

1           IN THE CIRCUIT COURT OF COLE COUNTY  
              STATE OF MISSOURI

2

3 KATHLEEN WEINSCENK, et al., )  
  )  
4       Plaintiffs,                 )  
  )  
5       vs.                         ) Case No.  
  ) 06AC-CC000656  
6 STATE OF MISSOURI, et al., )  
  )  
7       Defendants.                )  
  )

8

9           TRANSCRIPT OF PROCEEDINGS

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11           On the 21st day of August, 2006, the  
12 above-entitled cause came on regularly for  
13 hearing before the Honorable Richard G. Callahan,  
14 Judge of Division II of the 19th Judicial  
15 Circuit, Cole County, at Jefferson City,  
16 Missouri.

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19           REPORTED BY:

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          MINDY S. HUNT, CSR, CCR #840  
          19th Judicial Circuit  
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1                   AUGUST 21, 2006

2                   HEARING

3           THE COURT: For the record, Court calls  
4 06AC-CC00587, Jackson County, et al., versus the  
5 Attorney General, and Cause No. 06AC-CC00656 styled  
6 Weinscenk, et al., versus State of Missouri, et al.  
7 Causes were ordered consolidated.

8           Beginning with Plaintiffs on the first  
9 case, identify yourself for the record.

10          MR. NEWMAN: Burt Newman, I represent the  
11 Jackson County plaintiffs, including Jackson  
12 County, the City of St. Louis, Mayor Slay of the  
13 City of St. Louis, County Executive Charlie Dooley  
14 of St. Louis County, and Katheryn Shields, County  
15 Executive of Jackson County.

16          MR. DOWNING: Don Downing, I represent  
17 Weinschenk and plaintiffs.

18          MR. PRESSON: For the defendants in the  
19 Jackson County case, Robert Presson for the  
20 Attorney General's Office representing the State of  
21 Missouri in that case.

22          MR. LONG: Weinschenk case, the second

23 one, Judge, Mark Long for the Attorney General's

24 Office for the State of Missouri.

25 MS. WOOD: Weinschenk case, Barbara Wood,

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1 representing the defendant Robin Carnahan as  
2 Secretary of State.

3 THE COURT: Thank you very much. The  
4 first thing to be taken up is the motion to  
5 intervene, and who is here on behalf of those are  
6 those motions are in both cases, correct?

7 MR. DEUTSCH: Yes, your Honor. Jim  
8 Deutsch for intervenors Delbert Scott and Dale  
9 Morris. And actually I was going to ask my  
10 colleague from St. Louis to make argument on the  
11 motion to intervene, if that would be appropriate  
12 with the Court.

13 MR. PAYNE: Mike Payne, Board of Elections  
14 Commissioners for the City of St. Louis. I filed a  
15 motion to intervene in both matters.

16 THE COURT: That's in both cases also?

17 MR. PAYNE: Yes, your Honor.

18 THE COURT: Let me hear the arguments on  
19 it would be on behalf of motion to intervene.

20 MR. HEARNE: Your Honor, we represent  
21 Senator Delbert Scott. He is the duly elected  
22 Senator from Missouri's 28th Senate District, who

- 23 is also a taxpayer and voter and citizen of
- 24 Missouri, and who is know also the chair of the
- 25 Financial and Governmental Organizations, Veterans

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1 affairs and Elections Committee.

2 Then we also represent Dale Morris, who is  
3 a disabled, elderly St. Louis County voter who is  
4 seeking intervention. She also may testify in the  
5 House in support of the legislation. We have  
6 sought interventions, your Honor. We filed a brief  
7 that outlines some of the argument that will not be  
8 presented otherwise.

9 First, let me note each of those  
10 individuals have an interest in this case that to  
11 them as voters is to protect their right to vote  
12 and prevent their vote from being disenfranchised  
13 by having illegally cast votes counted and also to  
14 maintain as this law does. It has a number of  
15 features. This law is not just voter ID, which is  
16 then focused on proceeding, but a number of  
17 positions in this law that also affect these  
18 districts in provisional voting whatever decisions  
19 are going to have a direct effect on their interest  
20 on individual voters and taxpayers in the State of  
21 Missouri.

22 As we have indicated, your Honor, we do

- 23 not plan to take an additional amount of time in  
24 any way or in any way slowing down proceedings, but  
25 we do think there's substantial legal arguments we

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1 would present to the Court that the Court would not  
2 otherwise have benefit of the -- as well as  
3 evidence that would also be benefit of the Court to  
4 making a ruling on the arguments that has been  
5 raised.

6 Specifically, I will outline some points  
7 of evidence that we will bring, not otherwise be  
8 available that because of the similar statute in  
9 fact strictor photo ID state in state of Indiana,  
10 we would prepare to present the Indiana Secretary  
11 of State Todd Rokita to testify to his experience  
12 after that law was passed in Indiana and did not  
13 disenfranchise voters. It made the election  
14 process work more smoothly.

15 We have an economic analyst, a Ph.D. as  
16 well as statistician John Lott, who can testify  
17 that analysts of election results throughout the  
18 country and state with photo ID and voter  
19 identification provision not only is there not a  
20 contrary impact on any group and you have an  
21 increase in voter participation by having the  
22 protection of election process. That testimony

23 will be available also to present on behalf of the  
24 intervenor that would otherwise not be available  
25 through other parties.

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1           Finally, we anticipate that Senator Scott  
2 himself in consideration to Missouri Senate in  
3 terms of crafting the legislation is to make sure  
4 that it was consistent within the objective of  
5 protecting every Missourians right to vote,  
6 increasing confidence of all Missourians election  
7 process and the provision was made to provide for  
8 eligible voters in Missouri for a photo ID, as well  
9 as to make sure that anyone who didn't have the  
10 ability to have one, such as disabled, such as  
11 those born before 1941 and for religious beliefs.

12           That will be the testimony that we would  
13 present that would not otherwise be available to  
14 the Court. And we think that this is very  
15 important. We think that wherever it goes after  
16 this Court, that an evidentiary record is  
17 important. And we think, again, in reference to  
18 our own brief that we filed with the Court  
19 memorandums of law, your Honor, which outlines the  
20 other arguments in evidence that we would present  
21 that would not otherwise be presented in support.

22           THE COURT: All right.

23 MR. PAYNE: On behalf of the Board of  
24 Election Commissioners for the City of St. Louis in  
25 both cases, we filed our motions to intervene

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1 because we had a unique role of administration of  
2 elections, when looking at the three criteria that  
3 to intervene as a matter of right in Missouri law.  
4 We identified that the board has a significant  
5 recognizable interest and to suggest matter of  
6 interest, the board is actually the entity that has  
7 the task of actually enforcing the administration  
8 of the elections, so we have an interest in  
9 ensuring that registered voters are able to cast  
10 ballots and only those registered voters who are  
11 registered may cast this ballot in avoiding  
12 fraudulent voting and ensuring fair and orderly  
13 administration of election. And that's the  
14 recognizable interest that the board has in both of  
15 these matters.

16       Additionally, we may be impaired or our  
17 abilities and our interest may not be heard with  
18 the other parties. We have the unique position as  
19 the only entity that's actually administering the  
20 elections and will take this law into consideration  
21 and how to implement it at the actual election on  
22 the poll day. That's an interest that is very much

23 dispensable from my part in this case today.

24 And for those reasons, the Board of

25 Election requests that it be granted leave to

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1 intervene. They may also add additional testimony  
2 that would not otherwise be heard by election  
3 officials to this process and what they anticipate  
4 what that law will do as far as assisting in a fair  
5 and honest election.

6 THE COURT: Let me hear from the  
7 defendants, Mr. Long, as to what you have a view on  
8 the motions to intervene.

9 MR. PRESSON: We have no objection to  
10 either motion to intervene.

11 MR. LONG: That's correct, your Honor.

12 THE COURT: What about their statement  
13 that they would present some evidence that you  
14 folks would not present? Do you have any position  
15 on that one way or another?

16 MR. PRESSON: Well, certainly because we  
17 haven't had a chance to do any sort of discovery,  
18 so yes, they will be in a position to offer  
19 testimony that we certainly won't be able to right  
20 now.

21 THE COURT: Because they had discovery, or  
22 maybe I'm missing something?

23 MR. PRESSON: No. In terms of trying to  
24 locate some additional evidence. We just haven't  
25 had the time to do that. So we wouldn't be in a

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1 position to, you know, as Mr. Hearne said, bring in  
2 the Indiana Secretary of State or anyone else in  
3 that sort of category to the extent, you know -- I  
4 mean, this is only, like, a month since the first  
5 case was filed in less than a month, and then the  
6 second one was filed. In terms of preparation,  
7 yeah, we are still on the learning curve here.

8 THE COURT: Mr. Long?

9 MR. LONG: I have no doubt, I agree with  
10 the judge. We would not present the evidence  
11 absent the intervenors, so I would agree with  
12 Mr. Presson's comments.

13 MR. DEUTSCH: I would just add that the  
14 attorney and the Court had a chance to review the  
15 memorandum that's been filed in support of the  
16 intervenors. I think if you read through it, would  
17 indicate there's a substantial amount to know about  
18 this case. And if you read it, two thoughts  
19 occur. These people have done an awful lot and  
20 know an awful lot about it.

21 I want to make it clear that the parties  
22 will cooperate in any way with the Attorney

23 General, with the plaintiffs in the case to make  
24 sure that discovery is had and the deadline done by  
25 the Court gets back. We're not here to delay this

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1 thing. I think review of the pleadings so far  
2 would demonstrate that there is certainly a lot  
3 more to know about it, which we can find so far.

4 MR. DOWNING: Your Honor, I think  
5 everybody here has that same interest in making  
6 sure that our election laws are interpreted by  
7 Missouri Supreme Court in sufficient time before  
8 the November election so that all the local  
9 election authorities know what rules to follow.

10 Our concern on the intervention motion is  
11 it's going to slow down process. The first action  
12 here was filed on July 17th. They have had -- the  
13 intervenors did not file their motions to intervene  
14 until the eve of this preliminary injunction  
15 hearing. They filed motions last Thursday and  
16 Friday. There's absolutely no reason that they  
17 intended to intervene, that they could not have  
18 filed their intervention motion in the Jackson  
19 County case in July, and in our case, weeks ago in  
20 early August. And we, the plaintiffs, are  
21 prejudiced if they are allowed to intervene now.

22 We have spent weeks going through with the

- 23 Attorney General's Office and the Secretary of
- 24 State's Office in detail trying to come up with
- 25 stipulations to streamline this process for this

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1 hearing today or any future hearings. We've agreed  
2 to some 50 stipulations that will be offered today  
3 in evidence for this Court's consideration. And as  
4 a result of those stipulations, we, and I think the  
5 State, has agreed not to call a lot of live  
6 witnesses that they otherwise would have called.

7 If intervenors are allowed to intervene  
8 now on the eve of this hearing, and they are  
9 allowed to question the legitimacy of these  
10 stipulations, obviously, if they are parties to the  
11 case they have a right to determine whether they  
12 want to stipulate to those facts or not. This  
13 could put a tremendous slowdown on this case, and  
14 basically put it in a position where there's no way  
15 that Missouri Supreme Court can hear this in  
16 sufficient time to issue a definitive ruling on  
17 whether this photo ID law is constitutional in  
18 order to give the local election authorities plenty  
19 of time to administer.

20 So that's our primary concern, your Honor,  
21 is that we will be prejudiced by the untimely  
22 filing. Our other point is that in this state, at

23 least in the last 15 years that I can remember, the  
24 Attorney General is charged with defending the  
25 constitutionality of Missouri statutes. That

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1 office has done its job well. That office has put  
2 three of their top assistant attorney generals on  
3 the case. And I know for a fact, because I've been  
4 on the phone with them most of the last few weeks.  
5 They have been working hard on this case.

6 It's their decision as to what evidence to  
7 put on to defend the constitutionality of the state  
8 statute. There's been no hint that they are not  
9 zealously representing the State here. No one has  
10 suggested that. And to allow intervenors -- if  
11 these two entities and individuals are allowed to  
12 intervene, what's to stop 50 others from saying,  
13 well, I'm a voter. I have an interest in this.  
14 Let me me intervene, too.

15 And to address Mr. Hearne's concern about  
16 educating the Court, and that's a valid interest, I  
17 would suggest to the Court that a better procedure  
18 for allowing that to happen, rather than allowing  
19 his clients to intervene as parties, which will  
20 complicate this case tremendously, is to allow them  
21 to file an amicus brief to educate the Court. And  
22 the brandized briefs that have been allowed by the

23 Missouri Supreme Court and the US Supreme Courts,  
24 allow not only legal arguments, they allow factual  
25 arguments.

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1           So there's nothing to prevent the proposed  
2 intervenors from filing whatever amicus briefs they  
3 want to file. But if you allow these additional  
4 parties, there may be others. And then if we start  
5 the deposition process, assuming the Court doesn't  
6 rule today on the preliminary injunction motion,  
7 this case is going to get out of control and makes  
8 it very unlikely that the Missouri Supreme Court is  
9 going to get this time to issue a ruling. Thank  
10 you.

11           MR. NEWMAN: Your Honor, the Jackson  
12 County plaintiffs have joined with Mr. Downing in  
13 this motion, and I adopt Mr. Downing's arguments.  
14 I just want to add one thing, your Honor. The rule  
15 on intervention clearly states that intervention  
16 must be timely. And at this point I do not see how  
17 these requests to intervene could be considered  
18 timely by the Court.

19           The motion to intervene from the board of  
20 election commissions, the City of St. Louis was  
21 received in my office on August the 16th, a full  
22 month after I filed this suit. The other motion in

23 what Mr. Hearne has argued, I didn't even see that  
24 motion until Saturday, the 19th of August. It's  
25 about four inches thick, your Honor.

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1 I don't think the rule comprehends that  
2 untimely applications involving legal issues as  
3 they say they are arguing, can contravene the rule,  
4 which requires that if a party wants to intervene  
5 in the case, they must do so in a timely manner.  
6 This is not the time. There may be another time  
7 when consideration can be given to that, but I  
8 agree wholeheartedly with Mr. Downing that their  
9 views can be made perfectly clear to this Court  
10 through amicus briefs.

11 THE COURT: When would the other time --  
12 what other time are you referring to?

13 MR. NEWMAN: Well, your Honor, as the  
14 Court knows, this is a three-step -- now, we have  
15 narrowed it to a two-step process. There may very  
16 well be a hearing on a permanent injunction. But  
17 for now if these parties are allowed to submit that  
18 they like to court in terms of an amicus brief, the  
19 Court can consider their arguments, but it is  
20 prejudicial and unfair to plaintiffs after the 11th  
21 hour to be confronted with new issues that are  
22 supposedly being raised by these parties, which we

23 haven't had a chance to consider. The rule doesn't  
24 permit that. The rule calls for timely  
25 application. This could not be considered timely,

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1 your Honor.

2 THE COURT: Let me ask both of you, some  
3 of the stipulations and the like that you worked  
4 out with the attorneys in the case right now, are  
5 those reduced to writing?

6 MR. NEWMAN: Yes, your Honor.

7 MR. DOWNING: Yes, your Honor. We intend  
8 to present them as evidence today.

9 MR. NEWMAN: Your Honor, if I could just  
10 add, these stipulations were not drawn up  
11 overnight. There has been ongoing communication  
12 with the Office of the Secretary of State, and with  
13 the Office of the Attorney General. This has been  
14 going on for weeks to try to streamline this  
15 procedure as is required by the rules. And the  
16 intervention of these parties, your Honor, can do  
17 nothing but interrupt the work, which by statute  
18 the State of Missouri is to be represented by the  
19 Attorney General and the Secretary of State  
20 represents the interest of the voters of this  
21 state.

22 MR. HEARNE: Your Honor, two points. As I

23 read the plaintiffs' petition and their relief they  
24 are seeking, the injury they claim that they seek  
25 this Court to join, is requesting a photo ID when

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1 somebody goes in to vote. The first time that will  
2 ever happen is November 7th of this year, and that  
3 will only be for those who even the voter wanting  
4 to vote without a photo ID will still be able to  
5 cast a ballot. The first time that event comes up  
6 that, quote, denied the right to vote for lack of  
7 voter ID will be in '08, November of '08. So there  
8 is not an urgent objective in joining any activity  
9 that's going on right now that prevents the Court  
10 from considering this evidence.

11 There is the ability for the Court to hear  
12 this evidence, to include this evidence in the  
13 Court's ruling, to issue a final decision, assuming  
14 that they are correct, that the plaintiffs are  
15 correct and the Court's inclined to accept their  
16 position, assuming we then appeal it all the way up  
17 to the Supreme Court and ultimately a permanent  
18 injunction is issued and an appeal on that is  
19 taken, there is plenty of time for that. But for  
20 anybody that has ever asked for a photo ID in any  
21 election in this state under the existing law there  
22 is no injury that will occur.

23           It is certainly timely for the intervenors  
24 to come in and present to this Court. I think  
25 there's compelling evidence. We have individual

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1 voters in this state who have an interest in this  
2 legislation passed by the House and Senate, signed  
3 by the Governor. One of who is a senator, who is a  
4 chairman of the committee, the other is an  
5 individual voter, which is disabled who came to  
6 testify in support of this, who cares about her  
7 right to vote.

8 I think for the Court to take into account  
9 those interests as parties who certainly is  
10 interested in the law in this state, I think to  
11 limit them just amicable is to deny people to fully  
12 participate in a meaningful way. So we will  
13 certainly submit there's not going to be any harm  
14 or any prejudice to the plaintiffs by reason of  
15 intervention. And certainly the election board, I  
16 would let them speak for themselves.

17 THE COURT: What about the stipulations  
18 that's already been --

19 MR. HEARNE: I have not seen the  
20 stipulations, your Honor. I would be glad to  
21 review them in an expedited fashion and in a timely  
22 manner. We're not here to slow this down. We're

23 here to present some additional evidence to the  
24 Court. We think that we can certainly cooperate in  
25 every way to a speedy resolution of this case and a

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1 full hearing of the facts.

2 MR. PAYNE: Judge, two points raised why  
3 the board of election commissioner should not be  
4 granted leave to intervene in this issue. That was  
5 to slow down process, and then to present  
6 additional issues to this Court to consider. One,  
7 we're not here to slow down the process. We  
8 actually intend -- we are, as the board of  
9 elections, desire getting a ruling on this so we  
10 then can go -- we're going on in the elections.

11 And to say that we're adding additional  
12 issues, the issues that are raised in the pleadings  
13 by both of the plaintiffs regarding the impact it  
14 will have on specific board of elections in the  
15 City of St. Louis board of election commissioners  
16 identified as one of those parties, that would  
17 incur or would potentially be affected by this, I  
18 think certainly the board of elections has every  
19 right to be here and add testimony. Not on  
20 additional issues, but relevant testimony on the  
21 issue the are presented in the pleadings, your  
22 Honor.

23 THE COURT: The Court does not believe  
24 that the intervenors, at least, have the matter to  
25 intervene as a matter of right. I think it is

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1 discretionary with the Court. At this time I'm  
2 going to deny the motions to intervene in part  
3 because of the stipulations of fact that already  
4 have been entered into and prepared to hear  
5 evidence, and even giving you a chance to review  
6 the stipulations to see whether you were going  
7 agree or not would cause a delay that you state you  
8 don't wish to delay, don't wish to cause.

9 The Court would certainly allow the filing  
10 of amicus briefs and motions at any time. And  
11 beyond that, I don't want to go any further at this  
12 moment whether the Court would revisit the issue, I  
13 don't know. We talked about what we don't -- if we  
14 don't finish today or even if we finish today, we  
15 also reserved -- help me. Is it the 21st?

16 MR. PRESSON: September 20 and 21.

17 THE COURT: September 20 and the 21st for  
18 remaining dates to hear evidence. And so once we  
19 get beyond today, I don't know.

20 MR. DEUTSCH: Your Honor, one other  
21 thought, though, the reason that I have known  
22 both -- all counsel here, by representation they

23 are all honorable people, but please understand the  
24 relative interest and the positions of the parties  
25 and what the circumstances are. The intervenors do

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1 have evidence that is necessary and important for  
2 them to present. We are not saying by allowing to  
3 file an amicus brief we are going to be allowed  
4 to --

5 THE COURT: I understand that. I took  
6 counsel statements at -- I'm denying the motion at  
7 this time for today because the stipulations have  
8 been entered.

9 MR. DEUTSCH: For cautionary, though, I  
10 believe that contrary to the conclusion that this  
11 would delay, I believe, if the fact the preliminary  
12 injunction hearing is held between parties who have  
13 already seemed to work out stipulations that the  
14 rest of us haven't seen yet, and the Court renders  
15 a judgment, I believe that the second for these  
16 parties to move ahead with the case pretty much  
17 disappears with the preliminary injunction.

18 In fact, if a preliminary injunction  
19 entered, I believe the Court can move the case  
20 ahead because then I think it even has intention in  
21 getting this thing resolved. I don't know what  
22 incentive would be for plaintiffs in this case to

23 want to move a step further once they have a  
24 preliminary injunction, because they've won. And I  
25 would be cautious --

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1 THE COURT: But I think you're getting  
2 ahead of yourself as to where we're going to be at  
3 the end of the day.

4 MR. DEUTSCH: I have that concern, because  
5 I won't be participating in where we are at this  
6 time.

7 THE COURT: Well, but you will be  
8 permitted to file amicus briefs for today, and your  
9 motion to intervene is denied at this time without  
10 prejudice to bringing it up again.

11 MR. DEUTSCH: Thank you, your Honor.

12 THE COURT: Are we ready?

13 MR. DOWNING: Yes, your Honor.

14 MR. NEWMAN: Ready, your Honor.

15 THE COURT: I will leave it to you two  
16 gentlemen. These cases are consolidated.

17 MR. NEWMAN: They are, but Mr. Downing is  
18 going to begin, your Honor.

19 MR. DOWNING: I'll hand you a notebook  
20 that I'll be referring to in my opening.

21 THE COURT: I would like to limit  
22 plaintiffs and defendants to some amount of time to

23 be divided to -- is 15 minutes per side enough, or  
24 do you want a little bit longer? I think the  
25 evidence is important. But if you want more, I

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1 just want to it to be the same.

2 MR. DOWNING: Your Honor, we were thinking  
3 that our combined opening would take anywhere from  
4 45 minutes to an hour, the two of us. And then our  
5 evidence would probably take a couple hours, which  
6 would give them the balance of the day. So that  
7 would be roughly three hours and three hours for  
8 each side today. I don't know how much evidence  
9 they want to put on today. Is that --

10 MR. PRESSON: Fine.

11 MS. WOOD: Your Honor, we'll split our  
12 time. I think we have -- the Secretary of State's  
13 Office has a very brief opening and then the  
14 Attorney General's Office.

15 THE COURT: I would prefer to -- what was  
16 your estimate on the openings?

17 MR. DOWNING: Collectively 45 minutes or  
18 so, something like that, your Honor.

19 THE COURT: Let's try to make it 30 on the  
20 openings, because I'd be interested in legal  
21 argument after I've heard the evidence and giving  
22 more time then, if you don't mind. Can you do

23 30 minutes?

24 MR. DOWNING: If you would prefer to have

25 legal arguments after the evidence, we can go it

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25

1 that way, which I assumed you wanted a little  
2 overview first.

3 THE COURT: I don't mind a little  
4 overview. Just in terms of getting to the  
5 evidence.

6 MR. DOWNING: We'll do an overview first.

7 MR. PRESSON: Your Honor, this is sort of  
8 a housekeeping matter, in terms of procedure, the  
9 exhibits that Mr. Downing has given you, while the  
10 parties have agreed on stipulations, we have not  
11 agreed to their admissibility. We have observed  
12 certain objections. We have waived things like  
13 foundational requirements and things of that  
14 nature, so exactly when would you like to take up  
15 those objections at some point?

16 THE COURT: Well, let me ask you this: I  
17 assume there will be a lot of, not having read your  
18 stipulation, but going on past cases, I assume the  
19 stipulation does away with the need for records  
20 custodians and things of that nature. I assume  
21 parties still reserve the right to object on the  
22 basis of relevancy?

23 MR. PRESSON: Materiality.

24 THE COURT: Hearsay?

25 MR. PRESSON: Hearsay.

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1 MR. DOWNING: Double hearsay. We've got  
2 some affidavits --

3 THE COURT: Single hearsay is all you need  
4 but --

5 MR. DOWNING: But, for example,  
6 affidavits, we agreed they can be used in lieu of  
7 live testimony, subject to relevancy and  
8 materiality and double hearsay objections.

9 THE COURT: Are you waiving single hearsay  
10 objections?

11 MR. DOWNING: We are. For the reason that  
12 offering affidavits in court is not a court  
13 statement offered for the truth of it, so that's  
14 hearsay, so we're waiving those types.

15 THE COURT: All right.

16 MR. PRESSON: The first level of hearsay  
17 is, like, the author of the document. We're not  
18 insisting that the author of the document --

19 THE COURT: Appears personally, right. I  
20 understand.

21 MR. DOWNING: Your Honor, we have also put  
22 on your desk, those are the stipulations, a copy of

23 them. I have the original exhibits we're going to  
24 offer later. Those are the stipulation and a copy  
25 of all the exhibits and stipulations.

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1 THE COURT: All right.

2 MR. DOWNING: May it please the Court.

3 THE COURT: Before you begin, ladies and  
4 gentlemen, just as a general reminder, make sure  
5 your cell phones are off or on silent, please, just  
6 out of courtesy to the lawyers and the parties.

7 MR. DOWNING: Your Honor, from James  
8 Madison's federalists papers all the way through  
9 today, the right to vote has been a cornerstone of  
10 our democracy. As stated by the United States  
11 Supreme Court in 1964, the right to vote is the  
12 essence of a democratic society. And any  
13 restrictions on that right strike at the heart of  
14 representative government. And our own Supreme  
15 Court stated in 1951 that the right of universal  
16 suffrage is the attribute of sovereignty of our  
17 free people.

18 Our Missouri Constitution, unlike the US  
19 Constitution, provides express and repeated  
20 protections for this fundamental right, including  
21 the extraordinary clause in our Missouri Bill of  
22 Rights, which says no power, civil or military

23 shall at any time interfere to prevent the free

24 exercise of the right of suffrage.

25 Well, your Honor, that's exactly what the

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1 Missouri Legislature did when it enacted the  
2 Missouri Voter Protection Act. The act doesn't  
3 protect Missouri voters. It unduly burdens about  
4 170,000 or more of them who don't have photo IDs by  
5 requiring them to wind their way through a  
6 bureaucratic maze or multi-state basis to obtain  
7 documents that they will have to present in order  
8 to get an ID that's acceptable under this statute.  
9 Without it, these voters won't be allowed to cast a  
10 regular ballot and most of them won't be allowed to  
11 cast a ballot at all.

12 Without a doubt, and contrary to what Mr.  
13 Hearne said earlier today, this is the most  
14 restrictive voter ID law in the country. It's  
15 inconsistent with our constitution. It's  
16 inconsistent with the right of universal suffrage.  
17 It's inconsistent with our values, and it should be  
18 declared unconstitutional and enjoined.

19 This law is so restrictive, your Honor,  
20 that even the republican vice chair of our House  
21 Elections Committee, Representative Bill Deeken,  
22 voted against it. And as this Court is aware,

23 Representative Deeken was the Cole County Clerk for  
24 12 years and understands a thing or two about  
25 elections. Those who are burdened by the new law

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1 are not those who can easily deal with  
2 bureaucracy. They are not lawyers or doctors or  
3 journalists or educators. They are the poor; they  
4 are the uneducated; they are the disabled; they are  
5 minorities. People who don't have a car, people  
6 that don't have a computer, people who don't have  
7 access to the web. These are the least fortunate  
8 people in our society and these are the very people  
9 that this law singles out to cast a burden on.

10 To put the burdens on those who are least  
11 able in our society to able to bear them, is to  
12 meet the dignity of our great state. Many people  
13 in these groups will not only be unduly burdened.  
14 They will become discouraged. They will become  
15 confused, disenchanting. And many of them will give  
16 up altogether and simply won't vote. This type of  
17 farinaceous discrimination with the free exercise  
18 of the right to vote is precisely what the drafters  
19 of our constitution meant to prohibit.

20 What overriding and compelling purpose  
21 could possibly justify this? Well, at first the  
22 proponents of the legislation claimed that it was

23 justified to prevent voter fraud. But the only  
24 type of voter fraud that this law would deter is  
25 voter impersonation fraud at the polls. Someone

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1 shows up at the polls pretending to be someone else  
2 to vote. That type of voter fraud is virtually  
3 nonexistent in this state. We are unaware of a  
4 single instance or single reported type of this  
5 type of voting fraud anywhere in this state since  
6 at least 2000. Even Governor Blunt, when he was  
7 Secretary of State, said that the 2000 and 2004  
8 election in the state were fraud free, to use his  
9 word, and also said that they were two of the  
10 cleanest and problem-free elections in recent  
11 history, and that's a quote.

12 Obviously, realizing there's no need,  
13 compelling or otherwise, for this photo ID law, the  
14 proponents of this legislation did shift to the  
15 argument. They shifted it to say, well, we might  
16 not need to log, in fact, voter fraud, but we  
17 needed to combat the perception that voter fraud is  
18 out there. Well, your Honor, as best I can tell,  
19 there's no court anywhere in the country and  
20 certainly no court in Missouri that has ever bought  
21 the argument that a state can directly infringe on  
22 the fundamental right to vote based on mere

23 perception. The cases in the state's brief don't  
24 say this. Those were campaign finance cases in  
25 which the right to vote was not being infringed

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1 upon.

2       Rather the issue in those cases was an  
3 extent to which campaign contributions or  
4 expenditures can be limited. Those cases say  
5 nothing that would begin to justify the type of  
6 infringement on the right to vote that's at issue  
7 here. Once more, even if they did, there is no  
8 such perception as our evidence will show today.  
9 There certainly is no perception of any problem  
10 with the only kind of election fraud the photo ID  
11 requirement would prevent, and that is voter  
12 impersonation fraud. If the state believes there  
13 is such a perception, they are going to have to  
14 show it. This is Missouri, they are going to have  
15 to show it.

16       Perhaps, recognizing that it won't be able  
17 to show this, the state argues, again, without  
18 evidentiary support, that there are some undefined  
19 general perceptions throughout the United States  
20 that there is fraud with respect to the voter  
21 registration process and that justifies the law.  
22 Well, that's an interesting argument, because the

- 23 photo ID requirement does not address or apply to
- 24 the registration process at all. If someone
- 25 fraudulently registers and no photo ID is required

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1 to register, requiring that person to present a  
2 photo ID at the polls will not prevent that person  
3 from voting. The same documents used to register  
4 fraudulently allow that person to obtain the  
5 fraudulent photo ID.

6 More importantly, the type of registration  
7 fraud that's most prevalent would not even be  
8 affected. That type of fraud, your Honor, is where  
9 you have people paying people to obtain so many  
10 registrations. And they get them out of the phone  
11 books and they get them out of other sources, and  
12 they register those people. And the people who are  
13 registered, don't even know they are registered and  
14 they don't vote. And the photo ID law is not going  
15 to affect that at all.

16 Now, the state has argued that all the  
17 photo ID requirement does is require the voter to  
18 identify themselves at the polls, and that's  
19 certainly not unconstitutional. That's not what  
20 the new law does, your Honor. Existing Missouri  
21 law already requires Missouri voters to identify  
22 themselves at the polls. The existing law

- 23 obviously has been sufficient to deter voter
- 24 impersonation fraud. None has been reported since
- 25 this law went into effect in 2002.

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1           What the new law does is require those  
2 without photo IDs to wind through the bureaucratic  
3 mazes and pay money to vote. That's what it does.  
4 At the end of the day, what would be accomplished  
5 by the new photo ID requirement? Well, millions of  
6 state and local taxpayers' dollars are going to  
7 have to be spent to educate the voters and the  
8 public about the new law. And additional dollars,  
9 millions of dollars are going to have to be spent  
10 by local election authorities to administer this  
11 law. And for what? For what reason? To make it  
12 harder to vote for those least fortunate in our  
13 society? That's all the photo ID will accomplish.

14           In short, there's simply no legitimate  
15 justification for the photo ID requirement. It  
16 plainly is unconstitutional for that reason alone.

17           And, your Honor, after all the evidence, I  
18 would be happy to go through each of our claims and  
19 have legal argument on each of those claims, your  
20 Honor. Thank you.

21           MR. NEWMAN: Your Honor, I represent three  
22 Missouri citizens, who, like most Missouri

- 23 citizens, are voters. Who like most Missouri
- 24 citizens, are taxpayers. These three particular
- 25 Missouri citizens also hold elective office. Mayor

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1 Slay of St. Louis, County Executive Dooley of St.  
2 Louis County and Katheryn Shields, County Executive  
3 of Jackson County.

4 My clients, your Honor, are challenging  
5 this law, the Missouri Voter Protection Act, what  
6 I'll refer to as "The Act". They are challenging  
7 this law, and I will prove to this Court that for  
8 purposes of issuing a preliminary injunction, there  
9 is a likelihood of success on the merits based upon  
10 the claim that is being raised by my clients. My  
11 clients are raising their claim as taxpayers under  
12 the Missouri Constitution, Article 10, Section 23.  
13 What is commonly known as Article 16 through 23  
14 of -- I mean, Section 16 through 23 of Article 10  
15 as the Hancock Amendment.

16 They are raising their claim solely upon  
17 the Hancock Amendment, and they have stood up to  
18 challenge this law, because in addition to the  
19 grave concerns as elected officials that they have  
20 about the effectiveness of this law. And in  
21 addition to the burdens, the unnecessary burdens  
22 that they see on the voters of this state by reason

23 of this act, they see also a clear violation of the

24 Hancock Amendment.

25 The Hancock Amendment, your Honor, the

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1 Hancock Amendment is a citizens' amendment. In  
2 1980 the citizens of the State of Missouri passed  
3 the Hancock Amendment by vote. And one of the key  
4 provisions of the Hancock Amendment contained in  
5 Section 16, and also referred to in Section 21, is  
6 that the state cannot impose mandates upon counties  
7 without appropriation of funds to cover the costs  
8 and expenses of the new mandates that are imposed  
9 by the legislation.

10 The Hancock Amendment, your Honor, offers  
11 the Court a method, a neutral method of resolving  
12 this dispute. The Hancock Amendment is not  
13 political. It is apolitical. The Hancock  
14 Amendment is not partisan. It is not bipartisan.  
15 The Hancock Amendment requires objective evidence  
16 of increased costs and expenses imposed upon  
17 counties in this state and prohibits those  
18 expenditures and those costs to be borne by the  
19 state unless, unless the state has appropriated  
20 funds to reimburse the counties for those  
21 expenses.

22 The Hancock Amendment, your Honor, is free

- 23 of policy rendering. It's free of any political
- 24 influence. It applies to republican legislation.
- 25 It applies to democratic legislation. It applies

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1 to bipartisan legislation. It's a taxpayers'  
2 amendment to protect all taxpayers of the state  
3 from unfunded mandates and from the state passing  
4 along these costs and expenses to be borne by the  
5 counties to the detriment of schools, fire  
6 districts, water districts. This money, if it is  
7 not appropriated by the state, must come from the  
8 general revenue of the county. And the absence of  
9 the state appropriation, the general revenue is  
10 depleted for purposes other than what they were  
11 intended for.

12 Your Honor, we are going to present  
13 evidence in this case, detailed evidence of these  
14 additional costs and expenses. In addition to  
15 that, I want to mention that we have proposed Mel  
16 Hancock. Mr. Hancock, Congressman Hancock is  
17 considered the author of the Hancock Amendment. I  
18 know the state is going to object to his views.  
19 And I am not for a moment suggestion to this Court  
20 that Mr. Hancock's views are binding on your  
21 Honor. I am, however, going to provide the Court  
22 the authority to the effect that Mr. Hancock's

23 views are probative, and Mr. Hancock's views can be  
24 influential in the determination of the issues in  
25 this case.

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1           But it is not Mr. Hancock we're relying  
2 on. We are relying on seasoned veteran election  
3 authority employees, individuals from Jackson  
4 County, St. Louis County, and the City of St. Louis  
5 who combined, have conducted over 300 elections in  
6 this state. These are the individuals who by law  
7 provide estimates five weeks before every election  
8 of what the cost of the election is going to be.

9           And I have asked them to apply those  
10 principles of estimate to determine the cost  
11 associated with this act, with the Missouri Voter  
12 Protection Act. And they will present to the Court  
13 with substantial costs, significant costs, costs  
14 that are hundreds of thousands of dollars, your  
15 Honor, costs that the state is requiring and  
16 mandating that the counties incur because the state  
17 has passed this legislation and failed to do what  
18 the Hancock Amendment, the citizens' amendment  
19 requires, failed to appropriate the funds necessary  
20 for those costs and expenditures.

21           Your honor, ultimately I believe this act  
22 will be declared unconstitutional. And I believe

23 your Honor can declare it unconstitutional under  
24 the Hancock Amendment, which is also a part of  
25 Mr. Downing's case. And I want to a adopt

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1 Mr. Downing's arguments as well, your Honor, in  
2 this consolidated case. And ask the Court to  
3 carefully consider this evidence, because we  
4 believe it will be substantial. We believe it will  
5 be persuasive. We believe it will be convincing.  
6 And we believe it will illustrate to the Court  
7 beyond a doubt that there's a likelihood of success  
8 on the merits; and, therefore, preliminary  
9 injunction should be granted at the conclusion of  
10 this hearing. Thank you.

11 MR. LONG: Your Honor, Mark Long for the  
12 State. I'll address the constitutional issues.  
13 Mr. Presson will have some brief comments on the  
14 Hancock Amendment. This is a preliminary  
15 injunction hearing. They have painted with a broad  
16 brush what they intend to prove, but they still  
17 have to prove it. And the problem with this is  
18 that we believe there will be a girth of evidence  
19 as to exactly what their arguments are.

20 Missouri Constitution plainly gives to the  
21 state the ability to regulate elections. Article  
22 8, Section 2 sets forth the criteria for who is a

23 legal voter in this state, but it doesn't say you  
24 are prohibited from making sure that that person,  
25 when they appear at the polls, is who they claim

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1 they are. And no case has been cited from Missouri  
2 or anywhere else that says that the state is unable  
3 to do that.

4 The fact of the matter is that when you  
5 appear to vote, now you have to identify yourself,  
6 whether it's by voter ID card or some other  
7 identification. After the passage of Senate Bill  
8 1014, you're going to have to do the same thing,  
9 when you appear at the polling place, you are going  
10 to have to identify yourself again.

11 And while the plaintiffs have argued that  
12 that is some attempt to disenfranchise a great  
13 number of people, there isn't going to be evidence  
14 of that. You are not going to hear evidence, I  
15 believe, Judge, as to a certain particular number  
16 of the poor, the elderly, the this, the that. And  
17 when they argue pretext, that's a high burden for  
18 them to uphold.

19 What I believe you are going to hear is,  
20 is that we have an election process. People show  
21 up to vote. Senate Bill 1014 makes it actually  
22 easier for people to vote. Provisional ballots,

23 they are permitted in the state, are going to be  
24 expanded so that more people, if they do not have  
25 the type of identification necessary under the law,

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1 are permitted to vote. Instead of restricting  
2 voting, it makes it easier. And, in fact, those  
3 same provisional ballots today are only on  
4 statewide issues, state candidates and federal  
5 candidates. Under the new law, it's everything.  
6 All the local issues, et cetera. It actually  
7 expands your right to vote.

8 It also has provisions that permit those  
9 who are infirm, people that have a religious  
10 conviction to vote. Instead of restricting voting  
11 to the narrow extent that has been painted by the  
12 plaintiffs, I think examination of the evidence is  
13 going to lead you to the opposite conclusion.

14 And while they argue about the law, Judge,  
15 they haven't cited a single case that says it is  
16 illegal for this state when a voter appears to make  
17 sure that they are a qualified voter in this  
18 state. And the state, especially the General  
19 Assembly has plenary powers in the State of  
20 Missouri. They have the authority to make these  
21 laws.

22 As to the other issues about you're

23 forcing people to pay to vote, Judge, with all due  
24 deference to my learned counsel, this is not a poll  
25 tax. This is not Virginia in the '60s where you

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1 had to pay to vote. Everybody who has an ID, who  
2 wants an ID, will have to go through the same  
3 process. And the two most recent federal district  
4 court cases, both in Indiana and in Georgia,  
5 rejected this poll tax argument.

6 Judge, I will not belabor you any  
7 further. We've briefed it. You have got more  
8 paper than you need right at the movement. But the  
9 evidence burden is on the plaintiffs' case. We  
10 don't think for injunction purposes they are going  
11 to make it. And the state has a compelling  
12 interest in not only eradicating fraud, but in the  
13 running of its own election. And that is a burden  
14 that state takes quite highly. And that the state  
15 has enacted a law reasonable to carry that out.

16 MR. PRESSON: May it please the Court: I  
17 have just a few minutes with regard to Hancock  
18 issues. I was first struck by what Mr. Newman said  
19 that he represents three taxpayers. What that  
20 notably omits is Jackson County, and City of  
21 St. Louis, who are also named in there. Now, we  
22 had suggested in our suggestions in opposition to

23 their motion for preliminary injunction, that  
24 political entities or subdivisions don't have  
25 standing. And there are several Missouri cases, so

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1 I was struck by the fact that they didn't even  
2 mention those and wondered whether that was an  
3 agreement that those entities are not properly part  
4 of this case.

5 As Mr. Newman explained, this Hancock  
6 claim here, and several possible claims of the  
7 Hancock, is what's commonly called Hancock  
8 Amendments. There has to be a mandate existing by  
9 the statutes, and that mandate must then produce  
10 some additional costs for political subdivisions  
11 that is not funded by the state. And the courts  
12 have been very clear that you have to have both.  
13 You cannot establish either by simply guesswork,  
14 speculation or even common sense. This is a very  
15 evidence-intensive type claim on the Hancock  
16 Amendment.

17 What I find interesting in their  
18 allegations is that they don't really say, you  
19 know, section such and such and such and such of  
20 the bill now requires this and this is new. They  
21 don't then have an allegation that because this is  
22 new, it will cost more. I mean, what we have here

23 is some basic allegations that under this bill,  
24 it's going to be more expensive, but they don't  
25 really tie it into any essential mandate in Senate

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1 Bill 1014. I think that is something they are  
2 going to have to overcome, because I think that's a  
3 basic flaw in the way they have plead their case.

4 And they can't just assume that there are  
5 going to be increased costs. I mean, already there  
6 are provisional ballots that are available in  
7 Missouri law. There's now requirement of training  
8 of election judges. These are some of the  
9 increased costs that they have now, but they  
10 already exist. And nobody can -- when they first  
11 enacted the statute, nobody claimed they were in  
12 violation of the Hancock Amendment now simply  
13 because some existing activity political  
14 subdivisions might become more expensive over time  
15 is not in itself a violation of the Hancock  
16 Amendment. We cited a 1984 budget case out of the  
17 Circuit Court of St. Louis County.

18 This is going to be very evidence  
19 intensive. It will be very specific as to the  
20 counties involved. You cannot essentially make it  
21 all statewide. I mean, that was, I think, made  
22 very clear by our Supreme Court in the Brooks case

23 involving conceal and carry. That only those  
24 states or counties that have evidence and present  
25 evidence of an increased costs that they were going

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1 to incur, that they are then entitled to any relief  
2 under the act.

3 So this is very specific in terms of  
4 evidence, both type of mandate, the type of cost  
5 and to whom it will apply. And these are the  
6 standards that we ask the Court to keep in mind as  
7 we hear plaintiffs' evidence.

8 THE COURT: And I know you worked a lot on  
9 the Hancock Amendment in general, isn't it odd that  
10 you have a remedy that the statutes become  
11 unconstitutional in some counties and not  
12 unconstitutional in other counties?

13 MR. PRESSON: It may to some extent be  
14 unique to Hancock, but that's the way, I think, the  
15 court has recognized it. I mean, I think after the  
16 Brooks case they said relief could only be granted  
17 as to, I think, it was three counties in that  
18 case. Also the case involving City of Jefferson, I  
19 think it involved filing waste management claim.  
20 They said Jefferson City had presented that  
21 evidence of an increased cost. They were entitled  
22 to relief. Eldon had not presented any evidence of

23 cost and solely were not entitled. I think that's

24 just the way the cases go, your Honor.

25 MS. WOOD: Your Honor, the Secretary of

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1 State's Office will be very brief. As a chief  
2 election official our interest is to see that every  
3 Missouri voter who is entitled to vote, has that  
4 opportunity to exercise that fundamental right. We  
5 are in a unique position as a defendant today,  
6 because our position is that the photo ID  
7 requirements contained in this legislation  
8 potentially jeopardizes Missourians' right to vote  
9 for the very reason that were expressed by Mr.  
10 Downing and Mr. Newman.

11 I will not repeat what Mr. Downing and  
12 Mr. Newman have stated because I think they very  
13 adequately and eloquently covered those areas, but  
14 I will hit a few highlights that the Secretary of  
15 State's Office was interested in emphasizing to the  
16 Court.

17 The first is that we are concerned about  
18 the impact that the photo ID requirements will have  
19 of classes of individuals that Mr. Downing  
20 expressed: The elderly, the poor, women,  
21 minorities. The evidence will establish that these  
22 groups of people are statistically the ones who are

23 less likely to have a photo ID requirement that  
24 will be required by this legislation. We are also  
25 concerned about the fact that the underlying costs,

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1 while the photo ID is free, the underlying costs  
2 that result in these classes of people happen to  
3 obtain this ID are not free.

4       So what may very well happen is you have  
5 an individual who has been voting for years. And  
6 now under the -- that is able to vote under the  
7 current identification requirements, and now  
8 because they do not have the photo ID, and do  
9 not -- are not able to obtain the underlying  
10 documents, they are only entitled if they meet the  
11 classifications, the three classifications or for a  
12 brief period of time will be allowed to vote a  
13 provisional ballot. And that ballot will only be  
14 counted if that provisional ballot meets all of the  
15 other requirements under the provisional ballots in  
16 Missouri law.

17       The next thing we are focused on is the  
18 reason as to the photo ID requirement. We echo  
19 what Mr. Downing has said. Our office has not  
20 received a report of any allegation of voter  
21 impersonation fraud. We will have testimony from  
22 our elections director, who has been a Shelby

- 23 County Clerk, as well as elections director through  
24 both republican and democrat Secretary of States.  
25 And she will testify that in her length of time,

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1 there has been no report to our office for this  
2 type of fraud.

3 Our other further interest is in the  
4 underlying cost to the local election authorities.  
5 We agree with Mr. Newman that this will obviously  
6 have an impact in terms of how local election  
7 authorities will have to run their operation. Just  
8 mapping out under Senate Bill 1014, just mapping  
9 out now who is required and who is not required to  
10 get a provisional ballot is quite a lengthy  
11 process, so you're going to have an increase in  
12 training, you're going to have to change your  
13 training manuals, you will have to train the poll  
14 workers, you're probably going to have an increase  
15 in the amount of provisional ballots, absentee  
16 ballots. All of that comes at a cost.

17 The further interest to the Secretary of  
18 State's Office is that under this legislation, we  
19 are charged with doing an educational campaign.  
20 That educational campaign is to notify the public  
21 of the new requirements so that when individuals go  
22 to the polls, they know that their voter ID card,

23 which has always worked for all these years that  
24 you get from your local election authority, isn't  
25 going to work now. And we're charged with

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1 educating the public about that. That educational  
2 campaign went into effect through an emergency  
3 amendment as to an emergency clause when the  
4 Governor signed the bill. We are proceeding with  
5 our educational campaign so that the voters know  
6 what they will have to produce when they go to the  
7 polls if this statute would be upheld.

8       So we have those two interests in terms of  
9 the concerns we have about the impact to voters, as  
10 well as our educational campaign as to why the  
11 Secretary of State's Office would request that this  
12 Court make a determination as to the  
13 constitutionality of the photo ID requirements.

14       THE COURT: All right. Thank you. In  
15 fairness and, Mr. Presson, and Mr. -- did either of  
16 you have feel that your remarks were cut short? I  
17 mean, in view of the Secretary of State's position,  
18 it seems to me that your time should be divided  
19 between the two of you, not the three of you.

20       MR. PRESSON: Not necessarily speaking for  
21 Mark here, I don't feel that I'm short-changed in  
22 any way.

23 THE COURT: Mr. Long?

24 MR. LONG: Judge, unlike some lawyers, I

25 will resist the opportunity to argue my case a

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1 second time.

2 THE COURT: All right. Evidence for  
3 plaintiffs?

4 MR. NEWMAN: Yes, your Honor. The Jackson  
5 County plaintiffs will proceed first. We call as  
6 our first witness Robert Nichols, Junior.

7 THE COURT: Is anyone invoking the witness  
8 rule? I take it not. All right.

9 MR. NEWMAN: Your Honor, I have a prepared  
10 planned expense brief, which may be of some  
11 assistance during the presentation of the  
12 evidence. It does raise a couple of legal issues  
13 that may come up. I supplied counsel with a copy.

14 THE COURT: Sir, if you raise your right  
15 hand.

16 (Witness sworn.)

17 MR. NEWMAN: Your Honor, may I question  
18 the witness from the side of the jury box? Would  
19 that be satisfactory?

20 THE COURT: That would be fine. I would  
21 ask you to keep your voice up, but the only  
22 disadvantage of that is some counsel may not be

23 able to hear because you won't be on mike. If you

24 will --

25 MR. NEWMAN: If that causes a problem,

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1 your Honor, I can move back to the table. How  
2 about if I do it here, your Honor?

3 THE COURT: I tell you what, let me do  
4 that. Just turn that on.

5 ROBERT C. NICHOLS, JUNIOR, being duly sworn,  
6 testified as follows:

7 DIRECT EXAMINATION BY NEWMAN:

8 Q. Please state your full name.

9 A. Robert C. Nichols, Junior.

10 Q. And Mr. Nichols, were you subpoenaed to  
11 appear here today?

12 A. Yes, I was.

13 Q. And can you tell the Court where you live,  
14 sir?

15 A. I live at Lake Lotawana, Missouri, which  
16 is located in Jackson County, Missouri.

17 Q. And how are you presently employed?

18 A. I'm Democratic Director of Elections for  
19 Jackson County Board of Election Commissioners.

20 Q. How long have you been a Director of  
21 Elections for Jackson County?

22 A. A little over 20 years.

23 Q. And during that time, can you explain to  
24 us -- well, first of all, let me ask you this:  
25 Approximately how many elections during that

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1 20-year-period have you directed in your capacity  
2 as Democratic Director of the Jackson County Board?

3 A. Well, there are five elections dates a  
4 year, and I've hit almost all of them, so probably  
5 over 100.

6 Q. And what are your duties, basically, as  
7 Director for Jackson County Board?

8 A. I oversee the conduct of elections and the  
9 voter registration for our office and the staff.

10 Q. And do your duties also include estimating  
11 costs for elections?

12 A. Yes.

13 Q. Now, before we get into the estimation of  
14 costs, and I'd ask your Honor at this time to take  
15 judicial notice of the election laws, Section  
16 115.045.

17 May I approach the witness, your Honor?

18 THE COURT: You may.

19 BY MR. NEWMAN:

20 Q. Mr. Nichols, I want to hand you a copy of  
21 this statute. I'll point you to it. This one  
22 right here, 115.045 (indicating). Can you just

23 read that into the record, sir?

24 A. "Each election authority shall have the

25 authority to employ such attorneys and other

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1 employees as may be necessary to promptly and  
2 correctly perform the duties of the election  
3 authority."

4 Q. And do you perform the duties of the  
5 election authority in your position as director?

6 A. Yes.

7 Q. Now, is one of your duties, sir,  
8 estimating costs prior to each election?

9 A. Yes.

10 Q. And I would ask the Court at this time to  
11 take judicial notice of Section 115.077 of the  
12 Missouri election laws. I'm giving counsel a  
13 copy.

14 Mr. Nichols, I'm going to hand you now a  
15 copy of Section 115.077, and all I'd like you to  
16 read is the highlighted portion which is contained  
17 in paragraph two.

18 A. "No later than the fifth Tuesday prior to  
19 any election to be conducted for the state, special  
20 district or political subdivision, the election  
21 authority shall estimate the cost of conducting  
22 election for this state and each political

23 subdivision and special district submitting a

24 candidate or questioned after the election."

25 Q. And have you done that, sir, or have you

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1 participated in doing that in every election during  
2 the 20 years that you have been director for  
3 Jackson County election board?

4 A. Yes.

5 Q. Can you explain briefly to the Court the  
6 process that you go through in estimating costs?

7 A. Well, we determine what the -- how many  
8 voter locations will be needed for each election,  
9 the number of election workers at the polls, as  
10 well as additional staff that we'll need part-time  
11 in our office to help conduct the election.

12 Q. When you make these estimates, sir, are  
13 you assisted by anyone else in the office?

14 A. The republican director, Charlene Davis  
15 and our accounting manager, Scott Beck.

16 Q. And you then participate with the -- you  
17 then participate with the director, the republican  
18 director in preparing these estimates, is that  
19 correct?

20 A. That's correct.

21 Q. And, sir, did I ask you -- first of all,  
22 let me show you what's been marked as Plaintiffs'

23 Exhibit 2. I believe everyone has this, your  
24 Honor. This is the copy of Senate Bill 1014 and  
25 730, which is the Missouri Voter Protection Act in

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1 its legislative form.

2 Let me show you what's been marked as  
3 Plaintiffs' Exhibit 2, Mr. Nichols, and ask you if  
4 you have reviewed that document?

5 A. Yes, I have.

6 Q. And you have reviewed that document first  
7 at what point in time?

8 A. It was earlier in the session, I believe,  
9 in January, possibly late January that it was  
10 filed.

11 Q. Before the act, before the Missouri Voter  
12 Protection Act was passed?

13 A. Correct.

14 Q. And what was your purpose in reviewing  
15 that document at that time?

16 A. I received a request to do a fiscal note  
17 on the bill from the oversight department.

18 Q. And what is a fiscal note?

19 A. That's estimating the cost of what it  
20 would cost to implement any part of the bill.

21 Q. In preparing a fiscal note, having  
22 reviewed various versions of Senate Bill 1014 and

23 730, including this final version, do you follow  
24 the same process that you follow in estimating  
25 costs for an election in Chapter 115 statutes that

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1 I referred you to?

2 A. Yes.

3 Q. That's 115.077, correct?

4 A. Yes.

5 Q. You used the same principles, then, in  
6 determining for purposes of a fiscal note what the  
7 costs are going to be?

8 A. Yes.

9 Q. And did you do that in this case?

10 A. Yes.

11 Q. And did you submit several fiscal notes?

12 A. Yes.

13 Q. And do you recall, sir, the last fiscal  
14 note that was submitted?

15 A. Yes, I do.

16 Q. And when was that, sir?

17 A. That would have been late spring.

18 MR. NEWMAN: Your Honor, I have marked as  
19 Plaintiffs' Exhibit 4, the fiscal note involved.

20 BY MR. NEWMAN:

21 Q. And let me show you, Mr. Nichols, a copy  
22 of the fiscal note, Exhibit 4, and, of course, this

23 contains information from other counties, does it

24 not?

25 A. Yes.

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1 Q. I'd like to direct your attention, sir, to

2 page 21 of 33. Are you there?

3 A. Yes.

4 Q. Okay. At the very bottom of that page, it

5 indicates the officials of Jackson County Board of

6 Election Commission assumed they would have the

7 following fiscal impact; is that correct?

8 A. That's correct.

9 Q. When officials are referred to there, who

10 is being referred to?

11 A. The directors and board.

12 Q. Including you?

13 A. Yes.

14 Q. Including your counterpart, your

15 republican counterpart?

16 A. Correct.

17 Q. Is that correct?

18 A. Yes.

19 Q. Now if you turn to the next page, sir, I'm

20 going to ask you, first of all --

21 MR. PRESSON: Your Honor, I don't mean to

22 interrupt. Can I ask for a clarification, which

23 fiscal note is it, No. 25?

24 MR. NEWMAN: I'm sorry. It's the

25 May 12th, and it's on page 20. You have it there.

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1 It's page 21.

2 MR. PRESSON: The pages are breaking out a  
3 little differently than your copies.

4 MR. NEWMAN: Let me see if I can help  
5 you. It's about three-quarters of the way back.  
6 Let me see. Here it is, right here. Do you have  
7 it there now, Mr. Presson?

8 MR. PRESSON: Yes.

9 BY MR. NEWMAN:

10 Q. I want to ask you, first of all, you  
11 followed the same procedure as you followed in  
12 estimating costs prior to the election in preparing  
13 the fiscal note, correct?

14 A. Yes.

15 Q. And could you explain to the Court how you  
16 went about preparing this fiscal note on page 22 of  
17 33 of Exhibit 4?

18 A. We try to determine the impact that the  
19 additional provisional voting and absentee votes  
20 coming in that were created by that. And in lieu  
21 of that, we tried to figure out an estimate of how  
22 many people would be required, additional staff on

23 election day and after election day on the

24 verification board to process.

25 Q. And you did this with the other director,

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1 your counterpart, correct?

2 A. Correct.

3 Q. The entire process was done with both the  
4 republican and democratic directors, correct?

5 A. Yes.

6 Q. And as you went through this process, what  
7 reference did you make to Exhibit 2, the Voter  
8 Protection Act? In other words, how did you use  
9 this as a reference for preparing the fiscal note?

10 A. Well, we read through the piece of  
11 legislation and looked at all the aspects of what  
12 would have the greatest impact on our jurisdiction,  
13 which was actually the voter ID requirement and the  
14 provisional ballot aspects.

15 Q. Explain to the Court the provisional  
16 ballot aspect?

17 A. Well, we assume that -- there's an  
18 assumption that we made that there would be a  
19 greater entries in the number of provisional  
20 ballots that we would have to process, which then  
21 in turn require more people to process those in our  
22 office after the election.

23 Q. And when you make estimates under 115.077  
24 five weeks before an election, you make assumptions  
25 there, too, do you not?

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1 A. Correct. Based on our past experience.

2 Q. Exactly. And you have 20-years

3 experience, correct?

4 A. Correct.

5 Q. And you had 20-years experience at the

6 time you prepared this fiscal note with your

7 republic counterpart?

8 A. Very close.

9 Q. And can you explain to the Court now the

10 process you went through in coming up with the

11 various items reflected on page 22 of 33?

12 A. Starting at the very top of the page, we

13 determined that we would have to have 10 additional

14 phone lines brought in, 10 more wire drops for our

15 computers, and we also would need ten additional

16 computers with monitors and key boards for the

17 people to process provisional ballots so they would

18 have access to the voter registration database to

19 verify registrations, pull up signatures, check

20 cards.

21 Q. Now, when you mentioned provisional

22 ballots, you have dealt with provisional ballots

23 before, have you not?

24 A. Yes.

25 Q. And what elections were provisional

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1 ballots part of the election process?

2 A. Our past primary just recently got through  
3 with, they had provisional ballots in that one, and  
4 then in November 2004 we had provisional ballots as  
5 well.

6 Q. So you were familiar with provisional  
7 ballots. And for example, the items for cell  
8 phones, what is the purpose of the cell phones in  
9 relation to provisional ballots?

10 A. For the polls to be able to get in contact  
11 with our office on election day to determine  
12 eligibility of voters, and for us to be able to  
13 find information that may help them to get the  
14 voter to the right poll location.

15 Q. I notice you also have additional phone  
16 lines; is that correct?

17 A. Correct.

18 Q. Is it true that a provisional voter can  
19 call, has a right to call the election authority  
20 after the provisional ballot is cast to determine  
21 if the provisional ballot was counted?

22 A. Yes.

23 Q. And did you take into account the time  
24 involved in answering those calls and responding to  
25 the voter?

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1 A. Yes.

2 Q. And under personnel, you said training for  
3 10 elections clerks; is that correct?

4 A. Correct.

5 Q. And how did you arrive at that figure?

6 A. Well, it would take, based on 10,000  
7 provisional ballots, we would need that additional  
8 number of people to process those.

9 Q. Now, let me ask you this: How many  
10 precincts do you have in Jackson County?

11 A. We have over 450 precincts, but we only  
12 have 297 poll locations which have multiple  
13 precincts within them.

14 Q. So in other words, you have multiple  
15 precincts at particular polling locations?

16 A. Correct.

17 Q. And how does that come into play in  
18 reaching your calculations as shown on the fiscal  
19 note?

20 A. Well, we would figure that they would have  
21 to have extra people to man the phones, to take  
22 those calls on election day.

23 Q. And how many eligible voters were there in

24 the last election in Jackson County?

25 A. 216,000 plus.

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1 Q. Now, moving down the list here, you list

2 10 election clerks; is that correct?

3 A. Correct.

4 Q. And how did you arrive at that figure?

5 A. To process absentee ballot, we think will  
6 be an increase and takes -- you have a number of  
7 increase in absentee ballot, additional five teams  
8 which are two people bipartisan teams to work on  
9 processing those absentee ballots.

10 Q. And, again, you base this upon what?

11 A. The fact that there would be more people  
12 probably voting absentee under the fact because  
13 they can vote absentee without the voter ID  
14 requirements.

15 Q. And you have -- Ms. Davis did this based  
16 upon your experience; is that correct?

17 A. Correct.

18 Q. You make certain assumptions, did you not?

19 A. Yes.

20 Q. And, again, in estimating five weeks  
21 before each election you make assumptions, do you  
22 not?

23 A. Correct.

24 Q. That's part of the process?

25 A. Yes.

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1 Q. And based on the assumptions that you  
2 made, what additional costs did you envision would  
3 be required to be borne by the county by reason of  
4 this act?

5 A. Additional personnel basically.

6 Q. And that is calculated out then by the  
7 number of personnel including training of the  
8 personnel; is that correct?

9 A. Correct.

10 Q. And what training is required by reason of  
11 this act based upon your review of the act?

12 A. They would have to be trained on how to  
13 use the computer to get to database in Jefferson  
14 City.

15 Q. Then you have another figure that you have  
16 to need by photo ID that is required by the act?

17 A. Yes.

18 Q. What was the cost for?

19 A. We based it on estimated time at 225,000  
20 voters at that time because we had canvass --  
21 before the canvass, we based 225,000 times 24 cents  
22 on first-class bulk mailing.

- 23 Q. And you came up with \$54,000?
- 24 A. Correct.
- 25 Q. Okay. And then the total amount, can you

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1 tell the Court the total amount of the official  
2 estimate of Jackson County election officials  
3 contained in this fiscal note related directly to  
4 the Missouri Voter Protection Act?

5 A. \$470,308.

6 Q. Do you feel this is an accurate figure?

7 A. Cost for election judges borne just  
8 recently increased their pay and training by \$10  
9 each.

10 Q. There would be some increase costs in that  
11 respect; is that correct?

12 A. Yes.

13 Q. And let me also ask you, I'm going to show  
14 you what's been marked as Plaintiffs' Exhibit 1,  
15 your Honor. This is a copy of our suit but for  
16 convenience I had it marked to show the witnesses.

17 I want to show you a copy of the suit.

18 And particular, Mr. Nichols, I want to refer you to  
19 page five. Do you see it there in paragraph 20?

20 A. Yes.

21 Q. And did I ask you, sir, to review  
22 paragraph 20 and all of its subparts, which I

23 believe are A through K?

24 A. Yes.

25 Q. Okay. And I'd like you to go through

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1 those, sir, and tell me, first of all, do those  
2 refer to those subparagraphs? For example,  
3 subparagraph A, does that refer to a specific  
4 section of the act?

5 A. Yes.

6 Q. It refers to Section 115.163.3, correct?

7 A. Correct.

8 Q. All right. And did you take that into  
9 account, the replacing of the voter identification  
10 card and the creation of the voter notification  
11 card and the subparagraphs there pertaining to  
12 design, layout, postage and loss of revenue? Did  
13 you take those into account when compiling the  
14 fiscal note that you testified to?

15 A. Yes.

16 Q. All right. And B, again, B refers to  
17 specific sections, does it not, of the act?

18 A. Yes.

19 Q. And what are those sections?

20 A. 115.427.3 sub 3 and 115.427.13, 14 RSMO.

21 Q. That new affidavit forms for voters not  
22 possessing voter IDs; is that correct?

23 A. Correct.

24 Q. And there's no such affidavit that is in

25 existence previously prior to the enactment of the

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1 Voter Protection Act, correct?

2 A. Correct.

3 Q. And did you take that into account in  
4 tabulating your fiscal note?

5 A. In part.

6 Q. In part?

7 A. Yes.

8 Q. And are there parts in this that you did  
9 not take into account?

10 A. Yes.

11 Q. What would those have been?

12 A. Design and layout for item one, design and  
13 layout printing expenses for the new affidavit  
14 form, printing expenses for poll worker training  
15 materials, printing expenses for training  
16 instruction materials for staff.

17 Q. And had you taken those into account, is  
18 it your opinion that fiscal note would have been  
19 greater?

20 A. Yes.

21 Q. If you look at C, sir, again, does that  
22 refer to a specific section of the act?

- 23 A. Yes.
- 24 Q. What section?
- 25 A. Section 115.427-2.

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1 Q. Okay. And was that taken into account in  
2 the fiscal note that was prepared that you  
3 participated in preparing?

4 A. In part.

5 Q. Okay. And parts of it were not; is that  
6 correct?

7 A. Correct.

8 Q. And the parts that were not would those,  
9 in your opinion, increase the cost that would have  
10 been reflected on the fiscal note?

11 A. I believe so.

12 Q. And which parts were not taken into  
13 account in the fiscal note?

14 A. Design and layout and printing expenses of  
15 thousands of such signs, printing expenses for  
16 rewriting poll worker instructions, additional  
17 staff that was in consideration, as well as the  
18 poll worker training expenses, those were included.

19 Q. Now, number D, paragraph D, again refers  
20 to specific sections of the act, does it not?

21 A. Yes.

22 Q. And those are 115.427, 115.430 pertaining

23 to unfunded mandate resulting in expenses to hire

24 and training additional staff, correct?

25 A. Correct.

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1 Q. For provisional balloting, you took that  
2 into account, did you not?

3 A. Yes.

4 Q. E, 115.105.6, that imposes on local  
5 election authorities unfunded expenses for the  
6 drafting, redrafting and the printing of challenge  
7 and instructions. Did you take into account?

8 A. No.

9 Q. Had you done so, would that have resulted  
10 in an increase in the fiscal note?

11 A. Yes.

12 Q. Okay. F pertains to photocopying of  
13 provisional ballot envelopes; is that correct?

14 A. Correct.

15 Q. And was that taken into account?

16 A. No.

17 Q. Okay. So that also would have increased  
18 the amount of the fiscal note, correct?

19 A. Right.

20 Q. Number G, this is notice of election cards  
21 under 115.127 and 115.129, alleging those are  
22 unfunded mandates requiring expenses to redesign

23 and reprint election cards. Was that taken into

24 account?

25 A. Yes.

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1 Q. Okay. That was in your fiscal note?

2 A. Yes.

3 Q. And H and I pertain to -- I'm going to  
4 combine those. Those pertain to absentee ballots,  
5 do they not?

6 A. Correct.

7 Q. Is it your anticipation based upon your  
8 20-years experience as director of the Jackson  
9 County election board, that this legislation, this  
10 act will result in an increased amount of absentee  
11 ballots?

12 A. I believe it will.

13 Q. And, therefore, additional costs must be  
14 borne by the county unless appropriated funds come  
15 from the state?

16 A. Yes.

17 Q. All right. And finally Section 115.024,  
18 which calls for rescheduling of an election in the  
19 event of a catastrophe, did you take that into  
20 account?

21 A. No.

22 Q. Do you have any estimate as to what the

23 costs would be to reschedule an election in the

24 event of a catastrophe?

25 A. It would depend on how far long in the

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1 election day we would be. If it happened during  
2 the election process, and there would be a  
3 notification note to the voters again on where to  
4 vote at.

5 Q. What would be a minimum cost, in your  
6 estimation, for rescheduling an election?

7 A. Since we send out a poll notification card  
8 a week before every election to every voter, that's  
9 24 cents apiece, so that would depend on the number  
10 of voters that would be on the -- that would be  
11 eligible to vote, which could be up to anywhere  
12 from 30 --

13 Q. That's over 200,000 voters?

14 A. Correct.

15 Q. Now, I want to ask you just a couple more  
16 questions. And those questions pertained to the  
17 counting of votes. Can you explain to his honor  
18 the difference between tallying a regular vote, an  
19 absentee vote, and a provisional?

20 A. Okay. Well, the regular votes are counted  
21 now at the precinct level. They are voted and then  
22 counted at the same time the voter puts it in the

23 ballot, it is counted. Absentees are either voted  
24 in office or by mail, and they are processed by  
25 teams, bipartisan teams, with the envelope being

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1 opened, the names being read of the person that  
2 voted the absentee ballots.

3 Q. Let me stop you for a minute. When you  
4 mentioned bipartisan teams, you are talking about  
5 the need for additional personnel from both major  
6 parties to actually view the process of counting  
7 the vote, correct?

8 A. Correct.

9 Q. And that results in additional costs for  
10 personnel, correct?

11 A. Correct.

12 Q. All right. And what about the provisional  
13 ballots?

14 A. Same process to some degree as an absentee  
15 ballot in the fact that you have to verify the  
16 person's registration. And under the act, I  
17 believe even without the ID, you can still vote the  
18 provisional ballot, and it can be counted if your  
19 signature matches the one that we have on record.  
20 Accessing those records would take time, which  
21 would take more staff to do that. And that's why  
22 the extra clerks to process those ballots.

23 Q. And that was included in your fiscal note  
24 because of your belief based on your experience  
25 that there will be more provisional ballots and

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1 more absentee ballots, correct?

2 A. Correct.

3 Q. Let me ask you this: The note that was --

4 the final note that was submitted, the one dated

5 March 4th on Exhibit 4, were you and Ms. Davis in

6 agreement as to the content of that note?

7 A. Yes.

8 Q. Was there any disagreement between you as

9 to the estimates contained within that note and

10 propriety of those estimates?

11 A. No.

12 MR. NEWMAN: I have nothing further, your

13 Honor.

14 THE COURT: Mr. Downing?

15 MR. DOWNING: Your Honor, I would simply

16 stipulate and I would move that the testimony of

17 this witness be considered in my case as well,

18 because I have the Hancock claim.

19 THE COURT: And I'm assuming since these

20 are consolidated, I'm not sure what that means, but

21 I assume it works.

22 MR. NEWMAN: It's agreeable to me, your

23 Honor.

24 MR. PRESSON: I have just a few

25 questions.

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1 CROSS-EXAMINATION BY MR. PRESSON:

2 Q. I believe you indicated an estimate of  
3 10,000 additional provisional ballots would be  
4 filed?

5 A. Correct. That's just an estimate.

6 There's no way to know for sure if that would  
7 happen or not, but you have to go on optimum  
8 numbers.

9 THE COURT: Mr. Presson, would you either  
10 use -- we'll set up the podium at the noon break,  
11 but if you would either use that microphone or this  
12 one up here (indicating).

13 BY MR. PRESSON:

14 Q. Where did you get the figure of 10,000?

15 A. We have a number of residential facilities  
16 for senior homes which are assisted living centers  
17 where they don't have mobility to go out to get  
18 their -- capable of taking care of themselves for  
19 the most part, but they live in an assisted living  
20 place. We also have a large complexes where  
21 currently we have five poll locations of about  
22 5,000 senior adults that most of which do not drive

23 and whether they have IDs, I don't know, because  
24 it's a burden for them to come down and vote on  
25 election day if we would have the number -- based

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1 on the number of assisted living areas in our  
2 jurisdiction and those are increasing, so it was  
3 just a ballpark figure.

4 Q. So it was essentially based upon the  
5 assisted living facilities and the population that  
6 you knew were there?

7 A. Correct.

8 Q. Now, in terms of registered voters, I  
9 mean -- in 2006 this year, we're talking an off  
10 year of an election, are we not?

11 A. Correct.

12 Q. Your last off-year election would have  
13 been November 2002, correct?

14 A. Correct.

15 Q. Do you recall what the state percentage  
16 turnout was at that time?

17 A. I believe somewhere in the neighborhood of  
18 about 60 percent.

19 Q. If I told you on your website says  
20 54 percent, would you disagree with that?

21 A. I would not disagree with that.

22 Q. And how many absentee ballots did you have

23 in an off-year election in 2002, do you recall?

24 A. I don't recall.

25 Q. May I?

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1 I printed this off what I think is your

2 website. Does that look familiar?

3 A. Yes.

4 Q. How many absentee ballots does that

5 indicate in 2002?

6 A. 3,666.

7 Q. So you're anticipating an increase over

8 this figure then?

9 A. Correct.

10 Q. Okay. And there weren't any provisional

11 ballots in 2002; is that correct?

12 A. Not that I'm aware of.

13 Q. Okay. We first started that in 2004?

14 A. Right.

15 Q. So all of your estimates here are based on

16 a 10,000 figure, and basically assuming that they

17 all would show up to vote; is that correct?

18 A. Correct.

19 Q. In terms of, say, your own costs here that

20 you identified, like you said, I believe two extra

21 election judges per poll location. Is there any --

22 I mean, how did you decide that there was going to

23 be a need for two extra poll judges at every

24 location?

25 A. That would be to handle those persons that

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1 do not have IDs that would be coming in. So they  
2 would specifically be able to work with them and  
3 not slow up the process for the other voters.

4 Q. Well, I guess my question there is, is any  
5 increase at all going to necessitate in your mind  
6 the requirement for two additional poll workers?

7 A. I'm sorry. I don't think I understand  
8 your question.

9 Q. Well, that's probably understandable,  
10 because I didn't ask it very well.

11 I mean, is any increase at all in the  
12 number of provisional ballots going to be justified  
13 or called for two additional election judges per  
14 polling location?

15 A. We thought so based on our experience.

16 Q. Okay. So I mean, we have, you know,  
17 provisional ballots now, correct?

18 A. Yes.

19 Q. And the number of your registered voters  
20 currently is more than it was, say, four years ago  
21 for the off-year election?

22 A. Correct.

23 Q. So you will expect more people just to  
24 show up to vote, I assume, by the percentages?

25 A. Correct.

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1 Q. And presumably some increase of those  
2 would wind up voting provisional even if Senate  
3 Bill 1014 never went into effect; is that correct?

4 A. That's correct.

5 Q. So let's assume that you had, say, an  
6 extra five provisional ballots at a particular  
7 polling location, does that justify having or  
8 necessitate two extra election judges at every  
9 polling location?

10 A. We believe you have to be prepared for the  
11 unexpected at all times in elections.

12 Q. How many polling -- or how many election  
13 judges do you have in each polling location now?

14 A. Minimum of four.

15 Q. That used to be required by statute, did  
16 it not?

17 A. That's correct.

18 Q. And that statute has changed, there's no  
19 longer a set minimum; is that correct?

20 A. Pardon?

21 Q. Now, the statute has been changed, there's  
22 no longer a set minimum, it's up to the election

23 authority?

24 A. No. There's still a set minimum of four

25 election judges for each poll from each major

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1 political party. Then you can also have additional  
2 judges as long as none that are majority over the  
3 two parties.

4 Q. Do you have additional ones in your poll  
5 locations?

6 A. Depending on the size of the poll  
7 locations, we'll have anywhere from the four judge  
8 minimum to ten judges.

9 Q. Okay. Would it make any difference in  
10 your mind in terms of the need for having  
11 additional judges whether -- whatever the size of  
12 precinct, if that's the proper terminology, or the  
13 size of the turnout that you're expecting at that  
14 particular location?

15 A. That could probably alter the numbers that  
16 we have there. We base that on optimum numbers for  
17 each poll location. The impact of election always  
18 is varying.

19 Q. I wasn't quite sure I got something down  
20 in my notes here correctly. You said you had 450  
21 precincts, but only 200 polling locations?

22 A. 297 poll locations.

23 Q. Oh, okay. I saw in here that you said 300

24 when you did the fiscal note?

25 A. At that point we did have. We just

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1 reduced three for this last election.

2 Q. Now, in terms of, say, the office  
3 equipment, you need 10 additional phone lines, \$140  
4 month for 12 months; is that just for the computers  
5 for those home lines? I'm very technically  
6 illiterate.

7 A. No. That would be for the parties to be  
8 able to contact the necessary agency they would  
9 need to find if there was someplace they can find  
10 registration room, at DMV, through the database,  
11 contact the voter themselves if there's additional  
12 information required. They want to make sure that  
13 the voter's vote counts.

14 Q. This is a phone line, then, not any  
15 computer connection?

16 A. Correct.

17 Q. And that sort of contact is not made now  
18 between a polling place and your election central  
19 office, however you want to refer to it?

20 A. On a smaller scale in our office, yes, on  
21 election day, we do have contact.

22 Q. But I mean, they don't have phones now

23 available that they can call on at polling sites?

24 A. Yes.

25 Q. And like the cell phones, I mean, 193 and

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1 you've got 297 polling places, evidently you didn't  
2 feel the need for a cell phone in every polling  
3 place?

4 A. We already have some in our polls.

5 Q. So you've already decided to have some?

6 A. Yes.

7 Q. And computers, that's just for handling  
8 questions about voting; is that correct?

9 A. That would be to look up on the database  
10 to find the registered voters and compare the  
11 signatures to provisional envelopes that we'll be  
12 getting in.

13 Q. And that isn't done now?

14 A. Yes. On a small scale, yes.

15 Q. On a smaller scale?

16 With the 10 computers, the cell phones, I  
17 mean, those are all annualized and yet as you said  
18 you have five elections a year. These would be  
19 locked up and not used the other 360 days out of  
20 the year?

21 A. There's a cost involved in turning the  
22 phones off and turning them on before an election,

23 which would be probably even more from our  
24 experience in the past in turning phones off for a  
25 month or four months, quite expensive to have to

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1 turn them back on.

2 Q. But are they going to be used for any  
3 other purpose or would you anticipate they be used  
4 for any other purpose?

5 A. I don't anticipate any other purpose.

6 Q. Now, you mentioned training costs, there  
7 is a statute currently that requires training of  
8 election judge; is that correct?

9 A. Correct.

10 Q. And how often do you train election judges  
11 in Jackson County?

12 A. Before every election.

13 Q. Before every election. How much -- I  
14 mean, assuming that there are some changes in  
15 election laws over time, and you do this before  
16 every election, I assume it's kind of like lawyers  
17 would call continuing legal education. Do you just  
18 keep them up to date on what the changes have been,  
19 right?

20 A. Well, that and different law changes that  
21 come in, things that they have to know, be aware  
22 of, provisional ballots being one of them, new

23 forwarding equipment.

24 Q. When provisional ballots were used for the

25 first time in the 2004 election, you trained people

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1 then in the use of provisional ballots?

2 A. Correct.

3 Q. Is there anything in Senate Bill 1014 that

4 requires additional training of the local election

5 authorities?

6 A. Not that I'm aware of.

7 Q. Mr. Newman asked you several questions

8 about paragraph 20 in his petition. Do you still

9 have that in front of you?

10 A. Yes, I do.

11 Q. Okay. Good. Take a look at subparagraph

12 A, that refers to Section 113.163.3 about the voter

13 notification card. If my recollection is correct,

14 that section and the act says 90 days before a

15 general or a primary election this notification

16 card has to go out by the local election authority;

17 is that a fair summary of it?

18 A. Yes.

19 Q. Now, our next general election -- well,

20 primary election already passed, right?

21 A. Right.

22 Q. And our next general election is

23 November 7; is that correct?

24 A. Correct.

25 Q. And 90 days before November 7 would have

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1 been about approximately two weeks ago, wouldn't  
2 it?

3 A. Correct.

4 Q. So there's really no way you can comply by  
5 doing this 90 days before the election? As a  
6 matter of fact, the other provisions of Senate Bill  
7 1014, that requires the Secretary of State's Office  
8 to send out notification on education materials; is  
9 that correct?

10 A. Correct.

11 Q. So are you really anticipating that even  
12 though it says 90 days, and that 90 days is an  
13 impossibility, are you anticipating that you will  
14 have still have to do that in the upcoming November  
15 election?

16 A. We believe in fairness to the voters we  
17 would be, yes.

18 Q. But would that be a result of the actual  
19 mandate of the statute or just your idea as to  
20 what's fair?

21 A. We do not want our voters to go to the  
22 polls and be caught off guard. We want them to be

23 prepared to vote provisionally, which they have not  
24 done before.

25 Q. In subsection B, in paragraph 20, that

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1 talks about new affidavit forms. I wasn't quite  
2 sure. Did that play any role in your cost  
3 assessments?

4 A. No.

5 Q. And paragraph C, notification, I wasn't  
6 quite clear either. Did that play any role in your  
7 cost list?

8 A. Only the training part.

9 Q. Just the training?

10 A. Just the training, yes.

11 Q. But in terms of clear and and conspicuous  
12 notification, in terms of the allegations that  
13 would be expensive to design, layout and print  
14 these things, you didn't do anything that would  
15 support that allegation, did you?

16 A. Not at that time, no.

17 Q. Have you subsequently?

18 A. No.

19 Q. And subparagraph D, I think I may have  
20 already asked this, but this, again, talks about  
21 training additional staff, but there is no, I think  
22 you would agree, actual mandate to do any

23 particular training or any type of training in

24 Senate Bill 1014; is that correct?

25 A. Correct.

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1 Q. And subsection E, the allegation is that  
2 imposes on local election authorities for  
3 redrafting and reprinting the challenge of  
4 instructions. I think you said that this didn't  
5 play any part in your cost estimates either?

6 A. Correct.

7 Q. I'm unclear, because I can't find any  
8 statutory reference to challenge your instructions  
9 either in Senate Bill 1014 or even in the existing  
10 statutes. Could you help me out there?

11 A. On the back of the challenger form that  
12 the parties share a request, there are instructions  
13 on what they can and cannot do at the poll  
14 locations. They can challenge the voter's  
15 eligibility if they believe that there is something  
16 that is not right with that voter's identification  
17 or that they don't live at that particular poll  
18 location, they can challenge that. And challenge  
19 that to the election judges or to our office.

20 Q. But challengers aren't really, say, your  
21 employees or representatives like the election  
22 judges, are they?

23 A. Correct.

24 Q. The challengers, as I understand it, is

25 representatives of the two major parties or maybe

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1 some other parties?

2 A. Correct.

3 Q. And nothing in Senate Bill 1014 actually  
4 changes what they should be instructed upon, does  
5 it, or changes their duties, are you aware?

6 A. Not that I'm aware of.

7 Q. Subsection F then talks about  
8 photocopying. Did that play any part in your cost  
9 assessment?

10 A. Only the employee part of it. We did not  
11 calculate copy costs.

12 Q. You did not include copy costs?

13 A. Not the copy costs.

14 Q. Just additional staff?

15 A. Just additional staff.

16 Q. Now, G talks about distributing notice of  
17 election cards. I wasn't quite sure from the  
18 allegations how that differed from subparagraph A  
19 of the voter notification card. Is that a separate  
20 requirement?

21 A. We send out a full notification card one  
22 week prior to every election. That's policy.

23 Q. And that's when you send out a sample

24 ballot and all of that?

25 A. Not a sample ballot, but the date, time

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1 and location of the poll.

2 Q. Do some election authorities send out -- I  
3 mean, I always get sample ballots when I get  
4 notices. Not every election authority does that?

5 A. We do not.

6 Q. And then H talks about absentee ballots.  
7 Did anything, in terms of Senate Bill 1014, change  
8 the law on absentee ballots, when they can be filed  
9 or something like that?

10 A. Our assumption that we made in making our  
11 fiscal note was that it would increase the number  
12 of people requesting absentee ballots due to the  
13 fact that they live in assisted living centers  
14 where they may not have identification and that  
15 would be one of the requirements that they could  
16 vote without voting provisionally other than going  
17 to the poll location.

18 Q. So it's not really that the law on  
19 absentee ballots would change, just your belief  
20 that there would be an increase demand for them?

21 A. Correct.

22 Q. I guess that applies to subparagraph I

23 there, too?

24 A. Correct.

25 Q. Yeah, I. Because that's another

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1 allegation on this absentee.

2 And K, the catastrophe provision. And  
3 what you do about rescheduling an election? What's  
4 the law now? I mean, I'm not aware of, say, any  
5 election authority being able to just not hold an  
6 election because of some flood or tornado or  
7 whatever. Wouldn't they go ahead and redo it  
8 anyway?

9 A. I believe there's one instance where there  
10 was an election canceled and redone in St. Joseph  
11 in Buchanan County.

12 Q. And they just cancelled it?

13 A. Because of floods, court ordered, and they  
14 rescheduled it because of flooding.

15 Q. They had to go get a court order?

16 A. Correct.

17 MR. PRESSON: I have nothing further, your  
18 Honor.

19 THE COURT: Mr. Long?

20 CROSS-EXAMINATION BY MR. LONG:

21 Q. Mr. Nichols, I'll be brief. You mentioned  
22 these assisted living centers. Are you familiar

- 23 that in the bill those are the exact facilities
- 24 that Department of Revenue is required to allow
- 25 with its mobile units to make sure these people

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1 have a driver's license if they want one?

2 A. Yes.

3 Q. Are you also aware of the provision --

4 and, Judge, I believe it's on page 21 of the bill

5 115.427 sub 7, it also says the Department of

6 Revenue in a local election authority may enter

7 into a contract allowing local election authorities

8 to assist the Department in issuing a non driver's

9 license. Did you offer that with the Department of

10 Revenue?

11 A. They have not asked us yet.

12 Q. Have you asked them?

13 A. No.

14 Q. Also this suit was filed before the

15 primary election, wasn't it? The Jackson County

16 suit was filed before the primary election, wasn't

17 it?

18 A. I don't know. I was subpoenaed to be here

19 today so I don't know when it was filed.

20 Q. A fair answer. Would it also be a fair

21 answer, and would it be accurate that the recent

22 primary, the election authority did nothing to

23 ascertain the number of people who attended without

24 a photo ID?

25 A. No.

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1 Q. That's a correct statement?

2 A. That's correct. They did not.

3 MR. LONG: That's all the questions I  
4 have, your Honor. Thank you very much.

5 MR. NEWMAN: Briefly, your Honor.

6 THE COURT: Before you do, let me ask, the  
7 additional training that you anticipate?

8 THE WITNESS: Yes.

9 THE COURT: When will that be done?

10 THE WITNESS: That will be done at the  
11 same time. It's just additional costs for the  
12 extra 10 judges that we had to be included as part  
13 of that training with the other judges.

14 THE COURT: When is that done?

15 THE WITNESS: That's done anywhere between  
16 four weeks to two weeks before we start an  
17 election.

18 THE COURT: It would be done during the  
19 month of October?

20 THE WITNESS: Correct.

21 THE COURT: All right. Thank you.

22 MR. NEWMAN: One last question.

23 THE COURT: I'm sorry.

24 MS. WOOD: Secretary of State has no

25 questions.

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1 THE COURT: I apologize.

2 MS. WOOD: That's all right.

3 MR. NEWMAN: I just have a couple, your  
4 Honor.

5 REDIRECT EXAMINATION BY MR. NEWMAN:

6 Q. I want to be clear about these provisional  
7 ballots. You testified there were provisional  
8 ballots in '04, correct?

9 A. Correct.

10 Q. Am I correct that your testimony is that  
11 this act creates the need for additional  
12 provisional ballots?

13 A. That was our assumption.

14 Q. And that assumption is based upon the fact  
15 that individuals who don't have a photo ID can ask  
16 for a provisional ballot, correct?

17 A. Correct.

18 Q. Okay. As far as absentee ballots are  
19 concerned, if you vote absentee, you do not need a  
20 photo ID, correct?

21 A. Correct.

22 Q. Is that part of anticipating that more

23 people will vote absentee than previously?

24 A. Yes.

25 Q. And both of those instances there are

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1 additional costs as you have testified involved in  
2 personnel and training and so forth so that the  
3 election will be able to encompass the additional  
4 absentee and additional provisional ballots  
5 correct?

6 A. Yes.

7 Q. Is there anything in the fiscal note that  
8 you and Charlene Davis prepared that is not based  
9 on what you consider to be the requirement of this  
10 act --

11 A. No.

12 Q. -- Exhibit 4?

13 A. Everything there is what we felt was  
14 required.

15 Q. And you made a statement that you had to  
16 be prepared for all elections; is that correct?

17 A. Correct.

18 Q. What was your full statement? I don't  
19 think I --

20 A. That you had to be prepared for the  
21 unexpected in every election.

22 Q. The unexpected in all elections. One

- 23 reason being you don't have enough provisional
- 24 ballots, for example, someone might not be able to
- 25 cast a vote?

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1 A. Correct.

2 Q. That is something you want to avoid and  
3 you want to take into account in your estimates and  
4 in your cost projections, correct?

5 A. Correct.

6 MR. NEWMAN: I have nothing further, your  
7 Honor.

8 THE COURT: I have one last question. To  
9 be clear, the 430,000 estimate that you gave,  
10 that's not the total cost for the election, that's  
11 above and beyond what you would expect to pay for  
12 this election as a result of Senate Bill 1014?

13 THE WITNESS: Your Honor, that was based  
14 on five different election dates and those costs  
15 would be if we had five county-wide elections  
16 throughout the year, that's what our estimated  
17 costs would be based on, five county-wide  
18 elections, our optimum numbers.

19 THE COURT: But that's an increased cost  
20 as a result of this legislation, not your total  
21 costs?

22 THE WITNESS: Correct.

- 23 THE COURT: All right.
- 24 MR. DOWNING: Just a couple.
- 25 THE COURT: Sure.

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1 MR. DOWNING: May I approach the witness?

2 THE COURT: Yes.

3 MR. DOWNING: Sorry. I don't have another  
4 sheet of this, but I've shown it to counsel from  
5 the Attorney General's Office. I'll do a  
6 stipulation.

7 RECROSS-EXAMINATION BY MR. DOWNING:

8 Q. Mr. Nichols, I would like to show you  
9 what's been -- hasn't been marked yet, but what it  
10 is, I'll represent to the Court and counsel that I  
11 printed it off from the Department of Revenue's  
12 website last night. And it purports to be a  
13 schedule of business to the senior care facilities  
14 that Mr. Long referenced in his questions to you.  
15 Do you see that?

16 A. Yes.

17 Q. And correct me if I'm wrong, but I believe  
18 it states that only one such visit has occurred to  
19 date. Is that the way you read that in terms of  
20 the call that says "completed"?

21 A. Yes.

22 Q. Only one have been completed to date. Do

23 you see some others are scheduled?

24 A. Correct.

25 Q. How many of those on that list are

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1 scheduled in your jurisdiction, your election

2 jurisdiction?

3 A. None.

4 Q. None. And that was the vehicle Mr. Long

5 suggested in his question to you that would enable

6 these persons who live in these facilities get

7 photo IDs, correct?

8 A. Correct.

9 Q. One final question, have you had any

10 problem with voter impersonation fraud in Jackson

11 County in the last five years?

12 A. Not to our knowledge.

13 Q. And I take it from what you said, that you

14 don't believe a photo ID is necessary to prevent

15 that type of fraud in Jackson County?

16 A. I'm sorry. Could you repeat the

17 question?

18 Q. You said you haven't had a problem with

19 voter impersonation fraud in Jackson County in the

20 last five years?

21 A. Right.

22 Q. I take it you don't believe that the photo

23 ID is necessary in order to prevent that type of

24 fraud in Jackson County; is that right?

25 A. I guess it wouldn't -- doesn't hurt to

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1 have a photo ID.

2 Q. I'm sorry?

3 A. It doesn't hurt to have a photo ID.

4 MR. DOWNING: Thank you.

5 MR. PRESSON: Your Honor, could I ask a  
6 follow-up question?

7 RECROSS-EXAMINATION BY MR. PRESSON:

8 Q. Mr. Nichols, you said you have to expect  
9 the unexpected. Four years ago in an off-year  
10 election, the turnout, I think, we agreed roughly  
11 54 percent. Are you saying that you have to be  
12 prepared and expect, say, a 70 or 75 percent  
13 turnout for this election?

14 A. Yes. You always have to be prepared for a  
15 large turnout.

16 Q. And it would be more expensive to be  
17 prepared for that one?

18 A. Correct.

19 MR. PRESSON: I have nothing further.

20 THE COURT: Thank you very much.

21 (Witness steps down.)

22 THE COURT: We'll be in recess until --

- 23 let's try to start at 1:15, 1:20 at the latest. I
- 24 would ask counsel, if you have exhibits, maybe
- 25 about 10 after 1:00 to the extent that the court

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1 reporter can initial and date your exhibits, just  
2 for purposes of our record.

3 MR. NEWMAN: The ones I gave you, could  
4 that be left up there so I can have her do that?

5 THE COURT: Yes.

6 Court will be in recess until 1:15.

7 (A LUNCH BREAK WAS TAKEN.)

8 MR. DEUTSCH: Your Honor?

9 THE COURT: Yes.

10 MR. DEUTSCH: Based on the proceedings so  
11 far, particularly the opening statements, it was  
12 rather clear from Mr. Downing the he sees the case  
13 about fairness and facts, and Mr. Newman who sees  
14 his case about cost of facts, I feel compelled to  
15 renew my motion to intervene. I really think that  
16 the scene so far emphasizes the need to have  
17 further information.

18 The Attorney General's Office seemed to be  
19 supportive of our intervention and agreed that we  
20 have information that would be helpful to offer,  
21 and I would suggest that given the position taken  
22 by the Secretary of State Carnahan's Office, that

23 unless they are realigned as the plaintiff in the  
24 case, that any objection they might have have  
25 probably ought to be overruled. So I would

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1 appreciate if the Court would reconsider at this  
2 time the earlier ruling to deny our intervention.

3 THE COURT: All right. And the Court will  
4 note your -- yes, sir?

5 MR. PAYNE: Your Honor, I would also like  
6 the Board of Election Commissioners for the City of  
7 St. Louis, request to reconsider the denial of our  
8 motion to intervene, as well as the administrative  
9 body tagged with administering elections as the  
10 Secretary of State's indication that they would not  
11 or suggest that they're in favor of what the  
12 plaintiffs' moving for here. I think the board of  
13 elections has a unique opportunity and role to  
14 provide the Court with additional evidence and  
15 testimony relative to the cost for both of the  
16 issues relevant for today's hearing.

17 THE COURT: When I ruled this morning I  
18 indicated that my ruling was -- I was making it at  
19 this time. I would not necessarily look with  
20 prejudice on any renewed motion to intervene at a  
21 later date. I didn't mean at noon. But I did mean  
22 with respect to the hearing that we've scheduled

23 for September 20th and 21st, but the reason for my  
24 ruling this morning, this morning was the fact that  
25 we did have a stipulation of facts that had been

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1 worked on and agreed upon and allowing an  
2 intervention for today's hearing, the -- Mr.  
3 Hearne, I believe it was, indicated that while he  
4 would like to do that, he would have to review that  
5 stipulation and the like.

6 And it was simply -- there was a choice to  
7 be made to proceed with the hearing as it was  
8 scheduled today or, in effect, not to, at least  
9 start, at a much later time. So that was in part  
10 the basis for my ruling.

11 So your renewed request at this time would  
12 still be denied, but I will not be irritated at all  
13 and have an open mind with respect to a future  
14 hearing date. I'll hear all the sides on what the  
15 arguments are at that time.

16 MR. PAYNE: Thank you, your Honor.

17 MR. DEUTSCH: Thank you, your Honor.

18 THE COURT: You may call your next  
19 witness.

20 MR. NEWMAN: Thank you, your Honor. We  
21 call Carol Signaigo, please.

22 THE COURT: Ma'am, come forward first.

23 (Witness sworn.)

24 THE COURT: Have a seat, please.

25 CAROL SIGNAIGO, being first duly sworn, testified

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1 as follows:

2 DIRECT EXAMINATION BY MR. NEWMAN:

3 Q. Please state your full name for the  
4 record.

5 A. Carol Ann Signaigo.

6 Q. Where do you live, Ms. Signaigo?

7 A. In the City of St. Louis.

8 Q. Ms. Signaigo, are you presently employed  
9 on a full-time basis?

10 A. No. I'm retired as of 1999.

11 Q. And prior to that time, were you employed  
12 by the St. Louis Board of Election Commissioners?

13 A. Yes.

14 Q. When did your employment with the  
15 St. Louis Board of Election Commissioners begin?

16 A. 1973 as a temporary worker.

17 Q. And you became a permanent worker in what  
18 year?

19 A. 1977.

20 Q. Now, since 1999 when you retired, what  
21 employment have you had with Board of Election  
22 Commissioners for the City of St. Louis?

23     A. I've gone back a few times for  
24     redistricting, helping with petitions, things of  
25     that sort, as a consultant.

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1 Q. You have served as a consultant?

2 A. Uh-huh.

3 Q. And have you served as a consultant in  
4 each and every year since 2000?

5 A. Yes.

6 Q. And did you serve as a consultant in the  
7 primary election that was held this month?

8 A. As a special deputy, which is a one-day  
9 employment.

10 Q. Now, during the time that you were  
11 employed by the Board of Election Commissioners for  
12 the City of St. Louis, what jobs did you hold?

13 A. From clerk to assistant director, time  
14 keeping, up to cost of elections and running  
15 election registration.

16 Q. Let me ask you a question about a few of  
17 those. First of all, did you ever do any work as a  
18 purchaser?

19 A. Yes.

20 Q. How long did you perform those tasks?

21 A. Oh, 10 years probably.

22 Q. What does the purchaser do?

23     A. Buys everything that runs the election,  
24 costs anywhere from ballots to anything that you  
25 would use in the election board.

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1 Q. So as a purchaser, you were familiar with  
2 the cost, for example, of everything from paper to  
3 equipment?

4 A. Yes.

5 Q. All right. And when did you become  
6 assistant director?

7 A. 1987.

8 Q. And you retained that position, then, for  
9 12 years; is that correct?

10 A. Yes, sir.

11 Q. And does the assistant director assist the  
12 director day-to-day in the operation of the  
13 election authority?

14 A. Yes. Uh-huh.

15 Q. And what were some of your duties that you  
16 performed in that capacity?

17 A. Running the election, taking the place of  
18 the director whenever they were not available.  
19 Basically always registration was mine, plus the  
20 purchasing department.

21 Q. Let me show you Section 115.045 of the  
22 Missouri Statutes, and you're familiar with the

23 election laws of Missouri?

24 A. Yes, sir.

25 Q. They are contained in Chapter 115?

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1 A. 115, yes, sir.

2 Q. And would you read, please, 115.045?

3 A. "Each election authority shall have the  
4 authority to employ such attorneys and other  
5 employees as may be necessary to promptly and  
6 correctly perform the duties of the election  
7 authority."

8 Q. And did you perform the duties of the  
9 election authority for the City of St. Louis in the  
10 various capacities that you have testified to,  
11 including assistant director for 12 years?

12 A. Yes, sir.

13 Q. At the present time, what I mean by that,  
14 at the time of the primary election earlier this  
15 month, was there anyone at the Board of Election  
16 Commissioners in the City of St. Louis with more  
17 experience than you?

18 A. Not in terms of experience, no.

19 Q. Okay. And let me ask you also as part of  
20 your duties as assistant director, did you  
21 participate in the estimates prior to elections  
22 that were submitted each and every time there was

23 an election?

24 A. Yes, sir.

25 Q. All right. Let me show you

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1 Section 115.077, you're familiar with that, are you  
2 not?

3 A. Yes, sir.

4 Q. Does that cover what we're talking about  
5 in terms of the estimates that are submitted?

6 A. Yes, sir.

7 Q. And you participated in the preparation of  
8 those estimates during your 12 years --

9 A. Yes.

10 Q. -- as assistant director?

11 Now, next I want to show you what has been  
12 marked as Plaintiffs' Exhibit 4, and ask if you can  
13 identify -- if you can identify this document?

14 A. Yes. It's the Senate Bills 1014 and 730.

15 Q. And that's the new act, the Missouri Voter  
16 Protection Act?

17 A. Yes, sir.

18 Q. Have you reviewed that act?

19 A. Yes, sir. I read through it.

20 Q. Have you reviewed it in its entirety?

21 A. Yes, sir.

22 Q. And having reviewed that act, did you make

- 23 estimates, did you make costs or did you compute
- 24 cost amounts for various mandates that are required
- 25 by that legislation?

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1 A. Yes.

2 Q. Now, let me show you a copy of Plaintiffs'  
3 Exhibit 1, and this is the petition that has been  
4 filed in this case by Jackson County and others.

5 And I want to ask you, if you will, refer to  
6 paragraph 20 on page five?

7 A. Yes, sir.

8 Q. Did I specifically ask you to review  
9 paragraph 20 and the subparts of paragraph 20 in  
10 order to determine costs and expenses related to  
11 the various items alleged there to be unfunded  
12 mandates by reason of this act?

13 A. Yes, sir.

14 Q. And did you do that?

15 A. Yes.

16 Q. And did you do that in conjunction with  
17 your review of the act, Exhibit 4?

18 A. Yes.

19 Q. All right. I'd like to go through these  
20 with you beginning with subparagraph A. And  
21 subparagraph A, you were here for Mr. Nichol's  
22 testimony, weren't you?

- 23     A. Uh-huh.
- 24     Q. Subparagraph A deals with voter
- 25 notification cards, replacing voter identification

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1 cards, and that specifically relates to Section

2 115.163.3 of the act, correct?

3 A. Yes, sir.

4 Q. And did you analyze the various

5 allegations pertaining to unfunded mandates

6 contained in paragraph A and the subparagraphs

7 under it?

8 A. Yes, sir.

9 Q. And did you reach an amount as an

10 additional cost for the mandates of Section

11 115.163.3 relating to voter notification cards as

12 it would relate to the City of St. Louis?

13 A. I did for the postage not available for

14 design and layout, because I don't have that in

15 front of me. The postage, if they have to send out

16 a voter notification card for everyone, would cost

17 approximately \$28,000.

18 Q. 28,000?

19 A. Yes, sir.

20 Q. By the way, how many registered voters are

21 there in the City of St. Louis?

22 A. 196, approximately.

23 Q. 196,000?

24 A. Right.

25 Q. And I neglected to ask you, how many

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1 elections have you been involved with, participated  
2 with on behalf of, as an employee of in your  
3 various capacities, including assistant director,  
4 for the St. Louis Board of Election Commissioners?

5 A. August was 140.

6 Q. 140 elections. Have you missed any since  
7 1973?

8 A. One.

9 Q. You missed one?

10 A. I got sick.

11 Q. All right. Now, getting back to these  
12 allegations of unfunded mandates, the figure you  
13 would place on item A, at least part of it, was  
14 \$28,000?

15 A. Right. If everyone needed a new  
16 notification card because of the postage of it.

17 Q. Now, item B which, again, refers to the  
18 act, Sections 115.427.3, paren 3, closed paren and  
19 115.427.13-14, this deals with new affidavit forms  
20 for voters not possessing identification. Did you  
21 fix a cost mandated by the act for that service or  
22 for that requirement based upon your review of the

23 act?

24 A. On that historically of what it would cost

25 prior to when I was still involved in it, they

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1 would come to something, like, a dollar and a half  
2 apiece. Now, that's been since 1999, and that's  
3 the process we used then.

4 Q. Okay. And you understand --

5 A. So I really can't tell now.

6 Q. Now, you understand that this is a new  
7 affidavit that's required that wasn't required in  
8 any prior election, correct?

9 A. Well, we had affidavit forms prior, but  
10 this is new, so it would have to be started from  
11 scratch, I guess.

12 Q. So it's as different affidavit that the  
13 board has ever used before?

14 A. According to the way the law is written,  
15 yes, sir.

16 Q. So the affidavit would have to be created,  
17 and the affidavit would have to be designed and so  
18 forth, and we'd also list under the unfunded  
19 mandates training expenses, printing expenses,  
20 training to process the affidavits, training  
21 expenses for training instruction materials and  
22 additional staff. And have you considered all of

23 those items?

24 A. I have, but according to what I would have

25 done 10 years ago, because I'm not available now,

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1 but every one of them would have some kind of  
2 fiscal responsibility to them.

3 Q. Okay.

4 A. Because you have to go out and get them,  
5 to buy them.

6 Q. Okay. And based upon your experience, did  
7 you fix an amount for these -- for those additional  
8 costs, even as of the time you retired in 1999?

9 A. No, sir. I really didn't.

10 Q. But it is your testimony that there would  
11 be additional costs?

12 A. There would have to be additional costs.  
13 You would have to go and get these things.

14 Q. And would it be your testimony that these  
15 costs would be more than trifle?

16 A. Definitely, yes.

17 Q. Did you say definitely?

18 A. Well, postage and printing and personnel  
19 are always the most expensive things in an  
20 election. So one of them -- you know, so that  
21 would have to be one of the big costs of it.

22 Q. Okay. Now, number C refers to Section

- 23 115.427.2, and this talks about signage. How many
- 24 precincts are there in the City of St. Louis?
- 25 A. 205 and 122 possibly polling places.

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1 Q. There are some polling places, then, that  
2 have multiple precincts?

3 A. Yes, sir.

4 Q. And is it the practice, as you understand  
5 it, in St. Louis that any signage be displayed at  
6 each precinct within each polling place whether  
7 there be multiple precincts or not?

8 A. They all have their own signage with their  
9 number on it, yes.

10 Q. And this sign that's required would be a  
11 new sign that hasn't been used before, correct?

12 A. Yes, sir.

13 Q. And did you estimate a cost for the design  
14 of the sign and the printing expenses and the poll  
15 worker training and so forth relating to these  
16 signs?

17 A. Not at this present price, no, sir. I  
18 just can tell you that it was one of the more  
19 expensive things in the past.

20 Q. And it would certainly be more than  
21 diminimus; is that correct?

22 A. Right. Definitely.

23 Q. Would it in your opinion be a significant

24 cost?

25 A. Depending on what the sign -- how it's

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1 made.

2 Q. Okay. But you're familiar with the fact  
3 that signs are made and placed in polling places,  
4 correct?

5 A. Yes, sir. Uh-huh.

6 Q. And you're familiar with the fact,  
7 particularly from your purchasing days, that that  
8 costs money per sign, correct?

9 A. Definitely, yes, sir.

10 Q. How many signs would be required for the  
11 City of St. Louis, given the number of polling  
12 places and the number of precincts?

13 A. Right. Plus you would use them at the  
14 office, and I would have always gotten at least a  
15 third more than needed for each polling place.

16 Q. And how many would be needed, let's say  
17 for this November election?

18 A. I would have gotten at least 300, because  
19 it's 205 polling places plus extras. If they were  
20 generic without specific dates on them, then you  
21 would get a few more as you always had some  
22 in-house.

23 Q. And do you recall that the last time you  
24 were involved in estimating the cost in fixing the  
25 cost for signs that each sign would cost at least

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1 \$5 a sign?

2 A. For a decent sign, yes, something that  
3 would be lasting more than one election. If they  
4 were not election specific, then you would  
5 naturally get a better sign, so, yes.

6 Q. So it would cost more than \$5 per sign?

7 A. Uh-huh.

8 Q. Now, moving on to item D, which refers to  
9 115.427 and 115.430, this talks about -- the  
10 allegations talk about unfunded mandate resulting  
11 in expenses to hire and train additional staff to  
12 process significant increases in provisional  
13 ballots as a result of the act.

14 Now, based upon all your experience, do  
15 you believe -- including your consulting  
16 experience, and you consulted in 2004, did you not?

17 A. Yes, sir.

18 Q. And you consulted in every election since  
19 2000, correct?

20 A. Yes, sir.

21 Q. And in 2004 there were provisional  
22 ballots, correct?

23 A. Yes.

24 Q. All right. Can you tell us whether you

25 agree with section D that provisional ballots would

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1 be a consequence of the act in reference to those  
2 sections and would impose additional costs and  
3 expenses upon the City of St. Louis?

4 A. Yes.

5 Q. And is it your testimony that there will  
6 be more provisional ballots by reason of this act?

7 A. Yes.

8 Q. And is that because persons who do not  
9 have a photo ID or a driver's license will be  
10 required to cast a provisional ballot?

11 A. Yes.

12 Q. Okay. Next, Section 115.430.5(2) requires  
13 the photocopying of provisional ballot envelope,  
14 and then there are four separate categories listed  
15 there, including employing staff, photocopying and  
16 training expenses.

17 Were you able to fix a cost or expense  
18 based on your experience for that particular item?

19 A. Depending upon how many ballots that are  
20 come in, they will have to, at least -- well, you  
21 know you have to have teams of one of each republic  
22 and democrat. In house you would still want one

- 23 republic and one democrat. So if you couldn't use  
24 in-house, you would have to get people from  
25 outside, the same as you do for absentee counters

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1 were called, in teams. So you would have to  
2 have -- it depends on how many, but at least five  
3 teams, four to five teams doing that.

4 Q. Four to five teams. And, of course, they  
5 all have to be paid, and they would have to be paid  
6 because of the requirements of this act; is that  
7 correct?

8 A. Right.

9 Q. And they would not otherwise have to be  
10 paid or hired by the board in the City of St. Louis  
11 were it not for the act; is that correct?

12 A. If they were outside people, they would  
13 have to be paid, right.

14 Q. And would the amount for -- in your  
15 opinion, would the amount for that staff and the  
16 training of that staff, would that be an amount  
17 that was more than diminimus, more than trifle?

18 A. Definitely you would to pay them at least  
19 for a day, even if you only used them a short  
20 time. And I would have expected it to be longer  
21 than a day or so. Absentee counting is longer than  
22 a day, so . . .

23 Q. And much of that takes place after the

24 election, correct?

25 A. Right. After.

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1 Q. And the processing of absentee ballots and  
2 provisional ballots is more costly than regular  
3 ballots, correct?

4 A. With absentee it's per ballot, and I would  
5 imagine this would be, too.

6 Q. Now, G talks about the notice of election  
7 cards pursuant to 115.127 and 115.129 as being  
8 unfunded mandates requiring expenses to redesign  
9 and reprint the notice of election cards. Have we  
10 covered that item or have you fixed a cost for  
11 that?

12 A. I haven't fixed a cost for that, no, sir,  
13 because it's a different system than when I was  
14 there. We had our own cards and we sent them out.  
15 Now, it's done by an outside source. So they would  
16 have to redesign and send it. It would have a  
17 cost, but I don't know what it is.

18 Q. And would that cost be more than  
19 diminimus, or trifle, in your opinion?

20 A. It would depend upon what they charge for  
21 redesigning, because they redesign and they  
22 distribute this to an outside mailing source.

23 Q. Okay. Now, if you take a look at item H  
24 and I, those both refer to absentee ballots,  
25 correct?

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1 A. Uh-huh.

2 Q. I think we have discussed that. You have  
3 testified that there is additional costs in  
4 processing of absentee ballots over and above a  
5 regular ballot, correct?

6 A. Yes.

7 Q. And would you agree with me that this act,  
8 this act allows for an absentee ballot for persons  
9 who don't have a photo ID?

10 A. Yes, it does.

11 Q. An based upon your experience with the  
12 St. Louis Board, would you anticipate therefore  
13 that there will be more absentee ballots in this  
14 upcoming election in November and in other  
15 elections were this act to be law and enforced?

16 A. Yes.

17 Q. Okay. And because of those additional  
18 absentee ballots, you then would have the -- you  
19 then would have these additional expenses to pay  
20 individuals to process the absentee ballots,  
21 correct?

22 A. Yes.

23 Q. And that would be a cost that I think you  
24 have already said could be significant depending  
25 upon the amount of absentee voters, correct?

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1 A. Right.

2 Q. And it certainly wouldn't be diminimus or  
3 trifle; is that right?

4 A. Yes, that's right.

5 Q. Finally, K, Section 115.024, this imposes  
6 a requirement, which we refer to as an unfunded  
7 mandate for the rescheduling of an entire election  
8 in the event that there's a tragedy or some reason  
9 that the election can't be held.

10 Do you know -- can you estimate for us or  
11 can you fix a cost -- let me ask it this way: Can  
12 you fix a cost based upon your experience,  
13 including your consulting experiences since 1999,  
14 on what it would cost to reschedule an election in  
15 the City of St. Louis?

16 A. You would have to resend cards. That  
17 would be your big amount, to let people know. And  
18 I'm sure there would be advertising. It depended  
19 upon how close to the election it was changed to  
20 whether or not you have already paid -- well,  
21 judges -- there's a lot of expenses that you might  
22 not anticipate. It's hard to determine the cost of

23 it. At least the cost of the postage would have to  
24 be put in there, so that's as much postage as it  
25 takes to send out notice to the voters. First of

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1 all, the voters would have to know.

2 Q. So let's just take the postage alone. In  
3 the City of St. Louis there's 200,000 registered  
4 voters?

5 A. Right.

6 Q. And what would the postage be to notify  
7 them of a rescheduled election?

8 A. Well, 20 cents apiece, approximately.

9 Q. For -- did you say 196,000 registered  
10 voters?

11 A. 196 approximately, yes. It's easier to  
12 figure out the other, 40,000. I'm sure advertising  
13 would have to be put in there also. Advertising is  
14 a cost of an election change.

15 Q. And that wouldn't be a diminimus cost  
16 either, would it?

17 A. No.

18 MR. NEWMAN: I don't have any further  
19 questions at this time, your Honor.

20 THE COURT: Mr. Downing?

21 CROSS-EXAMINATION BY MR. DOWNING:

22 Q. Good afternoon.

23 A. Good afternoon.

24 Q. In your experience, and I think you said

25 over 20 years of experience for St. Louis City

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1 Election Board --

2 THE COURT: Pull that mike down.

3 BY MR. DOWNING:

4 Q. -- has voter impersonation fraud been a  
5 problem in your experience in St. Louis City?

6 A. No, sir.

7 MR. DOWNING: Thank you. That's all I  
8 have.

9 THE COURT: Mr. Presson?

10 CROSS-EXAMINATION BY MR. PRESSON:

11 Q. Hi. My name is Bob Presson.

12 A. Good afternoon.

13 Q. My name is Bob Presson. I represent the  
14 State of Missouri in this action. Since you have  
15 retired in 1999, I assume that you aren't  
16 authorized to speak on behalf of the Board of  
17 Election Commissioners?

18 A. No, sir.

19 Q. Did you discuss Mr. Newman's request to  
20 estimate costs with the board?

21 A. No, sir.

22 MR. NEWMAN: I'm going to object, your

23 Honor. I think it's irrelevant.

24 MR. PRESSON: I think it goes to the

25 way it's --

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1 THE COURT: Overruled.

2 I believe she answered.

3 MR. PRESSON: I believe she did.

4 THE WITNESS: No, sir. Yeah.

5 BY MR. PRESSON:

6 Q. Just to make it clear, you have not talked

7 about your -- with your -- not talked with the

8 board about your testimony?

9 A. No.

10 Q. Okay. Now, in the many years that you

11 have worked for Board of Election Commissioners, I

12 assume election laws changed a great deal over that

13 period of time?

14 A. Yes.

15 Q. And so having something, you know, come

16 along, the changes in election laws by itself isn't

17 particularly new, is it?

18 A. No.

19 Q. Okay. I mean, provisional ballots were

20 fairly new, I believe, just in the election --

21 since the election in 2004; is that correct?

22 A. Yes, sir. I think it was '4. It's a

23 different kind of provisional ballot, though, that  
24 they are talking about. There was a generic ballot  
25 with state and federal election. That's all you

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1 could vote for.

2 Q. I agree. But the requirement to allow a  
3 provisional ballot was itself new in 2004?

4 A. Yes. Uh-huh.

5 Q. And I assume there must have been some  
6 cost with the additional handling for that?

7 A. Yes.

8 Q. As you say, it's a different form of  
9 ballot under Senate Bill 1014. Now, if I  
10 understand it correctly, correct me if I'm wrong,  
11 but a provisional ballot will be exactly the same  
12 in terms of all the races and everything that  
13 somebody can vote upon?

14 A. Yeah, for that particular precinct,  
15 right.

16 Q. So, you know, in the past, you would have  
17 had to print up separate provisional ballots,  
18 wouldn't you?

19 A. My understanding is that you still do  
20 because they are a different color.

21 Q. The ballots are colored or the --

22 A. The ballots are and the envelopes.

- 23 Q. The envelopes are colored?
- 24 A. The envelopes, correct.
- 25 Q. In terms of your estimates here and costs,

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1 you kept saying, well, depending upon the number of  
2 voters, the number of provisionals or absentees,  
3 have you made any sort of estimate as to what that  
4 would be in the City of St. Louis?

5 A. Without a first election, not really. You  
6 have to have as many -- they are going to need  
7 provisional ballots in each polling place, in each  
8 polling precinct. Depending upon how many they  
9 anticipate. It's hard to decide how many, I'm  
10 sure, because they are going to have more than they  
11 think they need. They are going to be able to put  
12 five per precinct, which is what they did before.

13 Q. Well, I mean, there's nothing in the act  
14 itself that says there shall be a whole -- you  
15 know, an increased number of provisional ballots or  
16 absentee ballots, is there?

17 A. I don't believe so, no.

18 Q. And as I believe the witness testified  
19 this morning, just increased voter turnout could  
20 also mean an additional demand for particular  
21 things like ballots or whatever that the election  
22 authority has to contend with, wouldn't that be

23 fair?

24 A. Yes.

25 Q. Okay. So do you really know how many

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1 people in the City of St. Louis might need a  
2 provisional ballot under the provisions of this  
3 act?

4 A. No, sir.

5 Q. How many people might need an absentee  
6 ballot under the provisions of this act?

7 A. No.

8 Q. Okay. In terms of Mr. Newman's questions  
9 regarding paragraph 20, a lot of these seem to  
10 relate to, you know, what the voters do or don't  
11 do; is that a fair statement? I mean, voters show  
12 up and want to cast provisional or need to cast a  
13 provisional?

14 A. Yeah. Every election is based on voter  
15 participation. So until you know how many voters  
16 are going to be there, you have no idea.

17 Q. Okay. Let me go through, like, paragraph  
18 20a of the new voter notification card?

19 A. Yes, sir.

20 Q. As I recall that section, it says that  
21 90 days prior to a general election is when a local  
22 election authority has to send out this new card.

23 The next general election is November 7th; is that

24 correct?

25 A. I believe that is referring to the

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1 notification card that you send out in the spring  
2 prior to a federal and state election, which every  
3 two years then in the spring we're supposed to have  
4 our election roles cleaned and then send out a  
5 notification card. It's up to 90 days but it  
6 starts in May before the November election.

7 Q. But since -- this act hasn't gone into  
8 effect yet, has it?

9 A. I don't think so, no. It's August  
10 something.

11 Q. But my point is, it goes up to the 90  
12 days, but the 90 days prior to November 7th of this  
13 year is already past. It past, like, two weeks  
14 ago, didn't it?

15 A. Yes, sir.

16 Q. So there's really no way literally that  
17 any local election authority would fall within the  
18 terms of what the statute says with regard to the  
19 card?

20 A. So then you're saying they wouldn't have  
21 to send them on out then?

22 Q. Are you assuming they would, even though

23 the statute didn't require it?

24 A. For the voter's sake, I would assume that

25 they would, yes.

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1 Q. Well, what about 20b, the new affidavit  
2 forms? As a lawyer, you know, I just view an  
3 affidavit as something you type up on the computer  
4 and then print it out. Are you viewing it as  
5 something different?

6 A. I would view it as something printed, yes,  
7 sir.

8 Q. Does the statute spell out that it needs  
9 to be professionally printed?

10 A. I don't know. I don't think so.

11 Q. Well, in terms of things like design,  
12 layout, is there any real requirement as to what  
13 these affidavits should look like in the statute  
14 other than their content?

15 A. I didn't read of that in there. No, sir,  
16 I didn't read that.

17 Q. Same question with regard to the signs in  
18 paragraph C, is there any specification in Senate  
19 Bill 1014 as to the type of signs or how big they  
20 had to be or anything like that?

21 A. I don't think so, no, sir.

22 Q. Okay. In terms of training costs, which I

23 think you had indicated there would be some  
24 training costs in your opinion, is that what you  
25 testified to?

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1 A. Yes, sir.

2 Q. I assume that the St. Louis Board of  
3 Election Commissioners has training sessions for  
4 its election judges now?

5 A. Yes, they do.

6 Q. How often is that training?

7 A. Before the election -- it will be sometime  
8 in October, I'm sure.

9 Q. Is it before every election?

10 A. Almost every election. I wouldn't say  
11 every.

12 Q. And I think you acknowledged earlier, you  
13 know, over the time that you've been working with  
14 the board, election laws have changed. I assume  
15 the training has similarly changed over a period of  
16 time, too?

17 A. It would reflect the laws.

18 Q. As they are currently in effect at the  
19 time of the election?

20 A. Yes.

21 Q. There's nothing in Senate Bill 1014 that  
22 in effect says you must have some additional

23 training other than than what is currently

24 required, is there?

25 A. Not that I read, no, sir.

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1 Q. Okay. And regard to paragraph F, I don't  
2 recall Mr. Newman asking you about paragraph F, but  
3 that's about the provisional ballot envelope. Now,  
4 that's printed by the Secretary of State, isn't it?

5 A. That's what I understand, yes, sir.

6 Q. So if there is an increased demand for  
7 provisional ballots, the envelopes will be provided  
8 by the Secretary of State, not the local election  
9 authority?

10 A. According to the law, yes.

11 Q. Okay. Now, in terms of additional staff  
12 here, is it your testimony that you will need  
13 additional staff at every polling place?

14 A. No, sir, I didn't -- that was this  
15 morning. That was Mr. Nichols.

16 Q. Well, I wanted to see whether you were  
17 making a similar sort of assessment or reached an  
18 opinion on that. And you haven't reached an  
19 opinion on that?

20 A. No, I haven't.

21 Q. Okay. So you don't know whether  
22 additional election judges would be needed, then,

23 at each polling place?

24 A. At the polling place?

25 Q. Uh-huh.

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1     A. The November election would probably need  
2 more because of the increased participation of the  
3 voters anyway. Because of that, I would think they  
4 would at least try to have two more judges, if  
5 available.

6     Q. Well, maybe for bigger places like  
7 St. Louis City or St. Louis County, don't they also  
8 have staff that's sort of on call for when  
9 particular demand at a particular polling place may  
10 be necessary?

11    A. If there are people available, they will  
12 send them out if they have enough, yes.

13    Q. And similarly, if there's a need for  
14 additional ballots, don't they ship them out to  
15 particular polling places if you are running short?

16    A. Yes.

17    Q. Now, in terms of paragraph 20k, the  
18 disaster provision, to your knowledge, has any such  
19 disaster like that ever interrupted an election in  
20 the City of St. Louis?

21    A. No.

22           MR. PRESSON: I have no further questions,

23 your Honor.

24 THE COURT: Mr. Long?

25 MR. LONG: Your Honor, I have no questions

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1 at this time.

2 THE COURT: Ms. Wood?

3 MS. WOOD: Yes, your Honor.

4 CROSS-EXAMINATION BY MS. WOOD:

5 Q. Good afternoon. I'm Barbara Wood. I  
6 represent the Secretary of State.

7 A. Yes, ma'am.

8 Q. I just have a couple of questions. You  
9 were talking to Mr. Presson about the voter  
10 notification card that's in the new legislation,  
11 and he was asking you about the fact that there  
12 would not be time to send out for the new election  
13 for the election coming up in November?

14 A. Yes.

15 Q. But that card will have to be sent to  
16 subsequent elections, will it not?

17 A. Yes. Some will.

18 Q. Excuse me. I didn't mean to interrupt  
19 you. I'm sorry.

20 A. If it's mandated that you replace the  
21 voter ID card with a voter notification, you need  
22 to send them out somewhere along the line.

23 Q. So if there's not time to do it in the  
24 upcoming November election, it will have to be done  
25 in subsequent elections?

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1 A. Yes.

2 Q. And all of the increase costs that you  
3 talked about in terms of the notification card with  
4 the postage, the training, all the things you  
5 listed previously, how would you characterize those  
6 additional costs to the LEAs when you put them all  
7 together in one bundle? Would you consider them to  
8 be significant?

9 A. Oh, yes. Postage is always a significant  
10 amount of your cost of election.

11 Q. And in your experience with elections, you  
12 will have to train the poll workers on the new phot  
13 ID requirements?

14 A. Yes.

15 Q. And on the new requirements for  
16 provisional ballots?

17 A. Yes, ma'am.

18 MS. WOOD: No further questions.

19 MR. NEWMAN: Nothing further, your Honor.

20 THE COURT: Ma'am, how do you spell your  
21 last name?

22 THE WITNESS: S-i-g-n-a-i-g-o.

23 THE COURT: Thank you.

24 MR. NEWMAN: Your Honor, call Judy

25 Taylor.

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1 THE COURT: All right. Good afternoon.

2 THE WITNESS: Good afternoon.

3 (Witness sworn.)

4 MR. NEWMAN: May I approach, your Honor.

5 THE COURT: You may.

6 JUDITH TAYLOR, being first duly sworn, testified as

7 follows:

8 DIRECT EXAMINATION BY MR. NEWMAN:

9 Q. Please state your name for the record.

10 A. Judith Ann Taylor.

11 Q. And where do you live?

12 A. St. Louis County.

13 Q. What is your employment?

14 A. I'm director of -- the Democratic Director

15 of Elections.

16 Q. For St. Louis County?

17 A. For St. Louis County.

18 Q. And how long have you held that position?

19 A. Eight years.

20 Q. Ms. Taylor, how many registered voters are

21 there in St. Louis County?

22 A. About 658,000. And that will probably

23 raise for November, close to 700,000.

24 Q. 700,000 for November?

25 A. Uh-huh.

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1 Q. Prior to becoming director -- and what  
2 year did you become director?

3 A. 1998.

4 Q. '98. So you've been director for eight  
5 years, correct?

6 A. Uh-huh.

7 Q. And prior to that time what was your  
8 position?

9 A. I was assistant director for six years.

10 Q. Okay. So you have been either a director  
11 or an assistant director for a total of 14 years,  
12 correct?

13 A. Right.

14 Q. All right. And when did you begin work  
15 with at the election board in St. Louis County?

16 A. August 9, 1976.

17 Q. And have you been continuously employed  
18 there since then?

19 A. Yes, I have.

20 Q. So that would be a total of 30 years?

21 A. Right.

22 Q. How many elections have you conducted or

23 participated in conducting during that --

24 A. What --

25 Q. Let me me finish, please -- during that

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1 30-year span?

2 A. Well over 100.

3 Q. And how many precincts are there in  
4 St. Louis County?

5 A. There are over 1,500.

6 Q. And how many polling places?

7 A. 448.

8 Q. And I take it then that some polling  
9 places have multiple precincts where voters can  
10 vote; is that correct?

11 A. Exactly.

12 Q. Okay. Can you describe your job  
13 day-to-day what you do?

14 A. The director --

15 Q. As director?

16 A. Directors of election oversees the whole  
17 process. They oversee the election preparation,  
18 the registrations, the conduct of the election, the  
19 employees, there are 72 employees.

20 Q. An you're familiar with the election laws  
21 contained in Chapter 115 of the Missouri Statutes,  
22 are you not?

23 A. Yes, sir.

24 Q. And are you familiar with Section 115.045,

25 which discusses the employment of employees to

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1 correctly perform the duties of the election

2 authority?

3 A. Yes.

4 Q. You're familiar that?

5 A. Yes.

6 Q. And these are the duties you have just

7 described; is that correct?

8 A. That's correct.

9 Q. Now, as part of your duties, again,

10 referring to the election laws at this time,

11 Section 115.077, are you familiar with 077?

12 A. Would you read that please for me?

13 Q. 115.077, a portion dealing with estimating

14 costs?

15 A. Right.

16 Q. Are you familiar with that?

17 A. Yes, sir.

18 Q. Have you participated in accordance with

19 this statute in estimating costs no later than the

20 5th Tuesday prior to any election being conducted?

21 A. Yes, I have, sir.

22 Q. Do you know about how many times you have

23 participated in that process?

24 A. Well, probably in the last eight years, I

25 have done it for every election except this year.

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1 Q. Okay. This year being the primary  
2 election?

3 A. Any election this year it was turned over  
4 to the lead director.

5 Q. Oh, I see. Okay. So in all those  
6 previous elections, that was part of the functions  
7 and the duties that you performed as the estimation  
8 of costs for the election?

9 A. Yes, sir.

10 Q. Okay. Now, let me ask you what the -- how  
11 you interact with the board members at the  
12 St. Louis County Board of Election Commissioners,  
13 just in terms of the day-to-day functioning of the  
14 election authority?

15 A. Well, they have a meeting once a month,  
16 and they direct the other director and myself on  
17 the activities they want us to perform.

18 Q. Okay. So they have a once-a-month  
19 meeting?

20 A. Yes.

21 Q. And then you and other directors are then  
22 charged with the responsibility of carrying out the

23 day-to-day functions; is that correct?

24 A. Yes, sir, we are.

25 Q. Including those we refer to from 115.077,

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1 the estimation of costs?

2 A. Right.

3 Q. Now, based on your experience -- or before  
4 I ask you that, let me show you what has previously  
5 been marked as Plaintiffs' Exhibit 4, and ask if  
6 you can identify that?

7 A. Yes, sir. It's Senate Bill 1014 and 730,  
8 and it's the voter ID bill.

9 Q. And you are -- have you reviewed that  
10 bill?

11 A. Yes, sir.

12 Q. Are you familiar with its contents?

13 A. Yes, sir.

14 Q. Okay. And you're aware of the various  
15 provisions in the bill?

16 A. Yes.

17 Q. Are you aware that the bill requires new  
18 services, increased services to be performed by  
19 election authorities that were not required prior  
20 to this legislation?

21 A. Yes, sir.

22 MR. PRESSON: Let me object to the form of

23 question. I think assuming what he's trying to get  
24 this witness to say and that is that there are, in  
25 fact, increased duties here. I mean, he's assumed

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1 that all in the questions, so it assumes something  
2 not in evidence.

3 THE COURT: Rephrase.

4 BY MR. NEWMAN:

5 Q. All right. Having reviewed this piece of  
6 legislation, can you tell us what, if any, new  
7 duties are required by reason of this act?

8 A. Well, the new duties that would be  
9 required are we would need additional provisional  
10 ballots. We would need the identification card to  
11 go out. We wouldn't send it countywide. We would  
12 just send it to new registered voters. We would  
13 also have to have the signage at the polling  
14 place. That's just a few of the costs.

15 Q. Okay. And those are all new costs that  
16 didn't exist prior to this legislation?

17 A. Correct.

18 Q. And are there other costs as well?

19 A. Yes. There are --

20 Q. Okay. There are other --

21 A. Yes.

22 Q. I'm going to ask you about that

23 specifically.

24 A. Okay.

25 Q. I'm going to show you what has been marked

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1 as Plaintiffs' Exhibit 1, and refer you to  
2 paragraph 20. Now, have you previously reviewed  
3 paragraph 20 and its subparts?

4 A. Yes, sir, I have.

5 Q. Okay. Let's begin with paragraph A.

6 Based upon your review of Exhibit 4, the act, have  
7 you computed or fixed a cost associated with  
8 paragraph A referencing Section 115.163.3 of the  
9 act in reference to voter notification cards?

10 A. Yes, sir. I think that because we would  
11 only be sending out to the new registered voters,  
12 we would be spending about \$50,000.

13 Q. \$50,000?

14 A. To design a new card.

15 Q. And that is based upon, roughly, 700,000  
16 registered voters in St. Louis County?

17 A. Well, no, we wouldn't be sending out to  
18 all the voters. We would just be sending out to  
19 the new voters, but we would have to design a new  
20 card with that information. And in that we have to  
21 also comply with the postal regulations. So we  
22 would be paying computer hours to have the card

23 designed, and then we would have to pay to have the

24 card printed and sent out.

25 Q. So you would agree then that there would

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1 be design, layout and printing expenses, postage  
2 expense if this act were to go into effect?

3 A. Yes.

4 Q. And you believe you have fixed that cost  
5 at \$50,000; is that correct?

6 A. Yes.

7 Q. All right. Now, let's go to item D. This  
8 is in reference to new affidavit forms for voters.  
9 Why are there new affidavit forms required by this  
10 act, Mrs. Taylor?

11 A. Well, affidavit forms are basically  
12 because they are voting provisional. They wouldn't  
13 come to the polling place without the proper  
14 identification.

15 Q. And that wasn't required before?

16 A. No. Well, affidavits were, but we would  
17 have to have a different type of affidavit.

18 Q. This is a new affidavit that is required  
19 strictly because this act treats provisional voters  
20 in a new way, correct?

21 A. Yes.

22 Q. And have you estimated the cost associated

23 with subparagraph B, which references Section

24 115.427?

25 A. Yes. This one could be very expensive.

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1 If we would have to train our 6,000 judges on this,  
2 with a new affidavit and the new provisional  
3 voting, it could cost \$150,000 to print a new  
4 manual for our judges which would be approximately  
5 14,000.

6 Q. How much, 14?

7 A. 14,000.

8 Q. All right. Now, the price you fixed for  
9 training, explain to the Court what you mean by  
10 training in relation to this affidavit.

11 A. Well, we would have to train the judges to  
12 be able to provide if people don't come in with the  
13 proper identification, then they should be allowed  
14 to vote on all the issues on the ballot. Prior to  
15 this, they were only able to vote on federal and  
16 state issues. So they can now vote on everything.

17 Q. And you would have to then train -- there  
18 would have to be training as well concerning the  
19 completion of this new affidavit that the voter  
20 will be completing at the polling place, correct?

21 A. Yes.

22 Q. Someone has to instruct them and guide

23 them on how to to do that, correct?

24 A. That's correct.

25 Q. All right. Now, let's look at item C.

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1 Again, in reference to 115.427, and this talks  
2 about signage. Clear and conspicuous notifications  
3 at polling places, and you have testified that  
4 there are 1,500 precincts at 448 polling places?

5 A. Right.

6 Q. Is that correct?

7 A. That's correct.

8 Q. Now, at your multiple polling places where  
9 there's more than one precinct voting, do you have  
10 multiple signage or single signage?

11 A. Single signage.

12 Q. So we're talking about 448 signs?

13 A. Well, we would probably go with around  
14 500, because we would need signs in the office  
15 because that's a polling place, in the event that  
16 the signs got torn or anything. And I would  
17 estimate that those signs would run about \$5,000.

18 Q. Okay. And that includes the various  
19 expenses that are listed under subsection C,  
20 design, layout, printing, training additional poll  
21 staff, the whole -- all of those items?

22 A. Uh-huh.

23 Q. Now, number D, 427 again and 430, imposes  
24 on local election authorities the allegation being  
25 unfunded mandate resulting in expenses to hire and

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1 train additional staff to process increases in  
2 provisional ballots?

3 A. Well, we don't have it in our budget to  
4 hire additional staff, other than the 20 people we  
5 would hire for the November election.

6 Q. Well, what do you do in a situation where  
7 your budget does not provide for the hiring of  
8 additional staff?

9 A. We would have to use our regular employees  
10 and give them time and a half. We wouldn't have  
11 the money to hire additional employees.

12 Q. And have you fixed a cost based upon the  
13 use of existing personnel at time and a half  
14 overtime to cover this particular item, D?

15 A. Right now, there's virtually no overtime  
16 left in our budget. And we have gone through,  
17 like, \$82,000 in overtime. And I just don't see  
18 how we can do this.

19 Q. So your testimony is that you don't  
20 believe based upon present circumstances that the  
21 St. Louis County Board of Election Commissioners  
22 could comply with this act if it were to go into

23 effect in relation to item D?

24 A. Well, if it went into effect, we would

25 have to comply with it, but we would be zombies

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1 working. I mean, we would be working well over  
2 12 hours a day.

3 Q. And you would have staff working 12 hours  
4 a day without being paid for overtime; is that your  
5 testimony?

6 A. We would have to go to the St. Louis  
7 County Council for emergency appropriations.

8 Q. Okay. That would come from general  
9 revenue?

10 A. Right.

11 Q. Which otherwise might go for schools or  
12 fire districts or water works?

13 A. Parks or anything. Yeah. We would have  
14 to go for additional funding.

15 Q. Okay. Now, number E, 115.105.6, this  
16 talks about challenger instructions. Based upon  
17 your review of Exhibit 4, the act, and based upon  
18 all of your experience with the St. Louis County  
19 Board of Election Commissioners, were you able to  
20 fix a cost associated with that item?

21 A. Well, the challenger has to either -- has  
22 to tell the judges working at the polls or an

23 election authority. So that would probably require  
24 more telephone lines in our office, because it's  
25 difficult to get through on election day anyway.

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1 And it would be cheaper to have the phones  
2 connected all along rather than have them  
3 disconnected and reconnected. So that would be  
4 about a \$30,000 increase.

5 Q. Okay. Now, looking at F, Section  
6 115.430.52, this talks about photocopying  
7 provisional ballot envelopes. Now, there's been  
8 some reference made to the fact that the envelope  
9 is prepared by the Secretary of State, correct?

10 A. Correct.

11 Q. But you understand this isn't referring to  
12 preparation of the envelope, this is referring to  
13 the photocopying and the staff required to do that,  
14 correct?

15 A. Right.

16 Q. And can you fix a cost associated with  
17 item F based upon your review of the act?

18 A. I believe it would only be about \$200 to  
19 copy the paper part, you know, the actual envelope,  
20 but the costs would come in when I would have to  
21 pay -- pull employees off of other duties when --  
22 we would have to pull them off of other duties and

23 put them on to copying these. That's where the

24 cost would come in.

25 Q. Let's talk a little bit about provisional

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1 ballots and absentee ballots and regular ballots.

2 Can you explain to his honor the difference in

3 processing in terms of the amount of manpower

4 that's required for those three categories of

5 ballots?

6 A. Okay. The manpower for absentees begins

7 immediately 10 weeks out. We immediately start

8 preparing stamping envelopes and everything to get

9 them ready to go. We print on demand the absentee

10 ballots. We're expecting an increase in absentee

11 ballots because of the voter ID.

12 Q. And the reason is?

13 A. That they don't have to present a voter ID

14 to vote absentee.

15 Q. Fine. Go ahead.

16 A. We had 45,000 in 2002 absentee. I would

17 say that could jump close to 60,000, which is going

18 to put a big load on the election staff, a huge

19 load. Now, in 19-- -- in 2002 we only had 1,970

20 provisional ballots.

21 Q. In 2002. 2002 it first went into effect.

22 We had 19,70, I believe. We had 971 in 2004. And

23 this past election we only had seven, but they  
24 could only vote on the federal and state issues.

25 Q. And not any other issue?

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1 A. (Witness shakes head.)

2 Q. And this particular act requires a photo  
3 ID for every election; is that correct?

4 A. That's correct.

5 Q. And if you don't have your photo ID, then  
6 you have to ask to vote provisionally, correct?

7 A. That's correct.

8 Q. And when you vote provisionally, will you  
9 explain to his honor the process that's involved in  
10 tallying that vote and the interaction between the  
11 board staff and the voter in relation to his or her  
12 vote?

13 A. Well, they would have to call our office  
14 and we would have to say, yes, they are on the  
15 rolls, but they don't have an ID, so therefore they  
16 are going to have to vote provisional.

17 Q. When they vote provisional, those ballots  
18 aren't counted on election night. It takes  
19 bipartisan teams to go through each and every  
20 envelope, separate them by polling place, check the  
21 signature, verify that the voter does, in fact,  
22 live in at that particular address and is at the

23 correct polling place. And then the voter has an  
24 identification number that we issue him. And then  
25 he has the right to know, he or she has the right

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1 to know if their ballot has been counted, but we  
2 have up to 14 days to count those ballots.

3 Q. And it's your opinion based upon all of  
4 your experience that there will be more absentee  
5 and provisional ballots in elections in the future  
6 if this act goes into effect?

7 A. Yes, sir. I think there will be.

8 Q. Now -- well, I don't want pass to up G.  
9 This is notice of election cards pursuant to  
10 115.127 and 129. Do you see that there?

11 A. Yes, I do.

12 Q. Okay. Have you associated a cost with  
13 that?

14 A. The election cards, just to redesign them  
15 and reprint them, would be about 125,000. That's  
16 not to send them out. That would just be to  
17 redesign and print them.

18 Q. Okay. Now, H and I both pertain to --  
19 these both pertain to absentee ballots, do they  
20 not?

21 A. Yes, they do.

22 Q. Is there anything you haven't testified to

- 23 up until this time that you want to add in the way
- 24 of fixing costs associated with H and I?
- 25 A. Well, we would have to print new absentee

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1 ballot envelopes, and that would be at a cost of  
2 about \$5,000.

3 Q. And now the last item 115.024, this is the  
4 item relating to rescheduling of an election in the  
5 event of a tragedy. Do you have, based upon all of  
6 your experience, do you have some costs that you  
7 can fix on what it might cost this county or to do  
8 such a thing in the event there's no appropriation  
9 under this act?

10 A. Well, right now it costs St. Louis County  
11 anywhere between 500,000 and 600,000 to hold an  
12 election. We probably would have to start from  
13 square one if there was a national disaster. I  
14 mean, if one polling place went down, and we could  
15 immediately shift it to another polling place, and  
16 get someone to be stationed at the first polling  
17 place where the disaster was and say go two blocks  
18 down or whatever, we could recover rapidly. If the  
19 power went down, we could recover rapidly. But a  
20 natural disaster of a huge magnitude would be  
21 disastrous, and we would have to start from square  
22 one.

23 Q. And the cost then could be half a million

24 dollars?

25 A. Yeah.

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1 Q. Were you subpoenaed to testify here today?

2 A. Yes, sir, I was.

3 MR. NEWMAN: I don't believe I have any  
4 further questions of this witness, your Honor, at  
5 this time.

6 Oh, one other question.

7 BY MR. NEWMAN:

8 Q. The costs that you have fixed for us in  
9 your testimony today relating to these various  
10 items that are required by the act, did you compute  
11 those in the same manner that you would have  
12 computed a cost estimate before an election under  
13 Section 115.077?

14 A. Yes, sir.

15 Q. You employed the same techniques that you  
16 are statutorily required to do in each and every  
17 election?

18 A. Yes, sir.

19 MR. NEWMAN: Okay. Thank you very much.

20 THE WITNESS: Thank you.

21 CROSS-EXAMINATION BY MR. DOWNING:

22 Q. Good afternoon.

- 23 A. Good afternoon.
- 24 Q. Just one question for you. In your
- 25 experience in St. Louis County in elections, has

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1 St. Louis County experienced problems with voter  
2 identification fraud?

3 A. No.

4 MR. DOWNING: Thank you very much.

5 CROSS-EXAMINATION BY MR. PRESSON:

6 Q. Good afternoon.

7 A. Good afternoon.

8 Q. As you said, you were subpoenaed here  
9 today; is that correct?

10 A. Yes.

11 Q. Have you been authorized to speak on  
12 behalf of the St. Louis County Board of Election  
13 Commissioners?

14 A. No. I just answered his subpoena.

15 Q. Okay. Is there anyone from the St. Louis  
16 Board of Election Commissioners that is also in the  
17 courtroom here today?

18 A. Yes, sir. We have our chairman.

19 Q. And that is?

20 A. John Diehl, Mr. John Diehl.

21 Q. Okay. Have you discussed with him or any  
22 other member of the board of your expected

23 testimony here today?

24 A. I told him I thought it was about

25 provisional balloting.

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1 Q. But I mean, in terms of discussing the

2 substance of what you --

3 A. No.

4 Q. -- have testified here?

5 A. No, I haven't.

6 Q. Okay.

7 A. I haven't really discussed it with anyone.

8 Q. Okay. In terms of the alleged mandates

9 that Senate Bill 1014 imposes, it seems to me a lot

10 of the costs that you were estimating stem from an

11 anticipation of more provisional ballots and more

12 absentee ballots; is that a fair characterization?

13 A. I think that's fair.

14 Q. Do you have any idea how many such, you

15 know, provisional or absentee ballots could

16 reasonably be expected in St. Louis County?

17 A. I think both could increase by 20

18 percent.

19 Q. Over what?

20 A. Over what we've just recently had. We

21 only had seven, so I'm saying seven provisional

22 ballots this past election, but I think we can go

23 as high or higher than we had in 2002, which was

24 1,971.

25 Q. So you had 1,900 what?

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1 A. Provisional ballots in 2002.

2 Q. Oh. Maybe I'm a little confused. I

3 thought somebody else earlier had said that the

4 first election they had provisional ballots for was

5 2004?

6 A. It was 2002.

7 Q. 2002. Okay. And you had already had

8 1,900 then; is that correct?

9 A. 1,971, I believe it was.

10 Q. Okay. And you think that maybe there

11 could be an increase of 20 percent?

12 A. I would think so.

13 Q. So that would be roughly 380 additional

14 provisional ballots?

15 A. Uh-huh.

16 Q. Okay. Spread out over -- how many polling

17 places did you say you had?

18 A. 448.

19 Q. So that would be less than one additional

20 provisional ballot per polling place?

21 A. Uh-huh.

22 Q. In terms of training, which is another

- 23 thing you mentioned about increased costs, there's
- 24 currently a statute that requires election judges
- 25 to be trained; is that true?

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1 A. That's correct.

2 Q. And I don't think the statute itself  
3 specifies how often that training needs to be  
4 provided. What does St. Louis County do in that  
5 regard?

6 A. We train all the judges once a year, and  
7 we train the supervisors for every election.

8 Q. Okay. So in terms of the content of the  
9 training, every time the election laws change, I  
10 assume the content of the the training changes?

11 A. Right.

12 Q. Because, obviously, the election judges  
13 have to be kept up to date?

14 A. That's right.

15 Q. In the time that you've been working with  
16 the St. Louis County Board of Election  
17 Commissioners, have there been changes in the law  
18 like provisional ballots?

19 A. When 2002 there was the provisional --

20 Q. I mean, have there been other changes like  
21 that in the election laws over the years?

22 A. Oh, there's been changes over the years,

23 yes. I can't think of any right offhand, but there

24 has been.

25 Q. But any time those changes have come

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1 along, you've trained your election judges on those  
2 changes?

3 A. Yes, sir.

4 Q. Now, you mentioned that your duties used  
5 to include estimating costs of an election, but I  
6 think you said that sometime this year it had been  
7 turned over to someone else. Who is that?

8 A. Well, whatever the Governor's political  
9 party is, that's the lead director. And they have  
10 officially more to say than the person of the other  
11 party.

12 Q. So is there a co-director in your  
13 position?

14 A. No. We're directors. We're counterparts,  
15 but actually he has more to say than I do.

16 THE COURT: You're second among equals.

17 THE WITNESS: Yes. That's putting it in a  
18 very nice way.

19 BY MR. PRESSON:

20 Q. In terms of outside the context of your  
21 testimony here and the subpoena, did St. Louis  
22 County ever do any estimate with regard to Senate

- 23 Bill 1014 and what its costs might or might not be?
- 24 A. The chairman of the board did an estimate
- 25 cost on it.

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1 Q. Okay. And what was done with that  
2 estimate?

3 A. He sent it to the fiscal -- the fiscal  
4 note, but I don't know what was done with that  
5 estimate.

6 Q. So you sent it to the Oversight Division  
7 of the Committee on Legislative Research?

8 A. Uh-huh.

9 Q. Did you participate at all in that?

10 A. No. No, sir, I did not.

11 Q. Do you know what the conclusion of that  
12 was?

13 A. Yes.

14 Q. And what was the conclusion?

15 A. The conclusion was there would be a  
16 two-to-four-million dollar savings with touch  
17 screens.

18 Q. So, ultimately, Senate Bill 1014 wasn't  
19 going to cost anything more for St. Louis County?

20 A. Yes, it is. Because anyone that knows  
21 elections would know that this sort of a fiscal  
22 note, this sort of a bill, would have a cost on any

23 county. Also the fiscal note doesn't have anything

24 to do with touch screens.

25 Q. Well, let me ask you: Are there savings

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1 to be associated with Senate Bill 1014?

2 A. Not this particular bill, no, sir, there's

3 not.

4 Q. Okay. So what did you come up with in

5 terms of the total cost?

6 A. Roughly on this, about \$215,000.

7 Q. Okay. And whether or not -- I mean, is

8 that going to mean, in your opinion, that there's

9 going to be an increased cost at the next election?

10 A. I would think, yes, if it goes into effect

11 it would.

12 Q. So any projected savings wouldn't offset

13 these costs then?

14 A. No.

15 Q. There's one thing Mr. Newman asked you

16 about, and I believe it related to paragraph 20e,

17 and that was reprinting challenger instructions. I

18 must admit to being somewhat confused here. Can

19 you tell me where in the statute there is a

20 requirement for challenger instructions?

21 A. We actually -- we print out a form, give

22 it to the central committee chairs, they sign off

23 on the challengers, and they have to submit the  
24 names seven days prior to the election. I don't  
25 see a change in the challenger form. It's just the

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1 challenger cannot challenge the voter, per se.  
2 They have to go to the election judge or the  
3 election authority.

4 Q. Well, okay. So I guess my question,  
5 though, is, is there a requirement in Chapter 115  
6 that requires a local election authority to print  
7 out challenger instructions?

8 A. No. I can't answer that, because I'm not  
9 positive if there is one. We do do it, but I'm not  
10 positive if there is. If we do it as a courtesy or  
11 if it is. I'm sorry.

12 Q. Okay. Now, in response, though, to that  
13 particular question about reprinting challenger  
14 instructions as alleged in that paragraph, your  
15 answer then went off onto cost of additional  
16 telephone lines, which you said would be \$30,000.  
17 I wasn't quite sure I understood that. We're  
18 talking about telephone lines between the polling  
19 place and the Board of Election Commissioners'  
20 central office?

21 A. No. We're talking about adding additional  
22 lines in our office to receive all of the calls

23 that we would get.

24 Q. Okay. And you're anticipating that the

25 challengers would make more challenges, is that the

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1 upshot there?

2 A. Uh-huh.

3 Q. And how many telephone lines is \$30,000  
4 going to buy? I mean, I have no idea.

5 A. Probably about 20.

6 Q. Okay. So it's, like, \$1500 apiece then?

7 A. Uh-huh.

8 Q. And those then would be because of what,  
9 an increase in provisional ballots?

10 A. An increase in provisional ballots, and  
11 people showing up without proper identification.  
12 They will call our office. They will call our  
13 office at the drop of a hat.

14 Q. Do they do that now?

15 A. They do that now. But we don't have  
16 enough phone lines to go around right now.

17 Q. So you've got a shortage of phone lines  
18 now?

19 A. Uh-huh.

20 Q. Okay. There is no real requirement  
21 anywhere in Senate Bill 1014 that voters have to  
22 file a provisional or that they have to file an

23 absentee, is there?

24 A. No.

25 Q. That's the voter's choice then?

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1 A. Right.

2 MR. PRESSON: I have no further questions.

3 THE COURT: Mr. Long?

4 CROSS-EXAMINATION BY MR. LONG:

5 Q. My name is Mark Long. I work for the  
6 Attorney General's Office. I was curious. The  
7 \$215,000 figure that you gave, is that just for the  
8 upcoming November election?

9 A. That would be in addition to what we've  
10 already projected for November.

11 Q. Based on all the things that you have  
12 stated so far?

13 A. Uh-huh.

14 Q. And you were also asked by Mr. Downing  
15 about voter fraud, have you ever caught anybody at  
16 the ballot box trying to vote when they had already  
17 voted absentee?

18 A. Yes, sir, we did this election.

19 Q. Just at the -- two weeks ago at the  
20 primary election?

21 A. A judge. We dismissed her immediately.

22 MR. LONG: Thank you. That's all the

23 questions I have, your Honor.

24 MR. NEWMAN: Just a couple questions, your

25 Honor.

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1 THE COURT: Hold it.

2 MS. WOOD: We have no questions.

3 MR. NEWMAN: I'm sorry.

4 THE COURT: Go ahead.

5 MR. NEWMAN: Okay. Thank you.

6 REDIRECT EXAMINATION BY MR. NEWMAN:

7 Q. Ms. Taylor, I just have a couple more  
8 questions for you.

9 First of all, what you refer as your  
10 co-director?

11 A. Uh-huh.

12 Q. How much experience does he have at the  
13 St. Louis County Board of Election Commissioners?

14 A. He began in November.

15 Q. Last year?

16 A. Last year.

17 Q. So he's got less than a year's experience?

18 A. Uh-huh.

19 Q. Okay. Now, there was mention made of a  
20 fiscal note that St. Louis County submitted and it  
21 showed a savings; is that correct?

22 A. That's correct.

23 Q. And that savings was generated by a change  
24 in the way voters vote? In other words, new  
25 machines, correct?

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1 A. Correct.

2 Q. That change had nothing to do with the  
3 Missouri Voter Protection Act, did it?

4 A. No, sir, it didn't. And anyone that has  
5 any election experience would know that there's  
6 going to be substantial costs effect with this.

7 Q. Okay. But I just want to be clear, that  
8 the change in the voting machine, as I believe they  
9 are referred to as DREs, that one-sentence or  
10 two-sentence fiscal note, that's talking about  
11 saving money because of new voting machines?

12 A. That's right.

13 Q. Those new voting machines are not coming  
14 into effect because of this act, correct?

15 A. No.

16 Q. Okay. Now, just a couple other  
17 questions. Now, as far as some of the discussions  
18 that there's been had about postage, put aside for  
19 a minute postage as it relates to provisional  
20 ballots or any of that. The notification cards  
21 require postage, correct?

22 A. Right.

- 23 Q. All right. You're clear about that?
- 24 A. I'm clear about that.
- 25 Q. That's a cost that you can fix that's

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1 going to occur, and that's going to occur in  
2 November of 2006 and every other election by reason  
3 of this act, correct?

4 A. Uh-huh.

5 Q. All right. Will more provisional ballots  
6 be required because the act requires them to be  
7 precinct specific?

8 A. Well, there would be. We go by ballots'  
9 style, and we had 328 ballot styles, I believe, in  
10 August. So in April, it's ridiculous the amount of  
11 ballot styles we can get. So, yes, it would be  
12 specific to a polling place.

13 Q. And, therefore, there would be the need to  
14 print more provisional ballots that were specific  
15 to precincts?

16 A. Right. They have to be specific to the  
17 precincts.

18 MR. NEWMAN: I have nothing further.

19 Thank you very much.

20 THE WITNESS: Okay.

21 MR. PRESSON: Can I ask a follow-up?

22 THE COURT: Sure.

23 RECROSS-EXAMINATION BY MR. PRESSON:

24 Q. In terms of the notification cards that

25 Mr. Neman was just asking about, is that what's

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1 referenced in paragraph 20a of their petition?

2 A. Yes, sir.

3 Q. Okay. And you said that would be going  
4 into effect this November?

5 A. Uh-huh.

6 Q. Okay. Now, that one, as I recall, says  
7 the notification card has to be sent out at least  
8 90 days prior to a general or primary election?

9 A. Well, the notification we would be sending  
10 out, as I said before, would be to the new  
11 registered voters.

12 Q. Oh, so you're not going to send this out  
13 to everyone then?

14 A. No. We've already sent one out in May,  
15 and we would not send a second one out. We would  
16 only be sending to the new voters.

17 Q. But even in terms of new voters, the  
18 requirement for this new card says 90 days. You  
19 would agree, wouldn't you, that it's already less  
20 than 90 days until the November election?

21 A. That's correct. But the law also states  
22 that we have to notify them that they are

23 registered to vote.

24 Q. But it doesn't specify this new card, does

25 it?

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1 A. No.

2 MR. PRESSON: Thank you.

3 MR. LONG: Your Honor, I also have some  
4 very short --

5 THE COURT: All right.

6 RECROSS-EXAMINATION BY MR. LONG:

7 Q. Ma'am, just so that we don't misunderstand  
8 each other, you were talking about provisional  
9 ballots earlier. The new law -- and, Judge, I  
10 believe it's Section 115.430 sub 3, sub 2 says  
11 that, quote, All provisional ballots shall be  
12 marked with a conspicuous stamp or other  
13 distinguishing mark that makes them readily  
14 distinguishable from the regular ballots.

15 You're familiar with that in Senate Bill  
16 1014, correct?

17 A. Yes.

18 Q. So the regular ballot is going to look the  
19 same as a provisional ballot, whereas now the  
20 provisional ballot looks completely different than  
21 the regular ballot, doesn't it?

22 A. No, not really. The only difference would

23 be the heading at the top that it's a provisional

24 ballot.

25 Q. Well, the provisional ballot right now,

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1 doesn't it contain all those local questions, does  
2 it?

3 A. No. It only has state and federal.

4 Q. And according to this provision I just  
5 read, a provisional ballot can look exactly the  
6 same as all the regular ballots, you just have to  
7 stamp it?

8 A. We have to have printed on there  
9 provisional ballot.

10 MR. LONG: Well, whether you say print or  
11 not, if the Legislature says a stamp, I'll stick  
12 with stamp.

13 That's all the questions I have, your  
14 Honor.

15 MS. WOOD: Your Honor, I just have a  
16 couple.

17 RECROSS-EXAMINATION BY MS. WOOD:

18 Q. You mentioned in response to Mr. Long's  
19 question about the absentee fraud that happened?

20 A. Uh-huh.

21 Q. And that was caught without the need for a  
22 photo ID?

23 A. That was caught without the photo ID.

24 Q. And you also talked about the notification

25 card and the 90-day window, but that will have to

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1 be sent in subsequent elections also, right?

2 A. Yes.

3 MS. WOOD: That's all I have.

4 MR. NEWMAN: I have nothing further of

5 this witness, your Honor. I would ask that Mrs.

6 Taylor and Mrs. Signaigo be excused.

7 THE COURT: All right.

8 THE WITNESS: Thank you.

9 THE COURT: Thank you.

10 (Witnesses excused.)

11 MR. NEWMAN: Your Honor, I'm about to wrap

12 up my case in chief on behalf of Jackson County

13 plaintiffs. I would just mention to the Court

14 there will be submitted later stipulations. I just

15 wanted the Court to be aware that stipulation

16 states that Mayor Slay, Charlie Dooley and Katheryn

17 Shields were all taxpayers. I just wanted that to

18 be clear on the record.

19 Your Honor, the last thing I have is the

20 deposition of Mel Hancock, and I have for the Court

21 and I already distributed to counsel, a brief

22 memorandum in support of the admission of

23 Mr. Hancock's deposition. I would like to read a  
24 very brief portion of the deposition into evidence  
25 and then submit the entire deposition for the

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1 Court's consideration.

2 I believe, your Honor, that -- let me back  
3 up for a minute. When this deposition was taken  
4 last Thursday, Mr. Long and Mr. Presson were both  
5 available by telephone and cross-examined  
6 Mr. Hancock. There was an objection made to his  
7 testimony, which I stipulated to. And, your Honor,  
8 I am not in any way arguing that Mr. Hancock  
9 replaces your judgment in determining this case. I  
10 am not saying that his opinions are binding  
11 notwithstanding the fact that he's the author of  
12 the Hancock Amendment or the primary author.

13 What I am saying and what is stated in the  
14 memo I've given to you, is that his testimony is  
15 probative. And in another case, in another Hancock  
16 case, the Missouri Supreme Court found that the  
17 intent of the amendment's drafters can be  
18 influential in a court proceeding. And Mr. -- I'm  
19 representing to the Court that Mr. Hancock  
20 testified that he was one of the drafters of the  
21 amendment. This case that I've cited from the  
22 Supreme Court, 631 S.W.2d at 323 involve unfunded

23 mandates, opinions and the Supreme Court said they

24 could be influential.

25 On that basis, your Honor, and preserving

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1 the objections of the Attorney Generals, I would  
2 like to offer into evidence Plaintiffs' Exhibit 5,  
3 which is Mel Hancock's deposition, and I would like  
4 to read just one question and answer for the  
5 record.

6 MR. PRESSON: Well, your Honor, before  
7 Mr. Newman reads anything, I think he has to  
8 actually have written it and I do renew my  
9 objections to the admissibility of this  
10 deposition. To the extent -- although, he says it  
11 doesn't relate to the law, I think it is well  
12 established that any opinion as to the law actually  
13 invades the province of the court.

14 As to the role of the drafter, I mean, I  
15 don't think that carries any more weight in this  
16 instance. And in the case -- in a Boone County  
17 Court versus State, 631 S.W.2d 321 involving Mr.  
18 Hancock or one of its committees, they said in  
19 footnote two, "However, the interpretation of this  
20 constitutional amendment is not a question of how  
21 it was understood by its framers, but how it was  
22 understood by the people adopting it."

23           So I really don't think this is a matter  
24 of testimony either as a legislative expert as he  
25 was trying to establish Mr. Hancock the other day

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1 or as the drafter of the Hancock Amendment. I just  
2 don't think his deposition is admissible.

3 THE COURT: Let me say, I'm going to allow  
4 him to read it at this time. I want to read that  
5 case. I'm not going to take a recess to read it  
6 here at the moment. And all the -- I assume there  
7 will be some witnesses at some point from other  
8 parties where all of these witnesses, to some  
9 extent, are testifying to what they think the  
10 effect of the senate bill is on their office  
11 operations or what-have-you. And so a lot of this  
12 testimony there's an element of witnesses  
13 testifying to what they think the legal effect is.

14 In terms of paragraph K, the disaster  
15 provision, I'm not so sure what the legal -- I have  
16 some questions about that also. So I understand,  
17 the Court's not under the misguided impression that  
18 any witness's impression, even Mr. Hancock's, is  
19 necessarily persuasive, but I'll still allow it.  
20 And I'll allow some testimony -- I mean, I don't  
21 know what your witnesses are going to say, but  
22 there will be some modest leeway granted to all the

23 parties in this area.

24 MR. LONG: Yes, your Honor. Just to keep

25 the record clear, I'll join in Mr. Presson's

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1 objections for the same reasons and pursuant  
2 ruling.

3 THE COURT: The Court's not ruling  
4 specifically on this at this time, but I'll go  
5 ahead and accept it provisionally.

6 MR. NEWMAN: And those objections are  
7 stipulated to on the record, your Honor. At this  
8 time I would like to read from the deposition of  
9 Mel Hancock, beginning at page 14, line 19 -- I'm  
10 sorry -- line 15, and this is a question by me:

11 Congressman, based on your legislative  
12 background as a congressman, what you've testified  
13 to in terms of the functions you have performed as  
14 a congressman, based also upon your history in  
15 drafting of the Hancock Amendment, and  
16 participating in the various steps leading to its  
17 passage, do you have an opinion within a reasonable  
18 certainty as to whether Exhibit 2, the Missouri  
19 Voters' Protection Act, violates the Hancock  
20 Amendment, including Section 16 and 21?

21 Answer: Well, in my opinion, yes, it  
22 does. Just as long as they mandate something that

23 isn't paid for, then it violates the section, the  
24 mandate provision of the Hancock Amendment.

25 And with that, your Honor, I would offer

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1 into evidence Plaintiffs' Exhibits 1, 2, 4 and 5.

2 THE COURT: Subject to -- and I assume  
3 your objection runs to the deposition as well as  
4 that?

5 MR. PRESSON: Yes, your Honor.

6 THE COURT: I mean, I don't know what else  
7 is in there. All right.

8 Procedurally, Mr. Downing, are you going  
9 next, I assume?

10 MR. DOWNING: Yes. Does the Court need a  
11 break?

12 THE COURT: No. We'll go for -- we don't  
13 have a jury here, so -- individual lawyers are  
14 free, any time somebody wants to get up, just  
15 stretch, you're free to do that. The Court won't  
16 take any offense to that.

17 MR. DOWNING: Your Honor, I'm going to  
18 have a couple witnesses. Let me do a few things to  
19 lay a little groundwork for the witnesses'  
20 testimony. As I mentioned earlier, the parties had  
21 worked diligently to enter into stipulations of the  
22 fact and generated some documents. And those

23 stipulations are contained at exhibit -- in the  
24 binder No. 3 is Exhibit 10 in your binder. It's  
25 Exhibit 10, tab 3 in your binder. Sorry for the

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1 confusion.

2 I would offer the stipulations at this  
3 time. A full set of the exhibits to the  
4 stipulations should be up there. And we have the  
5 originals here, so I would offer those.

6 THE COURT: That's Plaintiffs'  
7 Exhibit 10?

8 MR. DOWNING: Yes. Plaintiffs'  
9 Exhibit 10.

10 THE COURT: All right.  
11 Gentlemen?

12 MR. LONG: Your Honor, we agree to the  
13 stipulation he's put in there is correct. We do  
14 have objections as stated at the beginning,  
15 stipulations we have reserved all objections to  
16 admissibility, double hearsay, relevancy to  
17 exhibits. We can take those up individually. We  
18 can take them up en masse. We can take them up at  
19 the conclusion of the testimony if the Court wants  
20 to do that. What the parties have stipulated to is  
21 foundation that custodians would not need to verify  
22 that that is a true and accurate document.

23 THE COURT: I understand that. I want to

24 get all the evidence in before we address --

25 MR. LONG: All the objections?

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1 THE COURT: -- the objections.

2 MR. DOWNING: So we offer Plaintiffs'

3 Exhibit 10. The next tab in your binder is

4 Plaintiffs' Exhibit 11, which are the affidavits.

5 They are specifically referenced in the

6 stipulation. I would offer those at this time

7 subject to whatever objections that need to be

8 argued later.

9 THE COURT: All right.

10 MR. DOWNING: We talked a lot about the

11 new law and the old law. Let me give a little

12 substance to this, and I think it will expedite my

13 witness's testimony. If you will turn to tab 5 in

14 the binder, this is the current law on voter

15 education.

16 THE COURT: I read this in the legal memos

17 that were filed. I mean, I understand the

18 differences between.

19 MR. DOWNING: Okay. I'll skip over that.

20 The main points I wanted to make, if you turn to

21 tab 10 in the book, if you want -- if you want to

22 vote in Missouri, and you don't have a photo ID,

23 the Missouri Department of Revenue has indicated  
24 fairly specifically what type of documents you have  
25 to obtain. You have to establish proof of -- this

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1 is in tab 10 -- you have to establish three  
2 different proofs. Proof of lawful presence, proof  
3 of identify and proof of residency.

4 To establish proof of lawful presence, if  
5 you happen to have been born in the United States,  
6 you only have two options. You have to get a  
7 certified copy of your birth certificate, which if  
8 if you happen to be born in Missouri, it will cost  
9 you \$15. If you were not born in Missouri, the  
10 fees range from 5 to \$30. But that's one option  
11 for establishing --

12 THE COURT: Let me ask you this: I saw  
13 that in your briefs. Do you intend to offer proof  
14 of that today, or are you going to have me take  
15 judicial notice of other state statutes or how are  
16 you planning on --

17 MR. DOWNING: It's in here, your Honor.  
18 Exhibit --

19 THE COURT: Okay. These exhibits are also  
20 coming in, or is it a stipulation of facts?

21 MR. DOWNING: I'm going to offer all of  
22 these. And they have proof. It's on the

23 websites. They stipulated to the genuineness of  
24 it. So I don't think anything is in dispute. I'm  
25 sure they will object, if I do.

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1 THE COURT: All right.

2 MR. DOWNING: So the two options,  
3 certified birth certificates in Missouri the cost  
4 is \$15. You have to obviously do what's necessary  
5 to get one. If you were born in another state, you  
6 have to pay 5 to 30. You have to go through the  
7 administrative hoops in those states to get one.

8 The only other option you have if you were  
9 born in the United States to have the proof of  
10 lawful presence is a passport. And that costs a  
11 lot more money than a birth certificate. So  
12 there's one thing I just wanted to make clear,  
13 unlike Indiana and unlike Georgia, there's  
14 absolutely no question here that if you want to  
15 vote, and you don't have a photo ID, you have got  
16 to pay money. If you want to vote a regular  
17 ballot, there's no dispute about that. There can't  
18 be an original dispute.

19 And as the Court knows, you read the  
20 briefs, that's only one of the things. We won't go  
21 into detail today. That's in the briefs. We have  
22 some exhibits we can offer later that document all

23 of the hoops and all the burdens the are imposed on  
24 voters who don't have photo ID and sometimes  
25 multiple fees.

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1           If you happen to be a woman who's married  
2   in the state and your name is not the same as  
3   what's on your birth certificate, you have to get a  
4   certified copy of your marriage license, or if  
5   you're adopted, a certified copy of the adoption  
6   papers. All sorts of hoops and fees that are at  
7   issue here. And my point is --

8           THE COURT: Let me ask you, just as long  
9   as you're going down this line, some of this is a  
10  result of the change that was made to the  
11  Department of Revenue of driver's license laws a  
12  couple years ago -- is it 2004?

13          MR. LONG: 2005, your Honor.

14          THE COURT: Or 2005. As a result of some  
15  federal mandates, correct? I don't think Missouri  
16  did that completely on its own.

17          MR. DOWNING: I'm not certain about that,  
18  but obviously before this law you didn't have to go  
19  through those hoops.

20          THE COURT: Used to be easier to get a  
21  driver's license five or six years ago.

22          MR. DOWNING: Right. With that said, your

23 Honor, I would like to call my first witness, Wendy

24 Noren.

25 (Witness sworn.)

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1 WENDY NOREN, being first duly sworn, testified as

2 follows:

3 DIRECT EXAMINATION BY MR. DOWNING:

4 Q. Good afternoon.

5 A. Hi.

6 Q. Could you state your name for the record,

7 please?

8 A. Wendy S. Noren.

9 Q. Ms. Noren, what do you do for a living?

10 A. I'm the County Clerk of Boone County,

11 Missouri.

12 Q. And how long have you had that distinct

13 honor and privilege?

14 A. I was elected in 1982.

15 Q. Have you served continuously since 1982 as

16 the Boone County Clerk?

17 A. Yes.

18 Q. What are the duties and responsibilities

19 of the Boone County Clerk?

20 A. Well, among other things, I'm by statute

21 the election authority for the County of Boone, I

22 have a lot of other duties relating to taxation,

23 county records, payroll, administrative duties, but

24 primarily those are the big ones.

25 Q. For purposes of your testimony today, you

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1 are the election authority in Boone County,  
2 correct?

3 A. That's correct.

4 Q. Now, you -- over the last 24 years that  
5 you served as Boone County Clerk, could you give  
6 the Court just an overview, we don't want to spend  
7 hours on this, give the Court an overview of some  
8 of the professional training, seminars that you've  
9 presented, some of your experiences around the  
10 country and around the world in addressing issues  
11 of voter fraud, election administration and those  
12 sorts of things.

13 A. Well, specifically maybe the voter fraud  
14 starting as early as 1982, I worked with Secretary  
15 of State Kirkpatrick investigating voter fraud in  
16 the City of St. Louis, absentee fraud, and had  
17 various situations over the years working with  
18 Secretary of States, including Kirkpatrick, the  
19 first Secretary Blunt, second Secretary Blunt and  
20 looking at issues relating to elections.

21 I serve on the US Election Assistance  
22 Commission Advisory Panel. It's a 36-member

23 advisory board to the US, the administrative body

24 that has been set up for federal elections.

25 Q. What is the purpose of that body?

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1     A. We advise the Election Assistance  
2 Commission on various studies that are to be done.  
3 We advise them on guidelines that are to be issued  
4 to states for voter registration systems, for  
5 electronic equipment. I worked on the best  
6 practices manual that they put out prior to the  
7 2004 election. It's a very new agency, so we're  
8 working our way through it. Some of the things  
9 coming up include a study on registration fraud and  
10 issues relating to that in this country.

11     Q. Have you also served your association  
12 Missouri State County Clerks and Election  
13 Authorities over the years?

14     A. Yes. I've served as a legislative chair  
15 for the Legislative Committee for many years. I'm  
16 not currently the legislative chair. I gave that  
17 up about a year and a half ago for family  
18 commitments, but probably at least 15 years of  
19 those years I served as a legislative chair. So I  
20 worked doing surveys of the association finding  
21 what they were interested in, what legislative  
22 things they needed, what problems they were having,

23 those types of things. I currently serve as the  
24 legislative chair for the International Association  
25 of Clerks, Records and Elections Officials.

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1 Q. I believe you also have served the United  
2 States of an official observer of some sort. Tell  
3 the Court about that.

4 A. I served as a state department  
5 representative to both observe and be a participant  
6 in elections in the Balkans over the course of the  
7 past 10 years. And have had training in the  
8 international principles relating to elections.  
9 And worked in an international situation on those  
10 standards.

11 Q. Now, bringing you back a little closer to  
12 home again, in your role as Boone County Clerk, did  
13 you work in concert with the Missouri Secretary of  
14 State's Office and other local election officials  
15 throughout the state in conducting and  
16 administering and certifying elections?

17 A. Yes. I am one of the cogs that  
18 participates in the election process in this state.

19 Q. Now, I understand from some of the  
20 discussions we've had that you conducted, you and  
21 your office, that conducted research on the  
22 implementation issues related to voter ID laws for

- 23 congressional testimony advising voters and
- 24 developing training material for staff and poll
- 25 workers on issues they face; is that correct?

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1 A. That's correct.

2 Q. Could you tell the Court, as part of your  
3 research on voter ID laws and how they -- effects  
4 they have on voters, could you tell the Court some  
5 of your conclusions and observations?

6 A. Okay.

7 MR. LONG: Objection, your Honor. This  
8 needs just a touch more foundation than "I did  
9 research and here's my conclusion" to qualify her  
10 as an expert on anything at the moment in terms of  
11 her conclusions, because "I did research", that  
12 isn't proper foundation for expert testimony.

13 MR. DOWNING: Your Honor, I can go on for  
14 about 30 minutes with some of her qualifications.  
15 If the Court believes she's not qualified, I can do  
16 that at this point.

17 MR. LONG: No. It's not the  
18 qualifications, it's the "I did research" isn't  
19 specific enough to lay the foundation.

20 THE COURT: As to what areas are you  
21 inquiring specifically?

22 MR. DOWNING: Her knowledge and experience

23 and expertise on voter ID laws and also how they  
24 impact the election process and voters in the  
25 election process. That's why I list some of the

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1 conclusions and opinions of her --

2 THE COURT: I'll allow some of that. I

3 mean, I think we'll get into some anecdotal at some

4 point in terms of other laws in other states and

5 the like, so I'm going to allow it.

6 BY MR. DOWNING:

7 Q. Okay. And, Ms. Noren, just to be clear,

8 you have prepared an affidavit in this case,

9 haven't you?

10 A. Yes, I have.

11 Q. Did you bring a copy of that with you?

12 A. Yes, I did.

13 MR. DOWNING: Your Honor, that's been

14 marked as Exhibit 51. I'll give your Honor a copy

15 if you want to take a look. I shared it with

16 counsel today. Today was the first opportunity

17 counsel had to look at from the Attorney General's

18 Office.

19 THE COURT: It's not part of the exhibit

20 here?

21 MR. DOWNING: It will be Exhibit 51, and

22 here it is, your Honor. I will offer it in at the

23 end of her testimony.

24 THE COURT: All right.

25 BY MR. DOWNING:

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1 Q. But if you need to look at that, Ms.  
2 Noren, to refresh some of your thoughts that you  
3 put down feel free to, but, again, in terms of the  
4 research that you have conducted on implementation  
5 issues relating to voter ID, can you share with the  
6 Court some of your conclusions, observations and  
7 impressions based upon your 24 years of knowledge  
8 and experience and expertise?

9 A. First of all, part of this is not just  
10 based on my research. It is part of the  
11 implementation process we are going through, the  
12 questions I'm having to answer for voters as they  
13 come up. Dealing with senior citizens having  
14 problems getting a photo ID. One of the problems  
15 many senior citizens have, and this has been my  
16 personal experience working with senior citizens  
17 since I started working in this office in 1978,  
18 many do not have a birth certificate. They were  
19 born at home. They were born in a state that may  
20 not have a birth certificate. Because I am the  
21 keeper of records of my county, for many of these  
22 people throughout the '80s, I had to dig through

23 school records being one of my official duties then  
24 was the county superintendent of schools to find  
25 the first grade teachers notation of their date of

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1 birth. That is my own personal experience working  
2 with many senior citizens and their ability to get  
3 proof of birth in order to get a non-driver's  
4 license for the State of Missouri.

5 Now, I've talked with them. I've talked  
6 with some of their family members over the summer  
7 and said, well, you know, under this law, you will  
8 be able to get a provisional ballot. That is very  
9 confusing to some senior citizens. If you have  
10 been voting for 40, 50 years going to a polling  
11 place, getting the same process, suddenly having  
12 some affidavit stuck in front of your face, having  
13 to stick your ballot in an envelope and take it  
14 away and put some place different from what any  
15 other voter is going to have is a very intimidating  
16 part of the process. And it is the kind of thing I  
17 have seen that made senior citizens turn and walk  
18 away from trying to participate in this process.

19 And I think anybody who has dealt with  
20 older people, whether it's your parents or your  
21 grandparents, understand they tend to have a higher  
22 level of distrust of anything that is different

23 that are coming in. So that's an area of

24 difficulty.

25 Q. And, Ms. Noren, let me stop you right

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1 there on that point. On senior citizens in  
2 particular, you understand that under the Missouri  
3 Voter Protection Act, they are one of the three  
4 categories of voters that could qualify for a  
5 provisional ballot, and you were just talking about  
6 the problems with provisional ballots and seniors,  
7 but isn't it true that the only way that they can  
8 even get a provisional ballot is if they are  
9 willing to swear that they are unable to obtain a  
10 photo ID; is that your understanding?

11 A. That is the way I -- assuming that is what  
12 the affidavit will read when we get instructions,  
13 yes, that they will need to sign an affidavit that  
14 states they are unable to do that.

15 Q. So if a senior citizen shows up at the  
16 polls without an acceptable photo ID, and is  
17 unwilling to swear under oath that they are  
18 completely -- well, that they are unable to get a  
19 photo ID and, therefore, don't sign the affidavit,  
20 they don't get a ballot at all, do they?

21 A. If they are not going to sign a statement,  
22 no, I would not be -- by the time it got back to my

23 office if it was not signed by the person, I would

24 not -- not meet the qualifications of a ballot I

25 could count, no.

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1 Q. Okay. Continue on.

2 A. Another area I have, we have a lot of  
3 issues with women who change their name and who  
4 have multiple name changes, and I think you brought  
5 this up a bit in your arguments. As we are working  
6 through this process, we have women who may have  
7 been born in one state, married in another state,  
8 divorced in a third state. In looking at the  
9 requirements in each of those states, you know, you  
10 go to one, it costs \$26 to get the divorce papers,  
11 a certified copy. Some that cost \$1.50 per page to  
12 get a certified copy of your divorce decree. Some  
13 of these things are a lot of pages, I think.

14 We also have people who have -- they may  
15 have been born in a foreign country, American  
16 citizens. We have military dependents who were  
17 born overseas. We have children of missionaries  
18 who are born in villages in some far off place in  
19 Africa. You don't just pull a birth certificate  
20 out of your hat. You don't walk down to the Health  
21 department and get a birth certificate when you  
22 were born in some hut in a country that doesn't

23 exist. And this is the problem people face --

24 MR. LONG: Your Honor.

25 THE COURT: Just one moment.

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1 MR. LONG: I'm sorry. This has gone way  
2 beyond the response of the question. This is a  
3 good speech. This isn't responsive to the question  
4 and ask the Court to redirect the witness to just  
5 answer the questions.

6 THE COURT: I agree.

7 THE WITNESS: These are real issues.

8 THE COURT: Excuse me, ma'am. You have to  
9 wait for me. The objection is sustained. Counsel  
10 is directed to rephrase his question.

11 MR. DOWNING: I'll rephrase the question.

12 BY MR. DOWNING:

13 Q. In your experience as the Boone County  
14 Clerk, you've dealt with people who are born in  
15 other countries and difficulties they have in  
16 obtaining voter IDs?

17 A. Yes, I have.

18 Q. Can you tell the Court about that  
19 experience?

20 A. We have people who are born in foreign  
21 countries and who are unable to produce the birth  
22 records in a timely fashion. We have people who

23 are -- have to go through the State Department in  
24 order to get the recording of their birth or  
25 they'll have to find areas. I mean, we had a

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1 situation where -- and this wasn't to deal with the  
2 voter, but we had a woman who was in my office. We  
3 were trying to locate marriage records from a  
4 village in Uzbekistan. These are not easy  
5 documents to find.

6 And the point here is, we are dealing with  
7 a very short --

8 THE COURT: Ma'am, you're not supposed to  
9 make the points. Just describe what your  
10 experience was.

11 THE WITNESS: All right. But my  
12 experience --

13 THE COURT: No. I think you were  
14 finished.

15 Next question.

16 BY MR. DOWNING:

17 Q. Ms. Noren, have you also given some  
18 thought and done some research as part of your job  
19 as Boone County Clerk, to the issue of  
20 registrations in this upcoming election and the  
21 deadline for registrations and what your office  
22 will have to do and when voters would actually get

23 the card, and how that would impact the right to

24 vote, have you given some thought to that?

25 A. Yes. We have in past history, and not

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1 just in this election, but in future elections  
2 because this law is not only for this election. I  
3 come from a very mobile county; therefore, we get  
4 lots of registration, applications in right at the  
5 deadline.

6 For example in 2004, we got about 7,000  
7 registration applications in within three days of  
8 the registration deadline. By the time we finished  
9 processing those, getting notification to those  
10 voters of their ID requirements, they will have  
11 approximately two weeks to acquire the  
12 identification required under this act.

13 Now, if you go -- if you have two weeks to  
14 get those IDs, and you are -- you know, I am going  
15 to have -- I'm doing this research. I'm preparing  
16 training materials for my staff, because we are  
17 going to have to be the ones to explain to voters  
18 in six weeks that, I'm sorry. You need to get your  
19 driver's license or your birth certificate from  
20 Michigan. And I know it says you have a six-week  
21 wait in Michigan and it's two weeks before our  
22 election.

23            Basically what's going to happen, we are  
24 going to have people who will be impossible for  
25 them to get the underlying documentation in time

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1 for the presidential -- I mean, for the general  
2 election in November. If their registration is  
3 turned in at the deadline, they don't receive  
4 notification from me until 10 days later. They  
5 then have a very short period to get documentation  
6 from multiple states, then go to Missouri  
7 Department of Revenue. If you go look at many of  
8 these states --

9 THE COURT: Okay. That's enough. I'm  
10 going to cut you off periodically.

11 THE WITNESS: Okay.

12 BY MR. DOWNING:

13 Q. Ms. Noren, have you given some thought to  
14 voters who lose their IDs? For example, driver's  
15 license, somebody has a perfectly acceptable  
16 Missouri driver's license, they lose it or have it  
17 stolen a week or two weeks before the election,  
18 what are you going to explain to those voters?

19 A. Well, you know, for this election, they  
20 will be able to cast a provisional ballot. That  
21 particular thing, if I'm able to match their  
22 signature, we will be able to count it. That will

23 not be the case in the future. There is going to  
24 come a time when the majority of people who lose a  
25 driver's license or lose their photo ID or worse,

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1 they are a victim of a crime in the days leading up  
2 to the election, they have their purse stolen, will  
3 not be allowed to vote, because they do not have  
4 the photo ID on them.

5 Q. You mentioned provisional ballots, do all  
6 provisional ballots get counted just like the  
7 regular ballots?

8 A. Well, certainly we count any that we can  
9 determine they are eligible to vote.

10 Q. What do you have to do before you can  
11 count a provisional ballot under the new law?

12 A. Well, I'm going to have to do -- well,  
13 first of all, we'll determine whether they are  
14 qualified to vote. I'm going to make the  
15 assumption these people have registered, they are  
16 qualified to vote in the precinct. I have  
17 established that. We then are going to have to do  
18 a signature verification in order for us to count  
19 that ballot, which, you know, verifies that the  
20 signature matches what is on their registration  
21 record.

22 Q. Are election authorities handwriting

23 experts?

24 A. No.

25 Q. In your experience, do people's signatures

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1 change over time?

2 A. Yes.

3 Q. What if you can't match the signature to  
4 the signature you have on file? Can you count the  
5 vote under the new law?

6 A. The law is silent on that.

7 Q. What if you're a disabled person and you  
8 can't make a consistent signature? How do you deal  
9 with under the new law?

10 A. I will do whatever I can to count every  
11 single ballot, but the law has not addressed the  
12 fact that there are people who are unable to sign  
13 their name.

14 Q. And the if law says you have got to verify  
15 their signature, you will follow the law?

16 A. That's correct.

17 Q. What about students at the University of  
18 Missouri, you're in Boone County, University of  
19 Missouri, back when I went there, most students had  
20 a photo ID. Is that acceptable to vote under the  
21 new law?

22 A. The student ID does not have an expiration

23 date on it; therefore, it doesn't meet the  
24 requirements under the law for a photo  
25 identification issued by the state with an

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1 expiration date on it, or it's not a non-driver's  
2 license and it's not a driver's license, so it has  
3 to have an expiration.

4 Q. So if students show up at the polls with  
5 just a student ID, they won't be able to get a  
6 regular ballot in this upcoming election?

7 A. Not unless they leave, go get -- you know,  
8 if they have their Missouri driver's license with  
9 them. Out of state students, people who have a  
10 driver's license from out of state, which, you  
11 know, according -- you know, the University and I  
12 have been discussing this in the past as an average  
13 of about 8,000 students per year. We don't have  
14 the numbers yet for this year.

15 Q. Let's turn to another subject. Ms. Noren,  
16 in your 24 years of experience as the Boone County  
17 Clerk, has voter impersonation fraud been a big  
18 problem for you, for the county?

19 A. No.

20 Q. What types -- we hear about election fraud  
21 in the newspaper. What types of election fraud are  
22 most prevalent, at least in your experience in

23 Boone County?

24 A. Well, I'm happy to say we have not had a

25 lot of election fraud going on in my county, but in

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1 the State of Missouri what we have, you know,  
2 working with other election officials, working with  
3 the Secretary of the State over the years in the  
4 development of legislation, investigating problems  
5 that have occurred over the years, the No. 1  
6 problem is with absentee ballots. And voter  
7 intimidation, particularly in the absentee ballots,  
8 praying on senior citizens who have absentee  
9 ballots.

10 The other area is vote by schemes. People  
11 paying people to vote certain ways. Those are the  
12 primary areas of voter fraud that we've seen in  
13 this state and what you see around the country  
14 also.

15 Q. And the photo ID requirement doesn't  
16 prevent those types of fraud, does it?

17 A. Not that I can see, because it does not  
18 impact absentee ballots at all.

19 Q. Okay. Now, during the -- I believe you  
20 said -- I don't know if you gave a number of years,  
21 but you were the legislative liaison/coordinator  
22 for the Missouri Association of County Clerks.

- 23 What was your title?
- 24 A. Chair or co-chair some years of the
- 25 legislative committee for the County Clerk's

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1 Association.

2 Q. And approximately how many years did you  
3 serve in that capacity?

4 A. At different times about 15 years.

5 Q. And I believe a few years ago you ceased  
6 being -- having that position?

7 A. Yes.

8 Q. I take it during that time period you had  
9 occasion to have discussions with election  
10 authorities across the State of Missouri on a  
11 regular basis?

12 A. Yes. And I would almost annually do a  
13 survey on what changes in legislation they felt  
14 were necessary.

15 Q. Okay. Did you receive any ground swell or  
16 any requests or --

17 MR. LONG: Objection. Judge, this has got  
18 to be hearsay. What someone else told her is  
19 obviously hearsay. It's obviously not offered for  
20 the truth of the matter asserted.

21 THE COURT: What's the relevance in terms  
22 of -- I assume you're getting into what the county

23 clerk's position was?

24 MR. DOWNING: Yes. I just want to know in

25 her capacity, did she hear of any voter

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1 impersonation fraud problems in the State of  
2 Missouri in her contacts with election authorities  
3 across this state.

4 MR. LONG: I renew my objection, Judge.

5 THE COURT: Pardon?

6 MR. LONG: I'll renew my objection because  
7 he's offering it for the truth of the matter. It's  
8 hearsay. That's exactly what it is.

9 THE COURT: I'm going to sustain the  
10 objection. You have testimony from three  
11 jurisdictions where it hasn't been an issue, so --  
12 four, I guess.

13 BY MR. DOWNING:

14 Q. Let me ask you this: The current  
15 identification requirements in Missouri law, voters  
16 have to identify themselves at the polls now, don't  
17 they?

18 A. Yes.

19 Q. In your experience, have those been  
20 sufficient to prevent voter impersonation fraud?

21 A. Yes.

22 Q. It's also true that if someone

23 impersonates a voter, that's a felony in this

24 state, isn't it, or do you know?

25 A. Yes. It's a class one.

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1 Q. Okay. You do know. I thought you did  
2 know.

3 You talked about -- and I cut you off  
4 before we got into that -- you mentioned problems  
5 with absentee ballot fraud. Can you explain what  
6 you were talking about problems with absentee  
7 ballot fraud in this state?

8 A. Well, I think the largest one was in  
9 probably 1982 primary in St. Louis City where there  
10 were people -- absentee ballots were being sent  
11 out. People would go around particularly to  
12 nursing homes or senior citizens and say, I am a  
13 notary. I'm here to pick up your ballots, or I'll  
14 take your ballot down to the election board. Those  
15 ballots were collected. They were then turning  
16 around and selling positions on the absentee  
17 ballot.

18 For example, if the person did not vote  
19 for something, which many senior citizens may vote  
20 or one or two things or many voters, they would  
21 turn around and sell part of it. I can't remember  
22 the exact dollar amount when we investigated it.

23 Or they would sell an overvote on the ballot. But  
24 because there were so many absentee ballots out  
25 there, people had access, because they had access

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1 to the list of people who were getting the absentee  
2 ballots, they were going around to those homes,  
3 collecting it from people, impersonating election  
4 board employees saying they were there to pick up  
5 their ballot. That was probably the largest  
6 thing.

7 At that point we did a fairly -- worked  
8 with Secretary Kirkpatrick, and we did a fairly  
9 significant change in our election laws relating to  
10 absentee ballots, restricting access to the list,  
11 restricting who could have an absentee ballot,  
12 those types of things.

13 Q. And the type of absentee ballot fraud you  
14 mentioned, when did you say that occurred?

15 THE COURT: 1982.

16 MR. DOWNING: That's what I thought.

17 BY MR. DOWNING:

18 Q. Since that time, have you heard of  
19 additional absentee ballot fraud in the -- well, I  
20 don't want to draw the hearsay objection.

21 Ms. Noren, you've had a lot of experience  
22 in the election administration area. In your

- 23 opinion, do you believe that the photo ID  
24 requirement in the Missouri Voter Protection Act is  
25 necessary to prevent any type of fraud that exists

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1 anywhere in the State of Missouri based on your  
2 knowledge?

3 A. No.

4 MR. DOWNING: Thank you very much.

5 THE COURT: Okay. How long will your -- I  
6 was going to take a break.

7 MR. NEWMAN: Why don't you, your Honor.  
8 That's fine.

9 THE COURT: We'll just take a 15-minute  
10 break. We'll start again at 3:30 by the courtroom  
11 clock.

12 (A BREAK WAS TAKEN.)

13 THE COURT: You may inquire.

14 MR. NEWMAN: Thank you, your Honor.

15 CROSS-EXAMINATION BY MR. NEWMAN:

16 Q. Ms. Noren, my name is Burt Newman. I  
17 represent Jackson County Plaintiffs in this case,  
18 and I wanted to ask you a few questions.

19 As County Clerk, you are required to  
20 adhere to the election laws in Chapter 115; is that  
21 correct?

22 A. Yes.

23 Q. Including 115.077 dealing with the  
24 estimation of costs prior to each election?

25 A. Yes.

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1 Q. And have you done that in each and every  
2 election since you became a County Clerk of Boone  
3 County?

4 A. Yes.

5 Q. So that would be roughly how many times?

6 A. Close to 100.

7 Q. 100 times. Okay. So you have estimated  
8 costs 100 times pursuant to statute?

9 A. Yes.

10 Q. Okay. I'm not going to go through your  
11 qualifications again. I think that's clear. What  
12 I do want to give you is Plaintiffs' Exhibit 4, and  
13 direct you to page -- on my copy is page 20 of 33,  
14 which begins with officials of the Office of Boone  
15 County Clerk stated there would be costs related to  
16 voter ID requirements. These costs are as  
17 follows. Do you see that there?

18 A. Yes.

19 Q. Did you participate in the preparation of  
20 that fiscal note?

21 A. Yes.

22 Q. And what was your participation?

23 A. I drafted the fiscal note. I did the work  
24 on that and submitted it to the Oversight Division.

25 Q. And did you do it based on familiarity

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1 that you had with the Missouri Voter Protection Act  
2 and its requirements?

3 A. Based on my reading of it, yes. At the --

4 Q. And can you go through the note and  
5 explain to us the costs that you have associated  
6 with the Missouri Voter Protection Act as reflected  
7 in that fiscal note for Boone County, Missouri?

8 THE COURT: Which page are we on?

9 MR. NEWMAN: It's on 20 of 33, your  
10 Honor.

11 THE COURT: All right.

12 THE WITNESS: Let me state I was not -- I  
13 do not have my underlying documents to this, so I'm  
14 going from memory to last May and there were many  
15 versions of this bill and several fiscal notes that  
16 I did. I wasn't prepared to go back. I have  
17 worksheets on this. My recollection is the  
18 printing costs deal primarily with the fact of the  
19 expansion of the provisional ballot from basically  
20 it was one ballot county-wide in my county, because  
21 it only covered statewide and federal candidates.  
22 There was one ballot face, one ballot style that I

23 could put in every polling place.

24 Under the bill that I was drafting this

25 fiscal note on, I would have to change that to have

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1 a separate ballot face for every type of ballot.

2 And so there are additional printing costs,

3 additional ballot stock costs, you know, on all

4 those things.

5 BY MR. NEWMAN:

6 Q. And what amount did you associate with

7 that?

8 A. I'll be honest, I do not have the

9 breakdown on this. I was not prepared. I did know

10 I was going to be asked about this fiscal note. My

11 subpoena did not address that. I'm guessing that

12 for a general election we have --

13 Q. Well, I'm not asking you to guess. I'm

14 asking you to testify to what fiscal note --

15 A. If you let me think here for a minute --

16 Q. Please let me finish.

17 A. Yeah.

18 Q. I just want you to testify what the fiscal

19 note says.

20 A. Oh, the fiscal note says I had \$21,000

21 postage and printing.

22 Q. And what's the next item that you

- 23 reflected on the fiscal note?
- 24 A. I had additional training for election
- 25 judges for the '06 election.

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1 Q. And what was that estimate?

2 A. That was \$10,275.

3 Q. So you fixed that cost in relation to what  
4 you interpreted from the bill?

5 A. That's correct. I pay an hourly rate for  
6 training. And based on what I was reading in the  
7 bill of new items I would be training my election  
8 judges for, that was the approximate cost.

9 Q. And what was the next item that you listed  
10 in your fiscal note?

11 A. Well, those were the ones that had to do  
12 with -- the others had to do with the registration  
13 items, so those were the two main ones, the 21,000  
14 and the 10,275. The third one dealt with equipment  
15 costs and conversion costs. That dealt with the  
16 state registration database. And the Secretary of  
17 State and I have worked out an alternative on that,  
18 so that does not any longer apply.

19 Q. Okay. Any other costs reflected on the  
20 fiscal note?

21 A. No, that's it.

22 Q. So those costs that you have fixed and

23 testified to as reflected on the fiscal note, each  
24 and every one of those was based upon the  
25 requirements of the act as you interpreted it based

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1 upon your experience as County Clerk of Boone  
2 County?

3 A. That's correct.

4 Q. Okay. And was the fiscal note prepared in  
5 the manner that you would have prepared a cost  
6 estimate for an election under 115.077?

7 A. It's similar, yes.

8 Q. The same type of thing were employed in  
9 preparing the note?

10 A. Yes.

11 Q. And you prepared the note by yourself?

12 A. Yes.

13 Q. Without any assistance?

14 A. Yes.

15 Q. And do you believe that the figures that  
16 you have testified to are accurate?

17 A. Yes.

18 MR. NEWMAN: I have nothing further.

19 Thank you very much.

20 THE COURT: Okay. Mr. Presson?

21 CROSS-EXAMINATION BY MR. PRESSON:

22 Q. I have just a few questions.

23           With regard -- first you said printing  
24 costs, which are listed here as \$21,000. You said  
25 the expansion of the provisional ballots, because

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1 there would now be separate ballots for, what, each  
2 precinct or whatever? I wasn't quite sure I  
3 followed.

4 A. That's correct. Because right now the  
5 provisional ballot in my county, we had for the --  
6 say, for the primary election, I had one  
7 county-wide provisional ballot for the democratic  
8 party, because it only covered federal and  
9 state-wide candidates at issue. I had one for the  
10 republican party. I had one for the libertarian  
11 party and then one that contained the issue on it.

12 Under this particular bill, when you have  
13 to have a provisional ballot for every style of  
14 ballot, I would have had 412 different provisional  
15 ballots in the August primary had this bill been in  
16 effect for that, because I have different  
17 legislative districts, I have different county  
18 commission districts, I have county committeeman  
19 and committeewoman races. Each one of those would  
20 be a different kind of provisional ballot. Your  
21 minimum order on them is 100 each.

22 Now, you were making the assumption that

- 23 you can only print, you know, provisional or stamp
- 24 it, but they have to be counted separately. I
- 25 mean, a valid security of the election system

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1 requires that if you're going to have a ballot, it  
2 can't be co-mingled with others. It needs to be  
3 coded in such a way that it can be counted two  
4 weeks later. Therefore, your coding process in  
5 ballot counting systems would require you to have a  
6 separate kind of ballot for a provisional ballot.

7 If I were to try to run -- just stamp  
8 provisional on it and run it two weeks later, as  
9 somebody implied the law might allow, my ballot  
10 counting system wouldn't take it, because it had  
11 already counted those precincts. They have to be  
12 separated out.

13 THE COURT: Ma'am, all right.

14 Just start with another question.

15 BY MR. PRESSON:

16 Q. But you have to print, I don't know, in  
17 excess of 400 different ballots right now, don't  
18 you?

19 A. Not provisional.

20 Q. Right. But, you know, just because you  
21 covered that many different areas in the county  
22 where there are different races and what not, you

23 have to print that many ballots and -- right? Just

24 regular?

25 A. Regular ballots, yes. I print that many

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1 regularly.

2 Q. Now, the statute, as I was reading it,  
3 said, you know, that it must be marked  
4 distinctively. Beyond that the statute didn't  
5 create any requirement or mandate for the  
6 provisional ballots, did it?

7 A. No. But our ballot counting system does  
8 require mandate and that's covered under a separate  
9 section of the statute. I mean, you can't -- they  
10 can't stand alone.

11 Q. When you say other part of the statute, do  
12 you mean Senate Bill 1014?

13 A. No. The current statute.

14 Q. Okay. So something that is elsewhere  
15 required other than 1014?

16 A. Well, our ballot counting system that we  
17 have, I can go buy a new ballot counting system,  
18 but that would increase the cost even more. The  
19 way you count ballots, you know, I can't just stamp  
20 it and then count it two weeks later. The ballot  
21 counting system counts by precinct. And when you  
22 close out precincts, you can't be adding things to

23 it. Either that or you count by hand, which is a  
24 different kind of ballot.

25 Q. Well, you add in, say, absentees later,

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1 don't you?

2 A. No.

3 Q. You don't?

4 A. Absentees are coded separately. They are

5 separate coding, too.

6 Q. So they are separately coded, too?

7 A. Uh-huh.

8 Q. So is it just that -- I mean, you have or

9 are expecting more provisionals or pretty much the

10 same? I mean, is this related to any --

11 A. It's irrelevant how many I get, because I

12 have to do a minimum order of 100 per style when I

13 order from the vendor. There are certain minimums

14 we have to go by under their thing. So even if I

15 only use five, I have to order 100. I may have

16 only wanted to order 10 libertarian ballots per

17 precinct, because that may have been only what I

18 needed. But because the requirements from the

19 vender, they have minimum order requirements of 100

20 per pop, so that's why my costs get so high.

21 Q. So your assessment of that cost isn't

22 really related to any particular point of Senate

23 Bill 1014, but would you say is an otherwise

24 existing requirement?

25 A. What I'm saying is, is that the Senate

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1 Bill 1014 is increasing the level of what I have to  
2 do. It is certainly -- you know, if I didn't -- if  
3 1014 did not exist, I would order one kind of  
4 ballot in November that would cover every  
5 provisional voter in the county, one ballot face.  
6 I will have to order multiple ballot faces and have  
7 them available for this November. That will  
8 increase my costs no matter whether I have an  
9 increase in the number, it will increase the order  
10 that I have to put in, in about three or four  
11 weeks.

12 I can't say today how many I will have to  
13 do. That will depend on if I have school districts  
14 that participate, if I have fire districts  
15 participate. Each one of those will increase the  
16 number of different ballot styles I have throughout  
17 the county. Before this bill, I only had one  
18 ballot style. After this bill, I will have  
19 multiple ballot styles for provisional ballots.

20 Q. So in terms of the cost here, it is  
21 totally irrelevant to any person not having the  
22 appropriate ID and needing to cast a provisional

23 ballot, that is not the basis for your assessment

24 of the cost then?

25 A. That is not my basis for the total

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1 assessment of the cost. Whether or not I have any  
2 increase in the number of people who cast a  
3 provisional ballot, the mere fact that they have  
4 expanded what is on a provisional ballot increases  
5 my costs.

6 Q. Okay. Now, then you also mentioned your  
7 training. How often does Boone County provide  
8 training?

9 A. Well, it depends on the election and  
10 whether or not on what we have to train. You know,  
11 this last election I was doing new equipment, and I  
12 did 15 hours of training for every election judge,  
13 which is probably more than anybody in the state,  
14 but I do it when we have new laws, I do it when we  
15 have new procedures that we're putting into place.  
16 So, yes, I --

17 Q. So in the last 24 years, I assume that you  
18 have seen lots of changes in election laws?

19 A. Yes. And I would like to bill the state  
20 for all of those changes.

21 Q. But that hasn't happened, has it?

22 A. No, not yet. It might.

23 Q. In terms of -- you know, I was a little  
24 unclear. It says provisional processing, in  
25 parentheses, 3,000 additional. Is that dollars

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1 or --

2 A. No. Actually, that was just I anticipate  
3 that we could possibly have 3,000. It was just a  
4 guess on my part, 3,000 provisionals would probably  
5 be the highest we would go on those.

6 Q. That was just an estimate of --

7 A. Right.

8 Q. And that's based primarily on students?

9 A. I would guess that's going to be my  
10 largest number of ones. That's where I'm going to  
11 have the largest number of provisional ballots  
12 coming from my student precincts, yes.

13 MR. PRESSON: Thank you. I have no  
14 further questions.

15 CROSS-EXAMINATION BY MR. LONG:

16 Q. Ms. Noren, I'm kind of interested in  
17 something you just said. You do more training, you  
18 believe, than other election authorities? I'm not  
19 trying to boost up Boone County here, but you  
20 believe you do more training, correct?

21 A. I think I did more training this last  
22 election than anybody else. I don't know if

23 anybody else popped in 15 hours of training on

24 their poll workers.

25 Q. Some of the things that you said, I wanted

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1 to go back over for just a second to make sure that  
2 some of your testimony was not misunderstood.  
3 Senate Bill 1014 increases penalties for certain  
4 types of fraud. You're familiar with that, are you  
5 not?

6 A. That's correct.

7 Q. You're not against that, are you?

8 A. I am not against that at all.

9 Q. You also indicated that some of the  
10 elderly in this state may not have birth  
11 certificates. Now, isn't it true that in Missouri,  
12 the state maintains birth certificates back to  
13 1910?

14 A. That's correct. But if you were born in  
15 Missouri.

16 Q. If you were born in Missouri. And let's  
17 talk about people that are born overseas for just a  
18 second. Isn't it true that in the State of  
19 Missouri by constitution you have to be a citizen  
20 in the United States to vote in the State of  
21 Missouri?

22 A. That's correct.

23 Q. And so, therefore, if you were born  
24 abroad, you're either going to have to have a  
25 passport, or you're going to have to have a

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1 certificate of naturalization? And if you were  
2 born in a small town in Nigeria, probably from the  
3 State Department you have the certificate of birth  
4 abroad; is that correct?

5 A. Are you carrying it with you? If you are  
6 a student at the University of Missouri, and you  
7 want to register to vote, and your parents -- you  
8 were born overseas to American parents, in general  
9 they don't have that with them in a timely  
10 fashion.

11 This is the point I was trying to make  
12 that it takes a while to get these documents. If  
13 you contact the State Department as to get this  
14 document, the time frame to get it takes longer  
15 than the time they are going to have when I notify  
16 them.

17 Q. When you register to vote someone, do you  
18 check to see if they are a United States citizen?

19 A. No. It is based on their oath. There  
20 is --

21 Q. So do you check to see if they have a  
22 birth certificate?

23 A. No.

24 Q. So do you check to see if they have a

25 photo ID when they register to vote?

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1 A. No.

2 Q. Would you agree with me the best time to  
3 catch somebody from fraudulently voting is before  
4 they place their vote in the ballot box?

5 A. The best time to catch somebody  
6 fraudulently voting, well, yes.

7 Q. So even though they are registered to  
8 vote, you have no way of verifying as the County  
9 Clerk, that they are a citizen of the United States  
10 when they vote, do you?

11 A. The photo ID law doesn't help that  
12 either.

13 Q. I appreciate you not answering my  
14 question. My question is, isn't that true?

15 A. That's true before and that's true after  
16 this law.

17 Q. But before this, we will -- this would  
18 confirm that they are a citizen of the United  
19 States; isn't that true?

20 A. A driver's license does not confirm that.

21 Q. You're not familiar with the  
22 requirements now to get a Missouri license to renew

23 your driver's license?

24 A. Non-citizens can get a driver's license.

25 Q. Yes. But that doesn't prove that they are

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1 a citizen of the United States, does it?

2 A. A driver's license does not prove that  
3 they are a citizen of the United States.

4 Q. But you have to show proof of lawful  
5 presence, proof of identity, are you familiar with  
6 those provisions in Missouri law?

7 A. I am. But I have voters out there who do  
8 not -- have not done that. So if they show me a  
9 Missouri driver's license, it is no proof that they  
10 are a US citizen.

11 Q. And that's your opinion, correct?

12 A. That is what I've been told by Department  
13 of Revenue.

14 Q. And so if the Department of Revenue  
15 testifies in this case differently than that, you  
16 wouldn't disagree with them, would you?

17 A. If they issued one five years ago. They  
18 did not check these things.

19 Q. I think my question was is if the  
20 Department of Revenue testifies differently than  
21 what you said your understanding was, you wouldn't  
22 disagree with them, would you?

23 A. No.

24 Q. Now, the other requirement is that when a

25 person registers to vote, you assign them to a

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1 precinct, do you not?

2 A. Yes.

3 Q. Based upon where they claim to live?

4 A. Yes.

5 Q. And if they show up to vote currently,

6 they can do so with a simple voter ID card that you

7 issued to them; isn't that true?

8 A. I do not issue a voter ID card to all new

9 registrants. Only those that register in person.

10 Q. All right. Those that register in person,

11 they can vote with a voter ID card?

12 A. That's correct.

13 Q. And if they do not have that, there are

14 other forms of identification that are currently

15 permitted by Missouri law?

16 A. That's correct.

17 Q. Including something as mundane as a

18 utility bill?

19 A. That's correct.

20 Q. And part of your training, do you show

21 people all the various utility bills that might

22 exist in Boone County so that they can identify

23 whether or not this is a true and correct utility

24 bill?

25 A. Yes. And I have a chart of different

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1 kinds of ID and which ID is valid if they  
2 registered by mail and if they registered in  
3 person.

4 Q. Right. And so if I show up with a utility  
5 bill to vote in Boone County, and I have a utility  
6 bill, and I can state that, hey, this is my utility  
7 bill. I'm sorry I don't have anything else. If  
8 they are on the voter registration rolls, they  
9 vote, correct?

10 A. That's right. If the name and address  
11 matches the name and address on my file.

12 Q. Right. The name and address between the  
13 voter registration roll and the utility bill?

14 A. That's correct.

15 Q. So if I show up in Boone County with a  
16 utility bill, and I claim my name is Wendy Noren,  
17 Wendy Noren is on the precinct register, I vote?

18 A. Prior to this law.

19 Q. Yes, prior to this law.

20 A. Yes. Not currently. Not any election  
21 coming up.

22 Q. And you would agree with me that without

23 the photo ID requirements of Senate Bill 1014, it's  
24 going to be very difficult for any county clerk in  
25 the State of Missouri to catch voter impersonation

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1 fraud, wouldn't you agree?

2 A. I'm sorry. What?

3 Q. Without the requirements of the photo ID  
4 found in Senate Bill 1014, you would agree with me  
5 that it's going to be difficult for any county  
6 clerk in the State of Missouri to catch voter ID  
7 fraud?

8 A. No, I wouldn't agree with that.

9 Q. Okay. Did you testify against this bill  
10 in either the Missouri House or Missouri Senate?

11 A. No, I did not.

12 Q. And you also talked about voters losing  
13 their ID card and how hard it would be possibly for  
14 them to vote?

15 A. That's correct.

16 Q. That's the same as if a person loses their  
17 voter ID card, they have to go find something else?

18 A. Actually, the list of identification is  
19 broad enough that most -- we haven't had situations  
20 where people were unable to vote because of that.  
21 They had people who will be able to find it. That  
22 list actually, you know, is an outgrowth of the

23 federal law on ID requirements.

24 Q. All those requirements -- the ones you're

25 talking about are like a voter ID card, utility

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1 bill, a bank statement, government check, things of  
2 that nature?

3 A. Right. Student IDs, Social Security card,  
4 Medicaid card.

5 Q. Which is something the federal government  
6 requires?

7 A. They don't require. They are on the  
8 acceptable list.

9 Q. Right.

10 A. The list that's in Missouri statute comes  
11 from the list that was in the Help America Vote Act  
12 for ID requirements for voters who register to vote  
13 by mail, and that was incorporated into Missouri's  
14 law.

15 Q. And you're familiar that those utility  
16 bill, et cetera, are also part of the requirements  
17 for proof of your residency for a Missouri driver's  
18 license and non-driver's license, aren't you?

19 A. Yes. It is on their list that I've seen.

20 Q. Ma'am, just one final question. We were  
21 talking about fraud earlier, and you mentioned  
22 absentee fraud. Would you agree that these states

- 23 should out -- should be out to find and catch
- 24 anybody who tries to fraudulently vote in the State
- 25 of Missouri?

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1 A. Yes.

2 MR. LONG: That all the have questions I  
3 have at this time for this witness, your Honor.

4 THE COURT: Ms. Woods?

5 MS. WOOD: I have no questions, your  
6 Honor.

7 REDIRECT EXAMINATION BY MR. DOWNING:

8 Q. Ms. Noren, just a couple of questions.

9 During the time that you were Chairman of the  
10 Legislative Committee of the Association of  
11 Missouri County Clerks, did that association ever  
12 propose the adoption of a photo ID requirement that  
13 would be implemented with Missouri law?

14 A. No.

15 Q. Why not?

16 MR. LONG: Objection, your Honor. Calls  
17 for speculation as to why they didn't do something  
18 or hearsay as to why they claim they didn't.

19 MR. DOWNING: She was chairman of the  
20 committee. She was the chairman, so she can speak  
21 as to why they didn't. She was the chairman.

22 MR. LONG: Your Honor, I think he's

23 already gotten into evidence what he wants, which  
24 is they didn't do anything. Anything beyond that  
25 would have to be speculation.

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1 MR. DOWNING: She knows why they didn't do  
2 it.

3 THE COURT: I would tend to think it  
4 wouldn't be speculation. I'm not sure as to the  
5 relevance actually, though.

6 MR. LONG: Then, Judge, I'll add that to  
7 my objection also.

8 THE COURT: Thank you.

9 MR. DOWNING: The relevance is the  
10 election authorities in this state did not propose  
11 the law that's been enacted. That means that they  
12 thought that it wasn't necessary.

13 THE COURT: Let me ask defense counsel  
14 this: Somewhere in your briefs I recall an  
15 argument that there was a national consensus on the  
16 necessity or something to do with voter IDs. I  
17 don't know if it was in Mr. Presson's. It had to  
18 be in one of your two briefs. Does that ring a  
19 bell with anyone?

20 MR. LONG: Your Honor, there is the Jim  
21 Baker and Jimmy Carter Commission that was issued  
22 just recently that talks a lot about that, but

23 there is no -- I don't think either one of us cited  
24 anything that says they are definitively it's a  
25 national consensus on much of anything.

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1 THE COURT: Well, what I'm talking about  
2 is how the US Supreme Court is now looking at  
3 foreign treaties, talking about developing national  
4 consensus that they will sometime cite as a basis  
5 for --

6 MR. LONG: No, your Honor. I did not cite  
7 that. We stuck with Missouri court of law.

8 MR. DOWNING: I think they said something  
9 about registration fraud, a national consensus on  
10 that, I thought was in your brief, registration  
11 fraud.

12 THE COURT: I just want to check to make  
13 sure this isn't an area where you're headed. I'm  
14 inclined to sustain the objection unless it's an  
15 area where you expect to go to during the  
16 defense --

17 MR. LONG: Not at the moment, Judge. I  
18 expect if I do, Mr. Downing will be smart enough to  
19 bring this back up and overrule your objection.

20 THE COURT: I'll sustain the objection at  
21 this time.

22 BY MR. DOWNING:

23 Q. One final point, Ms. Noren. We went  
24 through a few ways in which people can show up at  
25 the polls without a photo ID. What about someone

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1 who is pulled over for speeding or DWI, have you  
2 ever had a situation like that where someone gets  
3 taken away their photo ID, which is a driver's  
4 license, taken away from them in that situation?

5 A. Well, I had someone contact me -- there's  
6 been a lot of confusion as to when this law went  
7 into effect. And I did have someone contact me  
8 prior to the primary and ask me that just the  
9 Friday before the election saying they had taken in  
10 a speeding thing and would they be able to vote.  
11 And I said, yes, if they had other identification  
12 for the primary election.

13 But I anticipate in future elections we  
14 will have these situations where a voter has their  
15 driver's license confiscated for a speeding or,  
16 say, not doing a breathalyzer or something and have  
17 their driver's license confiscated and will then  
18 not be able to vote.

19 Q. Mr. Long, I think, asked you about the  
20 hypothetical that someone showed up in Boone County  
21 with a utility bill with your address and tried to  
22 vote under your name. Do you recall that?

23 A. Yes.

24 Q. That was his scenario. And the question

25 is, if that person voted under your name, the

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1 election authorities are going to catch that sort  
2 of thing because you're going to show up to vote,  
3 aren't you?

4 A. Well, actually I end up having to vote  
5 ahead of time because -- absentee, because I can't  
6 get out of my office on election day. But  
7 hypothetically, if it was someone other than me, in  
8 general, what's going to happen, that person is  
9 taking a huge risk that that voter, A, has not  
10 already been there and cast a ballot. If that's  
11 the case, their name is already signed in on the  
12 list. Or, B, that voter is going to be coming in  
13 and voting later, so we would know that day.

14 And, granted, that's why -- it's a very  
15 high risk form of fraud, which is why it's very  
16 low -- it's not used very often. That's why  
17 absentee ballot fraud is more effective for those  
18 who want to get into it.

19 MR. DOWNING: Thank you very much.

20 MR. NEWMAN: Nothing further, your Honor.

21 THE COURT: Anything further?

22 MR. PRESSON: No, sir.

23 MR. LONG: One question, your Honor.

24 RECROSS-EXAMINATION BY MR. LONG:

25 Q. It's not high risk if you register

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1 fraudulently, is it?

2 A. Well, certainly it is. You're going to  
3 have to pick up a fraudulent address. And so when  
4 you walk into that polling place, you're going to  
5 have to stand in front of somebody who could  
6 possibly be living in the house that you picked as  
7 the address, or be a neighbor standing in line and  
8 know that you weren't living in that house, because  
9 you don't just have to pick a name, you have to  
10 pick an address for that particular fraudulent  
11 registration, and that address has to go to that  
12 precinct. And you're going to show up in a  
13 building where people potentially somebody who  
14 lives in that house that you picked lives. So it's  
15 a very risky form. And that's why --

16 Q. So is it your testimony that most people  
17 that do registration fraud and then do absentee  
18 ballot fraud pick buildings that are already  
19 occupied?

20 A. Yes. And then use a post office box.

21 Q. And they never do it the other way around?

22 A. I'm not going to say never, but the fact

23 the --

24 MR. LONG: That's enough. I appreciate

25 you answering my question.

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1 Thank you, your Honor.

2 THE COURT: All right. Thank you very  
3 much. I think you're excused.

4 (Witness excused.)

5 MR. DOWNING: Your Honor, at this time I  
6 offer Exhibit 51, which is Ms. Noren's affidavit.

7 MR. LONG: I have all types of objections  
8 in Ms. Noren's affidavit. If you want to take it  
9 up now, we can, or if you want to take it up with  
10 the other exhibits, that would be fine.

11 THE COURT: Where was it? Is that in the  
12 book?

13 MR. DOWNING: Right there (indicating).

14 THE COURT: We'll take it up later. I  
15 assume those are the same issues as with respect to  
16 some of the other affidavits also?

17 MR. LONG: Yes, your Honor.

18 MR. DOWNING: Okay. Your Honor, at this  
19 time I'd like to call Betsy Byers to the stand.

20 (Witness sworn.)

21 BETSY BYERS, being first duly sworn, testified as  
22 follows:

23 DIRECT EXAMINATION BY MR. DOWNING:

24 Q. Good afternoon. It's been a long day,

25 hasn't it?

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1 A. Yes, it has.

2 Q. Could you state your name for the record,  
3 please?

4 A. Betsy Byers.

5 Q. Ms. Byers, what you do for a living?

6 A. I'm co-director of elections for the

7 Secretary of State's Office.

8 Q. And how long have you held that position?

9 A. In that position since January of 2001.

10 Q. Prior to that time, did you hold a similar  
11 position with a different title?

12 A. Yes.

13 Q. What was that?

14 A. Beginning in February of 1999, I was

15 Deputy Secretary of State for elections.

16 Q. So would it be fair to say you served  
17 under democratic and republican administrations in  
18 the Secretary of State's Office?

19 A. Yes.

20 Q. What are your duties and responsibilities  
21 in the position you mentioned?

22 A. The Secretary of State is a chief election

23 official for the State of Missouri. In that  
24 capacity we have particular duties related to  
25 candidate filing, certification candidates to a

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1 primary and general election ballot. We also  
2 oversee the initiative petition process and certify  
3 petitions as sufficient or insufficient to appear  
4 on the ballot. We also conduct or oversee the  
5 conduct of special elections and a few other things  
6 as well.

7 Q. And I think you said you've been in that  
8 position seven and a half years?

9 A. Yes.

10 Q. Under various titles?

11 A. Yes.

12 Q. Before that what was your position?

13 A. I was Shelby County Clerk.

14 Q. And in that position you were the election  
15 authority for Shelby County, Missouri?

16 A. Yes.

17 Q. How long did you serve in that position?

18 A. Six years.

19 Q. So for the last 13 and a half years,  
20 you've been involved in the administration of  
21 elections in this state?

22 A. Yes.

23 Q. Would you briefly give the Court your

24 educational background?

25 A. Bachelor's degree in education from the

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1 University of Missouri and plus some graduate  
2 hours.

3 Q. And you're here today pursuant to my  
4 subpoena; is that correct?

5 A. Correct.

6 Q. Part of your responsibility as co-director  
7 of elections in the Secretary of State's Office  
8 would be to review, study and implement changes in  
9 the law relating to the administration of  
10 elections. Would that be fair?

11 A. Yes.

12 Q. And offer guidance to local election  
13 authorities on the proper interpretation and  
14 administration of elections in this state?

15 A. Yes.

16 Q. In that capacity, have you reviewed the  
17 Missouri Voter Protection Act, which was passed  
18 this last session by the Missouri General Assembly?

19 A. Yes, I have.

20 Q. And you understand that that act has a  
21 photo identification requirement that would become  
22 effective for all elections unless enjoined by this

23 Court after August 28th?

24 A. Yes.

25 Q. And do you understand that the articulated

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1 purpose for the photo ID requirement was to prevent  
2 voter fraud. Do you understand that?

3 A. That was my understanding, yes.

4 Q. What type of voter fraud would the photo  
5 ID requirement prevent?

6 A. Would a photo ID requirement prevent?

7 Q. Yes.

8 A. Voter impersonation fraud.

9 Q. And could you explain what you mean by  
10 that? What is voter impersonation fraud?

11 A. If someone comes into a polling place  
12 claiming to be someone other than who they really  
13 are, and they attempt to vote.

14 Q. Now, from time to time in your position at  
15 the Secretary of State's Office, have you received  
16 reports of issues and concerns from local election  
17 authorities and others regarding the administration  
18 of elections?

19 A. Yes.

20 Q. Since the 2000 election, do you recall  
21 receiving any reports of voter impersonation fraud  
22 anywhere in the State of Missouri?

23 A. No.

24 Q. If there had been any widespread or

25 significant issues of concerns about voter

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1 impersonation fraud occurring in Missouri, do you  
2 believe in your position of the Secretary of  
3 State's Office you would have heard about it?

4 A. Had they been widespread, yes.

5 Q. Yes. And during the same time period,  
6 have you heard reports or concerns about  
7 improprieties regarding absentee ballots?

8 A. Yes.

9 Q. Summarize briefly the concerns you have  
10 heard in that regard.

11 A. Some of the concerns have been presented  
12 to our office, some reported to our office,  
13 individuals who have requested an absentee ballot  
14 have said that someone has come to try to help them  
15 vote their ballot. There's been some concerns  
16 of --

17 Q. Voter intimidation kind of issues; is that  
18 what you're talking about?

19 A. Yes. I'm sorry, yes. I should have  
20 explained it. And voters who are elderly in a  
21 nursing home or other similar type facility getting  
22 absentee ballot, someone coming and trying to

- 23 assist them to vote their ballot. Absentee ballots
- 24 being sent to an address other than where the voter
- 25 resides and concerns that someone else is getting

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1 that absentee other than the voter.

2 Q. Now, the photo ID requirement in the  
3 Missouri Voter Protection Act doesn't address  
4 absentee ballots, does it?

5 A. No.

6 Q. In terms of registration fraud, has your  
7 office received reports of registration fraud  
8 during your tenure?

9 A. We've had reports of concerns of voter  
10 registration fraud occurring, yes.

11 Q. What types of registration fraud you have  
12 reports brought to your attention?

13 A. Individuals filling out applications for  
14 someone other than the person they have filled out  
15 the application for, turning in applications that,  
16 you know, have a fraudulent signature on them, some  
17 things like that.

18 Q. Okay. And the voter ID requirement of the  
19 Missouri Voter Protection Act doesn't address that  
20 type of fraud, does it?

21 A. No.

22 Q. Now, there were changes made to Missouri's

23 election law in 2002 regarding voter identification

24 requirements, right?

25 A. Yes.

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1 Q. And that law, which is the current law,  
2 allows voters to present many forms of  
3 identification at the polling place in order to  
4 identify themselves, doesn't it?

5 A. Yes.

6 Q. Some things such as a utility bill, bank  
7 statement, government check, paycheck, current  
8 identification card, any ID issued by the United  
9 States Government, a student ID issued by the  
10 University of Missouri, those forms are all  
11 acceptable under the current law, aren't they?

12 A. Correct. Yes.

13 Q. And a photo ID under the current law was  
14 permissible. You could show up and give them your  
15 driver's license, but it wasn't required; is that  
16 right?

17 A. Correct.

18 Q. And that law has been in effect for every  
19 election from 2002 to the present, right?

20 A. Correct.

21 Q. During that time frame, do you recall any  
22 reports of voter registration fraud -- or voter

23 identification fraud in this state?

24 A. No.

25 Q. Do you recall hearing from local election

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1 authorities that the state needed to do something  
2 to prevent voter impersonation fraud?

3 MR. LONG: Objection, your Honor. That  
4 would be hearsay.

5 MR. DOWNING: I'm just asking if she  
6 recalls hearing anything.

7 THE COURT: I don't think it's for the  
8 truth. It's whether the reports would come in,  
9 so . . .

10 THE WITNESS: No.

11 BY MR. DOWNING:

12 Q. From the time that the photo ID  
13 requirement was proposed in this last legislative  
14 session, have you heard widespread and significant  
15 concerns about the photo ID requirement being  
16 unduly burdensome to registered voters in the  
17 state?

18 A. Yes.

19 Q. Have concerns been brought to your  
20 attention that many registered voters without a  
21 photo ID likely will be discouraged from voting?

22 MR. LONG: Objection, your Honor. That is

23 hearsay.

24 THE COURT: The fact that somebody --

25 what's the relevance or the foundation for this?

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1 MR. DOWNING: I'll withdraw that  
2 question.

3 THE COURT: All right.

4 BY MR. DOWNING:

5 Q. Now, proponents of the law have offered  
6 that provisional ballots may be allowed. You  
7 understand the law under certain circumstances  
8 allows provisional ballots to be voted if they  
9 don't show up with a photo ID? Do you understand  
10 that?

11 A. Yes.

12 Q. But under the new law, I just want to make  
13 sure this is correct, there are three categories of  
14 voters that would be allowed to cast provisional  
15 ballots under the new law. The disabled, people  
16 with a religious belief against having a photo ID,  
17 and people born before 1941; is that right?

18 A. Three categories which they would be able  
19 to vote without a photo ID?

20 Q. Yes. They would be able to vote a  
21 provisional ballot?

22 A. Those three are included in that, yes.

23 Q. But if you're in one of those categories,  
24 say, you were born before 1941, you don't  
25 automatically get a provisional ballot, do you?

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1 A. You have to fill out an affidavit stating  
2 your identity, and that you are unable to obtain a  
3 photo identification.

4 Q. So if you're born before 1941, and you  
5 were not willing to swear that you couldn't get a  
6 photo ID, and you didn't have a photo ID, you don't  
7 vote; is that right under the new law?

8 A. Correct.

9 Q. And let's talk about provisional ballots  
10 on one other point. Provisional ballots are not  
11 available in all elections, are they?

12 A. No.

13 Q. And the new law doesn't change that?

14 A. I'm sorry?

15 Q. And new law doesn't change that, right?

16 A. No. April elections, local elections, you  
17 don't have provisional ballots.

18 Q. So provisional ballots are available only  
19 in primary and general elections of the state?

20 A. Correct.

21 Q. When would the first local election be  
22 after the -- there's a general election in

- 23 November. When would be the first possible time  
24 for a local election in this state?  
25 A. February as an open election. First

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1 Tuesday or first Monday in February.

2 Q. So in that election, if you show up to the  
3 poles without an acceptable photo ID, you don't get  
4 to vote at all, no provisional ballot, no regular  
5 ballot, no vote at all, right?

6 A. Correct.

7 Q. Let me ask you a few questions about  
8 Defendant Secretary of State Carnahan just to get  
9 an understanding of how your office interacts with  
10 other local election authorities -- with the local  
11 election authorities. Now, she is the chief  
12 election -- Defendant Carnahan, the Secretary of  
13 State is the chief elected official for the State  
14 of Missouri and is responsible for administering  
15 all statewide elections including those for state  
16 and federal office, correct?

17 A. Correct.

18 Q. Defendant Carnahan assists the 116 local  
19 election authorities in interpreting and  
20 administering the state election laws and  
21 promulgates rules governing elections and  
22 electronic voting systems; is that right?

23 A. Correct.

24 Q. Defendant Carnahan is required to publish

25 the Missouri election laws for use by county clerks

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1 and election boards, right?

2 A. Yes.

3 Q. Defendant Carnahan convenes the State

4 Board of Canvasses and Canvassers and totals and

5 announces election results, right?

6 A. Yes.

7 Q. Defendant Carnahan designs and provides to

8 local election authority the envelopes and forms

9 necessary to carry out provisional voting

10 throughout Missouri, right?

11 A. Correct.

12 Q. Defendant Carnahan's responsible for

13 producing various election materials including

14 instructions for poll workers, training video and

15 manual for election authorities, right?

16 A. Correct.

17 Q. Defendant Carnahan's also responsible for

18 maintaining a computerized state-wide voter

19 registration data base known as the Missouri Voter

20 Registration System for use by local election

21 authorities in Missouri, right?

22 A. Yes.

23 Q. Defendant Carnahan cooperates with other  
24 officials and civil organizations to provide  
25 materials to support voter registration,

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1 responsibility and education?

2 A. Yes.

3 Q. Right. And Defendant Carnahan is a chief  
4 elected official responsible for the administration  
5 and coordination of state responsibilities pursuant  
6 to the Help America Vote Act in 2002, and  
7 coordination of state responsibilities under the  
8 National Voter Registration Act of 1993, right?

9 A. Yes.

10 Q. Now, Secretary Carnahan, in her capacity  
11 as a chief elections official of the state, wrote a  
12 letter to Governor Matt Blunt on May 17, 2006, did  
13 she not?

14 A. Yes.

15 MR. DOWNING: May I approach the witness?

16 THE COURT: You may.

17 MR. DOWNING: Your Honor, this is  
18 Plaintiffs' Exhibit 33. It's in your notebooks.

19 Your Honor, it's under tab 25 in your notebook.

20 THE COURT: You have to explain to me the  
21 numbering system sometime.

22 MR. DOWNING: Sometimes I have to explain

23 it to myself.

24 BY MR. DOWNING:

25 Q. Ms. Byers, I've handed you what's been

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1 marked as Plaintiffs' Exhibit 33. Can you identify  
2 that?

3 A. It's a letter from Secretary Carnahan to  
4 Governor Blunt.

5 Q. And what's the date on the letter?

6 A. May 11, 2006.

7 Q. Have you read this letter before?

8 A. Yes.

9 Q. This is the letter in which Secretary  
10 Carnahan urged the Governor to veto the Missouri  
11 Voter Registration Act; is that a fair  
12 characterization?

13 A. Yes.

14 Q. There's just a couple statements in here.  
15 I don't want to read the whole letter for the  
16 record, but a couple of statements here I just want  
17 to get your view on whether you agree with some of  
18 these factual statements in the letter based on  
19 your experience in running elections in Missouri.

20 In the third paragraph of the letter,  
21 Secretary Carnahan states, "Proponents of this  
22 legislation have argued the legislation is

- 23 necessary to remedy perceived voter fraud.
- 24 However, there is no evidence that such voter fraud
- 25 actually exists or that this drastic measure would

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1 solve any existing problem in our election system."

2 Do you see that?

3 A. Yes.

4 Q. Do you agree with those statements?

5 A. Yes, I do.

6 Q. In the -- let's see. That was the third

7 paragraph. In the sixth paragraph, the last

8 paragraph from the -- next to the last paragraph

9 from the bottom, Secretary Carnahan in that

10 paragraph states, "In addition, following the

11 November 2002 general election overseen by your

12 administration, you commended the local election

13 authorities for conducting an election that was,

14 quote, free of fraud, closed quote. No new

15 circumstances arose under the 2004 November

16 election, also under supervision or since, which

17 would necessitate making it harder for thousands of

18 Missourians to vote." Do you see that?

19 A. Yes.

20 Q. Do you agree with Secretary Carnahan that

21 to your knowledge no new circumstances arose that

22 would justify making it harder for Missourians to

23 vote?

24 A. Yes.

25 Q. The final point I wanted to ask you about,

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1 the second page of the document, the second  
2 paragraph, Secretary Carnahan is talking about  
3 provisional ballots. I just wanted to verify your  
4 view that her statement is accurate. She states in  
5 the last sentence of that paragraph, "You are also  
6 undoubtedly aware that in the 2004 general election  
7 when you were Secretary of State, over 8,000  
8 provisional ballots were cast, but only 3,000 were  
9 actually counted." Do you see that?

10 A. Yes.

11 Q. Is that accurate?

12 A. Yes, it is.

13 MR. DOWNING: Thank you very much,  
14 Ms. Byers. That's all I have.

15 CROSS-EXAMINATION BY MR. NEWMAN:

16 Q. Ms. Byers, we met a few minutes ago. I'm  
17 Burt Newman. I just have a few questions for you.

18 If I can approach the witness, your  
19 Honor?

20 THE COURT: You may.

21 BY MR. NEWMAN:

22 Q. Let me first give you copy of Plaintiffs'

23 Exhibit 1. I'm not going to ask you about it yet.

24 I'm going to ask you a few questions first.

25 A. Okay.

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1 Q. If I understand your testimony in response  
2 to Mr. Downing's questions, in one capacity or  
3 another you have been in a director's position with  
4 the Secretary of State in regard to elections for  
5 10 years?

6 A. Since 1999.

7 Q. Oh, since 1999?

8 A. Yes.

9 Q. And prior to that time, what was your  
10 position?

11 A. Shelby County Clerk.

12 Q. Okay. And you were Shelby County Clerk  
13 for six years?

14 A. Yes.

15 Q. Now, in your position since 1999 with the  
16 Secretary of State's Office, do your duties and  
17 responsibilities include dealing with all Missouri  
18 counties --

19 A. Yes.

20 Q. -- regarding election legislation?

21 A. Yes.

22 Q. That's part of your job duties, is it not?

23 A. Correct.

24 Q. And you've reviewed this act --

25 A. Yes.

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1 Q. -- have you not?

2 A. Uh-huh.

3 Q. And have you advised or are you available  
4 to advise all counties, all county authorities of  
5 the requirements of the election laws including  
6 this law, should it go into effect?

7 A. Yes. We advise in the call they have  
8 their training this week, which we're going to be  
9 doing some training on this.

10 Q. And that's part of your job and you  
11 supervise all of that work for all of the counties  
12 in the State of Missouri. Now, some counties -- is  
13 that correct?

14 A. Yes.

15 Q. Some counties the county clerk serves as  
16 the election authority, and in other counties,  
17 there's an actual board with directors, correct?

18 A. Correct.

19 Q. And the director actually performs the job  
20 that the county clerk would perform in a smaller  
21 county, right?

22 A. Yes.

23 Q. Shelby County is a smaller county --

24 A. Yes.

25 Q. -- is that correct?

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1 A. Uh-huh.

2 Q. Now, in reviewing the act, did you note  
3 anywhere in the act where there has been an  
4 appropriation of funds from the Legislature to  
5 cover the costs associated with the act and the  
6 implementation of the act by all the counties in  
7 the State of Missouri?

8 A. No.

9 Q. When you were county clerk -- and I  
10 believe that was for a period of six years?

11 A. Yes.

12 Q. You were required before each election to  
13 submit estimates, were you not, under 115.077 of  
14 what the costs would be for elections?

15 A. Correct. Yes, I was.

16 Q. And in your job now, you're still familiar  
17 with those types of estimates, are you not?

18 A. Yes.

19 Q. Okay. Now, you have been here listening  
20 to the testimony all day, have you not?

21 A. Yes, I have.

22 Q. And you have heard testimony from Jackson

- 23 County, St. Louis County, the City of St. Louis and
- 24 Boone County about increased costs, correct?
- 25 A. Yes.

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1 Q. Some of those costs, those are all  
2 relatively larger counties, aren't they?

3 A. Yes.

4 Q. You would consider them larger counties?

5 A. Yes.

6 Q. Some of the costs associated with the act  
7 in those counties might not apply to smaller  
8 counties; is that correct?

9 A. Correct.

10 Q. And looking at Exhibit 1, if you would,  
11 that I have left for you there, over on page five,  
12 beginning with paragraph 20, number A, did I ask  
13 you to look through these -- you had a copy of the  
14 petition in your office since your office is the  
15 defendant, correct?

16 A. Correct.

17 Q. And did I ask you to look through these  
18 and determine which would apply to all counties and  
19 which would apply only to certain counties and not  
20 to smaller counties? Did I ask you to do that?

21 A. Uh-huh. Yes.

22 Q. Okay. Let's take the first one dealing

23 with the voter notification card. Is it your view  
24 that that would apply to all counties in the State  
25 of Missouri regardless of size?

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1 A. Yes.

2 Q. Okay. Now, looking at number B, the  
3 requirement of production of new affidavit form,  
4 would it be your view that that would apply to all  
5 counties in the State of Missouri?

6 A. B, well, some of those affidavits will be  
7 produced by our office.

8 Q. So that wouldn't apply to all counties in  
9 the state?

10 A. Correct.

11 Q. Okay. Taking a look at number C, based on  
12 115.427.2, the signage, would that apply to all  
13 counties in the state in your view based upon your  
14 experience?

15 A. On signage, yes.

16 Q. Okay. And what about D, would that apply  
17 to all counties in your view based upon your  
18 experience both as a county clerk and in your  
19 position with the Secretary of State's Office?

20 A. Yes.

21 Q. Okay. What about E, would your view be  
22 that E would result in increased costs to all

- 23 counties including smaller counties?
- 24 A. I will have to say I believe all counties
- 25 are going to have to change their poll worker

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1 instructions and their training.

2 Q. Okay. So you would include E then for all  
3 counties, correct?

4 A. Yes.

5 Q. What about F, that's in reference to  
6 115.430 dealing with photocopying, the provisional  
7 ballot, envelopes and the associated costs?

8 A. Right. Assuming an increase in  
9 provisional ballots, yes.

10 Q. Do you believe there will be an increase  
11 in provisional ballots in elections should this act  
12 go into effect?

13 A. Yes, I do.

14 Q. Do you believe it will be an increase in  
15 absentee ballots, should it go into effect?

16 A. Yes, I do.

17 Q. Now, take a look at, if you will, H and I,  
18 we've combined them. And they deal with absentee  
19 ballots, and would it be your opinion that these  
20 costs associated with H and I would be costs that  
21 would apply and result in mandates to all counties  
22 in the State of Missouri regardless of size?

23 A. H, with the increase of absentee ballots,  
24 yes, I believe they will have an increase. And I,  
25 I'm not sure on I.

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1 Q. Okay. So you can't give me a yes on I?

2 A. No, I can't.

3 Q. And on K, what would your view be on K as

4 far as application to all counties for additional

5 costs and expenses?

6 A. And this is the disaster portion of it?

7 Q. Yes, ma'am.

8 A. I couldn't say on that exactly.

9 Q. You say it would not?

10 A. Well, I'm not entirely sure. I don't know

11 if I can answer that question.

12 Q. That's fine. That's fine. So going back,

13 just to look through these, paragraph 20 of

14 Exhibit 1, you would associate increased costs and

15 expenses to all counties in the State of Missouri

16 for subparagraph A, subparagraph C, D, E, F and H;

17 is that correct?

18 A. Yes.

19 Q. And would the costs and expenses that you

20 would associate for each county in this state based

21 upon the requirements of this act as you have

22 reviewed it and you have testified, would those

23 costs be greater than the diminimus cost, would be

24 more than a trifled cost?

25 MR. PRESSON: Objection, your Honor. I

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1 don't think this establishes the sort of  
2 familiarity that would be necessary to make that  
3 sort of judgment with regard to every 115 election  
4 authority jurisdictions in the state.

5 MR. NEWMAN: Your Honor, this lady's job  
6 is to administer elections for all counties in the  
7 State of Missouri. She is familiar with this law.  
8 She was also a county clerk in a small county, and  
9 I believe she does have the expertise.

10 THE COURT: I think that would be my  
11 ruling, but I'm going to allow counsel to develop  
12 his record.

13 BY MR. NEWMAN:

14 Q. As to those particular -- as to those  
15 particular subsections, and I'm going to go through  
16 them again, that you have --

17 THE COURT: I think she understands the  
18 question.

19 MR. NEWMAN: Beg your pardon?

20 THE COURT: Why don't you just have her  
21 answer the question that was posed. Did she answer  
22 it?

23 MR. NEWMAN: She didn't answer the

24 question.

25 THE COURT: Do you remember it?

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1 THE WITNESS: Yes, I do.

2 THE COURT: Why don't you go ahead and  
3 answer it.

4 THE WITNESS: Based on my experience, yes,  
5 I would say.

6 BY MR. NEWMAN:

7 Q. Yes, the cost would be more than trifle or  
8 diminimus?

9 A. Yes.

10 MR. NEWMAN: Thank you very much. I have  
11 no further questions.

12 THE COURT: Mr. Presson?

13 CROSS-EXAMINATION BY MR. PRESSON:

14 Q. Ms. Byers, I have just a few questions.  
15 With regard to all the matters that Mr. Newman has  
16 went through and all those subparagraphs, paragraph  
17 20 of the petition, in terms of some of them like  
18 the affidavits or others like the signage, are  
19 there particular requirements, you know, for the  
20 design, the size, the material out of which it  
21 needs to be made, whether it needs to be done  
22 professionally? Are there any such requirements in

23 the act?

24 A. Not that I'm aware.

25 Q. With regard to others that they alleged

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1 and you were asked about, like, D, is all based  
2 upon an expectation, I guess, may be a way to put  
3 it, that there might be an increase in number of  
4 provisional ballots or absentee ballots; is that --

5 A. Yes. Because in elections, you have to  
6 prepare for the worst and pray for the best.

7 Q. So do lawyers sometimes. But there is no  
8 part of Senate Bill 1014 that mandates that a  
9 particular voter has to use a provisional ballot or  
10 has to use an absentee ballot, is there?

11 A. That a voter is mandated to --

12 Q. Right. It doesn't say --

13 A. -- vote a provisional?

14 Q. Yeah. There's no requirement that it be  
15 mandated, it's up to the voters?

16 A. Well, I don't believe the voter has the  
17 options if they want to cast a ballot in certain  
18 circumstances.

19 Q. Well, you're assuming also that the voters  
20 can't get, you know, an ID to avoid a provisional?

21 A. Correct. If they meet one of the  
22 circumstances in this legislation, then they are

23 going to either not vote or vote a provisional

24 ballot.

25 Q. Well, provisional ballots exist now?

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1 A. Yes, they do.

2 Q. And that's a fairly recent requirement,  
3 2002 I believe, was what that statute passed?

4 A. 2002, uh-huh.

5 Q. Did that impose great new costs upon local  
6 election authorities when that was passed?

7 A. In my opinion, yes, it did. I believe so.

8 Q. And does it, you know -- I mean, I assume  
9 the 13, 14 years that you've been doing elections  
10 both locally and the Secretary of State you've seen  
11 other changes in election laws, too?

12 A. Yes.

13 Q. And some of those in turn just make it  
14 more expensive?

15 A. Did you ask do they make?

16 Q. Do they?

17 A. Yes, some do.

18 Q. Has anybody ever challenged those as being  
19 a violation of the Hancock Amendment, to your  
20 knowledge?

21 A. I'm not aware.

22 Q. If, in fact, a particular election

- 23 authority doesn't have any increase in provisional
- 24 ballots or doesn't have an increase in absentee
- 25 ballots, then their cost wouldn't necessarily go up

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1 by as much as some other districts that would?

2 A. Well, depending on the area of where they  
3 experience the cost. If it was to hire extra staff  
4 to come in after the fact, and they didn't increase  
5 so they wouldn't have a need, then they wouldn't  
6 have that increase.

7 Q. But it's pretty much all a matter of just  
8 estimating, because nobody's really incurred any  
9 costs under 1040 yet, have they?

10 A. Not yet.

11 Q. And we really won't know whether they'll  
12 be an increased number of provisional or absentee  
13 ballots until this actually goes into effect and  
14 goes into an election, will we?

15 A. No.

16 Q. Now, in terms of training, statutes  
17 certainly require local election authorities to  
18 train poll workers; is that correct?

19 A. Yes, they do.

20 Q. And the curriculum that they provide is  
21 pretty much -- with some exceptions, pretty much up  
22 to them; is that not true?

23     A. Yes. They prepare their own curriculum,  
24 plus they use some of the curriculum provided by  
25 our office.

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1 Q. But apart from what you provide, they can  
2 train on anything that they want generally, can  
3 they not?

4 A. Yes.

5 Q. And, you know, do it more often than other  
6 counties might do?

7 A. Some do.

8 Q. And, you know, in terms of additional  
9 staff, aside from any minimum that might be  
10 applicable, they can decide based upon demand for,  
11 you know, basically their services, but as to how,  
12 you know, to allocate or whatever the election  
13 judges in various precincts or polling places?

14 A. They make those decisions, yes.

15 Q. Now, in the provisional ballots that we've  
16 had since 2002, if, in fact, the voter was  
17 determined to be eligible by the local election  
18 authority, then that provisional ballot was  
19 actually counted in terms of the election results,  
20 wasn't it?

21 A. Yes.

22 Q. The only provisional ballots that weren't

23 counted were when the local election authority

24 determined the person was not eligible?

25 A. They were not eligible.

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1 MR. PRESSON: I have no further questions,  
2 your Honor.

3 CROSS-EXAMINATION BY MR. LONG:

4 Q. Ms. Byers, you have been here all day?

5 A. Yes, I have.

6 Q. The local election authorities, there was  
7 some testimony about their costs and how much it  
8 was going to cost and things of that nature. The  
9 Secretary of State's Office, and yourself in  
10 particular, haven't undertaken any study to  
11 determine that those were reasonable, necessary or  
12 valid, correct?

13 A. Not that I'm aware.

14 Q. And would that be the same for the  
15 comments in the fiscal note that was mentioned  
16 earlier?

17 A. Yes, I assume so.

18 Q. Now, I'd like to ask you a question about  
19 registration in this state. You said you were  
20 concerned about that. And unfortunately, I had not  
21 had my little statute book here. Isn't it true  
22 that in Missouri to be registered to be a voter and

- 23 you have to present some identification showing  
24 that you're a citizen?  
25 A. When you register in person, you have to

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1 show a -- I believe it's a valid Missouri driver's  
2 license or another form of personal  
3 identification.

4 Q. As a matter of fact, the section cite is  
5 115.135, sub 2, your Honor, and I believe -- and if  
6 you will just -- I can read it to you or -- I tell  
7 you what, it's 4:30. I'm just going to read it to  
8 you real fast rather than letting you read. It  
9 says, "A person applying to register with an  
10 election authority or deputy registration official  
11 shall identify himself or herself by presenting a  
12 copy of a birth certificate, Native/American travel  
13 document, other proof of United States citizenship,  
14 valid Missouri driver's license or other form of  
15 personal identification at the time of  
16 registration."

17 That's what it says. You wouldn't  
18 disagree with that, right? That sounds like what  
19 most people do?

20 A. Yes.

21 Q. I'm sorry. It's not a trick question.  
22 That's how you register in the State of Missouri?

23 A. Right.

24 Q. Okay. And are you familiar with what it

25 takes to get a Missouri driver's license, other

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1 than generally like the rest of us when you have to  
2 go in there and get it?

3 A. I'm not an expert.

4 Q. Fair enough. I won't ask you a question  
5 about that one.

6 You also mentioned concerns about catching  
7 voter impersonation fraud or not catching it or  
8 whatever. Is it the general position of the  
9 Secretary of State's Office that they are against  
10 fraud in any form for elections?

11 A. Yes.

12 Q. Is it the position of the Secretary of  
13 State's Office that they will try to stamp out  
14 fraud whatever form it is?

15 A. Yes.

16 Q. And is presenting -- or preventing --  
17 excuse me -- unqualified persons from voting a  
18 concern of the Secretary of State's Office?

19 A. I'm sorry. I couldn't hear part of your  
20 question.

21 Q. I'll try this again. Is preventing  
22 unqualified persons from voting a concern in the

23 Secretary of State's Office?

24 A. Yes.

25 Q. So if a person isn't a citizen, and they

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1 are not a resident of that precinct, and they are  
2 not over 18 years of age, or they don't meet their  
3 regular qualifications in Missouri, you want to  
4 prevent them from voting, correct?

5 A. Yes.

6 MR. LONG: Okay. That's all the questions  
7 I have at this time for this witness, your Honor.

8 THE COURT: Ms. Wood?

9 CROSS-EXAMINATION BY MS. WOOD:

10 Q. Ma'am, you testified about, obviously, the  
11 concern of the Secretary of State of not wanting  
12 fraud in elections?

13 A. Yes.

14 Q. But in your lengthy experience in  
15 elections, impersonations, fraud or imposter voting  
16 is not an issue that you have heard any report  
17 about?

18 A. That's correct.

19 Q. And as to the training, obviously, as you  
20 have heard the testimony today through Mr. Presson  
21 and Mr. Long, local election authorities do  
22 training when there are changes in election law?

23 A. Yes.

24 Q. We have seen that with the implementation

25 of the Help America Vote Act?

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1 A. Correct.

2 Q. And we have seen that with the new voting  
3 equipment?

4 A. Yes.

5 Q. Both which were just recently used in the  
6 primary election?

7 A. Yes.

8 Q. In terms of the training for poll workers,  
9 and that will have to be done with the  
10 implementation of this legislation, you testified  
11 that you were getting ready for clerks' training,  
12 which I believe is Wednesday, right?

13 A. Yes, I am.

14 Q. And so you were revising your training  
15 materials for that clerks' conference?

16 A. Yes, I was.

17 Q. And when you made that revision for your  
18 training materials, and you looked at the changes  
19 in this legislation for the photo ID, as well as  
20 the provisional ballot, how would you characterize  
21 the change to your training materials?

22 A. Massive.

23 Q. And that would be the same type of  
24 training changes, material changes that the local  
25 election authorities are going to face?

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1 A. Yes. As a former educator, I'm very  
2 concerned about the type of training that we offer  
3 to local election authorities, which they in turn  
4 can offer to the election judges. I think we've  
5 seen that election judges need high quality  
6 training in order to perform their duties in the  
7 polling place accurately and to the best of their  
8 ability.

9 Q. Elections in the State of Missouri are  
10 conducted at the local level; is that correct?

11 A. Yes, they are.

12 Q. And our Secretary of State helps us  
13 provide guidance and assistance to those local  
14 election authorities?

15 A. Correct.

16 Q. Do we have any supervisory enforcement as  
17 to the local election authorities?

18 A. No.

19 MS. WOOD: That's all I have.

20 MR. DOWNING: No questions for me, your  
21 Honor.

22 MR. NEWMAN: Nothing further, your Honor.

23 THE COURT: All right. Thank you very

24 much.

25 (Witness steps down.)

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1 MR. DOWNING: We have one more witness  
2 that we think will take about 10 minutes. I know  
3 it's been a long day. We call Kathleen  
4 Weinschenk.

5 May we approach on the witness, your  
6 Honor?

7 THE COURT: Sure.

8 (AN OFF-THE-RECORD DISCUSSION WAS HELD AT  
9 THE BENCH.)

10 MR. DOWNING: Your Honor, for the record,  
11 we've had a discussion off the record about our  
12 next witness Kathleen Weinschenk. It's difficult  
13 to understand what she says, and she has someone  
14 who can interpret what she says. And the parties  
15 have agreed to a procedure that we think will  
16 ensure reliability that her testimony, her actual  
17 testimony is understood by all, and we would like  
18 to proceed on that basis.

19 THE COURT: All right. My understanding  
20 this is done without objection.

21 Ms. Weinschenk, would you raise your right  
22 hand?

23 (Witness sworn.)

24 THE COURT: All right. And, sir, would

25 you identify yourself for the record?

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1 MR. AHRENS: Greg Ahrens, A-h-r-e-n-s.

2 THE COURT: Mr. Ahrens, would you raise  
3 your right hand.

4 (Interpreter sworn.)

5 THE COURT: You may proceed.

6 MS. AIRSMAN: Where would you like him to  
7 sit?

8 THE COURT: I think just right -- whatever  
9 you folks are most comfortable.

10 MS. AIRSMAN: Mr. Ahrens, how long have  
11 you known Kathleen Weinschenk?

12 MR. AHRENS: I've known Kathleen since  
13 1991.

14 MS. AIRSMAN: Do you understand that we've  
15 asked you to act as an interpreter for Kathleen so  
16 that the Court may receive her truthful and  
17 accurate testimony in this proceeding?

18 MR. AHRENS: Yes.

19 MS. AIRSMAN: Do you have to communicate  
20 with Kathleen on a regular basis?

21 MR. AHRENS: Yes.

22 MS. AIRSMAN: Do you have the ability and

23 confidence to understand and interpret her

24 answers?

25 MR. AHRENS: Yes.

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1 MS. AIRSMAN: Are you satisfied that you  
2 can understand what she is saying?

3 MR. AHRENS: Yes.

4 MS. AIRSMAN: Where you have misunderstood  
5 her in the past, has she been able to correct you?

6 MR. AHRENS: Yes.

7 MS. AIRSMAN: Will she correct you today  
8 if you mistake what she has said?

9 MR. AHRENS: Probably no -- yes, she  
10 will.

11 MS. AIRSMAN: Do you understand the  
12 importance of interpreting the testimony of  
13 Kathleen in a true and accurate manner for this  
14 proceeding?

15 MR. AHRENS: Yes.

16 MS. AIRSMAN: Do you have an interest,  
17 financial or otherwise in the outcome in this  
18 case?

19 MR. AHRENS: No.

20 MS. AIRSMAN: Are you related by blood or  
21 marriage to any of the attorneys or parties  
22 involved in this case?

23 MR. AHRENS: No.

24 MS. AIRSMAN: Have you ever been convicted

25 of a crime?

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1 MR. AHRENS: No.

2 MS. AIRSMAN: Have you ever been accused  
3 of giving false testimony or giving a false  
4 statement under any circumstances?

5 MR. AHRENS: No.

6 MS. AIRSMAN: If the Court sees fit to  
7 allow you to act as an interpreter of the testimony  
8 of Kathleen, will you do so accurately?

9 MR. AHRENS: Yes.

10 MS. AIRSMAN: I would just ask the Court  
11 to approve Mr. Ahrens.

12 THE COURT: The Court will so do.

13 MS. AIRSMAN: Thank you.

14 (The following questions were given by  
15 Ms. Airsman and the answers were given by Mr.  
16 Ahrens, the interpreter, unless otherwise noted.)  
17 KATHLEEN WEINSCHENK, being first duly sworn,  
18 testified as follows:

19 DIRECT EXAMINATION BY MS. AIRSMAN:

20 Q. Ms. Weinschenk, can you please state your  
21 name for the record?

22 MS. WEINSCHENK: Kathleen Weinschenk.

23 BY MS. AIRSMAN:

24 Q. Ms. Weinschenk, are you over the age of

25 18?

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1 MS. WEINSCHENK: Yes.

2 BY MS. AIRSMAN:

3 Q. Where were you born?

4 A. Little Rock, Arkansas.

5 Q. Are you currently married?

6 MS. WEINSCHENK: No.

7 BY MS. AIRSMAN:

8 Q. Have you ever been married?

9 MS. WEINSCHENK: Yes.

10 BY MS. AIRSMAN:

11 Q. Where do you currently live?

12 A. Columbia, Missouri.

13 THE COURT: Mr. Ahrens, keep your voice up

14 when you answer, please. Try to speak with a full

15 voice.

16 THE WITNESS: Boone County.

17 BY MS. AIRSMAN:

18 Q. How long have you lived in Boone County?

19 A. Thirty-five years.

20 Q. And do you pay taxes in the State of

21 Missouri?

22 A. Yes.

23 Q. Ms. Weinschenk, what's your highest level

24 of education?

25 A. I have an M.Ed. From the University of

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1 Missouri.

2 THE COURT: Mr. Ahrens, you will have to  
3 speak louder than you are. I mean, shout it out,  
4 please.

5 THE WITNESS: An M.Ed.

6 BY MS. AIRSMAN:

7 Q. Are you involved in any community  
8 activities?

9 A. Yes, I am. Elected official of Boone  
10 County Democratic Party. I am involved in my  
11 church. I'm on the Ped Net Board, and I serve on  
12 First Knight.

13 Q. Thank you. Are you registered to vote,  
14 Ms. Weinschenk?

15 A. Yes.

16 Q. And do you regularly vote?

17 MS. WEINSCHENK: Oh, yeah.

18 BY MS. AIRSMAN:

19 Q. Is the right to vote something that is  
20 important to you?

21 A. Oh, very.

22 Q. Have you voted in the polls in the past?

23 A. Yeah.

24 Q. And who transports you to the polls to

25 vote?

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1 A. Greg.

2 Q. Do you prefer to vote at the polls?

3 A. Yes.

4 Q. Why?

5 A. I am not an invalid. I like to do the  
6 normal things, if I can.

7 Q. Thank you. Ms. Weinschenk, you have a  
8 Missouri identification card that was issued in the  
9 1980s that contains no expiration date; is that  
10 correct?

11 A. Yes.

12 Q. Is it your understanding that your  
13 Missouri identification card is not a non-driver's  
14 license and, therefore, it does not entitle you to  
15 vote?

16 A. Yes.

17 Q. Ms. Weinschenk, why did you choose to  
18 become a plaintiff in this lawsuit?

19 A. Because I think the new law will keep me  
20 and a lot of other people with disabilities from  
21 voting, and I think that's a shame.

22 Q. Okay. Do you understand that the State of

23 Missouri has waived the \$11 fee for obtaining a  
24 non-driver's license if it's issued for the purpose  
25 of voting?

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1 A. I do.

2 Q. Do you understand that in order to obtain  
3 a non-driver ID, you will be required to provide a  
4 certified copy of your birth certificate or a  
5 passport.

6 MS. WEINSCHENK: I do.

7 BY MS. AIRSMAN:

8 Q. Do you have a passport?

9 A. No.

10 Q. Do you have a certified copy of your birth  
11 certificate?

12 A. No.

13 Q. What will you have to do to obtain a  
14 certified copy of your birth certificate from the  
15 State of Arkansas?

16 A. I would have to pay \$12.

17 Q. Do you know how long it takes to get that  
18 birth certificate from the State of Arkansas?

19 A. No.

20 Q. Ms. Weinschenk, do you object to having to  
21 pay the \$12 in order to exercise your fundamental  
22 right to vote?

23 A. Yes.

24 Q. Ms. Weinschenk, you testified earlier that

25 you were married previously. Has your name changed

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1 since birth due to that marriage?

2 A. Yes.

3 Q. Do you understand that you will also be  
4 required to submit proof of a name change in order  
5 to obtain your non-driver identification?

6 A. I do.

7 Q. Do you have a certified copy of your  
8 marriage license?

9 A. No.

10 Q. Ms. Weinschenk, once you obtain your birth  
11 certificate and a marriage license, it will be  
12 required to go to the Boone County Department of  
13 Revenue office to obtain the non-driver  
14 identification card; is this correct?

15 A. Yes.

16 Q. Would this be burdensome for you?

17 A. Yes.

18 Q. Why?

19 A. Because I would have to have Greg take me.

20 Q. Ms. Wienschenk, do you understand that if  
21 you show up to vote at the polls in November  
22 without a valid photo ID, you will not be able to

23 vote a regular ballot?

24 A. Yes.

25 Q. Do you understand that you will be

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1 provided a provisional ballot, but only if you can  
2 truthfully state under oath that you are unable to  
3 obtain a current and valid photo ID because of your  
4 physical disability?

5 A. Yes.

6 Q. Ms. Weinschenk, are you unable to get a  
7 non-driver's ID, or would it simply be a burden to  
8 you?

9 A. It would be a burden.

10 Q. Ms. Weinschenk, even if you could  
11 truthfully state under oath that you are unable to  
12 obtain a valid photo ID, do you understand that any  
13 provisional ballot you cast would not be counted  
14 unless the election authority can verify your  
15 identify by comparing your signature with that on  
16 file with the election authority?

17 A. Yes.

18 Q. And will your signature at the polls match  
19 the signature on your voter registration record?

20 A. No.

21 Q. Why is that?

22 A. I was born with cerebral palsy, and I can't

23 control my muscles, so I can't write.

24 Q. Ms. Weinschenk, is it true that you use a

25 mark in lieu of a signature?

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1 A. Yes. But it's never the same.

2 Q. Thank you. Ms. Weinschenk, do you feel  
3 that the photo ID requirement interferes with your  
4 fundamental right to vote?

5 A. Yes.

6 MS. AIRSMAN: Thank you. I have no  
7 further questions.

8 THE COURT: Mr. Presson?

9 MR. PRESSON: I have no questions, your  
10 Honor.

11 THE COURT: Mr. Long?

12 MR. LONG: I have none, your Honor.

13 THE COURT: Ms. Wood?

14 MS. WOOD: I have none, your Honor.

15 THE COURT: Mr. Downing?

16 MR. DOWNING: No, your Honor.

17 THE COURT: Ms. Weinschenk, thank you very  
18 much.

19 MR. DOWNING: Your Honor, at this time our  
20 live testimony is over for today. We have several  
21 exhibits that we've talked about offering and have  
22 offered subject to the objections, so we need to

23 find out what the objections are to determine  
24 whether your Honor will admit these into evidence.

25 MR. NEWMAN: I have also, your Honor,

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1 offered, I believe, four exhibits into evidence and  
2 request a ruling.

3 MR. DOWNING: One other thing, your Honor,  
4 my understanding is what you said earlier was that  
5 all the testimony offered today all day would be in  
6 both cases.

7 THE COURT: Correct.

8 MR. DOWNING: Okay. Thank you.

9 MR. PRESSON: I'm not quite sure which  
10 exhibits because I don't think they've actually  
11 been offered yet.

12 MR. DOWNING: We can go through that, if  
13 you have them.

14 THE COURT: Well, are there exhibits that  
15 you're not offering?

16 MR. DOWNING: No.

17 MR. LONG: I'd like to object to those,  
18 Judge.

19 THE COURT: But in terms of their resting,  
20 we have, at least, their complete offer of their  
21 exhibits. There's no foundation requirement, no  
22 foundation objections made. There are issues on

23 relevance, materiality --

24 MR. PRESSON: And hearsay.

25 THE COURT: -- and hearsay, double

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1 hearsay.

2 In terms of testimony, do you have  
3 testimony, Mr. Presson or Mr. Long, that you wish  
4 to offer today?

5 MR. PRESSON: I only have one affidavit  
6 possibly. Be similar to the affidavits that  
7 Plaintiffs have offered. I have shared with both  
8 counsel. That would be the only thing. No live  
9 testimony at this time.

10 MR. LONG: And, your Honor, I also have  
11 one affidavit from the Department of Revenue. I  
12 didn't share it with counsel ahead of time, but I  
13 would submit that in lieu of live testimony.

14 MS. WOOD: And, your Honor, we have no  
15 evidence.

16 THE COURT: I apologize.

17 MS. WOOD: That's okay.

18 THE COURT: Let me just take a -- I will  
19 keep it about a five-minute recess. I want to get  
20 my calendar, but I want to talk to counsel in  
21 chambers, but I expect to be back out here no later  
22 than ten after 5:00, and I'm hoping for five after

23 5:00. I'd like to have a three- or four-minute  
24 conference in chambers with my calendar. All  
25 right.

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1 MR. NEWMAN: Now?

2 THE COURT: Right now.

3 We'll be in recess.

4 (A BREAK WAS TAKEN.)

5 THE COURT: Thank you very much. Be  
6 seated.

7 Mr. Downing, do you want to complete your  
8 offer?

9 MR. DOWNING: Yes, your Honor. Just to  
10 make sure the record is clear, we're offering  
11 Plaintiffs' Exhibits 10 through 51 subject to the  
12 objections of counsel.

13 THE COURT: Subject to that objection,  
14 Exhibits 10 through 51 are offered and will be  
15 received, subject to objection.

16 (PLAINTIFFS' EXHIBIT NOS. 10 THROUGH 51  
17 WERE RECEIVED INTO EVIDENCE.)

18 MR. NEWMAN: Your Honor, I would like to  
19 offer, I believe I have, but I will again offer  
20 Jackson County Plaintiffs' Exhibits 1, 2, 4 and 5.

21 THE COURT: That offer is made and those  
22 are also --

23 MR. PRESSON: Subject to objections.

24 THE COURT: -- subject to objections,

25 which we'll take up.

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1 Mr. Presson, do you have evidence?

2 MR. PRESSON: At this time only the  
3 affidavit of Michael P. Wilson, who is the Director  
4 of the Oversight Division of the Committee on  
5 Legislative Research. I previously provided copies  
6 to opposing counsel. And this should be  
7 Defendants' Exhibit A. Are we using letters to  
8 keep it separate?

9 THE COURT: Letters.

10 (DEFENDANTS' EXHIBIT A WAS MARKED FOR  
11 IDENTIFICATION BY THE REPORTER.)

12 THE COURT: Mr. Newman, I have your 1, 2  
13 and 4. What was 5?

14 MR. NEWMAN: Five was the deposition of  
15 Mel Hancock.

16 THE COURT: Oh, sure.

17 Exhibit A, is there an objection to A, or  
18 is it just received?

19 MR. DOWNING: Subject to the same  
20 objections. We haven't seen double hearsay, your  
21 Honor.

22 THE COURT: And, Mr. Presson, do you have

23 any further evidence, at least, this evening?

24 MR. PRESSON: Nothing further at this

25 time, your Honor.

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1 THE COURT: Mr. Long?

2 MR. LONG: Yes, your Honor. I provided  
3 counsel previously with the affidavit of Lowell  
4 Pearson, the Deputy Director for Missouri  
5 Department of Revenue, and ask that that be marked  
6 and admitted. I have a courtesy copy for the  
7 court.

8 (DEFENDANTS' EXHIBIT B WAS MARKED FOR  
9 IDENTIFICATION BY THE REPORTER.)

10 MR. LONG: Judge, would ask for admission  
11 of Exhibit B.

12 MR. PRESSON: I have additional copies,  
13 too, for the Court.

14 MR. DOWNING: Your Honor, we reserve the  
15 same objections.

16 MR. LONG: Judge, we do not have any live  
17 testimony at this time.

18 THE COURT: Ms. Woods?

19 MS. WOOD: We don't have anything further  
20 at this time.

21 THE COURT: All right. At this time the  
22 Court's going to pass the matter. And let me ask

- 23 you this: The understanding of the Court that all
- 24 the evidence has been received would be applicable
- 25 to both temporary and permanent?

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1 MR. DOWNING: Yes, your Honor.

2 THE COURT: Is that correct?

3 MR. NEWMAN: Correct, your Honor.

4 MR. PRESSON: Correct.

5 THE COURT: And the Court will pass the

6 matter for further hearing until Thursday,

7 September 7th at ten o'clock.

8 Court's in recess.

9 (OFF THE RECORD.)

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