.

24 If there are two forms of ID, one that is correct and
25 one that is wrong?

1 Actually, let me just stop on the first two.

2 So, based on those first two bubbles and variations, the
3 wrong ID and a missing ID and the different application by
4 Ohio's Boards of Elections, would you agree with me that that's
5 yet another dimension upon which Ohio's voters are being
6 subjected to nonuniform standards across the counties?

7 MS. RICHARDSON: Objection.

8 THE COURT: Overruled.

9 MS. RICHARDSON: Your Honor, may we have a side-bar?

10 THE COURT: Yes.

11 MS. RICHARDSON: Thank you, Your Honor.

12 (Thereupon, the following proceeding was held at side-bar.)

13 THE COURT: Go ahead, Ms. Richardson.

14 MS. RICHARDSON: Your Honor, I understand that the
15 Court has overruled our objection to this demonstrative.

16 THE COURT: Yes.

17 MS. RICHARDSON: But I think at this point in time,
18 essentially, this demonstrative contains, from our standpoint,
19 a number of inaccurate characterizations of the testimony that
20 have been provided.

21 THE COURT: Okay.

22 MS. RICHARDSON: This is, essentially, the plaintiffs'
23 closing argument, where they try to characterize the evidence
24 that's been presented in this case in their view.

25 THE COURT: Ms. Richardson, you remember that all

1 probative evidence is prejudicial? You know that, right?

2 All -- It's prejudicial to somebody, but that doesn't mean that
3 it's not relevant, nor is it inadmissible. The test is whether
4 it's more probative -- whether its probative value outweighs,
5 you know, its evidentiary significance.

6 Now, this is your main witness. He's the representative
7 of the Secretary of State. We don't have anybody from the
8 Legislature. He's the representative from the Secretary of
9 State's Office, and he is the chief elections officer. That's
10 who the Secretary is. If he's his -- Mr. Damschroder is the
11 Secretary's election deputy serving the chief elections
12 officer. And this case is about voting.

13 Now, I would expect his questions to be uncomfortable to
14 you. And, you know, you can make a continuing objection. But
15 I want you, also, as I've tried mightily to tell everybody, but
16 it's falling on deaf ears, that I am not a jury. I'm a fact
17 finder. So you have the advantage of having a judge who can
18 kind of weed out stuff that's fluff. And, you know, you both
19 contain more than a bit of fluff in a lot of your questions,
20 particularly when it was going to, you know, to lead the
21 witness for the other side. And that's just how trials work,
22 often.

23 So, you know, Mr. Chandra's questions may not have the
24 evidentiary value that he places on them; but he's entitled to
25 ask the very difficult questions of your witness. And they

1 should be difficult questions, because anytime that you are
2 enacting a measure that impacts upon fundamental rights, it
3 shouldn't be easy.

4 And so I'm going to let him find -- get to the heart of
5 this as he sees it so that he can write his brief, just like
6 you will write your briefs. And, you know, the State was
7 equally diligent and dogged, appropriately so, with all of
8 the -- with all of the plaintiffs' witnesses, especially the
9 key ones, like the experts.

10 So, if you want to make a continuing objection to any
11 and all questions so that we can get through this examination,
12 you may; but I'm going to give counsel considerable leeway in
13 terms of what is argumentative and what is not because
14 it's -- you know, he's your main witness.

15 And, so, we are going to have to conclude this case. I
16 know that that view is not, necessarily, universally shared.
17 But we have to -- we're going to conclude this case.

18 You're going to institute a continuing objection. And
19 Mr. Chandra is going to finish his cross-examination.

20 MS. RICHARDSON: Thank you, Your Honor.

21 (The following proceedings were had in open court.)

22 THE COURT: Mr. Chandra, please continue.

23 MR. CHANDRA: Thank you, Your Honor.

24 Could you please read back the last question? And I'd
25 like to append to it "assuming that variations among counties

1 are true."

2 (The last question was read back by the court reporter.)

3 THE WITNESS: Assuming that there are variations among
4 the counties, yes.

5 BY MR. CHANDRA:

6 Q. Now, let's turn to the issue of the two forms of ID, one
7 that is correct and one that is wrong. And that relates to the
8 situation where somebody puts down two forms of ID on the form;
9 one of those matches, but one of them does not.

10 Yes say Delaware and Meigs County. No says Cuyahoga
11 County.

12 Would you agree, too, that that, if that is accurate, is
13 a situation in which Ohio's voters are being subjected to
14 different standards in the application of Senate Bills 205 and
15 216?

16 A. Yes.

17 Q. And what is your own view as to whether, under those
18 circumstances where a voter has provided correct information,
19 it's just that one piece of information is incorrect in the ID
20 field, should that voter be disenfranchised of their ballot?

21 A. No.

22 Q. Okay. So, in your own view, Cuyahoga County is getting
23 it wrong by disenfranchising voters under those circumstances?

24 A. Based on my understanding of this demonstrative, like --
25 if, for instance, the person puts the correct last four of

1 their social but an incorrect driver's license, my view would
2 be that the voter has satisfied the identification requirement
3 by having a correct form of ID.

4 Q. Okay. But would you agree that, at this moment -- Well,
5 let me withdraw that.

6 Would you agree that, with respect to the 2014 and 2015
7 and primary 2016 elections, that Cuyahoga County and their
8 Board of Elections had no way of knowing that?

9 A. Had no way of knowing --

10 Q. What your view is.

11 A. That's correct.

12 Q. And it's not provided in the statute, that information,
13 correct?

14 A. That -- That specific example is not provided in the
15 statute, correct.

16 Q. Correct. And that's because the statute does not spell
17 out all of the different variations that could occur under the
18 five fields, correct?

19 A. That's correct.

20 Q. Both Senate Bills 205 and 216 when I say "the statute,"
21 correct?

22 A. Correct.

23 Q. All right. Would you agree that it would not burden the
24 Boards of Elections if the Secretary of State made it mandatory
25 that Boards accept a ballot by a vote of three if they could

1 determine that all of the other information that a voter -- you
2 know what? Let me withdraw this. Let me just withdraw it, and
3 we'll come back to that issue.

4 All right. The next item on the bubble is: Will the
5 ballot be counted if the identification field on the form or
6 envelope has an ID that cannot be matched because it is not in
7 the database?

8 Yes say Butler, Cuyahoga, Lorain and Warren Counties.
9 No says Lucas County.

10 Now, if that's true, where there's any kind of variation
11 among the counties, would you agree that that, too, is a
12 dimension on which Ohio's voters would be subjected to
13 different standards in the application of Senate Bills 205 and
14 216?

15 A. Yes.

16 Q. Now, what's your own view about whether an ID that can't
17 be matched, an ID that's provided on the form but it can't be
18 matched because it's not already entered by government workers
19 into the database, should that voter be stripped of their right
20 to franchise with that ballot?

21 A. The voter's ballot should be counted.

22 Q. But the counties at issue have no way of knowing that
23 from Senate Bills 205 and 216, correct?

24 A. Correct.

25 Q. And they certainly haven't received a directive from the

1 Secretary of State telling them what to do on that particular
2 variation of all the combinations that could occur under Senate
3 Bills 205 and 216 in the five fields, correct?

4 A. Correct.

5 Q. Okay. Forgive me. I'm going to wind up jumping around
6 a little bit, because I'm waiting for a question from my
7 co-counsel. But, so, assuming that differences among the
8 counties exist with respect to how to apply particular errors
9 and omissions on the five fields exist, would you agree, in
10 general, then, that voters filling out the same -- the forms
11 the same way are being treated differently by different
12 counties regarding whether their votes will be counted --

13 A. Yes.

14 Q. -- and that, as a result, these voters are being put
15 into a situation, with respect to the five fields, that is, for
16 all practical purposes, standardless?

17 MS. RICHARDSON: Objection.

18 THE COURT: Mr. Damschroder, do you understand the
19 question?

20 THE WITNESS: I think so.

21 THE COURT: What is the basis for your objection, Ms.
22 Richardson?

23 MS. RICHARDSON: It's vague. It calls for a legal
24 conclusion.

25 THE COURT: I agree that it calls for a legal

1 conclusion. I'm going to sustain your objection. I don't know
2 that it's as vague as it is improper.

3 MS. RICHARDSON: Thank you, Your Honor.

4 THE COURT: So your objection is sustained.

5 MS. RICHARDSON: Thank you.

6 BY MR. CHANDRA:

7 Q. I'll ask a different question.

8 Would you agree, then, that these voters are being
9 subjected to different standards in the application of Senate
10 Bills 205 and 216?

11 A. Yes.

12 Q. All right. All right. I'm going to move to a different
13 subject.

14 You and I, yesterday, touched upon the issue of literacy
15 a little bit. You would agree that one needs to be able to
16 read and write to fill out the absentee and provisional ballot
17 forms with the five fields, correct? I believe that was your
18 testimony yesterday.

19 A. I think my testimony was that's correct, with the
20 exception that the person can ask for assistance.

21 Q. Okay. And that would also be true in terms of filling
22 out the 11-S form?

23 A. Correct.

24 Q. And the 11-S form is mailed to the voter. And so they
25 wouldn't necessarily be in a position of asking for assistance

1 in filling out that form at home, correct, from the Board of
2 Elections?

3 A. Well, they could contact the Board of Elections, and the
4 Board could provide that assistance in person.

5 Q. I understand your point. But what I'm saying is, if the
6 person can't read or write, they may not even know what the
7 11-S form is asking of them, correct?

8 MS. RICHARDSON: Objection. Calls for speculation.

9 THE COURT: Sustained.

10 Rephrase your question, Mr. Chandra.

11 BY MR. CHANDRA:

12 Q. Would you agree that a person needs to be able to read
13 and write to be able to read the 11-S form? Or -- Let me
14 withdraw that.

15 Would you agree that a person needs to be able to read
16 to read the 11-S form?

17 A. Yes.

18 Q. And would you agree that a person who is not able to
19 read the 11-S form is not going to know what it is asking of
20 them?

21 A. Correct, not without asking for assistance.

22 Q. A person who is not able to read may not even know who
23 sent them the 11-S form, correct?

24 MS. RICHARDSON: Objection. Calls for speculation.

25 THE COURT: It does call for speculation. I'm not

1 even sure why that's relevant, why it's relevant that a
2 perspective voter needs to know who sent them the 11-S form.

3 MR. CHANDRA: Your Honor, that it's coming from the
4 Board of Elections and asking for information is what I'm
5 getting at.

6 THE COURT: Okay. I tell you what, since you have
7 this witness on cross-examination, why don't you just ask him
8 that?

9 MR. CHANDRA: Thank you, sir.

10 BY MR. CHANDRA:

11 Q. So would you agree with me that a voter who can't read
12 and receives the 11-S form is not necessarily going to know
13 that the Board of Elections sent it to them, asking for
14 information?

15 MS. RICHARDSON: Objection.

16 THE COURT: Overruled.

17 You may answer.

18 THE WITNESS: Correct.

19 BY MR. CHANDRA:

20 Q. And that, for a functionally illiterate person, the 11-S
21 form would then compound any problem associated with that
22 person's lack of literacy in filling out the ballot form to
23 begin with?

24 A. I don't know that it would compound the problem, because
25 it's actually -- the 11-S is actually designed to help cure a

1 defect -- a missing information or defect. But the same -- the
2 same challenge would exist for that voter for the 11-S as for
3 filling out the identification envelope as for making the
4 application.

5 Q. Okay. Whether it would compound the problem or not, for
6 a functionally illiterate person, the 11-S form, if the person
7 can't read it, doesn't solve the problem, does it?

8 A. That's correct.

9 MS. RICHARDSON: Objection.

10 THE COURT: Overruled.

11 MS. RICHARDSON: Thank you, Your Honor.

12 BY MR. CHANDRA:

13 Q. You testified earlier with regard to poll-worker
14 assistance and, I believe, just now, as well, that if one
15 cannot fill out the form, one has to ask for help. Correct?

16 A. That's correct.

17 Q. Now, in your experience as an elections administrator
18 for the Franklin County Board of Elections, would you
19 acknowledge that there are some people who cannot read or write
20 who might be too embarrassed to ask for help?

21 MS. RICHARDSON: Objection.

22 THE COURT: Overruled.

23 THE WITNESS: I don't know that for certain, but I
24 believe that could be a circumstance.

25 MR. CHANDRA: So, I'm going to show you what's been

1 marked as Plaintiffs' Exhibit 3977. And my understanding is
2 that there is no objection to the use of this exhibit. So I'd
3 request that it be admitted, Your Honor.

4 MS. RICHARDSON: That's correct, Your Honor, no
5 objection.

6 THE COURT: All right. Exhibit P3977 will be
7 received.

8 BY MR. CHANDRA:

9 Q. Sir, what is this document that's entitled "Voting
10 Rights Information," with a number of numbered points on it?

11 A. I think -- I believe it's a form that's proscribed by
12 our office that Boards of Elections can post at polling places
13 that lists the voter's rights.

14 Q. Okay. So, how is a voter who can't read supposed to
15 read Item 10 that informs the voter that, if they need
16 assistance in voting due to blindness or inability to read or
17 write -- how is a voter who can't read supposed to read that?

18 A. They would have to ask for assistance to read that about
19 the opportunity to ask for assistance.

20 Q. Okay. So, is it your understanding -- You testified on
21 direct about the benefits of Senate Bills 205 and 216, to your
22 understanding, correct?

23 A. Correct.

24 Q. Is it your understanding that the reason for the
25 provision barring poll-workers from filling out these ballot

1 forms under Senate Bills 205 and 216, or helping unless they
2 are asked for specified reasons, stems from a desire -- excuse
3 me -- is a response to this Court's decisions regarding
4 poll-worker error?

5 MS. RICHARDSON: Objection.

6 THE COURT: Ms. Errett, read that question back,
7 please. I want everybody to listen to it.

8 (The last question was read back by the court reporter.)

9 THE COURT: I'm going to sustain the objection because
10 I'm not -- you are asking Mr. Damschroder to tell the Court, as
11 a fact finder, what the motivating reasons, or what one of the
12 motivating reasons for Senate Bill 205 and 216 was. Mr.
13 Damschroder has testified that he didn't enact 205 or 216,
14 didn't request the enactment of 205 or 216. There is no
15 testimony that Mr. Damschroder has given that would lead the
16 Court to believe that he has any idea as to why the Legislature
17 enacted these -- why the Senate enacted these two measures.

18 So, without some foundation that he would know the
19 answer to that, I think that's an unfair question to him. So,
20 I'm going to sustain the objection.

21 MR. CHANDRA: Okay.

22 MS. RICHARDSON: Thank you, Your Honor.

23 THE COURT: Yes.

24 BY MR. CHANDRA:

25 Q. Mr. Damschroder, have you gained, or do you have any

1 understanding, for the reasoning behind the provisions in
2 Senate Bills 205 and 216 that would bar poll-workers from
3 filling out the ballot forms, or helping, unless they are asked
4 for specified reasons?

5 A. Again, I don't know what the General Assembly's intent
6 was.

7 Q. I understand.

8 A. My view, as an elections administrator, is that there
9 can be -- there can be a benefit in having the voter fill it
10 out, because the voter is the person who, you know, has the
11 firsthand knowledge of the voter's information; and by having
12 someone else fill it out, it then runs the risk that that
13 person who is filling it out on behalf of the voter makes a
14 mistake. So that's my view, as an elections administrator, of
15 what the potential elections administration benefit is. I
16 don't know what the General Assembly intended with it.

17 Q. Fair enough. And one of the so-called benefits,
18 following up on what you just said, would be that this would
19 avoid accusations of poll-worker error that led to
20 disenfranchisement by removing poll-worker assistance?

21 MS. RICHARDSON: Objection. Mischaracterizes the
22 testimony.

23 THE COURT: Overruled.

24 MS. RICHARDSON: Thank you, Your Honor.

25 THE WITNESS: If -- If the voter -- If the poll-worker

1 made a mistake in filling it out, that would be poll-worker
2 error. And, so, I think the answer is yes.

3 BY MR. CHANDRA:

4 Q. Okay. From your experience in government -- You
5 testified to considerable experience in government -- are you
6 aware of any other government workers who are barred from
7 helping people unless they specifically request assistance in
8 filling out forms?

9 A. I'm not aware of that.

10 Q. Back to Plaintiffs' Exhibit 3977, which was the Voting
11 Rights Information document, do you know whether this poster
12 has been tested by a literacy expert?

13 A. Not to my knowledge.

14 Q. Yesterday, when I showed you the e-mail exchange
15 concerning -- with Ms. Rosenfield, of the League of Women's
16 Voters, and Ms. Chisnell, the form expert -- I can show it to
17 you again, if you need to; but do you recall whether
18 Ms. Chisnell also suggested that you have the form tested for
19 literacy that you were preparing?

20 A. I don't remember, specifically, if she suggested it or
21 if she offered the name of a person if we wanted to do that.

22 Q. Okay. But, if so, you didn't pursue that suggestion,
23 either, correct?

24 A. We did not test the form with illiteracy -- from a
25 literacy standpoint, correct.

1 Q. Okay. In retrospect, do you wish you had?

2 A. I don't intend this answer to sound flip, and so I
3 apologize if it does, in advance; but, I mean, yes from the
4 standpoint of it would not have been an issue in this case
5 right now.

6 Q. So you only -- If I understand your answer, you only
7 regret it as a way of having avoided litigation?

8 MS. RICHARDSON: Objection. Mischaracterizes
9 testimony.

10 THE COURT: Overruled.

11 THE WITNESS: Yes.

12 BY MR. CHANDRA:

13 Q. You have no regret with respect to the impact on voters
14 of not testing your form for literacy?

15 A. To my knowledge, there has not been a negative impact as
16 a result of the form.

17 Q. And, so, I'm going to -- Do you remember you gave a
18 deposition on February 25th, 2016, in this case?

19 A. I don't remember the specific date, but I remember
20 giving a deposition, yes.

21 Q. And you were asked a question by Ms. Gentry. I'm going
22 to just show you the relevant portion, Line 25.

23 "Why didn't you do a test?"

24 And your answer was? Could you read it into the record,
25 please?

1 A. Sure. Line 25, the question: "Why didn't you do a
2 test?"

3 Next page is Line 1. "That's a good question. Probably
4 in retrospect, I wish we would have, if for no other reason,
5 that I could have answered the question as, yes, we did."

6 Q. Okay. So, with that --

7 MS. RICHARDSON: Your Honor --

8 THE COURT: Yes.

9 MS. RICHARDSON: Your Honor, I would object to the use
10 of the transcript. I don't believe that's inconsistent with
11 the testimony that's been provided today.

12 THE COURT: Overruled.

13 MS. RICHARDSON: Thank you, Your Honor.

14 BY MR. CHANDRA:

15 Q. And with respect to that answer, then, were you, then,
16 also simply emphasizing that you wish you could have answered
17 the question, in the context of litigation, that you had run
18 the test?

19 A. I think that's what I've said, yes.

20 Q. Well, if the test had shown that there was a problem
21 with functionally illiterate voters filling out the five
22 fields, would that have caused you to do anything differently
23 with that form?

24 A. Yes.

25 Q. What would it have caused you to do differently?

1 A. So, if we had done a test and the recommendations had
2 come back that some things could be changed, enhanced, that
3 were consistent with the law, then we would have looked at
4 implementing those.

5 THE COURT: Excuse me one second.

6 MR. CHANDRA: No problem.

7 (Whereupon, there was a brief interruption.)

8 THE COURT: Mr. Chandra, thank you very much. Please
9 continue.

10 BY MR. CHANDRA:

11 Q. But, regardless of what a literacy expert would have
12 told you, based on your answer about having to still be
13 consistent with the law, you still would have been obligated,
14 in your view, to create a form that requires a person to fill
15 out the five fields, correct?

16 A. Correct.

17 Q. And they would be obligated to fill out the five fields,
18 regardless of whether or not they are functionally illiterate,
19 if they don't ask for help, correct?

20 A. Correct.

21 Q. And they would be obligated to fill out the five fields,
22 regardless of whether they're functionally illiterate, if they
23 don't ask for help and the information contained within the
24 five fields is not necessary to a particular Board of Elections
25 to establish the identity of that voter, correct?

1 A. I believe that's correct. I think I lost you partway,
2 but I believe that's correct.

3 Q. Let's just make sure.

4 THE COURT: Mr. Damschroder --

5 THE WITNESS: Yes, sir.

6 THE COURT: -- I will have the court reporter read the
7 question back. I don't want you to be lost.

8 THE WITNESS: I appreciate it. Thank you, sir.

9 THE COURT: Thank you, Denise.

10 (The last question was read back by the court reporter.)

11 MS. RICHARDSON: Objection.

12 THE COURT: On what basis, Ms. Richardson?

13 MS. RICHARDSON: It's compound, Your Honor.

14 THE COURT: I'm not certain that it's compound. But I
15 am certain that it's confusing to the Court.

16 Mr. Damschroder, if you understand -- do you understand
17 the question?

18 THE WITNESS: I do.

19 THE COURT: All right. You may answer it.

20 THE WITNESS: The answer is yes.

21 MR. CHANDRA: Thank you.

22 BY MR. CHANDRA:

23 Q. I'm glad we, at least, understand each other. I don't
24 know if it helps if the Court doesn't understand it, though.

25 So, as Franklin County's Director, you know that

1 Franklin County has the second largest Somali population of any
2 urban county in the country, correct?

3 A. Yes.

4 Q. And you know, from your experience as Franklin County's
5 Director of the Board of Elections, that that Somali population
6 has limited literacy, correct?

7 MS. RICHARDSON: Objection.

8 THE COURT: I'm going to allow him to answer the
9 question because it may be within -- it may have been within
10 his wheelhouse as the Director of the Franklin County -- as the
11 Chair of the Franklin County Board -- I'm sorry -- as the
12 Director of the Franklin County Board of Elections.

13 You may answer it, Mr. Damschroder.

14 THE WITNESS: Yes, sir.

15 My understanding is that, yes, with the Somali community
16 here in Franklin County, there is limited English proficiency.
17 And, to that end, while I was there, we hired Somali Americans
18 to come and work at the Board and to provide language
19 assistance.

20 THE COURT: Just for clarity of the record, Mr.
21 Chandra, and I think that -- I want to make sure that I
22 understood your question.

23 You meant there was a challenge with respect to literacy
24 because English is that population's second language?

25 MR. CHANDRA: Actually, I was speaking to literacy

1 generally. And it could be broken into pieces: In part,
2 because of English proficiency and, in part, literacy
3 generally. So I could break it into multiple questions, Your
4 Honor.

5 THE COURT: That's where the -- That's where the
6 confusion adheres, because I'm certain that the Somali
7 community is literate in their native tongue.

8 MR. CHANDRA: Well, so, this is what my questioning
9 was going to.

10 THE COURT: Do you believe that they're illiterate in
11 their native tongue?

12 MR. CHANDRA: So, it is my understanding -- and,
13 again, I could be wrong, but I have a good faith belief that
14 there is an issue both with respect to literacy in terms of
15 reading and writing --

16 THE COURT: Yes.

17 MR. CHANDRA: -- in their native tongue, in addition
18 to issues of literacy with regard to English proficiency, Your
19 Honor.

20 THE COURT: Okay.

21 MR. CHANDRA: That's my belief.

22 THE COURT: I understand. All right.

23 Ms. Richardson?

24 MS. RICHARDSON: I do object, Your Honor.

25 THE COURT: I mean, I don't think that there is a

1 basis for an objection. It's almost like saying I think that
2 English speakers can't be illiterate in English. There are
3 English speakers who may not be -- may not meet some educator's
4 definition of literate even though that person can speak
5 English.

6 So, I understand his question. But I wanted to make
7 sure that his question was not grounded in -- this is the
8 Somali second -- English would be a second language to most
9 Somalis; hence, they're illiterate in that language. But
10 that's not what he meant. He clarified what he meant. Mr.
11 Damschroder understood it. So your objection is noted, but
12 overruled.

13 Mr. Chandra, you may be continue.

14 MS. RICHARDSON: Thank you, Your Honor.

15 BY MR. CHANDRA:

16 Q. Okay. All right. I'd like to just jump back to a
17 date-of-birth question for you.

18 MR. CHANDRA: If I could have a moment, Your Honor.

19 BY MR. CHANDRA:

20 Q. Now, your office has issued a directive, Mr.
21 Damschroder, that allows Boards, by a vote of three, to accept
22 ballots with a date-of-birth mismatch if the Board can verify
23 the voter's identity based on the other information provided,
24 correct?

25 A. Correct.

1 Q. And it would not burden the Boards, would it, if the
2 Secretary of State's Office made it mandatory that Boards
3 accept a ballot with a date-of-birth mismatch or omission where
4 the voter has correctly completed the other four fields and the
5 Board can verify the voter's identity by all other information
6 on the form, correct?

7 A. Partially correct. So, for -- Our office's view of the
8 law is, when the date of birth is omitted, that then the Board
9 cannot, by a vote of three, use the other fields to determine
10 the sufficiency of the form; but, if something is provided and
11 it's incorrect, does not match, then the Board can do the vote
12 by three to determine the sufficiency of the submission.

13 Q. Okay. Respectfully, sir, that wasn't my question,
14 though.

15 A. Okay.

16 Q. My question was -- I'm going to ask the question be read
17 back to you.

18 THE COURT: Thank you, Ms. Errett.

19 (The last question was read back by the court reporter.)

20 THE WITNESS: Correct.

21 BY MR. CHANDRA:

22 Q. All right. So, I believe you have testified

23 -- Withdrawn.

24 You do not keep track of the questions you receive from
25 Boards of Elections about how they handle particular -- how

1 they should handle particular provisional ballot forms,
2 correct?

3 A. I think that's correct, yes.

4 Q. And the same would be true with respect to absentee
5 ballot forms?

6 A. Correct.

7 Q. And you, also, haven't checked to ensure that bipartisan
8 teams are actually reviewing each provisional ballot, correct
9 --

10 A. That's correct.

11 Q. -- at the Boards of Elections, correct?

12 A. That's correct.

13 Q. You have, also, not issued any uniform policy whether
14 there should be a second layer of review to ensure that Board
15 staffs do not commit errors with respect to their review of
16 provisional ballot affirmation forms and the forms that
17 accompany absentee ballots, correct?

18 A. I think that's correct. In terms of a second physical
19 review, we have, I think, proscribed steps that the Board needs
20 to take to search the statewide voter registration database.
21 But we have not proscribed a second -- a review by a second
22 person.

23 Q. But you testified earlier that a county, a large county
24 like Franklin County or Cuyahoga County, could be reviewing
25 tens of thousands of provisional ballot affirmation forms,

1 correct?

2 A. That's correct.

3 Q. And, so, would it be fair to say, without a uniform
4 policy of a second layer of review, that any human error by
5 Board of Elections workers with respect to their review of the
6 five fields and the decisions they make -- okay? -- would then
7 not be subjected to a second layer of review to catch those
8 errors on individual ballots?

9 A. That's correct.

10 Q. And that would be true with respect to all the potential
11 permutations of errors that voters could make with respect to
12 each of the five fields, correct?

13 A. That's correct.

14 Q. Now, please correct me if I'm wrong. But it's my
15 understanding that the Revised Code provides that a Board of
16 Elections shall not examine the provisional ballot affirmation
17 of a voter who still has to come -- still has to provide
18 information to the Board until the eleventh day after the
19 election; is that correct? Let me withdraw that --

20 A. I'm sorry.

21 Q. -- and rephrase it in a grammatically correct manner.

22 It's my understanding that, under the Revised Code, a
23 Board of Elections shall not examine until the eleventh day
24 after the election, or later, the provisional ballot
25 affirmation form of a voter who is still required to provide

1 information to the Board?

2 A. I believe that's correct.

3 Q. And, so, given the fact that the Board can't even start
4 that review with respect to those provisional ballots until the
5 eleventh day, you would agree with me that there really is no
6 rational reason to deny provisional ballot voters Days 8, 9 and
7 10 to correct any errors or omissions on their provisional
8 ballot affirmation form?

9 A. I think it gives -- it does give the Board a window from
10 when the staff is, you know, finishing its -- you know, putting
11 the processing before the Board and to get everything ready for
12 the Board to actually vote, the earliest being the eleventh
13 day. So I think that -- I think that is a rational reason.

14 Q. How much more additional work is it for a Board to
15 accommodate voters on Days 8, 9 and 10 to correct information
16 necessary for them to secure their right to franchise?

17 A. I don't know that I can quantify that.

18 Q. Now, would you agree that it's not fair that absentee
19 voters get notice regarding a problem with their absentee
20 ballot form but provisional voters do not?

21 A. I believe that it is fair.

22 Q. So you believe that it is fair to deny any notice to
23 provisional ballot voters that there is a deficiency on the
24 five fields?

25 A. So, I would say that the provisional voter receives a

1 notice, at the time they cast a provisional, letting them know
2 that if they do not provide identification at the time of
3 casting the provisional, that they can provide that after the
4 election.

5 Q. Mr. Damschroder, that wasn't my question. Do you need
6 to hear the question back?

7 A. Yes, please.

8 MR. CHANDRA: I would ask that it be read.

9 THE COURT: Thank you, Ms. Errett.

10 (The last question was read back by the court reporter.)

11 THE WITNESS: Yes.

12 BY MR. CHANDRA:

13 Q. And you continue to believe that it is fair to provide a
14 provisional ballot voter with no notice of an error or omission
15 on the provisional ballot affirmation form despite the fact
16 that you have acknowledged that there is a large number of
17 potential errors or omissions based on the five fields that
18 that voter could make?

19 A. Yes.

20 Q. Well, doesn't that amount to treating provisional voters
21 as second-class citizens with respect to their right to
22 franchise relative to absentee ballot voters?

23 MS. RICHARDSON: Objection.

24 THE COURT: Overruled.

25 THE WITNESS: No, I don't believe so.

1 BY MR. CHANDRA:

2 Q. Okay. Turning to a different topic, is it your
3 understanding that your boss, the elected Secretary of State,
4 Secretary Husted, was the Speaker of the Ohio House in 2006?

5 A. Yes.

6 Q. Now, you testified on direct that you pay attention to
7 media reports of potential problems that occur in elections in
8 Ohio and that you then try to investigate and address potential
9 problems as a result of reading those media reports. Do you
10 recall that?

11 A. Yes.

12 Q. And you read, in particular, being a Franklin County
13 resident -- You are a Franklin County resident, correct?

14 A. I am.

15 Q. Okay. I didn't want to assume anything. I know some
16 people commute. You read the *Columbus Dispatch*?

17 A. I do.

18 Q. In 2012, you became aware, while you were working for
19 the Ohio Secretary of State, of a *Columbus Dispatch* report that
20 Doug Preisse, P-r-e-i-s-s-e, a member of the Franklin County
21 Board of Elections, had allegedly sent an e-mail to a reporter
22 stating, "I really actually feel we shouldn't contort the
23 voting process to accommodate the urban -- read
24 African-American -- voter turnout machine." Correct?

25 MS. RICHARDSON: Objection.

1 THE COURT: Basis?

2 MS. RICHARDSON: Hearsay.

3 THE COURT: I don't think it's being offered for its
4 truth. You're just asking him if he became aware of this
5 statement. So the objection is noted but overruled.

6 You may answer, Mr. Damschroder, if you know.

7 THE WITNESS: Yes.

8 BY MR. CHANDRA:

9 Q. And when you heard about this, surely, you then, as a
10 top elections official for the Ohio Secretary of State,
11 investigated potential racial bias by a Republican Board of
12 Elections member in a county where more than one in five
13 residents are African Americans, correct?

14 A. We did not.

15 Q. In the *Obama for America* case, a federal court found
16 that it was improper for the Secretary of State to cut back
17 early voting hours, correct?

18 MS. RICHARDSON: Objection.

19 BY MR. CHANDRA:

20 Q. Is that your understanding?

21 THE COURT: Sustained. Rephrase.

22 MS. RICHARDSON: Thank you.

23 THE COURT: Rephrase, Mr. Chandra.

24 MR. CHANDRA: Okay.

25 BY MR. CHANDRA:

1 Q. Mr. Damschroder, do you have familiarity, generally,
2 with the *Obama for America* case that was filed against the
3 Secretary of State in -- I believe it was 2012?

4 A. Yes.

5 Q. And you were working for the Secretary of State at the
6 time, correct?

7 A. Correct.

8 Q. And you were aware that the issue in that case was
9 whether or not it was proper to cut back early voting hours?

10 MS. RICHARDSON: Objection.

11 THE COURT: He was -- It's overruled. He's simply
12 asking him if he was aware of that.

13 MS. RICHARDSON: Your Honor, may I --

14 THE COURT: No.

15 MS. RICHARDSON: Okay. Thank you.

16 THE COURT: You're overruled.

17 You may answer, Mr. Damschroder, if you know.

18 THE WITNESS: Yes, as it related to a law that had
19 been passed.

20 BY MR. CHANDRA:

21 Q. Okay. And the issue was whether or not the -- or one of
22 the issues was whether or not early voting would be available
23 to Ohio's voters, as it had been in 2008's Presidential
24 election, during the last three days of the election, before
25 the -- before Election Day, correct?

1 A. Yes.

2 Q. And in that case was it your understanding that the
3 Court held that -- held for the plaintiffs in that case?

4 A. I think that's right.

5 Q. Okay. And, in 2012, did the Secretary of State and that
6 office have any involvement in cutting back early voting hours
7 for 2012 in the Presidential election?

8 A. As I had mentioned before, the General Assembly had
9 passed a law that ended in-person absentee voting the Friday
10 before the election. So our office instructed the Board to
11 enforce that rule.

12 Q. Was your office engaged with the General Assembly in
13 advocating for that legislation?

14 A. My recollection is that we were on that because it was a
15 military voting bill.

16 Q. And before being involved in cutting back early voting
17 hours in the 2012 Presidential election, the Secretary of
18 State's Office knew at that point that African-American voters,
19 in particular, in Cuyahoga County, in the 2008 Presidential
20 General Election, disproportionately used early voting,
21 correct?

22 MS. RICHARDSON: Objection.

23 THE COURT: Overruled.

24 THE WITNESS: I -- I believe that, yes, we knew that,
25 in larger counties with larger African-American population,

1 there was a larger percentage of in-person absentee ballots
2 that were cast by African Americans.

3 BY MR. CHANDRA:

4 Q. And, in fact, in 2008, you were Franklin County's
5 Director at that time, right?

6 A. In the 2008 General Election, I was the Deputy Director,
7 but I was at Franklin County.

8 Q. Okay. Fair enough. Thank you. And you, personally,
9 saw mostly African-American voters using early in-person
10 voting, correct?

11 A. Yes.

12 Q. And that was especially true on Sundays, correct?

13 MS. RICHARDSON: Objection.

14 THE COURT: Overruled.

15 THE WITNESS: Yes.

16 BY MR. CHANDRA:

17 Q. Now, are you familiar with Professor Norm Robbins and
18 Professor Mark Salling?

19 A. Yes, I'm familiar with them.

20 Q. Are you familiar with studies that they have performed
21 regarding use of early in-person voting in 2008 and 2012 by
22 race?

23 A. I don't -- I don't -- I don't recall, specifically.

24 Q. All right. Again, going back to the issue of news
25 reports to which you pay attention, did you become aware from

1 news reports, or in any other way, in the runup to the November
2 2012 election, Presidential election, about an incident where a
3 billboard stating that voter fraud is a felony and stating the
4 penalties for it had been placed in a predominantly
5 African-American community in the heart of the City of
6 Cleveland?

7 A. I remember hearing about that, yes.

8 Q. And was that through media reports?

9 A. I believe so.

10 Q. And you would admit, would you not, that your office did
11 nothing to investigate the potential impact of that billboard
12 on potential voters, did you?

13 A. That's correct.

14 Q. You didn't investigate whether that was a potential
15 effort at intimidating African-American voters to not vote,
16 correct?

17 A. We did not investigate it, that's correct.

18 Q. Nor did your office, or the Secretary of State, himself,
19 issue any public statements criticizing the placement of that
20 billboard in a predominantly African-American community in
21 Cleveland, correct?

22 A. Not that I'm aware of.

23 Q. Did your office issue any public comment, at all, having
24 been made aware of the controversy?

25 A. Not that I'm aware of.

1 Q. Are you aware of, during the recent reelection of
2 Secretary of State Husted, the Ohio Republican Party sending a
3 mailer to voters that darkened State Senator Nina Turner, his
4 opponent's image, and calling her a slumlord?

5 MS. RICHARDSON: Objection.

6 THE COURT: Overruled. I want you to hear the
7 question, too, Ms. Richardson. The question is whether he is
8 aware. Not whether it's true. Just whether he's aware. Your
9 objection is overruled.

10 Mr. Damschroder, you may answer.

11 MS. RICHARDSON: Thank you, Your Honor.

12 THE WITNESS: I'm not aware of that.

13 BY MR. CHANDRA:

14 Q. Now, Secretary of State Husted and his office have not,
15 during the course of his tenure, reached out affirmatively to
16 homeless groups to ask them about the particular needs and
17 concerns of their voting constituencies, have you?

18 A. Not, not in those terms, no.

19 Q. And, similarly, Secretary of State Husted and his office
20 of the Secretary of State have not reached out to the Ohio
21 Legislative Black Caucus to meet with them and to discuss
22 particular concerns they might have for their African-American
23 constituents in voting, correct?

24 A. Not to my knowledge.

25 Q. Okay. I'm going to show you what's been marked as

1 Plaintiffs' Exhibit 1239. And this is the way it was produced
2 to us, or I guess this is how we obtained it. It was redacted
3 in this manner. You see, at the bottom, the e-mail is from
4 you, correct?

5 A. Correct.

6 Q. And that e-mail address there, it's from a Hotmail
7 account, correct?

8 A. It is.

9 Q. Now, do you ordinarily conduct public business from a
10 private e-mail account?

11 A. On a -- On a Sunday, at 9:24 p.m., I -- I might, yes.

12 Q. Okay. And, so, in the course of this litigation, when
13 responding to the plaintiffs' discovery request for information
14 concerning the Senate Bills 205 and 216, did you search your
15 personal e-mail account to see whether you had provided
16 responsive documents?

17 MS. RICHARDSON: Objection.

18 THE COURT: Overruled.

19 THE WITNESS: I did.

20 BY MR. CHANDRA:

21 Q. Okay. And did you produce all responsive documents?

22 A. I did.

23 Q. All right. So, looking at the rest of the e-mail, you
24 see here that -- if you could just read the first sentence on
25 that first page into the record.

1 A. Thank you.

2 "Following is a list summary of the items that are
3 suggestions for enhancing Substitute Senate Bill 8,
4 parentheses, the detail information including section
5 references and bill line numbers is contained in the attached
6 document, end parentheses, colon.

7 Q. So this e-mail is dated December 6, 2009, correct?

8 A. Correct.

9 Q. Now, looking at the second page, if you could look at
10 Item #8 and Item #11, could you please first read Item #8 into
11 the record?

12 A. Item #8 is: Clarify what information is mandatory on
13 the application for absent voter's ballot.

14 And what was the other one? Number 11?

15 Q. Yes.

16 A. Require that provisional ballots contain the same
17 identification information as is required for voter
18 registration and absent voter balloting in order to be
19 validated.

20 Q. So you would agree with me, would you not, based on
21 those Items #8 and #11 in the e-mail, that those are akin to
22 the subject matter of Senate Bills 205 and 216 from later
23 years, correct?

24 A. Correct.

25 Q. And so it would be fair to say that you and your office

1 of Secretary of State have been personally engaged, even in the
2 years running up to Senate Bills 205 and 216, on the subject
3 matter of Senate Bills 205 and 216 with respect to the five
4 fields, correct?

5 MS. RICHARDSON: Objection.

6 THE COURT: Basis?

7 MS. RICHARDSON: May I ask for a side-bar, Your Honor,
8 or respond?

9 THE COURT: Yes, you may have a side-bar.

10 MS. RICHARDSON: Thank you.

11 (Thereupon, the following proceeding was held at side-bar.)

12 THE COURT: Go ahead, Ms. Richardson.

13 MS. RICHARDSON: Thank you, Your Honor.

14 Your Honor, the e-mail that's being used to question,
15 the e-mail is an e-mail he sent as a member of the Franklin
16 County Board of Elections in 2009. I have no issue with that
17 testimony. But now Mr. Chandra is using this e-mail to suggest
18 involvement by the Secretary of State's Office. It's an
19 improper suggestion, because this was not a Secretary of State
20 representation.

21 THE COURT: Okay. Go ahead.

22 MR. CHANDRA: No. That's a fair point. And if I was
23 insinuating that in the question, I can rephrase the question.
24 I kind of need to hear it again.

25 THE COURT: All right. Just rephrase your question.

1 MR. CHANDRA: Sure.

2 THE COURT: Your objection is sustained.

3 MS. RICHARDSON: Thank you, Your Honor.

4 THE COURT: Rephrase your question.

5 (The following proceedings were had in open court.)

6 THE COURT: Mr. Chandra, how much more do you have,
7 approximately?

8 MR. CHANDRA: Approximately 30 minutes, Your Honor, 30
9 to 45, at the outset.

10 THE COURT: No. You have -- You were right the first
11 time. You have approximately 30 minutes.

12 MR. CHANDRA: Okay.

13 THE COURT: Ms. Richardson, how much do you have by
14 way of redirect? Just estimate.

15 MS. RICHARDSON: I would expect approximately 15
16 minutes, Your Honor.

17 THE COURT: Okay.

18 So, Mr. Kelley and Mr. Berndt, could you approach the
19 side-bar, please?

20 (Thereupon, the Court confers with Counsel off the record.)

21 THE COURT: Mr. Chandra, please proceed.

22 MR. CHANDRA: Thank you, Your Honor.

23 BY MR. CHANDRA:

24 Q. I'm trying to skip things. Okay.

25 So, sir, I'm going to show you, now, what's been marked

1 as Plaintiffs' Exhibits 17, 18, 19 and 20. These are various
2 reports generated, I believe, by your office, compiling the
3 data coming from the counties. And it's very small. And I'll
4 zoom in as needed.

5 Do you need a copy of this?

6 A. If you have one, that would be more helpful to me. I
7 apologize.

8 Q. Sure. Hand on a second.

9 I'm sorry. Let me go back and ask that the previous
10 question I asked before the side-bar be read back to me, and
11 then I'll rephrase it.

12 (The question was read back by the court reporter.)

13 BY MR. CHANDRA:

14 Q. So, I'm going to limit that question, first, to just you
15 personally.

16 A. Yes.

17 Q. And would the same be true for the Office of Secretary
18 of State in the runup to the introduction of Senate Bills 205
19 and 216 by their respective sponsors?

20 A. I would say not in the runup to those two bills, no.

21 Q. Okay. So is it your testimony that this issue that you
22 had articulated as an elections official when you were with
23 Franklin County just went off of your radar screen, the items
24 in number 8 and 11?

25 A. No. It was still on my radar screen, but the focus

1 became, going into '12, you know, making sure we had clear
2 guidance to the Boards on the laws that were on the books.

3 Q. So it's fair to say, though, that there were other
4 legislative priorities other than the items reflected in number
5 8 and 12?

6 A. Yes.

7 Q. All right. Okay. So, going back to Exhibit 17 -- and
8 I'm going to get some help from my colleague, here, to try to
9 move things along -- this is for the 2014 election. And among
10 the fields from this document, sir -- First of all, are you
11 familiar with this document?

12 A. Yes.

13 Q. Okay. And does it do what I said that it did: Compile
14 the information from the counties?

15 A. It compiles information, yes.

16 Q. Okay. And it compiles the reasons that absentee and
17 provisional ballots were rejected, correct --

18 A. Correct.

19 Q. -- among other things?

20 So I'd like you to take a look at Cuyahoga, Franklin and
21 Hamilton Counties, please, on here. And read into the record
22 the number of ballots that were rejected based upon errors in
23 the five fields for absentee and provisionals, respectively,
24 Cuyahoga, Franklin and Hamilton.

25 A. Well, I think this is just absentee.

1 Q. Okay.

2 A. And I can't see across all the columns. I apologize.

3 Q. Okay. Do you need a document to try to -- Here.

4 A. So that's the Cuyahoga line that I'm seeing there?

5 Q. Yes.

6 A. Okay.

7 Q. Just give me an approximation of the number of absentee
8 ballots rejected for the five fields. And if that means you're
9 approximately adding them up or if you want to read the numbers
10 one by one, that's fine. I'd just like to get those into the
11 record, please.

12 A. Sure. So, for this, it looks like no voter signature
13 was 186. Non-matching signature was 1. Missing or incorrect
14 birthdate that does not meet exceptions, 128. Different
15 address on ID envelope than in voter's record, 2. Voter ID
16 envelope contains insufficient information, 2. The first-time
17 voter without -- Non-first-time voter without proper
18 identification, 1. Non-first-time voter without proper
19 identification, 42.

20 Q. Okay. But let's just focus on the five fields.

21 A. Okay.

22 Q. And, then, take a look at the name column, also, missing
23 or non-matching name, to the left of what's highlighted.

24 A. Yes. So --

25 Q. Over here (indicating).

1 A. Missing or non-matching name, I think, is zero.

2 Q. Okay. And, now, if you -- you know what I'd rather do,
3 just to move things along, is --

4 MR. CHANDRA: May I approach, Your Honor, and just
5 hand him my exhibit?

6 THE COURT: Yes, you may.

7 BY MR. CHANDRA:

8 Q. Let me give you a hard copy exhibit.

9 A. I'm sorry.

10 Q. Take a look at Hamilton and Franklin, as well. And
11 just, you know, approximate --

12 A. Sure.

13 Q. -- the number of people that are being -- that are not
14 having their ballots counted because of errors on the five
15 fields.

16 MS. RICHARDSON: Objection.

17 THE COURT: Overruled.

18 THE WITNESS: So, this is for Hamilton, I think.

19 No voter signature is 16. Non-matching signature, 27.
20 Missing or incorrect birthdate that does not meet exceptions,
21 36. Different address on ID envelope than in voter record, 51.
22 Non-first-time voter without proper identification, 43.

23 I think that's -- those are the relevant ones for
24 Hamilton.

25 BY MR. CHANDRA:

1 Q. So, rather than go through all of these exhibits --

2 MR. CHANDRA: May I approach and get it, Your Honor?

3 THE COURT: Yes.

4 BY MR. CHANDRA:

5 Q. Rather than go through all of these exhibits, in the
6 interest of time, I'm going to represent to you that there are
7 numbers from these larger counties that are reported for
8 rejection of voters' ballots for reasons attributable to the
9 five fields. Okay? So, assume that for the purposes of my
10 questioning.

11 Now, by contrast -- I'm sorry. I needed to give you
12 this back again.

13 MR. CHANDRA: If I may, Your Honor?

14 BY MR. CHANDRA:

15 Q. Look at Allen, Meigs, Noble and Wyandot. And would you
16 agree with me that those counties are reporting no one losing
17 their right to vote over the five fields?

18 A. For some of the categories, that's correct.

19 Q. Yeah, for the five-fields errors?

20 A. Well, I think -- I would consider, I think, based on
21 this, the voter ID envelope contains insufficient information,
22 there is 14 for Allen. So there are some, but the numbers are
23 fewer.

24 Q. Okay. Now, you would expect, based on larger turnout in
25 a Presidential-election year, these numbers being reported for

1 a lower turnout election, like in 2014, to be higher, generally
2 speaking, correct?

3 A. There's certainly more voters in a Presidential
4 election, yeah. So --

5 Q. And so you would expect higher rates of -- not rates,
6 necessarily, but higher numbers of rejections based on larger
7 turnouts, generally speaking?

8 A. I don't know that I would expect that. I think there is
9 a likelihood that that risk increases.

10 Q. Okay. Hang onto that.

11 A. Sure.

12 Q. So, again, assuming that similar patterns are evident on
13 the other exhibits produced by your office, showing compiled
14 reports for provisional voters, compiled reports for absentee
15 and provisional voters for 2015, that Cuyahoga, Franklin,
16 Hamilton are reporting people being rejected for the five
17 fields, errors on the five fields, and yet some of these
18 smaller counties like Allen, Meigs, Noble, Wyandot, either
19 nobody or hardly anybody, you would -- When you receive the
20 data and compile it, do you review the data?

21 A. I have -- I've looked at it, but we have not conducted a
22 study of it, per se.

23 Q. Okay. But the divergence in reporting of rejection of
24 voters for the five fields between mostly white, smaller, rural
25 counties like those that I mentioned -- Allen, Meigs, Noble,

1 Wyandot -- versus larger urban counties that have larger
2 percentages of African American voters, like Cuyahoga, Franklin
3 and Hamilton, did not cause your office to investigate why
4 there might be a divergence in those numbers, correct?

5 MS. RICHARDSON: Objection.

6 THE COURT: Overruled.

7 THE WITNESS: That's correct.

8 BY MR. CHANDRA:

9 Q. And, in fact, your office doesn't monitor or investigate
10 provisional or absentee rejection rates, correct?

11 A. We do, at a high level, just from a statewide total, but
12 not individual-county level by category.

13 Q. Okay. Now, so, would it be fair to say that the Office
14 of Secretary of State -- Let me withdraw that.

15 So, your Office of Secretary of State pushed for
16 statewide uniformity when large urban counties with the biggest
17 African-American populations sought to have longer hours for
18 early voting, correct?

19 MS. RICHARDSON: Objection.

20 THE COURT: Basis?

21 MS. RICHARDSON: It's mischaracterizing the testimony.

22 THE COURT: Overruled.

23 MS. RICHARDSON: Thank you, Your Honor.

24 THE WITNESS: The Secretary of State's Office pushed
25 for uniformity for absentee days and hours across the whole

1 state.

2 BY MR. CHANDRA:

3 Q. And at the time that your office was pushing for that
4 uniformity, larger urban counties with larger African-American
5 populations, like Cuyahoga County, wanted and expressed that
6 they wanted longer hours for early voting than what the
7 Secretary wanted them to have, correct?

8 A. Correct.

9 Q. And, indeed, when two Democratic members of Montgomery
10 County Board of Elections, Dennis Lieberman and Tom Ritchie,
11 refused to cut early in-person voting hours, Secretary of State
12 Husted removed them from office, correct?

13 MS. RICHARDSON: Objection. Relevance.

14 THE COURT: Overruled.

15 THE WITNESS: I think -- I think that kind of
16 mischaracterizes exactly what happened, but they were removed
17 for failure to follow a directive.

18 BY MR. CHANDRA:

19 Q. And the directive required a cut in early in-person
20 voting hours than from what those Montgomery County officials
21 of the Board of Elections wanted to have for their larger
22 county in Ohio that contains a significant African-American
23 population, correct?

24 A. Correct.

25 Q. And, so, the Secretary, in response to that refusal,

1 removed them from office, correct?

2 A. For their failure to follow the directive.

3 Q. But your office has not pushed for uniformity when
4 reports to your office show that larger counties with
5 African-American populations are enforcing Senate Bills 205 and
6 216 and smaller, rural, mostly white counties are not enforcing
7 those rules, correct?

8 A. That's correct.

9 Q. I'd like to show you --

10 MR. CHANDRA: And I am wrapping up, Your Honor.

11 THE COURT: Okay.

12 BY MR. CHANDRA:

13 Q. I'd like to show you what's called a declaration. And
14 it's a statement sworn under penalty of perjury: The parties
15 in this case have agreed to submit certain testimony in this
16 trial to the Court in the form of these declarations to
17 expedite matters, rather than bring them in as live witnesses.

18 And I would like you to, please, take a moment to read
19 this declaration of Sally Miller. I'll put it up on the
20 screen. Let me know when you're ready for me to move it up.

21 Let me know when you've had a chance to read it.

22 THE WITNESS: Yes.

23 BY MR. CHANDRA:

24 Q. So, Ms. Miller testifies that she is 87 years old and a
25 resident of Franklin County, correct?

1 A. Yes.

2 Q. She says she hasn't missed an election since she was 21,
3 correct?

4 A. Yes.

5 Q. She votes by absentee ballot because she has difficulty
6 walking and doesn't leave the house much, correct?

7 A. Correct.

8 Q. Now, she says that, in 2014, she voted by absentee
9 ballot, right?

10 A. That's correct.

11 Q. And she filled the absentee ballot and ballot form out
12 by herself, correct?

13 MS. RICHARDSON: Objection, Your Honor.

14 THE COURT: Basis?

15 MS. RICHARDSON: Your Honor, I have a general
16 objection to the use of this exhibit.

17 THE COURT: Right. Your objection is noted, but
18 overruled.

19 MS. RICHARDSON: Thank you, Your Honor.

20 THE COURT: You may answer, Mr. Damschroder.

21 THE WITNESS: I think the answer is correct.

22 BY MR. CHANDRA:

23 Q. Now, she goes on to say she didn't rely on anyone else,
24 and it didn't occur to her to ask anyone for help. Did I read
25 that correctly?

1 A. Correct.

2 Q. She goes on to testify that she has macular
3 degeneration. She says she used her glasses and a magnifying
4 glass to help her read the information and fill out the
5 absentee ballot and form. And she says she usually checks over
6 her work on such forms two to three times.

7 Did I get that correct?

8 A. Yes.

9 Q. Now, she goes on to testify that she did not receive
10 notice from the Board of Elections of any error on her ballot
11 form and that, had she received such notice, she would have
12 corrected the error. She says she did receive something from
13 the Board of Elections stating that it had not counted her
14 vote.

15 Did I get that correct?

16 A. Yes.

17 Q. She then goes on to state her view. Quote: I do not
18 believe my vote should have been thrown out just because my
19 Social Security number was off by one digit, especially at my
20 age.

21 Now, I'd like you to assume, for purposes of my
22 questioning, that everything that Ms. Miller says here with
23 respect to how her ballot was handled is verifiable through the
24 records and testimony of Hamilton -- excuse me -- Franklin
25 County. Earlier in your testimony, you were testifying about

1 the benefits, versus the costs, to voters, correct?

2 A. Yes.

3 Q. And you were also testifying that every vote should
4 count, correct?

5 A. Correct.

6 Q. And you also said that -- Well, correct me if I'm wrong.
7 I believe that you were suggesting the benefits of Senate Bills
8 205 and 216 outweigh the burdens on individual voters. Did I
9 get that correct?

10 A. That's my view, yes.

11 Q. So, sir, what would be your response, as a top elections
12 official and a representative of the Secretary of State in the
13 State of Ohio, to Ms. Miller when she says that she doesn't
14 believe her vote should have been thrown out just because her
15 Social Security number was off by one digit, especially at her
16 age?

17 A. I would say that I feel badly about it, but that that's
18 the law.

19 MR. CHANDRA: Your Honor, may I have a moment to
20 confer?

21 THE COURT: Yes.

22 (Whereupon, there was a brief interruption.)

23 BY MR. CHANDRA:

24 Q. Do you believe -- Assuming that what Ms. Miller says is
25 accurate, do you believe that what happened to Ms. Miller was

1 fair?

2 A. I do.

3 Q. Even if Ms. Miller's identity could otherwise be
4 verified by the Franklin County Board of Elections?

5 A. Yes.

6 Q. Going back to, very briefly, to the issue of the removal
7 of Mr. Ritchie and Mr. Lieberman from the Montgomery County
8 Board of Elections, that removal took place by the Secretary of
9 State around the same time that Doug Preisse was making his
10 comments, allegedly, about African-American voters, correct?

11 A. I don't remember the specific time frame; but it was in
12 the 2012 -- in the lead-up to the 2012 Presidential General
13 Election.

14 Q. Okay. All right. I'd like to show you one last
15 document. And that is --

16 MR. CHANDRA: Your Honor, I'm not sure if I moved for
17 the admission of Plaintiffs' Exhibit 1239. Could I --

18 THE COURT: Ms. Richardson, any objection to 1239?

19 MS. RICHARDSON: Yes, Your Honor.

20 THE COURT: For the same basis that you had previously
21 articulated?

22 MS. RICHARDSON: No, Your Honor. May I respond?

23 THE COURT: Yes.

24 MS. RICHARDSON: This one is different, because, as I
25 mentioned, this was not made during Mr. Damschroder's time at

1 the Secretary of State's Office. So it cannot be used as a
2 party statement.

3 MR. CHANDRA: May I respond, Your Honor?

4 THE COURT: Yes, at side-bar, though.

5 (Thereupon, the following proceeding was held at side-bar.)

6 THE COURT: Ms. Richardson, go ahead.

7 MS. RICHARDSON: Your Honor, again, we did not object
8 to the testimony. But this document is hearsay and should not
9 come in separately. This was a statement made by him in his
10 capacity as member of the Franklin County Board of Elections,
11 which is not a party in this case.

12 THE COURT: But did he make it pursuant to his -- the
13 normal course of his duties at the Franklin County Board of
14 Elections?

15 MS. RICHARDSON: I don't know that, Your Honor.

16 THE COURT: Okay. I'm going to sustain your objection
17 on this basis: That if you want this document to come in, you
18 need to establish an 803.6 basis for the exhibit, because he
19 could have created it in the regular and ordinary course of his
20 duties as Director of the Franklin County Board of Elections.

21 MR. CHANDRA: May I offer you one other idea that
22 might get around that problem?

23 THE COURT: Yes.

24 MR. CHANDRA: It is not being introduced for the truth
25 of the matter. It's being introduced for two purposes. One is

1 to reflect his state of mind that he believes that Items 8 and
2 11 are important and, number two, to impeach the earlier
3 testimony, to some degree, that, somehow, they had nothing --

4 THE COURT: You need to offer this into evidence, as
5 substantive evidence, if you're just using it for impeachment.

6 MR. CHANDRA: Fair enough.

7 THE COURT: So --

8 MR. CHANDRA: But I can ask the questions. That's
9 fine. It's not for the truth of the matter, though. That's
10 all I want to say.

11 MS. RICHARDSON: Your Honor, while we are here, we
12 would also object to it coming in even if he lays the
13 foundation that this was made in the official capacity as a
14 Franklin County Board of Elections --

15 THE COURT: It's a business record. Business records
16 can come in even if he's not testifying in his capacity.
17 That's the purpose for the exception. It doesn't hunt back to
18 what position he held at the time. The question is when the
19 document was created, was it created in the regular and
20 ordinary course of business. And, so, if you establish that
21 foundation, it comes in.

22 MR. CHANDRA: Thank you.

23 MS. RICHARDSON: Thank you, Your Honor.

24 (The following proceedings were had in open court.)

25 BY MR. CHANDRA:

1 Q. Mr. Damschroder, putting back Plaintiffs' Exhibit 1239,
2 you testified earlier about, when you're working on a Sunday
3 night from home, you would use your personal account for
4 business, correct?

5 A. I did in this instance, certainly, yes.

6 Q. Okay. So, in this instance, is it fair to say that this
7 document, Plaintiffs' Exhibit 1239, the e-mail from you to Jon
8 Husted and Jim Hughes, copied to a number of other individuals,
9 was prepared in the ordinary course of business on your part as
10 a Franklin County Board of Elections official?

11 A. Yes.

12 Q. Okay.

13 MR. CHANDRA: On that basis, Your Honor, I request
14 that it be admitted.

15 THE COURT: Any objection?

16 MS. RICHARDSON: We do object, Your Honor. But I
17 understand the Court's ruling.

18 THE COURT: Okay. It will be received.

19 BY MR. CHANDRA:

20 Q. So, I'm going to show you one last document, Mr.

21 Damschroder. And I appreciate your patience.

22 This document has been marked as Plaintiffs' Exhibit
23 1484. And this appears to be some sort of a media release on
24 the letterhead of Jon Husted, Ohio Secretary of State, dated
25 Monday, June 4, 2014. And it's entitled: "Secretary Husted

1 outlines what voters need to know in light of new election law
2 changes."

3 Did I read that correctly?

4 A. Yes.

5 Q. And then, underneath that, there is a subheading that
6 says, Secretary Husted: "Ohio is one of the easiest places to
7 vote in the nation."

8 Did I read that correctly?

9 A. Yes.

10 Q. All right. Are you familiar with this release? Have
11 you seen it before?

12 A. I don't specifically recall seeing it.

13 Q. In the course of business of your work, would you
14 ordinarily have a hand in the drafting of such releases related
15 to elections?

16 A. No.

17 Q. Okay. So those drafts would be prepared by whom in the
18 office?

19 A. The drafts would be prepared by our communications
20 staff.

21 MR. CHANDRA: Your Honor, at this time, I move for the
22 admission of Plaintiffs' Exhibit 1484.

23 THE COURT: Any objection, Ms. Richardson?

24 MS. RICHARDSON: No objection, Your Honor.

25 THE COURT: 1484 will be received.

1 BY MR. CHANDRA:

2 Q. So, sir, I'd like you to, please, read the quote
3 above -- Well, actually, let me back up.

4 So, you see that this release, in part, covers the
5 subject of the passage of Senate Bill 205, correct?

6 A. Correct.

7 Q. And issues related to -- all right. Let me leave it at
8 that.

9 Okay. So, now, if you could, please, read the quote
10 from Secretary Husted, toward the bottom of the first page of
11 Plaintiffs' Exhibit 1484, into the record.

12 A. Quote: With four weeks of voting and the ability to
13 cast a ballot early by mail or in person and on Election Day,
14 all Ohio voters will have the same opportunity to vote no
15 matter where they live, end quote, Secretary Husted said.

16 Q. Thank you.

17 So, given what we've just discussed in your testimony
18 about different Boards of Elections in Ohio applying Senate
19 Bill 205 and also 216 differently with respect to the five
20 fields across the State, would you agree with me that this
21 statement by Secretary Husted turns out not to be true?

22 MS. RICHARDSON: Objection.

23 MR. CHANDRA: Actually, let me withdraw that and
24 clarify a little bit.

25 BY MR. CHANDRA:

1 Q. It may be true with respect to Ohio voters having the
2 same opportunity to vote, but it would not be true with respect
3 to Ohio voters having the same opportunity to have those votes
4 counted, correct?

5 A. I think, as we've talked about it, it is true that the
6 application of the laws has varied from county to county. And
7 so that would result in -- Because some counties would count it
8 differently than others, that would result in them being
9 handled differently and some counting, some not.

10 Q. I'd like an answer to my question, please.

11 A. Could you read it back, please?

12 Q. Yes, please.

13 (The last question was read back by the court reporter.)

14 THE WITNESS: That's correct.

15 MR. CHANDRA: Thank you. I have no further questions,
16 Your Honor.

17 THE COURT: All right. Ms. Richardson?

18 MS. RICHARDSON: Yes, Your Honor, just a few minutes.

19 REDIRECT EXAMINATION

20 BY MS. RICHARDSON:

21 Q. Good morning, Mr. Damschroder.

22 A. Good morning.

23 Q. Yesterday, Mr. Chandra asked you some questions about
24 the burden on election officials in adding birthdate. Do you
25 recall those questions?

1 A. Yes.

2 Q. I'd like to take you back to an example you provided in
3 your direct of a search that your office performed with the
4 name John Smith. Do you recall that?

5 A. Yes.

6 Q. And how many names came up under that search?

7 A. I think there was about 650.

8 Q. And, so, I'd like for you to assume for a moment that
9 all --

10 MR. CHANDRA: Objection, Your Honor. Beyond the
11 scope.

12 THE COURT: She hasn't completed her question.

13 MR. CHANDRA: I'm sorry.

14 THE COURT: I'm going to allow Ms. Richardson to
15 complete her question. Then you may interpose your objection.

16 Please complete your question, Ms. Richardson.

17 MS. RICHARDSON: Thank you, Your Honor.

18 BY MS. RICHARDSON:

19 Q. I would like for you to assume that the only information
20 you had for that voter was the name John Smith and a signature.
21 What would the process of validating that voter's ballot
22 include for a Board member?

23 MR. CHANDRA: Objection. Beyond the scope, Your
24 Honor.

25 THE COURT: Overruled.

1 You may answer, Mr. Damschroder.

2 THE WITNESS: The Board would have to search through
3 the statewide voter registration database for -- to look at
4 each of the John Smiths to see if there was a signature in the
5 statewide voter file, to see if the signature matched; and if
6 there was not a signature in the statewide voter registration
7 file, they would then have to contact the other county to get a
8 copy of the original voter registration record.

9 BY MS. RICHARDSON:

10 Q. And they would have to do that for all 600 names in the
11 registration database, correct?

12 A. That's correct.

13 Q. And I'd like for you now to assume that you have the
14 voter's birthdate. How, if at all --

15 MR. CHANDRA: Your Honor, objection. I'm sorry.

16 THE COURT: Continue with your question, Ms.

17 Richardson.

18 MS. RICHARDSON: Thank you, Your Honor.

19 BY MS. RICHARDSON:

20 Q. How, if at all, would that change the process for the
21 Board?

22 A. So, the Board would be able to search on the voter's
23 name and date of birth and pull up -- and then return only the
24 ones that matched name and date of birth.

25 Q. And what would you expect in terms of the size of the

1 results that would be responsive to that search?

2 MR. CHANDRA: Objection. Leading, Your Honor.

3 THE COURT: Overruled.

4 You may answer, Mr. Damschroder.

5 THE WITNESS: It would be certainly less than the 650.

6 BY MS. RICHARDSON:

7 Q. And, so, which process would be easier for the Board, in
8 your view?

9 A. I think, as I've testified, having more data-points is
10 helpful for the Board to efficiently identify the correct voter
11 in the voter file.

12 Q. Thank you, Mr. Damschroder.

13 And Mr. Chandra also asked you some questions about the
14 Secretary of State Office's legislative priority. Do you
15 recall those questions?

16 A. Yes.

17 Q. What is the Secretary of State Office's legislative
18 priority?

19 A. The Secretary has been pushing the General Assembly to
20 enact online voter registration, I think, almost since he came
21 in as Secretary of State.

22 Q. You were also asked some questions about the use of DRE
23 machines in various counties. Do you recall that?

24 A. Yes.

25 Q. Who makes the decision about what county will use DRE

1 machines or some other type of voting equipment?

2 A. The county Board of Elections.

3 Q. And in the case of a county that elects to use a DRE
4 machine, when does a voter who is voting absentee in person
5 complete the absentee application?

6 A. When they check in at the Board of Elections prior to
7 casting their ballot.

8 Q. And when does the voter actually cast the vote?

9 A. After the Board has entered the -- you know, checked the
10 information from the application into the -- into the voter
11 registration system, the Board would then give them, like, an
12 authority-to-vote slip with the correct ballot style. The
13 voter would go over to the DRE. The voter would -- The
14 poll-worker would bring up the correct ballot style in the DRE.
15 And the voter would cast it at the DRE.

16 Q. And where does this process take place?

17 A. Generally at the county Board of Elections, or the Board
18 may designate one other location if the Board offices are
19 insufficient for in-person absentee voting.

20 Q. And in either of those two circumstances, would the
21 Board or its staff actually be present for that vote process?

22 A. Yes.

23 Q. How does that process that you've just described compare
24 to the process a voter must go through if he or she votes
25 absentee by mail?

1 A. So, after the voter submits the application and the
2 Board enters it in its voter registration database, the Board
3 mails the ballot to the voter. And the voter, you know, marks
4 the ballot, you know, at home or wherever, but somewhere other
5 than at the Board of Elections.

6 Q. And in your experience, is there a time difference in
7 terms of when the voter would complete the application and when
8 the voter would return the ballot in the case of absentee by
9 mail?

10 A. Yes. I mean, it varies. Some voters, once they get the
11 mail, you know, may vote it immediately and mail it back in.
12 Others may, you know, hold the ballot and research candidates
13 and issues before voting it and mailing it back in.

14 Q. Mr. Damschroder, you were also asked a question about
15 when a Board can review a provisional ballot. Do you recall
16 that?

17 A. Yes.

18 Q. And do you still have up in front of you the Ohio
19 Election Official Manual?

20 A. I do. It's over here.

21 Q. I would ask that you turn to page 6-9.

22 A. Yes.

23 Q. And if you take a look at Section 1.03 --

24 A. Yes.

25 Q. -- what does that section instruct the Boards?

1 A. Section 1.03 covers processing of provisional ballots.

2 Q. And if you take a look at the first line of that section

3 --

4 A. Uh-huh.

5 Q. -- can you just read that into the record, please?

6 A. "Board staff, working in bipartisan teams, may begin
7 examining provisional ballot envelopes the day after the
8 election, as long as the Board has adopted a provisional ballot
9 policy allowing its staff to do so."

10 Q. Thank you, Mr. Damschroder.

11 I believe you were also asked some questions about a bar
12 code that some counties place on an absentee ballot. Do you
13 recall that?

14 A. Yes.

15 Q. And what, if anything, does that bar code tell the Board
16 about whether the voter who returns the ballot continues to be
17 eligible to cast that ballot?

18 MR. CHANDRA: Objection. Leading.

19 THE COURT: Overruled.

20 THE WITNESS: The bar code is just a representation of
21 the voter's voter identification number, perhaps ballot style.
22 It doesn't say anything about the voter's eligibility.

23 BY MS. RICHARDSON:

24 Q. And what, if anything, does that bar code tell you about
25 whether the person that completed the ballot is the same person

1 that the Board actually sent the ballot to?

2 A. Like I said, it's just a bar code of the voter's
3 identification number. It doesn't speak to the eligibility or
4 the person who is actually filling out the envelope.

5 Q. Thank you, Mr. Damschroder. You were also asked a
6 number of questions about literacy and whether a person who is
7 functionally illiterate would be able to review particular
8 forms. Do you recall that?

9 A. Yes.

10 Q. And in order to complete a voter registration
11 application, would a voter need to read the instructions?

12 A. Yes, or get assistance.

13 Q. And what about with respect to the absentee ballot
14 application?

15 A. Yes, or receive assistance.

16 Q. What about with respect to the instructions that are on
17 the ballot, itself, when a voter cast a vote?

18 A. Yes, or ask for assistance.

19 Q. And you mentioned, I believe on your direct, that a
20 voter who needs assistance can bring a person of his or her
21 choosing with them to the polls. Is that correct?

22 A. That's correct.

23 Q. Mr. Chandra asked you about your experience, generally,
24 in government. Are you aware of whether there are other
25 government forms that contain instructions and information?

1 A. I'm sure that there are.

2 Q. And would someone who is functionally illiterate also
3 need to seek assistance in reading and responding to those
4 instructions on other government forms?

5 A. I would believe so.

6 Q. Mr. Chandra asked you whether the Boards would have
7 access to your personal views. Do you recall that?

8 A. I'm sorry. Could you restate that? I'm sorry.

9 Q. Sure. I believe Mr. Chandra asked you a question about
10 some of your personal views and whether the Boards would have
11 access to information about your personal views. Do you recall
12 those questions?

13 MR. CHANDRA: Objection, Your Honor.

14 THE COURT: Overruled.

15 THE WITNESS: I think generally.

16 BY MS. RICHARDSON:

17 Q. And let me ask you a slightly different question. With
18 respect to the official instructions and positions of the
19 Secretary of State's Office, would the Boards have access to
20 information about what those instructions and positions are?

21 A. Yes, they would.

22 Q. And would that be included, for example, in the Ohio
23 Election Official Manual that we've discussed?

24 A. Yes.

25 Q. Does the Secretary of State's Office also provide

1 training to the Boards?

2 A. Yes, we do.

3 Q. Mr. Chandra asked whether you had reached out to
4 homeless advocacy organizations on any occasion. Do you recall
5 that question?

6 A. Generally.

7 Q. And I think his question was specific to particular
8 circumstance. Was that your understanding?

9 A. Yes.

10 Q. In general, has the Secretary of State's Office ever
11 worked with homeless organizations on various voting-related
12 issues?

13 A. Like -- I can speak specifically. We have worked
14 closely with COHHIO, a local homeless advocacy organization.
15 They've been very helpful in helping to advocate for online
16 voter registration with us.

17 Q. And is COHHIO the Coalition On Homelessness and Housing
18 in Ohio?

19 A. Yes.

20 Q. Mr. Chandra asked you a question about a voter who
21 alleges that her ballot was rejected because of a mistake with
22 respect to her Social Security number. Do you recall those
23 questions?

24 A. I do.

25 Q. Prior to the enactment of Senate Bills 205 and 216, was

1 a voter required to include Social Security number on either
2 the provisional ballot affirmation or the absentee ID?

3 A. The voter was required to provide a form of
4 identification, one of the options being the last four of
5 Social.

6 Q. Thank you. And, to your knowledge, did Senate Bill 205
7 or 216 make any changes to that ID requirement?

8 A. They did not.

9 Q. Mr. Damschroder, you were also asked some questions
10 comparing Cuyahoga County, for example, to a smaller county
11 like Meigs County. Do you recall that?

12 A. Yes.

13 Q. Can you describe, just in general terms, the relative
14 difference in those counties in terms of the number of votes
15 cast?

16 A. Cuyahoga has far more votes cast than Meigs.

17 Q. And so would you expect that, in terms of raw numbers,
18 Meigs County would have fewer rejections than Cuyahoga County?

19 A. Yes.

20 MS. RICHARDSON: No further questions, Your Honor.

21 Thank you, Mr. Damschroder.

22 MR. CHANDRA: Very brief recross, Your Honor.

23 THE COURT: You're going to have to tell me what
24 you're going to recross on.

25 (Thereupon, the following proceeding was held at side-bar.)

1 THE COURT: What are you intending to recross on, Mr.
2 Chandra?

3 MR. CHANDRA: Just a couple of short areas. I can't
4 imagine it taking long, but it's --

5 THE COURT: I can.

6 MR. CHANDRA: It won't. But there is -- Ms.
7 Richardson, I believe, perhaps inadvertently, put some
8 misleading information into the record through the witness
9 about the Board being able to review the provisional ballot
10 affirmation form before the eleventh day. I have the statute.
11 I want to show him the statute and have him correct the
12 misinformation that was put in the record.

13 THE COURT: I don't want him to -- I will tell you now
14 that I'm not going to allow you to have him interpret the
15 statute. He is not a lawyer. He can't interpret the statute.
16 You can ask him his understanding, but you have seven minutes.

17 MR. CHANDRA: Okay.

18 THE COURT: And, you know, I can't get people to
19 understand that the purpose for recross and redirect is
20 rehabilitation. It's not to get the last word in on this.
21 It's only for rehabilitation. And, so, tell me how you want to
22 rehab -- All right. So you've got the matter with respect to
23 the statute. What else?

24 MR. CHANDRA: Yes. And, then, with respect to the DRE
25 machines -- Again, this is not just me. This is, my co-counsel

1 for ODP would like to see --

2 THE COURT: Tell me what it is.

3 MR. CHANDRA: -- a question with respect to, the voter
4 who votes early in-person in a county without a DRE machine, is
5 also casting that ballot at that time; it's just counted later.
6 I would like to draw that point out because an effort was made
7 to show that --

8 THE COURT: No. No. I don't want to know about the
9 effort. I want to know about the case. What does that have to
10 do with this case?

11 MR. CHANDRA: So, what it has to do with is, among our
12 facts with respect to the equal protection claim is that there
13 are differences in treatment of voters with regard to having to
14 fill out the absentee ballot form when they don't -- when they
15 have a DRE machine.

16 THE COURT: What does that have to do with this? Tell
17 me.

18 MR. CHANDRA: And, so, what I'm trying to do is
19 address the testimony that was just elicited that tried to show
20 that there is a difference, somehow, between a voter that cast
21 with respect to a DRE machine versus someone who is casting
22 absentee ballot, again, a very quick point to be made. And
23 then I'm done. It will be well under the seven minutes that
24 Your Honor has talked about.

25 THE COURT: Those are the only two points?

1 MS. RICHARDSON: Your Honor, if he does ask that
2 second question with respect to the DRE machine, I'd want to
3 have one recross, because, in a paper-ballot county, voters
4 have the option of taking that ballot home. There is no
5 requirement to cast the ballot in person, in contrast to a DRE
6 machine, that, obviously, has to be cast in person.

7 THE COURT: All right.

8 MS. RICHARDSON: Thank you, Your Honor.

9 THE COURT: Anything else, Mr. Chandra, before we --

10 MR. CHANDRA: No. Actually, just one other thing that
11 was handed to me, which is on the issue of voter registration
12 forms and illiteracy that was raised.

13 THE COURT: Yes.

14 MR. CHANDRA: Again, there is no statutory bar on
15 assistance to voters under those circumstances by poll-workers.
16 That's the only point I want to elicit on that issue.

17 THE COURT: And that's relevant because -- In the
18 three weeks that we've been together, that hasn't -- I take it
19 that that hasn't been covered?

20 MR. CHANDRA: No, not with respect to voter
21 registration forms. This is the first time Ms. Ryan has raised
22 that as a defense.

23 THE COURT: Ms. Richardson. Yeah, but go ahead.

24 MS. RICHARDSON: Your Honor, he asked that question
25 already on cross. And it was answered.

1 THE COURT: I thought so, but --

2 MR. CHANDRA: Then I won't ask it again.

3 THE COURT: All right.

4 MS. RICHARDSON: Thank you, Your Honor.

5 (The following proceedings were had in open court.)

6 RE-CROSS-EXAMINATION

7 BY MR. CHANDRA:

8 Q. Mr. Damschroder, Ms. Richardson was asking you questions
9 about DRE machines. Do you recall that?

10 A. Yes.

11 Q. Okay. So, would you agree that, when a voter votes
12 early, in person, in a county that doesn't have a DRE machine,
13 that voter is required to fill out the absentee ballot form,
14 correct?

15 A. The absentee identification envelope, yes.

16 Q. Correct. Thank you. And that voter, after filling out
17 that form, has now cast the ballot; but it's just counted
18 later, correct?

19 A. Yes. When they drop the envelope -- When they seal the
20 ballot in the envelope and drop it in the ballot box, it's
21 considered cast. It can't be retrieved at that point.

22 Q. Okay. Now, my other question concerns the issue of the
23 counting of provisional ballots beginning the eleventh day. I
24 want to make sure we clear this up.

25 Would you agree that, under the Revised Code, is it your

1 understanding that that count cannot begin for provisional
2 ballot voters who still have to provide certain information
3 back to the Board of Elections, correct?

4 A. The count can't begin for any voters, any provisional
5 voters, until the eleventh day after the election. That's
6 correct.

7 Q. Okay. And so the issues with respect to Days 8, 9 and
8 10, in terms of those -- those could still be days on which
9 information would be received if it were not for the law
10 prohibiting that, correct?

11 A. Yes.

12 MR. CHANDRA: All right. Thank you.

13 No further questions, Your Honor.

14 THE COURT: Thank you.

15 You have one question?

16 MS. RICHARDSON: One question, Your Honor. Thank you.

17 FURTHER REDIRECT EXAMINATION

18 BY MS. RICHARDSON:

19 Q. Mr. Damschroder, you were asked a question about the
20 process of voting in DRE counties. And Mr. Chandra asked you,
21 also, about paper-ballot counties. I have just one question in
22 that regard.

23 In a county that offers early in-person voting on paper
24 ballots, is the voter permitted to take that ballot home or
25 outside of the Board and cast that ballot at a later time?

1 MR. CHANDRA: Objection. Leading.

2 THE COURT: Overruled.

3 You may answer, Mr. Damschroder.

4 THE WITNESS: Yes.

5 MS. RICHARDSON: Thank you.

6 THE COURT: Thank you.

7 MS. RICHARDSON: No further questions, Your Honor.

8 THE COURT: Mr. Damschroder, thank you very much, sir.
9 You may be excused.

10 THE WITNESS: Thank you, sir.

11 MR. CHANDRA: May I, Your Honor?

12 THE COURT: (Nodding affirmatively.)

13 MR. CHANDRA: Your Honor, we have some exhibits that
14 we would like to stipulate to and introduce. Would you like to
15 wait until after your hearing?

16 THE COURT: No. I'm going to first confer with Ms.
17 Richardson to find out whether you have any additional
18 witnesses.

19 Have a seat, Mr. Chandra.

20 MS. RICHARDSON: No additional witnesses, Your Honor.

21 THE COURT: Do you rest at this time?

22 MS. RICHARDSON: We do have some stipulations that we
23 would like to read into the record.

24 THE COURT: All right. You have some stipulations.
25 Do you rest, subject to the stipulations?

1 MS. RICHARDSON: Yes, Your Honor.

2 THE COURT: And you, too, Mr. Chandra, have some
3 stipulations; is that right?

4 MR. CHANDRA: Correct, Your Honor.

5 THE COURT: But you don't have a rebuttal case; am I
6 correct?

7 MR. CHANDRA: No, Your Honor. Thank you.

8 THE COURT: All right. So, have you all conferred on
9 your stipulations; or is there further conferring that has to
10 be done?

11 MS. RICHARDSON: I think we have conferred and are
12 prepared to offer those.

13 THE COURT: Okay.

14 MR. CHANDRA: I believe so, also, Your Honor.

15 THE COURT: All right. Since we're still in the
16 defense case, offer your stipulations, Ms. Richardson.

17 MS. RICHARDSON: Your Honor, at this time, I believe,
18 pursuant to stipulation with the plaintiffs, the defense would
19 offer Defense Exhibits 2 through 7, 13 through 25, 32 through
20 53, 56 through 57, 59, 61, 105 through 108, as well as D95
21 through D104 and D63 through D65.

22 MR. CHANDRA: No objection, Your Honor.

23 THE COURT: All right.

24 2 through 7, 13 through 25, 32 through 53, 56 through
25 57, 59, 61, 105 through 108, D95 through 104, D63 through 65

1 will be received pursuant to stipulation.

2 MS. RICHARDSON: Thank you, Your Honor.

3 THE COURT: All right. Now, you have rested, am I
4 correct, Ms. Richardson?

5 MS. RICHARDSON: Yes, Your Honor.

6 THE COURT: All right.

7 MS. RICHARDSON: We would ask one thing, if the Court
8 would permit it. I believe that plaintiffs had asked for the
9 possibility of keeping the record open just for the limited
10 purpose of the voter stipulations and county stipulations that
11 are still being worked out. We would just ask for the same
12 leave, just so that we can confirm the record and make sure
13 that there were no --

14 THE COURT: Okay. How much time do you need?

15 MR. CHANDRA: Is through the end of next week fine for
16 both sides on that?

17 THE COURT: April 8th, isn't that next Friday? A week
18 from tomorrow, rather?

19 MS. RICHARDSON: Yes, Your Honor.

20 THE COURT: All right. Both sides will have -- The
21 record will remain open so that both sides can make any final
22 evidentiary submissions on or before April 8th. After that
23 time, the record as of -- What time does the Clerk's Office
24 close? Four o'clock?

25 COURTROOM DEPUTY CLERK: (Nodding affirmatively.)

1 THE COURT: As of four o'clock April 8th, four o'clock
2 p.m. on April 8th, the record closes with respect to these
3 evidentiary offerings.

4 MS. RICHARDSON: Thank you, Your Honor.

5 THE COURT: Now, Mr. Chandra, your stipulations.

6 MR. CHANDRA: Thank you, Your Honor.

7 So, I believe that we have stipulations as to
8 Plaintiffs' Exhibits 2 through 5 --

9 THE COURT: Okay.

10 MR. CHANDRA: -- 8 through 10. And, then, 11 has
11 already been admitted over objection. So -- and then 12
12 through 24.

13 Okay. Withdraw 14 and 16 from that, Your Honor. I'm
14 sorry.

15 THE COURT: 12 through 13, and then 14 through 15?

16 MR. CHANDRA: No, 14 would be out, Your Honor.

17 THE COURT: Okay, 12 through 13, 15 and then --

18 MR. CHANDRA: -- 17.

19 THE COURT: -- 17 through 24.

20 MR. CHANDRA: Correct.

21 THE COURT: Okay.

22 MS. RICHARDSON: No objection, Your Honor.

23 THE COURT: All right. Is that it?

24 MR. CHANDRA: I wanted to make sure that in your notes
25 you had 2 through 5, Your Honor.

1 THE COURT: 2 through 5, 8 through 10, 12 through 13,
2 15, 17 through 24.

3 MR. CHANDRA: Yes, Your Honor. Thank you.

4 THE COURT: And --

5 MS. RICHARDSON: Yes, Your Honor. That's correct, no
6 objection.

7 THE COURT: Okay.

8 And, with that, you rest as well; is that correct, Mr.
9 Chandra?

10 MR. CHANDRA: Yes, Your Honor.

11 THE COURT: All right.

12 Ms. Errett, how long before the complete transcript will
13 be provided?

14 COURT REPORTER: I believe by next Wednesday, or
15 sooner.

16 THE COURT: So, if next Wednesday is the date by which
17 the transcripts will finally be provided -- and this has been a
18 rolling process. So, you've been -- you're not just getting
19 all of the transcripts by next Wednesday. So, next Thursday
20 will be the 7th. So your briefs -- your opening briefs -- I
21 think we agreed that you would have two weeks from the time of
22 the transcript. So your opening briefs will be due on the
23 21st. Your reply -- and they'll be simultaneous filings. And
24 simultaneous replies on the 28th.

25 Any further questions from the plaintiff?

1 MR. CHANDRA: No, Your Honor. Thank you.

2 MS. RICHARDSON: Your Honor, just one. Are there any
3 page limitations in terms of the briefing?

4 THE COURT: Yes. We did -- what -- I welcome your
5 input. I am assuming that you don't believe that this is
6 something that can be done within 20 pages. So what --

7 MR. CHANDRA: So for the briefing, Your Honor,
8 because, A, we bear the burden and, B, we have so many claims
9 and we need to cover those --

10 THE COURT: Just tell me what you need, what you
11 would --

12 MR. CHANDRA: If I may have a moment to confer?

13 THE COURT: Certainly.

14 (Whereupon, there was a brief interruption.)

15 MR. CHANDRA: Okay. Your Honor, what we would like is
16 50 pages and the ability to file with that, or submit to the
17 Court in Word, if the Court prefers, proposed findings of fact
18 and conclusions of law.

19 THE COURT: Well, that's what yours would be, your
20 proposed findings of fact and conclusions of law.

21 MR. CHANDRA: I'm sorry. I didn't hear you.

22 THE COURT: That's what it would be, anyway. I mean,
23 for a bench trial, you would submit proposed findings of fact
24 and conclusions of law. That's what your posttrial briefing
25 is.

1 MR. CHANDRA: Right. In that case, Your Honor, we
2 would appreciate a hundred-page limit.

3 THE COURT: You're kidding me. There is no way.
4 There is absolutely no way that I'll -- because if I gave you a
5 hundred pages, you would take 120. There is no way. And there
6 is nothing in this case that can't be said in 50 pages. So,
7 you probably were smart enough to double what you really wanted
8 so it just didn't seem quite as bad.

9 So there will be a 50-page limitation on your opening
10 briefs and a 25-page limitation on your reply briefs. That
11 way, you'll be efficient.

12 MR. CHANDRA: Could I get some clarification from the
13 Court, please?

14 THE COURT: Sure.

15 MR. CHANDRA: What we had originally envisioned and
16 discussed on our side were two separate documents: A closing
17 brief, because there had been no closing argument, a final
18 brief, and a separate document that would be proposed findings
19 of fact and conclusions of law.

20 THE COURT: Ms. Richardson, what do you want?

21 MS. RICHARDSON: Your Honor, we expected there would
22 be one brief that would contain proposed findings of fact and
23 conclusions of law.

24 THE COURT: That's the way I've done it in my 19
25 years. And it has served the Court and the public well.

1 Well, you have 50 pages to say it.

2 MR. CHANDRA: Thank you, Your Honor.

3 MS. RICHARDSON: Thank you, Your Honor.

4 (Whereupon, there was a brief interruption.)

5 THE COURT: Is there anything further from the
6 plaintiffs?

7 MR. CHANDRA: No, Your Honor. Thank you.

8 THE COURT: Anything further from the defense?

9 MS. RICHARDSON: No, Your Honor.

10 THE COURT: All right. Thank you very much, everyone.

11 Just for ease of convenience, you don't have to worry
12 about all of these notebooks right now, because I just need to
13 get to my change of plea. I mean these notebooks over to my
14 right. You need to clean off your space a little bit, but I'll
15 give you ten minutes to get that cleaned off. And then, you
16 know, to the extent that, you know, you need to confer or to do
17 whatever, you may do so.

18 MS. RICHARDSON: Thank you, Your Honor.

19 THE COURT: All right.

20 (Proceedings were concluded at 11:15 a.m.)

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C E R T I F I C A T E

I do hereby certify that the foregoing is a true and correct transcript of the proceedings before the Honorable Algenon L. Marbley, Judge, in the United States District Court, Southern District of Ohio, Eastern Division, on the date indicated, reported by me in stenotypy and transcribed by me or under my supervision.

s/Denise Errett, FCRR
Denise Errett, FCRR
Official Federal Court Reporter

DATE: April 1, 2016