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STATE OF MAINE

KENNEBEC COUNTY, ss.

SUPERIOR COURT

CIVIL ACTION

DOCKET NO. AUGSC-CV-2020-00095

APPEAL NO. KEN-20-262

<p>ALLIANCE FOR RETIRED AMERICANS, ET ALS,</p> <p style="text-align: right;">Plaintiff</p> <p style="text-align: center;">VS.</p> <p>MATTHEW DUNLAP, ET ALS,</p> <p style="text-align: right;">Defendant</p>
--

**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.

RECORDED BY:

DALE STAPLES



1 TRANSCRIBED BY:

2 eScribers, LLC
3 7227 North 16th Street, Suite #207
4 Phoenix, AZ 85020

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I N D E X

WITNESS DIRECT CROSS REDIRECT RECROSS

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. Baltés. 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 RECROSS-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 one 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 RE-CROSS-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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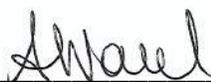
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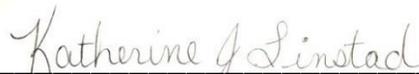
CERTIFICATION

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.

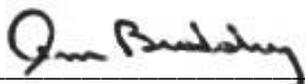
October 2, 2020



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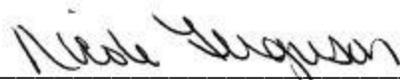
Katherine Linstad
Court-Approved Transcriber



Ann Brodsky, CET-862
Court-Approved Transcriber



Debra Price, -985
Court-Approved Transcriber



Nicole Ferguson, CDLT-149
Court-Approved Transcriber

