

STATE OF MAINE

KENNEBEC COUNTY, ss.

SUPERIOR COURT

CIVIL ACTION

DOCKET NO. AUGSC-CV-2020-00095

APPEAL NO. KEN-20-262

ALLIANCE FOR RETIRED  
AMERICANS, ET ALS,

Plaintiff

VS.

MATTHEW DUNLAP, ET ALS,

Defendant

**MOTION FOR PRELIMINARY**  
**INJUNCTION - DAY 1**

SEPTEMBER 21, 2020

AUGUSTA, MAINE

VOLUME I OF II

BEFORE:

THE HONORABLE WILLIAM J. STOKES

APPEARANCES:

ON BEHALF OF THE PLAINTIFF:

MATTHEW S. WARNER, ESQ.

SEVERIN M. BELIVEAU, ESQ.

ON BEHALF OF THE DEFENDANT:

PHYLLIS GARDINER, ESQ.

ALSO PRESENT:

PATRICK STRAWBRIDGE, ESQ.

ZACHARY HEIDEN, ESQ.

THOMAS KNOWLTON, ESQ.

ALEXA BALTES, ESQ.

JOHN DEVANEY, ESQ.

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I N D E X

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FOR THE PLAINTIFF:

Dr. Michael Herron 29                      97,136                      151                      156,157

Ronald Stroman                      168                      194,200                      213                      217

MISCELLANEOUS

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1 (This matter came for hearing before The Honorable  
2 William J. Stokes of the Kennebec County Superior Court,  
3 Augusta, Maine, on September 21, 2020 at 9:00 a.m.)

4 THE CLERK: On the record.

5 THE COURT: Good morning, everyone. This is Justice  
6 Stokes. We are on the record in the matter of Alliance for  
7 Retired Americans, et al. v. Matthew Dunlap, et al. This is  
8 the Kennebec docket number CV-20-95.

9 Does anyone need more time to get ready for the hearing?  
10 It's about -- by my watch, it's 9:00. Does anyone need any  
11 further --

12 MS. GARDINER: Your Honor?

13 THE COURT: Yes, Ms. Gardiner?

14 MS. GARDINER: I believe my co-counsel, Tom Knowlton is  
15 waiting to be (audio interference) --

16 THE COURT: Waiting to be admitted?

17 MS. GARDINER: -- on the call.

18 THE COURT: Okay. So we'll just wait for him to come on  
19 and we'll get him on. Any --

20 MS. GARDINER: He's -- he's ready. He's ready, but I  
21 don't know whether there's something that -- that the clerk  
22 needs to do to --

23 THE COURT: I see --

24 MS. GARDINER: -- admit him.

25 THE COURT: -- I see, Jason (phonetic) -- well, usually



1 the little -- little blurb comes up and says "admit" or  
2 "deny."

3 Do you see where Tom Knowlton is?

4 THE CLERK: I don't, but I'm going to send him the link  
5 right now.

6 THE COURT: Ms. Gardiner, we're going to send Tom another  
7 link just to make sure that he's got it.

8 MS. GARDINER: Thank you.

9 (Pause)

10 THE COURT: That -- there's Severin. Mr. Beliveau, is  
11 that you? Nope. Mr. Beliveau, did you just join? .

12 THE CLERK: Uh oh, he's muted.

13 THE COURT: Right, but I'm not.

14 THE CLERK: Nope, but he is. (Indiscernible).

15 THE COURT: Severin, you might have had to -- unmute  
16 yourself to respond. The skills that we have had to develop  
17 during the pandemic of how to keep our mouths shut and when to  
18 allow ourselves to talk, I'm -- I suppose it's good practice  
19 for when this is finally over.

20 I'm still waiting -- Ms. Gardiner, I'm still waiting  
21 to -- to -- to see Mr. Knowlton pop up. I haven't seen him  
22 yet. There he is. Okay.

23 Mr. Knowlton, you there? Perennial problem: not  
24 wanting -- not knowing when to mute or unmute.

25 MR. KNOWLTON: There we go, I'm unmuted.



1 THE COURT: there --

2 MR. KNOWLTON: I'm unmuted now --

3 THE COURT: -- there you go, Mr. Knowlton.

4 MR. KNOWLTON: -- is it better?

5 THE COURT: Great. So listen, we're on the record in the  
6 matter of Alliance for Retired Americans v. Dunlap, docket  
7 number CV-20-95. We're here on the Plaintiffs' motion for a  
8 preliminary injunction. Let me tell you what I've done.

9 I'm pretty much current with everything you've sent me  
10 except for the most recent exhibits that you've delivered this  
11 morning. I did spend most of the weekend reading the cases  
12 that have been cited. I haven't read them all, but I've read  
13 a -- the overwhelming number of them from various  
14 jurisdictions. I did get a chance to read the Pennsylvania  
15 Supreme Court decision over the weekend. I did not get a  
16 chance, yet, to read the Oklahoma decision and the one from  
17 Michigan. I did scan it, I had some technical difficulties  
18 trying to print it out, but I did read through both of the  
19 Oklahoma and Michigan, I -- in sort of a scanning mode.

20 I did get a chance to read the Pennsylvania Supreme Court  
21 decision in its entirety. And I've read pretty much every  
22 decision that you've cited. I think the most recent one was  
23 on August 28th of this year. So I'm fairly current, but they  
24 seem to be coming down at a particularly fast rate as we get  
25 into September.



1        So I'm prepared today. I think what we'll probably do is  
2 go for a reasonable length of time this morning. All of us  
3 probably need a little break every once in a while; I do, I  
4 know, when I'm wearing this mask for, you know, multiple  
5 hours. So I'll probably go until about 10:30, take a break,  
6 and go until noontime, take a break, and then we have the rest  
7 of the day to do whatever you need to do. I have all the  
8 exhibits that have been sent.

9        John Devaney, you there?

10       MR. DEVANEY: I'm here, Your Honor.

11       THE COURT: Okay.

12       MR. DEVANEY: Can you guys see me?

13       THE COURT: John, I can see you. Thank you. And I have  
14 your submission with the extra authority from Pennsylvania,  
15 Oklahoma, and Michigan. I also have the exhibits that were  
16 delivered, I think, this past Friday by the defendants in  
17 support of their opposition to the preliminary injunction.  
18 I've also -- also received today Exhibit 5 from the  
19 defendants, the exhibit -- affidavit of Dr. Shah.

20       And then I also have -- Mr. Warner, I have the  
21 Plaintiffs' exhibits that I believe were submitted either  
22 Friday or today.

23       MR. WARNER: I have it.

24       THE COURT: And then I also have the exhibits submitted  
25 by Mr. Strawbridge on behalf of the intervenors. I think



1 that's all I have, but you -- you know, again, I -- I've got a  
2 lot of material here so I may have overlooked something or --  
3 or have not mentioned it on the record.

4 Zach, did you submit anything further in terms of  
5 exhibits on behalf of ACLU?

6 MR. HEIDEN: No, Your Honor, we did not.

7 THE COURT: All right. So I think the record is  
8 complete. And as I said, I read everything that I could get  
9 my hands on that I actually had. So I think I'm pretty  
10 current but there are some things I haven't managed to read,  
11 but I'll do that within the next several days.

12 I will try to get a decision out on this relatively  
13 quickly. I've been thinking about how -- how I'm going to do  
14 that. I'm not going to try to take a lot of time to do an  
15 extensive procedural history or anything like that. I think  
16 you need a decision. A -- speed is more important than --  
17 than the aesthetics of whatever I write. So I'm going to try  
18 to get a decision out for all of you relatively quickly so  
19 that you can do whatever you need to do.

20 With that, anything we need to do preliminarily, John,  
21 before we begin from the Plaintiffs' standpoint, or Matt,  
22 either one?

23 MR. DEVANEY: Your Honor, this is John. I believe we  
24 have agreement among the parties on addition of the exhibits  
25 that have been put forth, you know, including the materials



1 that people submitted with their preliminary injunction  
2 papers --

3 THE COURT: Okay.

4 MR. DEVANEY: And there's just one very small issue that  
5 Mr. Strawbridge and I traded emails on about this morning, and  
6 I think Mr. Strawbridge and I want to briefly address that.  
7 But other than that, I believe, subject to any comments from  
8 others, we have agreement on admission of everything that has  
9 been submitted to you.

10 THE COURT: All right. Let me turn -- before we get to  
11 Patrick's issue, Ms. Gardiner and Mr. Knowlton, who's going to  
12 take the lead on the defense?

13 MS. GARDINER: I'm trying to get my cursor on the mute  
14 button.

15 THE COURT: I understand. I know the feeling. My --  
16 my --

17 MS. GARDINER: Your Honor, we're --

18 THE COURT: -- heart's with you. What'd you say?

19 MS. GARDINER: This is -- this is a team effort for  
20 the -- for the defense, Your Honor --

21 THE COURT: All right.

22 MS. GARDINER: I'll be ending the agreement, and Mr.  
23 Knowlton will be cross-examining witnesses.

24 THE COURT: All right. Great.

25 And then Zach, I've given you time to argue as well.



1 And Patrick, are you there?

2 MR. STRAWBRIDGE: Yes, I --

3 THE COURT: There you are.

4 MR. STRAWBRIDGE: -- am.

5 THE COURT: Yeah, I see you.

6 MR. STRAWBRIDGE: Yeah.

7 THE COURT: I'm sorry. And let's address the issue that  
8 John mentioned so we can get that out of the way and sort of  
9 move forward.

10 MR. STRAWBRIDGE: Yeah, Judge, just -- just to avoid a  
11 dispute, I think we have agreed with them that our Exhibit 2,  
12 which is a Carter Baker (phonetic) (audio interference) --

13 THE COURT: I'm sorry. Would you repeat that, Patrick?

14 MR. STRAWBRIDGE: -- with that (audio interference)  
15 pages -- I'm sorry. Exhibit 2 --

16 THE COURT: Yup.

17 MR. STRAWBRIDGE: -- in the intervenor's notebook.

18 THE COURT: Yup, I got it. I'm looking at -- I'm looking  
19 at it now, Patrick.

20 MR. STRAWBRIDGE: Yeah. We're -- just -- just -- just to  
21 avoid a dispute, we're -- we're agreed that we're offering  
22 that for purposes of an exhibit at this hearing only as to  
23 pages 45 to 47 --

24 THE COURT: Okay.

25 MR. STRAWBRIDGE: -- which is all we cited in our papers,



1 and I guess, obviously, any cover page or context to establish  
2 the authenticity of the document; that's it.

3 THE COURT: All right. Is that -- is that your  
4 understanding, John?

5 MR. DEVANEY: It is, Your Honor.

6 THE COURT: All right. So we'll limit that exhibit to 45  
7 to forty -- pages 45 to 47, which is, as you say, Patrick,  
8 that's what you cite in your written materials anyways.

9 MR. STRAWBRIDGE: And -- and while I -- while I have the  
10 mic, I guess I would just note that I'm going to be handling  
11 any cross-examination that we elect to do, and Ms. Baltes  
12 is -- Alexa Baltes, from our firm, will be handling the  
13 arguments this morning.

14 THE COURT: Okay, great. How do you want to proceed?  
15 There are a number of -- of statutory provisions that are the  
16 subject of the motion to -- for preliminary injunction. Do  
17 you want to start with opening statements, or do you want to  
18 go directly to the presentation of evidence? I'll leave it to  
19 you. I've got the day for you, so I'm willing to -- I'm  
20 willing to sort of go in any method you'd like to pursue.

21 John, you can -- since you're the moving party and --  
22 Matt, you're the moving party, I'll sort of throw it in your  
23 hands for now.

24 MR. DEVANEY: Well -- well, thanks, Your Honor. Based on  
25 our last status conference with you, I had the impression that



1 we would give you very brief opening statements and then turn  
2 to the witness presentation. And I can tell you that we're  
3 presenting just two witnesses today --

4 THE COURT: Yeah.

5 MR. DEVANEY: -- first, Dr. Herron and then second, Mr.  
6 Stroman. So -- yeah, the -- my -- my plan had been to give a  
7 five or ten-minute opening defense as --

8 THE COURT: That's fine.

9 MR. DEVANEY: -- Your Honor.

10 THE COURT: Yup, that's fine.

11 Is that acceptable to all the rest of the parties?

12 Phyllis and Tom? Patrick? Zach? Okay, great.

13 MS. GARDINER: Yes.

14 THE COURT: So with that, are we ready to begin? John,  
15 you think you're ready to begin? Do you need any time to get  
16 set?

17 MR. DEVANEY: I'm good. I think I'm ready to go. Thank  
18 you.

19 THE COURT: All right. We'll let's go. Let's do it.

20 PLAINTIFF'S OPENING STATEMENT

21 MR. DEVANEY: All right. Well, thank you. Your Honor, I  
22 am first mindful of the fact that, as you just described,  
23 you -- you've studied the papers, you've read the cases, and  
24 you expressed a preference for a -- a short opening so I will  
25 try to keep my remarks brief. And I don't plan these remarks



1 to go into detail about the various provisions for  
2 challenging. Instead, what I -- I want to emphasize is  
3 just -- just the -- the important backdrop under which this  
4 case is taking place.

5 And we all know that we're placed in really extraordinary  
6 circumstances in these times, and these circumstances need to  
7 be considered, of course, in assessing the claims we've put  
8 before Your Honor in our request for injunctive relief. And I  
9 know some of these circumstances are self-evident, but I still  
10 want to spend a couple of minutes emphasizing what they are  
11 and their importance to our claims.

12 And the reality, of course, is the November election is  
13 one that is truly unprecedented today for the country and for  
14 the State of Maine. As we all know too well, we are dealing  
15 with a trifecta of events that will make voting and  
16 administering the election this year an extraordinary  
17 challenge.

18 And the first of those events is the most lethal pandemic  
19 that our country has faced since, I guess, 1918. And  
20 unfortunately, today is the day that we will probably record  
21 our 200,000th death in this country from the pandemic. Cases  
22 have been rising in Maine. And as the expert epidemiologists  
23 in this case agree on both sides, the pandemic will  
24 unfortunately still be very much with us when this election  
25 takes place next month and in early November.



1       And Your Honor, Maine, of course, recognized this fact in  
2       its recent lawsuit against the Postal Service which is before  
3       Your Honor, and Maine recognized that voting in person this  
4       year is simply not feasible for many people in this state. As  
5       we know, Maine has -- I believe, it's the highest population  
6       of elderly citizens in the country. And it means that voting  
7       at the polls, and as important serving at the polls, it's just  
8       simply too risky for tens of thousands or hundreds of  
9       thousands of people in this state.

10       And second -- or the second trifecta of events, Your  
11       Honor, is that the pandemic, for reasons relating to the risks  
12       that everyone's facing, has led to a surge in absentee voting  
13       across the country including voting by mail and including in  
14       Maine. And the primaries in just about every state that have  
15       taken place this past spring and summer saw unprecedented  
16       increases in voting by mail. And election officials in Maine  
17       and elsewhere are predicting unprecedented volumes of voting  
18       by mail in the November election.

19       And this is another essential fact in this case that is  
20       undisputed, just like the fact that the pandemic will still be  
21       with us is undisputed. There's no question that for this  
22       election to truly reflect the will of the people and for  
23       Mainers to be able to exercise their right to vote, they're  
24       going to need full, ROBUST access and reliable access to  
25       voting by mail.



1       And third, the last of the trifecta events -- of events,  
2 Your Honor, is that all of this comes at a time when the  
3 United States Postal Service is having severe budget  
4 shortfalls, personnel shortages, and significant delays in  
5 delivering mail. And it -- the reality is that at a time when  
6 our country needs to Postal Service more than ever to run an  
7 election, the Postal Service has never been challenged in the  
8 service it's providing to our country.

9       And again, this essential fact is -- is undisputed as  
10 Maine just filed a lawsuit against the Postal Service  
11 outlining the problems the Postal Service is facing with  
12 resource shortages and with the performance problems it's  
13 having in delivering mail on a timely basis.

14       And Your Honor, we'll be hearing, as I mentioned before,  
15 from Mr. Stroman who's on the video screen right now, and Ron,  
16 who was the deputy postmaster general for nine years, the  
17 number-two position in the Postal Service up until this past  
18 June 1, and he's got some very unique insights into some of  
19 the challenges the Postal Service is facing and frankly, the  
20 incompatibility of some of Maine's voting laws with what's  
21 happening with the different times in the Postal Service.

22       And so, Your Honor, it's against this backdrop that I ask  
23 you to consider our claims and our challenges to some of this  
24 provisions of Maine -- Maine's voting laws relating to  
25 absentee ballots. And I -- as I said before, I'm not -- I



1 don't plan on walking through each of the claims we're making,  
2 but there is one I want to highlight just because I think it  
3 is so poignant. And that's the election date of receipt  
4 deadline which is the requirement that to be counted, an  
5 absentee ballot must arrive by 8:00 on Election Day, and if it  
6 doesn't, it is -- it is, you know, tossed away. It's not  
7 counted, and that voter is disenfranchised. And in recent  
8 elections in Maine, more than 1,000 citizens have been  
9 disenfranchised at this law.

10 The problem promises to be a lot worse this year because  
11 of the surge of voting by mail and because of the problems  
12 with the Postal Service. As our expert, Dr. Herron,  
13 establishes, the convergence of these events that I've  
14 described, ensure -- almost ensures that thousands of Mainers  
15 are at risk. And they'll -- likely will be disenfranchised if  
16 that Election Day receipt deadline is not moved back so that  
17 at least some number of days after Election Day are allowed  
18 for ballots that come in by mail to be counted, using the  
19 postmark as an indication of whether the voter voted on or  
20 before Election Day and allowing some number of days after  
21 Election Day to be counted.

22 To me, Your Honor, that -- this particular claim just  
23 highlights these various factors that I've kind of described  
24 to you and the effect of them. And similar relief is needed  
25 for some of the other provisions that we've obviously





1 challenged, but this one, to me, just brings to life this  
2 trifecta of events in a -- ways that are particularly  
3 meaningful.

4 And related to that, Your Honor, in Maine, as you're  
5 aware, one can request an absentee ballot up to five days  
6 before Election Day. The Postal Service is telling us that  
7 it's going to take about two weeks, maybe 15 days, for a  
8 roundtrip; that is for a ballot to go from the clerk's office  
9 to a voter, and if the voter promptly fills it out, to get it  
10 back to the clerk's office. And what that tells us is voters  
11 who request ballots, you know, within the last couple of weeks  
12 of the election, certainly within the last week of the  
13 election, are at very serious risk of not having their ballots  
14 arrive in time and being rejected.

15 And the general counsel of the Postal Service recently  
16 informed Maine of that in a letter to the State, and -- and  
17 Maine, itself, recognizes it and plan to file against the  
18 USPS.

19 Your Honor, I want to abide by my promise to be brief,  
20 and so I will not go through the other claims. I'll leave  
21 them to our papers and to the discussion that we're about to  
22 have with Dr. Herron. The -- but as I conclude, there are  
23 just two other points I ask you to bear in mind.

24 One is that Maine's voting system, as we describe in our  
25 papers, was designed for in-person registration and in-person



1 voting. But Maine is among one of the states in the country  
2 that has the highest rates of in-person voting historically.  
3 Its system is designed for that. Its system is not designed  
4 to have a -- an election in which a majority of voters are  
5 going to be voting absentee. And that underlines why we're  
6 here and why we felt we had to come in and make sure that the  
7 constitutional rights of Mainers were protected in these  
8 extraordinary circumstances and that changes be made to  
9 voting -- absentee voting regime to ensure that voting is not  
10 overly-burdensome (audio interference) by Mainers -- for  
11 Mainers who must vote by mail.

12 And the last point I'll make, Your Honor: the state  
13 interest that's put forth, for the most part, its support of  
14 these restrictions on absentee voting that we'll be talking  
15 about today is protected against voter fraud. And the record,  
16 I would submit, establishes that this is another yet  
17 undisputed fact in this case; that voter fraud is not a  
18 significant issue in the country and particularly in Maine  
19 where, again in the complaint against the Postal Service,  
20 Maine says that. And to his credit, Secretary of State Dunlap  
21 has said that on multiple occasions publically.

22 And so I'd ask Your Honor as you consider the state  
23 interest that's put forth, that you bear in mind that voter  
24 fraud is not a meaningful problem in Maine and is not a  
25 sufficient state interest to support the infringement on



1 voting rights that are created by the provisions that we're  
2 challenging.

3 With that, Your Honor, I will cede to my colleagues, and  
4 we look forward to having to hear from Dr. Herron after we  
5 hear from others with their openings.

6 THE COURT: Thank you, Mr. Devaney. I appreciate it.

7 Zach, do you want to say anything? I -- I know you're in  
8 as an amicus. I haven't given you an opportunity to argue.  
9 I -- I want to make sure you have a full opportunity to say  
10 whatever you want to say. So if you want to say -- take some  
11 time in your -- for an opening, I'm happy to hear you.

12 AMICUS CURIAE'S OPENING STATEMENT

13 MR. HEIDEN: Thank you, Justice Stokes, and thank you for  
14 the opportunity. My name is Zachary Heiden, and I represent  
15 Amici Curiae, The ACLU of Maine, and Maine Conservation  
16 Voters.

17 And just briefly, as Mr. Devaney said, I expect that the  
18 evidence today that you're going to hear is going to -- to  
19 show that Maine's election system has served it well in the  
20 past under normal circumstances, but what we are experiencing  
21 today is anything but normal circumstances. And I think the  
22 Court is aware of that. You're holding a trial over Google  
23 while wearing a mask, so it's probably not escaped anybody's  
24 attention that this is an unusual world that we are in.

25 And when the Court is considering the evidence that's



1 been presented so far and the evidence that's presented today,  
2 we hope that it'll take account of the fact that as  
3 circumstances change, the legal analysis, the balance whether  
4 it's a strict scrutiny analysis or a -- or a pure balancing  
5 test analysis, also has to change to take account of that.  
6 And in light of that, we think that at the end of close of  
7 evidence and after hearing arguments, you're going to find  
8 that -- that a preliminary injunction is -- is required in  
9 this case.

10 The second point that I'm going to make has to go with --  
11 to defense's which I expect that you'll -- the evidence will  
12 show today that the State has a number of defenses. It's made  
13 them in its briefing and I think it will support them in  
14 its -- its arguments today. But a number of those defenses go  
15 to concerns that the State would have -- the executive branch,  
16 particularly would have with implementing some of the issues  
17 under consideration in Plaintiffs' motion on its own, for  
18 example, issues related to the fisc and the legislature's  
19 control over spending or issues related to home rule and  
20 the -- the power of municipalities.

21 While those are undeniably valid constitutional  
22 considerations for the executive branch acting on its own,  
23 they fall away when we look at them in light of an order from  
24 this Court -- an order on issues of the constitutional  
25 considerations that are no less important. So as you're

1 considering the evidence, and -- and ultimately when you hear  
2 the -- the legal arguments, we hope that the Court will view  
3 those defenses not through the lens of what could the  
4 secretary of state or the executive branch do on its own, but  
5 what could the Court order the executive branch and the State  
6 of Maine to do because we are, after all, one state with one  
7 constitution, and this Court's decision will be binding on the  
8 entire state.

9 With that, I'll look forward to making legal arguments  
10 later today and to hearing the evidence as it comes in.

11 THE COURT: Thank you, Mr. Heiden, appreciate it.

12 And Ms. Gardiner, are you going to do some -- the  
13 arguing, and Mr. Knowlton's going to the cross -- questioning?

14 MS. GARDINER: Yes, Your Honor.

15 THE COURT: All right. I'd be happy to hear from you.

16 DEFENDANT'S OPENING STATEMENT

17 MS. GARDINER: Thank you. At the outset, we think it is  
18 worth noting the standards (audio interference) in evaluating  
19 Plaintiffs' claims, and the lens through which this Court  
20 should view the Plaintiffs' evidence this morning.

21 A mandatory injunction is an extraordinary and drastic  
22 relief. It should not be granted unless the moving party  
23 carries the burden of persuasion with respect to each of the  
24 four elements of the preliminary injunction test. Plaintiffs  
25 bear the burden first of showing that they have a substantial



1 likelihood of success on the merits of each of their claims.  
2 To succeed on the merits under the Anderson-Burdick sliding  
3 scale test, Plaintiffs must prove with respect to each of  
4 their claims that the state law requirement they challenge  
5 actually imposes an undue burden on Plaintiffs' right to vote.  
6 It is not adequately justified by any government interest.

7 It's not enough to show that particular impairment might  
8 possibly burden some voters or theoretically could burden some  
9 voters. Nor is it enough to show that modifications they --  
10 they want this Court to impose would be preferable or easier  
11 for voters or even that there may be sound policy reasons to  
12 support such changes. But those are arguments that should be  
13 presented to the legislature, not the Court.

14 The Constitution explicitly provides state legislatures  
15 with authority to regulate the times, places, and manner of  
16 holding the elections. And reasonable, non-discriminatory  
17 regulations that impose a moderate burden on the right to vote  
18 must be upheld if justified by important state interests. We  
19 ask the Court to listen and review the evidence carefully in  
20 applying this framework of analysis.

21 And we recommend to the Court, Federal District Court's  
22 recent decision in the Oklahoma case that Your Honor  
23 referenced that was provided by Plaintiffs on Friday. A  
24 Democratic Congressional Campaign Committee in Oklahoma,  
25 Democratic Party v. Ziriox. It provides a useful guide to the

1 analytical framework. The evidence in this case will show  
2 that any burdens imposed by the election laws Plaintiffs have  
3 challenged are moderate to slight and are more than justified  
4 by important state interests in administering an orderly,  
5 fair, and secure election that will produce outcomes that  
6 voters can have confidence in.

7 (Indiscernible) offer (indiscernible) theories about how  
8 voters could be burdened by various requirements, but no  
9 evidence that any voter has actually been harmed or burdened.  
10 And the data in the record is going to prove that either way.

11 In addition to proving substantial likelihood of success  
12 on merits, Plaintiffs also bear a heavy burden to show that a  
13 mandatory injunction changing the rules governing voter  
14 registration and absentee balloting during the last five weeks  
15 of an election cycle is justifiable and in the public  
16 interest. A tall order, especially when those rules have to  
17 be implemented by local officials in 500 different  
18 jurisdictions across the state.

19 The rules Plaintiffs ask the Court to modify have  
20 governed Maine elections for decades. Changing the rules so  
21 close to an election can easily cause confusion for voters and  
22 election workers and undermine the State's ability to run an  
23 orderly, secure, and a reliable election process which is so  
24 crucial.

25 Finally, as the Court considers the case law offered, we



1 ask that you keep in mind that analysis of the extent to which  
2 any voting regulation burdens the right to vote is highly  
3 fact-dependent, and every state's election laws differ in  
4 important respects. Evaluating the degree of burden imposed  
5 by one department requirement, often depends on the effects  
6 that other requirements and alternatives provided to voters  
7 may be provided in that state's laws. The incidence of  
8 COVID-19 and relative public health risks also vary  
9 significantly among states.

10 Furthermore, Maine is different from most states outside  
11 of New England in that we administer elections locally at the  
12 municipal, not county level. This means, among other things,  
13 that no Maine voter lives very far from their town office.  
14 And contrary to what the Plaintiffs' interests argued, it is  
15 certainly not a disputed fact that a surge in absentee voting  
16 means high dependence on voting by mail. Voting absentee in  
17 Maine does not mean necessarily voting my mail, that is of --  
18 one option, but there are other options including delivery by  
19 a family member, delivery by a third-person, and driving  
20 across town to place an absentee ballot in a secure drop box  
21 without having to have an interaction with anybody.

22 And I would disagree as well that Maine's system of  
23 voting is so highly dependent on in-person voting. That's  
24 certainly been the tradition in Maine, but Maine has had a  
25 robust system of absentee balloting for a long time. We're





1 one of the states that allows absentee voting for no reason  
2 with no excuses. And there has been a significant amount of  
3 absentee voting over the years, although it is certainly  
4 urgent this year.

5 It's also significant when examining other cases and  
6 (indiscernible) made, that our population is relatively small.  
7 So while Pennsylvania's secretary of state expects three  
8 million voters to request mail-in absentee ballots, Maine only  
9 has about a million voters, and they're dispersed across 500  
10 local jurisdictions reducing the possibility of long lines at  
11 voting places and backlogs of absentee ballot requests in  
12 clerks' offices.

13 Our primary election in July was conducted without any of  
14 the problems encountered in states such as was found in (audio  
15 interference) Pennsylvania earlier this year even though Maine  
16 also experienced a significant surge in absentee balloting.

17 While not effortless, registering to vote and voting is  
18 quite easy, and Maine's regulation of time, place, and manner  
19 are both reasonable and justifiable. As shown on the record  
20 already before this Court, they impose no undue burdens on  
21 Plaintiffs' constitutional rights, and an injunction is not  
22 warranted.

23 Maine has a -- does have a proud tradition of maintaining  
24 election integrity, and the regulations that -- that we have  
25 and operate under in this election are designed to continue



1 that record. Thank you, Your Honor, that's all I have.

2 THE COURT: Thank you, Ms. Gardiner.

3 Mr. Strawbridge, happy to hear from you.

4 MR. STRAWBRIDGE: Ms. Baltes will be presenting opening  
5 argument if that's okay, Your Honor?

6 THE COURT: Absolutely, it's -- it -- perfectly great.

7 Ms. Baltes, nice to see you.

8 INTERVENOR'S OPENING STATEMENT

9 MS. BALTES: Good morning, Your Honor. This case is one  
10 of many recent lawsuits brought all over the country by  
11 Democrats and their allies to change long-settled state  
12 election laws. Their efforts to, among other things, alter  
13 mail-in ballot deadlines, require the Government to pay for  
14 postage, and allow ballot harvesting, are subjects properly  
15 limited to legislative discussions since, indeed, it is state  
16 legislatures charged with the power and obligation to weigh  
17 all relevant policy concerns and regulate elections.

18 But the four pillars movement hasn't persuaded  
19 legislatures in many parts of the country. Instead, they see  
20 COVID-19 as an opportunity to, at best, short-circuit, and at  
21 worst circumvent state legislative process by asking Courts  
22 like this one to reweigh policy decisions and rewrite the law  
23 even as the November 3rd election is already meaningfully  
24 under way. The Court should decline to be used as a tool for  
25 such interference.



1       And the evidence will show that the Court should deny the  
2 Plaintiffs' motion for preliminary injunction. Last minute  
3 judicial changes to elections sow confusion in the electorate  
4 increasing the risk of ballot mistakes and decreasing both  
5 participation and faith in the system. And here Plaintiffs'  
6 only delay in bringing this suit was the additional 44 delay  
7 in moving for a preliminary injunction is what has opened up  
8 the Court, the State, and voters to those risks associated  
9 with judicially-imposed, last minute changes to election laws.

10       The Purcell principle counts as against judicial  
11 interference in these -- circumstances without regard to the  
12 substance of Plaintiffs' claims. But in any event, Plaintiffs  
13 have failed to show even a reasonable likelihood of success on  
14 the merits of any of their many claims, let alone a clear  
15 likelihood of success required for the mandatory injunctions  
16 that they seek. All of the claims fail the Anderson-Burdick  
17 balancing because no provision or policy places more than a  
18 minimal burden on Plaintiffs' opportunity to vote. And any  
19 such burdens are outweighed by the state's interest in the  
20 orderly administration of fair and accurate elections.

21       Maine is known for its accommodating, accessible voting  
22 laws. The state provides so many ways to vote and to receive  
23 a ballot, that any person who struggles with the given option  
24 has plenty of alternative means to cast their vote. But  
25 differently, the plain and legitimate speed of Maine's

1 election laws does not deny the reasonable opportunity to  
2 vote. That ends the relevant analysis.

3 To the extent there are isolated individuals who face  
4 true idiosyncratic burdens on their ability to vote, those who  
5 can't vote safely in person on or before Election Day despite  
6 the many accommodations and precautions that have been taken,  
7 can't pay for postage or can't access postage, can't drive the  
8 short distance to deliver their ballot in a secure no-human  
9 contact drop box, and don't have a family member or a  
10 third-party volunteer who can deliver their ballot for them,  
11 striking down this generally acceptable law is not the answer.

12 COVID-19 hasn't produced new logistical and safety  
13 considerations imposed for voters in the state. But those  
14 voters in the state have had the last six months to weigh  
15 those considerations and form a plan of action. Importantly  
16 here, the State has spent substantial time, energy, and effort  
17 to adapt the November election to both protect and accommodate  
18 voters as well as preserve the integrity and orderly  
19 administration of the election. There is no basis for  
20 upsetting the decisions the State has made. The evidence will  
21 show the preliminary injunction should be denied.

22 THE COURT: Thank you, Ms. Baltes. I believe that  
23 completes opening statements. And with that, Mr. -- I'll turn  
24 it back to you, Mr. Devaney, to call your first witness if  
25 you'd like.



1 MR. DEVANEY: Thank you, Your Honor. Plaintiffs call Dr.  
2 Michael Herron.

3 THE COURT: Mr. Herron, good to see you. Can you see me  
4 all right?

5 DR. HERRON: Good to see you, Your Honor. I can't see  
6 myself, but I can see you and Mr. Devaney and various other  
7 people. So --

8 THE COURT: Okay. You might be up on the corner.

9 DR. HERRON: -- if you can see me, I don't need to -- oh,  
10 yes, there it is.

11 THE COURT: What -- yeah, you see you -- the -- that  
12 little window up there? What -- what I'm going to do, Mr.  
13 Herron, is -- going to ask you to raise your right hand, and I  
14 will swear you in.

15 Do you swear or affirm that the information -- that the  
16 testimony you're about to give in this proceeding will be the  
17 truth, the whole truth, and nothing but the truth?

18 DR. HERRON: Yes, I do.

19 THE COURT: All right. Thank you very much.

20 Mr. Devaney, you may proceed whenever you're ready.

21 DR. MICHAEL HERRON, HAVING BEEN DULY SWORN, TESTIFIED  
22 AS FOLLOWS:

23 DIRECT EXAMINATION BY MR. DEVANEY:

24 Q Good morning, Dr. Herron. Would you please state your  
25 full name for the record?



1 A Yes, Michael Charles (phonetic) Herron.

2 Q Dr. Herron, please briefly explain to the Court what  
3 analysis you were asked to provide in this case.

4 A I was asked by Plaintiffs' counsel to study the voter  
5 registration system in Maine and the state's absentee  
6 voter system.

7 Q And you formed opinions regarding the burdens those  
8 laws impose on voters; is that correct?

9 A Yes, that is correct.

10 Q And those opinions are set forth in both your opening  
11 report and your rebuttal reports sent last week; is  
12 that right?

13 A That is correct.

14 Q Dr. Herron, would you please briefly describe for the  
15 Court your academic and professional background?

16 A Sure. I'm a professor of government at Dartmouth  
17 College in Hanover, New Hampshire. I've taught here  
18 for 17 years. I have a Ph.D. from Stanford University,  
19 in particular from the graduate school of business. My  
20 Ph.D. is in policonomics which is an area in the  
21 business school that is essentially  
22 mathematical-political science. After leaving graduate  
23 school, I taught at Northwestern University in Chicago,  
24 and then later I moved to Dartmouth.

25 Q Mike, you might want to move closer to your mic. I --



1 I don't know about others, but you're cutting out  
2 for -- for me.

3 A Is that better? I moved my monitor closer.

4 THE COURT: I think that is better.

5 Q That is better.

6 THE COURT: Yup.

7 Q Thank you. Okay. Would you mind just -- again, just  
8 repeating your -- your -- at a high-level, your  
9 professional and academic background? I think a lot of  
10 us had trouble hearing that.

11 A Sure. I'll -- I'll repeat what I just said. I am a  
12 professor of government at Dartmouth College. I've  
13 taught here for 17 years. My Ph.D. is in a field  
14 called policonomics from the Stanford graduate school  
15 of business. After leaving graduate school, I taught  
16 at Northwestern University for six years, and then I  
17 moved to Dartmouth where I teach now.

18 Q Okay.

19 A Is -- can everyone hear me now?

20 Q Very well.

21 A Thank you.

22 Q And -- and you've been teaching at Dartmouth for how  
23 many years?

24 A Seventeen.

25 Q Have you published peer-reviewed articles?



1 A Yes, I have.

2 Q In general, in what topics have you published?

3 A I would say one of my main focuses of interest is  
4 election administration, and I've written a number of  
5 articles, I would say between 10 to 15, on subjects  
6 like voting lines, early voting, voter fraud, and  
7 issues about ballot formats. Those are some of the  
8 issues I've -- I've engaged in the literature on  
9 election administration.

10 Q How long have you been studying election  
11 administration?

12 A I would say I started in 2000 when the 2000  
13 presidential election occurred.

14 Q Have you testified previously as an expert witness on  
15 issues relating to election administration?

16 A Yes, I have.

17 Q Would you describe for the Court those cases and state  
18 whether you were qualified as an expert in those cases?

19 A The first case I testified in was a contested election  
20 in Florida -- contested congressional election. I --  
21 these are all in my expert report as well. I testified  
22 in the Texas quarter (indiscernible) case  
23 (indiscernible), and I testified in a case in New  
24 Hampshire on Senate Bill 3. I believe that in all of  
25 those cases -- I don't remember in the first case





1           because it was a long time ago, but I was recognized as  
2           an expert in them.

3           MR. DEVANEY: Your Honor, at this point we would ask that  
4           Dr. Herron be qualified as an expert in election  
5           administration.

6           THE COURT: Any objection from the -- the defendants, Mr.  
7           Knowlton?

8           MR. KNOWLTON: No objection, Your Honor.

9           THE COURT: Mr. Strawbridge or Ms. Balter -- Baltes?

10          MR. STRAWBRIDGE: No, Your Honor.

11          THE COURT: All right, great. In -- in Maine, Mr.  
12          Devaney, we don't actually have the judge declare the person  
13          an expert. You -- you make your presentation; if there's no  
14          objection, we proceed with the testimony.

15          MR. DEVANEY: Thanks Your Honor.

16          THE COURT: All right. Go ahead.

17          BY MR. DEVANEY:

18          Q       Dr. Herron, at -- at a high level, what is the  
19                  framework that you used to evaluate the laws that are  
20                  at issue in this case?

21          A       I used a framework that's called the calculus of  
22                  voting. It's explained in my expert report how I --  
23                  how I involved it.

24          Q       Would you describe for us today -- what -- what is the  
25                  calculus of voting analysis?



1 A The calculus of voting is a way that political  
2 scientists who study elections often use to sort of  
3 frame the decisions that individuals make when they're  
4 deciding whether to vote. And so it's a -- it's an  
5 idea that an individual deciding to vote will weigh the  
6 costs and benefits of voting. If the costs are greater  
7 than the benefits, the individual chooses not to vote;  
8 if the benefits are greater than the costs, the  
9 individual chooses to vote.

10 Q And -- and what are the benefits of voting that go into  
11 the calculus of voting analysis?

12 A The types of benefits that people think about? When an  
13 individual chooses to vote in an election, there's a --  
14 a chance, that's small but nonetheless a chance, that  
15 the individual's vote will be pivotal and to the  
16 election outcome, meaning that person is like the  
17 decisive voter. So if an individual has the  
18 opportunity to be decisive, that's -- and gets to pick  
19 his or her preferred candidates, that would be a  
20 benefit. In addition, scholars do invoke other ideas  
21 about why people get benefits from voting, and that has  
22 to do with the fact that people enjoy or value  
23 participating in democratic governance and voting with  
24 their community members. Voting with the community,  
25 again, could be locally-defined, could be a larger

1 jurisdiction like a state or a country. People might  
2 value voting and for many reasons independently of  
3 whether any vote is pivotal, and that's a second set of  
4 benefits associated with voting.

5 Q What are some of the costs that go into the calculus of  
6 voting analysis?

7 A So the word "cost" is often use generally not  
8 necessarily referring to financial cost, although there  
9 can be financial costs of voting in the sense of  
10 purchasing postage. But often -- I'll -- I'll discuss  
11 several types of costs. One of -- cost is a time cost.  
12 So people refer to the time cost of voting in this  
13 literature that could reflect the cost that -- that --  
14 the times an individual spends waiting in line to vote  
15 or possibly waiting in line to purchase stamps at a  
16 supermarket or a post office. They are any sort of  
17 time expenditure. It's not necessarily a financial  
18 cost, but is nonetheless a cost. And there are also  
19 information costs associated with voting. So if an  
20 individual, for example, who typically votes in person  
21 realizes that he or she wants to vote by mail, the --  
22 the person has to learn how to do that, and there  
23 are -- there are information costs associated with  
24 that. There are also potential risks with certain  
25 types of voting, mainly voting by absentee, that a

1 ballot might not count. That -- that is in -- that is  
2 a cost as well. And in a pandemic like we're in now,  
3 another cost of voting in an infection risk based on  
4 the social engagement with others. This is not the  
5 sort of cost that people in the literature typically  
6 thought about prior to the pandemic. I've been working  
7 in this area since, did I mention, 2000, and I -- and  
8 up to this point, no one really thought that, like,  
9 voting would -- might be a health risk but now it is.  
10 So the potential risk or the infection risk that an  
11 individual has of catching the disease or possibly  
12 passing on the disease to others, these are all  
13 different -- these are all forms of costs that now,  
14 that really should be -- in the pandemic, are part of  
15 the calculus of voting.

16 Q Dr. Herron, can the calculus of voting analysis differ  
17 by individual voters?

18 A Yes.

19 Q Would you explain?

20 A So when I talked about costs, one cost I mentioned was  
21 a time cost of waiting in line. But there are, of  
22 course, infection risks of waiting in line as well.  
23 And certain people in a pandemic might be more  
24 vulnerable than others to the risks of being in a line.  
25 And so if an individual is, say, you know, compromised

1 or has other health risks associated with the disease,  
2 then waiting in line is also -- waiting in -- the --  
3 the cost of waiting in line will vary by -- by a  
4 person's health profile.

5 Q Dr. Herron, we'll go through, of course, each of the  
6 provisions of the law the Plaintiffs are challenging,  
7 but what -- at a high level, what are your conclusions  
8 that you reach in this case?

9 A So I talked about a number of different areas in my  
10 expert report. So I'm going to, if I may, consult this  
11 report for -- at the moment, sort of to make sure I  
12 follow (indiscernible?

13 Q Please -- please do.

14 A So I'll start with the election date of return  
15 deadline. I'm looking at my expert report at page 7,  
16 and in -- in my expert report and my rebuttal report  
17 and when I refer to my report I mean all reports  
18 though. I look -- I examine the Election Day -- ballot  
19 return deadline which is 8 p.m. on Election Day, and I  
20 show that many people submit ballots in Maine that  
21 historically have -- are late and rejected. And I show  
22 that -- and I look at various -- I show as well that  
23 there are lots of ballots in Maine, thousands of them,  
24 that are almost late. With respect to ballot cure,  
25 which is the second point -- a second point in my

1 report, ballot curing refers to the opportunity that  
2 voters have to fix ballots -- the absentee ballots that  
3 otherwise would be rejected. And my report shows that  
4 there's no statutory requirement in Maine for a cure.  
5 Although I'm, of course, aware of guidance that has  
6 been promulgated by the secretary of state about ballot  
7 cure, my report shows there's no statutory requirement  
8 for that. And it shows that individuals cast absentee  
9 ballots that would be helped by a cure period, in other  
10 words by an opportunity for individuals to address  
11 defects in the ballot that would lead to rejection. A  
12 third point refers to voter assistance. So Maine Law  
13 sets out requirements about the types of individuals  
14 who -- about -- about the types of assistance that  
15 absentee voters can receive. For example, paid  
16 assistance is not a loan and -- and the law is specific  
17 about witness requirements and multiple witness  
18 requirements in some cases. And my report notes that  
19 there are people who take advantage of these --  
20 would -- would take a -- could take advantage of voter  
21 assistance, particularly as it -- as it pertains to  
22 delivery of absentee ballots from voters to local  
23 election officials. And I show that in particular that  
24 in the 2020 primary that just occurred, that there  
25 are -- that there were few new limits on -- on the sort



1 of assistance that people normally had that weren't  
2 available in the pandemic. The fourth point that I  
3 want to mention is -- excuse me -- about voter  
4 registration. In Maine, there are several methods to  
5 register to vote. Historically, Maine is one of the  
6 most heavily in-person or its person contact  
7 registration states in the country. And my report  
8 provides evidence to this effect, and it also shows how  
9 registration has dropped in Maine since the pandemic  
10 has started. And I -- and I -- that is based on data  
11 produced by the State in comparisons between 2020  
12 registration, which are after the pandemic, and 2016  
13 registrations that, of course, were not. And the  
14 fourth -- excuse me -- and the fifth and -- and the  
15 last point I wanted to mention concerns prepaid  
16 ballots. So in Maine, prepaid absentee ballots are not  
17 part of the absentee ballot environment. My report  
18 describes how the cost of postage is literally a cost  
19 of voting. So earlier I noted that people use the cost  
20 in a general term, not necessarily referring to  
21 financial cos. But in fact, purchasing postage is  
22 literally a financial cost, albeit not a large one for  
23 many people, but it is nonetheless a cost. And my  
24 report argues that individuals who do not have access  
25 to stamps or simple access to the internet in which to



1 purchase stamps will be burdened by this -- the -- by  
2 the postage requirement in the state. So those are the  
3 five areas that I discussed --

4 Q Okay.

5 A -- in my report.

6 Q Thank you for that summary, Dr. Herron. And before we  
7 get into each of those issues in a little more detail,  
8 I -- I want to ask you some questions about absentee  
9 voting in Maine, in general and the trends in Maine  
10 with respect to it. And did -- before this year, what  
11 was the typical absentee voting rate in Maine? And if  
12 you need to refer to your report at all for the data,  
13 you address this at page 5 of your rebuttal on table 1.

14 A Okay. Thank you. I'm looking at table 1 on page 5.  
15 So in Maine, as I -- and we already have heard, there  
16 are essentially three ways of voting absentee. One way  
17 is called a vote by mail where an absentee ballot is  
18 submitted by mail. Another way is a delivered absentee  
19 ballot. And a third way absentee voting is not really  
20 absentee because it involves voting in front of a  
21 clerk. So I'm going to talk about the first two types  
22 of absentee ballots, the absentee voting because I'm  
23 interested in this report primarily in -- in burdens in  
24 COVID-19, and absentee voting in front of a clerk is  
25 essentially a form of in-person voting. So on table 1,



1 what I show is that historically in Maine, if I look at  
2 primary elections, that you see that the rate of  
3 vote-by-mail and delivered absentee ballots covers  
4 somewhere around, you know, four to six percent roughly  
5 speaking. If you look at the 2020 primary, that rate  
6 jumps to around 50 percent. So for those of you who  
7 are looking at my report, I'm adding 35.41 and 18.93,  
8 and that gives you over 50 percent, so that's 50  
9 percent of overall turnout. So what that shows is  
10 that, although in -- in historical primaries in Maine,  
11 the sum of the VB -- the vote-by-mail percent, the  
12 delivered ballot percent is around four to six  
13 percent -- maybe six and a half in some cases, maybe  
14 closer to four in others, the number skyrocketed in  
15 2020 going to over 50 percent.

16 Q And -- and what percent of the absentee voting in the  
17 recent primary was by mail?

18 A In the recent primary, which was July 14, 2020, there  
19 were 35.41 -- well, let's say 35 percent of ballots  
20 were vote by mail. So in my table, I'm looking at the  
21 number; there around 317,000 total votes, 112,272  
22 roughly were vote by mail. I'm -- I said roughly  
23 because there are, of course, some debates on the exact  
24 form of the data, but that's -- those -- those figures  
25 are approximate.

1 Q Is that increase in absentee voting and voting by mail  
2 consistent with trends you're seeing in other states?

3 A Yes, across the country in states that have held  
4 elections during the primary, there have been surges in  
5 absentee voting, in particular voting by mail. Some  
6 states, of course, have shifted to all-mail elections  
7 or effect all-mail elections. So for those, of course,  
8 the -- the vote-by-mail rate is practically 100  
9 percent. But even in states that have -- that have  
10 just remained -- that -- that -- that maintain their  
11 typical configuration, there's been surges around 50 --  
12 60 percent in -- all -- all over the country. So these  
13 numbers are not unusual in any sense.

14 Q Okay. Based on your analysis of trends in the country  
15 and Maine's July primary, what are your expectations  
16 with respect to the volume of absentee voting and  
17 voting by mail to the November election in Maine?

18 A Well, all the data that we can bring on this, which  
19 relies on essentially table 1 and what we've observed  
20 in other states, is that I -- I would expect similar  
21 consequence -- similar vote-by-mail rates in the  
22 November 2020 election, moderated by the fact that  
23 there will be, of course, more people voting. So when  
24 I said similar, I meant similar rates. In general  
25 elections in the United States they generate a lot more

1 people than in primary elections, and so we would  
2 expect more vote-by-mail voters even if the rate is  
3 with -- even if the rate is the same.

4 Q Are there tradeoffs for voters when they vote absentee  
5 versus voting in person?

6 A Yes, there are.

7 Q What -- what are those tradeoffs?

8 A So when a -- an individual votes in person, I'll --  
9 I'll start with that, so ignoring the -- the health  
10 issues that I earlier discussed when I contexted [sic]  
11 the calculus of voting: when the individual votes in  
12 person, he or she can take her ballots, file it  
13 effectively, and that is a -- an accepted -- that --  
14 that's a ballot that is then counted. There really  
15 isn't a discussion when a voter votes in person about  
16 whether a ballot is accepted. It's simply a ballot.  
17 The -- person votes and then it's done. But in  
18 absentee voting, that's not true. The -- the sort of  
19 simple idea of receive ballot, vote ballot, and -- and  
20 complete it that's not how absentee voting works. With  
21 absentee voting, there are many opportunities for  
22 something to go wrong. If a voter has a ballot from  
23 a -- a local election official, the -- the individual  
24 has to correctly fill out a ballot return envelope,  
25 sometimes called a ballot certificate -- I'll just

1 refer to it as an -- envelope here -- then submit the  
2 ballots, possibly via mail, to a local clerk. And so  
3 the ballot, for example, could be late if the Postal  
4 Service was late, and so that's a risk because late  
5 ballots in Maine don't count -- late absentee ballots  
6 in Maine don't count. That risk simply doesn't exist  
7 for in-person voters. And similarly, if an individual  
8 doesn't correctly fill out his or her ballot return  
9 envelope in Maine -- and when I say "fill out" that  
10 could refer to if the voter's signature, or possibly  
11 also a witness or another witness' signature because  
12 Maine has laws about witnesses for voters who need  
13 assistance -- so I'm speaking generally about an  
14 envelope, but it -- there could be multiple signatures  
15 needed. If a voter doesn't -- or witnesses --  
16 doesn't -- do not correctly fill out their envelope,  
17 then that voter's ballot can be rejected. So what  
18 I've -- and to answer your question, I've described  
19 true rejection risks for -- that absentee voters face  
20 due to lateness and incorrect signature, incorrect  
21 envelopes. In-person voters don't have them. So the  
22 tradeoff, I think, becomes an individual has to weigh a  
23 potential health risk of voting in person versus  
24 staying healthier, safer in a pandemic but risking  
25 ballot rejection due to lateness and/or a signature



1 problem.

2 Q To what extent does the experience of a voter factor  
3 into whether he or she can successfully navigate the  
4 requirements of absentee voting?

5 A So at -- I -- I -- in my expert report, I describe an  
6 analysis of individuals who have experienced voting by  
7 mail and individuals who don't have experience voting  
8 by mail, and that's an important subject in the  
9 pandemic giving the shifts to voting by mail that I've  
10 just described. And one thing that my expert report  
11 shows is that individuals who are inexperienced mail  
12 voters have greater late ballot and signature error  
13 rates than individuals who are not. And that means  
14 that people who are -- people who are inexperienced  
15 have a greater rejection risk for absentee voting -- or  
16 for vote by mail voting, excuse me.

17 Q What are your expectations for the November election in  
18 Maine with respect to the number of inexperienced  
19 voters, that is, inexperienced with absentee voting?

20 A Well, based on historical trends in the United States,  
21 we generally see a much greater turnout in general  
22 elections and also different types of voters. So  
23 traditionally, again, what I'm describing now is  
24 established in the literature. We tend to see more  
25 educated voters and more politically-engaged voters in

1 the primary. In a general election, you'll see a wider  
2 group. And given that there's -- there are -- there  
3 are more general election voters than primary voters  
4 and given that there's this surge in -- vote by mail,  
5 some of these voters are going to be new vote-by-mail  
6 voters and therefore inexperienced and therefore prone,  
7 as I describe in my expert report, to these sorts of  
8 problems that lead to rejected ballots.

9 Q Thanks for that background, Dr. Herron. I -- I'll now  
10 turn to specific provisions of law that Plaintiffs are  
11 challenging in this case, and we'll begin with the  
12 election date receipt deadline which we've already  
13 described as the deadline that requires ballots to  
14 arrive in election offices by 8 p.m. on Election Day in  
15 order to be counted. Let me ask you first: did --  
16 does every state have an Election Day of receipt  
17 deadline?

18 A No.

19 Q What are some of the other methods that other states  
20 follow?

21 A So some states have deadlines that depend on postmark  
22 and some other period of time after Election Day. So a  
23 state, like for example Arizona -- actually I think  
24 that the State could allow a ballot to be counted as  
25 long as it was postmarked on election day, but received



1 in a short period after the election.

2 MR. DEVANEY: Your Honor, can you hear Dr. Herron?

3 THE COURT: I can. He -- he got a little bit faint  
4 there, but I -- I can hear him.

5 MR. DEVANEY: Okay. He cut out for me. Were -- did you  
6 sufficiently hear his answer to that question? I didn't hear  
7 it.

8 THE COURT: Yeah. He said -- you asked him whether all  
9 states follow the Election Day receipt deadline. He said, no.  
10 And then he gave us examples in other states. He mentioned  
11 Arizona, but then he seemed to strike that and said that some  
12 states have it postmarked with the understanding that it's  
13 going to be received sometime later. It could be a matter of  
14 days, what have you. So I did hear that.

15 MR. DEVANEY: Thank -- thank you.

16 BY MR. DEVANEY:

17 Q Dr. Herron, in your opinion, can a voter who is voting  
18 by mail control whether his or her ballot is received  
19 by Election Day receipt deadline?

20 A No.

21 Q Why not?

22 A This speaks to the issue of one of the risks of voting  
23 absentee. When an individual places his or her ballot  
24 in the mail service, in a post office or in a, say,  
25 postal box, the individual loses control of that



1 ballot. And the postal service delivers it. And the  
2 individual can't control when that will happen. So  
3 that means once an individual votes, the on time  
4 delivery is out of his or her hands.

5 Q Are there any activities that take place at the clerk's  
6 office that is outside the voter's control after the  
7 voter requests a ballot?

8 A Yes. So when a voter -- he may request an absentee  
9 ballot, a local clerk's office has to process that  
10 request. And the voter cannot control, of course, how  
11 quickly the clerks respond. And in my -- in my  
12 rebuttal report on -- at some point later in the  
13 report, I describe the number of days between absentee  
14 ballot requests by voters and ab -- and the dates at  
15 which clerks send out the absentee ballots. And I show  
16 that in most cases the clerks react quickly, but not in  
17 all cases. In some cases in the 2020 primary there  
18 were some lapses as many as 10 days between requests  
19 and send outs, so to speak. And so that's another  
20 dimension that voters cannot control with respect to  
21 absentee voting.

22 Q Do you know if Maine has a law that requires clerks to  
23 respond to absentee ballot requests within a certain  
24 time period?

25 A I'm not formally familiar with what the exact





1 requirements are -- statutory requirements are for  
2 Maine and their clerk requirements.

3 Q Okay. You just rely on the data you've been presented  
4 about how quickly they've turned around those requests?

5 A Correct. I'm not making a statement as to whether they  
6 are following the law or not. I'm simply reporting  
7 that, in most cases, they reacted quickly, but in some  
8 cases they reacted -- well to say, my table shows that  
9 in some cases there was a lag as many as ten days  
10 between the request date and the send out date.

11 Q Are you referring, by the way, Dr. Herron, to Table 12,  
12 on page 32 of your rebuttal report?

13 A Yes. I'm referring to that table.

14 Q Okay. On -- Dr. Herron, to the best of your knowledge,  
15 how much time is the postal service recommending -- or  
16 telling voters that it will take for mail ballots to be  
17 sent and returned?

18 A The USPS guidelines -- excuse me, the Postal Service  
19 guidelines, which are from a pre-pandemic document,  
20 recommends that voters allow one week. So seven days  
21 from a voter to -- from a ballot to leave -- say the  
22 voter's info until it arrives in elections office. And  
23 since an absentee vote -- an absentee ballot has to  
24 make a roundtrip from a clerk's office to a voter and  
25 then back, by mail that guides would translate to two

1 weeks.

2 Q And do you have an opinion about whether there is a  
3 risk for voters who request a ballot less than 14 days  
4 before Election Day?

5 A I would say yes.

6 Q Do you expect voters in Maine to request ballots within  
7 that time frame?

8 A I would say that Maine law allows ballots to be --  
9 absentee ballots to be requested within five days of an  
10 election. And so I expect that voters will rely on the  
11 law, and that would seem to me as a reasonable thing to  
12 do. So any voter requesting a ballot within -- you  
13 know, within the period of 5 to 14 days before an  
14 election will fall in this period, that in some sense  
15 it's inconsistent with the postal services' guidelines  
16 of 14-day roundtrip. Yeah.

17 Q On -- Doctor, how would you describe the burdens that  
18 are imposed on voters by the Election Day receipt  
19 deadline in Maine?

20 A I would say the burdens are associated with a rejection  
21 risk. So I talked about this briefly, but to make it  
22 clear, when a voter submits an absentee ballot by mail,  
23 if it's late, it's out of the voter's control. And it  
24 is therefore not counted, because late ballots in Maine  
25 are not counted and there's no recourse. There's no --



1 I mentioned -- I earlier mentioned that I gave a cure,  
2 but there's no cure for late ballots. Late ballots are  
3 simply rejected. So voters are burdened by the risk  
4 that their ballot won't count.

5 Q Have you conducted an analysis of how many ballots are  
6 likely to arrive after Election Day in Maine for the  
7 upcoming election, and it will not be counted unless  
8 there's a change to this law?

9 A Yes.

10 Q What conclusion did you reach? And if you need to  
11 refer to your report, I think you addressed on page 91  
12 of your opening report.

13 A So one thing I did in my expert report is I considered  
14 the possibility of a surge in absentee voting in Maine,  
15 which is consistent with what we observed so far in  
16 Maine and in other states, and asked the question, what  
17 if the turnout in Maine in November of 2020 is the same  
18 as the turnout in November 2016? Of course, I  
19 recognize that no one really knows exactly turnout will  
20 be this upcoming November, so I think a conservative  
21 estimate is what the turnout was in the most recent  
22 presidential election. And then I said -- or I  
23 considered in Table 21 what if the vote-by-mail rate in  
24 Maine is very high compared to what it normally is in  
25 general elections.

1 And what Table 21 does is it offers several different  
2 scenarios for late ballots based on different  
3 scenarios. And when I wrote that table in my expert  
4 report, I didn't know the vote by mail rate for the  
5 2020 Primary in Maine. I thought it was 30.73, but  
6 actually it was a little bit higher. That I now know  
7 from finalized data. So if voters were to use -- if  
8 voters cast vote-by-mail ballots in Maine at 2020  
9 primary rates and they cast late ballots at sort of  
10 their typical rates in Maine as explained in my expert  
11 report, we would expect around 2,400 late ballots. And  
12 this, of course, ignores any postal delays that may be  
13 new to this environment. I assumed in Table 21 that  
14 everything was the same as it was in the past minus the  
15 VBM, vote-by-mail rates. So ignoring any exigencies  
16 associated with the pandemic.

17 Q In your report you -- you described that estimate as  
18 conservative. Why -- why did you use that term?

19 A I would say it's conservative because -- well, for  
20 several reasons. One is it ignores any potential mail  
21 delays that are in addition to what people normally  
22 observe based on what's going on in the postal service  
23 at the moment, at least, what is to my knowledge. It  
24 also ignores the fact that some of these new VBM voters  
25 in Maine might be very prone to these problems I've

1 described, late ballots for example, and that -- I  
2 can't -- it's difficult to know how many exactly new  
3 voters there will be. So I'm ignoring the fact that  
4 that probably could be worse -- late ballot problem  
5 could be worse due to new voters.

6 Q Dr. Herron, do you recall how many late ballots there  
7 were in the July Primary in Maine?

8 A I believe -- I'm going to consult my expert -- my  
9 rebuttal reports.

10 Q I think that's page 14.

11 A I may have misheard you. Is it 13?

12 Q I thought it was Table 19, page 14.

13 A Tab -- your question was about the number of late  
14 ballots? That's Table 16 on page 13.

15 Q Oh, I apologize.

16 A And so the answer to your question is 297.

17 Q And what would you say to someone who might argue,  
18 well, that's a relatively small number of ballots, and  
19 it does not portend problems for the November election?

20 A I would say two things to that. One, when that number  
21 is bigger than zero, that represents individuals who  
22 attempted to vote and weren't able to. So I don't  
23 associate that number with the words or the adjectives  
24 small, because anytime somebody tries to vote but is  
25 prevented from doing so, that's a problem, I would say.

1 So 297 represents 297 people.

2 The second point I would mention is that the Primary --  
3 the 2020 Primary in Maine took place on July 14th. And  
4 my understanding of postal service issues is that they  
5 really came to the floor in August. And so that means  
6 they didn't affect the July Primary. So my comment  
7 before about being conservative in late ballot rates  
8 reflects the fact that what we saw in July of 2020 may  
9 not be a good reflection of August and later, given the  
10 what we now know about postal delivery.

11 Q Dr. Herron, my last question for you on this topic is  
12 as you look at the Election Day receipt deadline this  
13 year, the effects of it, how do they compare to the  
14 effects of the deadline in prior to years with respect  
15 to burdens on voter -- on voters?

16 A I would say the burdens are greater in a pandemic for  
17 variety of reasons. One is, it's simply they're going  
18 to be more people who might engage these burdens -- or  
19 might be affected by these burdens, because there's so  
20 many more vote-by-mail voters. And so because there  
21 are more people voting by mail, then more people whose  
22 ballots can be rejected. And in addition, the more  
23 ballots that can -- they're just sort of at risk in  
24 general when there are more people voting by mail.  
25 So now, I'd like to turn to page 14 and Table 19. And

1 that table shows the rates of almost late ballots or  
2 barely on time. Obviously, those mean the same thing  
3 in this context. This table reports the number of  
4 vote-by-mail ballots that arrived on Election Day  
5 itself and on the day before. So I'm calling those  
6 close. You can call them barely on time or almost  
7 late. It means the same thing. And what you can see  
8 is that there were thousands of these ballots in the  
9 2020 Primary. And these ballots were on the edge of  
10 being rejected. As I earlier mentioned, there's no  
11 cure for late ballots in Maine. So approximately 18  
12 percent of vote-by-mail ballots arrived on the last day  
13 possible or on the day before. I'm looking at,  
14 basically, the middle row of Table 19. I see 18.26  
15 percent. That represents over 20,000 votes. I just  
16 added 12,836 and 7,605. So while those ballots were on  
17 time, what this table shows is that they were  
18 vulnerable to small perturbations in mail delivery.  
19 So to answer your question, when you have so many more  
20 people voting by mail, all of sudden this -- the vote  
21 by mail -- not all of sudden, but the vote by mail  
22 deadline matters to many, many more people. You can  
23 see that the numbers of ballots that were close in the  
24 2020 Primary is much smaller than the number of ballots  
25 that are traditionally close, and that's because there



1 was a surge in vote by mail voting.

2 Q Thank you, Dr. Herron. I'm going to change topics now  
3 and move to the issue of curing ballots that have  
4 apparent errors on them. And let me ask, to the best  
5 of your knowledge, do Maine statutes require election  
6 clerks to give voters who have mistakes on their  
7 absentee ballots the opportunity to correct them?

8 A No. There is no -- to the best of my knowledge, there  
9 is no statutory requirement in Maine for what your  
10 describing which is often called a ballot cure.

11 Q And by way of background, what are the typical errors  
12 that we see with absentee ballots that are submitted by  
13 voters? What are the most common type of errors?

14 A Will, ignoring late ballots, the most common sort of  
15 error that leads to what's called a defect or leads to  
16 ballot rejection is a missing signature. That's the  
17 most common problem in Maine, and I would say, in my  
18 work across the country, it's the most common problem  
19 there as well.

20 The next common problem is a mismatch signature. And  
21 I'll use the term, mismatch, carefully. What I mean by  
22 a mismatch signature is not a mismatch in an objection  
23 sense between a voter's signature on a ballot and an  
24 official signature. What I mean is an assessment by a  
25 local clerk that a voter's signature on the absentee





1 ballot envelope doesn't match the signature -- an  
2 official signature, or another signature that the clerk  
3 has. So I'll use the term mismatch, but it should be  
4 under -- that's from the judgment of a local clerk.

5 Q Does your experience indicate whether there are  
6 particular categories for voters for whom these types  
7 of errors are most common?

8 A Yes.

9 Q And in what conclusion do you reach in that regard?

10 A So I would mention two types. One is I already  
11 mentioned, this comes from voter inexperience with  
12 vote-by-mail voting. So that's stated in my expert  
13 report on that.  
14 In addition beyond Maine, because Maine doesn't have  
15 the data that would allow me to assess this sort of  
16 question that you're asking, I know that there is -- on  
17 individuals who request ballot -- request assistance of  
18 voting, which is in some sense a proxy for having a  
19 disability, those individuals also have greater rates  
20 of signature defects on their ballots. This -- this is  
21 not again due -- I can't say this in Maine for sure,  
22 because Maine doesn't promulgate any data that would  
23 allow me to do that, but I know from other states  
24 that's the case.

25 Q In your original report, Dr. Herron, you address a



1 projection -- or you provide a projection of how many  
2 ballots you would expect to be rejected in November for  
3 signature related reasons. You address that on page  
4 91, I believe of your report. And can you just tell  
5 the Court how many ballots you are predicting will be  
6 rejected for these signature related reasons?

7 A So I did the same exercise as I described about late  
8 ballots. So holding everything fixed -- I'm on page 91  
9 of my expert report, holding everything fixed in the  
10 Maine system, assuming voters forget to sign their  
11 ballots at the same rate, that there's no cure and so  
12 forth, if you take the historical missing signature  
13 rates and scale everything up by turnout in 2020, which  
14 I assume in November 2020, which I assume is the same  
15 as November 2016, you would expect around 2,368 ballots  
16 of missing signatures.

17 Q Dr. Herron, you're aware that this past Friday the  
18 State in this case provided new guidance that municipal  
19 election officials are to provide to voters with  
20 respect to curing errors with the ballots; is that  
21 right?

22 A Yes, I'm aware of that guidance.

23 Q And you -- you had a chance to review that guidance?

24 A Yes, I have.

25 Q Let me ask you, first, with respect to mismatching



1 signatures. So this is the circumstance where the  
2 ballot's actually signed by -- and the clerk analyzes  
3 to see whether the signature matches the signature  
4 that's on file with the State. What is set forth in  
5 the new guidelines about how to address that situation?

6 A So if I may, I'm going to pick up this guidance?

7 Q Please do.

8 A Which I believe was Exhibit 17?

9 Q Yes, Defendant's Exhibit 17.

10 A Thank you. So this guidance specifies sets of  
11 procedures for three different types of defects. So  
12 the first one is the one that your question  
13 addressed -- excuse me, which is mismatched photo  
14 signatures. Again, I'm using the term mismatch meaning  
15 a judgment call made by a local election official.  
16 So what the guide specifies is that a local clerk must  
17 make a good faith effort to reach the voter who cast  
18 the absentee ballot with the missed -- that's been  
19 asserted to have a mismatched signature. The clerk  
20 needs to notify the voter of the defect by phone or  
21 email, attempt to verify that the individual being  
22 spoken to or contacted actually did cast the ballot --  
23 the absentee ballot as -- as the one that's being  
24 assessed. And if the person's able to do this, then  
25 the clerk is allowed to classify that ballot as



1           accepted. And the language is, "voter confirmed that  
2           they personally signed the envelope. And if the clerk  
3           is unable to reach the voter by the 8 p.m. Election Day  
4           deadline" -- that's the election date deadline that I  
5           discussed earlier, "then the ballot should be accepted,  
6           but challenged."

7   Q       By the way, do you know if the provisions in Exhibit 17  
8           are binding on municipal election officials or just  
9           pure guidance?

10  A       It's my understanding that they are guidance. And I  
11           noticed -- and I note as well that -- that the -- I'll  
12           just quote here, quote "the clerk must make a good  
13           faith effort to notify the voter as quickly as possible  
14           within one business day at a minimum that the ballot  
15           may be rejected or challenged unless the defect is  
16           cured." End quote. I expect maximum is what is meant  
17           here, not minimum, but I believe that this is guidance.  
18           It is not -- it does not have the weight of a statute.

19  Q       And are there any standards set forth in that guidance  
20           with respect to how clerks or election officials should  
21           determine whether a signature matches a signature that  
22           is on file?

23  A       No. But the -- I'll read the language from the  
24           guidance again. Here's a quote. "If the voter's  
25           signature on the envelope does not appear to have been

1 written by the same person as the voter who's signature  
2 appears on the absentee ballot application, then the  
3 clerk must -- " end quote, and then a bunch of  
4 procedures are listed.

5 So I think the answer to your question is no.

6 Q Thank you. And then could you summarize your  
7 understanding of what the guidance provides for ballots  
8 containing missing signatures and other errors?

9 A So the second set of procedures in the guidance relates  
10 to missing signatures. As I noted earlier missing  
11 signatures are the most common reason for ballot  
12 rejection outside of lateness, much more common than  
13 mis -- allegedly mismatched signature.

14 The missing signature guidance specifies that clerks  
15 should notify voters by phone or email. And then --  
16 then as a following -- then allows several options.  
17 Which is -- these options do not appear in the mismatch  
18 voter signature. So there are -- so this -- this will  
19 be a -- this is different.

20 One option is that a voter with a missing signature can  
21 travel to his or her town office simply to sign the  
22 ballot envelope that has no signature. That's option 1  
23 or A in the guidance.

24 Option B is requesting that a clerk send a new ballot  
25 to the voter.



1 And Option C is to engage in a verification exercise  
2 with the clerk, and that if the clerk approves that  
3 verification exercise then the ballot is accepted, but  
4 nonetheless, challenged. So it is not accepted. It is  
5 accepted but challenged. That's Option C.

6 And then Option D, which isn't really an option, but  
7 I'll mention it, because it's relevant to your  
8 question, is if the clerk isn't able to reach the  
9 voter, then the ballot is simply rejected.

10 Q And for a voter, under this guidance, to be certain  
11 that his or her ballot will actually be accepted and  
12 counted, is it correct that the voter must either come  
13 in in person to cast a new ballot or cast a new ballot  
14 by mail?

15 A Yes, because of the challenge provision in Option C  
16 that I just mentioned before. So if the clerk approves  
17 a verification exercise done over the phone, then the  
18 ballot is still challenged.

19 Q And you testified earlier about the 14 or 15-day  
20 periods taken for ballots to be sent and returned, is  
21 it realistic for a voter who is informed of an error in  
22 his or her ballot to be able to fix that by mail within  
23 15 days of Election Day?

24 A Not in my opinion, it is not. And that's because  
25 Option B, which I mentioned, requesting a duplicate

1 ballot requires a ballot to travel from a clerks'  
2 office -- a new ballot to travel from a clerks' office  
3 to the voter and then back. And by postal service  
4 guidelines, which recommend a week for lag of that  
5 roundtrip, that's a two-week roundtrip duration then.  
6 So any -- if a voter were to learn about a defect -- a  
7 missing signature within 14 days, that option would not  
8 be consistent with postal service guidelines.

9 Q So to be certain that his or her ballot be counted,  
10 what is the option for a voter who's informed within 15  
11 days of Election Day of a problem with a ballot?

12 A In my opinion, to be certain, the voter must travel to  
13 the clerk and sign the envelope. And that would --  
14 that would guarantee that the ballot counts, but as I  
15 mentioned in my discussion about the cost of voting, of  
16 course, this is all of the complications associated  
17 with public engagement or social engagement during a  
18 pandemic. And of course, I'm also assuming right now  
19 that the voter is able to travel this way. One thing I  
20 know from my research, and this is nothing specific  
21 about Maine here, is that some of the people who vote  
22 absentee, are doing this primarily because, in fact,  
23 traveling or physically going places are not easy for  
24 them, or in some cases it's simply impossible due to  
25 disabilities or other issues. And for those voters the

1 idea of Option A here which is traveling to the town  
2 office is not feasible.

3 Q Does the guidance provide any remedy for voters who  
4 receive their absentee ballots on Election Day or  
5 immediately before Election Day?

6 A It doesn't have any particular provisions for that  
7 other than specifying that clerks have to reach the  
8 ballot and complete this process by the Election Day  
9 deadline which is 8 p.m. on Election Day. So if a  
10 voter were to learn, hypothetically, late on the -- in  
11 the afternoon of election day, there would be a very  
12 few number of hours for the individual to go -- to  
13 complete one of these processes, one of these options  
14 that I have described.

15 Q And then so to be clear, any curing that takes place  
16 has to take place by Election Day under this guidance;  
17 is that right?

18 A Yes. Under this guidance, it's -- by my understanding,  
19 it's very explicit that the curing has to be completed  
20 by 8 p.m. on Election Day.

21 Q And do you have a view about whether curing should be  
22 permitted after Election Day?

23 A Yes.

24 Q What -- what is your view?

25 A So a number of states allow curing after Election Day.





1 I'll just mention a few of them, Florida does, and they  
2 have a two-day cure window. Illinois is the longer  
3 range of this. They have 14-day cure window. I  
4 believe Colorado is eight days. Arizona may be five  
5 days. So these are deadlines for cures. They're  
6 not -- yeah -- there's deadlines for cures, just what I  
7 explained. So a voter who has a ballot that would  
8 otherwise be rejected has the opportunity to cure his  
9 or her ballot within those time windows.

10 Q And why do you believe it's important to allow curing  
11 after Election Day?

12 A I think in a pandemic in particular, they're going  
13 to -- well, we are already know that there -- that all  
14 the data suggests that we should expect a surge of  
15 ballots -- vote-by-mail ballots. I already mentioned  
16 how many we expect to arrive very close to being late.  
17 If there are postal delays, that are in addition to  
18 what we've talked about, then those numbers will be  
19 even greater. Which means you should expect in Maine,  
20 and many states if patterns hold, a lot of ballots to  
21 arrive on Election Day or say, one day before. And  
22 that will put tremendous pressure on any cure -- cure  
23 system that requires -- that has a deadline of Election  
24 Day itself.

25 I mean, it -- it seems sort of obvious with respect to



1 the fact that ballots arrive literally on Election Day.  
2 The opportunity for clerks to, on one hand, cure them,  
3 and also deal in a -- deal with in person voting, even  
4 though it will be limited, according to the data that  
5 we have, in a socially distant way, that will be very  
6 complicated. And so a lot of -- so I think to make  
7 this option amenable and usable by voters, particularly  
8 in a pandemic, that the sort of cure -- the cure  
9 windows I have described for other states are  
10 appropriate.

11 Q Do you have a particular recommendation as to what cure  
12 period Maine ought to use, or are you relying on the  
13 range of the states that you've identified?

14 A I would say based on those other states that a week  
15 seems reasonable.

16 Q On -- in -- does this cure guidance offer any remedy  
17 for ballots that are received in the mail after 8 p.m.  
18 on Election Day?

19 A No. Ballots that are received late, in other words  
20 after what is now the statutory deadline for ballot  
21 receipt, are rejected.

22 Q Are you familiar -- and I just have a couple more  
23 questions on this topic, but are you familiar with the  
24 method of curing an absentee ballot through the  
25 submission of an affidavit?



1 A Yes, I am.

2 Q Can you describe for the Court what that involves?

3 A So I'll just mention two states, Florida and Illinois.  
4 Florida allows ballot cures to be affected by  
5 affidavits. In Illinois law they use the term  
6 statement in their law. I'm not a lawyer, so I'm not  
7 sure if statement is the same thing as affidavit, but  
8 I'll go with this. They allow statements to substitute  
9 for -- to be a way that a cure is executed.

10 Q And do you have a view on whether this affidavit option  
11 ought to be offered in Maine to reduce burdens on  
12 voters?

13 A Yes, I think it should.

14 Q And why is that?

15 A For the same reason that I think a cure period beyond  
16 Election Day would be appropriate. In a pandemic, and  
17 consistent with all the data we've observed, we should  
18 expect a lot of vote-by-mail ballots arriving late or  
19 very close to late if not -- we'll just say very close  
20 to being late on election day in particular. Moreover  
21 in a pandemic, individuals traveling to elections  
22 offices, which you know, might be in a pre-pandemic  
23 period be unremarkable for many people, although  
24 certainly not for the people who are disabled, those  
25 sort of actions are health risks. And if we weren't in



1 a pandemic period, I wouldn't necessary say for people  
2 who are not disabled and have no other issues, sure  
3 traveling to an elections' office may be easy. I'm not  
4 suggesting that it is easy for people who say, have  
5 certain work schedules or are challenged in other ways.  
6 But in a pandemic it's certainly true that none of  
7 those thing apply, and that people who face  
8 difficulties going to election offices, or are sick  
9 themselves, or at risk, or a fear of getting sick, it  
10 would be reasonable to allow an affidavit to be a  
11 cure -- as other states do to be a cure method.

12 Q What methods of delivery of affidavits do these other  
13 states allow for?

14 A I believe they also allow electronic submission. I'm  
15 not familiar with all of their details.

16 Q Okay. Third party assistance, is that provided for?

17 A I believe so. I can't say exactly what Illinois law  
18 says.

19 Q Okay. And this is my last question to you on this  
20 topic, is it's a slight non secretor what is supposed  
21 to happen when a voter casts a ballot in front of clerk  
22 with respect to the clerk checking the signature on a  
23 ballot?

24 A So I earlier mentioned that there a three types of ways  
25 to vote absentee in Maine. One of these ways is called



1 in the presence of a clerk. So it's a slight misnomer.  
2 It's not really an absentee ballot, because it's done  
3 literally in front of a clerk. On the other hand, it  
4 is sort of an absentee ballot because it's not done on  
5 Election Day. So it's an absentee form. It's an  
6 absentee ballot, excuse me.

7 So Maine -- it's my understanding that Maine statute  
8 says that clerks are supposed to ensure that when  
9 individuals vote absentee ballots in their presence, in  
10 the presence of a clerk, that the ballot correct --  
11 that the voter correctly fills out the absentee ballot  
12 envelope. Even those absentee ballots are conducted --  
13 are filled out in the presence of clerks, they still  
14 have absentee ballot envelopes and all of the signature  
15 rules apply. And Maine law says that the clerk is  
16 supposed to make sure they're filled out correctly.

17 Q And in your experience or observation, do you know if  
18 clerks consistently verify that ballots have been  
19 signed when this method is used?

20 A So in my expert report -- actually, I'll refer to my  
21 rebuttal report right now. So I'm referring now to  
22 Table -- the update to Table 15 on page 12 of my  
23 rebuttal reports. It refers to what are called clerk  
24 absentee ballots, which I define in my expert report as  
25 absentee ballots cast in the presence of clerks. This

1 is the third method of voting absentee. It's not  
2 particularly common, but it's used.

3 What you can see is that there were missing signatures  
4 on a very small number of these ballots also, 16 of  
5 them in the 2020 Primary. Of course, you might say  
6 that number is small, but I would argue again, that  
7 these are people who wanted to vote, who lost the  
8 opportunity to vote because of a signature defect. And  
9 what's important about this is that these individuals  
10 literally voted in front of clerks who are instructed  
11 to make sure that ballots are filled out correctly and  
12 there was still a missing signature. And that -- what  
13 I take from this is the fact that missing signatures  
14 happen. We know that they happen. They happen even in  
15 the best of circumstances, and I would say clerk voted  
16 absentee ballots really are the best of circumstances.  
17 But we still see ballots with missing signatures.  
18 You can also note that among the elections listed in  
19 Table 15, the election with the greatest number of  
20 missing signatures among clerk cast absentee ballots  
21 was the 2020 Primary.

22 Q Thank you, Dr. Herron.

23 MR. DEVANEY: Your Honor, I'm mindful of your comment  
24 earlier that 10:30 might be the appropriate point for a break.  
25 I know we're a little past that. I'm about to change topics.



1 So I thought I would check in with you.

2 THE COURT: Yeah, this sounds like a good spot to take a  
3 break. Let's take 15 minutes, give us the chance to stretch  
4 and do whatever else we need to do. And let's try to get  
5 back -- by my watch it's 10:36, so let's do -- oh, let's give  
6 us to -- how about -- how about 10:50.

7 MR. DEVANEY: Sounds great. And Your Honor, just for  
8 purposes of letting you know where I am. We're probably about  
9 60 percent of the way through the direct.

10 THE COURT: Sounds great. Thank you, Mr. Devaney. All  
11 right. We'll see you in about 15 minutes.

12 MR. DEVANEY: Thank you.

13 (Recess at 10:36 a.m., until 10:59 a.m.)

14 THE COURT: Okay. We're back on the record in the matter  
15 of Alliance for Retired Americans et al v. Matthew Dunlap et  
16 al, docket CV-20-95. Anyone need any more time to do what  
17 they need to do, or we all set to resume? When we left we  
18 were still in the direct examination of Dr. Herron by Mr.  
19 Devaney, and we stopped at a good logical stopping place.

20 Mr. Devaney, anything we need to do before we resume?  
21 Anything we need to --

22 MR. DEVANEY: No, Your Honor, we're ready to roll.

23 THE COURT: Okay. Great. Mr. Knowlton you all ready to  
24 resume? Patrick you all set? Zach? Okay, great.

25 So we've got, Mr. Devaney, I'll turn it back to you and



1 we'll remain in the direct examination of Dr. Herron.

2 MR. DEVANEY: Thank you, Your Honor.

3 RESUMED DIRECT EXAMINATION BY MR. DEVANEY:

4 Q Dr. Herron, we're now going to turn to Maine's  
5 restrictions on voter assistance. And let me ask you,  
6 just as a foundational question, can you describe what  
7 types of assistance with ballot delivery are permitted  
8 under Maine law?

9 A Maine law allows two forms, I would say, in a general  
10 sense, of ballot delivery. One is by immediate family  
11 members. And one is, by what the State calls, third  
12 parties. These third parties are not allowed to be  
13 paid. Can everyone hear me? I'm seeing a lot of  
14 freezing.

15 Q We can hear you.

16 THE COURT: We can hear you fine, yup.

17 Q Yeah.

18 A Okay. I will just continue. Thank you. Maine allows  
19 immediate family members to deliver ballot -- absentee  
20 ballots and also third parties. However, with third  
21 party ballot delivery there are witness requirements,  
22 and depending on the voter's circumstance, for example  
23 if the voter also needs assistance with ballot marking,  
24 because of a -- say, a difficulty reading the ballot,  
25 those -- the witness requirements includes like an



1 assistant requirement as well. And so if you have a  
2 ballot delivered by a third party, you could come into  
3 contact with up to three other individuals.

4 Q And the prohibition on paid third parties from  
5 returning bad ballots, do you know, does that apply to  
6 someone who's, for example, a salary campaign worker  
7 who has multiple responsibilities, not just  
8 responsibility for assisting voters?

9 A I'm not going to offer a legal judgment, but it's my  
10 understanding that it does. So in other words, that  
11 behavior is also prohibited by Maine -- by Maine law is  
12 my understanding.

13 Q And in your report you talked about this -- these  
14 restrictions placing burdens on voters. And I just  
15 want to ask you, would you describe to the Court what  
16 burdens this results in for voters including during the  
17 pandemic?

18 A Well, a voter who, because of a disability, cannot  
19 easily travel anywhere, might have difficulty or would  
20 have difficulty acquiring stamps. So even if such a  
21 voter like that wanted to vote by mail, the act of  
22 getting stamps might be difficult. So I would say that  
23 when -- when they're -- when they're -- with respect to  
24 family members and third party ballot delivery, these  
25 are -- the requirements are burdensome, because they

1 involve other individuals, in particular, for example,  
2 individuals who have to be witnesses for third party  
3 delivery. And they're -- in general, these  
4 requirements are burdensome, because it require  
5 individuals to find others to deliver their ballots.

6 Q You mentioned that family members are permitted to  
7 return ballots on behalf of other family members. Have  
8 you analyzed the extent to which that is actually  
9 happening during the pandemic?

10 A Yes, I have.

11 Q And so for everybody who's following along, Dr. Herron  
12 addresses that topic in his rebuttal, Figure 1, page  
13 17. And can you just describe for the Court what you  
14 determined from looking at the data about whether  
15 family members are actually assisting with returning  
16 ballots at the same rate as in the past?

17 A Yes. So what this figure shows is across the number of  
18 recent elections in Maine -- statewide elections that  
19 are Primaries and Generals each dot in the figure  
20 represents an election and each election is labeled.  
21 GE stands for General Election. On the horizontal or  
22 the X axis of this figure is the number of voter  
23 delivered absentee ballots. These are the ballots that  
24 the voter actually delivered him or herself. And on  
25 the vertical axis, the Y axis, is the number of family

1 delivered ballots. And what you can see in the figure  
2 is if I -- if you ignore the 2020 Primary, there's a  
3 really nice relationship between voter delivered  
4 absentee ballots and family delivered absentee ballots.  
5 In fact, it's practically linear I would say. And you  
6 can see this by just, basically, throwing a line  
7 between those points. Again, I'm ignoring the 2020  
8 Primary.

9 And so if you can visualize that sort of a line, what  
10 you can see is the 2020 Primary is very different. In  
11 fact, it has a lot of voter delivered absentee ballots,  
12 which is consistent with the fact that there were so  
13 many absentee ballots in general, but many fewer are  
14 family delivered absentee ballots. And in particular,  
15 the dot for the 2020 primary is close to, in a  
16 horizontal sense -- it's underneath the dot for the  
17 2016 General Election; not exactly, but close to it.  
18 So that means we should have seen a lot more family  
19 delivered absentee ballots. And in particular, if you  
20 think about the vertical distance between the 2016  
21 General and the 2020 General -- Primary, that gap is a  
22 measure of the number of family delivered absentee  
23 ballots that didn't happen. So that's number around, I  
24 would say, 12,500. And I just calculated that by  
25 noticing that the 2020 Primary's around 12,500 family



1 delivered. And it should have been over 25,000. So  
2 the difference between 25,000 and 12,500 is 12,500. So  
3 I would say that because of the pandemic, it looks like  
4 12,500 family delivered absentee ballots didn't occur.

5 Q And for those voters who don't have a family member  
6 who's able to return a ballot, or actually don't have a  
7 family members at all, what is their option if they  
8 want assistance with returning the ballot during the  
9 pandemic?

10 A They have to use what I mentioned earlier, third party  
11 ballot delivery.

12 Q And just to be clear, what -- there's a witness  
13 requirement with that third party delivery?

14 A Yes.

15 Q And if so, can you describe what it is?

16 A Excuse me. Maine imposes a witness requirement on  
17 third party ballot delivery -- third party absentee  
18 ballot delivery and this form of ballot delivery isn't  
19 very often used -- heavily used in Maine. Excuse me.  
20 I'm trying to find the table where I describe this.  
21 On page Table 2 -- I'm sorry, on Table 2, page 6 of my  
22 rebuttal report, I describe the methods of absentee  
23 ballot delivery. This table was the source for the  
24 figure that I just discussed. And this question refers  
25 to third party ballot delivery, which is in the right

1 most column of this table. So you can see that the  
2 numbers are small, relatively speaking. So not many  
3 people in Maine use third party absentee ballot  
4 delivery, however, just like the family number -- just  
5 like the number of family delivered absentee ballots  
6 was small in the 2020 Primary, so was the number of  
7 third party absentee ballot deliveries. And you can  
8 see this, because there were 301 of those. And so that  
9 number is in the 2020 Primary row and the third party  
10 column. So 301 is small. And I can say that for the  
11 following reason. If you compare the 2020 Primary to  
12 the 2018 Primary which is right above it, you can see  
13 there were around five times as many delivered absentee  
14 ballots in 2020 as there were in 2018. That's 60,000  
15 divided by 12,000 which is around 5. So therefore we  
16 should expect five times as many third party ballot  
17 deliveries, but in fact, we don't. We see 301 compared  
18 to 141. That's about twice as many.

19 So what that means is you should have seen five times  
20 as many third party deliveries in 2020 Primary, but we  
21 only say twice. So that's a real reduction in third  
22 party deliveries and that's the same for the amount I  
23 just described in family deliveries. So all these  
24 methods of ballot delivery -- of absentee ballot  
25 delivery that rely on other people, either immediate



1 family members or a third parties accompanied by  
2 witness requirements, all of those methods were down in  
3 the 2020 Primary.

4 Q What do those data tell us about the available pool of  
5 people in a November election to assist with returning  
6 ballots for others?

7 A I would say the data suggests to me that that pool  
8 shrunk. And it can, of course, shrink for a number of  
9 reasons. It could be that others -- that individuals  
10 don't want to help others, because they're afraid of  
11 getting sick from them or that they're afraid of  
12 infecting them. Or it could be that individuals don't  
13 want to expose other family members to risk. So all of  
14 these things will shrink the pool in some fashion. And  
15 I would say that that result is consistent with what  
16 we've seen across the country in the availability of  
17 poll workers.

18 So various states have run primaries during the  
19 pandemic. And I've already talked about them -- some  
20 of them. And it's documented that in some of these  
21 states, they've had difficulty recruiting poll workers,  
22 or poll workers simply haven't wanted to -- haven't  
23 wanted to work in polls the way that they normally do.  
24 And I would say that looks like the same affect here,  
25 because that reduced availability of individuals by the



1 families members or not to assist the voting the  
2 process, broadly construed in this case ballot  
3 delivery.

4 Q Dr. Herron, we've heard the term in this case and in  
5 others, ballot harvesting, suggesting that possibly  
6 there's something nefarious about this type of systems  
7 with delivering ballots. But in your experience who  
8 are the types of voters who rely on assistance in  
9 returning ballots?

10 A Older people, people with disabilities is what it  
11 appears from other data. We don't have data on Maine  
12 given the nature of Maine may not exactly relies on  
13 this sort of thing, but from other states, that's what  
14 I can say.

15 Q The effect of these restrictions on the pool of people  
16 available to assist with those categories of  
17 population, how burdensome are they this year as  
18 compared to prior years?

19 A I would say the burdens are much greater now, simply  
20 because of the pandemic. It -- a witness requirement  
21 is always a burden, however, in a pandemic, the witness  
22 requirement is a burden because of an infection risk.  
23 So as I earlier mentioned that, depending on one's  
24 circumstance, using a third-party absentee ballot  
25 delivery in Maine could expose someone up to -- with up



1 to three contacts. Ordinarily we might not argue that  
2 those contacts are health risks. We might say they're  
3 burdensome anyway, but we certainly wouldn't  
4 necessarily say they're health risks, but now, of  
5 course, we would. And the different exigencies in the  
6 pandemic. And so these requirements are now burdensome  
7 definitely.

8 Q Dr. Herron, in response to this particular issue and  
9 some of the other issues that plaintiffs have raised in  
10 this case, as I mentioned in my opening, the State has  
11 talked about voter fraud as a justification. And let  
12 me just ask you a foundational question. Have you  
13 analyzed or studied voter fraud in the United States as  
14 part of your election administration analysis and  
15 studies?

16 A Yes. I have two peer reviewed papers on voter fraud.

17 Q Can you just describe in a very high level what those  
18 papers are?

19 A So one paper is an analysis of Donald Trump's claims  
20 about voter fraud in the 2016 General Election. So I  
21 wrote this with some of my colleagues at Dartmouth.  
22 And we looked at some of Donald Trump's arguments or  
23 claims about prevalence of fraud, non-citizen fraud.  
24 We looked at -- and that's just in voting, excuse me,  
25 claims about New Hampshire in particular. That's



1 incidental to the fact that I live in New Hampshire.  
2 There was a -- there were arguments some of you may  
3 remember about particular fraud there. And there were  
4 arguments that the elections were rigged. I'm using  
5 rigged in the general sense. That was the claim.  
6 And so my colleagues and I decided to write a paper  
7 that said, like, if we take all these claims very  
8 seriously what might we see in the data. And so that  
9 paper is a product of that analysis. And basically, we  
10 find no evidence for any of the claims that Donald  
11 Trump was making in the period before and immediately  
12 after the 2016 General Election. That's one paper.  
13 And the other paper is an analysis of North Carolina  
14 District 9 and the election there in 2018. I wrote  
15 that one by myself, not with my Dartmouth colleagues.  
16 And there I show that patterns in absentee voting and  
17 Election Day voting look consistent with allegations  
18 about fraud.

19 Q And have you testified as an expert on fraud in other  
20 proceedings?

21 A I have.

22 Q Now, from your research, what conclusions have you  
23 drawn about the prevalence of voter fraud in the  
24 country?

25 A So my research includes the papers I just mentioned, my



1 understanding of the reading the literature on this  
2 subject, and some work I did on Maine, in particular,  
3 for this litigation that's summarized in my rebuttal  
4 reports. And my conclusion is that voter fraud in the  
5 United States is rare. And voter fraud in Maine is  
6 also rare. Obviously, it's always possible that one  
7 state like Maine is unusual, which is why I studied  
8 Maine in particular in my rebuttal report. I find no  
9 evidence that it is unusual. It looks like in the rest  
10 of the country evidence of voter fraud is rare.

11 Q Have you seen any statements from Maine officials with  
12 respect to whether voter fraud is rare in Maine?

13 A Yes, I have.

14 Q Please describe them.

15 A So --

16 Q You may have addressed this in your rebuttal report in  
17 paragraph 83.

18 A Thank you. So in that paragraph, I quote Secretary of  
19 State of Maine. I'll just read this quote. "Among  
20 secretaries of state, we've been very concerned about  
21 the rhetoric around the conduct of the election." End  
22 quote. Secretary Dunlap went on to say, quote, "The  
23 idea that there's widespread voter fraud is really more  
24 of a myth." End quote.

25 Q And Dr. Herron, have you analyzed whether there's voter



1 fraud in Maine specifically with respect to absentee  
2 voting?

3 A When I studied Maine, which is described in my rebuttal  
4 report, when I looked for incidents of voter fraud, I  
5 looked for incidents of fraud in general. So absentee  
6 voter fraud is a special case of voter fraud. So if I  
7 conclude that voter fraud is rare in Maine, in general,  
8 then it follows any specific sets or type is also rare.

9 Q And did you review Maine's lawsuit, it's complaint  
10 against the United States' Postal Service?

11 A Yes, I did.

12 Q Did you see any statements in there with respect to  
13 Maine's view of whether there is voting fraud in the  
14 context of absentee voting?

15 A Yes, I did.

16 Q What did you see?

17 A I'm looking now. I don't know what the exhibit number  
18 is. I'm looking at the lawsuit, the complaint filed by  
19 Pennsylvania, California, Delaware, Washington D.C.,  
20 Maine, Massachusetts, and North Carolina against the  
21 postal service. And in this complaint, paragraph 11 on  
22 page 4, I'll read the paragraph in its entirety. It's  
23 only one line. Quote, "Contrary to Presidents -- "  
24 excuse me. I'll start again. Quote, "Contrary to  
25 President Trumps claims, there is no evidence that

1 mail-in ballots contribute to fraud." End quote.

2 And so far as Maine is a signatory to this lawsuit, I  
3 would attribute that statement to Maine as well.

4 Q And Dr. Herron, my last question on this topic is in  
5 your research have you reached any conclusions about  
6 the relationship between voting assistance laws of the  
7 type we've just discussed and voter fraud?

8 A So I have done research on various states including the  
9 ones I mentioned, and I don't see any evidence for a  
10 relationship between laws restricting assistance with  
11 ballot delivery and voter fraud.

12 Q Thank you, Dr. Heron. We have two more topics to talk  
13 through. The first one is postage, and the last one is  
14 voter registration. Now, with respect to postage, you  
15 mentioned in your summary at the start of your  
16 testimony that Maine does not prepay for postage, and  
17 in a report you talked about burdens that places on  
18 voters. Can you just expand for the Court on what  
19 burdens that results in for voters?

20 A I would say there are two broadly. There's literally  
21 the financial cost of postage, which is 55 cents,  
22 small, but not necessarily for everyone. But there's  
23 also a burden associated with acquiring postage. So  
24 not everyone keeps postage at his or her residence.  
25 And that means individuals who want to mail their



1       ballots back need to get postage. And so one way to do  
2       that is by traveling to a facility like a post office  
3       or a store that sells stamps. Those sort of activities  
4       are unremarkable, perhaps. in normal circumstances, but  
5       not in a pandemic. So those traveled -- but the  
6       potential health risk associated with that travel is a  
7       cost or a burden. And another way that individuals can  
8       purchase postage is via the internet. If one, the  
9       individual has internet access, and two is facile  
10      (phonetic) with internet ordering. So I would say the  
11      burdens stem, to answer your question, from the actual  
12      cost of postage, as well as, the acquisition of postage  
13      that may not be trivial for everyone.

14    Q     Do you now if Maine has taken any public position with  
15       respect to whether the types of travel required to  
16       obtain postage are appropriate during the pandemic?

17    A     Well, I've heard -- I apologize, I can't see her name  
18       on my screen, but I heard the -- I believe one of the  
19       State defendants this morning was speaking about the  
20       travel cost being small. So if that answers your  
21       question, I would say I heard that.

22    Q     And what are the consequences, Dr. Herron, to voters of  
23       providing postage?

24    A     There is some evidence that providing postage actually  
25       leads to greater turnout. And I use the adverb,

1 actually, here because many people think that 55 cents  
2 is negligible, which it may be for some people, but not  
3 for everyone. So in my expert report I described some  
4 evidence from the State of Washington that the  
5 largest -- I believe it's King County, I'd have to look  
6 to my report to verify, provided postage and noticed an  
7 increase in vote-by-mail returns. There is some  
8 evidence in Switzerland on this. There is also a paper  
9 in the United States that doesn't find evidence of  
10 strong effects or any effects. So I would say there is  
11 some evidence -- some evidence that when jurisdictions  
12 provide postage, turnout increases.

13 Q Dr. Herron, our last topic is voter registration. And  
14 just by way of background, you investigated the methods  
15 of voter registration that are available in Maine,  
16 correct?

17 A Correct.

18 Q And could you just describe for the Court what those  
19 methods are?

20 A So --

21 Q And I believe you -- in your original report you  
22 address this issue at page 36.

23 A Thank you. So in Maine I took some data from the U.S.  
24 Elections Assistance Commission, which is a federal  
25 organization. It collects data from jurisdictions like



1 states. In fact, it collects data from states on  
2 various aspects of electoral processes including  
3 registration. And what Table 3 on page 36 reports is  
4 the ways historically, at least in the past four  
5 statewide General Election cycles, individuals have  
6 registered to vote in the State of Maine. So you can  
7 see that some states are listed as SDR. That stands  
8 for same day registration. This is a voter  
9 registration method that's available in Maine, often  
10 called SDR. SDR registrations are in person. And  
11 that's because in order to use SDR you have to be in a  
12 polling place.

13 In addition, registrations can be conducted at DMV  
14 offices, or voter registration drives, or by mail. And  
15 I should say here, that I'm using the term registration  
16 in the general sense. From the U.S. Elections  
17 Assistance Commission data you can't always tell if  
18 registrations are new registrations or they're updates.  
19 This is all discussed in my expert report. So I'm  
20 using that term generally now.

21 And what you can see is that, from Table 3, that almost  
22 all voter registrations in Maine are conducted  
23 historically in -- using methods that involve in person  
24 contact. So this is sort of collapsed or summarized on  
25 Table 4 on page 38 where I take those numbers and break

1 the methods of registration into two types, contact and  
2 non-contact. So in Maine, the only form of non-contact  
3 registration is mail. Maine does not offer online  
4 registration, which would be another form of non-  
5 contact registration that other states offer, many  
6 other states, I should say.

7 So you can see from Table 4 which collapses SDR  
8 registrations, registrations at drives. Again, these  
9 are all in person forms. You can see that historically  
10 well north of 90 percent of voter registrations in  
11 Maine are conducted in methods that involve in person  
12 contact. And in principal, one could argue that that's  
13 not remarkable, but in a pandemic, of course, it is,  
14 because methods of non-contact -- methods of contact  
15 registration involve infection risk.

16 So earlier I talked about the cost of voting. And in  
17 Maine you have to register to vote, so therefore any  
18 cost of registration is also a cost of voting. So any  
19 infection risk associated with registration is an  
20 infection risk for voting. And so what this table  
21 shows is that historical methods of voter registration  
22 in Maine are associated with this sort of costs that  
23 are problematic in a pandemic.

24 Q How does Maine compare to other states with respect to  
25 contact versus non-contact forms of registration?



1 A It's one of the most contact intensive states in the  
2 country. And you -- and this clear on -- made explicit  
3 on page 40 of my expert report in this figure, Figure  
4 1. That figure is called a bar plot. So the height of  
5 each bar represents the percent of non-contact voter  
6 registrations. And each bar is a state. So it doesn't  
7 include every state as discussed in my expert reports a  
8 couple states don't have data that allow me to do this  
9 work. That's not surprising with data from the  
10 Elections Assistance Commission sometimes can be  
11 spotty.

12 What you can see here is that Maine -- the Maine bar is  
13 colored black so it's visible and it's in the far right  
14 of the figure. And the word Maine is underneath. And  
15 that shows that compared to almost all states, Maine  
16 has a greater -- is a lower rate of non-contact  
17 registration than almost every state in the country.  
18 The only states that have less -- that are -- have  
19 smaller rates of non-contact are New Jersey, Wyoming,  
20 and New Hampshire. So I would say, to answer your  
21 question, Maine is unusual in the sense of the extent  
22 to which it's registration methods mandate or are used  
23 in a contact way.

24 Q Does that give you any concerns about the ability of  
25 people to register for the November election?

1 A It does.

2 Q What concerns?

3 A The concerns I would have reflect the fact that in the  
4 pandemic individuals clearly don't want to expose  
5 themselves to others. And I can see that from other  
6 states that have published data -- I can see it from  
7 Maine also, but in my expert report I described other  
8 states that had published data on how individuals are  
9 registered to vote during a pandemic.

10 Q And now, for those who can't register in person in  
11 Maine, can you just clarify what it -- what must they  
12 do to register by mail?

13 A To register by mail in Maine you have to have a  
14 registration form, which is available online, but must  
15 be printed. So this registration form, you have to get  
16 it, which either means you print it, assuming you have  
17 to access to a printer, or you ask a clerk to send it  
18 to you, in which case you have a mail delay. Then you  
19 have a registration form. And if you are a new  
20 registrant as opposed to a registrant who's, say,  
21 updating their registration, you need to make copies of  
22 identification documents that satisfy Maine law. And  
23 these copies you have to make with some sort of copying  
24 device, either a printer or a copy machine, some device  
25 to which an individual has access, and that material

1 has to be sent to a clerk.

2 Q Now Dr. Herron, in your rebuttal report, you provided  
3 update on the effect that the registration laws in  
4 Maine are having on the volume of registrations. And  
5 what conclusion do you reach in that regard? And I  
6 refer you to page 21 of your rebuttal report.

7 A So on page 21 of my rebuttal, Table 11, that table  
8 reports some data that was produced by the State on  
9 voter registrations in 2016, '18, and '20. So the  
10 other registration data I just discussed came from the  
11 Elections Assistance Commission. This data comes from  
12 the State of Maine directly. I just want to make that  
13 clear, because the sources are different.  
14 So what the State did was it broke down registrations  
15 by year, '16, '18, and '20, and by whether they were  
16 new registrations or address updates. As I mentioned  
17 before those are both in some sense considered voter  
18 registrations. So I'm going to talk about this table  
19 and focus attention on the total rows. Turns out that  
20 doesn't matter anyway, but I'm going to look at the  
21 rows that say total. So when I say a registration, I  
22 mean any sort of a registration.  
23 So the comparison I wanted to draw is between 2020 and  
24 2016. And that's because both of those years are  
25 presidential years. So it turns out if you do the

1 analysis that I'm going to describe talking about 2018  
2 and 2020 you get the same basic result. But I would  
3 argue that the 2016 to 2020 comparison is better and  
4 more appropriate because 2016 and '20 follow -- for the  
5 purposes of this analysis they -- they're both in  
6 presidential election years.

7 So what we see is that the top panel of Table 11 list  
8 registrations in the first two months of the year.  
9 That would January and February and a couple days into  
10 March. And I'm using those first two months because  
11 that's how the State organizes data when it disclosed  
12 it to me. And what you can see from this -- well,  
13 first of all, I would note that those two months should  
14 be understood as pre-pandemic.

15 So what you can see is in 2020 there were 32,980  
16 registrations in Maine. In 2016 there were 8,970. So  
17 if you take the ratio for 32,980 divided by 8,970 you  
18 get about 3.6. So what that means is that in Maine,  
19 before the pandemic started, there were a lot more  
20 people registering to vote in 2020 compared to 2016;  
21 3.6 times as many. So that tells you something about  
22 the, you know -- I would say the interest in engaging  
23 in elections in 2020 compared to 2016.

24 Now, if you look at the lower panel of Table 11 it  
25 describes March to Election Day, the Primary Election



1 Day. So you should understand this as post-onset of  
2 pandemic. I'll talk for a moment about the fact that  
3 Election Day varied, but for the moment I'll just think  
4 of before and after Election Day. And what you can see  
5 there, if I look at the total row, is that in 2020  
6 there were 14,454 registrations and in 2016 there were  
7 14,278. So that -- the ratio of 14,454 to 14,278 is  
8 barely 1. I believe it's 1.07.

9 So what we earlier saw was that there was a surge in  
10 Maine pre-pandemic, about a surge level of 3.6 times as  
11 many registrants before the pandemic started. Once the  
12 pandemic started, that ratio -- that surge basically  
13 went away. There were barely more registrations in  
14 2020 than 2016. And we know that that wasn't true  
15 before the pandemic.

16 Now, it turns out that what I'm saying is actually an  
17 understatement in the drop of voter registrations in  
18 Maine once the pandemic started, and that's because the  
19 Primary Election Day in 2020 was held in July. The  
20 Primary Election Day was July 14th. But the Primary  
21 Election Day in 2016 was in June. So that means there  
22 were actually more days, March to Primary Election Day,  
23 in 2020 than in 2016.

24 So as I explained in my rebuttal report, what I do is I  
25 normalize those figures by number of days. And if you

1 do that, you get even a greater drop. So the ratio of  
2 2020 registrations to 2016 registrations is actually  
3 less than one. I believe it's around .78. I'd have to  
4 check my report to get the exact number, but the key  
5 thing is it's actually less than one. So what became a  
6 surge -- excuse me. What started as surge in voter  
7 registration pre-pandemic, because actually a drop  
8 relative to 2016 voter registration post onset of  
9 pandemic.

10 Q What conclusion do you draw from that?

11 A Well, I conclude that these voter registration -- that  
12 the restrictions on voter registration in Maine,  
13 restrictions on Maine requiring in-person contact bind  
14 or matter. And I -- in particular, I would draw  
15 attention to what I found in Wisconsin in my expert  
16 report. Wisconsin is a state that -- which I have  
17 similar sorts of data, and in 2020 post-pandemic,  
18 they're number of registrations actually increased in  
19 the period. So we know it's not true that the pandemic  
20 just drove down registrations everywhere. So what  
21 we're finding is they drove them down in Maine. And in  
22 Wisconsin there's online registration. So that's a  
23 form of voter registration that doesn't require  
24 contact. That's not available in Maine.

25 Q Is it possible that the drop off in Maine occurred



1           simply because everybody had already registered before  
2           the pandemic hit?

3   A       That would seem unlikely based on historical data. And  
4           in my rebuttal report on --

5   Q       Paragraph -- page 62.

6   A       On, excuse me -- right. On -- on paragraph 59 --

7           (Audio Disconnects)

8           THE COURT: What happened?

9           THE CLERK: I'll have to --

10          THE COURT OFFICER: You may have run out of battery.

11          (Recess at 11:37 a.m., until 11:42 a.m.)

12          THE COURT: -- snafu on our end. So we're back on --  
13 we're back on the record in the matter of Alliance for Retired  
14 Americans et al v. Matthew Dunlap, CV-20-95. I apologize for  
15 that interruption, but we had a little power outage. So let  
16 me just tell you, Mr. Devaney are you there?

17          MR. DEVANEY: Yeah, I'm here, Your Honor.

18          THE COURT: I think you've moved -- you've moved around  
19 on my screen, but there you are down on the bottom.

20          The last thing I remember Dr. Herron saying before we  
21 went offline there, he had mentioned that he had been studying  
22 some information from Wisconsin which showed an increase in  
23 voter registration during the same time period that Maine saw  
24 a decrease during the period of time from March until the  
25 Primary. He noted that the Wisconsin office online



1 registration, which Maine does not offer. And then I think,  
2 at that point, we went offline. That was my last recollection  
3 of what Dr. Herron was saying.

4 MR. DEVANEY: Thanks for that context, Your Honor. I  
5 just have one more question for him. Should I go back on the  
6 record and ask that question?

7 THE COURT: Yeah, sure. We're on the record now, John,  
8 so you -- please continue.

9 MR. DEVANEY: Okay.

10 THE COURT: Yup.

11 RESUMED DIRECT EXAMINATION BY MR. DEVANEY:

12 Q Dr. Herron, you talked about the drop off in  
13 registrations in Maine as compared to Wisconsin once  
14 the pandemic hit. Is it possible that that drop off in  
15 Maine is explained by the fact that most voters had  
16 already registered by the time the pandemic hit?

17 A No, I don't believe so. And I addressed this in my  
18 rebuttal report. I should note given this back and  
19 forth, the Wisconsin data are on Table 6 of my expert  
20 report. But to address this question in particular  
21 about whether the drop off in Maine could be a  
22 consequence of the fact that everyone was registered to  
23 vote effectively, on page 59 of my rebuttal report, I  
24 note that according to the State's data, there were  
25 110,254 voter registrations in Maine in January of 2016



1 through November 2016. So roughly that's the 2016  
2 General Election period. It doesn't include December,  
3 but that's obviously after the election. Of those,  
4 110,254, approximately, 60.82 percent of them at 67,059  
5 took place in October and November. Those are the last  
6 two months. We're not in November -- October/November  
7 yet. And I don't have data from the State on obviously  
8 those months. They haven't happened.

9 So what I would say is what this data suggests is that  
10 in Maine, in Presidential Election years, there is a  
11 surge in registration in the month of the Presidential  
12 Election and the month before, November and October.  
13 And if that's consistent also in 2020 that would mean  
14 that there are a lot of people who are planning to  
15 register to vote in those two months in the upcoming  
16 presidential race.

17 Q Thank you, Dr. Herron.

18 MR. DEVANEY: Your Honor, that concludes my direct  
19 examination of Dr. Herron. And I offer him for cross.

20 THE COURT: All right. Thank you, Mr. Devaney. And I  
21 think we'll start with Mr. Knowlton.

22 MR. KNOWLTON: Thank you. Good morning.

23 CROSS-EXAMINATION BY MR. KNOWLTON:

24 Q Prof. Herron, my name is Thomas Knowlton, and I'm an  
25 assistant attorney general representing the defendants



1 in this matter. First thing I'd like to direct you to  
2 is the testimony that you gave about the cure  
3 procedures that Secretary of State has implemented.  
4 And in particular, would you agree that in June of this  
5 year the Secretary of State shoot some guidance to  
6 municipal officials instructing them to cure certain  
7 errors that maybe -- may have been made in absentee  
8 ballots?

9 A Yes. As I mentioned in my rebuttal report, it's my  
10 understanding that, I believe, it was five days after  
11 this litigation was filed that the State issued some  
12 guidance. It was -- my understanding is it's different  
13 than this guidance which is dated September 18th, 2020.  
14 And it's my understanding that that guidance was in  
15 effect for the 2020 Primary from the moment it was  
16 issued.

17 Q Sure. And that first guidance -- you just made a note  
18 of the fact that the lawsuit was filed in June. But  
19 that first guidance was issued well before you issued  
20 your report in this case, wasn't it?

21 A I don't know the date of the guides. I don't have that  
22 data in front of me right now.

23 Q Well, if you -- if you -- if the guidance was issued in  
24 June of 2020 and your report was issued in August, is  
25 it fair to say that you had every opportunity to review

1 and consider that guidance in preparing your report?

2 A I would say that if the guidance was issued before my  
3 report, then the numbers cited in my report would  
4 reflect that guidance being in effect.

5 Q So your initial report actually makes no mention of  
6 this guidance, does it?

7 A It does not, because I didn't know it existed at that  
8 time.

9 Q So you prepared a report in August of this year that  
10 did not know of the existence of guidance that the  
11 Secretary of State had issued in June; is that your  
12 testimony?

13 A I would say my testimony relied on the Maine statutes.  
14 And what I cited in my report is what the law -- my  
15 understanding of the law. And I wasn't aware that  
16 there was this guidance that you are mentioning in  
17 June. So I didn't incorporate that in my report.

18 Q All right. Professor Herron, but you did note the  
19 guidance in your rebuttal report; isn't that fair to  
20 say?

21 A That is true. I definitely noted it in my rebuttal  
22 report.

23 Q You noted in four different places and concluded that  
24 the lower rejection rates in the July Primary were  
25 likely a result of that guidance; is that fair to say?

1 A I don't know exactly what your report -- or you're  
2 referring to me -- my report, but I understand that I  
3 did comment in my rebuttal report on the rejection rate  
4 in the 2020 Primary. And I noted that the guidance was  
5 in effect.

6 Q Well, please look at paragraph 11 of your rebuttal  
7 report, please, on page 8. Are you there?

8 A I am there.

9 Q Would you agree that in paragraph 11 of your rebuttal  
10 report you state that the lower rejection rates are  
11 quote, "likely a result of new absentee ballot cure  
12 procedures instituted by the Maine Department of  
13 Secretary of State." End quote.

14 A Yes, and then the end of the sentence is via guidance  
15 circulated, yes, that's correct.

16 Q Right. Okay. And you're aware that similar guidance  
17 has been or will be issued for the upcoming General  
18 Election, right?

19 A I believe that is the guidance that I discussed in my  
20 testimony that's dated September 18th, 2020. And the  
21 title is issued by the Secretary of State's Office for  
22 the November 3, 2020, General Election.

23 Q Right. And that was Defendant's Exhibit 17. And you  
24 answered some questions from Mr. Devaney about that  
25 document. Do you recall that?



1 A I recall that, yes.

2 Q And one of the things that you focused in on was the  
3 cure guidance regarding missing voter signatures, which  
4 is on page 2 of that exhibit; do you remember that?

5 A I remember I -- it's on page 1 of mine, but that's  
6 probably because I don't have a cover page. But yes, I  
7 remember discussing the mismatched voter signature  
8 guidance.

9 Q I'm actually asking you first about the missing voter  
10 signature guide which is on the second page of that  
11 exhibit. Would you look at that please?

12 A I apologize. I was confused about which category.

13 Q That's okay.

14 A So I --

15 Q That's okay.

16 A And I --

17 Q Do you remember testifying about the missing voter  
18 signature guidance?

19 A Yes.

20 Q And in particular, with respect to paragraph C, you  
21 noted that if the voter didn't wish to do either go  
22 into the town office or request a duplicate ballot,  
23 that the clerk would accept the ballot but challenge  
24 it; do you remember that?

25 A I believe I said that, and I can see that is what is in



1 paragraph 2C.

2 Q Now Prof. Herron, do you know what the consequence is  
3 if a ballot is challenged under the statutes?

4 A It's my general understanding that challenged ballots  
5 in Maine are counted later in an election depending on  
6 election margins.

7 Q Right. But a matter of fact, the statute provides that  
8 a challenged ballot must be counted the same as a  
9 regular ballot; isn't that right?

10 A Well, you would have to -- I mean, I'd have to see the  
11 statute to say it's the same.

12 Q Okay. And that the validity of a challenged ballot  
13 need not be determined unless it affects the result of  
14 an election; isn't that what Maine statutes provide in  
15 Section 6.96 of Title 21-A, Professor?

16 A Well, ordinarily I would ask you to show me the text of  
17 that to confirm it, but it is my understanding that  
18 that is correct.

19 Q Okay. And with respect to mismatched voter signatures,  
20 what happens if the clerk is unable to reach the voter  
21 by 8 p.m. on Election Day?

22 A This is at the top of page 2. What it says is that --  
23 should I read it?

24 Q Sure, thank you, yes.

25 A "If the clerk is unable to reach the voter before 8



1 p.m. on Election Day, the clerk should accept the  
2 ballot but challenge it in accordance with Title 21-A,  
3 section 673, subsection 1."

4 Q And have reviewed the evidence that the State provided  
5 in this case about how many ballots were actually  
6 rejected for having signatures that didn't matching the  
7 July 2020 Primary?

8 A That number, I think I mentioned in my testimony, is  
9 very small compared to the number of ballots with  
10 missing signatures.

11 Q It was nine, wasn't it?

12 A I don't know off the top off my head about the exact  
13 number, but I am confident in that -- in what I said  
14 earlier, which is that the number of ballots with  
15 mismatched signatures, again, subject to my  
16 understand -- my clarification of what mismatched means  
17 is lower than the number of ballots with missing  
18 signatures.

19 Q I'm going to ask you now about your testimony  
20 regarding, what you call, experienced vote-by-mail  
21 absentee ballot voters. And you offered some opinions  
22 about what you called experienced voters as compared to  
23 those who are not experienced. You recall that  
24 testimony?

25 A I believe I do.



1 Q And that definition is important to your opinions,  
2 because you conclude that by mail absentee ballot  
3 voters who are not experienced casted  
4 disproportionately higher number of rejected absentee  
5 ballots; is that your testimony?

6 A I would have to review what I said, but I am confident  
7 that in my expert report on page 86, I breakdown 2018  
8 General Election voters in two categories -- 2018  
9 absentee votes in two categories based on experience or  
10 not. And I show that the rates of lateness and  
11 signature vary by whether people have experience or  
12 not. And people with vote-by-mail experience have  
13 lower rejection rates due to lateness and missing  
14 signatures.

15 Q And in that -- in paragraph 217, you define experience  
16 as someone who has successfully cast a vote-by-mail  
17 absentee ballot in one of three elections, the 2016  
18 Primary, the 2016 General Election, and then the 2018  
19 Primary Election, correct?

20 A Could you clarify whether you said and or -- or?

21 Q Well, your -- your expert report actually says it two  
22 different ways, but what I understand you to be saying  
23 is that you considered someone to be experienced if  
24 they cast a successful vote-by-mail ballot in any one  
25 of those three elections that I just referenced; is



1           that right?

2       A     It is right. And I -- at the moment I don't see any  
3           evidence that I said it in more than one way, but I  
4           will put that aside for the moment. I said on  
5           paragraph 216, quote, "To be classified as VBM  
6           experienced for the purposes of this analysis of the  
7           2018 GE, General Election, it is sufficient for a voter  
8           to have cast a VBM ballot at any one of the three  
9           previous statewide elections."

10      Q     So if someone cast a successful vote-by-mail ballot in  
11           the 2018 General Election, you did not consider that  
12           voter to be experienced, correct?

13      A     Well, this is an analysis of voting in the 2018 General  
14           Election.

15      Q     So that's a yes that you did not consider that person  
16           to be experienced if they cast a successful vote-by-  
17           mail ballot in the 2018 General Election, correct?

18      A     No, that doesn't make any sense, because this analysis  
19           is a study of how people voted in the 2018 General  
20           Election based on whether they were experienced. It  
21           wouldn't make sense for me to define experienced --  
22           excuse me. It wouldn't make sense for me to study the  
23           effect of experience on voting in the 2018 General  
24           Election and also define experience based on what  
25           someone did in the 2018 General Election.



1 Q So it --

2 A That is why -- excuse me. That is why I define  
3 experience based on previous statewide elections.

4 Q So it's fair to say that you didn't consider people who  
5 voted successfully in either the 2018 General Election  
6 of the 2020 Primary Election, because your analysis  
7 focused on the 2018 General Election; is that your  
8 testimony?

9 A I don't understand how the premise of this question  
10 makes sense so I -- I wouldn't say it's my testimony  
11 that I did not consider whether people voted  
12 successfully in the 2020 Primary, because my study --  
13 this table is an analysis of voting in the 2018 General  
14 Election, and the 2000 (sic) Primary hadn't happened  
15 yet. So I couldn't define experience based on  
16 something that was in the future from the perspective  
17 of the 2018 General Election.

18 Q Let's talk about elections prior to 2016 then. Did you  
19 consider vote-by-mail absentee ballot voters who  
20 successfully voted in the 2014 General Election?

21 A I did not. I limited this experiment -- this  
22 particular table to a comparison of '16 to '18. And I  
23 can tell you I've done similar sorts of analysis in  
24 other states and counties, and everywhere I look I find  
25 the same results.

1 Q But Prof. Herron, I didn't ask you about your similar  
2 studies. I was just asking you about whether or not  
3 you considered voters from 2014. So I would just ask  
4 you to answer the questions that I ask if you could do  
5 that please. So you didn't consider anybody prior to  
6 2016; is that correct?

7 A Could you please restate that question?

8 Q Sure. In determining whether a voter was experienced  
9 in the 2018 General Election, you did not consider  
10 whether or not that voter had successfully cast a vote-  
11 by-mail absentee ballot in any election prior to 2016,  
12 correct?

13 A I defined VBM experience based on statewide  
14 elections -- and let me just make this clear again in  
15 2016 or the 2018 Primary. So I would say it's true  
16 that my analysis did not incorporate experience in the  
17 way you're describing it using the 2014 General  
18 Election. That is true.

19 Q All right. Thank you. I want to ask you some  
20 questions now about the results from the 2020 Primary  
21 and some of the tables that are in your rebuttal  
22 report. So could you look at the Table 1, which is  
23 your up-to-date reports on page 5 of your rebuttal  
24 report? And the first thing I want to ask about is the  
25 percentages of absentee voting in recent elections.

1           What was the rough percentage of absentee voting in the  
2           2018 General Election?

3   A       That's not listed in this table.

4   Q       So just in terms of vote-by-mail and delivered absentee  
5           ballot, what was the percentage of that in 2018 General  
6           Election?

7   A       I believe it would be 2.45 plus 4.37. So we're looking  
8           at 6.82.

9   Q       So Dr. Herron, on that I'm asking you about the 2018  
10          General Election which is the last line on that column.  
11          Aren't those percentages 8. -- 8.29 and 10.39 and when  
12          you add them up you get about almost 19 percent?

13   A       Yes, I apologize. I thought you were asking about the  
14          Primary. Yes, if you add 8.29 plus 10.39 you get  
15          approximately 19.68 it looks like. Excuse me, I take  
16          that back, it's 18.68.

17   Q       And similarly, for 2016 there was nearly 19 percent of  
18          ballots cast were absentee voting by the vote-by-mail  
19          and delivered method; is that right?

20   A       I believe you're asking me to add up 9.63 and 9.23  
21          which will be around almost 19 percent, correct.

22   Q       Okay. But I thought you had testified on direct that  
23          the rate of absentee ballots in the recent years had  
24          been 4 to 6 percent. If you testified to that was that  
25          just an error?

1 A I was talking about Primary Elections, because the 2020  
2 Primary Election is a Primary.

3 Q Okay. Now, I'd like you to look, please, to Table 21  
4 in your original report, which is on page 91. You  
5 spent some time talking about your -- what was a low  
6 number and how you arrived at what you anticipated  
7 would be the total number of rejected ballots in the  
8 upcoming election. So I want to just clarify the basis  
9 for those predictions that you made. So I'm looking at  
10 the first line on Table 21. I believe you testified  
11 that those are the numbers that you anticipate being  
12 rejected in the upcoming General Election on the  
13 grounds of lateness and no signature; is that right?

14 A I would not say that I predicted it in the way you're  
15 describing. I explained in my report that if voters  
16 behave in a similar way, and if Maine's election laws  
17 are held constant, then based on historical trends,  
18 this is what one would expect.

19 Q And you said that you would expect at least 4,787 total  
20 rejected vote-by-mail ballots in the upcoming election,  
21 right?

22 A I just explained that that table is based on assuming  
23 that voters behaved the same way that they have in the  
24 past, and that Maine's election laws are -- and the  
25 environment is the same. So if all of those things

1 hold, then this is one way to think about the number of  
2 late and no signature VBM ballots that we might expect  
3 in Maine in November 2020.

4 Q And do you recall what the percentage rate of rejection  
5 you assumed when you come up with those numbers?

6 A It's in my expert report.

7 Q Why don't you look at paragraph 226. Why don't you  
8 look back at page -- paragraph 226.

9 A I am at 226, sir.

10 Q Sure. So would you agree that you assumed that 1.02  
11 percent of the vote-by-mail absentee ballots would be  
12 rejected for lateness?

13 A Correct, because that was the rate of lateness in the  
14 General (indiscernible) --

15 Q And that one percent of the mail-by-vote ab -- okay.  
16 So you took the same rates from 2018 General Election  
17 and assumed that it would apply to the 2020 General  
18 Election. And that rate for ballots that were rejected  
19 due to lateness was 1.02 percent?

20 A Yes. I believe -- Yes, I think I've said that -- yes.

21 Q Okay. And the percentage for missing -- for ballots  
22 rejected because of missing signatures was one percent.  
23 That's the assumption you used on Table 21, right?

24 A Yes. That's from paragraph 226 on page 80 of my expert  
25 report.

1 Q And you've called that a conservative prediction,  
2 meaning that that was probably too low, and that the  
3 actual rate would be more than that, right?

4 A That's not what conservative means. Conservative means  
5 possibly the same or possibly more. And I explained in  
6 my expert report why I thought that was conservative.

7 Q Okay. So let's look at the actual numbers from the  
8 2020 election if we could. If we were to look at  
9 Table -- Tables -- let's look at your rebuttal  
10 report -- excuse me -- at paragraph 11, which has Table  
11 11. So what was the actual number of vote-by-mail  
12 ballots that were rejected in the recent primary?

13 A .88.

14 Q So .8 percent -- .88 percent which is less than 1  
15 percent, right?

16 A .88 is less than one, yes.

17 Q Okay. And your premise was that more than two percent  
18 of vote-by-mail absentee ballots would be rejected for  
19 just two reasons, lateness and missing signatures,  
20 right?

21 A My analysis looked only at those two causes, but those  
22 are -- I mean, I didn't choose them accidentally. Those  
23 are the major causes of ballot rejection, correct.

24 Q And would you agree that your premise, based on those  
25 2018 General Election percentages, was wrong?



1 A Well, my analysis looks at the --

2 Q -- about the (audio interference) Primary? I'm sorry,  
3 go ahead.

4 A What -- could you tell me the question in front of me,  
5 please?

6 Q Sure. Would you agree that your premise that more than  
7 two percent of the vote-by-mail ballots would be  
8 rejected is wrong as it turned out in the July 2020  
9 Primary Election?

10 A My premises for the 2020 General Election, so it  
11 can't -- it can't be wrong at the moment, because the  
12 2000 General Election -- 2020 General Election hasn't  
13 happened. And, yeah. So --

14 Q So did you consider changing your opinions at all after  
15 reviewing the data from the 2020 Primary Election in  
16 terms of how many ballots would likely be rejected?

17 A I think I would -- it's fair to say I considered it,  
18 but there are a couple confounding factors. One is  
19 what I realize when I wrote my rebuttal report, that  
20 there was guidance from the Secretary of State about  
21 rejected absentee ballots, and that guidance, as I  
22 mentioned in my report, appears to have had an effect.  
23 So I point that out in my report. And that should  
24 be -- that would certainly be part of analysis what one  
25 might think based on the 2020 General now.



1 In addition, I'm aware of the fact that most of the  
2 postal issues that I have read about started in August.  
3 And how exactly that would interact could also  
4 principal should be taken -- could be taken into  
5 account another analysis. So I would say, I thought  
6 about it. One could always revise estimates. I am  
7 comfortable with what I said before which is, holding  
8 those various aspects fixed, here's one way to think  
9 about the magnitude of some of the rejection rates that  
10 we have seen today.

11 Q How would the postal service problems affect ballots  
12 that were rejected because of missing signatures?

13 A It would affect lateness, and I was talking about  
14 rejection in a broader sense than just signatures.

15 Q So you would agree they would have no impact on the  
16 percentage of ballots that were rejected because they  
17 were late, right?

18 A I'm not so sure I would go ahead and say that. There  
19 might be people who, because of concerns about postal  
20 delays, change their behavior in other ways. I don't  
21 really know. If, for example, individuals who might  
22 have -- might shy away from mail, might behave  
23 differently. So I'm not so sure I would say they are  
24 unrelated in the way you're describing.

25 Q You didn't do any analysis about that relationship in

1 your report though did you?

2 A No. Right now I would say there is -- I don't really  
3 think that we have good data right now on -- that would  
4 enable me to answer that question in a really careful  
5 way, because that's not -- we don't know yet.

6 Q Could you look at paragraph 13, again in your rebuttal  
7 report, which is an updated Table 13? What was the  
8 percent of ballots that were -- according to your  
9 number, what is the percent of ballots that were  
10 rejected -- vote-by-mail ballots, excuse me, in the  
11 2020 Primary for missing signatures?

12 A According to this table it's 0.46.

13 Q And what is the operating assumption there you're using  
14 for the upcoming General Election in terms of the  
15 percent?

16 A The operating assumption I was using was the 1.00  
17 figure from the 2018 General Election.

18 Q Okay. And would you agree that the .46 percent from  
19 the Primary, is the lowest among all of the elections  
20 you have listed on Table 13?

21 A I would agree that .46 is lower, and I attributed that  
22 to the cure guides as is made clear in my rebuttal  
23 report.

24 Q So would you look at paragraph 16, please, which is  
25 your updated Table 16? This is the percentage of

1 ballots that were rejected due to lateness. And how  
2 many ballots were rejected in the recent Primary? How  
3 many vote-by-mail absentee ballots were rejected in the  
4 recent Primary due to lateness?

5 A According to this Table 297, I believe I discussed that  
6 in my earlier testimony.

7 Q And that's roughly .26 percent of the total vote-by-  
8 mail ballots cast?

9 A Yes.

10 Q And how does that compare in terms of the other  
11 elections that you have on that table in terms of  
12 whether it's better or worse as a percent?

13 A I would say -- let's -- let's -- rather than better or  
14 worse, I'll just say it's lower. It's not clear about  
15 the 2018 Primary I discussed in my expert report.  
16 There is some question about data from the 2018 Primary  
17 on whether the Maine Secretary of State's data on this  
18 election are consistent in terms of the codes that they  
19 used. So I would -- I would say that .26 is lower than  
20 the other numbers, but not lower than the 2018 subject  
21 to the caveat that I just mentioned.

22 Q So wouldn't you conclude from that data that Maine  
23 voters have gotten the message that if they're going to  
24 vote absentee ballot by mail, they need to mail the  
25 ballot early enough to get there on time?

1 A I would say that we know from the primary that you  
2 might be able to attribute that statement to primary  
3 voters, but I earlier noted that it's well known in  
4 like the literatures in which I work, that General  
5 Election -- electors differ from their Primary voters.  
6 So I'm a little hesitant -- in fact, I don't want to  
7 use the term Maine voters in the way you're doing it,  
8 because we're talking -- it's conceived about different  
9 pools of voters.

10 Q And with respect to those 297 ballots that were  
11 rejected as late, you don't know when they were placed  
12 in the mail, do you?

13 A There is no data for Maine about postmarks that would  
14 enable me to answer your question. It might be that  
15 someone knows the postmark dates, but I don't.

16 Q So those late ballots might have been mailed the day of  
17 the election as far as you are aware, correct?

18 A Well, I don't know the postmark dates, so they could  
19 have been mailed two weeks before the election. They  
20 could have been mailed two days before the election. I  
21 don't know the postmark dates.

22 Q And they could have been mailed after the election,  
23 couldn't they?

24 A I -- I -- as I said I don't know the postmark dates.

25 Q So that's a yes. They could have been mailed after the

1 election, right, Dr. Herron?

2 A Yes, I suppose, that if a voter had voted after an  
3 election that could (audio interference).

4 Q And you're aware that the postal service sometimes  
5 delivers election mail without postmarking it?

6 A I have read that, yes.

7 Q So if the State had decided to accept absentee ballots,  
8 as long as they were postmarked on or before the  
9 Election Day and received up to three days up to three  
10 days after the Election Days, how many of those 297  
11 ballots would have been saved? Do you have any idea?

12 A So on page 33 of my expert -- of my rebuttal report,  
13 Table 13, I give a breakdown of days of receipt. So I  
14 believe you said three. I can't remember exactly in  
15 this question since I was looking for this table.

16 Q I said they're postmarked on or before the Election Day  
17 and received up to three days after the Election Day.  
18 How many of those in that table would fit that  
19 category?

20 A Well, I already explained that I don't know postmark  
21 dates because Maine doesn't include those dates in the  
22 data they make. They -- when Maine circulates their  
23 data on absentee ballots, they include the dates that  
24 the ballots are received. They don't include any  
25 information on postmarked, what the postmark date is,

1 and whether there even was one. So I can't answer your  
2 question, how many of those ballots would have been  
3 accepted conditional on postmark, because I don't know  
4 postmark dates. I wish I did. I wish this were in the  
5 data. I'm relying on data from the State. That's all  
6 I can do here. I just don't know postmark dates.

7 Q This isn't a criticism. I'm not saying this as a  
8 criticism, Dr. Herron, but as you said you just don't  
9 know how many of those late ballots would fit that  
10 criteria, correct?

11 A I don't know postmark dates, but if the State were to  
12 give me data on them I'd gladly replicate that table  
13 using postmarks.

14 MR. KNOWLTON: So Justice Stokes, this may be a good time  
15 to break. I'll leave it up to you. It's 12:22. I've got  
16 more to do, obviously, but I'll leave it up -- I can keep  
17 going if you'd like or whatever you'd like me to do.

18 THE COURT: Well, time flies when you're having a good  
19 time. I had lost track of the time, to be honest with you.  
20 But thank you for the reminder. I think it's time for us to  
21 get some -- get some nourishment.

22 Let's do this. You say it's almost -- well, by my watch  
23 it's 12:23. Let's resume at 1:30. That should give us plenty  
24 of time to get something to eat, and this way we have the  
25 afternoon and we'll go right through to 4 if necessary, okay?

1 I hope we're still on track to be able to get everything in by  
2 4. What do you think, John?

3 MR. DEVANEY: Well, Your Honor, so far I don't have much  
4 redirect, and Mr. Stroman is our only other witness and his  
5 direct will be infinitely shorter than Dr. Herron's. I'm  
6 hopeful, depending on the cross.

7 THE COURT: Sure. And, Mr. Knowlton, who do you think  
8 we're doing in terms of time? Do you have any witnesses after  
9 Mr. Stroman?

10 MR. KNOWLTON: No, we don't have any of our own  
11 witnesses.

12 THE COURT: And Mr. Strawbridge, just give me a sense as  
13 to how -- do you have any witnesses that you want to present?

14 MR. STRAWBRIDGE: No, Your Honor, we don't have any  
15 witnesses. I expect that we'll need to do some hopefully  
16 (audio interference). It's going to be just -- just hopefully  
17 10, 15 minutes or less.

18 THE COURT: Okay. It looks like we're on time to get the  
19 evidence in and then to do closing arguments. So we should be  
20 in good shape. We'll try to start as promptly as we can at  
21 1:30, okay. Get something -- get something good to eat and  
22 we'll see you at 1:30. Thank you.

23 (Recess at 12:24 p.m., until 1:31 p.m.)

24 THE COURT: We're back on the record in the matter of  
25 Alliance for Retired Americans, et al., v. Matthew Dunlap

1 (indiscernible). This is Docket Number CV20-95.

2 When we broke for lunch, and just so the record's clear,  
3 we were in the middle of the evidentiary phase on the  
4 Plaintiff's motion for a preliminary injunction. We're in the  
5 middle of the testimony of Prof. Michael Herron. He has  
6 completed his direct. He's in the middle of his  
7 cross-examination with Tom Knowlton, and I think we are  
8 prepared to proceed with the cross-examination.

9 Anything we need to address before we resume?

10 Mr. Devaney?

11 MR. DEVANEY: Nothing, thank you, Your Honor.

12 THE COURT: Mr. Knowlton?

13 MR. KNOWLTON: No, thank you. We're all set.

14 THE COURT: All right. Mr. Strawbridge?

15 MR. STRAWBRIDGE: No, Your Honor.

16 THE COURT: And Mr. Hyde?

17 MR. HYDE: No, nothing from me, Your Honor.

18 THE COURT: Okay. All right, we're all set then. So  
19 let's proceed. And Mr. Knowlton, you may proceed. I think  
20 when you left off -- you probably have a better memory than I  
21 do -- you had been discussing with Prof. Herron about his  
22 knowledge of when a postmark date would be on an absentee  
23 ballot. He -- I think his last answer was, I just don't know  
24 because I don't know postmark dates. And I don't remember  
25 what you pursued after that, but that seemed to be a logical



1 break in your questioning, so.

2 MR. KNOWLTON: I pursued lunch after that, Your Honor, so  
3 I'm going to move on to a different subject.

4 THE COURT: Yeah, I did lunch too. I'm going to follow  
5 up with my wife's apple pie and ice cream later on today, so.

6 BY MR. KNOWLTON:

7 Q Prof. Herron, would you please look at Table 2, which  
8 is in page 6 of your rebuttal report.

9 THE COURT: Mr. Knowlton, if you have a look  
10 (indiscernible) and the rebuttal report. The one that I have  
11 is Exhibit 32, and it ends on page 47. That's in the exhibit  
12 book.

13 MR. KNOWLTON: I have it as Exhibit 34, and I was -- I  
14 was directing him to page 6, which is his updated Table 2.

15 THE COURT: I think the exhibits may be slightly  
16 different. I'm looking at 32. 34 in my book appears to be  
17 the Complaint.

18 MR. STRAWBRIDGE: Your Honor, this is Patrick  
19 Strawbridge. I think the Plaintiff's omitted two exhibits in  
20 their preliminary list when they transmitted it back to the  
21 Court after some discussion between the parties. That's why a  
22 few of the numbering is off.

23 MR. DEVANEY: Yeah, and I can confirm that, Your Honor.  
24 We had a couple of different exhibits that were floating out  
25 there, but the binder beside you is, obviously, the final

1 exhibit list and I may not have given Tom what's reflected --

2 THE COURT: All right. So just give me the page number,  
3 Tom, I guess, if you're referring to Dr. Herron's supplemental  
4 report or rebuttal report which I have. I've read it.

5 MR. KNOWLTON: Page 6, Table 2 right now is where I'm  
6 referring.

7 THE COURT: All right, great.

8 MR. KNOWLTON: So I guess all my references to Exhibit 34  
9 earlier should be Exhibit 32, because they did omit two  
10 exhibits, so.

11 BY MR. KNOWLTON:

12 Q So Dr. Herron, if you could look at Table 2, updated to  
13 you, which is on page 6; and directing your attention  
14 to the line of numbers next to the 2020 Primary, do you  
15 recall offering some testimony about those numbers in  
16 your direct examination?

17 A Yes, I do.

18 Q And you referred to the fact that there were 301  
19 third-party deliveries in the 2020 Primary. Do you  
20 remember drawing attention to that number?

21 A Yes, I do.

22 Q You don't know why there were only 301 third-party  
23 deliveries in this recent primary election, do you?

24 A I would say that in my testimony, I drew attention to  
25 the regularities in third-party deliveries and also



1 family deliveries, and I noted that one of the  
2 elections had the pandemic during it. Excuse me. One  
3 election was affected by a pandemic, and in some ways  
4 that's a natural experiment. So I am associating the  
5 changes in ballot deliveries with that pandemic.

6 Q So Dr. Herron, you didn't do any regression analysis or  
7 other statistical analysis in your expert report, did  
8 you?

9 A I wouldn't agree with that. This table lists numbers,  
10 and numbers are statistics.

11 Q Did you do any regression analysis?

12 A Of what?

13 Q To draw some causal link between a particular number on  
14 a table and another number?

15 A Regression analyses, I know -- you cannot draw causal  
16 links from regression, necessarily. You can draw  
17 causal links when you have some sort of a variable. In  
18 this case, like the existence of a pandemic, if you  
19 believe is external to the other variables causing a  
20 particular phenomenon of interest. So for -- in this  
21 case, I'm interested in third-party deliveries, also  
22 families; and implicitly, when I showed you that figure  
23 and I talked about hitting a line, I suppose you could  
24 call that an -- or a regression. But the reason I  
25 didn't do regression here is not because -- it's not

1 because I wasn't trying to tell a causal story about  
2 the effect of the pandemic. It's because I don't -- I  
3 don't need to estimate a regression here.

4 Q So your testimony is that there were only 301  
5 third-party deliveries because there was a pandemic in  
6 2020; is that correct?

7 A My testimony is that in the other election, we saw more  
8 third-party deliveries compared to total deliveries  
9 than we do in a 2020 Primary. That's what I'm saying.  
10 And that is consistent with the idea that third-party  
11 deliveries were more, as family deliveries are because  
12 of the pandemic.

13 Q What's the basis --

14 A We don't know for sure, when you have observational  
15 data. All I can do as someone who (indiscernible)  
16 election -- elections -- is draw attention to that  
17 fact.

18 Q And what are all the facts that you're basing your  
19 opinion that that 301 figure is because of the  
20 pandemic?

21 A Well, I assert in this table eight elections, each of  
22 which involved thousands of ballots. I haven't summed  
23 the total number of ballots, but it looks to me like  
24 it's a couple hundred thousand. So we have a couple  
25 hundred thousand ballots scattered over eight

1 elections, and those other elections have different  
2 ratios of third-party ballots of total deliveries. And  
3 I'm noting that 301 seems small compared -- in  
4 particular, compared to those other primaries.

5 Q And you concluded that it's small because of the  
6 pandemic, right?

7 A In the -- in the analysis that I'm describing, I -- I  
8 don't want to use the word "could", because that word  
9 is very strong. But I can tell you in an environment  
10 like this I cannot, as an academic or someone doing  
11 expert work for this Court, artificially cause some  
12 election to be affected by a pandemic. That's just not  
13 possible. And so all I can do is look at elections  
14 that occur in pandemic, in this case one of them, and  
15 elections that didn't occur in pandemics, and try to  
16 draw an inference. So I'm not going to say the word  
17 "because" because that's too strong. It's just --  
18 that's in general not possible for this sort of  
19 analysis that I'm describing here.

20 Q Dr. Herron, I want to ask you about the voter  
21 registration data. So if you could look at your  
22 rebuttal report at paragraphs 38 to 46, which is right  
23 around pages 21 and 22. If you could turn there,  
24 please. Table 11 on page 21 as well. So Dr. Herron,  
25 are you aware that as of November 2018 more than 96

1           percent of Maine's voting age population was registered  
2           to vote?

3    A       I don't know the exact number, so I'm not comfortable  
4           confirming that. But it doesn't sound to me like it's  
5           out of line.

6    Q       And are you aware that as of that date, according to  
7           the U.S. Census Bureau, Maine had the highest voter  
8           registration made -- rate in the nation?

9    A       I would give you the same answer. I cannot confirm  
10          that's what the Census Bureau says without a document  
11          in front of me.

12   Q       Do you have any reason to doubt it?

13   A       Well, that's not normally -- I wouldn't necessarily  
14          take a position on something that I can't see any  
15          evidence on. But I'm -- what you're saying doesn't  
16          strike me as out of line.

17   Q       And are you aware that as of this year, in July, more  
18          than 97 percent of Maine's voting age population was  
19          registered to vote?

20   A       I would answer the same way. I don't have those data  
21          right in front of me and they're not in my expert  
22          report or the rebuttal. But what you're saying doesn't  
23          seem out of line, but I'm not comfortable saying for  
24          sure that those numbers are correct. I just don't know  
25          at this point.

1 Q Well, Dr. Herron, if those -- if those numbers are  
2 correct, wouldn't you agree that a state that has more  
3 than 97 percent of its voting age population registered  
4 to vote makes it easy for citizens to register?

5 MR. DEVANEY: Your Honor, I'm just going to register an  
6 objection for lack of foundation for those data.

7 THE COURT: Well, I think he's asking a hypothetical  
8 question. He can ask a hypothetical question and if Dr.  
9 Herron can't answer it, he can tell us he can't answer it.  
10 But I think he can ask a hypothetical question.

11 MR. DEVANEY: Okay.

12 THE WITNESS: All right. Sir, what is the question in  
13 front of me, then?

14 BY MR. KNOWLTON:

15 Q Sure. Would you agree that a state -- if that data is  
16 correct, would you agree that a state that has more  
17 than 97 percent of its voting age population registered  
18 to vote makes it easy for its citizens to register to  
19 vote?

20 A I would say that those data suggest, assuming that they  
21 are correct, that some percentage, I believe 97 is the  
22 hypothetical you used, have overcome the barriers to  
23 registering to vote. I would say that, as well, the  
24 table you directed me at -- to look at engages this  
25 question about registration during a pandemic. But I

1 think you're describing are figures about registration  
2 pre-pandemic. I wasn't totally following all this  
3 hypothetical, but I believe that's what you were  
4 stating. And -- but I was discussing, in the context  
5 of registration, is what happens to Maine's -- the  
6 first of Maine's registration in a time when person-to-  
7 person contact is -- is costly.

8 Q Okay. Let's look at your Table 11 on page 21 of your  
9 rebuttal report. Wouldn't you agree that the State  
10 processed more voter registration in 2020 between  
11 January 1st and the primary election day than it did in  
12 both 2018 and 2016? Isn't that what Table 11 shows?

13 A Excuse me. That was a compound question. Which one is  
14 in front of me?

15 Q Dr. Herron, wouldn't you agree that the State processed  
16 more voter registration changes between January 1st and  
17 the primary election date in 2020 than it did during  
18 that same period in both 2018 and 2016?

19 A You specifically mentioned changes; is that correct,  
20 sir?

21 Q Voting registration and voting registration changes.  
22 Yes, the data you received from the State. Yes.

23 A I believe you are asking me if the sum of 32,980 plus  
24 14,454 is greater than the corresponding sums of 2016  
25 and 2018. Could you please confirm that I'm



1 understanding your question?

2 Q That's correct.

3 A Then yes, I would confirm that the sum of those numbers  
4 I just read, those sums are greater than in 2016 and  
5 2018.

6 Q And even after -- and even after the onset of the  
7 pandemic in 2020, there were more voter registrations  
8 and voter registration changes from March 1st to the  
9 primary election day in 2020 than there were in both  
10 2018 and 2016, correct?

11 A No. Well, okay. Let me --

12 Q Dr. Herron, isn't 14,454 bigger than 10,231?

13 A Your question had an "and" in it, and I was saying no  
14 because those periods have different lengths. So  
15 you're asking me to compare 14,454, which is over 132  
16 days, to 14,278, which that would be over 101 days and  
17 that comparison isn't a fair one. And so --

18 Q I'm not asking you --

19 MR. DEVANEY: Your Honor, can he allow the witness to  
20 finish, please?

21 THE COURT: Let the witness finish, and then you can  
22 follow up.

23 THE WITNESS: And your question as it was asked, I was  
24 addressing both of them at once.

25 BY MR. KNOWLTON:



1 Q Okay. My question dealt with both 2018 and 2016. So  
2 would you confirm that there were more voter  
3 registrations between March 1st and the primary  
4 election day in 2020 than there were in the 2016?

5 A I would confirm that the number 14,454 is greater than  
6 the number 14,278.

7 Q And what do those numbers reflect, Dr. Herron?

8 A The number 14,454 is the number of total registration  
9 changes from March 4th, 2020 through -- I would  
10 object -- to July 13, 2020, which is approximately 132  
11 days four-and-a-third months, I believe. And the  
12 number 14,278 is the number of total registration  
13 changes, plus new ones, from March 4, 2016 through June  
14 13, 2016, which is approximately three-and-a-third  
15 months.

16 Q And the operative end date for each of those figures  
17 are for primary election day, correct?

18 A I -- I apologize. I might have lost a few words. Did  
19 you say the operative figure is the primary election  
20 day?

21 Q The operative end date for those two periods that you  
22 just described were the primary election days in each  
23 year, correct?

24 A Yes, that is correct.

25 Q So even during the pandemic, there were more voter



1 registrations and voter registration changes in 2020  
2 than there were during the same period in 2016, Dr.  
3 Herron. Isn't that what Table 11 shows?

4 A Not in my opinion.

5 Q Okay. Would you agree voter behavior regarding when  
6 they cast an absentee ballot is not a static behavior?

7 A Could you tell me what you mean by "a static behavior",  
8 please?

9 Q Sure. Simply because voters behaved a certain way in  
10 2018 doesn't mean they'll behave the same way in 2020.  
11 Would you agree with that?

12 A I would say that in any exercise like the one I'm  
13 doing, I use historical behavior to try to understand  
14 what might impact the new and upcoming election. I  
15 can't say for sure that every single voter would act  
16 the same way. I am comfortable with that. It's  
17 impossible to know, of course. But I'm using the  
18 historical records for my judgment about the upcoming  
19 election.

20 Q Would you agree, with respect to the --

21 MR. KNOWLTON: Strike that. Withdraw that question.

22 Q So following up on your last answer where you said, I  
23 think you said it's -- did you say it's impossible to  
24 know whether the voters will act the same this year as  
25 they did in 2018?

1 A Yes. And what I mean is one cannot know with 100  
2 percent certainty, as one should never in an  
3 environment like this.

4 Q You've identified some -- you made some reference with  
5 some issues regarding the Postal Service, so I want to  
6 ask a couple of questions about that. Wouldn't you  
7 agree that the voters could make sure to avoid any  
8 problems with the Postal Service by mailing their  
9 absentee ballot well in advance of the election?

10 A No.

11 Q So your testimony is that even if a voter sent in their  
12 absentee ballot three weeks before the election, that's  
13 not likely to get there on time?

14 A I don't recall saying anything about three weeks in my  
15 testimony.

16 Q I'm asking you.

17 A So please, what is the question?

18 Q Do you believe that the voters can make sure their  
19 absentee ballot will get to the town office on time if  
20 they mailed it two weeks in advance of the election?

21 A What do you mean by "make sure"?

22 Q Is it likely to get to the town office on time, Dr.  
23 Herron, if they mailed it two weeks before the  
24 election?

25 A If a voter has his or her ballot two weeks before an



1 election -- and I just want to be clear that even  
2 stating that is not a trivial assumption, given that  
3 absentee ballots have to travel through the mail to  
4 reach the voter in the first place. I'm not going to  
5 address that point at the moment. I believe you're  
6 asking me is it likely. I will take it greater than a  
7 50 percent probability. I would say what I understand  
8 about mail delivery is that, given the Postal Service  
9 advises one week, that if a voter allows one week for a  
10 ballot to travel from his or her residence to the local  
11 clerk, I would say that a ballot mailed two weeks  
12 early, assuming all other issues are gone, is the  
13 probability most likely, using your framework of  
14 reaching a elections clerk on time.

15 Q Can you agree that voters can always deliver their  
16 ballots in person if they wanted to make sure that it  
17 got there on time, correct?

18 A No.

19 Q Why not?

20 A Some voters are not capable to travel to an elections  
21 office. So they, by definition, cannot do what you  
22 just stated.

23 Q Okay. Aside from voters who aren't able to travel or  
24 to have someone deliver it -- withdraw the question.  
25 Let me ask you about postage, Dr. Herron. You said it



1 was a burden to acquire postage. Is that your  
2 testimony?

3 A I said, I believe -- I would have to check my  
4 transcript for sure -- that individuals who don't have  
5 stamps in their residences, acquiring postage can be a  
6 burden, and the extent of that burden would depend on  
7 the voter's circumstance.

8 Q You're aware that you can buy postage at most grocery  
9 stores, Dr. Herron?

10 A I believe that I mentioned supermarkets in my  
11 testimony. And so yes, I'm aware. I can't give you  
12 the percentage, but I'm generally aware that that is  
13 what you stated in the case.

14 Q And you can buy stamps over the internet?

15 A I'm sorry, what is the question?

16 Q Would you agree that you can buy stamps over the  
17 internet, sir?

18 A I personally can do this? I apologize. I'm not sure  
19 if you're asking me -- what's the subject here?

20 THE COURT: I think he's asking you is are you aware that  
21 postage stamps can be purchased over the internet?

22 THE WITNESS: Yes. I think I even mentioned that. I  
23 know it's mentioned in my report, and I think I testified to  
24 it. And I also noted that postage can only be purchased by  
25 someone over the internet by someone who has internet access



1 and, in principle, by someone who understand the whole online  
2 of how to purchase things and has facility with online  
3 ordering, if I recall.

4 BY MR. KNOWLTON:

5 Q All right. Let me ask just a couple of questions about  
6 voter fraud, Dr. Herron. You agree that voter fraud  
7 does exist in Maine, don't you?

8 A Could you help me understand? What does "does exist"  
9 mean?

10 Q That there have been documented examples of voter fraud  
11 in Maine in the last 30 or so years.

12 A Yes. My rebuttal report does focus on this explicitly.

13 Q Wouldn't you agree that it's important for the public  
14 to have confidence in the State's electoral system?

15 A As a general sense, I -- I think it's good when the  
16 public is confident. I would say that's probably a  
17 good thing.

18 Q And wouldn't you agree that it's a good thing for the  
19 State to protect the integrity of its electoral  
20 process?

21 A I would agree that protecting the integrity is  
22 important. By that I mean ensuring that ineligible  
23 voters cannot cast ballots and assuring that eligible  
24 voters are able to cast ballots.

25 Q I don't have any further questions at this time, Dr.



1 Herron.

2 MR. KNOWLTON: Your Honor.

3 THE COURT: Thank you, Mr. Knowlton.

4 Mr. Strawbridge, you're handling the questioning for the  
5 Intervenors?

6 MR. STRAWBRIDGE: Yes, and I'm furiously cutting  
7 questions to try to make this as brief as possible for the  
8 benefit of everybody. Maybe not you, Prof. Herron, but we'll  
9 so how this goes.

10 CROSS-EXAMINATION BY MR. STRAWBRIDGE:

11 Q Good afternoon. How are you, sir?

12 A I'm doing fine. Thank you for asking.

13 Q I want to just walk through a couple of the charts in  
14 your rebuttal report, which I think is Exhibit 32 in  
15 Your Honor's book. And so can we start with your  
16 revised Table 10. Let me know when you've got it in  
17 front of you, sir. This is on page -- this is on page  
18 7 of the rebuttal report. Have you got that, sir?

19 A I do.

20 Q Okay. So this is -- this is a list of the number of  
21 ballots that were rejected and the percentage that were  
22 rejected for the elections depicted on this chart,  
23 correct?

24 A Among absentee ballots.

25 Q For absentee ballots. That obviously includes both by





1 mail ballots and delivered absentee ballots, correct?

2 A Yes.

3 Q Okay. And so the table shows that the rejection rate  
4 for absentee ballots in the 2020 primary was .71  
5 percent; is that correct?

6 A Yes.

7 Q And this, looking at some of the other residential  
8 primaries that are on this chart, that's a lower  
9 projection rate than the 2012 primary, right?

10 A The 2000 primary rejection was 1.16 and .71 is lower  
11 than 1.16. Yes.

12 Q .71 is also a lower rejection rate than existed for the  
13 2016 Presidential primary, correct?

14 A That's correct, because that was a .98.

15 Q Right. And with respect to the general elections,  
16 would you agree with me that, for example, looking at  
17 2012, the general election rejection total was lower  
18 than the 2012 primary?

19 A Correct. I'm looking at .6 line and the .7 line.

20 Q So the 2012 -- my question's a little bit different,  
21 which is that the -- the rejection percentage for the  
22 2012 primary was higher than it was in the 2012 general  
23 election, correct?

24 A That is true.

25 Q And that trend also held for the 2016 election. There



1 was a greater percentage of ballots rejected in the  
2 primary in 2016 than that were for the general,  
3 correct?

4 A That is correct.

5 Q Okay. If we go to the next page, page 8, we have Table  
6 11. And this is a subsite of the table we were just  
7 looking for, right? This is the vote by mail rejection  
8 and rejection percentage?

9 A Correct.

10 Q And again, so if you look at the 2020 primary of .888,  
11 that is the lowest projection percentage for any of the  
12 other primary elections showing here, correct?

13 A Yes. I think I -- and I attributed to that as I --  
14 yeah, I purport to -- likely to cause and effect, that  
15 there was a cure process at work.

16 Q Okay. Well, in any event, the scheme trend that we saw  
17 in the prior chart also holds year to year with  
18 primaries in general, right? In other words, if you  
19 look at the 2012 primary election it had a higher  
20 rejection percentage than the 2012 general election  
21 did, correct? Do you see that, sir?

22 A I'm -- I'm checking the election. I believe it's  
23 reversed in 2018.

24 Q Right. I was asking about 2012, the Presidential  
25 elections.



1 A So in 2012, the primary had a greater rejection rate  
2 than the general. That is correct.

3 Q Right. And in 2016, again, we see a higher rejection  
4 percentage for the 2016 primary than we did with the  
5 2016 general election, correct?

6 A I think 3.6 is greater than 1.36.

7 Q Right. It's more than two times greater, correct?

8 A Yes.

9 Q So that brings me to your Table 21 in your original  
10 report. And so we'll find that here. That's on page  
11 91 of your original report, which I think is Exhibit 1  
12 in Your Honor's collection. Do you have that table,  
13 sir?

14 A Yes, I do.

15 Q Okay. This is the table where you used the methodology  
16 to project how many late and no-signature ballots one  
17 might expect for the -- for the upcoming general  
18 Presidential election, correct?

19 A Yes. Subject to all the points that came up in my  
20 discussion in this result.

21 Q Right. And we're going to talk a little bit about the  
22 assumptions that go into this. Now I understand that  
23 this chart uses some assumptions, and let's just stick  
24 with the main assumptions, because I -- I understand  
25 that you used some assumptions from other states about

1 the number of turnout, but I want to start with kind of  
2 your -- your first scenario there, which is based on  
3 the Maine 2020 Primary, right?

4 A Yes --

5 Q Your first area -- your first area is based on the  
6 Maine 2020 Primary, correct?

7 A Yes.

8 MR. DEVANEY: Mr. Strawbridge, I'm sorry, what page  
9 number are you on?

10 MR. STRAWBRIDGE: I'm sorry. This is in the original  
11 report. This is -- this is page -- the table up here is on  
12 page 91. I'm about to go backwards a couple of pages, just  
13 talk about the assumptions that got built into this  
14 projection.

15 MR. DEVANEY: Thanks very much.

16 MR. STRAWBRIDGE: No problem.

17 BY MR. STRAWBRIDGE:

18 Q So for purposes of the projection you used here, you  
19 assumed that Maine would have the same turnout in  
20 November 2020 as it did in November 2016. That's  
21 paragraph 225 of your report, correct?

22 A The same general election turnout, that is correct.

23 Q Right. And 2016 was a Presidential election, just like  
24 2020 is, correct?

25 A Yes.



1 Q Now in paragraph 226, you say that for the absentee  
2 ballot rejection rates, my projections rely on the most  
3 recent general election in Maine, the 2018 general  
4 election, correct?

5 A Yes.

6 Q So here, you didn't use the last Presidential election.  
7 You switched to the last general election, correct?

8 A Yes.

9 Q And the rate that you drew for the late vote by mail  
10 ballot comes from Table 16 in your report, right?

11 A I want to confirm Table 16. Can you tell me what page  
12 we're on?

13 Q Well, sir, in paragraph 226 of your original report,  
14 you write that you assumed that the late vote by mail  
15 ballot rate in the upcoming November 2020 election is  
16 the same as that 1.02 percent observed in the 2018  
17 general election. See Table 16 for this rate.

18 A Yes.

19 Q Did I read that correctly?

20 A Yes, and I'm looking at Table 16 now.

21 Q Okay. Well, let's look at Table 16 in your rebuttal  
22 report, right, because that would be the more updated  
23 one; is that right?

24 A It is more updated, but the 2018 information didn't  
25 change.

1 Q Okay. Well, let's -- I'd like to look at the more  
2 updated one if we could, so sorry for switching back,  
3 but let's go back to our rebuttal report, which is  
4 Exhibit 32 and the updated Table 16 appears on page 13.  
5 You see that?

6 A I do.

7 Q I want to make just a couple of observations about this  
8 table before we get to the -- the variable that you  
9 chose. This table shows the number and percentage of  
10 late ballots that were received by mail in the  
11 elections pictured in the table, correct?

12 A Yes.

13 Q And so if we look at the 2020 primary, the election  
14 that was just held in July in the middle of the current  
15 pandemic, right, the late percentage was .26; is that  
16 correct?

17 A Yes, that is correct.

18 Q And that is a lower percentage than all but one of the  
19 prior primary elections, correct?

20 A That is correct.

21 Q And it's also a lower percentage than any of the  
22 general elections. Obviously, we have not had the 2020  
23 general election yet, right?

24 A Right. I mean, you're asking me to compare the 2020  
25 primary late rate to the general election in 2020.



1 Subject to that caveat, yes, the .26 is lower in that  
2 way.

3 Q All right. And consistent with my sort of exercise I  
4 did with you before, if you'll look at the 2012  
5 elections, right, the percentage late for the primary  
6 is higher than what it ended up being in the general,  
7 right?

8 A For the 2012 that is correct. But as I noted before,  
9 not for the 2018.

10 Q Right. But I want to focus on the Presidential  
11 primaries here. So for 2012, it's higher than it was  
12 for the general election, right?

13 A Yes.

14 Q And for 2016 it was higher, a 1.97 percent, than it was  
15 in the general election which was .41 percent, correct?

16 A That is correct.

17 Q And just looking at the general elections generally,  
18 the 2018 general election, which was a non-Presidential  
19 election, had by far the highest percentage late of all  
20 the general elections on this table, correct?

21 A I'm not sure what you mean by "by far". I would say  
22 1.02 is greater than the other numbers.

23 Q It's more than double all the other numbers, isn't it,  
24 sir?

25 A Yes.



1 Q And it's four times the number of the actual most  
2 recent election that took place in the primary during  
3 the pandemic, the 2020 primary?

4 A Well, it -- I mean four times 26 might be larger. But  
5 you're asking me to compare a general to a primary  
6 here. So I believe you're asking me if -- if four  
7 times .26 is great -- is less than 1.02, it's not  
8 quite.

9 Q It's between three and four times. Would you give me  
10 that, sir?

11 A I'd definitely give you that, but I -- I'd just like to  
12 emphasize you're comparing the general with the primary  
13 late rates.

14 Q Well, no -- yes, I agree with that. But the reason why  
15 it's significant, I guess, sir, is because if we went  
16 back to your original report when you were projecting  
17 the number of late ballots that are likely to take  
18 place in the 2020 general election, you just so  
19 happened to choose, as your multiplier, the single  
20 highest percentage in any of the last four general  
21 elections on this chart, even though it was not a  
22 Presidential election, correct?

23 A I chose the most recent late rates, recent in the  
24 temporal sense, among the general election. I didn't  
25 choose the largest rate, late rate in the table. As



1           you pointed out, there's plenty of elections as well,  
2           too, where late rates are actually greater. But I took  
3           the most recent one that happened to be 1.02

4   Q       Even though in the same model for turnout projections,  
5           you used a Presidential year as a comparison, correct?

6   A       For that, I was trying to deal with the fact that the  
7           exact number of people showing up in the 2020 general  
8           is hard to know. Most people believe that turnout is  
9           going to be very high in 2020. At least -- let me say  
10          this another way. Based on 2018 turnout, most people,  
11          I would say, who work in my area believe that 2020  
12          turnout is going to be very high. Obviously, it's not  
13          possible to know how large the turnout will be. And I  
14          would like to, in some ways, be conservative in my  
15          number of people turning out. I don't think using 2018  
16          turnout would have been a reasonable thing because  
17          that's not, at least -- because that's a non-  
18          Presidential general election. So I took the 2016  
19          general. Pre-pandemic, I think it would be very clear  
20          that that is a conservative number because across the  
21          country 2018 turnout was much higher than the typical  
22          midterms. So --

23   Q       But lower than a general election, correct?

24   A       Yes.

25   Q       I'm sorry, a Presidential general election is what I



1           meant to say.

2    A       Correct.

3    Q       All right. Okay, sir. I want to talk about your  
4           discussion of voter fraud that you had with Mr.  
5           Devaney. Do you remember that?

6    A       I do.

7    Q       And -- and just going back to your general  
8           qualifications, you've been studying election  
9           administration for your entire career; is that fair to  
10          say?

11   A       I wouldn't say -- no, not my entire career.

12   Q       How about the last 15 years or so?

13   A       I believe Mr. Devaney asked me when I started, and if  
14          my memory is correct, I said I started in 2000 when the  
15          2000 general election happened and all -- and all the  
16          excitement surrounding that election occurred.

17   Q       Right. And I notice that you published some articles  
18          in some election law journals; is that correct?

19   A       I have.

20   Q       In fact, you sit on the review board for an election  
21          law journal?

22   A       I do.

23   Q       And you occasionally review and -- and comment on  
24          Supreme Court decisions in the area of election law; is  
25          that fair?



1 A I'm sorry, I'm not sure what you're asking me.

2 Q Do you sometimes publish articles commenting on Supreme  
3 Court decisions regarding election law?

4 A I'm trying to think if my papers have commented on --  
5 I'm sure they invoked Supreme Court decisions. I'm not  
6 sure --

7 Q It's something --

8 A I apologize.

9 Q Go ahead. It's something that you do have to  
10 familiarize yourself generally within this area that  
11 you study, correct?

12 A I'm sorry. I still don't understand what you're  
13 asking. I apologize.

14 Q I -- I admit it's -- it's not a good question. And  
15 maybe I made it too complicated. Part of your job is  
16 to -- is to understand, at a basic level, what the  
17 Supreme Court has said regarding election laws?

18 A Yes. I'm not a lawyer, and I -- I don't --

19 Q Right.

20 A -- claim to have legal expertise on -- in ways that  
21 someone trained in law would. I would say that my work  
22 involves elections. Elections are regulated by laws.  
23 And --

24 Q Have you --

25 A I apologize.



1 Q I'm sorry, I didn't mean to interrupt.

2 A And some --

3 Q Did you want to finish?

4 A And some of my papers involve election laws.

5 Q Have you had occasion, in some point in your studies  
6 then, to familiarize yourself with Supreme Court  
7 decision in Crawford v. the Marion County Election  
8 Board?

9 A What do you mean by familiarize myself with it?

10 Q Do you know about the decision?

11 A In a -- not in a legal sense that you would. I  
12 would -- I would have --

13 Q Are you --

14 A -- had --

15 Q Are you aware that that's a decision that upheld  
16 Indiana's voter ID statute?

17 A Yes, I am aware of that.

18 Q All right. And -- and are you aware that in that  
19 decision, Justice Stevens included in his opinion some  
20 specific discussion about the state's interest that  
21 justified voter ID law?

22 A I'm aware in the general sense of a justice asserting  
23 that. I'm not sure if I --

24 Q And are you --

25 A I'm not sure if I could have explicitly said that



1 particular justice, given my knowledge. But I will --

2 Q That's fine.

3 A -- accept that it -- that particular person.

4 Q And you remember that one of the interests that the  
5 Court, Justice Stevens in his opinion discussed, was  
6 justifying that law was the state's interest in  
7 preventing voter fraud?

8 A That is my understanding of that decision, but I -- I  
9 don't have it in front of me, and I'm not able to  
10 confirm. But that is -- that is my understanding.

11 Q All right. And do you recall whether or not that  
12 was -- that interest existed even though the record in  
13 that case contains both no evidence of any such fraud  
14 actually occurring in Indiana at any time through its  
15 history, unquote?

16 A Well, are you asking me to confirm what the --

17 MR. DEVANEY: Your Honor -- Your Honor, I'm going to  
18 object to this line of questioning unless Mr. Strawbridge puts  
19 the decision in front of Mr. Herron and give him an  
20 opportunity to look at what was said. I think this is not  
21 proper cross. He doesn't have the document in front of him,  
22 and he's being asked to take Mr. Strawbridge's word for what's  
23 in a Supreme Court opinion.

24 THE COURT: You want to be heard on that, Mr.  
25 Strawbridge?

1 MR. STRAWBRIDGE: You know, I really just wanted to ask  
2 him if he remembers. If he doesn't, it can speak for itself,  
3 and I'm happy to move on.

4 THE COURT: Why don't you just rephrase the question, if  
5 you can? And then if he doesn't -- if he's not familiar with  
6 the -- with the language that you're referring to, you're  
7 either going to have to read it to him or accept his answer.

8 MR. STRAWBRIDGE: I have it here, but I'd just rather  
9 save us a little time. But that's fine.

10 BY MR. STRAWBRIDGE:

11 Q Mr. Herron, do you remember whether or not the record  
12 in Crawford states, "No evidence of any such fraud  
13 actually occurring in Indiana at any time in its  
14 history"?

15 A In all honesty, I don't know the exact time I -- I  
16 looked through that decision. So I can't say that I  
17 remember it. I -- I don't -- I don't know.

18 Q Okay. I don't have any other questions for you, Mr.  
19 Herron.

20 THE COURT: Mr. Devaney, I'm going to give you a chance  
21 to redirect. I just want to caution everyone, it's now, by my  
22 clock, 2:19. So we want to make sure we get on Mr. Stroman's  
23 testimony. I want to leave enough time for everyone to have,  
24 you know, their -- their say and arguments. So we'll talk  
25 about timing as we get to the end of the evidentiary portion,



1 but I'm going to ask Mr. Devaney to try to, as I used to say  
2 to the city council when I was mayor, concise is nice. So if  
3 we could try to focus on being concise that would be nice.

4 MR. DEVANEY: So noted, Your Honor.

5 REDIRECT EXAMINATION BY MR. DEVANEY:

6 Q Dr. Herron, I just have a few follow ups, and they'll  
7 be somewhat random in terms of sequence just because  
8 I've taken notes during two different cross-  
9 examinations. But I just want to be clear. You  
10 pointed out that, in response to Mr. Knowlton's  
11 question, that primary voters are different from  
12 general election voters. Do you recall saying that?

13 A Yes, I do.

14 Q And you didn't have an opportunity, I think, to explain  
15 that difference. Could you just elaborate on that, why  
16 they are different?

17 A Well, they tend to be fewer in number. And in many  
18 cases they tend to be more educated. And what the  
19 research shows is they're more politically engaged.

20 Q And with respect to being able to navigate absentee  
21 voting or voting by mail, do those differences in  
22 population of voters from a primary to a general  
23 have -- have an effect on ability to navigate?

24 A Well, you might -- I mean, I think the -- the more  
25 sophisticated people vote in primaries. They tend to



1 be more experienced voters and you know that having  
2 voting, VBM -- absentee voting experience is associated  
3 with being able to successfully have the vote by mail  
4 ballot that counts. So I would say that in general, I  
5 would expect that one sees the more experienced types  
6 in the primary.

7 Q Changing topics, Dr. Herron. Mr. Knowlton, as you  
8 recall, asked you, in connection with the ballot  
9 receipt deadline, about whether voters could avoid  
10 having their ballots arrive late by simply voting  
11 several weeks before the election. Do you recall that  
12 line of questioning?

13 A I believe I do.

14 Q And I think you testified that in Maine, a voter's  
15 allowed to request an absentee ballot up until five  
16 days before Election Day; is that right?

17 A That's correct.

18 Q And would you expect that voters would actually rely on  
19 what the law says in deciding when they're going to  
20 request an absentee ballot?

21 A I would assume that voters take the law seriously, and  
22 since the state law says an individual can request a  
23 ballot up to five days before, I would expect voters to  
24 take that as a serious statement about when it is  
25 permissible to request a ballot.





1 Q And if someone were to decide to vote absentee three or  
2 four weeks before the election, is there a loss that  
3 comes from that from an information and informed voter  
4 respect?

5 A I would say that the answer is yes. When a voter votes  
6 early, he or she is voting with less information than  
7 voters who vote late -- later, I should say. I don't  
8 mean late in the sense of rejected ballots, but vote  
9 later in the process. And so I think it's generally  
10 appropriate, since elections are the key mechanism that  
11 our government uses to select its officials, that we  
12 want voters to be as informed as possible, and that  
13 means casting their ballots as late as possible. So  
14 for example, the last Presidential debate is, I think,  
15 on October 22, which is 12 days before election day.  
16 And so if any voter is determined to learn as much as  
17 possible about the candidates for President -- I'm  
18 only, of course, speaking of our Presidential  
19 candidates here -- these individuals have every reason  
20 to wait until the last debate is concluded. And so any  
21 voter who voted early would be losing that opportunity  
22 to learn more. And we also know that looking beyond  
23 Presidential races, because of course, there are lots  
24 of offices in the November 2020 election. They're up  
25 for -- they're being contested. Sometimes candidates

1 withdraw. This is, of course, (indiscernible)  
2 primaries, but candidates can withdraw at any time, of  
3 course. And so a voter that votes his or her ballot  
4 three weeks or four weeks before an election might, in  
5 principle, vote for someone who is actually not running  
6 for office. And that's different than someone who  
7 votes close to election who wouldn't be faced with that  
8 problem.

9 Q Thank you, Dr. Herron. Just a couple of more  
10 questions. Could you turn to Table 10 of your rebuttal  
11 report.

12 A Yes.

13 Q And Mr. Strawbridge walked you through the percentages  
14 set forth in this table with respect to rejected  
15 ballots. Do you recall that line of questioning?

16 A Yes, I do.

17 Q And focusing on primaries, if you look at raw numbers  
18 of voters whose ballots were rejected, which primary  
19 has the highest number of broad -- of voters whose  
20 ballots were rejected?

21 A The 2020 primary there were 1,300 ballots rejected.

22 Q And that's by far a -- the largest number of rejected  
23 ballots in recent primaries between 2012 and 2020,  
24 would you agree?

25 A Yes. I notice the other numbers are, well, in one

1 case, going to page of 91. The other case is 153 --  
2 103 and 135. So if I could do the division, I would say it's  
3 around seven to eight times as many ballots, roughly.

4 Q And if you could look at table 16, please, also of your  
5 rebuttal. And Mr. Strawbridge pursued a sort of line  
6 of questioning with you where he focused on the  
7 percentage of late ballots.

8 Again, if you look at the raw number of late ballots  
9 that were rejected and were not counted within the  
10 primaries, is it correct that 2020 was the largest  
11 number?

12 A Yes. The other numbers of rejected ballots range from  
13 48 to 21 to 44 in '10, and there were 297 in the recent  
14 primary.

15 Q And you have testified that one can expect reasonably  
16 that the number of late ballots for the 2020 general  
17 will be higher than 297 that were rejected in the  
18 primary. And can you just explain why that is the  
19 case?

20 A Well, we can expect a lot more people to vote in the  
21 2020 general election in November than the primary.  
22 That's the case across American elections. And if --  
23 if more people vote, you would expect more late  
24 ballots, all things equal.

25 Q And in addition, are there issues relating to the



1           Postal Service that affect your conclusion?

2   A       My understanding, reading about the Postal Service, is  
3           that some of the main delays that you began read about  
4           were starting in August. The primary took place on  
5           July 14, which is between -- previous to August, which  
6           means since November is after August, all -- everything  
7           I would have read about the Postal Service would make  
8           me suggest that the issues will continue, which means  
9           that the polls still service part of -- the risk due to  
10          late postal delivery will be greater in November than  
11          it was in July.

12          So even if the turnout was the same, which -- in the  
13          general and the primary, which it would be implausible  
14          to think that, you would still expect more late ballots  
15          given to the Postal Service.

16   Q       Thank you, Dr. Herron.

17   MR. DEVANEY: No further questions.

18   THE COURT: Mr. Knowlton, brief recross.

19   MR. KNOWLTON: Just one question, Your Honor, if I might.

20   THE COURT: Yeah, go ahead.

21          RE CROSS-EXAMINATION BY MR. KNOWLTON:

22   Q       Dr. Herron -- Dr. Herron, you have no idea whatsoever  
23           whether or not the Postal Service will be better or  
24           worse in the upcoming eight weeks, do you?

25   A       I'm sorry. No idea whatsoever?



1 Q Correct.

2 A I -- I would say that I --

3 Q Just speculating -- you're just speculating, aren't  
4 you?

5 A I would say that I have read various reports about  
6 postal delays, I wouldn't call those speculation. And  
7 my reports cite some discussions of Postal Service  
8 delays. I -- I'm not claiming expertise in the Postal  
9 Service. I'm claiming that I've read those articles  
10 that are discussing the Postal Service. So I would not  
11 call that speculation. I would call what I am saying  
12 grounded in what I have read.

13 MR. KNOWLTON: No further questions, Your Honor.

14 THE COURT: Mr. Strawbridge, brief recross.

15 MR. STRAWBRIDGE: If I could just very briefly, Your  
16 Honor.

17 RECROSS-EXAMINATION BY MR. STRAWBRIDGE:

18 Q Following up on that last question, do you know whether  
19 or not the Plaintiffs identified concerns about  
20 slowdown in the Postal Service in the complaint they  
21 filed in this case in June, Dr. Herron?

22 A I have reviewed the complaint, but at this point, I  
23 don't remember if that document mentioned the Postal  
24 Service.

25 Q Mr. Devaney walked you through the raw numbers in some



1 of the tables that we were looking at, including the  
2 revised table 16 from your rebuttal report. Do you  
3 recall that?

4 A I do.

5 Q When you projected the numbers of -- of late ballots  
6 and ballots missing signatures in the upcoming 2020  
7 election, did you use a raw number in that calculation  
8 or did you use the (audio interference)?

9 A Well, I lost the end of your question. I believe  
10 you -- but I think I understood it. Could you restate?

11 Q Do you need me to repeat it?

12 A Yes, please.

13 Q Yes. My question is when you actually projected the  
14 number of potentially late or missing signature ballots  
15 in the 2020 general election, did you use raw numbers  
16 or did you use a rate?

17 A Well, rates are ratios of raw numbers, I would say.

18 Q Correct. Did you use the raw numbers for those tables  
19 or did you use the rate?

20 A When I did table 21?

21 Q Yes.

22 A Well, I would say I used both. I took the ratios of  
23 those numbers -- excuse me, I took the ratios of the  
24 raw numbers, calculated rates, then I multiply by  
25 various numbers of ballots, those are raw numbers. And



1           that gives me counts of projected late in those  
2           signature ballots subject to all the caveats that I  
3           have earlier described -- not all the caveats, but  
4           subject to the environment that I have described.

5   Q       All right. Can I just direct you back to paragraph 226  
6           of your original report? It's page 88. Let me know  
7           when you're there.

8   A       I am there.

9   Q       Okay. Second sentence of that rate [sic] reads, does  
10          it not -- the second sentence of the paragraph reads,  
11          does it not:

12                 "In particular, I assume that the late VBM ballot  
13                 rate in the upcoming November 2020 election is the  
14                 same as that 1.02 percent observed in the 2018 GE",  
15                 meaning general election.

16          Correct?

17   A       Correct, yeah.

18   Q       And you refer people to tables -- I'm sorry, go ahead.

19   A       I would say that sentence that you just read appears in  
20          paragraph 226.

21   Q       Right. And then the following sentence refers to table  
22          16 for this rate, correct?

23   A       Yes, it does.

24   Q       Thank you, sir.

25   THE COURT: I just have a couple of questions for you,

1 Dr. Herron, and I won't be lengthy because I do want to hear  
2 from Mr. Stroman. But Dr. Herron, a couple of issues.

3 On the area of the use of witnesses to return absentee  
4 ballots, which I think you addressed in your direct testimony,  
5 and one of the concerns you have about that is that the voter  
6 gets to that point where they're going to use someone other  
7 than an immediate family member, which is defined in Maine  
8 law. They're not going to mail it back. They're not going go  
9 to the town office to hand deliver it to the clerk or put it  
10 in a drop box, assuming there's a drop box available.

11 They get to the point where they're not going to do any  
12 of that. My understanding is that at that point, to hand it  
13 to a third party to deliver your ballot, you need to either do  
14 it in front of a notary, do it in front of a clerk, or do it  
15 in front of two witnesses. That's my understanding of how  
16 Maine law works. Is that your understanding as well?

17 THE WITNESS: Yes, Your Honor.

18 THE COURT: And so I guess my question, Dr. Herron, is  
19 what more is it that the State of Maine has to do to provide  
20 more options to an absentee voter than what it has already  
21 done?

22 THE WITNESS: What options does it have?

23 THE COURT: What option -- what more options do -- do you  
24 think Maine should be offering?

25 THE WITNESS: Well, for example, in the pandemic, the two





1 witness requirements are very serious.

2 THE COURT: But I guess my question, Dr. Herron, is there  
3 is no requirement to have two witnesses on every absentee  
4 ballot. It is only -- it comes -- as I understand Maine law,  
5 it only comes into play when you have chosen not to mail it  
6 back, when you have chosen not to deliver it back -- hand  
7 deliver it back, when you don't have an immediate family  
8 member, and that's defined to include, I don't know, you know,  
9 aunts and half-brothers, as far as I could read it, but it's  
10 pretty extensive.

11 It's only when you get to the point where you use none of  
12 those options that the State says, look, if you're going to  
13 give this to some third party -- and this is a ballot. This  
14 isn't an application. This is the actual ballot -- we have a  
15 concern that you're just handing over a ballot to some unknown  
16 person. And when you do that, you have to either do it in  
17 front of a notary, a clerk, or two witnesses.

18 And so my question is, what more -- what other options do  
19 you think we should have? You can mail it back. You can  
20 deliver it back. You can give it to a family member. You can  
21 drop it off at a mail -- at a secure lockbox, so I'm told.  
22 What -- what more is necessary?

23 THE WITNESS: Well, I -- my feeling is that the witness  
24 requirements -- so when you say another option, I would say  
25 one option is returning a ballot with, say, one witness rather

1 than two or some sort of an affidavit. And I understand  
2 that (indiscernible).

3 THE COURT: How do you get the affidavit to the -- to the  
4 clerk's office.

5 THE WITNESS: Well, it could be, for example, given to  
6 the individuals who turn in the ballots, or it could be  
7 submitted electronically.

8 THE COURT: Okay. So these are -- but these -- I guess  
9 I'll refrain from getting into sort of legal arguments with  
10 you because that's not fair to either me or you. All right.  
11 So you think there are other options, for example, online  
12 submitting materials, which would be an option.

13 Let me ask you this, Dr. Herron, in terms of the  
14 registration requirements going -- I'm sort of skipping gears  
15 here and going to the registration requirements. What is it  
16 about the registration requirements that you find burdensome?

17 THE WITNESS: Well, I mean, it's -- it's not that I'm  
18 finding it burdensome. I mean, the data suggests that it's  
19 burdensome here. What -- what's going on in Maine is that  
20 because the requirements -- because its registration regime  
21 depends extremely heavily on in-contact or in-person  
22 registrations, in a pandemic, that's burdensome. And so you  
23 can see that in the data, given the slowdowns in registration  
24 rates that I testified to.

25 THE COURT: Okay. And I guess my question, what is it

1 that you say that the State should be offering that it doesn't  
2 already offer?

3 THE WITNESS: It seems to me that at this point in time,  
4 developing online registration is not in the cards. Most  
5 states offer that, but Maine doesn't. And that's certainly  
6 not going to change quickly. I would -- you know, I don't  
7 want to -- I mean, I see myself as an expert witness here, not  
8 as an advocate.

9 I understand the Plaintiffs have some other suggestions  
10 about vote.org and there are other modalities for  
11 registration. Certainly, I was -- it could -- you could  
12 imagine the State would allow online. I wouldn't call it  
13 online voter registration, but at least, for example, perhaps  
14 allowing Maine voters to mail pictures of their registration  
15 forms. That might be slightly better.

16 THE COURT: But now we're back to getting -- you've got  
17 to get stamps for that.

18 THE WITNESS: I understand that there are dilemmas.

19 THE COURT: Well, that's -- I guess -- I guess that's my  
20 point, maybe. You know, I'm signaling some of my questions  
21 without having closing arguments. Life presents a lot of  
22 dilemmas. This particular pandemic has created dilemmas for  
23 us all.

24 Is it -- is it your position from the data, Dr. Herron,  
25 that -- well, I guess what I'm trying to -- let me see if I

1 can rephrase this. One of the difficulties I'm having  
2 wrapping my head around some of the issues here is you can  
3 imagine, you can hypothesize a voter, a potential voter, who  
4 cannot do any of the things that the State is asking it to do,  
5 regardless of how inconsequential they are.

6       You know, for example, putting a postage stamp on a  
7 ballot. Six months ago, I don't think anyone would have  
8 seriously argued that that was a burden of any kind, or if it  
9 was, it was so inconsequential as to be meaningless. Now it's  
10 taken on a seriousness that we never would have imagined it  
11 had back in February.

12       So I guess my problem is you can always have -- you can  
13 always hypothesize a voter who is afraid to go out to the Post  
14 Office to get a stamp, afraid to go to the Post Office to mail  
15 an item, does not want to have contact with their immediate  
16 family because they're afraid of infection or contagion. They  
17 do not want to be involved with witnesses, doesn't have --  
18 they don't have a printer. They don't have the internet.  
19 They don't have a printer, et cetera. You know, there's --  
20 you can conjure up a difficulty for everybody if you -- if you  
21 worked at it.

22       I guess my question is that almost expects a -- a -- a  
23 system of registration and absentee balloting that almost  
24 requires the State to invent a perfect system that is easy for  
25 every conceivable voter. And is that the standard that I'm

1 operating under when I look at your numbers?

2       There's -- there's going to be potential rejections.  
3 There are going to be people who do send in their votes late.  
4 You could spend, and the legislature can spend, years divining  
5 a system which covers every possible eventuality for every  
6 conceivable voter and still would not eliminate, would  
7 never -- and still would not have a perfect system. You'd  
8 still have probably some rejections. Some people would  
9 probably be disenfranchised.

10       And I'm struggling with are we looking for perfection  
11 here for everybody, or are we looking for a voting system that  
12 is minimally burdensome, since we're talking about burdens  
13 now. I mean, the Supreme Court has talked about burdens or  
14 acceptably burdensome, I guess, as there may be some burden  
15 which is acceptable.

16       And my -- we're -- what I've spent a lot of time thinking  
17 about this over the last two weeks is, most of the examples  
18 that I hear are concerning voters who apparently can't take  
19 advantage of any of the options that Maine gives them. Can't  
20 go to the Post Office, can't get a stamp, you know, can't go  
21 there, can't drive there, don't have a family member to take  
22 them there or pick it up and drop it off, and don't have a  
23 computer, don't have a printer.

24       And so I -- I'm struggling with where I draw the line or  
25 where should I be drawing the line between a system that

1 carries some burdens with it that may or may not be  
2 acceptable, and a system which is totally burden free, but is  
3 unattainable.

4 THE WITNESS: Your Honor, would you like me to speak?

5 THE COURT: Well, I would. I'd love to have you speak.

6 THE WITNESS: So I think the type of person you're  
7 describing is one who suffers from the worst parts that our  
8 society has to offer. So you've described someone who is  
9 poor, disabled, and who doesn't have family members nearby.  
10 And I -- I really, really understand that you're thinking,  
11 well, if you take all of these circles, who's really left in  
12 the middle? That's sort of what you're saying. It's like,  
13 you can't do this, you can't do this, you can't do this, who's  
14 left. So what I can tell you is, there are people like that.

15 So I don't see the question is, like, do you want a  
16 perfect system, because I agree with you, that's not going to  
17 be possible. I think the question here is do we want rules  
18 and really support the people who have the most difficulty in  
19 society. And those people -- and I've learned that from my  
20 involvement as an expert witness over and over again, these  
21 are poor, disabled people who just don't have the resources  
22 that I think -- I don't want to say for other people here, but  
23 I look and say, well, of course, buy it on the internet, okay.

24 Well, that just doesn't work for some part of society.  
25 Or ask your kid to bring you. Well, that doesn't work if you

1 are poor and your child either doesn't live near you and your  
2 spouse has passed away, and your child has a job that is so  
3 rigid, because a lot of jobs are -- not a lot of other jobs,  
4 but some are -- that just doesn't work.

5 And so if you keep narrowing the circle down, not -- like  
6 I have in that diagram, you end up with some subset of people,  
7 and these people have it worse off. So when I say, when you  
8 think about your decision, my advice would be not perfect  
9 action but trying to do what we can to make it so that those  
10 people have it as -- have a good chance of being able to vote  
11 successfully. Because if they do, then everyone else will,  
12 too.

13 THE COURT: Thank you, Dr. Herron. I appreciate your  
14 thoughts on it.

15 John, did my questions prompt anything from you?

16 MR. DEVANEY: No, Your Honor.

17 THE COURT: Tom, anything -- any follow up on the basis  
18 of my questions?

19 MR. KNOWLTON: No. Thank you, Your Honor.

20 THE COURT: And Patrick?

21 MR. STRAWBRIDGE: No, Your Honor.

22 THE COURT: All right. Well, thank you.

23 Professor Herron, thank you very much for your testimony,  
24 very helpful. And I've spent many hours reviewing your  
25 reports, both the initial one and the rebuttal. So I



1 appreciate your help in this matter.

2 THE WITNESS: Thank you, Your Honor.

3 THE COURT: John, next witness.

4 MR. DEVANEY: Your Honor, thank you. We call Mr. Ronald  
5 Stroman.

6 THE COURT: Mr. Stroman, good to see you. I know you've  
7 been waiting there patiently, and I appreciate it very much.  
8 If you would raise your right hand, please, I'll swear you in.  
9 And do you swear or affirm that the testimony you are about to  
10 give will be the truth, the whole truth, and nothing but the  
11 truth?

12 THE WITNESS: I do.

13 THE COURT: Thank you, Mr. Stroman.

14 And with that, Mr. Devaney, you may proceed when you're  
15 ready.

16 RONALD STROMAN, HAVING BEEN DULY SWORN, TESTIFIED AS  
17 FOLLOWS:

18 DIRECT EXAMINATION BY MR. DEVANEY:

19 Q Good afternoon, Mr. Stroman.

20 A Good afternoon, John.

21 Q Would you state your full name for the record, please?

22 A Ronald Stroman.

23 Q And could you please give the Court a brief description  
24 of your education and employment background?

25 A Yes. I graduated with a BA degree in government from





1 Manhattan College, and a law degree from Rutgers  
2 University in the Newark campus.

3 In terms of work experience, I work as an attorney  
4 adviser. My first job out of law school was at the  
5 U.S. Department of Housing and Urban Development. From  
6 there, I took a position on the house -- United States  
7 House Judiciary Committee as assistant counsel. From  
8 there, I took a position as deputy general counsel for  
9 the House Government Operations Committee. On the  
10 House Government Operations Committee, I held several  
11 positions, including deputy staff director on the  
12 committee.

13 From there, I took a position as director in the U.S.  
14 Department of Transportation. I reported directly to  
15 the Secretary of Transportation in that -- in that  
16 position. I then took a position as managing director  
17 at the Government Accountability Office in Washington.  
18 From there, I became staff director for the House  
19 Committee on Oversight and Reform. That committee has  
20 legislative and oversight jurisdiction over the United  
21 States Postal Service.

22 From there, I took a position as Deputy Postmaster  
23 General of the United States, and I left that position,  
24 retired from Federal service in June of this year.

25 Q So a total of about 40 years of Federal service?



1 A Yeah. A little bit more, John; but yes, very close.

2 Q In your position, Mr. Stroman, as Deputy Postmaster  
3 General, could you just, first, give a high-level  
4 description of your responsibilities that you had?

5 A Yes. So I was a member of the Postal Service Board of  
6 Governors. The board is statutorily -- statutorily,  
7 the board has 11 positions. Nine of those positions  
8 are appointed by the President and confirmed by the  
9 Senate. Two positions are held by virtue of the  
10 statutory positions in the Postal Service.  
11 So the Postmaster General and the Deputy Postmaster  
12 General sit on the Board of Governors, and I sat on  
13 that board. The Board of Governors sets the strategic  
14 direction for the Postal Service, so all the major  
15 policy determinations that the Postal Service made were  
16 made by the Board of Governors.

17 I was the second highest ranking person at the United  
18 States Postal Service behind the Postmaster General.  
19 By statute, in the event that the Postmaster General is  
20 not available, I am -- was in charge of the United  
21 States Postal Service. I was a member of the executive  
22 leadership team. We met on strategic implementation of  
23 policy initiatives on a weekly basis. I met with the  
24 Postmaster General virtually every day.

25 I led a couple of teams in addition. I headed our



1 international -- our international team, which I  
2 represented the United States Postal Service at the  
3 Universal Postal Union, which is the second oldest  
4 United Nations organization in the country. And there,  
5 the UPU as it's known, sets international postage  
6 rates, tariffs, sets terms for the international flow  
7 of mail and packages. It also sets -- it's responsible  
8 for overseas voting, so overseas voting by our service  
9 women and men, and residents who live overseas. The  
10 UPU sets those terms, and we work with all of the  
11 states to ensure that those ballots get to overseas  
12 voters and get back.

13 I was responsible for relations with Federal and State  
14 elected officials; so in that capacity, worked directly  
15 with Congress of the United States, worked to implement  
16 Postal Service policy throughout the United States at  
17 the -- at the state and local level. In that capacity,  
18 that is -- I worked extensively with election officials  
19 around the country, National Association of State  
20 Election Directors, National Association of Secretaries  
21 of State.

22 I gave speeches and had discussions on issues related  
23 to delivery of ballots in that sense. I was  
24 responsible for our internal operations with regard to  
25 election mail. So there, we worked on getting



1 information out to our state and local governments,  
2 what information we thought that was known to be  
3 appropriate.

4 Also, I was responsible for training. So I -- we  
5 developed internal training regimens for our own  
6 employees. And then as I mentioned, just outreach  
7 generally to state election -- election officials.  
8 That's it at a -- at a high level.

9 Q Thank you for that. Before I get into some more  
10 specific questions with you, Mr. Stroman, about the  
11 issue that is before us, the Election Day receipt  
12 deadline. I just want to ask you, could you describe  
13 for us how a piece of mail is processed?  
14 If I walk down the street and put an envelope in my  
15 blue mailbox, what happens from there? Could you just  
16 walk us through the process?

17 A Yeah. So our network is -- as you know, is extensive.  
18 We go to every house, every business in the United  
19 States, six days a week. We have approximately 31,000  
20 post offices around the country. There are 289 mail  
21 processing facilities around the country.  
22 And the flow is potentially in three parts. The first  
23 part is retail, the second part is processing and the  
24 third part is delivery. And I'll walk you through each  
25 of those.



1 So with regard to the retail portion, what you would  
2 think of is carriers who go out and deliver mail. You  
3 all have carriers that go to your house or your  
4 business. At that -- at that retail level, in the  
5 morning, the carriers have routes which are  
6 established, and they take mail that has been delivered  
7 to them in the Postal Service and they go out and  
8 deliver that mail on those routes.

9 They also pick up mail from blue mailboxes or for --  
10 from post boxes that are in front of homes. And so  
11 they take that mail, and they're bringing it back to --  
12 to a post office.

13 Notably, the routes that they run get restructured on a  
14 regular basis because if you had employees, for  
15 example, who are out, who are out sick, the other  
16 employees generally are going to have to pick up the  
17 slack. So that means you have to divide the routes or  
18 split the routes. So instead of three routes, you  
19 might split a carrier's route who was out among two  
20 other carriers who were in for the day. So they split  
21 those routes.

22 They then take that mail and they bring it back to the  
23 post office. There, that mail gets prepared to go to  
24 a -- by transportation to a processing facility,  
25 generally. It could go to an airport if it's going to



1 be flown across the country. But for purposes of just  
2 simplicity, it then goes -- a truck comes on a schedule  
3 to pick up the mail from the retail facility.

4 Now, that's important in part because if the carriers  
5 are late coming back, they will potentially -- you're  
6 talking about a delay in loading the mail. So that can  
7 delay the mail and can delay the truck leaving,  
8 potentially. Or if the truck leaves on time, you end  
9 up leaving the mail. And there are also other issues  
10 regarding the transportation. There's a shortage of  
11 truck drivers, for example, and you know, that can  
12 delay the mail.

13 So once the drivers pick that mail up, they then drive  
14 it to a processing facility in that area, the  
15 origination area. There, what happens is the mail gets  
16 processed on automated equipment, depending upon what  
17 type of mail it is.

18 So if it's first class mail, it will get processed  
19 on -- on one processing equipment. It could be a  
20 flat -- what we'll call flat envelopes, which get  
21 processed on another. It could be a package, which  
22 gets processed on package sorting equipment. Those are  
23 also processed by virtue of a schedule. So if you have  
24 employees who are out, for example, in the processing  
25 facility, it can also delay the mail. You can also



1 have other kinds of things that happen; belts can break  
2 on our machines, other kinds of software problems.  
3 But you run the mail or packages on your equipment.  
4 Then what happens is that you will have -- you then set  
5 them out on a platform, and trucks come again to pick  
6 up that mail. If it's going to be delivered in the  
7 area of that processing facility, it will then go --  
8 the truck will take it to -- we call it the delivery  
9 unit. And the delivery unit, it gets sorted again, and  
10 the delivery unit sorts it down to specific addresses.  
11 So it then gets sorted, and carriers then take that  
12 mail out, and you start the process where they go out  
13 and they deliver the mail.  
14 If the processing facility is -- if the mail is going  
15 to someplace outside of the area of the first  
16 origination processing facility, the trucks will drive  
17 it usually, unless it's being flown to a processing  
18 facility that is in the destination. So that's the  
19 second processing facility where it gets processed  
20 again. And then it's taken to a delivery unit. And  
21 from there, it then goes to -- carriers pick it up and  
22 deliver it to a home market.

23 Q Thank you for that. In your affidavit that you filed  
24 in this case, you talked about staffing shortages that  
25 the Postal Service has been facing and is facing. And

1 my question for you is, can you describe the shortages  
2 you're referring to and how they affect overall the  
3 process you described, and the ability to deliver mail  
4 on time?

5 A Yeah. So during the normal -- outside of a pandemic,  
6 you know, you have -- regularly, you have -- it's a  
7 huge organization, 600 -- over 600,000 employees, so  
8 you have employees who are out sick. And when that  
9 happens, you know, you make adjustments and you  
10 continue to try to operate, you know, with other  
11 employees taking the position of those employees who  
12 are out sick. Like I went into the routes.  
13 In the pandemic, starting in March, what we saw was a  
14 dramatic decline in certain areas of employees either  
15 not coming to work. And they weren't coming to work  
16 either because they were a part -- they were diagnosed  
17 with COVID-19, or they had a relative or someone in the  
18 household that had COVID-19, or they had children and  
19 somebody had to stay home and take care of them, or  
20 they were afraid.  
21 And so in some of these hot spots -- early in March, it  
22 started in New York, it started to spread throughout  
23 the country, we saw employee availability rates down  
24 to -- as low as 40, 30, 40 percent in some -- in some  
25 instances of employees not coming to work. So it just





1 created just a huge problem, particularly in a pandemic  
2 where first responders are dependent upon being  
3 provided, say, pharmaceuticals and personal protective  
4 equipment, PPE.

5 So we had to make some very tough decisions about how  
6 are we going to triage here. So what we decided was  
7 that we were going to prioritize packages because we  
8 had to get out PPE and pharmaceuticals. This is a  
9 life-and-death matter. This was certainly something  
10 that was difficult. So we said, look, if the mail has  
11 got to stay, and it's going to have to wait for a  
12 couple days. That was a decision which we made and it  
13 was a tough decision. We don't ever want to hold the  
14 mail if you don't have to, but you know, we just didn't  
15 have the employee base.

16 And then, you know, we started to see this spread from  
17 New York on the east coast to New Jersey, and then  
18 starting to move across the country to Philadelphia and  
19 Detroit, and the major metropolitan areas. We had a  
20 lot of people who were there who were -- who started to  
21 be out sick.

22 And the problem is that the Postal Service has an  
23 integrated network, so you know, you can't isolate it.  
24 So if you have the legs in New York, you can have the  
25 legs all across the country because of the



1 transportation legs.

2 We also started to see, for example, that you know, the  
3 airlines were shutting down. So when you had to, you  
4 know -- if you had to fly mail across the country, we  
5 didn't have the lift. And with no, you know -- there  
6 were no airlines. Well, there weren't no airlines, but  
7 they were certainly cutting back significantly. So we  
8 had to try to either drive it longer distances, or had  
9 to contract new flights, new carriers and do the best  
10 that you could, which obviously they jack up the rates.  
11 So it was a -- it was -- it is a very stressful time,  
12 and continues as far as I can tell it to be.

13 Q Do you know if the staffing shortages that you  
14 experienced that you just described still persist  
15 today?

16 A Based on the testimony of the new Postmaster General,  
17 who testified before the House Oversight Committee and  
18 the Senate Homeland Security Committee, his testimony  
19 is that there are about 50 what he calls hot spots  
20 around the country that are -- you have some  
21 significant employee availability issues. And as I  
22 said, you know, you can't isolate it. You can't have  
23 an employee availability on one issue and just isolate  
24 it to there.

25 So his testimony -- which makes sense given, you know,



1 the pandemic -- is that there is -- continues to be  
2 significant employee availability problems.

3 Q Mr. Stroman, in your affidavit, your sort of opening  
4 punch line is that the Election Day receipt deadline in  
5 Maine creates a significant risk of a significant  
6 number of Maine voters being disenfranchised. Is that  
7 a fair summary of your ultimate conclusion?

8 A Yes, that's fair.

9 Q And could you just describe to the Court the extent to  
10 which these personnel shortages affect that conclusion?  
11 And also, changes in postal service operations for the  
12 last couple of months?

13 A So let's start -- let's start with the employee  
14 availability issues. Those are dramatic. I mean, I --  
15 I think I have in -- certainly in the nine years I was  
16 in the Postal Service and talked to the other employees  
17 who have been there for decades, no one has ever seen  
18 employee availability issues at this level, where  
19 people are just not coming to work and not returning.  
20 So you know, it's not as if people are out for one day.  
21 I mean, you've got to be -- if you have COVID, you  
22 know, or you have a loved one, I mean, they're out at  
23 least 14 -- 14 days. And it means that you have  
24 significantly less people to process mail and packages,  
25 and it just delays your ability to get mail and



1 packages out.

2 You know, you need people to -- carriers to go out and  
3 pick up the mail, as I described. You need drivers to  
4 transport the mail. You got to have people to process  
5 the mail in the processing facilities and, you know,  
6 and sort the mail. So if, you know, you just have kind  
7 of a zero-sum gain, you can't flex up a little bit by  
8 bringing noncareer employees in over some period of  
9 time to help ease the burden. That creates its own  
10 struggles, because nonemployees, you know, are --  
11 they're new, nonpermanent employees, noncareer  
12 employees. And so that creates their own problems in  
13 terms of delivery issues or making mistakes.  
14 So it has a significant -- it had a significant impact,  
15 I think, in the -- depending upon, you know, what month  
16 and where we were talking about. So it was pretty  
17 significant.

18 In terms of changes that are made by -- during the  
19 tenure of the new Postmaster General, you know, on top  
20 of the pandemic, the new Postmaster General came in and  
21 decided that he wanted to ensure that trucks -- I  
22 described the truck regime -- between post offices and  
23 the mail processing facilities would just leave on  
24 time. Because he came in, saw a report which said that  
25 trucks weren't leaving on time, and there's a cost

1 associated with that.

2 And given some of the struggles of the Postal Service,  
3 it's long term. Some of those are obviously a ten-year  
4 struggle in terms of the decline in mail volume. There  
5 is -- as the mail volume is declining, the number of  
6 places that you have to deliver mail is increasing. So  
7 you have these two things which are going on at the  
8 same time creating financial strains on the Postal  
9 Service.

10 So he came in and was looking for, you know, ways to  
11 create both efficiencies and, you know, ways to save  
12 money. So transportation is one of those ways. And he  
13 said, trucks, you know, got to leave on time. But the  
14 issue came that, you know, there are reasons why the  
15 mail wasn't prepared to be picked up from a truck on  
16 time. The schedules weren't matching up. You know,  
17 this is a huge, huge organization, and you start to  
18 change that.

19 So mail was being left. So trucks were leaving,  
20 there's no mail or a little bit of mail, and you had a  
21 backlog. And so it kept getting built up, and built  
22 up, and built up, and built up. And so over time you  
23 had these backlogs of mail with the trucks -- yes, the  
24 trucks are leaving on time, that's true. But if you're  
25 not addressing the underlying cause of the mail delays,



1 then you're going to not really solve the problem.

2 And I will say these underlying causes of mail delays  
3 are not new. These are longstanding delays, and they  
4 are caused for a variety of reasons, which I could go  
5 into, but I won't at the moment. But unless you fix  
6 those, and if you have the trucks just leaving on time,  
7 on a delay -- you're going to delay the mail. And you  
8 know, so that was a problem.

9 We then had either, you know -- it's -- you have what  
10 appears to be at least a communications problem because  
11 employees from all across the country believe that  
12 their ability to -- their overtime, the ability to  
13 process the mail, get it delivered using overtime was  
14 significantly reduced. And either it came from  
15 headquarters, which the Postmaster General has said  
16 there was a miscommunication, but you had this  
17 communication -- at least a communication issue where  
18 people believed that this is -- that they were told you  
19 can't then catch up, and that contributed to delaying  
20 of the -- of the mail.

21 And so the combination of those delays and not being  
22 able to come back and pick mail up was you can't run  
23 extra trucks. It just created a situation where the  
24 mail plunged and -- starting in the latter part of  
25 July -- to the point where it was just, I mean, you



1 know, delays were, you know -- were obviously very,  
2 very bad. And the Postal Service is trying to dig out  
3 from under that today.

4 Q And when you speak of delays, as I understand it, Mr.  
5 Stroman, the Postal Service has certain performance  
6 objectives when it comes to when mail is delivered.  
7 Can you just summarize for the Court what those  
8 objectives are?

9 A Yes. So the objectives are that, you know, for first  
10 class, we could -- there are really -- with regard to  
11 elections, there are two classes of mail that the  
12 Postal Service uses for delivering ballots, first class  
13 mail and marketing mail. And so for first class mail  
14 and marketing mail, there is a standard of 96 percent  
15 on time delivery for first class and marketing mail.  
16 What that means is, you should -- the goal is to meet  
17 your service standards of delivering marketing and  
18 first class mail, 96 percent of those pieces should be  
19 delivered consistent with that -- those service  
20 standards. I can go into the service standards if  
21 you'd like, but the internal goal is 96 percent.  
22 Do you want me to discuss the service standards or --

23 Q Oh, you mean the number of days?

24 A Yes.

25 Q Yes. Just briefly. Thank you.



1 A All right. So the service standards, so the 96 percent  
2 is the target. So for first class mail, you have a  
3 service standard of two to five days. That means that  
4 ideally, what you would you do is deliver your first  
5 class mail throughout the country, from origin to  
6 destination, somewhere between two and five days 96  
7 percent of the time.

8 For marketing mail, which is a slower class of mail,  
9 you would deliver -- that service standard is three to  
10 ten days. It is primarily used in circumstances when  
11 you don't need to -- you don't need the speed of first  
12 class mail. Usually businesses use marketing mail for  
13 different purposes, which I can go into, again, if  
14 you'd like. But that service standard is three to ten  
15 days.

16 So the 96 percent standard is for first class mail.  
17 You deliver first class mail between three and five  
18 days 96 percent of the time, and marketing mail  
19 between -- between two and five days for first class  
20 mail and three and ten days for marketing mail 96  
21 percent of the time.

22 Q And so to put it in terms of ballots, hypothetically,  
23 you have 100,000 ballots, and the Postal Service is  
24 hitting its 96 percent performance target. That means  
25 that 4,000 ballots are not going to be delivered within



1           those time frames; is that --

2   A       That's correct.

3   Q       Is that correct?

4   A       Yes.

5   Q       And then based on the factors you described and  
6           developments you described in the Postal Service, do  
7           you know what -- whether they've been achieving that 96  
8           percent objective in the last two months?

9   A       No. They've gone -- they've been somewhere between --  
10          the data that I've looked at is between 82.7 percent  
11          and 87 percent, so somewhere between 82 and 87 percent.  
12          And the last time I looked at the data, it was the  
13          first week in September. So that was the most recent  
14          data that I saw.

15   Q       And Mr. Stroman, you're aware that Maine joined a  
16          number of states and sued the Postal Service over its  
17          performance; is that right?

18   A       Yes.

19   Q       Have you reviewed that complaint?

20   A       Yes.

21   Q       And I just want to read you a statement in that  
22          complaint, and ask you if you agree with that. The  
23          complaint states:

24               "The combination of too few workers, elimination of  
25               weight and extra trips, rigid adherence to start and



1           end times, and an increased package volume is  
2           causing undelivered mail and packages to pile up."

3           Do you agree with that statement?

4   A       Yes.

5   Q       Mr. Stroman, another factor you cite in connection with  
6           your conclusion that significant number of Maine voters  
7           would be disenfranchised by election date receipt  
8           deadline is the fact that voters can request an  
9           absentee ballot up till five days before the Election  
10          Day; is that correct?

11   A       Correct.

12   Q       Can you explain why, in your opinion, voters who  
13          request absentee ballots within the last, oh, you know,  
14          week to ten days -- five to ten days of an election  
15          during this pandemic are at risk of not having their  
16          ballots returned on time?

17   A       Yes. And it is the incongruity of the service  
18          standards of the Postal Service with the last date by  
19          which voters in Maine could request a ballot. So I --  
20          I walked through, I think -- I walked through kind of a  
21          hypothetical. So I can do that, if you like, for the  
22          purposes of illustration.

23   Q       I think that -- yeah, I think one hypothetical would be  
24          helpful.

25   A       All right. So if you -- if you think about a week



1 before the election, and you think about the service  
2 standards of the Postal Service, let's take the most  
3 aggressive being first class mail. So I request a  
4 ballot a week before, on the 27th, before the general  
5 election. And let's say that in Maine, the clerks move  
6 very quickly and get that ballot in the mail the next  
7 day, on the 28th.

8 And you know, so they -- they put that ballot in the  
9 mail on the 28th. And let's -- so it will take a  
10 minimum of -- a minimum of two days to get to the  
11 voter. So here, we're talking about the 30th, that  
12 Friday before an election, sometime on Friday getting  
13 to -- getting to the voter.

14 So then let's just say the voter gets it, looks at it,  
15 is very efficient, right. You know, fills out the  
16 mail -- fills out the ballot either that day or the  
17 next day, you know, kind of knows who they want, fills  
18 it out. Then goes and say, drops it in a blue -- a  
19 blue collection box. After the, you know -- it's in  
20 the afternoon, so it's a good chance that the carrier  
21 has gone.

22 So the carrier is not going to pick that up until  
23 Monday. So if you pick it up on Monday, the earliest  
24 it could get to an elections board is the Wednesday --  
25 is Wednesday, the day after the election. And that's



1 almost assuming everything works, you know, perfectly.  
2 You know, and even if a voter were to take that ballot  
3 to a post office so you avoid the -- you know, you  
4 avoid the carrier. So you take it to a post office,  
5 say, that Saturday, it won't get processed until Monday  
6 anyway. So it -- because if it gets processed on  
7 Monday, the earliest it can get back to the clerk is,  
8 again, the Wednesday after an election.  
9 And so it is a, you know -- it's a very tight time  
10 frame, and I think there is certainly a high degree of  
11 chance that it doesn't get back.

12 Q And Mr. Stroman, attached to your affidavit was a  
13 letter from general counsel of the Postal Service dated  
14 July 29th, Mr. Marshall. And I take it you know Mr.  
15 Marshall?

16 A Yes, I know Tom very well. We worked together. I saw  
17 Tom almost every day, you know, for nine years.

18 Q And I'm certainly paraphrasing here, but Mr. Marshall,  
19 in his letter to the Maine Secretary of State, says  
20 that there is a tension between Maine state law and  
21 USPS delivery times that creates a significant risk of  
22 voters being disenfranchised. And did you agree with  
23 his statement?

24 A Absolutely.

25 Q And how -- how likely is it, Mr. Stroman, do you



1 believe that Maine voters will be disenfranchised,  
2 given the factors you've described, if the Election Day  
3 receipt deadline is not moved back by some number of  
4 days?

5 A I -- I think there is a high degree of likelihood that  
6 some voters are going to have their ballots invalidated  
7 because it didn't get to them on time.

8 Q And you've proposed in your affidavit a solution of a  
9 postmark deadline; is that correct?

10 A Yes.

11 Q Can you describe why you pose that as a solution, and  
12 what benefits are that you see?

13 A Yeah. I -- I think, you know, we -- I've seen the way  
14 the states that use postmark, and I've seen states that  
15 don't use postmarks. And for those states that use  
16 postmarks, it -- it allows the voters to get their  
17 ballots counted, and it allows them -- you know, they  
18 have kind of done what they're supposed to do, which is  
19 that they filled out the ballot consistent with  
20 whatever the state statute is, and it's in the  
21 possession of the Postal Service.

22 So at that point, they -- you know, they have no  
23 control over it. They've done -- they've exercised  
24 their civic responsibility. So if the goal is to count  
25 ballots, to enfranchise your voters, if that's the

1 goal, and they then exercise their rights consistent  
2 with the statute, then, you know, it seemed to me that  
3 in my experience having a postmark worked well to give  
4 a greater likelihood that that ballot is going to be  
5 counted, and that person's vote would be counted. So  
6 that's my rationale.

7 Q What is the postal service's practice with respect to  
8 postmarking mail?

9 A So all ballots are -- our regulations require all  
10 ballots to have a postmark. All ballots are supposed  
11 to have a postmark. So that's what, you know, not only  
12 what, you know, our regs are, that's how we train our  
13 employees, that all ballots must have a postmark.  
14 I would say that that is the case in the overwhelming  
15 majority of cases. Now, there are -- there can be  
16 times at which it doesn't get a postmark. Sometimes,  
17 for example, you have two letters which get stuck  
18 together. That happens occasionally. And when they  
19 get stuck together, either one may get a postmark, but  
20 the one that's stuck doesn't get -- doesn't get a  
21 post -- doesn't get a postmark.  
22 Sometimes there are circumstances in which people try  
23 to -- some clerks stuff too much stuff into an envelope  
24 and it breaks open, and it doesn't get through the  
25 postmarking process.

1 The postmarks are provided -- if you have it on an  
2 automated mail processing equipment, it will  
3 automatically put a postmark on a letter. So you don't  
4 have to think about it. It automatically sprays a  
5 postmark on it. I should have started with that  
6 explanation.

7 There are occasions, as I said, where software issues,  
8 software problems come up and you don't get a postmark.  
9 That's why you have to be careful about making changes  
10 too close to an election. We -- when I was there, we  
11 banned making software changes two months before an  
12 election for that reason. But -- so there are -- there  
13 are occasions when that doesn't happen.

14 A final check is supposed to be the carriers  
15 themselves. They're supposed to thumb through the  
16 mail -- the ballots to make sure that there's a  
17 postmark on them. So we have to -- we try to have that  
18 check.

19 Q And if there's -- if a ballot slips through and it's  
20 for some reason not postmarked, is there any way to  
21 determine when the Postal Service took custody of that  
22 ballot?

23 A Yeah. On our automated equipment, the machines take  
24 pictures of the mail covers. This is of all of the  
25 ballots; all the mail goes through our automated

1 equipment. They take cover -- pictures of the front  
2 cover.

3 It is primarily a -- a something -- not exclusively,  
4 but primarily something that -- that law enforcement  
5 took advantage of when they are trying to determine the  
6 origin of a letter, for example.

7 And so we can go back and look through our -- the  
8 files, which we keep, I think, for at least six months  
9 to a year, you can go back and see on -- in your file,  
10 did you have possession on a certain day of a -- of a  
11 envelope. So if you keep the envelope, bring the  
12 envelope back, you can then check to see.

13 There's also other small bar codes which get sprayed on  
14 the bottom of envelopes. And if you look on the bottom  
15 of your envelope, you'll see, like, a little code on  
16 the -- on the bottom. You can also use those spray  
17 codes to determine, you know, when you took possession.  
18 It's not quite as efficient as -- as the mail covers,  
19 but you can go back with some time and get that -- and  
20 get that done. So those are kind of two ways. Third  
21 way, you know, as I told you, mail bar code. You know,  
22 if you happen to use those mail bar codes, you could do  
23 it that way, but those are the ways that you can -- you  
24 can determine.

25 Q And my last question for you, Mr. Stroman, is states



1           that have adopted a postmark system, is there a certain  
2           amount of coordination and education that goes on  
3           between the postal service and election officials about  
4           the postmark system?

5   A       Yes. Oh, yeah. Oh, yeah, yeah, yeah. Yeah, it is  
6           important for the postal service and the boards of  
7           election to work very, very closely. We need to  
8           know -- they -- it's not me anymore, but the postal  
9           service needs to know, for example, what kind of --  
10          needs to know A, you're using a postmark, and then  
11          they'll make sure that the equipment that they have in  
12          place allows you to get the postmark.  
13          So for example, the flats. Some state's boards of  
14          election use these flat -- flat envelopes, and then  
15          you'll use flat sorters to sort through the flat  
16          envelopes. So you have to make sure you have the right  
17          equipment. And so that's just an ongoing working  
18          relationship between the postal service and boards of  
19          election that occur on a regular basis. And so having  
20          that good communication is absolutely pivotal.

21   Q       Mr. Stroman, thank you. I have no further questions.  
22            Appreciate your testimony.

23   THE WITNESS: Thanks.

24   THE COURT: Cross-examination, Mr. Knowlton?

25   MR. KNOWLTON: Thanks, Your Honor.



1 CROSS-EXAMINATION BY MR. KNOWLTON:

2 Q Good afternoon, Mr. Stroman. I have a few questions  
3 for you.

4 A Good afternoon.

5 Q Been here for a long time, so thank you for your  
6 patience. Would you agree that it's the policy of the  
7 postal service to deliver election mail, regardless of  
8 whether it has any postage on it?

9 A Yes.

10 Q Okay. I want to ask you a few questions about this  
11 postmark issue. You're familiar with the case that was  
12 decided by the Federal court in Oklahoma last week,  
13 aren't you? The last name of the Secretary State, I  
14 think, was Ziriaux; are you familiar with that case?

15 A I'm familiar with the case, yes.

16 Q You testified in that case, didn't you, Mr. Stroman?

17 A I did.

18 Q And have you seen the court's opinion?

19 A I've seen it. I can't say that I've mastered the --  
20 the opinion. There's a lot of opinions which have come  
21 down recently.

22 Q But the court set out --

23 THE COURT: I share your -- I share your pain, Mr.  
24 Stroman. Mr. Stroman, I understand that there have been a lot  
25 of decisions coming down within the last two weeks, so I share

1 your sense of being overwhelmed.

2 Q So Mr. Stroman, without asking you about the court's  
3 rationale, the court quotes testimony that you offered  
4 in that case --

5 A Uh-huh.

6 Q -- in the course of that decision; do you agree?

7 A I -- I can't -- I don't have the decision.

8 Q You haven't read it, sir?

9 A No, I -- I've said, I've looked at it. I -- I don't  
10 know if I've quoted and -- so that, I can't tell you.

11 Q Okay. Well, I'll just tell you some of the things the  
12 court attributed to you, and you tell me whether or not  
13 they're true.

14 A Okay.

15 Q With respect to postmarking --

16 A Uh-huh.

17 Q -- the court says that what you testified was that,  
18 "Sometimes what we would do is that we would skip the  
19 processing step."

20 A No.

21 Q Does that sound like something you said?

22 A That's not -- let me clarify that. The processing  
23 step, there is no -- there's no regulations, there's  
24 no -- you know, there's no anything which says you  
25 should skip the processing step. It shouldn't happen,

1           you shouldn't skip the processing step.

2           Once you skip the processing step, it makes you have  
3           mistakes which get made. What happens, though, is that  
4           at the local level, sometimes our -- our -- when you  
5           have states that say -- that require ballots to get  
6           delivered on a day certain, that is the dates the  
7           states aren't using postmarks.

8           Our officials try to be helpful, and they skip the  
9           processing step, and deliver those ballots directly to  
10          (audio interference). This is inconsistent with our  
11          requirements -- our regulations.

12          But in an effort to be helpful, I understand, you know,  
13          the local officials are trying to be helpful and get  
14          those ballots delivered, so that's -- what is going on.  
15          But that -- that is not consistent with our operating  
16          procedures.

17   Q       And by skipping the processing step, that means not  
18             postmarking the envelope, correct?

19   A       Correct. But there would be no need to postmark the  
20             envelope if you had to get the ballot in on a day  
21             certain. You don't skip the processing step if you  
22             have a postmarking requirement. So that's the --  
23             that's the difference.

24           And when you have a postmark requirement, there's no  
25           need to skip the processing step because you -- A, you



1 want to get the postmark; B, you have time to get it  
2 in. The -- the only reason you would skip the  
3 processing step is in those circumstances where you're  
4 trying to be helpful to the state to expedite getting  
5 ballots in.

6 And then, as I said, inconsistent with our operating  
7 procedures.

8 Q And Maine is one of those states that doesn't have a  
9 statute that depends on a postmark, correct?

10 A Correct. Right.

11 Q So in Maine, the postal service would want to be  
12 helpful, in your words, by skipping the processing step  
13 and delivering the mail without issuing a postmark,  
14 correct?

15 A I wouldn't suggest it. I -- I -- I argued against it  
16 because you make mistakes. I understand that the local  
17 officials are trying to be helpful. It is inconsistent  
18 with our process, but they do do it. So look, I mean,  
19 you know, you got to -- obviously, you pick and choose  
20 what battles you want to play.

21 And I understand why they did it. I understand why the  
22 states and local boards of elections wanted it, and  
23 they would tell me they wanted it, and I would tell  
24 them, you make mistakes when that happens.

25 And I can tell you any number of occasions where that



1           happened and the postal service -- somebody didn't know  
2           that this informal arrangement happened. So somebody's  
3           out sick at the postal service, which happens,  
4           particularly in a pandemic, and somebody comes to pick  
5           it up, and there's no mail there, then you got a he  
6           said/she said, postal service is responsible.  
7           So it is inconsistent with our process, and I -- if  
8           they try -- if they do it in different parts of the  
9           country, I understand the reasons why, but it is  
10          inconsistent with our requirements.

11   Q       You would agree that an election official would not  
12           know when an absentee ballot was mailed if it lacked  
13           the postmark, right?

14   A       I'm sorry, I missed -- I don't understand the question.

15   Q       You would agree that the collection officials would not  
16           know when an absentee ballot was mailed if it lacked a  
17           postmark, correct?

18   A       Do you mean when it was -- I'm sorry, do you mean when  
19           it was mailed from a voter going back or from -- they  
20           would know when they mailed it out to the voter. They  
21           wouldn't know when it was mailed from the voter back to  
22           the board of election; is that what you were saying?

23   Q       Yeah. Yes, that's the point I'm making. Yes.

24   A       Correct. They wouldn't know.

25   Q       All right. So you mentioned the lawsuits that the



1 states have brought against the postal service,  
2 Postmaster Dejoy, and President Trump. Are you aware  
3 that last Thursday, on September 17th, the United  
4 States District Court for the District of Washington  
5 issued a nationwide injunction against the postal  
6 service, President Trump, and Postmaster Dejoy, in one  
7 of those lawsuits?

8 A I thought it was a TRO.

9 Q It's an injunction -- if it's -- I think it's a  
10 preliminary injunction, but it's some kind of an order  
11 prohibiting --

12 A Yes, I'm aware.

13 Q -- the postal service (audio interference) -- you're  
14 aware of that, correct?

15 A I'm aware that there was a preliminary order issued,  
16 yes.

17 THE COURT: Mr. Knowlton --

18 A According to-- (indiscernible).

19 THE COURT: -- could you just -- because the two of you  
20 are talking over each other, and I understand why it happens,  
21 what was the injunction for? I just didn't catch the end of  
22 your sentence.

23 MR. KNOWLTON: I'm sorry, I -- we were speaking over each  
24 other, so let me just start again.

25 BY MR. KNOWLTON:

1 Q Are you aware, Mr. Stroman, that there was an  
2 injunction prohibiting the postal service, Postmaster  
3 Dejoy, and President Trump from enforcing Postmaster  
4 Dejoy's policy changes announced in July that slowed  
5 mail delivery?

6 A I think that's right. I don't have the decision before  
7 me, so I can't say precisely what it is that the judge  
8 issued a preliminary injunction against.

9 Q Okay.

10 MR. KNOWLTON: And Your Honor, this is one of these, you  
11 know, many cases that are decided -- that are coming down the  
12 road over the last couple of weeks, so I'm not sure whether  
13 that's in the packet that you have yet, but we'll direct it to  
14 the Court if you don't have it yet.

15 THE COURT: I do not believe I have the -- I've heard  
16 about it. I did read something about it on the internet, but  
17 I don't actually have the decision that granted the  
18 injunction.

19 MR. KNOWLTON: I don't have any further questions for Mr.  
20 Stroman right now. Thank you, Mr. Stroman.

21 THE WITNESS: Thank you, Mr. Knowlton.

22 THE COURT: Mr. Strawbridge, cross?

23 CROSS-EXAMINATION BY MR. STRAWBRIDGE:

24 Q Good afternoon, Mr. Stroman. How are you?

25 A Mr. Strawbridge, how are you?





1 Q Doing just fine, thank you.

2 A Good.

3 Q When you were discussing the performance statistics  
4 with respect to the delivery of -- was that first class  
5 mail or election mail that you had most recently  
6 checked in August or September?

7 A First class. First class mail.

8 Q Okay. Are those (audio interference)?

9 A I'm sorry?

10 Q Are those published online, those statistics?

11 A These were published. They were published on --  
12 there -- there are two places where you can find the  
13 data. The House Oversight Committee and the Senate  
14 Homeland Security Committee published those online.  
15 And the postal service published some data with the  
16 Postal Regulatory Commission.

17 Q Right. And this is their service performance results  
18 website; is that right?

19 A Yeah, I believe -- yes. Who -- you mean the postal  
20 service?

21 Q Correct. Yes.

22 A Yes, I think that's correct.

23 Q So you can -- just correct me if I'm wrong, you can go  
24 on there and you can click through on the web, and you  
25 can look at, like, the latest quarterly statistics, for



1 example, as to on-time performance for all sorts of  
2 categories of mail, correct?

3 A Yeah, but -- but I think -- it's a little bit of apples  
4 and oranges. So what the postal service publishes  
5 online -- as you correctly stated, Mr. Strawbridge, is  
6 quarterly performance data. The data I'm referring to  
7 was not part of the quarterly performance data.  
8 This is data that was obtained from -- by committees in  
9 the Congress, and so they were in addition to the  
10 performance data. What those committees requested --  
11 performance data on a quarterly basis is every three  
12 months.

13 What the -- Congress asked for is weekly performance  
14 data. So that weekly performance data they were  
15 interested in really was from the time of the new  
16 postmaster general's implementation of his  
17 (indiscernible) changes; so you know -- so today and  
18 going forward. So that's something in addition to the  
19 quarterly data.

20 Q And is your -- are you saying that that data is  
21 available on the House website?

22 A Yes.

23 Q Where?

24 A The House Committee on Oversight and Reform published  
25 the data on their website, and it's -- in addition to



1           that, if you go -- if you look at a report that was  
2           issued last week from the minority on the Senate  
3           Homeland Security and Governmental Affairs Committee,  
4           they issued a report, and so you can look at the data  
5           on their report as well.

6   Q       And none of this information was included or attached  
7           to your affidavit, correct?

8   A       No, I don't believe it was. I'd have to go back and  
9           take a look at it. I don't believe it was.

10  Q       Okay. (Indiscernible).

11  A       (indiscernible) I'm talking about data that was the  
12           most recent data. This came out within the last week  
13           or so.

14  Q       And what are the specific numbers with respect to the  
15           Southern Maine processing facility?

16  A       They didn't -- they didn't break it out by specific  
17           area. This was -- this was national data. And to  
18           your -- you know, to your (indiscernible) point, data  
19           can vary from state to state, from board of elections  
20           to board of election. So this was national data. They  
21           did not -- at least I did not see data from Maine  
22           (indiscernible).

23  Q       Do you know whether or not Maine tends to run above or  
24           below the national average in terms of this processing  
25           of mail of related -- of election related mail?

1 A I -- I don't know. There are -- I -- I don't know the  
2 answer to that.

3 Q You testified that one of your roles at the postal  
4 service was specifically working with states on  
5 election mail issues; is that correct?

6 A Correct. That is true.

7 Q And did you also -- I'm sorry, is it also -- is it also  
8 correct that that included familiarity with audits from  
9 the office of Inspector General at the post office with  
10 respect to how states performed with election mail?

11 A Yes.

12 Q In fact, you attached to your affidavit a report that  
13 was very specific to the Milwaukee area, with respect  
14 to its performance of election mail this past spring,  
15 correct?

16 A Correct.

17 Q All right. In fact, wasn't there a 2018 audit of the  
18 midterm election mail handling done by the Office of  
19 Inspector General; do you recall that?

20 A Yes, I do.

21 Q Okay.

22 A I do.

23 Q Do you remember what -- do you remember whether or not  
24 the Southern Maine postal facility was selected as one  
25 of the case studies in that audit?

1 A I can -- I cannot remember.

2 Q Okay. Well, let me see if I can try to refresh your  
3 recollection here. And give me one second. I'm going  
4 to attempt to put something up on the screen.

5 A Okay.

6 Q It may or may not work. Give me one second here, and  
7 let's --

8 A Sure.

9 Q -- bear with the technology.

10 A Sure. Take your time, Mr. Strawbridge.

11 Q Yeah.

12 MR. STRAWBRIDGE: If this doesn't work for the Court,  
13 we'll abandon the effort in a timely fashion. All right. I'm  
14 going to risk sharing my entire screen here. All right. Can  
15 everybody see my screen now?

16 THE COURT: Yep.

17 MR. STRAWBRIDGE: Okay. And are you able to enlarge my  
18 window to see this, "Service Performance of Election Political  
19 Mail During the 2018 Midterm and Special Elections",  
20 (indiscernible) report?

21 THE WITNESS: Yeah. I -- I can certainly -- I can see  
22 it.

23 MR. STRAWBRIDGE: Okay. Great.

24 BY MR. STRAWBRIDGE:

25 Q That is the report we were just talking about?



1 A I believe this is the report you were talking about,  
2 yes.

3 Q Correct. And the one that you said you recall,  
4 correct?

5 A I do recall this, yes.

6 Q Yeah. Okay. And so if we go down on this report --  
7 I'm going to go to --

8 A Uh-huh.

9 Q -- and I'm happy to -- I'm happy to provide this to  
10 everybody by email after the hearing if you so -- but I  
11 just want to go down to this page here. This is page  
12 of the PDF.

13 A Okay.

14 Q Election and political mail service performance scores.

15 A Uh-huh.

16 Q You see that?

17 A I do.

18 Q And so on the left --

19 A Uh-huh.

20 Q I'm sorry.

21 A Go ahead.

22 Q On the left I -- it looks like they've listed the high  
23 performing facilities that were audited in this report;  
24 is that correct?

25 A Uh-huh. Yes.



1 Q And on the right are the low performing facilities,  
2 correct?

3 A Correct. Yes.

4 Q And if you go down the list on the high performing  
5 facilities, the Southern Maine P and DC is listed on  
6 that chart; is that correct?

7 A Correct. Yes.

8 Q And what does P and DC stand for?

9 A That's a processing and delivery facility.

10 Q Okay. And I assume it's located in Southern Maine,  
11 given the name, correct?

12 A Yes. Maine has two primary, and had two secondary  
13 processing facilities. So Southern Maine and Eastern  
14 Maine were the two processing facilities. So one of  
15 those two, Southern Maine, got good scores.

16 Q Okay. And do you know what the scores were for the  
17 other one?

18 A I do not, but obviously --

19 Q Okay.

20 A -- they weren't in the high performing or the low  
21 performing facility.

22 Q At least with respect to Southern Maine, it indicated  
23 that their processing score was 99.5 percent in 2018  
24 midterm and special elections?

25 A Correct.

1 Q And that was compared to a national goal of 96 percent?

2 A Correct. That's the goal that I referred to; that is  
3 correct.

4 Q All right. And sitting here today, you can't tell us  
5 any more recent data that is available to you with  
6 respect to how the Maine specific facilities have been  
7 performing --

8 A That --

9 Q -- in the past year?

10 A That's correct, I cannot.

11 Q Okay. In your affidavit --

12 A Uh-huh.

13 Q -- again, in paragraph 4, you recommended that you were  
14 very familiar with state laws governing voting by mail?

15 A Uh-huh. Yes, sir.

16 Q And there are other states that have broader vote by  
17 mail practices than Maine does; would you agree with  
18 that?

19 A When you say broader, I'm -- what do you mean?

20 Q There are some states, for example, that conduct, you  
21 know, the bulk of their election by mail. They  
22 automatically send a ballot by mail to most voters?

23 A Oh, yeah. You have, certainly, Washington, Oregon,  
24 Colorado, Utah now, Hawaii, California's transitioning  
25 there. So yes, those states have -- pretty much do





1 most of their voting by mail.

2 Q And here, I'll just try to unshare my screen now since  
3 we're done with that exhibit.

4 A Okay.

5 Q Although, now you have to look at me, so maybe that's a  
6 net loss for everybody. So Colorado and Hawaii were  
7 two states you mentioned, correct, Mr. Stroman?

8 A Yes. Uh-huh.

9 Q Yeah. And in fact, in both Colorado and Hawaii, where  
10 the bulk of the election is conducted by mail, they  
11 have receipt deadlines, do they not?

12 A I'd have to double check, but I believe that is  
13 correct. Yes, I believe that's right.

14 Q And in fact, aren't there receipt deadlines the day of  
15 election -- the day that is designated election day?

16 A I have to go back and look. I can't say off the top of  
17 my head, but I believe that is true.

18 Q Okay. Now, in your written testimony, you basically  
19 express concern that a voter who requested a ballot a  
20 week before the election --

21 A Uh-huh.

22 Q -- is at risk of not having their ballot sent and  
23 returned by mail in time; is that correct?

24 A That's correct.

25 Q But if a voter was able to request and receive their



1 ballot, you know, more than two weeks before the  
2 election, then they're supposed to be able to deliver  
3 that election -- that ballot back on time, correct?

4 A Yeah. The -- the earlier a voter requests a ballot,  
5 the more likely it is that that ballot will get  
6 delivered on time. I will say, based on my personal  
7 experience, that you -- I have seen in, you know, every  
8 election that I've been a part of, that you see a  
9 significant number of ballots coming in at the last  
10 minute.

11 So you are correct that the earlier you request the  
12 ballot the more likely it is that the ballot will be  
13 processed and delivered consistent with state deadline.

14 Q And do you know whether or not the Secretary of State's  
15 voter guide specifically advises individuals who wish  
16 to cast their absentee ballots by mail to allot for  
17 seven to ten days of delivery time?

18 A I do not know whether it does. I can -- all I can tell  
19 you is that, you know, we have been talking to states  
20 for years about this issue. And despite whatever  
21 messaging has taken place has not prevented fair amount  
22 of late ballots from coming in.

23 Q And do you know how early Maine allows individuals to  
24 request absentee ballots?

25 A No, I don't. Not off the top of my head.



1 Q Okay. Do you know how early Maine voters can receive  
2 their absentee ballots?

3 A I do not.

4 Q Okay. Do you know whether Maine provides an option for  
5 people to return absentee ballots in person?

6 A I thought I heard the Judge saying that that -- that  
7 they could do that during his questioning of the expert  
8 witness.

9 Q Do you have any independent knowledge?

10 A No.

11 Q Okay. Do you know whether Maine law allows family  
12 members to return absentee ballots?

13 A Based on what I've heard today, I believe that to be  
14 true.

15 Q Okay. That, again, is just based on what you heard  
16 from others --

17 A Uh-huh.

18 Q -- speaking today?

19 A Yes.

20 Q Okay. And do you know is -- same question is the  
21 secured drop boxes; do you know what Maine allows?

22 A Yes. I understand that to be true.

23 Q Okay. And my concern -- the concern in this letter  
24 that you discussed with Mr. Devaney was just simply the  
25 fact that Maine allows you to obtain an absentee



1 ballot, you know, less than five to seven days before  
2 the election, and that's what gives rise to the concern  
3 about this gap, correct?

4 A No. It's not just that. It is that plus my personal  
5 experience in seeing the number of late ballots that  
6 come in. For example, you know, the IG -- since you  
7 mentioned IG report, they did a -- they did a report  
8 which I -- you know, released in September, and they  
9 showed a million ballots across the country were late  
10 getting into boards of election.

11 So that's consistent with what I have seen throughout  
12 my tenure, which is that ballots are going to come in  
13 late. And you know, regardless, people focus on --  
14 seem to focus on the deadline. The messaging is get  
15 your ballot -- you know, request your ballot by this  
16 date, or that date.

17 And you know, we all get busy, and we're busy people,  
18 and we all tend to -- you know, sometimes some of, you  
19 know, wait until the last minute. So I have my  
20 experiences that that happens, and has happened, and  
21 continues to happen in -- in elections across the  
22 country.

23 And that particularly, when you have a situation with  
24 this dramatic increase where we expect to be absentee  
25 balloting, I expect that to -- to increase.



1 Q Okay. And let me just ask about that. That's -- yeah,  
2 that's going to be the procrastinate -- or to wait  
3 until the last minute --

4 A Yeah.

5 Q -- unique to people who choose to vote by mail, is it?

6 A I'm sorry? I --

7 Q In other words, for people who decide to vote at the  
8 polls, it's very possible that in any given year,  
9 somebody thinks well, I'll do that on my way home from  
10 work tonight. I'll make sure that I get there by 8:00.  
11 But they may not vote early in person, or they may not  
12 vote first thing in the morning; they may wait until  
13 the end of the day to cast their ballot, correct?

14 A My experience is with election mail and voting by mail.  
15 So I'm not -- I don't think I'm in a position to opine  
16 on voters' state of mind when they go to the polls.

17 Q Okay.

18 MR. STRAWBRIDGE: I don't have any other questions for  
19 you. Thank you, very much, Mr. Stroman.

20 THE WITNESS: Thank you.

21 THE COURT: Redirect, Mr. Devaney?

22 MR. DEVANEY: Thank you, Your Honor. I will be brief.

23 REDIRECT EXAMINATION BY MR. DEVANEY:

24 Q Mr. Stroman, Mr. Knowlton asked you a question that  
25 focused on your testimony about when local postal



1 officials will sometimes skip the processing part in  
2 order to get ballots quickly to election officials, and  
3 you said that that's a violation of procedures on --  
4 and he put out to you that Maine isn't a postmark  
5 state, implying that, therefore, the skipping of the  
6 processing might be something that happens in Maine.  
7 My question for you, though, is if Maine were to adopt  
8 the postmark deadline, either through this proceeding  
9 or some other means, how likely is it that postal  
10 workers would skip the processing part and not have  
11 postmarks?

12 A Well -- yes, and I think as I addressed -- I tried to  
13 address that, I think it -- there would be no reason to  
14 do it. They wouldn't -- I don't -- I can't foresee a  
15 reason that they would skip the processing step. If  
16 you need to get a postmark, the best way to get a  
17 postmark is to go through processing, have the postmark  
18 placed on the envelope automatically through automated  
19 equipment, and you'll get that postmark.  
20 So if the goal is to get the ballots counted, then the  
21 best way to get the ballots counted in a postmarking  
22 state is to go through the processing. Very, very  
23 simply.

24 Q And in response to another question for Mr. Knowlton,  
25 you said that if there's not a postmark -- you agreed

1 with that, that if there's not a postmark on a ballot  
2 that an election official won't know when it was mailed  
3 on -- what I wanted to ask, though, is you also  
4 testified earlier that it's possible through the photo  
5 scanning through barcode on an envelope to tell when  
6 the postal service received custody of it.

7 Can you just clarify your answer to Mr. Knowlton?

8 A Yes, and I -- and I -- I apologize. I was assuming he  
9 meant just receiving a ballot from a -- from a voter.  
10 But if that official wanted to determine, in the  
11 absence of a postmark, when the postal service took  
12 receipt of that ballot, there are ways to do that.  
13 That is for them to -- for a clerk to take the  
14 envelopes, share them with the postal service, as  
15 happens frequently -- or whenever this comes up -- not  
16 frequently, but it does happen, and they then can look  
17 through their files, look at the front covers and  
18 determine when the postal service took receipt of a --  
19 of a -- of a particular ballot; or they can look to  
20 see with the bar code when they took receipt of the --  
21 of the ballot.

22 So there are ways. In fact, certainly, during the  
23 primary there were a couple of examples where postmarks  
24 were placed on envelopes or ballots, postal service was  
25 able to work with that local board of election to



1 determine, in just about most cases, when the postal  
2 service took receipt of the ballot.

3 Q And my last line of question for you is about -- to a  
4 discussion you had with Mr. Strawbridge. And he pulled  
5 up the -- very impressively by the way, technically,  
6 pulled up a document from his --

7 MR. KNOWLTON: It was very impressive.

8 Q He pulled up that document, it showed that Maine had  
9 a -- the Southern Maine Processing Center had a 99.5  
10 percent --

11 A Yes.

12 Q -- performance success rate. You've been listening  
13 today; were you aware that in the 2018 midterm, that I  
14 think was the subject of that report, that one percent  
15 of ballots were late?

16 A Again, I -- I have to go back and look and check that,  
17 but I don't --

18 Q I'll ask you to accept that for purposes of my  
19 question. And if today the performance success rate of  
20 the Southern Maine Processing Center is less than 99.5  
21 percent, would you agree that creates a meaningful risk  
22 of a higher than one percent late ballot rate?

23 A Yes, I think it does. And the other thing I would say  
24 to you, as I -- yes, you're absolutely right. But the  
25 other thing I would say -- and I didn't articulate this



1 well, as perhaps I should, you got two processing  
2 facilities -- one in east and on in southern.  
3 And so they have to -- they work together.  
4 So -- you know, to deliver ballots or -- throughout  
5 Maine. And so depending upon, you know, where you drop  
6 it off, where you're delivering it to, those have got  
7 to kind of work together. You got to have  
8 transportation that runs from one to the other.  
9 So if eastern Maine were slower than southern Maine,  
10 you still are going to have potential problems just  
11 within -- in Maine, that's not involving, you know,  
12 other networks.  
13 So you got to look at the inter-relationship between  
14 the processing facilities, not just one processing  
15 facility, and how they work together. So that's a  
16 point I -- I should have made as well.

17 MR. DEVANEY: Thank you, Mr. Stroman. No further  
18 questions.

19 THE COURT: Mr. Knowlton, any recross?

20 MR. KNOWLTON: Just one question, Your Honor, if I may.

21 THE COURT: Sure.

22 RECROSS-EXAMINATION BY MR. KNOWLTON:

23 Q Mr. Stroman -- excuse me. Sir, how long would it take  
24 the postal service to figure out when they took receipt  
25 of a ballot, if it didn't have a postmark on it?



1 A It depends on the number that you're talking about. If  
2 you were talking about a small number, you could do it  
3 very quickly. I mean, you just -- within a day, two  
4 days max, maybe.

5 Q So what if it's a 1,000?

6 A Yeah, I would consider that a small number. I mean,  
7 I'm talking -- I mean, when I say, you know, had  
8 100,000 ballots or something, it might take you a week  
9 or so, but 1,000 is pretty -- I mean, that's -- that  
10 would be very quick.

11 MR. KNOWLTON: All right. No further questions. Thank  
12 you.

13 THE COURT: Mr. Strawbridge, any recross?

14 MR. STRAWBRIDGE: No, other than to just thank Mr.  
15 Stroman for his patience in sticking with us all day.

16 THE COURT: Yeah.

17 THE WITNESS: Thank you.

18 THE COURT: I have one question for you, Mr. Stroman.

19 THE WITNESS: Yes.

20 THE COURT: Hold on a second. I'm not going to let you  
21 off that easy. I just have one question. In one of the  
22 things that I read, both in your affidavit, your testimony  
23 today, and also the letter from Mr. Marshall --

24 THE WITNESS: Yes.

25 THE COURT: -- that is part of the record is -- I think

1 it's the -- the word is used, there's attention or an  
2 incongruity --

3 THE WITNESS: Yes.

4 THE COURT: -- between Maine's absentee ballot timelines  
5 and the USPS, you know, schedule protocols --

6 THE WITNESS: Yes.

7 THE COURT: -- or standards. And it, in part -- and you  
8 did answer this question, but I noticed that you didn't -- you  
9 made clear that your concern was not simply the fact that  
10 Maine allows a person to obtain or request an absentee up to  
11 five days before the election; and you clarified while it's  
12 that, but it's also your personal experience with elections.

13 THE WITNESS: Yeah.

14 THE COURT: So I understand that, but I do want to sort  
15 of focus in on the five day business. You know, the fact that  
16 you --

17 THE WITNESS: Yeah, sure.

18 THE COURT: -- can go and apply -- request an absentee  
19 ballot five days before the election, and I think that's going  
20 to allow you to do that with the governors -- I think the  
21 Governor may have done something with an emergency order on  
22 this; I believe it's the Friday before the election this year.

23 THE WITNESS: Okay.

24 THE COURT: Now, I understand your concern that, you  
25 know, in terms of mailing that letter -- mailing that ballot



1 back, is going to be inconsistent with your -- with the USPS  
2 performance standards because of the fact that you're going to  
3 have a Saturday, it's not going to be processed until a  
4 Monday, and likely it's not going to arrive until -- it may be  
5 postmarked Monday, it might be postmarked Tuesday, but it  
6 won't get there actually until Wednesday or Thursday.

7 My question to you is, however, that the five-day time  
8 theory when you can ask for absentee ballot isn't necessarily  
9 designed by the legislature to be -- it's not designed to be  
10 consistent with the postal service schedules.

11 And let me suggest to you that that is an option that the  
12 legislature gives to Maine voters who may find themselves in a  
13 situation as the election gets closer, they may be planning on  
14 going in person, but something comes up they're going to be  
15 out of town now suddenly, or there's -- you know, there's some  
16 emergency; so they can go and apply for an absentee ballot and  
17 then make -- fill it out and return it directly to the -- to  
18 city hall without using the mail at all. And so I guess what  
19 I'm suggesting to you is, from the mail delivery standpoint --

20 THE WITNESS: Uh-huh.

21 THE COURT: -- the five days may seem, you know, out of  
22 line with USPS scheduling standards, but from the standpoint  
23 of making absentee ballots available to people as close to the  
24 election as possible, doesn't the five days make sense?

25 THE WITNESS: Well, here's what I say. This came up all

1 the time when we -- when I spoke with election officials. And  
2 sure, I understand the desire to give voters the maximum  
3 amount of time you reasonably can, to request ballots because  
4 you're -- I understand that, because what you are trying to do  
5 is to ensure that you give voters an opportunity to exercise  
6 the franchise.

7 What I would say though, to you, Judge, is that to some  
8 extent it's an illusion because yes, you have these other  
9 options, but unless you're telling voters, don't put this in  
10 the mail. If you request the ballot five days, it's not going  
11 to get there. And don't put it in the mail. You have to  
12 deliver it in person, then what you're doing is you're  
13 creating this illusion of voters.

14 They don't know, and so you're potentially  
15 disenfranchising voters who figure, okay. Well, I'm just  
16 going to stick it in the mail. And for the position of the  
17 postal service, that is a reputational risk. One of the  
18 reasons we did this is to help the voters, but also  
19 reputational risk on the postal service because people start  
20 to blame the postal service today.

21 And so don't tell -- but so you give them the opportunity  
22 to put this in the mail, you're -- you're -- it's just not  
23 true. It's not going to get there, and so that's my concern,  
24 Judge. I mean, I understand the reasons that people do it,  
25 but it is -- you're almost -- you're lending credence to a

1 process that is going to result in people being  
2 disenfranchised.

3 THE COURT: Thank you, Mr. Stroman. I'm going to turn --  
4 John, do you have any follow-up to my question?

5 MR. DEVANEY: I do not.

6 THE COURT: Tom, do you have any follow-up to my  
7 question?

8 MR. KNOWLTON: No, Your Honor.

9 THE COURT: Patrick, any follow-up for my question?

10 MR. STRAWBRIDGE: No, Your Honor.

11 THE COURT: All right. Well, Mr. Stroman, thank you,  
12 very much. You've been here all day long. I appreciate your  
13 patience very much and --

14 THE WITNESS: Thank you, Judge.

15 THE COURT: -- very helpful testimony. I appreciate it.  
16 Stay safe.

17 THE WITNESS: You, too.

18 THE COURT: Thank you.

19 THE WITNESS: Thank you, Your Honor. Thanks.

20 THE COURT: Now, I take it -- John, are you resting at  
21 this point?

22 MR. DEVANEY: We are, Your Honor. Obviously, with all  
23 the other evidence that we've submitted (indiscernible).

24 THE COURT: Sure. Oh, absolutely. Tom, what's your plan  
25 in terms of presentation of evidence, or is it all in through



1 affidavit?

2 MR. KNOWLTON: All of our evidence, Your Honor, is in  
3 through the exhibits, which -- if they haven't been admitted  
4 yet -- we're offering them now if they haven't been formally  
5 admitted. I don't think there was any objection to any of our  
6 exhibits.

7 THE COURT: Yeah. My understanding was that everyone's  
8 exhibit, with the exception of the unique exhibit that Mr.  
9 Strawbridge talked about this morning when we were talking  
10 about pages 45 to 47, or 50 -- whatever pages that are -- they  
11 are, other than that I understood that all the exhibits were  
12 admitted without objection, on both sides -- on all sides I  
13 should say; is that correct?

14 MR. DEVANEY: So the Plaintiff's (audio interference),  
15 yes; that's correct, Your Honor.

16 THE COURT: Okay. So Mr. Knowlton, at this point, it's  
17 now after 4:00. I feel like you don't want to start arguments  
18 now, for a couple of reasons. Number one, I'd be getting the  
19 fish eye from the clerks, and they have a long day here, and I  
20 need to get them -- you know, get going at their regular time.

21 The other thing is, we've had a lot of information  
22 supplied by the two witnesses. There's a lot of information  
23 that has been supplied to me just today with the exhibits. So  
24 you know, I'm not -- I want to give you the full -- I'm not  
25 going to say you get 20 minutes for oral argument, and I got

1 to get out of here at 4:30.

2 So let me tell you what my schedule is, because I thought  
3 this was going to be done today, and I'll blame my wife for  
4 this. She's not here to hear me. So I did plan on meeting  
5 with somebody, we're having some work done at the house  
6 tomorrow, so Tuesday was the one day -- Tuesday morning was  
7 the one day I could actually meet with that person, but that's  
8 not going to be all day, that's just in the morning.

9 I believe I'm free in the afternoon tomorrow. Now, I got  
10 to get a clerk to help me through this process. Because  
11 unlike you, Mr. Strawbridge, I don't have that skill to be  
12 able to bring up a document while I'm doing a Google Meet  
13 meeting. So Dale, are we able to get the afternoon tomorrow?

14 THE CLERK: I will ask the (indiscernible).

15 THE COURT: Okay. It would be strictly for oral  
16 argument. If we started at 1 -- what I'm thinking of working  
17 on is seeing if we could start at 1, do the same thing we did  
18 today, you know, with the Google Meet, and then you would not  
19 be subject to the, you know, time limitation. I really don't  
20 want to -- you know, this is too important for me to try to  
21 squeeze argument in for the next 20 minutes; just doesn't make  
22 sense to me to do that.

23 So I guess my question is, what's your availability  
24 tomorrow?

25 MS. GARDINER: Your Honor, the one problem I've got is a





1 status conference with the Federal court in another case at  
2 2:00. I --

3 THE COURT: Well --

4 MS. GARDINER: -- do have cocounsel in that case, but I'm  
5 the primary person. If --

6 THE COURT: How about -- let me throw out another option  
7 to you. I could probably do something by 11 if you wanted to  
8 start that early. That helps you, Ms. Gardiner, or anybody  
9 else?

10 MS. GARDINER: Yes, I'm available any time before 2:00.

11 THE COURT: Yeah.

12 MS. GARDINER: I have another commitment with the  
13 governor at 3:30, so earlier would be better --

14 THE COURT: All right.

15 MS. GARDINER: -- from my perspective.

16 THE COURT: Does that work for you, Patrick?

17 UNIDENTIFIED SPEAKER: That helps?

18 MR. STRAWBRIDGE: Yes, we're available any time tomorrow.

19 THE COURT: All right. Tom, does that work for you?

20 MR. KNOWLTON: Yes. Yes, Your Honor.

21 THE COURT: John and Matt?

22 MR. DEVANEY: Yes, Your Honor.

23 THE COURT: Zach?

24 MR. HEIDEN: Yes, Your Honor.

25 THE COURT: Alexa, I see you're -- Patrick speaks for you



1 on this matter? Okay. Well, I don't need -- as I said, I  
2 have to -- I agreed to meet with this particular person. I'll  
3 probably decide on the tracks and all -- at the end of the  
4 day, I'll probably decide on the tracks. But I do -- I did  
5 agree to do this tomorrow at 9:30. So if I can just spend an  
6 hour, and then if we could plan on starting at 11, that would  
7 give you ample time to argue.

8 And I want to give everyone ample time to be able to  
9 argue these points, and then I got to start the process of,  
10 you know, writing something up. Let me just give you some  
11 idea as to what my schedule is. After tomorrow, I'm booked  
12 doing criminal this week in Kennebunk pretty much all day. So  
13 I'll try to get -- I'm going to try to get something out for a  
14 decision first part of next week.

15 So I'm going to spend some time over the weekend doing  
16 it, but that's probably the best I can do, only because, as I  
17 said, they've got me doing criminal matters all week long  
18 beginning on Wednesday. And I can't -- you know, I can't  
19 really steal time away from that to deal with this. So that's  
20 my -- that's what I'm shooting for if I can get something out  
21 early part of next week.

22 That would give you the last week of September, and then  
23 you would have all of October to do whatever you need to do,  
24 if this needs further review or anything of that nature. Does  
25 that work for everyone? All right.

1 MR. DEVANEY: Yes.

2 THE COURT: Well, we'll conform.

3 MR. DEVANEY: Can I ask one question about the closing  
4 arguments?

5 THE COURT: Sure.

6 MR. DEVANEY: Just a sense of how long you want to hear  
7 from us, and if there are any particular -- you know, we've  
8 given you a lot of information. I just want to make sure --

9 THE COURT: You really have, yeah.

10 MR. DEVANEY: -- it's (indiscernible).

11 THE COURT: I have questions -- John, I'll be honest with  
12 you, I got questions that, you know, I've been sort of  
13 thinking through this process. And so a lot of the  
14 information that I sort of want to tease out from you is, you  
15 know -- and Mr. Knowlton as well, and Patrick, in terms of,  
16 okay. How do these things -- we're talking verdict, that's  
17 what we're talking for the most part.

18 And the verdict, Anderson sort of standard of review.  
19 We're talking burden. You know, my -- focus of my questions,  
20 frankly, are going to be, you know, what is the burden? And  
21 can you explain it to me? And why is it significant or not  
22 significant?

23 And you know, is it a result of the State's action, or is  
24 it, you know -- and I understand, you know, having not read --  
25 had the benefit of reading a lot of material, is I read the

1 submissions from the Plaintiff -- as I sort of reduce the  
2 argument to its essence is that these regulations may be  
3 modest or reasonable in non-pandemic times, but you combine  
4 the pandemic with the postal service situation, and I think  
5 what the Plaintiff is saying is the effect of that is that the  
6 burden actually becomes more severe because of the time that  
7 we're living in.

8       And that's how I -- that's how I interpreted what you  
9 were saying, Matt and John. Zach, you had an intriguing  
10 argument based upon the Maine Constitution, which I found  
11 very, you know, interesting because I hadn't thought about it.  
12 But I think from the standpoint of the traditional viewpoint,  
13 John and Matt, I think that's your argument, is that what may  
14 have been fine six months ago has now -- because of strange  
15 circumstances, has meant that the burden is significantly more  
16 severe than it would have been pre-pandemic, I think that's --  
17 I'm reading what you're saying.

18       And that seems to be somewhat consistent with some of the  
19 case law that I've been reading. And the other thing I want  
20 to give you -- you know, I don't -- I'm not trying to play,  
21 you know, gotcha (phonetic), the other issue that I need some  
22 help on, and that I'm going to be asking for is, where's the  
23 source of my authority?

24       You know, what authority do I have to do some of the  
25 things that I'm being asked to do? I understand that, you



1 know, Pennsylvania Supreme Court has what they call  
2 extraordinary jurisdiction; I'm not so sure I have that. I'm  
3 a statutory court. I'm not the supreme judicial court. I  
4 don't have any extraordinary powers that I know of, and no  
5 one's told me otherwise.

6 So you know, one of the focus -- one of the questions I  
7 will continue to ask you, okay. Fine, what's my authority to  
8 do something like that? And so if that'll -- that helps you,  
9 John, that's where I'm going to be delving into.

10 MR. DEVANEY: Very helpful. Thank you, Your Honor.

11 THE COURT: Okay. So let's do this, unless you hear  
12 otherwise from us, let's -- we'll send you the link, probably  
13 the same link, right? It's probably going to be the same  
14 invitation. We'll try to start at 11. And in terms of  
15 timing, I'm not -- I'm flexible, you know, I have nothing --  
16 I've devoted the time for this case, so I'm not going to put  
17 it in artificial.

18 But let's say, John -- you know, say 30 minutes and then  
19 some rebuttal, but I'm flexible with that. As I said, the  
20 areas that I'm focusing on is I'm trying to wrap my head  
21 around, you know, burden, State's interest, and obviously my  
22 authority. You know, what authority do I have to do some of  
23 the thing that I'm being asked to do as a Superior Court  
24 justice?

25 So anything we need to address before we part company



1 today? And again, I'm sorry that we couldn't finish it one  
2 day. But you know, I saw I had a -- I almost should have  
3 said, you know, when you -- when Mindy (phonetic) came to me  
4 said, oh, no, they all assured me it could be done in one day,  
5 I almost should have said, look, I've been at this long  
6 enough. You never rely upon estimates of time given to you by  
7 a bunch of lawyers, that's the last thing you do. They're the  
8 worst in terms of estimating time.

9 So we probably should have, you know, grabbed the half a  
10 day anyways. So I think that's what's going to end up doing.  
11 But I did make some personal scheduling for tomorrow, but I'll  
12 be here by 11, how's that?

13 MR. DEVANEY: Sounds great.

14 THE COURT: All right. Great.

15 MR. KNOWLTON: Thank you, Your Honor.

16 THE COURT: Nice to see all of you, and please stay safe  
17 and enjoy the evening.

18 MR. DEVANEY: Thank you, Your Honor.

19 MS. GARDINER: Thank you.

20 THE COURT: Bye-bye, now.

21 MR. KNOWLTON: Thank you, Your Honor. See you tomorrow.

22 THE COURT: Thank you.

23 MR. STRAWBRIDGE: Yes, Judge.

24 (Proceedings adjourn at 4:17 p.m.)  
25

1 (Hearing concluded, recommencing in Volume II, September  
2 22, 2020)

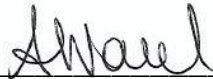
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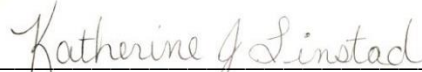
## CERTIFICATION

We HEREBY CERTIFY, that the foregoing, pages 1 through 231, is a true transcript of a CD recorded on Monday, September 21, 2020, at the Kennebec County Superior Court located at Augusta, Maine, of the case entitled, ALLIANCE FOR RETIRED AMERICANS, ET ALS vs. MATTHEW DUNLAP, ET ALS, to the best of our professional skills and abilities.

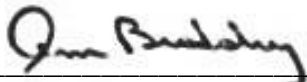
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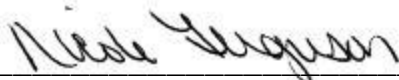
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