

Exhibit DD
(Excerpts)

1 KRIS KOBACH
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE DISTRICT OF KANSAS
4

5 STEVEN WAYNE FISH, RALPH)
6 ORTIZ, DONNA BUCCI,)
7 CHARLES STRICKER, THOMAS)
8 J. BOYNTON, DOUGLAS)
9 HUTCHINSON, AND THE)
10 LEAGUE OF WOMEN VOTERS)
11 OF KANSAS, ON BEHALF OF)
12 THEMSELVES AND ALL)
13 OTHERS SIMILARLY)
14 SITUATED,)

15 Plaintiffs,)

Case No. 2:16-cv-2105

16 vs.)

17 KRIS KOBACH, IN HIS)
18 OFFICIAL CAPACITY AS)
19 SECRETARY OF STATE FOR)
20 THE STATE OF KANSAS; AND)
21 NICK JORDAN, IN HIS)
22 OFFICIAL CAPACITY AS)
23 SECRETARY OF REVENUE FOR)
24 THE STATE OF KANSAS,)

25 Defendants.)

26 Kansas City, KS
27 DEPOSITION OF KRIS KOBACH
28 TAKEN ON BEHALF OF THE PLAINTIFFS
29 AUGUST 3, 2017

30 Reported By: Lauren N. Lawrence
31 Job No. 127945

1 KRIS KOBACH

2 I N D E X

3 WITNESS: PAGE

4 KRIS KOBACH

5 EXAMINATION BY MR. HO 9

6

7 E X H I B I T S

8 NO. DESCRIPTION PAGE

9 Exhibit 1 Amendments to the National 10

10 Voter Registration Act

11 Exhibit 2 Consolidated Reply Memorandum 13

12 in Support of Plaintiffs'

13 Motion for Preliminary

14 Injunction

15 Exhibit 3 Emergency Motion for a Stay 30

16 Pending Appeal

17 Exhibit 4 E-mail dated July 3, 2017, to 32

18 Desiree Taliaferro from Kris Kobach

19 Exhibit 5 Department of Homeland 47

20 Security Kobach Strategic

21 Plan for First 365 Days

22 Exhibit 6 Defendant's Response to 64

23 Plaintiffs' Motion to Unseal

24

25

KRIS KOBACH
 IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF KANSAS

STEVEN WAYNE FISH, RALPH)
 ORTIZ, DONNA BUCCI,)
 CHARLES STRICKER, THOMAS)
 J. BOYNTON, DOUGLAS)
 HUTCHINSON, AND THE)
 LEAGUE OF WOMEN VOTERS)
 OF KANSAS, on behalf of)
 themselves and all)
 others similarly)
 situated,)

Plaintiffs,)

Case No. 2:16-cv-21-5

vs.)

KRIS KOBACH, in his)
 official capacity as)
 Secretary of State for)
 the State of Kansas; and)
 NICK JORDAN, in his)
 official capacity as)
 Secretary of Revenue for)
 the State of Kansas,)

Defendants.)

VIDEOTAPED DEPOSITION OF KRIS KOBACH,
 produced, sworn, and examined on August 3, 2017, at
 the offices of United States District Court of Kansas,
 500 State Avenue, Kansas City, Kansas 66101, before
 Lauren N. Lawrence, RPR, KS CCR, and Notary Public
 within and for the State of Missouri, in a certain
 cause now pending in the United States District Court
 for the District of Kansas between STEVEN WAYNE FISH,
 RALPH ORTIZ, DONNA BUCCI, CHARLES STRICKER, THOMAS J.
 BOYNTON, DOUGLAS HUTCHINSON, AND THE LEAGUE OF WOMEN
 VOTERS OF KANSAS, on behalf of themselves and all
 others similarly situated, Plaintiffs, versus KRIS
 KOBACH, in his official capacity as Secretary of State
 for the State of Kansas; and NICK JORDAN, in his
 official capacity as Secretary of Revenue for the
 State of Kansas, Defendants; on behalf of the
 Plaintiffs.

1 KRIS KOBACH

2 A P P E A R A N C E S

3 APPEARING FOR THE U.S. DISTRICT COURT:

4 Chief Magistrate Judge James P. O'Hara
5 U.S. DISTRICT COURT, DISTRICT OF KANSAS
6 United States District Court
7 500 State Avenue
8 Kansas City, Kansas 66101

9 APPEARING FOR PLAINTIFFS:

10 Mr. Dale Ho
11 Mr. R. Orion Danjuma
12 Mr. Doug Bonney
13 AMERICAN CIVIL LIBERTIES UNION
14 125 Broad Street
15 New York, New York 10004

16 APPEARING FOR DEFENDANT, SECRETARY OF STATE'S OFFICE:

17 Ms. Susan Becker
18 KANSAS SECRETARY OF STATE'S OFFICE
19 120 Southwest 10th Avenue
20 Topeka, Kansas 66612

21 ALSO PRESENT:

22 Ms. Amy Henson, Attorney/Law Clerk to
23 U.S. Magistrate Judge James O'Hara
24 Desiree Taliaferro, Secretary of State's Office
25 Michael Dennis, Videographer

Court Reporter:

Lauren N. Lawrence, RPR, KS CCR
Missouri Notary Public

1 KRIS KOBACH

2 Q. You've reviewed the substantive briefs and
3 dispositive briefs in the case?

4 A. This -- the dispositive briefs on the
5 merits, absolutely, I have reviewed.

6 Q. Okay. I'm going to hand you a document
7 that's been marked as Kobach Exhibit 1.

8 This is a draft amendment to Section 5 of
9 the National Voter Registration Act or NVRA that your
10 office produced to the plaintiffs in this case;
11 correct?

12 A. It is a -- it is a -- I would refer to it
13 as a draft of a draft. It's not actually anywhere
14 near ready to be proposed or shown to anyone.

15 Q. When was this "draft of a draft," as you
16 put it, drafted?

17 A. It would have been prepared by me sometime
18 in the late summer or early fall of 2016. It would
19 have been before the 10th Circuit ruled, but after --
20 on the preliminary injunction, but after Judge
21 Robinson ruled. Sometime in there.

22 Q. But just to clarify the record, Judge
23 Robinson issued a preliminary injunction decision on
24 May 17, 2016, and you're saying that this document,
25 Exhibit 1, was drafted after that ruling; correct?

1 KRIS KOBACH

2 A. Yes.

3 Q. And you said that you drafted it; correct?

4 A. Yes.

5 Q. You physically typed it out?

6 A. Yes. I physically typed it into my
7 computer.

8 Q. When you say your computer, do you mean
9 your personal computer or a Kansas Secretary of State
10 office computer?

11 A. I can't recall for cer- -- for certain.
12 I'm -- I'm not sure. If I were to speculate, I would
13 say more likely my personal one, but I'm not certain.

14 Q. The language that you propose in this
15 document, amendments to the National Voter
16 Registration Act, you proposed three changes to the
17 National Voter Registration Act; correct?

18 A. Well, the --

19 MS. BECKER: Objection. Mischaracterizes
20 what it said about it being a draft of a draft. And
21 there's no foundation too.

22 MR. HO: I'll re-ask the question.

23 Q. (By Mr. Ho) There are five items listed
24 here in this document, Amendments to the National
25 Voter Registration Act; correct?

1 KRIS KOBACH

2 A. Yes, there are.

3 Q. The last two are redacted; correct?

4 A. That is correct.

5 Q. Okay. The second item here reads "In
6 52 U.S.C. Section 204 [sic]" -- "20504(c)(2)(B),"
7 colon, "delete," quote, "'May require only the minimum
8 amount of information necessary to,'" end quote, "and
9 replace with," quote, "'may require any information
10 that the State deems necessary to'"; is that correct?

11 A. You have read it correctly, yes.

12 Q. The language in this item is word for word
13 exactly the same as what the plaintiffs in this case
14 argued previously would be precisely how the NVRA
15 would have to be rewritten in order for states to have
16 authority to require documentary proof of citizenship
17 for motor voter applicants; is that correct?

18 A. I have no idea what you argued. The --
19 this is -- the -- the reason for this is a contingency
20 if Plaintiffs win this lawsuit after final summary
21 judgment or a final bench trial. This is a -- the
22 reason it is a draft of a draft and it is not anywhere
23 near final form is it would only be necessary to file
24 this amendment or propose this amendment if the
25 defendant loses this case and Plaintiffs succeed in

1 KRIS KOBACH

2 persuading federal judges to change the meaning of the
3 NVRA.

4 Q. You're aware that the plaintiffs in this
5 case previously argued, during preliminary injunction
6 briefing, that in order for states to have the
7 authority to require documentary proof of citizenship
8 for motor voter applicants, then the NVRA would have
9 to be rewritten; correct?

10 A. I do not recall you making that argument.
11 No, I do not.

12 (Kobach Exhibit 2 was marked for
13 identification.)

14 Q. (By Mr. Ho) Okay. I'm going to hand you
15 what's marked as Plaintiffs -- sorry -- Kobach
16 Exhibit 2. It's a brief that was filed in this case.
17 This is Plaintiffs' reply brief on their motion for
18 preliminary injunction dated April 21, 2016,
19 Document 94.

20 Do you see that?

21 A. I see that, yes.

22 Q. Could you turn to page 17, please?

23 The third and fourth sentences in this
24 brief on this page read, "In essence, Defendants'
25 interpretation of the statute would require rewriting

1 KRIS KOBACH

2 the statute as follows." Quote, "'The voter
3 registration application portion of an application for
4 a state motor vehicle driver's license" --

5 A. I -- I'm sorry. Counsel, which page are
6 you on? You said 14 or 17?

7 MS. BECKER: Objection. This is already in
8 the record, as you've told me. I -- I object to
9 reading this document into the record and then you
10 asking for his comment on your argument.

11 THE COURT: Overruled.

12 Q. (By Mr. Ho) Are you on page 17?

13 A. I am now on page 17.

14 Q. Okay. The third sentence starts "In
15 essence, Defendants' interpretation of the statute
16 would require rewriting the statute as follows,"
17 quote, "'The voter registration application portion of
18 an application for a state motor vehicle driver's
19 license,'" dot, dot, dot, and then in strikethrough,
20 "'only the minimum amount of,'" end strikethrough and
21 in brackets, "'any information that the State deems
22 necessary,'" closed brackets, "'to enable state
23 election officials to assess the eligibility of the
24 applicant.'" "

25 Other than a few punctuation issues, did I

1 KRIS KOBACH

2 read that correctly?

3 A. Yes, you did.

4 Q. Okay. So the language in this brief that
5 the plaintiffs identified as being necessary to change
6 the NVRA in order to provide states with the authority
7 to require documentary proof of citizenship for motor
8 voter applicants is identical to Item 2 in your draft
9 of draft amendments to the National Voter Registration
10 Act; correct?

11 A. It is similar, but I did not consult your
12 brief in drafting what might be necessary if the ACLU
13 and plaintiffs in this case succeed in persuading a
14 federal judge to change the meaning of the NVRA. The
15 document is a contingency if the plaintiffs prevail in
16 the 10th Circuit and if the Supreme Court denies cert.
17 Then, at that point, it would be necessary for
18 Congress to restore the original meaning of the NVRA
19 and to correct the misinterpretation that Plaintiffs
20 have urged the courts to make.

21 Q. Your draft amendment was written after the
22 Plaintiffs' brief in this case that we just quoted
23 from, Exhibit Number 2; correct?

24 A. Yes. It was written after April 21, 2016.

25 Q. And your testimony today is that it is a

1 KRIS KOBACH

2 coincidence that the language in Item 2 in your draft
3 amendments to the NVRA is essentially identical to
4 what the plaintiffs had previously argued would be
5 necessary in order to provide states with authority to
6 require documentary proof of citizenship for motor
7 voter applicants; is that correct?

8 MS. BECKER: Objection. Mischaracterizes
9 the evidence. He didn't say "coincidence."

10 MR. HO: You can answer the question.

11 MS. BECKER: Mischaracterizing. I'd like
12 an objection ruling, please.

13 THE COURT: Certainly. The objection is
14 overruled.

15 You may answer, sir.

16 A. The -- I'm actually surprised to see the
17 similarity right now. So I don't recall ever looking
18 at your brief of April 21. I don't normally look at
19 your briefs to take guidance in anything that I do and
20 certainly wouldn't look at your briefs in drafting a
21 contingent plan for months, if not years, in the
22 future if you succeed in persuading the 10th Circuit
23 to change the meaning of the NVRA. So, no, I -- I
24 don't consult your legal writing in anything that I
25 do.

1 KRIS KOBACH

2 read by the reporter.)

3 A. I did review the preliminary injunction
4 briefing in this case, yes.

5 Q. (By Mr. Ho) And your testimony is that you
6 did not remember this argument in Plaintiffs' reply
7 brief in the preliminary injunction -- on -- on the
8 preliminary injunction motion about what would need to
9 change about the language of the National Voter
10 Registration Act in order for you to have authority to
11 require documentary proof of citizenship for motor
12 vehicle -- motor voter applicants at the time that you
13 drafted your draft amendments to the NVRA; correct?

14 A. You've asked a question that has lots of
15 components. I'll try to give you a very direct answer
16 to what I think you were asking.

17 I did not remember the portion of your
18 brief that you were referring to when I drafted a
19 contingency amendment for the future if the plaintiffs
20 in this case succeed in persuading a federal judge or
21 judges to change the meaning of the NVRA.

22 I would also add that your -- the
23 plaintiffs' entire case hinges on the words "may
24 require only the minimum amount of information
25 necessary," which I think you would agree with. And

1 KRIS KOBACH

2 it is obvious that that phrase would have to -- if you
3 persuade the federal judiciary to somehow read into
4 that a prohibition on proof of citizenship that the --
5 the -- the clarification by Congress in the future
6 would have to say that the State has discretion, and
7 there really aren't that many ways to say that the
8 State has discretion. So I find it interesting that
9 your brief of April 21 has similar language.

10 Q. (By Mr. Ho) And just so that the record is
11 clear, your use of the phrase in your draft amendment
12 "may require any information that the State deems
13 necessary," which is identical to the language in
14 Plaintiffs' preliminary injunction reply brief, that
15 similarity in the language is a coincidence; correct?

16 A. I think that it is so unlikely as to be
17 almost impossible that I would take one of the ACLU's
18 briefs in hand and look at the ACLU's brief if I were
19 trying to make sure that, in the future, if the ACLU
20 won this case, that Congress were able to clarify the
21 original meaning of the -- of the NVRA as stated by
22 Senator Wendell Ford in the United States Senate when
23 he said that nothing in this bill prohibits a state
24 from requiring proof of citizenship. So I think it is
25 inconceivable that I would have had your brief in my

1 KRIS KOBACH

2 hand when drafting this.

3 Q. Are you aware of any other draft amendments
4 to the National Voter Registration Act that would
5 require -- I'm sorry. Let me start that again. It --
6 it -- let me ask a different question.

7 Is it your understanding that these
8 amendments would supersede the preliminary injunction
9 ruling in this case and permit you to impose a
10 documentary proof of citizenship requirement on motor
11 voter applicants?

12 MS. BECKER: Objection. Calls for -- form.

13 THE COURT: Counsel, I want to make sure
14 you're not -- you're -- that you're understanding
15 correctly where I'm coming from. What I want you to
16 do is, if you have an objection to, say, for instance,
17 in this situation, "I object to the form," and then
18 precisely state what's wrong with the form as opposed
19 to then transcending into -- as coaching the witness
20 as to what you want him to do.

21 MS. BECKER: I just --

22 THE COURT: So maybe more specificity here
23 would be helpful.

24 MS. BECKER: Okay.

25 THE COURT: So if there's something --

1 KRIS KOBACH

2 A. I don't -- I've never seen such a draft,
3 no.

4 Q. Is this the only draft amendment -- draft
5 of amendments to the NVRA in your possession?

6 A. Yes.

7 Q. Are there any other versions of this
8 document Exhibit 1 that you're aware of?

9 A. No.

10 Q. You drafted this document in preparation
11 for a meeting with the President-elect; correct?

12 A. No.

13 Q. Okay.

14 A. I drafted this document for a future
15 time -- I didn't even know I was going to meet with
16 the President-elect when I drafted this. As I said,
17 it was late summer, earlier fall. So that would have
18 been, at the earliest, July; at the latest, October.
19 I didn't know I was going to meet with the
20 President until November -- President-elect until
21 November of 2016. So, no, it was not -- there was no
22 anticipation of any meeting with the President when
23 this was drafted.

24 (Kobach Exhibit 3 was marked for
25 identification.)

1 KRIS KOBACH

2 Q. (By Mr. Ho) I'm going to show you a
3 document that's been marked as Kobach Exhibit 3. This
4 is an emergency motion for a stay that you filed in
5 the 10th Circuit yesterday. Could you turn to page 6
6 of this document?

7 The last full paragraph on this page, the
8 last sentence reads "In sum, the information
9 surrounding the mental thought processes of the
10 Secretary when he drafted two pages in preparation for
11 meeting the President-elect, is not relevant to the
12 case at hand and should not be the subject of a
13 special deposition."

14 Did I read that correctly?

15 A. Yes, you read that correctly.

16 Q. Is that not a reference to Exhibit 1, your
17 draft amendments to the National Voter Registration
18 Act?

19 A. I don't know what it's a reference to. I
20 didn't draft this, but I'm telling you flatly that I
21 did not know I would ever be meeting with the
22 President-elect when I drafted this because he was not
23 elected as of -- I know I drafted this before October
24 when the -- the date in October when the 10th Circuit
25 ruled. So I could not have possibly drafted this in

1 KRIS KOBACH

2 preparation for a meeting with the President-elect.

3 Q. Okay. Did you draft this document,
4 Exhibit 1, before the oral argument in the
5 10th Circuit on the preliminary injunction?

6 A. You'll have to tell me the date of the oral
7 argument. I can't re- -- recall off the top of my
8 head.

9 Q. I believe it was in mid-August.

10 A. I -- I honestly don't know.

11 (Kobach Exhibit 4 was marked for
12 identification.)

13 Q. (By Mr. Ho) Okay. I'm going to show you a
14 document that's been marked as Kobach Exhibit 4. This
15 is an e-mail chain, and it includes an e-mail from you
16 to Gene Hamilton dated November 9, 2016; is that
17 correct?

18 A. Yes, that is correct.

19 Q. Who is Gene Hamilton?

20 A. At the time, Gene Hamilton was one of the
21 people on the presidential transition team --
22 President Trump's transition team.

23 Q. What was his role on President Trump's
24 transition team?

25 A. So I should be more specific. There were

1 KRIS KOBACH

2 several transition teams. This was the transition
3 team having to do with the Department of Homeland
4 Security and the issue of immigration. He was on that
5 team. I was on that team, and he was kind of one of
6 the people who was organizing it, coordinating phone
7 calls, things like that.

8 Q. This e-mail is sent from your Gmail
9 account; correct?

10 A. Yes. That is correct.

11 Q. But you did not produce this document to
12 the Plaintiffs until after the motion to compel
13 briefing and order on that motion to compel; correct?

14 A. I think that is correct.

15 Q. Okay. Have you searched your Gmail account
16 for documents that may be responsive to Plaintiffs'
17 other discovery requests in this case?

18 MS. BECKER: Objection. That's
19 attorney-client work product and privileged. And --
20 yeah. And...

21 THE COURT: Objections are overruled.

22 A. Yes. I have searched my Gmail accounts --
23 or account. Singular.

24 Q. (By Mr. Ho) When did you search your Gmail
25 account for responsive documents?

1 KRIS KOBACH

2 Q. (By Mr. Ho) All right. In this --

3 A. And -- and I want to be clear. I
4 don't reca- -- you -- you asked earlier do you
5 recall -- I just don't recall what the content was of
6 the e-mails that I may have deleted. It's just --
7 mainly, it's by size. So it -- it is conceivable, but
8 I -- I don't know.

9 Q. (By Mr. Ho) In your e-mail to
10 Mr. Hamilton, you write "Thanks. Cindy mentioned it
11 that we will also be putting together information on
12 legislation drafts for submission to Congress early in
13 the administration. I have already" -- "I have some
14 already started regarding amendments to the NVRA to
15 make clear that proof of citizenship requirements are
16 permitted," in parentheses, "based on my ongoing
17 litigation with the ACLU over this."

18 Did I read that right?

19 A. Yes.

20 Q. Okay. When you refer to amendments to the
21 NVRA, is that any -- a reference to Exhibit 1, the
22 draft NVRA amendments we discussed earlier?

23 A. Well, it's a -- as the text of this e-mail
24 says, it's -- it's -- it says I've already started.
25 And so if anything had ever been -- first of all,

1 KRIS KOBACH

2 nothing was ever sent to the transition team or to
3 Mr. Hamilton. And so if anything hypothetically would
4 have been sent, it probably wouldn't have been
5 Exhibit 1. It would have been something more -- in
6 more finished form, but the -- to give some context,
7 the -- this e-mail followed a number of phone
8 conversations, the transition team would usually have
9 conference calls, and people would be chiming in from
10 all over the country. Well, most of them were in DC.
11 I was elsewhere. I'm -- I think there were other
12 people off in other locations too.

13 Anyway, this e-mail followed a -- I think
14 it was right after the election. It looks like
15 Nov- -- Wednesday, November 9, and I believe -- my
16 recollection is that there was a -- a conference call
17 where they needed to very quickly take an assessment
18 of who had -- who had worked on what. Members of the
19 transition team were on Capitol Hill, staffs; people
20 like me, not on Capitol Hill but who had extensively
21 worked on immigration issues. And so it was sort of
22 an inventory taking. "If you've worked on anything,
23 let us know so we don't reinvent the wheel and draft
24 another executive order when somebody has already done
25 this.

1 KRIS KOBACH

2 So this was simply me saying, "Oh, by the
3 way, I have started working on these two issues." The
4 purpose of the transition team was to prepare
5 executive orders, prepare initial policy direction for
6 the new administration, potentially prepare drafts of
7 regulations, which the Executive Branch can do without
8 Congress's direct involvement. It was unclear whether
9 the transition team would do legislative drafts, but
10 basically all the members of the team were asked, "Let
11 us know what you've worked on so we can move quickly
12 if we need to take whatever you worked on and add it."

13 As it happened, nothing was ever sent on
14 either of the issues I mentioned in this e-mail.

15 Q. Mr. Kobach, my question was a lot simpler
16 than that. It was:

17 When you wrote to Mr. Hamilton in reference
18 to amendments to the NVRA that, in your words, you had
19 "already started," was that a reference to Exhibit 1,
20 the document we discussed earlier titled Amendments to
21 the National Voter Registration Act?

22 MS. BECKER: Objection. Asked and
23 answered.

24 THE COURT: Overruled. He did not answer
25 that question.

1 KRIS KOBACH

2 A. Okay. I -- yes. In -- in the sense that I
3 had -- I was simply telling him "I had started work on
4 that. If the" -- again, I made reference to the
5 litigation with the ACLU. If the ACLU won in this
6 litigation, then it might be necessary for the Trump
7 Administration to -- if the Trump Administration
8 agreed that the -- it changed the meaning of the
9 NVRA -- such a victory by the ACLU, that is -- then
10 this might be something that they -- they wish to
11 consider. But at the end of the day, I don't think
12 the transition team ever put together any legislative
13 drafts. So...

14 Q. (By Mr. Ho) But in your e-mail you
15 reference "legislation drafts for submission to
16 Congress early in the administration"?

17 A. Right.

18 Q. Right?

19 A. Yes.

20 Q. So the draft amendments to the NVRA are
21 included in the category of "legislation drafts for
22 submission to Congress early in the administration";
23 correct?

24 A. I would note that the transition team never
25 did produce any legislative drafts that I'm aware of.

1 KRIS KOBACH

2 So I think there -- there was a discussion of it on
3 one of the conference calls. But, to my knowledge,
4 the transition team -- at least the transition team I
5 was involved in never produced any legislative drafts.

6 Q. No. My question wasn't what the transition
7 team did or didn't do. My question was:

8 When you referenced "legislation drafts for
9 submission to Congress early in the administration,"
10 included among that idea of drafts of legislation for
11 early in the administration, was amendments to the
12 NVRA; correct?

13 A. No. You'll see that the e-mail discusses
14 two amendments. The other one was an amendment to
15 8 U.S.C. 1623 regarding in-state tuition to illegal
16 aliens. That issue is not in litigation, and that
17 would be something that, if the li- -- administration
18 wanted to do early in its first year, they could do
19 right away. Drafts -- amendments to the NVRA were --
20 are not necessary yet because the NVRA fully supports
21 states that want to provide -- that want to require
22 proof of citizenship. So the "early in
23 administration" would be more of a reference to 1623.

24 Q. So just so I understand your testimony,
25 Mr. Kobach, your first sentence after "Thanks"

1 KRIS KOBACH

2 references "legislation drafts for submission to
3 Congress early in the administration"; correct?

4 A. Yes.

5 Q. Your second sentence immediately thereafter
6 is "I have some already" -- "I have some already
7 started regarding amendments to the NVRA." And what
8 you are testifying today is that the amendments to the
9 NVRA are not among what you intended to reference when
10 you described "legislation drafts for submission to
11 Congress early in the administration; correct?

12 A. I find it interesting that you didn't read
13 the full second sentence because the rest of the
14 second sentence refers to the amendment regarding
15 in-state tuition to illegal aliens in violation of
16 8 U.S.C. 1623. And so that is what I was referring to
17 in that -- the "early in the administration" part. As
18 I've told you multiple times, there's no need to amend
19 the NVRA to restore the original understanding of
20 Congress that states may require proof of citizenship
21 unless and until the 10th Circuit rules on final
22 jud- -- judgment in this case and the Supreme Court
23 denies cert that -- that -- that your attempt to
24 change the NV- -- NVRA is correct. So, no, there --
25 it is not necessary early in the administration.

1 KRIS KOBACH

2 of the Trump Administration?

3 A. It was never shared with any member of the
4 Trump Administration.

5 Q. Was Exhibit 1 ever shared with anyone other
6 than Garrett Roe or Bryan Caskey?

7 A. It was not shared with anyone other than
8 those two individuals.

9 Q. Did you ever have -- other than this e-mail
10 that we've talked about with Gene Hamilton -- any
11 other communications with anyone regarding the
12 existence of Exhibit 1, the draft amendments?

13 A. Yes. I -- I did.

14 Q. And who were those communications with?

15 A. I can recall specifically telling a friend
16 of mine who is a congressman from Ohio -- Iowa, Steven
17 King, that in the future, if we lose this case, an
18 amendment might be necessary to restore the meaning of
19 the NVRA, and that I -- would he be willing to
20 introduce that amendment at that future date if -- if
21 it were necessary.

22 Q. Any other communications with anyone else
23 regarding draft amendments to the NVRA?

24 MS. BECKER: Objection. Are -- are you
25 referring to the document?

1 KRIS KOBACH

2 MR. HO: Yes.

3 MS. BECKER: Correct? Okay.

4 A. Not -- no, not specifically regard- --
5 regarding this -- this Document Number 1.

6 Obviously, I -- you're going to -- another
7 document, which talks in more general terms about
8 amending the NVRA, but as far as this one, no. The
9 only other person I can recall is -- is Congressman
10 King. And, again, it was never sent to him, and it
11 was just "If" -- "If ever the time comes, would you be
12 willing to carry this amendment?"

13 Q. (By Mr. Ho) Any communications with anyone
14 else regarding what you described as the "idea" of
15 amending the NVRA?

16 MS. BECKER: Objection. Scope.

17 A. Yeah. The --

18 THE COURT: Overruled.

19 A. Yes. The idea of amending the NVRA is --
20 yeah -- is -- I've had multiple communications with
21 people.

22 Q. (By Mr. Ho) And with whom have you had
23 those communications?

24 A. Well, obviously, the idea of amending the
25 NVRA is in the final line of the document you have in

1 KRIS KOBACH

2 NVRA?

3 A. It -- I don't recall any specific con- --
4 conversations is -- is the answer to your question.
5 Is it possible? Yes, but I -- I don't recall any.

6 (Kobach Exhibit 5 was marked for
7 identification.)

8 Q. (By Mr. Ho) I'm going to show you what's
9 been marked as Kobach Exhibit 5.

10 This is a document titled Department of
11 Homeland Security Kobach Strategic Plan for First
12 365 Days; correct?

13 A. Yes.

14 Q. What is this document?

15 A. This --

16 MS. BECKER: Objection. The document
17 speaks for itself -- or form. Could you ask a
18 specific question about it?

19 THE COURT: Overruled.

20 A. This document is a document that I prepared
21 before having a meeting with President-elect Trump in
22 November of 2016.

23 Q. (By Mr. Ho) Did anyone else assist in the
24 preparation of this document?

25 A. No.

1 KRIS KOBACH

2 Q. How many page- -- full -- total pages is
3 this document?

4 A. It is one page.

5 Q. Okay. When did you say it was created?

6 A. In November of 2016.

7 Q. There are 23 items on this document;
8 correct?

9 A. Yes.

10 Q. And you took this document with you to a
11 meeting with then President-elect Trump on
12 November 20, 2016, in New Jersey; correct?

13 A. I don't recall the exact date, but it was
14 in New Jersey, yes, that sounds about right.

15 Q. Did you also bring your Exhibit 1, your
16 draft NVRA amendment to that meeting?

17 A. No.

18 Q. What was the purpose of that meeting?

19 A. The purpose of the meeting was to discuss
20 the future of the Department of Homeland Security and
21 also to discuss the possibility that I might become
22 Secretary of Homeland Security.

23 Q. You were photographed holding this
24 document, Exhibit 5, outside of that meeting; correct?

25 A. Yes.

1 KRIS KOBACH

2 Q. The last header on this document, Roman
3 numeral five, reads "Stop aliens from voting";
4 correct?

5 A. Correct.

6 Q. And that header has three items under it,
7 the first two of which are redacted; correct?

8 A. Correct.

9 Q. The third item, Item Number 23, reads
10 "Draft Amendments to National Voter Registration Act
11 to," underlined, "promote proof of citizenship
12 requirements"; right?

13 A. Correct.

14 Q. And that is a reference to Exhibit 1, your
15 draft amendments to the NVRA; correct?

16 A. No.

17 MS. BECKER: Objection. Form.
18 Mischaracterized the evidence.

19 THE COURT: It's moot. He's already
20 answered question.

21 A. No, it's not.

22 MS. BECKER: Slow down.

23 A. It -- it refers to an un- -- as yet
24 uncreated amendment.

25 Q. (By Mr. Ho) And what exactly does this

1 KRIS KOBACH

2 refer to, if not your Exhibit 1?

3 A. Well, the --

4 MS. BECKER: Object- -- I'm sorry.

5 Objection. It assumes facts not in evidence.

6 THE COURT: Overruled.

7 A. The -- the draft of a draft amendment,
8 Exhibit 1, would be a contingency if -- if ever
9 Plaintiffs prevail in this case. It doesn't encourage
10 states to do anything. The concept on line number 23
11 of Exhibit 5 is if -- I mean, again, it's more just a
12 conceptual statement. If it could be -- you know, if
13 you guys prevail in this case, then that future
14 amendment might need to in- -- incorporate some of
15 Exhibit 1. But, really, it's -- it's more of a -- as
16 you may recall, the NVRA, when it was drafted in 1993,
17 encouraged an implicit incentive to encourage states
18 to do same-day registration, or it gave -- in essence,
19 it gave states that did same-day registration a sort
20 of benefit, if you will, under the Act. And the idea
21 would be, at some point in the future, the
22 administration might want to give an incentive to do
23 proof of citizenship.

24 Q. (By Mr. Ho) And what do you mean by
25 incentive for proof of citizenship?

1 KRIS KOBACH

2 Q. -- to keep the --

3 A. I --

4 Q. -- voter rolls clean that you would exempt
5 states from if they adopted --

6 A. It --

7 Q. -- a proof of citizenship requirement?

8 A. It -- it's not -- there -- there are none
9 in the -- in the existing NVRA, as I'm sure you know,
10 other than the general admonition at the beginning of
11 the "Purposes" section of the NVRA, which talks about
12 maintaining accurate voter rolls. So -- well, there
13 are. There -- you could -- you could argue that the
14 provisions regarding how obsolete registrations
15 when -- when a person moves are designed to keep voter
16 rolls clean.

17 The point is that, it -- it doesn't refer
18 to anything specific. It's -- if there were a future
19 bill to bring the NVRA up to date with the Internet
20 age, this is something that the administration can
21 consider. The purpose of this document, Exhibit 5, is
22 it's just a -- it's a discussion piece. It's intended
23 to provide elements for possible discussion in a
24 meeting.

25 Q. And it's a discussion piece for the first

1 KRIS KOBACH

2 365 days of the Trump Administration; correct?

3 A. Mostly -- actually, Item Number 23 doesn't
4 really fall within the first 365 days. I don't think
5 it's -- A, we wouldn't have had any finality in this
6 litigation. So you wouldn't know whether you guys in
7 the ACLU had succeeded in changing the meaning of the
8 NVRA. I think it wouldn't be prudent to -- to draft
9 any amendment to the NVRA until after this case is
10 concluded because you wouldn't want to kind of open up
11 the hood and start tinkering with the engine of the
12 NVRA until you know whether you had succeeded in
13 changing the meaning of the NVRA.

14 So, really -- and so that -- so you don't
15 know yet whether any of the language in Exhibit 1
16 would have to be -- you know, would be -- would be
17 wise to be included in it. So I would say that Item
18 Number 23 doesn't really fall within the first
19 365 days. It would be more accident, you know.

20 Q. So the title of this document is something
21 of a misnomer? When you say for first 365 days --

22 A. No.

23 Q. -- not everything in the document relates
24 to the first 365 days of --

25 A. Correct. Not everything, but the vast

1 KRIS KOBACH

2 majority of what's redacted does. Absolutely.

3 Q. How long was your meeting with
4 President-elect Trump?

5 MS. BECKER: Objection. Scope.

6 THE COURT: Sustained.

7 MS. BECKER: Wait. Don't answer.

8 Q. (By Mr. Ho) Did anyone else attend your
9 meeting with President-elect Trump when you carried
10 this document into it?

11 MS. BECKER: Objection. Scope.

12 THE COURT: As to that objection --

13 MS. BECKER: And privileged.

14 THE COURT: -- the objection is overruled.

15 A. Yes. The other attendees were, to the best
16 of my recollection, Reince Priebus, who subsequently
17 became Chief of Staff; Steve Bannon, who became the
18 President's strategic advisor; Stephen Miller, who is
19 the President's -- now the President's domestic --
20 sort of a domestic policy advisor. I'm not sure what
21 his title is exactly -- Jared Kushner, the President's
22 son-in-law. I think that's it.

23 Q. (By Mr. Ho) Did you give --

24 A. And -- and the President-elect, of course.

25 Q. Did you give a copy of this document to

1 KRIS KOBACH

2 anyone at that meeting?

3 A. Yes. I did give a copy of the document to
4 probably all of those individuals I just named. I --
5 I -- I think I brought in -- I don't know -- five or
6 six copies.

7 Q. Did you give a copy of this document to
8 anyone outside of that meeting?

9 A. No.

10 MR. ROE: And, again, obviously, the Court
11 and opposing counsel?

12 Q. (By Mr. Ho) With the --

13 A. Yeah. I mean --

14 Q. -- exception of the Court and opposing
15 counsel?

16 A. -- at -- at -- right. At -- at the time,
17 yeah.

18 Q. So I understand Item 23 on this document
19 refers to an idea to amend the NVRA. That's your
20 testimony; right?

21 A. It's -- it's an idea in the future, as I
22 said, that if the NVRA were modernized at some point
23 after this case is done, then you -- you might want to
24 do a number of things.

25 You might want to correct any misimpression

1 KRIS KOBACH

2 that is created by a judgment in this case that goes
3 against the original meaning of the NVRA. You might
4 want to modernize the NVRA and bring it into the
5 Internet age, and you might want to, you know,
6 consider incentives, like in the original NVRA
7 language to -- which incentivized same-day
8 registration.

9 Q. Were any of those ideas discussed during
10 your meeting with President-elect Trump?

11 A. I don't think so. In -- in other words, I
12 don't think we got to Item 23.

13 Q. Did you discuss the National Voter
14 Registration Act during that meeting with President
15 Trump?

16 A. I don't think so.

17 Q. Did you discuss documentary proof of
18 citizenship requirements during the November 20
19 meeting with President-elect Trump?

20 MS. BECKER: Objection. Scope.

21 THE COURT: Overruled.

22 A. I don't recall specifically. I don't think
23 we -- I don't think so. I think I may have discussed
24 the general issue of aliens voting, but I don't recall
25 documentary proof of citizenship requirements being

1 KRIS KOBACH

2 discussed.

3 Q. (By Mr. Ho) When you say you may have
4 discussed "the general issue of aliens voting," what
5 do you mean by that?

6 A. That we may have discussed the problem of
7 noncitizens voting illegally in U.S. elections.

8 Q. Did you discuss the extent of the problem
9 of noncitizens voting illegally in U.S. elections?

10 MS. BECKER: Objection. Scope.

11 THE COURT: Overruled.

12 A. I don't -- I don't remember.

13 Q. (By Mr. Ho) What -- when you say that you
14 discussed the problem of noncitizens voting in --
15 illegally in U.S. elections, what do you mean by that?

16 A. I mean that noncitizens have regis- -- have
17 successfully registered and have successfully voted in
18 Kansas, and that I believe this problem extends beyond
19 Kansas to the other states as well, and that it has
20 the potential to -- well, it over- -- it effectively
21 nullifies a citizen's vote every time a noncitizen
22 votes, and it potentially can swing the result of an
23 election if the election is close.

24 MS. BECKER: And, Counsel, I just wanted to
25 note my stopwatch shows that you have five minutes.

1 KRIS KOBACH

2 where amendments to the NVRA were discussed?

3 MS. BECKER: Objection. Scope.

4 THE COURT: Overruled.

5 A. I cannot recall. I -- I'm pretty sure the
6 answer is no. I can't think of any, no.

7 Q. (By Mr. Ho) Have you had any other
8 meetings with President Trump or members of the Trump
9 Administration where documentary proof of citizenship
10 for voter registration was discussed?

11 MS. BECKER: Objection. Scope.

12 THE COURT: Overruled.

13 A. Yes. Because I am -- President Trump named
14 me to be the vice chairman of his Commission on
15 Election Integrity, and that issue has been discussed
16 in the context of the Commission on Election
17 Integrity, and that Commission includes, as staff,
18 members of his administration.

19 Q. (By Mr. Ho) This document was drafted
20 before the formation of that commission; correct?

21 THE COURT: Which -- which are you
22 referring to, Mr. Ho?

23 MR. HO: Oh, I'm sorry.

24 Q. (By Mr. Ho) Document -- Exhibit Number 5,
25 your strategic plan for Homeland Security was drafted

1 KRIS KOBACH

2 before the formation of the Commission; correct?

3 A. That is correct.

4 Q. Was the formation of the Commission
5 discussed during your November meeting with Donald
6 Trump?

7 MS. BECKER: Objection. Scope.

8 THE COURT: Sustained.

9 Q. (By Mr. Ho) Were methods for -- let me
10 start that again.

11 Were -- were methods for identifying
12 noncitizens who would become registered to vote
13 discussed during your November meeting with then
14 President-elect Trump?

15 MS. BECKER: Objection. Scope and attorney
16 work product as lead counsel.

17 THE COURT: Sustained on the former. Moot
18 as to the latter.

19 Q. (By Mr. Ho) Can you describe the substance
20 of your communications that you referred to earlier
21 about documentary proof of citizenship with members of
22 the presidential commission on elections?

23 MS. BECKER: Objection. Form. Attorney
24 work product and scope.

25 THE COURT: Sustained as to scope. Moot as

1 KRIS KOBACH

2 are a reply memorandum, and --

3 MS. BECKER: This?

4 A. Yeah. I -- I don't think I've shared any
5 briefing in this case with members of the Commission
6 staff. I don't recall ever doing that. I -- I don't
7 recall it. It -- it's possible, but I don't know why
8 I would.

9 Q. (By Mr. Ho) Have you -- you testified
10 earlier that you've had discussions about documentary
11 proof of citizenship requirements for voter
12 registration with members or staff of the Commission;
13 correct?

14 A. I think I testified that it -- it's
15 possible I could -- that we have -- could have
16 discussed that. We -- we have discussed the issue of
17 noncitizen voting. I -- I don't know if -- I don't
18 recall a specific discussion of documentary proof of
19 citizenship requirements; although, I think in the
20 open -- this would be public record.

21 In the first meeting of the Commission in
22 the month of July, in my opening statement, I might
23 have said something about Kansas having a documentary
24 proof of citizenship requirement. So there might be a
25 reference to it in that -- in that public statement.

1 KRIS KOBACH

2 Q. Other than that reference, can you recall
3 any other conversations or communications with members
4 of the Commission regarding documentary proof of
5 citizenship requirements for voter registration?

6 A. I think it's --

7 MS. BECKER: Objection. Asked and
8 answered.

9 THE COURT: That objection is overruled.

10 A. I can't -- let's see. I am -- I am certain
11 that I have discussed this lawsuit with staff of the
12 Commission. So since this lawsuit principally
13 concerns documentary proof of citizenship, I would say
14 that the answer is probably, yes, that we -- that
15 in -- in some sense, I have discussed the issue with
16 them.

17 Q. (By Mr. Ho) Who have you discussed the
18 issue with specifically?

19 A. Most likely, it would be the designated
20 federal officer of the Commission, who is Andrew
21 Kossack. And, possibly, also -- but I'm not
22 certain -- the general counsel to the Vice President,
23 Mark Paoletta. But, again, those are the two members
24 of the Commission staff that I most frequently talk
25 to, and I'm sure -- I just don't recall specifically.

1 KRIS KOBACH

2 THE COURT: The scope objection is
3 sustained. The other objections are deemed moot.

4 (Discussion held sotto voce.)

5 THE COURT: You have four minutes, Mr. Ho.

6 MR. HO: Yes. Thank you, Your Honor.

7 May we just go off the record for about
8 90 seconds?

9 THE COURT: You may.

10 VIDEOGRAPHER: We're now going off the
11 record. The time is 11:52.

12 (Recess.)

13 VIDEOGRAPHER: We're now going back on the
14 record. The time is 11:54.

15 Q. (By Mr. Ho) Mr. Kobach, you testified
16 earlier about conversations you had with Congressman
17 Steve King --

18 A. Yes.

19 Q. -- about documentary proof of citizenship
20 requirements and am- -- amending the NVRA.

21 Do you remember that?

22 MS. BECKER: Objection. Mischaracterizes
23 the evidence.

24 A. I had a conversation with Steve --

25 THE COURT: Excuse me. The -- the

1 KRIS KOBACH

2 objection is overruled.

3 THE WITNESS: I'm sorry.

4 A. I had a conversation -- well, maybe more
5 than one conversation with Steve King about in the --
6 if in the future, if we lost this lawsuit, if we -- if
7 it were necessary to amend the NVRA to restore the
8 original meaning of the NVRA because you had succeeded
9 in changing it through litigation, would he be willing
10 to carry an amendment if I ever gave one to him, and
11 he said yes.

12 Q. (By Mr. Ho) You said you may have had more
13 than one conversation?

14 A. Well, I -- I talk with Steve King -- we're
15 friends. So I -- I -- it's -- yeah. I think I
16 probably have said it to him on more than one
17 telephone -- usually telephone conversations.

18 Q. Do you know roughly when these
19 communications happened where you asked him to
20 potentially carry one of these amendments to the NVRA?

21 A. One would have been roughly about the time
22 that I drafted this in the -- in the late summer
23 earlier fall -- "this" being Exhibit 1 -- just
24 thinking to myself -- again, planning ahead -- if ever
25 this is necessary, you know, who would I consider if

1 KRIS KOBACH

2 we lost this case to -- to -- to restore the original
3 meaning by -- by carrying the amendment, the original
4 meaning of the NVRA? And then probably -- I think
5 I've -- I think I've discussed it with him
6 subsequently, maybe, late fall, early winter. Just,
7 you know, checking to be sure, you know, "If ever this
8 happens, can I" -- "would you be willing to carry it?"

9 Q. Any time -- have you had any follow-up
10 conversations since that time?

11 A. Not about this subject. I -- I think I
12 just had a conversation with him last week, but it had
13 nothing to do with this.

14 Q. During your conversations with
15 Congressman King, did you ever discuss evidence of
16 noncitizen registration and the extent of it as a
17 reason for needing these amendments?

18 MS. BECKER: Objection. Scope.

19 THE COURT: Sustained.

20 MR. DANJUMA: Just -- just one moment, Your
21 Honor.

22 MR. HO: We don't have any other questions
23 at this time, Your Honor.

24 THE COURT: Any cross-exam?

25 MR. ROE: Can we --