Supreme Court of Ohio Clerk of Court - Filed June 22, 2016 - Case No. 2016-0313

IN THE SUPREME COURT OF OHIO

The Ohio Manufacturers' Association, et al.,	:	**Case No: 2016-0313**
	:	
Relators,	:	**Original Action under Section 1g, Article II of the Ohio Constitution**
	:	
v.	:	
	:	
Ohioans for Drug Price Relief Act, et al.	:	
	:	
Respondents.	:	

EVIDENCE OF PETITION RESPONDENTS – VOLUME II

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EVIDENCE OF PETITION RESPONDENTS – VOLUME II

Petition Respondents hereby file Volume II of their Evidence in the instant case:

Exhibit No.

Deposition Transcript of Matthew Damschroder…….. 14

Respectfully submitted,

/s/ Donald J. McTigue_____

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the Evidence of Petition Respondents – Volume II was served by e-mail on June 22, 2016, upon the following:

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PETITION RESPONDENTS' EXHIBIT 14

**(Deposition Transcript of Matthew Damschroder,
Chief of Staff to Secretary of State Jon Husted)**

IN THE SUPREME COURT OF OHIO

- - -

The Ohio Manufacturers' Association, the Ohio Chamber of Commerce, Pharmaceutical Research and Manufacturers of America, Keith A. Lake, and Ryan R. Augsburger,	:	
Relators,	:	
vs.	:	Case No. 2016-0313
Ohioans for Drug Price Relief Act, by and through its Committee: William S. Booth, Daniel L. Darland, Tracy L. Jones, Latonya D. Thurman; and Honorable Jon Husted in his Official Capacity as Ohio Secretary of State,	:	
Respondents.	:	

- - -

DEPOSITION

of Matthew Damschroder, taken before me, Karen Sue Gibson, a Notary Public in and for the State of Ohio, at the offices of McTigue McGinnis & Colombo LLC, 545 East Town Street, Columbus, Ohio, on Tuesday, May 31, 2016, at 9:00 a.m.

- - -

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By Mr. Matt Walsh,
Elections Counsel
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Columbus, Ohio 43215

On behalf of the Respondent Jon Husted, Ohio Secretary of State.

- - -

1 Tuesday Morning Session,
2 May 31, 2016.
3 - - -
4 STIPULATIONS
5 It is stipulated by and among counsel for the
6 respective parties that the deposition of Matthew
7 Damschroder, a witness called by the Respondents
8 under the applicable Rules of Civil Procedure, may be
9 reduced to writing in stenotypy by the Notary, whose
10 notes thereafter may be transcribed out of the
11 presence of the witness; and that proof of the
12 official character and qualification of the Notary is
13 waived.
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(Witness sworn.)

MR. CLINGER: Great. I think it would be good to introduce ourselves. I am Derek Clinger, counsel for Respondents William Booth, Daniel Darland, Tracy Jones, and Latonya Thurman.

MS. SFERRA: My name is Anne Marie Sferra, and I am here on behalf of the Relators.

MR. VOIGT: Steven Voigt and I represent the Secretary of State.

THE WITNESS: Matt Damschroder with the Secretary of State's Office.

MR. WALSH: Matt Walsh with the Secretary of State's Office.

MR. CONOVER: Brodi Conover, counsel for the Respondent Secretary of State.

MR. CLINGER: Okay. This is the deposition of Matthew Damschroder being taken in the case of Ohio Manufacturers' Association versus the Ohio Drug Relief Act, Case No. 2016-0313, in the Ohio Supreme Court.

- - -

1 MATTHEW DAMSCHRODER
2 being by me first duly sworn, as hereinafter
3 certified, deposes and says as follows:
4 CROSS-EXAMINATION
5 By Mr. Clinger:
6 Q. Notice of the deposition was provided to
7 counsel for Respondent Secretary on May 20. Did you
8 get a chance to see that?
9 A. Yes.
10 Q. Okay. Great. And just for the record I
11 am going to be treating you as an adverse witness
12 since your office is taking positions adverse to our
13 client.
14 Mr. Damschroder, you were just sworn to
15 tell the truth; is that correct?
16 A. Yes.
17 Q. And by virtue of working at this office,
18 I know you have been deposed before.
19 A. I have.
20 Q. How many times have you been deposed?
21 A. Actually I think we counted this last
22 week. I think this is number 20 or 21.
23 Q. Oh, wow. Great. I probably won't have
24 to go over this then but.

1 A. Always good to do it.
2 Q. I am going to ask you some questions.
3 You are obligated to answer them truthfully and fully
4 and to the best of your ability. It's important you
5 understand the questions. If you don't, just let me
6 know. You can ask to clarify. And for the sake of
7 the court reporter, it's important we speak with
8 verbal communications and not nod.
9 And additionally, also for the sake of
10 the court reporter, we will try not to interrupt each
11 other. I will try not to interrupt you, and I will
12 ask that you do the same. Same goes for counsel
13 here.
14 If you need a break at any time, just let
15 me know or your counsel know. I will just ask that
16 you finish the question.
17 A. Sounds good.
18 MR. VOIGT: Before we start I want to put
19 on the record, you know, I think that whether
20 Mr. Damschroder is an adverse witness is probably a
21 question by question determination, and so I reserve
22 an objection to that because to the extent you are
23 asking questions that are not related to -- to the
24 extent you are asking questions that are related to a

1 case where we are -- where your clients, Mr. Clinger,
2 and the Secretary of State are on the same side of
3 the v., I'm not sure that he would be characterized
4 as an adverse witness. So with that, you know, I
5 just wanted to preserve the objection.
6 MR. CLINGER: Okay.
7 Q. (By Mr. Clinger) What's your present role
8 with the Secretary of State's Office,
9 Mr. Damschroder?
10 A. I am the Chief of Staff and Assistant
11 Secretary of State.
12 Q. Okay. How long have you been Chief of
13 Staff?
14 A. Since January of 2015.
15 Q. Okay. Were you Assistant Secretary of
16 State -- is that all the same?
17 A. Right. Right now, Assistant Secretary of
18 State and Chief of Staff are kind of two titles that
19 kind of go with each other. Before January of '15, I
20 was the Director of Elections and Deputy Assistant
21 Secretary of State.
22 Q. Okay. As Chief of Staff, what are your
23 general responsibilities?
24 A. So as Chief of Staff and Assistant

1 Secretary of State, basically everything that happens
2 in the Secretary of State's Office is something that
3 I'm responsible for to the Secretary, so election,
4 campaign finance, business services, HR, IT, finance.
5 All of the functions of the Secretary of State's
6 Office are the things I am responsible for to the
7 Secretary.
8 Q. Each of those you listed, are those the
9 departments?
10 A. Yes.
11 Q. Okay. Now, do statewide initiative
12 petitions, do those fall under the elections division
13 or something else?
14 A. They would fall under elections.
15 Q. Okay. And so with respect to statewide
16 initiative petitions, as Chief of Staff, what are
17 your responsibilities?
18 A. So responsibilities that I would have as
19 it relates to statewide initiative petitions would be
20 directing the activities of the elections department
21 in receiving the petition and in overseeing the
22 directive issue to the Board of Elections, the
23 transmitting of the petitions to the boards,
24 receiving those back, and getting the reports of the

1 total number of signatures that have been identified
2 by the boards, and then advising the Secretary, and
3 ultimately the determination of the validity and
4 sufficiency of the petition.
5 Q. Okay. Are you involved with the drafting
6 of the directives?
7 A. Yes.
8 Q. Okay. Since you have been Chief of
9 Staff, how many statewide initiative petitions have
10 been filed with the Secretary's Office?
11 A. Two, I think. One was an initiated
12 constitutional amendment in 2015, in the summer of
13 2015, and the other would be the most recent
14 initiated statute petition that was filed in
15 December.
16 Q. Okay. I was thinking of the Fresh Start
17 Act also filed in September.
18 A. Oh, okay. I forgot about that, yeah.
19 Q. And when you were the Elections Director,
20 how long -- was that from the beginning of the
21 Secretary's term?
22 A. Yes. I came in in January of '11 and --
23 as Director of Elections and Deputy Assistant
24 Secretary of State.

1 Q. Okay. And what were your general
2 responsibilities?
3 A. Basically at that time in January of '11,
4 everything that had to do with elections or campaign
5 finance I was responsible for.
6 Q. Now, with respect to the statewide
7 initiative petitions, what were your
8 responsibilities?
9 A. Basically all the same things that I do
10 now as Chief of Staff.
11 Q. Okay. Is there any difference? Are you
12 more hands off now or?
13 A. I would say that there's a very small
14 difference. I don't pay attention now in the same
15 way that I did before to the day-to-day signature
16 totals that counties are reporting like I used to.
17 Q. Okay. And how many statewide initiative
18 petitions have been filed with Secretary Husted?
19 A. I don't know for sure. I would say it's
20 probably in the range of 10 to 12, but I don't know
21 for sure.
22 Q. In your experience which counties do
23 petitioners typically file the most signatures from?
24 MR. VOIGT: Hold on.

1 (Discussion off the record.)
2 Q. (By Mr. Clinger) In your experience from
3 which counties do petitioners typically submit the
4 most signatures from for statewide initiative
5 petitions?
6 MR. VOIGT: Objection, lack of
7 foundation. You can answer if you.
8 A. So I think it depends on the petition and
9 the petitioner. And noting, of course, that there is
10 a signature threshold from, you know, a certain
11 percentage of counties, and so petitioners usually
12 try to -- in my experience try to aim for that
13 percentage and in more counties than they -- than
14 they need to get the minimum threshold for the
15 percentage.
16 Q. Now, what about the -- there is another
17 threshold, correct? Just an overall signature?
18 A. Correct.
19 Q. And would you agree that petitioners
20 typically target more populous counties?
21 MR. VOIGT: Objection. I guess you are
22 asking for a very broad conclusion with that and him
23 to speculate and lack of foundation. Go ahead.
24 A. Can you repeat the question?

1 MR. CLINGER: Can you repeat that
2 question.
3 (Record read.)
4 A. I don't know that I'm in a position to
5 say what petitioners typically do, but I would say
6 that it's easier for a petitioner to generally get
7 more signatures in a more populous county than a less
8 populous county, and so I would say purely
9 speculating, never having looked at actual
10 percentages, I think that they probably track closely
11 to the number of registered voters by county.
12 Q. Okay. Now, before you were at the
13 Secretary of State where were you at?
14 A. I was at the Franklin County Board of
15 Elections.
16 Q. Okay. How long were you there?
17 A. I was at the Franklin County Board of
18 Elections for just under eight years.
19 Q. What were your -- what was your title
20 there?
21 A. I started in 2003 as Director and then in
22 March of 2008 became Deputy Director when the parties
23 of the Secretary of State's Office changed.
24 Q. Okay. And when you were Deputy Director,

1 what were your general responsibilities?
2 A. So in Franklin County when I was there,
3 the duties of the Director and Deputy Director were
4 essentially the same. And so in both roles I was
5 responsible for overseeing voter registration,
6 absentee voting, campaign filings, candidate filings,
7 petition filings, poll worker training, polling
8 places, basically all of the tax of local elections
9 administration.
10 Q. What were your responsibilities with
11 respect to statewide initiative petitions?
12 A. So we -- as Director and Deputy Director,
13 we had full-time and part-time staff who would
14 actually check the signatures. I also checked
15 signatures. And then we would certify a total number
16 of valid and invalid signatures on part-petitions
17 back to the Secretary of State.
18 Q. Okay. And how many statewide initiative
19 petitions would you say you oversaw?
20 A. I don't know for sure but probably in the
21 eight years I was there maybe a dozen or so but I
22 don't know for sure.
23 Q. Okay. When you were at the Board of
24 Elections, did instructions regarding the review of

1 statewide initiative petitions, did those always come
2 from the Secretary of State's Office?
3 A. So ordinarily a directive that was issued
4 from the Secretary of State's Office would be
5 accompanied by instructions including a sheet of how
6 to mark the petitions for particularly isolated
7 invalidity of a signature.
8 Q. You said ordinarily. So what's -- what's
9 extraordinary?
10 A. I use that as a caveat to say because I
11 don't remember every single petition when I was
12 Director of the Board of Elections, and so I wouldn't
13 want to say with 100 percent definitive nature that
14 we got instructions for every one of those petitions.
15 Q. Can you remember a time when instructions
16 came from somewhere else?
17 A. No.
18 Q. Okay. And with respect to the number of
19 signatures attested to in a circulator statement,
20 would you agree that the instructions have always
21 been that the number attested to in the circulator
22 statement can be higher than the actual number of
23 signatures but not lower?
24 MR. VOIGT: Hold on. If you are asking

him to recite directives or laws, I think it would be better to just put the particular document in front of him. I think it's unfair to ask him to recite by memory what -- what -- what the directives and laws state with respect to the validity of signatures. I mean, this is kind of a memory test in terms of what you are doing.

MR. CLINGER: Happy to do that. Okay.

MR. VOIGT: Thank you.

Q. First directing your attention to we will mark this as Exhibit 1.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. This is Directive 2005-33. It's instructions regarding the SmokeFreeOhio Initiative Petition Proposing a Statute. Do you see the date that it was issued?

A. December 1, 2005.

Q. Okay. And does this -- do you remember these particular instructions?

A. I don't remember specifically, but I remember that there was a SmokeFree initiative petition -- initiated statute petition.

Q. Okay. And do you see on the -- on the first page, the second body, the first sentence, it

1 says "You must examine each part-petition in
2 accordance with the enclosed instructions."
3 A. Yes.
4 Q. And is that a typical instruction in your
5 experience?
6 MR. VOIGT: Are you asking whether that
7 statement or the instructions thereafter are typical?
8 Q. Whether the statement -- let me rephrase.
9 Do -- do Boards of Elections have any
10 discretion in following the instructions from the
11 Secretary of State's Office in a directive?
12 A. The directives issued by the Secretary of
13 State, the instructions of the Secretary of State, I
14 think have been -- it's been termed they have the
15 force of law, and they have to be followed and
16 failure to do so could result in dismissal.
17 Q. Okay. And if you'll turn to the third
18 page. Do you see the -- under the bullet point
19 "Circulator Statement" the body that starts with the
20 words "When the number of signatures on a
21 part-petition"?
22 A. Yes.
23 Q. Okay. And I will give you a moment to
24 review all of that including the following bullet

1 points.
2 A. Okay.
3 MR. VOIGT: Can you give me just a
4 second? I have never seen this document so just give
5 me a moment, please.
6 MR. CLINGER: Sure.
7 MR. VOIGT: Okay. Thank you.
8 Q. Now, would you agree -- I'm sorry. What
9 does this instruct with inconsistent -- an
10 inconsistency between the number attested to in a
11 circulator statement and number of actual signatures
12 on a part-petition?
13 MR. VOIGT: Objection. Document speaks
14 for itself.
15 A. So it says that when the number of
16 signatures appears to differ from the number reported
17 on the circulator statement, then the board must
18 examine the part-petition to determine the nature of
19 the inconsistency.
20 Q. Okay. And if the number -- if the
21 inconsistency -- if the number on the circulator
22 statement is equal to or greater than the number of
23 signatures, what does it instruct?
24 A. That it reads do not reject the

1 part-petition because of the inconsistent signature
2 numbers.
3 Q. And if the number of signatures in the
4 circulator statement is less than the total number
5 submitted on the part-petition, what does it
6 instruct?
7 A. It reads to reject the entire
8 part-petition.
9 Q. Okay. And is there any language in there
10 about arithmetic error?
11 A. I don't see anything in these particular
12 set of instructions that talks about math errors.
13 Q. Okay. This will be Exhibit 2.
14 (EXHIBIT MARKED FOR IDENTIFICATION.)
15 Q. And so this is Directive 2010-01 and it's
16 regarding the review of a referendum petition.
17 A. That's correct.
18 Q. And I am going to ask you to turn to the
19 page 3 again. Under the section for "Circulator's
20 Statement" with the body it starts with "When the
21 number of signatures on a part-petition appears," do
22 you see that?
23 A. I do.
24 Q. I will give you a moment to review that.

1 And, again, with respect to inconsistency
2 in the number of signatures in the circulator
3 statement and the number of signatures actually
4 appearing on the part-petition, what does this
5 instruct?
6 MR. VOIGT: Objection. Document speaks
7 for itself.
8 A. It reads when there is -- "When the
9 number of signatures on a part-petition appears to
10 differ from the number reported in the circulator's
11 statement, then the board must examine that
12 part-petition to determine the nature of the
13 inconsistency."
14 Q. And if the number of signatures reported
15 as being witnessed by the circulator in the
16 circulator statement is equal to or greater than the
17 total number of signatures not crossed out on the
18 part-petition, what does it instruct?
19 A. "Do not reject the part-petition because
20 of the inconsistent signature numbers."
21 Q. Okay. If the number of signatures
22 reported as being witnessed is less than the number
23 of total uncrossed-out signatures submitted, what
24 does it instruct?

1 A. That it reads to "reject the entire
2 part-petition."
3 Q. Would you agree that these are the same
4 instructions -- or similar -- the effect is the same
5 as the prior directive I showed you?
6 A. I don't think they are entirely the same,
7 but I think the information is generally the same.
8 Q. Okay. And what's different about them?
9 A. I think the -- we can go back and look,
10 but the one thing that it looks like Secretary
11 Brunner added in 2010 that's different than the
12 Blackwell '05 directive was information about the
13 signatures being uncrossed out or not crossed out.
14 Q. Okay. And is there any language in the
15 Brunner directive about mathematical error?
16 A. There does not appear to be.
17 MR. VOIGT: Objection to the extent you
18 are asking him -- do you want him to read this
19 whole -- do you want him to take a moment to read the
20 entire -- are you talking about -- just this
21 particular part of this document you are talking
22 about?
23 MR. CLINGER: Yeah.
24 MR. VOIGT: Because this is a five-page

1 document.
2 Q. (By Mr. Clinger) If you would like to
3 read it all, I can wait.
4 A. Well, certainly as it relates to just
5 this one part we have been talking about, there's not
6 a reference to mathematical error.
7 Q. Okay. And going back to the Blackwell
8 directive, which is Exhibit 1, is there any language
9 in there about the legal effect of crossed-out
10 signatures? Does it -- with regard to the validity
11 of the petition?
12 MR. VOIGT: Objection, to the extent it
13 calls for a legal conclusion.
14 A. And, again, not -- just as it relates to
15 the portion that we were talking about earlier under
16 the second bullet point, "Circulator's Statement" and
17 the two bullet points about "Equal to or Greater
18 Than" or "Less than," there doesn't seem to be any
19 reference there to uncrossed-out signatures at all so
20 there doesn't appear to be any instructions in that
21 section about uncrossed-out signatures.
22 Q. What about other parts of the directive?
23 MR. VOIGT: Same objection.
24 A. Just in a quick summary, in the 2005-33

1 directive there doesn't appear to be a reference to
2 uncrossed-out signatures anywhere in it that I can
3 tell.
4 Q. Okay. I was referring to struck out
5 signatures.
6 A. I'm sorry, uncrossed-out or
7 struck-through signatures, interlineated signatures.
8 Q. Same question with regards to the Brunner
9 directive.
10 MR. VOIGT: Same objection.
11 A. The only references that I see on a quick
12 skim of the document of the 2010-01 directive to
13 signatures that are not crossed out are the two
14 bullet points under paragraph B, the "Circulator's
15 Statement" which I think is on page 3 of the document
16 and then also on page 1, item No. 6, that reads "If
17 the number written by the circulator on the
18 circulator statement at the end of the part-petition
19 is less than the number of uncrossed out signatures
20 on the part-petition, the entire part-petition is
21 invalid." That continues to the top of the next page
22 "This is because the board cannot discern which
23 signature was not witnessed by the circulator."
24 Q. Okay. This will be Exhibit 3.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)
2 Q. And do you recognize this document?
3 A. I do.
4 Q. What is it?
5 A. This is Chapter 11 of the Ohio Election
6 Official Manual that was issued as Directive 2015-33
7 in December of '15.
8 Q. Okay. And were you involved with the
9 drafting of this?
10 A. I was.
11 Q. Who else was involved in the drafting?
12 A. Pat Wolfe, our Elections Administrator,
13 and then a bunch of attorneys in the office.
14 Q. Okay. How many attorneys are in the
15 office?
16 A. I think we have seven or eight total
17 attorneys in the office.
18 Q. Okay. And would the attorneys in the
19 elections division, would they be the ones drafting
20 this or would other attorneys from other departments
21 be involved?
22 A. Would mostly -- it would just be the
23 attorneys in the elections division.
24 Q. Okay. And is the election -- what is the

1 Election Official Manual?
2 A. The Election Official Manual as issued in
3 December of '15 is the permanent directive -- or it's
4 a series of permanent directives from the Secretary
5 of State's Office that comprises all of the elections
6 administration instructions to the County Boards of
7 Elections at that time.
8 Q. Okay. Had it been changing at that time?
9 A. So the Secretary issues permanent
10 directives and temporary directives. We have issued
11 other directives since this directive. For instance,
12 we issued a directive in -- I don't know when it was,
13 February maybe, about absentee ballot postmark dates
14 and those things, and we are getting ready to in the
15 near future post edits to the Election Official
16 Manual this summer to have an updated version for the
17 fall.
18 Q. Okay. What are the -- do any of those
19 edits pertain to the review of statewide initiative
20 petitions?
21 A. I don't remember for sure what the
22 lawyers have listed for the -- for the petition
23 section. Most of the changes have to do with
24 absentee voting and those sort of things, and we are

1 waiting to see what happens in another federal court
2 case to see what else may need to be added --
3 Q. Gotcha.
4 A. -- or taken away.
5 Q. Who -- who would know if the directives
6 regarding statewide initiatives are going to be
7 changed?
8 A. Well, the Senior Elections Attorney in
9 our office Carrie Kuruc is the person in charge of
10 spearheading that effort, and then they will all be
11 posted online for public comment before it becomes a
12 permanent directive so.
13 Q. Okay. Before we proceed I am going to
14 introduce another exhibit. This will be Exhibit 4.
15 (EXHIBIT MARKED FOR IDENTIFICATION.)
16 Q. Do you recognize this document?
17 A. I do.
18 Q. And what is this?
19 A. This is Chapter 14 of the Election
20 Official Manual which was issued in December of '15
21 as Directive 2015-36 covering the topic of statewide
22 initiative and referendum.
23 Q. Okay. I am going to be using both of
24 these, just FYI. Now, on Chapter 11, which was

1 Exhibit 3, if you go to page 11-8, and this is the
2 section titled "D Circulator's Statement on Each
3 Part-Petition." And, now, down at the bottom, it
4 starts with "The board must review each part-petition
5 to determine." Do you see that?
6 A. I do.
7 Q. Now, with respect to inconsistencies in
8 the number of signatures witnessed and the number
9 appearing on the part-petition, what does this
10 instruct?
11 MR. VOIGT: Objection. The document
12 speaks for itself.
13 A. It says at the bottom of page 11-8 and
14 continuing to the top of page 11-9 that "The board
15 must accept the circulator statements of
16 part-petitions at face value unless there are
17 inconsistencies with the number of signatures
18 witnessed (see below) or with information about the
19 circulator across part-petitions reviewed within a
20 single county (i.e., the circulator writes different
21 permanent residence addresses on different
22 part-petition)."
23 Q. Okay. Now, with respect to the
24 inconsistencies, it directs you to see below. What

1 does it say if the number of signatures are less than
2 the number of uncrossed-out signatures submitted?
3 What does it instruct?
4 A. So the first item is "If the number of
5 signatures reported in the statement is less than the
6 total number of uncrossed-out signatures submitted on
7 the part-petition, then the board must reject the
8 entire part-petition."
9 Q. Okay. And if the inconsistency is that
10 the number of signatures reported in the statement is
11 equal to or greater than the number of not crossed
12 out in the part-petition, what does it instruct?
13 A. It reads that "then the board does not
14 reject the part-petitions because of the inconsistent
15 signature numbers. Instead, the board must review
16 the validity of each signature as usual."
17 Q. Okay. And does this say anything about
18 mathematical error?
19 MR. VOIGT: Objection. Are you asking
20 about just these particular paragraphs that you've
21 been asking about or the entire document?
22 MR. CLINGER: I guess both.
23 MR. VOIGT: Or other documents for that
24 matter.

1 MR. CLINGER: Just what's in front of
2 him.
3 MR. VOIGT: You are only asking -- you
4 are asking him with respect to Exhibit 3.
5 MR. CLINGER: Uh-huh.
6 MR. VOIGT: To go through Exhibit 3 and
7 tell you whether there are -- there is a reference to
8 mathematical errors. He is welcome to take the time
9 to review it if he needs to.
10 MR. CLINGER: Okay.
11 MR. VOIGT: By the way I also want to put
12 on the record I object to this entire line of
13 questioning relating to differences in the number of
14 signatures and a -- the number of signatures on a
15 petition and the attestations related to the number
16 of signatures because these questions clearly are
17 designed to elicit testimony related to a case that
18 wherein discovery is premature.
19 In that particular case the Secretary of
20 State filed a motion to dismiss. There has not been
21 a decision on that yet, and so discovery in that case
22 is premature. I would not have the same objections
23 if your questions were related to the OMA case which
24 wherein discovery is going forward.

1 With that I am going to allow the witness
2 to continue. I just wanted to put on the record that
3 I have an objection to any question -- in fact, why
4 don't I just have that as a continuing objection.
5 Well, maybe be better for me to point out specific
6 things throughout the -- throughout the deposition
7 that I object to that I feel are not related to the
8 specific case that you noticed the deposition that I
9 feel is appropriate for questioning in this
10 deposition.
11 MR. CLINGER: Okay. And I will just note
12 this relates to the affirmative defenses from
13 Respondent Secretary's answer. In this case he said
14 he acted in good faith, acted pursuant to Ohio law at
15 all times, and acted with legal active -- and legal
16 factual justifications. So this relates to the
17 affirmative defenses.
18 A. So in skimming through Chapter 11, I
19 don't see any references to mathematical error in
20 Chapter 11.
21 (Discussion off the record.)
22 A. In skimming through the Chapter 11
23 document, I did not see a reference to -- to
24 mathematical error.

1 Q. Okay. And did you see anything -- or is
2 there anything about the legal effect of struck out
3 signatures on the validity of the part-petition?
4 MR. VOIGT: Objection, calls for a legal
5 conclusion.
6 A. In the two sections where you talked
7 about on page 11-9, there is reference to
8 uncrossed-off signatures there. Also at the bottom
9 of page 9 there is a note that reads "In determining
10 whether the number of signatures reported by a
11 circulator of a non-statewide candidate's petition
12 matches the number of signatures on that
13 part-petition, particularly with regard to
14 crossed-out signatures, board of elections should
15 take care so as to not make a determination that is
16 'too technical, unreasonable, and arbitrary' given
17 the unique fact set of that petition and information
18 available to the board, if any."
19 Q. Okay. And did you see any other
20 references throughout the chapter?
21 A. I did not.
22 Q. Okay. And so on to Exhibit 4, Chapter
23 14, the other section I provided, just a general
24 question. With respect to the instructions regarding

1 petitions between the two chapters, what's the
2 difference? Kind of a general question what's the
3 purpose of the two different chapters?
4 A. So the -- the purpose behind Chapter 11
5 would be to give general information about petitions,
6 and then Chapter 14 would be to reiterate any of
7 those that the board -- the Secretary felt necessary
8 to reiterate as well as to provide any information
9 that's specific to statewide initiative and
10 referendum.
11 Q. Okay. And now turning to page 14-4,
12 these are the instructions regarding inconsistencies
13 in the circulator statements compared to the number
14 of part-petitions; is that correct?
15 A. Yes.
16 Q. Okay. And are these the same
17 instructions that were in Chapter 11?
18 MR. VOIGT: Objection. Document speaks
19 for itself.
20 A. In skimming through it, I don't --
21 particularly as it relates to the topics we
22 discussed, I don't see any inconsistencies.
23 Q. Okay. And do you see anything in this
24 chapter about mathematical error?

1 MR. VOIGT: Same objection.
2 A. In skimming through it, I don't see a
3 reference to mathematical error.
4 Q. Okay. And do you see anything about the
5 legal effect of striking out signatures?
6 MR. VOIGT: Same objection and also
7 asking for a legal conclusion.
8 A. So I think it talks about in the middle
9 of page 14-4 what to do when the total number of
10 uncrossed-out signatures submitted on the
11 part-petition is fewer than the total number -- when
12 the number reported is fewer than the number of
13 uncrossed-out signatures, then the board rejects
14 the -- invalidates the entire part-petition, similar
15 instructions to what we've talked about before.
16 Q. Okay. And so having reviewed the
17 Election Official Manual and then the Brunner
18 directive and the Blackwell directive, would you
19 agree that the instruction with respect to that sort
20 of inconsistency has been the same?
21 MR. VOIGT: Hold on. I am going to
22 object based on lack of foundation and no showing of
23 personal knowledge, particularly with respect to
24 prior administrations. With that you can answer the

1 question.
2 A. So I think, as we've talked about, you
3 know, that the words used vary from directive to
4 directive, that I would say that the instructions are
5 generally the same as it relates to what to do with
6 part-petitions where the number is different from --
7 the actual number of signatures on the part-petition
8 is different from the number the circulator says they
9 witnessed.
10 Q. Okay. You are saying they are generally
11 the same. Is the exception to that with regard to
12 the precise wording?
13 MR. VOIGT: Same objection.
14 A. That appears to be the difference.
15 Q. Okay. And would you agree that none of
16 these directives contain language about mathematical
17 error?
18 A. In skimming through them, I didn't see a
19 reference to mathematical error in any of them.
20 Q. Okay. And would you agree that none of
21 these directives contain language about the legal
22 effect of striking out signatures on the entire
23 validity of the petition, part-petition?
24 MR. VOIGT: Objection, vague and calls

1 for legal conclusion and frankly it's confusing to
2 me. I am not sure what you are asking for. But if
3 you feel you understand.
4 A. Could you rephrase it or restate it?
5 Q. Sure. Yeah. Would you agree that none
6 of these directives contain language -- I will start
7 over.
8 Would you agree that in none -- sorry,
9 that none of these documents contain instructions
10 that say if there's a signature struck out by someone
11 other than the circulator, signer, or the signer's
12 attorney in fact, that the part-petition is invalid?
13 MR. VOIGT: Objection. The documents
14 speak for themselves.
15 A. In skimming through them, I don't think I
16 saw a reference to any of those.
17 Q. Okay. Would you agree that -- and you
18 are basing that on your experience as Election
19 Administrator reviewing statewide petitions that it's
20 common to see circulator statements that overreport
21 the number of signatures appearing on the
22 part-petition?
23 A. Common I don't know. I have seen
24 part-petitions where -- where there is a difference

1 between the number of signatures appearing on the
2 part-petition and the number of signatures the
3 circulator reported as having witnessed.
4 Q. Okay. And were those part-petitions
5 invalidated?
6 A. I think it depends on the circumstance.
7 You know, as we've talked about in these series of
8 directives, there has been two circumstances that
9 were presented to the boards as examples of possible
10 scenarios with instructions on how to -- you know,
11 what to do with those two scenarios. So, you know,
12 so that in those cases there were instructions on how
13 to deal with them.
14 Q. Okay. But you can't recall any of them
15 being invalidated?
16 A. As I sit here today, I don't know, you
17 know, the ultimate disposition of certainly the tens
18 of thousands of individual part-petitions that have
19 been filed at the Secretary of State's Office. So I
20 can't speak to all of those.
21 Q. Okay. And can you recall prior -- or
22 other than the petition proposing the Drug Price
23 Relief Act, can you think -- do you remember an
24 instance from your years either at the Secretary of

1 State's Office or with the Board of Elections when a
2 petition was returned, when a statewide initiative
3 petition was returned, to the Boards of Elections for
4 review?
5 A. Not that -- not that I recall.
6 Q. Okay. And is there anybody else in the
7 Secretary of State -- Secretary of State's Office who
8 would have experience with that or know that answer?
9 A. Well, I think probably -- probably be
10 documented through directives that are on our -- on
11 our website. But, you know, Pat Wolfe is the person
12 in our office who's been there the longest number of
13 years, so whether she remembers, you know, I would
14 doubt that she would remember with any specificity
15 individual part-petitions from all of her years.
16 Q. Okay. And what's Pat Wolfe's position?
17 A. She is the Elections Administrator.
18 Q. Okay. And with respect to struck out
19 signatures, would you agree from your experiences
20 that's also a common issue in part-petitions?
21 A. Again, common I don't know, you know, how
22 to quantify that; but, you know, I have seen it
23 happen.
24 Q. Okay. And do you recall whether those

1 part-petitions were invalidated?
2 A. I think similar to what I said before, I
3 don't remember the -- every individual part-petition,
4 but I am sure there are circumstances where that did
5 happen.
6 Q. Okay. Who would know?
7 A. Well, I would imagine there were
8 circumstances where that would happen.
9 Q. Where part-petitions were invalidated?
10 A. Uh-huh.
11 Q. Who would know for sure?
12 A. Well, in terms of, you know, our office,
13 you know, you would have to look at each individual
14 part-petition of every petition that was ever filed
15 with our office to know for sure because we don't
16 track the reason every part-petition was rejected so
17 that would -- I don't know that anybody would know
18 for sure.
19 Q. So if I am understanding correctly, the
20 only way to check that would be to review each
21 initiative petition?
22 A. I think so, yeah.
23 Q. Okay. There is no other documents?
24 A. Correct.

1 Q. Okay. Do you recall either while at the
2 Secretary of State's Office or with the Boards of
3 Election -- Board of Elections a statewide issue
4 petition other than the Drug Price Relief Act being
5 returned to the boards because it contained struck
6 out signatures?
7 A. Not that I recall.
8 Q. Okay. When did you first hear about the
9 petition proposing the Drug Price Relief Act?
10 A. I don't remember specifically, but it
11 would have been I think when they filed their initial
12 thousand with the Attorney General's Office.
13 Q. Okay. And were you involved with --
14 okay. So it's filed with the Attorney General's
15 Office. What happens next with the petition?
16 A. So with the initial thousand filed with
17 the Attorney General, the Attorney General sends the
18 part-petitions to the County Board of Elections to
19 review, and if there are a thousand valid signatures,
20 the AG certifies -- if I remember correctly, the AG
21 certifies the -- that the statement on the petition,
22 the summary, is fair and truthful. And then it goes
23 to -- I am trying to remember. Does an initiated
24 petition go to the Ballot Board? I think so but I

1 don't remember for sure.
2 But anyway at some point they start
3 gathering signatures, they the petitioner; and then
4 they are filed with the Secretary of State's Office.
5 Q. Okay. And with respect to the Ballot
6 Board, what are your responsibilities?
7 MR. VOIGT: Are you asking you Matt
8 Damschroder?
9 Q. Yeah, you Matt Damschroder.
10 A. I don't really have any specific
11 responsibilities as it relates to the Ballot Board
12 other than to make sure that Carrie Kuruc, Senior
13 Elections Attorney in our office who is kind of the
14 staff person assigned to the Ballot Board, has
15 everything she needs and that she has done everything
16 she needs to do to ensure an efficient meeting.
17 Q. Okay. And do you recall when the Drug
18 Price Relief Act was before the Ballot Board?
19 A. I don't.
20 Q. Do you recall when the petition was filed
21 with the Ohio Secretary of State's Office?
22 A. It was in December but I don't remember
23 exactly when, December of '15.
24 Q. Okay. And when it was filed -- and when

1 the petition was first filed with the Secretary of
2 State's Office and before it was transmitted for --
3 the part-petition was transmitted to the Boards of
4 Elections, did the Secretary of State staff review
5 the part-petitions?
6 A. So I think the only thing that we did
7 with the petitions was that we -- I think we Bates
8 stamped them, basically counted the part-petitions,
9 and I think we also tallied up the number of
10 signatures as identified on the circulator statement
11 before sending them to the boards.
12 Q. So you went through each part-petition
13 and tallied up the number appearing on the circulator
14 statement?
15 A. I think we did that, yes.
16 Q. Okay. And is that how -- is that how the
17 Secretary -- let me back up.
18 Would you agree that the Secretary of
19 State is required to determine whether or not the
20 petition purports to contain a sufficient number of
21 signatures before it's transmitted to the Boards of
22 Elections?
23 MR. VOIGT: Wait. Objection, confusing.
24 Calls for a legal confusion -- calls for a legal

1 conclusion and it's confusing.
2 MR. CLINGER: Yeah. I will strike that
3 question.
4 MR. VOIGT: I am actually having trouble
5 understanding the question myself.
6 MR. CLINGER: Yeah. I will just withdraw
7 the question.
8 Q. (By Mr. Clinger) At this time I am going
9 to direct you to Exhibit 5.
10 (EXHIBIT MARKED FOR IDENTIFICATION.)
11 Q. And do you recognize this document?
12 A. I do.
13 Q. What was -- what is this?
14 A. This is Directive 2015-40 to the County
15 Boards of Elections with instructions regarding the
16 review, examination, and verification of the petition
17 proposing an initiated statute.
18 Q. Okay. And who drafted this?
19 A. I would say that probably Carrie Kuruc
20 and Pat Wolfe were involved in the drafting of this.
21 Q. Anybody else?
22 A. I would -- I don't know for sure, but I
23 think I probably saw a draft of it before it was
24 issued.

1 Q. Okay. But were you involved with the
2 drafting of it?
3 A. I think I saw a draft of it, but I think
4 the primary drafters were Pat Wolfe and Carrie Kuruc.
5 Q. Okay. And so there were multiple drafts
6 of the directive?
7 A. I don't -- I don't know if there were or
8 not.
9 Q. Okay.
10 A. Or whether it was just Carrie drafted it
11 as an attorney and then Pat looked at it from an
12 elections administration standpoint. I don't
13 remember all the different iterations, if there were
14 any.
15 Q. Okay. If there were different
16 iterations, would they have been e-mailed to you?
17 A. On something like this I would usually
18 only see the final draft to approve before it goes
19 out.
20 Q. Okay. And what date -- okay. So you
21 would agree this instructs the Boards of Elections to
22 complete their review and return to the Secretary of
23 State's Office by noon on December 30, 2015?
24 A. Yes.

1 Q. Okay. And how did you determine that
2 date or how did the office determine that date?
3 A. I think I was -- as I recall, I was one
4 of the individuals pushing for an earlier date.
5 Q. Earlier than what?
6 A. I mean for a quick turnaround from the
7 boards.
8 Q. Okay. So there was discussion to -- for
9 a later date?
10 A. I don't know if there was discussion per
11 se. Like usually with initiated constitutional
12 amendments the boards usually get, I think, two or so
13 weeks, sometimes three weeks to do those. And so I
14 was -- I recall pushing that we needed to have quick
15 turnaround.
16 Q. Okay. And why were you pushing for a
17 quick turnaround?
18 A. Going into a Presidential election year,
19 I didn't want to have -- in my view we wanted to get
20 this, you know, done and taken care of and finished
21 so the boards could focus on the election.
22 Q. Were there any other reasons for the
23 earlier date?
24 A. No.

1 Q. Was anybody else pushing for an earlier
2 date?
3 A. Not specifically that I recall.
4 Q. Okay. And with respect to instructions
5 for reviewing signatures on part-petitions, what does
6 this directive instruct?
7 MR. VOIGT: Objection. The document
8 speaks for itself.
9 A. It instructs the boards in kind of the
10 third section of the paragraph on page 1 to follow
11 the instructions in Chapter 11 of the Election
12 Official Manual when reviewing the petitions.
13 Q. Okay. And Chapter 11 of the Election
14 Official Manual, is that -- that was the same Chapter
15 11 that we reviewed earlier?
16 A. That's correct.
17 Q. Okay. Now, during the drafting of this
18 directive, was there any discussion about changing or
19 amending the instructions contained in Chapter 11 of
20 the Election Official Manual?
21 A. Not that I recall.
22 Q. Okay. Who would -- is it you wouldn't
23 have been a part of that discussion or you just don't
24 remember it?

1 A. If there were conversations, I would have
2 been a part of those discussions, so I don't recall
3 any conversations about that.
4 Q. Okay. Who else would have been privy to
5 that conversation?
6 A. That would have been Carrie Kuruc, our
7 elections attorney, and probably Pat Wolfe.
8 Q. Okay. This will be Exhibit 6.
9 (EXHIBIT MARKED FOR IDENTIFICATION.)
10 Q. Now, when you were preparing for the
11 deposition, did you review this document?
12 A. I did not.
13 Q. Okay. Have you seen this before?
14 A. I saw it before it was filed.
15 Q. Okay. And did you -- were you reviewing
16 it, or were you adding to it? I will rephrase that.
17 MR. VOIGT: Go ahead.
18 Q. Why did you look at this before it was
19 filed?
20 MR. VOIGT: Objection. If your answer
21 involves communications with counsel, I want you to
22 exclude those from your answer.
23 A. So in my capacity as Chief of Staff, I
24 almost always read through legal filings before they

1 are filed.
2 Q. Okay. And does Secretary Husted review
3 the legal filings?
4 MR. VOIGT: Objection. That calls for
5 privileged information.
6 MR. CLINGER: If he reviewed it? I am
7 not asking for any communications.
8 MR. VOIGT: You know, the formulation of
9 answers and how answers are formulated in a pleading
10 and who counsel speaks with in consultation about
11 that certainly is privileged.
12 MR. CLINGER: All right.
13 Q. (By Mr. Clinger) I am going to direct you
14 to page 2 first. And this interrogatory asks to
15 "Provide the date, time, form and a synopsis of any
16 and all communications with any attorney or employee
17 of the law firm of Bricker & Eckler concerning the
18 Petition or the Act." What follows on the next four
19 or five pages is a log of any and all communications
20 with an attorney or employee of Bricker & Eckler. We
21 are going to start on page 6 now unless you need more
22 time to review it.
23 A. Okay.
24 Q. It appears to be in reverse chronological

1 order. So at the bottom of page 6 there is a bullet
2 point December 22, 2015. It's an e-mail from Chris
3 Slagle, a partner at Bricker & Eckler to David
4 Bowling, Elections Counsel for the Ohio Secretary of
5 State's Office. Do you know Chris Slagle?
6 A. I do.
7 Q. How do you know him?
8 A. I've known Chris probably going back to
9 '03, '02. And I know he is an attorney at Bricker,
10 and I have known him as a friend for years.
11 Q. Okay. How did you two meet?
12 A. Through Republican Party politics.
13 Q. Okay. And what's your involvement with
14 Republican Party politics?
15 MR. VOIGT: Objection, irrelevant.
16 A. I am a Republican and I am right now a
17 member of the Franklin County Republican Central
18 Committee and have worked on various campaigns and I
19 currently work for a Republican officeholder.
20 Q. And what is Chris Slagle's involvement?
21 MR. VOIGT: Objection, irrelevant and
22 confusing.
23 A. I don't know what all of his involvements
24 are with -- in Republican politics right now. I

1 think he's still counsel to the Republican Party,
2 state Republican Party, but I don't know for sure.
3 Q. Okay. And -- okay. I am going to direct
4 your attention to Exhibit 7 now.
5 (EXHIBIT MARKED FOR IDENTIFICATION.)
6 Q. And this appears to be an e-mail chain
7 between Chris Slagle and David Bowling. If you want
8 to look at it while you look at the interrogatories
9 on page 6, this corresponds to the last bullet point
10 on page 6 and then the second to last which would be
11 the December 22, 2015, 2:44 e-mail.
12 A. I see that.
13 Q. Okay. Now, with respect to the initial
14 e-mail from Chris Slagle to Dave Bowling, the one
15 that took place on Tuesday, December 22, 1:12 p.m.,
16 were you informed of this public records request?
17 A. I don't remember specifically being
18 informed of this public records request. I was on
19 vacation, so I don't remember whether -- I don't
20 remember whether anybody called me to let me know
21 that they had made -- they, Slagle had made a public
22 records request or not.
23 Q. When were you on vacation?
24 A. I don't remember when exactly we left,

1 but it was that week before -- week of and before
2 Christmas.
3 Q. Okay. So were you out of the office?
4 A. I was in Wisconsin.
5 Q. And would you -- I mean, are you
6 typically informed of public records requests?
7 A. Not -- not usually.
8 Q. Okay. Is Secretary Husted typically
9 informed about records requests?
10 A. No.
11 Q. Okay. Do you know if Secretary Husted
12 knows Chris Slagle?
13 MR. VOIGT: Objection, irrelevant.
14 MS. SFERRA: Objection.
15 MR. VOIGT: Calls for speculation, not
16 showing personal knowledge.
17 A. I don't know who all the Secretary knows,
18 but I would imagine that the Secretary knows Chris
19 Slagle.
20 Q. Okay. And, now, the second to last
21 bullet point on page 6, December 22 phone call
22 between Chris Slagle and Jack Christopher.
23 A. Yes.
24 Q. Who is Jack Christopher?

1 A. Jack Christopher is the Deputy Assistant
2 Secretary of State and General Counsel for the Ohio
3 Secretary of State's Office.
4 Q. What are his responsibilities in the
5 office?
6 A. He is the General Counsel, so he is the
7 highest ranking attorney in our office. He has -- in
8 addition to his legal counsel role, he also has
9 direct reports in terms of campaign finance, the
10 campaign finance attorney, and then also our HR
11 department, and then he also is the lead supervisor
12 of the other attorneys in the office.
13 Q. Okay. With respect to public records
14 requests, what are his responsibilities?
15 A. He assigns the attorneys in the office
16 who are the point people for receiving and fulfilling
17 public records requests, and then I think he meets
18 with them on a regular basis to discuss those
19 requests.
20 Q. Okay. And are you aware that this phone
21 call took place?
22 A. I am.
23 Q. Okay. When did you become aware of it?
24 A. If I remember correctly, sometime after

1 that phone call, sometime after the e-mail came in,
2 and sometime after Jack and Chris had that phone
3 call, Jack called me on vacation.
4 Q. Okay. What did you two discuss?
5 A. Well, arguably my conversations with the
6 Secretary's General Counsel are probably privileged.
7 MR. VOIGT: Okay. Hold on. I instruct
8 you not to answer that because that's asking for
9 privileged information.
10 Q. Okay. Do you know who initiated the call
11 between Chris and Jack?
12 A. I do not.
13 Q. Okay. Who would know that?
14 A. Well, I imagine -- I mean, I don't know
15 for sure, so I could only speculate but probably
16 someone who was on the phone call would know who
17 initiated it.
18 Q. Okay. So Jack or Christopher would
19 probably know that?
20 A. Yeah.
21 Q. Okay. Now, going to the next
22 communication which is this December 22 e-mail at
23 2:44 which is -- also you have a copy of which is the
24 e-mail chain on the top.

1 A. Uh-huh.
2 Q. Do you know when this records request was
3 fulfilled?
4 A. I do not.
5 Q. Okay. And who would know that?
6 A. I think there would be a record in our
7 office potentially or David would know, David
8 Bowling.
9 Q. Anybody else? Would anybody else know?
10 A. I don't know who else would know.
11 Q. And so if there was response -- an e-mail
12 response from Dave Bowling to that e-mail, would the
13 office have a record of that?
14 A. You mean if -- if David replied to Chris?
15 Q. Yeah, yeah.
16 A. I would imagine we would have a record of
17 that.
18 Q. Okay. And, now, on the next
19 communication, the December 23, 2015, phone call
20 between Chris Slagle and Jack Christopher.
21 A. I see that bullet point.
22 Q. Do you know what time that call took
23 place?
24 A. I do not.

1 Q. Who would know that?
2 MR. VOIGT: Objection, irrelevant.
3 A. I don't know -- I don't know for certain
4 who would know other than potentially the people on
5 the call.
6 Q. Okay. Do you know how long that call
7 was?
8 A. I do not.
9 Q. Do you know who initiated the call?
10 A. I do not.
11 Q. Were you aware of this call at any point?
12 A. Not that I recall.
13 Q. Okay. Would anybody else have been aware
14 of this call?
15 MR. VOIGT: Objection, calls for
16 speculation.
17 A. I don't know.
18 Q. Okay. And the next e-mail I am about to
19 show you, it's the next bullet point, December 23,
20 7:07 p.m., e-mail from Chris Slagle to Jack
21 Christopher. This will be Exhibit 8.
22 (EXHIBIT MARKED FOR IDENTIFICATION.)
23 Q. Have you seen this e-mail before?
24 A. I don't think so.

1 Q. Okay. And under the cc. line there is a
2 Kurt Tunnell and Maria Armstrong are copied.
3 A. I see that.
4 Q. Do you know who Kurtis Tunnell is?
5 A. He is an attorney at Bricker.
6 Q. Okay. And do you have a personal
7 relationship with him?
8 MR. VOIGT: Objection, irrelevant.
9 A. I know Kurt and I think we're friends.
10 Q. Okay. How long have you known Kurt?
11 A. I think I first met Kurt in probably
12 1999.
13 Q. Okay. What happened in 1999?
14 A. I was managing a campaign for Columbus
15 City Council for the Flag Lady, Mary Leavitt, and he
16 was a donor to the campaign.
17 Q. Okay. And do you know Maria Armstrong?
18 A. I do.
19 MR. VOIGT: Objection, irrelevant.
20 Q. How do you know Maria?
21 A. I've known Maria for several years. I
22 don't remember when or how we first came to know each
23 other.
24 Q. Okay. And do you know if Secretary

1 Husted knows Mr. Tunnell?
2 MR. VOIGT: Objection, irrelevance, calls
3 for speculation, no showing of personal knowledge.
4 A. He does know Kurt.
5 Q. Okay. Do you know how he knows Kurt?
6 MR. VOIGT: Same objection.
7 A. I don't know how they first came to know
8 each other.
9 Q. Okay. And do you know if Secretary
10 Husted knows Maria Armstrong?
11 MR. VOIGT: Same objection.
12 A. Yes.
13 Q. Okay. Do you know how they know each
14 other?
15 MR. VOIGT: Same objection.
16 A. And I don't know how -- how he first came
17 to know Maria.
18 Q. Okay. Do you know if Secretary Husted
19 was informed of this e-mail?
20 MR. VOIGT: Objection, calls for
21 speculation.
22 A. I don't know if Jack shared it with him,
23 but I would doubt that Jack shared it with him.
24 Q. Okay. Why do you doubt that?

1 A. Because, like I said, the Secretary was
2 out --
3 MR. VOIGT: To the extent you are going
4 to go into any communications that Mr. Christopher
5 had with the Secretary, I don't want you to include
6 that in your answer.
7 A. My recollection is the Secretary was out
8 of town at the same time I was out of town.
9 Q. Okay. Now, did -- was this -- was this
10 e-mail ever forwarded to you?
11 A. I think -- like I said before, I think
12 this is the first time I have seen this e-mail.
13 Q. Okay. And, now, in the second body of
14 the paragraph -- sorry, second paragraph of the body
15 of the e-mail, the one that starts "Franklin County
16 Petition (attached)."
17 A. I see that.
18 Q. Actually let me back up. So you see the
19 top line of the e-mail says "Jack - thanks for taking
20 a couple of minutes to discuss a few questions we had
21 earlier today." I presume that refers to that
22 December 23 phone call that's on the interrogatory.
23 It says "We thought it might be helpful to highlight
24 with examples of the petitions issues we are

1 wondering about." And then it goes into some issues.
2 So this first paragraph, "Franklin County
3 Petition (attached)," it appears to be the first
4 sentence I've seen where Chris Slagle is identifying
5 petitions with blacked out signatures. The last
6 sentence of that paragraph, it states "Of the 3,400
7 petitions we have reviewed in multiple counties,
8 nearly 64 percent of the petitions have this type of
9 issue included."
10 A. I see that.
11 Q. Are you aware, did the Secretary of
12 State's Office verify that number?
13 A. I don't think we did a quantitative
14 analysis of those petitions in that regard.
15 Q. Okay. Did you do another type of review?
16 MS. SFERRA: I didn't hear your question.
17 Q. You said you didn't do a quantitative
18 type of review. Is there another type of review?
19 MR. VOIGT: Objection, vague.
20 A. So, no, we did not do any other -- any
21 other type of review.
22 Q. Okay. Now, the next paragraph, this --
23 it says "The second troubling issue is where the
24 circulator attests in the circulator statement to

1 having witnessed 28 signatures, but there are" --
2 excuse me. I think it is a typo. "There is only 1
3 signature is included actually on the petition."
4 A. I see that.
5 Q. The second to last sentence says that "Of
6 the 3,400 petitions we have checked as of today, this
7 issue of attesting to 28 signatures while only having
8 1 signature actual appears on 50 percent of the
9 petitions. Across all counties." Did the Secretary
10 of State's Office verify that?
11 MS. SFERRA: Objection. You are asking
12 about these 3,400 petitions?
13 MR. CLINGER: Yeah.
14 A. We did not.
15 Q. Okay. And do you know -- okay. So doing
16 the math of that sentence -- it says 3,400 petitions,
17 50 percent have this issue where it attested 20
18 signatures while only having 1 signature. So doing
19 the math that would be roughly 1,700 part-petitions
20 is what they're representing; is that correct? Is it
21 correct that's what they are representing?
22 A. I don't know what they are representing
23 but that seems to be the mathematical result of that
24 statement.

1 Q. Okay. And, now, the last paragraph of
2 this e-mail, it states "thought it might be helpful
3 to have an example of two of what we are seeing as
4 you continue internal discussions. Thanks Jack -
5 look forward to discussing more tomorrow." So this
6 was the day after the petition was filed. What
7 internal discussions would that be referring to?
8 A. To my knowledge there were --
9 MR. VOIGT: To the extent -- are you
10 asking for communications that the Secretary's Office
11 had with its internal legal counsel?
12 MR. CLINGER: No. I am referring to
13 Chris Slagle's e-mail. He seems to be aware of
14 internal discussions. I am asking what those are.
15 MR. VOIGT: You are asking about the last
16 part, "as you continue internal discussions."
17 MR. CLINGER: Yeah.
18 MR. VOIGT: Okay. To the extent -- to
19 the extent your answer includes privileged
20 communications related to counsel, I don't want you
21 to include the substance of any of those
22 communications. To the extent you understand the
23 question too.
24 A. So when Mr. Slagle says -- you know, uses

1 the phrase "as you continue internal discussions," I
2 don't know what -- what he was talking about. But to
3 my knowledge there were no -- there were no internal
4 communications, internal discussions, on this subject
5 matter at this time.
6 Q. Okay. And so you'll see actually the
7 last line of that e-mail says "look forward to
8 discussing more tomorrow."
9 A. I see that.
10 Q. Now, if you look at the interrogatory, we
11 are now third from the top on page 6, December 24 --
12 oh, no, excuse me, second from the top, "On or about
13 December 24, 2015, phone call." I presume that --
14 this phone call you are listed on it as somebody who
15 was on the phone call. Do you remember that phone
16 call?
17 A. I do.
18 Q. Did you take this call while you were on
19 vacation?
20 A. Yes.
21 Q. Okay. Do you remember what time this
22 call was?
23 A. I don't remember specifically, no.
24 Q. Do you typically take work calls while

1 you are on vacation?
2 A. Much to my wife's chagrin, yes.
3 Q. Do you know whose idea the phone call
4 was, who initiated it?
5 A. I think answering that would probably
6 divulge attorney-client privileged information.
7 Q. Okay. Do you know when the call was
8 scheduled?
9 A. I don't remember for certain. I think it
10 was late morning, but I don't remember for sure.
11 Q. Okay. Like day of?
12 A. Because it was Christmas Eve day.
13 Q. And how did you learn that the call was
14 going to take place?
15 MR. VOIGT: Objection, asked and answered
16 and the witness testified that it calls for
17 privileged information.
18 A. Same answer.
19 Q. Okay. Was Secretary Husted invited to
20 join the call?
21 A. He was not.
22 Q. And why not?
23 MR. VOIGT: Objection, irrelevant and
24 based on prior answers, it may call for privileged

1 information.
2 A. So I would say ordinarily it's the most
3 efficient use of the Secretary's time to have staff
4 on any subject gather all of the information that can
5 be gathered before presenting to the Secretary. And
6 it was not necessary at this time to inform the
7 Secretary.
8 Q. And so reading this response to the
9 interrogatory, it says "phone call between
10 Christopher Slagle, a partner at Bricker & Eckler and
11 other employees of Bricker & Eckler." Do you know
12 who the other employees were?
13 A. I don't remember for certain.
14 Q. Okay. Do you know, I guess, who would
15 know who else was on the call?
16 A. Jack might remember but I don't remember
17 for certain --
18 Q. Okay.
19 A. -- who was on the call.
20 Q. And then so from the Secretary of State's
21 Office it was Jack Christopher, yourself, Craig
22 Forbes, and Carolyn Kuruc were on the call?
23 A. Yes.
24 Q. Do you recall anyone else from the

1 Secretary of State's Office being on the call?
2 A. No.
3 Q. No. I'm sorry, no in that nobody else
4 was on the call from the Secretary of State's Office?
5 A. Based on what we said here, I'm confident
6 there was no one else on the call.
7 Q. Okay. And do you recall discussing with
8 Mr. Slagle the issue of struck out signatures?
9 A. I recall that Chris presented their
10 concerns about kind of what I will call the two
11 categories of petitions, one being the consistent use
12 of the same form of interlineation across multiple
13 part-petitions in different counties and also the
14 concern about the circulator statement showing a
15 number of signatures that did not match the number of
16 signatures actually on the part-petition.
17 Q. Okay. And did you discuss the Secretary
18 of State's instructions with respect to those two
19 issues?
20 A. No, I don't recall that we discussed
21 anything about the Secretary's instructions to the
22 board. I think it was just Chris presenting, much
23 like it appears that he did in this e-mail of the
24 23rd at 7:07 p.m. to Jack, you know, discussing those

1 concerns.
2 Q. Okay. Did Mr. Slagle discuss the
3 Secretary of State's authority to order a re-review
4 of the petitions at this time?
5 A. I don't remember Chris ever bringing that
6 up.
7 Q. Okay. Would anybody else from Bricker &
8 Eckler have -- was anybody else from Bricker & Eckler
9 speaking during the call?
10 A. Not that I remember.
11 Q. Okay. Was the Secretary of State's
12 authority to withhold the transmission of the
13 proposed law to the General Assembly, was that
14 discussed on the call?
15 A. Not that I recall.
16 Q. Okay.
17 MR. VOIGT: Objection to the
18 characterization of the question.
19 Q. Did you take notes during the call?
20 A. No.
21 Q. What's -- I mean, so after the call, was
22 there then -- what happened next? Was there
23 follow-up among each other?
24 MR. VOIGT: Objection, vague.

A. My recollection is that after the call, I had a conversation with -- with Jack Christopher, a phone call.

Q. Was anybody else on that call?

A. I don't remember for sure.

MR. VOIGT: No. I move to strike the last answer, and the content of discussions with counsel are privileged including who may have been part of that communication. So I instruct the witness not to answer -- not to provide privileged information in his answers.

MR. CLINGER: Okay.

Q. Were there any other -- were there any e-mails, any follow-up between any Secretary of State staff about the call?

A. Not that I recall.

Q. Were there any meetings, follow-up meetings, about this?

A. About the --

Q. About the call, about the contents of the call.

A. Well, I was still -- I was still on vacation, so I think the only thing I would have had would be phone conversations with counsel.

1 Q. Okay. And earlier you mentioned that
2 before you present an issue to Secretary Husted, you
3 are trying to gather information. After this call,
4 did you then present the issue to Secretary Husted?
5 A. At some point after the call, but I don't
6 remember what the date was, there was -- there was a
7 conversation that I had with the Secretary counsel.
8 MR. VOIGT: Okay. That's fine.
9 Q. Now, in the interrogatories flipping to
10 page 5, the second to last bullet point is a
11 December 30 e-mail from Chris Slagle, 5:02 p.m.
12 A. Can I take this real quick?
13 MR. CLINGER: Yeah. Off the record.
14 (Recess taken.)
15 Q. Go back on the record.
16 So on page 5 of the interrogatory, second
17 to last bullet point, it refers to a December 30
18 e-mail from Chris Slagle. Prior to this e-mail did
19 that conversation with Secretary Husted you referred
20 to, did that -- did that conversation take place
21 before the e-mail?
22 A. My recollection is that conversation did
23 not take place before this e-mail.
24 Q. Okay. Now, I am going to direct your

1 attention to that e-mail. It will be Exhibit 9.
2 (EXHIBIT MARKED FOR IDENTIFICATION.)
3 MR. VOIGT: What are we on, 9?
4 MR. CLINGER: Yeah.
5 Q. And attached to the e-mail is also the --
6 an attachment to the e-mail. It's also referred to
7 in the interrogatories in the bullet point
8 immediately above the bullet point about the e-mail.
9 A. I see that.
10 Q. And have you seen this e-mail before?
11 A. I don't know that I saw the e-mail, but I
12 saw the letter.
13 Q. Okay.
14 A. The attachment.
15 Q. When did you see the letter, first see
16 the letter?
17 A. I don't know exactly, but I think it was
18 either on Wednesday, the 30th, or Thursday, the 31st.
19 Q. Okay. Were you back from vacation at
20 that point?
21 A. Yes.
22 Q. Now, turn to the letter, the first
23 sentence, "On behalf of our client, PhRMA." Was this
24 the first time that Chris Slagle identified himself

1 as representing PhRMA?
2 A. I don't remember whether he specifically
3 identified them in the -- in the conference call that
4 I was on as representing PhRMA specifically, so I
5 guess the first time we -- that we knew specifically
6 that the client was PhRMA.
7 Q. The letter was the first time?
8 A. Yes.
9 Q. Okay. And, now, in that same paragraph,
10 last sentence says "We would appreciate your review
11 and instruction to the Boards of Elections regarding
12 two statistically and legally significant issues." I
13 believe they are referring to the two categories that
14 we have been discussing. The paragraph that starts
15 with No. 1 "False Circulator Affidavits," it says "A
16 sizable percentage of the part-petition contain false
17 circulator affidavits because they attest, under
18 penalty of election falsification, to having
19 witnessed significantly more signatures than actually
20 appear on the actual part-petition." It goes on in
21 that same paragraph to say "See attached Exhibit A
22 listing the 6,435 part-petitions that include this
23 type of false certification."
24 Did the Secretary of State's Office

1 verify that figure?
2 MR. VOIGT: Objection, calls for
3 speculation and it may call for privileged
4 information. If you are able to answer the question
5 without disclosing privileged information, you can.
6 A. To my -- to my knowledge, I don't -- I'm
7 not aware and I don't believe that anybody -- similar
8 to what I testified earlier about the other numbers
9 that Chris had provided, we did not conduct a review
10 to see if those numbers were accurate.
11 Q. Okay. And you see the middle sentence
12 there, three sentences, "There appears to have been a
13 systemic, widespread practice of falsifying the
14 circulators' attestation across the state and by
15 numerous circulators who declared under penalty of
16 election falsification that they were the circulator
17 of 'the foregoing petition paper including 28
18 signatures...' although the part-petitions contain
19 only one or two signatures." And then it list -- and
20 then it states again their exhibit contains 6,435
21 part-petitions that include this type of false
22 certification.
23 Would it surprise you if Exhibit A
24 actually only included 460 part-petitions that

1 contained like 1 or 2 signatures attesting the 28
2 signatures and not 6,435?
3 MR. VOIGT: Objection.
4 A. I don't think anybody in our office
5 looked -- you know, compared the exhibit to the
6 actual part-petitions so.
7 Q. Okay. And did -- so when the office
8 received this letter and you read it, the part about
9 6,435 part-petitions included this type of
10 falsification, did you believe that was true?
11 MR. VOIGT: Objection, form.
12 A. So I don't think we -- I think we were
13 more concerned not about the quantity but whether
14 there appeared to be based on the allegations an
15 irregularity. You know, the irregularity in and of
16 itself is troubling regardless of the total number of
17 irregularities that there were alleged to be.
18 Q. Okay. Now moving on to page -- I guess
19 page 2 of the letter, page 3 of the packet.
20 A. Got it.
21 Q. Under the paragraph that starts with the
22 No. 2, "Altered Petitions," it states that "A review
23 of the part-petitions also reveals that a significant
24 number of petitions appear to have been altered by

1 someone other than the circulator or the signer.
2 Attached at Exhibit B is a comprehensive list of the
3 5,598 part-petitions which contain signatures that
4 were clearly stricken by someone other than the
5 circulators or signer." Did the office verify that
6 claim?
7 MR. VOIGT: Objection to the extent it
8 calls for privileged information.
9 A. And the same as my previous answer, we
10 didn't conduct a review of the quantity.
11 Q. Okay. Now, so after this letter was
12 received, that's when you had your conversation with
13 Secretary Husted about the issues?
14 A. I don't remember the -- the specific
15 date, but it was after we received this letter.
16 Q. Okay. And so this came December 30 at
17 5:02 p.m. so the next day was New Year's Eve. Was
18 the office open on New Year's Eve?
19 A. The office was open.
20 Q. Okay. And then Friday would have been
21 New Year's Day. Was the office open on --
22 A. The office was closed on the 1st.
23 Q. Okay. And so would that -- do you
24 think -- do you recall that conversation happening on

1 December 31?
2 A. I don't remember specifically when the
3 conversation with the Secretary took place, but it
4 was after receiving this letter and then before we
5 issued the directive --
6 Q. Okay.
7 A. -- so.
8 Q. Did that conversation take place inside
9 the office?
10 A. It did.
11 Q. Okay. And so what was -- do you recall
12 Secretary Husted's reaction to this letter and the
13 evidence that you had gathered to present to him?
14 MR. VOIGT: Hold on. Was counsel
15 present?
16 THE WITNESS: Yes.
17 MR. VOIGT: Okay. I instruct you not to
18 answer that question.
19 Q. Did the office provide a response to
20 Chris Slagle or anybody else at Bricker & Eckler
21 about the issues identified in this letter?
22 A. Not that I know of.
23 Q. Okay.
24 A. I don't think we sent like a reply letter

1 or anything like that.
2 Q. Okay. And by this point, by December 30,
3 5:02 p.m., had anybody else contacted the Secretary
4 of State's Office about the petition?
5 A. I'm sorry, by the 30th?
6 Q. Yeah.
7 A. I think probably the only other contact
8 we had had from -- would be from petitioners asking
9 for the status updates on the certification.
10 Q. Okay. And so you stated already that you
11 don't recall the office ever verifying the numbers
12 identified in this letter. Did the office perform
13 any sort of independent review of the petition
14 relating to these two issues?
15 MR. VOIGT: Objection to the extent it
16 calls for privileged information.
17 A. Yeah, and so the answer to that would
18 be -- would be privileged from an attorney-client
19 privilege.
20 Q. Okay. Did any Boards of Elections --
21 through this process did any Boards of Elections
22 contact the office about either of these two issues?
23 A. No, not that I recall.
24 Q. Okay. And so would you agree that

1 Bricker & Eckler's letter and the communications are
2 only communications pertaining to these two issues
3 that the Secretary of State's Office received?
4 MR. VOIGT: Are you referring to this
5 specific time period?
6 MR. CLINGER: Yeah.
7 MR. VOIGT: In other words, before there
8 was an additional review.
9 MR. CLINGER: Yeah.
10 MR. VOIGT: That's what you are referring
11 to.
12 MR. CLINGER: Yeah.
13 A. And, yes, I think the letter and the
14 inquiries from Bricker were the only inquiries we had
15 on these subjects about the petitions.
16 Q. Okay. This is Exhibit 10. Those are
17 kind of separate exhibits. I would like to draw your
18 attention to what we are marking as Exhibit 10 and
19 11. 11 being the retention agreement, 10 being the
20 e-mail.
21 (EXHIBITS MARKED FOR IDENTIFICATION.)
22 MR. VOIGT: Exhibit 10 is the retention
23 agreement?
24 MR. CLINGER: I'm sorry. So 10 is the

one that starts with Mike DeWine, and the retention agreement is No. 11.

MR. VOIGT: Thank you.

Q. (By Mr. Clinger) So Exhibit 10, this is an e-mail -- or, yeah, e-mail, letter, from the Attorney General's Office from Michael J. Hall, Director of Outside Counsel, to Maria Armstrong we discussed earlier, a partner at Bricker & Eckler. It states that Bricker & Eckler -- dated August 26, 2015. "Bricker & Eckler has been appointed Special Counsel to represent Ohio Secretary of State in a mandamus action regarding State ex rel. Walker v. Husted. The budget" -- next paragraph "The budget for this matter is $20,000."

Next paragraph down, last sentence, says "This assignment will terminate on" -- "This assignment will terminate June 30, 2016, unless terminated earlier by the Attorney General's Office." Jack Christopher was also cc'ed on this.

The next document, next page, is an amended assignment letter, again from Michael J. Hall, Director of Outside Counsel, and it contains a -- an attachment to it that is a summary of the assignments that have been assigned to Bricker &

1 Eckler. And, again, it just lists Secretary of
2 State, State ex rel. Walker, et al. v. Husted, budget
3 $35,000, and the budget had been increased by $15,000
4 at that point. And, again, it says "This assignment
5 will terminate June 30, 2016, unless terminated
6 earlier by the Attorney General's Office."
7 And then in Exhibit 11 you see this is a
8 retention agreement. If you go to the very last
9 page, you will see that it was signed by Michael Hall
10 and Maria Armstrong on June 22, 2015. The footer
11 notes it was a retention agreement, "Special Counsel
12 Retention Agreement Fiscal Year 2016 & Fiscal Year
13 2017." So would you agree that Bricker & Eckler was
14 under contract to serve as special counsel to the
15 Secretary of State's Office at the time that they
16 contacted you about the petition?
17 MS. SFERRA: Objection.
18 MR. VOIGT: Hold on a second. I object
19 to the characterization of the document. It speaks
20 for itself and it calls for speculation and you have
21 not established a showing of personal knowledge
22 related to this. If you are able to answer the
23 question, you can.
24 A. So I don't know -- I don't think I am in

1 a position to testify about the status of a contract
2 between the Attorney General's Office and the Bricker
3 & Eckler law firm. The Attorney General's Office did
4 appoint Bricker to represent the Secretary in Walker
5 v. Husted; and as I recall, the Ohio Supreme Court
6 issued that decision in probably August or September
7 of 2015. And so certainly from my perspective as
8 Chief of Staff, the representation of Bricker in that
9 matter was concluded. Now, whether or not it was
10 concluded for purposes of the Attorney General's
11 Office's contract with Bricker for bookkeeping
12 purposes, that I can't say, but for the purpose of
13 our office, the cause was over and -- and so -- in
14 our office's view that representation was concluded.
15 Q. Okay. Now, was the fact that -- was this
16 fact that they had served as special counsel
17 discussed at any point while they were asking about
18 the two issues in the petition?
19 A. No.
20 Q. Okay. Has it come up since then?
21 MR. VOIGT: Objection to the extent you
22 are asking for -- to the extent your answer would
23 involve communications with counsel.
24 A. I think it's only come up in the context

1 of this litigation, this question, and I think you
2 guys may have done a public records request.
3 Q. And do you know if Secretary Husted was
4 aware?
5 MR. VOIGT: Calls for speculation.
6 A. Aware of?
7 Q. That Bricker & Eckler had served as
8 special counsel recently and was now asking the
9 Secretary to take official actions.
10 MR. VOIGT: Irrelevant and calls for
11 speculation.
12 A. So I know that the Secretary knew that
13 the office had engaged special counsel from Bricker
14 in the Walker v. Husted matter in the summer of '15.
15 I'm confident that that past representation was
16 irrelevant to the Secretary in the context of the
17 questions about the petition.
18 Q. What do you mean it was irrelevant to the
19 Secretary? Like he deemed it irrelevant?
20 A. That it didn't matter who the questions
21 about the -- who was pointing out the irregularities
22 in the petition.
23 Q. Okay.
24 A. That it was Bricker was of no import to

1 the Secretary but that it was the fact that there
2 were irregularities on the petition.
3 Q. Okay. And so, now, I am going to direct
4 your attention to Directive 2016-01 which will be
5 Exhibit 12.
6 (EXHIBIT MARKED FOR IDENTIFICATION.)
7 Q. And who drafted this directive?
8 A. So I did an initial draft for legal
9 counsel to review, and then attorneys reviewed it
10 before it was presented to the Secretary.
11 Q. So were there multiple drafts?
12 A. I don't know how many different
13 iterations the attorneys went back and forth with
14 but.
15 Q. But there were multiple drafts?
16 MR. VOIGT: Objection. If you are
17 talking about multiple drafts for the content of what
18 attorneys are doing reviewing and preparing this,
19 then I would instruct the witness not to divulge
20 those privileged and work product procedures. If you
21 can't answer the question, just say "I can't answer
22 the question."
23 A. So what's the question again, if you
24 don't mind?

1 MR. CLINGER: Yeah. Can you read it
2 back?
3 (Record read.)
4 MR. VOIGT: Let me rephrase my objection,
5 reiterate my objection. If there are attorneys
6 involved in drafting this and there are drafts that
7 are being circulated among attorneys, that's
8 information that is privileged and should not be
9 included in an answer. If you are not able to answer
10 the question, then -- please do not answer the
11 question divulging any privileged information. If
12 you are able to answer it without divulging
13 privileged information, you can do so.
14 A. I can't answer without divulging
15 attorney-client privileged information.
16 Q. Okay. So the directive I am looking at
17 right now, is this verbatim the same text you
18 initiated in your initial draft?
19 A. No.
20 Q. How many drafts did you write?
21 A. I did an initial draft for attorney
22 review and then the attorneys do what they do and
23 then we had a final draft.
24 Q. Okay. When did your -- when did the

1 Secretary of State's Office decide to order the
2 re-review?
3 A. I don't remember the precise date, but it
4 was before this directive was issued, and it was
5 after -- in conversation with the attorneys from the
6 office.
7 Q. Okay. Whose idea was it -- was it your
8 idea to order the re-review?
9 A. I think answering that question would
10 probably divulge attorney-client privileged
11 information.
12 Q. Did your initial draft of the directive
13 contain language ordering the re-review?
14 A. Yes, it did.
15 Q. Was there a debate in the office about
16 whether to order the re-review?
17 MR. VOIGT: Objection. Clearly based on
18 prior answers that the witness has provided, that's
19 privileged. Providing an answer to that would elicit
20 privileged information.
21 MR. CLINGER: Are you instructing him not
22 to answer?
23 MR. VOIGT: Correct.
24 Q. (By Mr. Clinger) Given that the boards

1 had certified a sufficient number of valid signatures
2 at that point, was there any discussion as to when
3 the re-review would move the petition below the
4 threshold?
5 MS. SFERRA: I am going to object to the
6 form of the question in that it assumes something
7 that there has not been any foundation laid for.
8 MR. VOIGT: I object. Can you please
9 read the question again.
10 (Record read.)
11 MR. VOIGT: Object. I object to the
12 question because it's an unfair characterization and
13 that it includes an assumption of a legal conclusion.
14 And to the extent that the answer would involve
15 communications with counsel, I instruct the witness
16 not to answer -- not to divulge privileged
17 information. If you can answer the question without
18 discussing privileged information, you are welcome to
19 do so.
20 MR. CLINGER: I will just withdraw the
21 question.
22 MR. VOIGT: Okay.
23 Q. (By Mr. Clinger) Now, going back to that
24 Directive 2015-40 that provided the instructions for

1 the original review, it asks that the -- is ordered
2 or required that the boards submit their results of
3 the review to the office by December 30 at noon. Do
4 you recall what those boards had reported?
5 A. I don't remember the specific number, but
6 my recollection is that they reported enough, a
7 sufficient number of valid signatures in a sufficient
8 number of counties.
9 Q. Okay. And would you agree that the
10 Secretary did not transmit the proposed law to the
11 General Assembly on its first date of session in
12 2016?
13 A. I don't remember what day we transmitted
14 it to the General Assembly.
15 Q. Okay. All right. Do you know what --
16 I'm sorry if you just stated this answer. Do you
17 know what date was the General Assembly's first day
18 of session?
19 A. I don't.
20 Q. Okay. Do you recall any discussion about
21 sending the package to the General Assembly on its
22 first day of session?
23 MR. VOIGT: To the extent your answer
24 divulges privileged communication, I instruct you not

1 to answer the question. If you can answer it without
2 divulging privileged information, you can answer.
3 A. And based on those instructions, I can't
4 answer the question.
5 Q. Okay. Earlier you said you recall the
6 Fresh Start Act initiated petition.
7 A. I think you prompted me and that helped
8 me remember.
9 Q. Yes. Do you recall what date that
10 proposal was transmitted to the General Assembly?
11 A. I don't actually recall that we -- that
12 we did transmit it, so I don't remember what date it
13 was transmitted, if it was.
14 Q. So I will direct your attention toward
15 the Exhibit 13.
16 (EXHIBIT MARKED FOR IDENTIFICATION.)
17 Q. And that is the transmittal letter from
18 the Secretary for the Fresh Start Act to the General
19 Assembly?
20 A. It appears to be, yes.
21 Q. And what date does it say it was
22 transmitted?
23 A. January 5.
24 Q. Okay. Would you agree that was

1 transmitted on the first day of the General Assembly?
2 MR. VOIGT: Objection. He has already
3 testified he doesn't know when the General Assembly
4 started its session.
5 A. Correct. Correct. My earlier answer was
6 I don't know when the General Assembly's first day of
7 session was.
8 Q. Okay. Would anyone in your office know
9 when was the first day of the General Assembly's
10 session in 2016?
11 A. I think the General Assembly decides
12 its -- its sessions. But Jack Christopher in our
13 office having also been former counsel to the
14 Republican Caucus and the Ohio House of
15 Representatives would probably have a better idea
16 than I would.
17 Q. Okay. Anybody else?
18 A. I would say Jack.
19 Q. Okay. And so would you agree that the
20 petition proposing the Drug Price Relief Act was not
21 transmitted to the General Assembly on the same day
22 that the Fresh Start Act was transmitted to the
23 General Assembly?
24 A. That's correct.

1 Q. Okay. And so is it your understanding of
2 Directive 2016-01 that the petition would not be
3 transmitted to the General Assembly until the
4 re-review was completed?
5 A. So it would be my understanding that as a
6 result of this directive, that the petition would not
7 be transmitted to the General Assembly until the
8 Secretary had determined the quote -- had determined
9 and certified the sufficiency of the petitions. It's
10 on page 3.
11 Q. Okay. Now, I would like to draw your
12 attention to Exhibit 14.
13 (EXHIBIT MARKED FOR IDENTIFICATION.)
14 Q. And so these are correspondences from
15 Secretary Husted's office and petitioners proposing
16 initiated statute regarding dog auctions that was
17 filed with the Secretary's office on December 22,
18 2011. You see this January 3 letter.
19 A. Yes.
20 Q. States that "The petition purports to
21 contain the number of signatures required by law and
22 those signatures will be verified by January 13,
23 2012." And it states "As required by Ohio
24 Constitution Article II, Section 1b, I am

1 transmitting to the General Assembly a part-petition
2 including the full text of the proposed initiated
3 statute." And that letter is January 3 so it was a
4 proposed law regarding a dog auction statute that was
5 transmitted to you on January 3. And according to
6 this letter, that the signatures would be verified by
7 January 13, 2012, which was 10 days after this
8 letter.
9 The next page, the letter, January 10,
10 2012, and you'll see towards the bottom an indented
11 paragraph -- well, go through all this actually. So
12 Secretary Husted certified "that petitioners
13 submitted a total of 11,209 valid signatures on
14 behalf of the referendum and that signatures from 51
15 counties meet or exceeded 1-1/2 percent of the total
16 number of votes cast for the office of governor in
17 the respective counties at the last gubernatorial
18 election. The requirements of Article II, Sections
19 1b and 1g, of the Ohio Constitution are thereby not
20 fully satisfied." And then it states that "The
21 Committee shall be allowed ten additional days after
22 the date of this notification for the filing of
23 additional signatures to the petition."
24 And this final letter is dated January 27

1 and then this indented paragraph recaps everything
2 again. The petition was filed at the office on
3 December 22, 2011, and supplemented by petitions on
4 January 20, 2012. Skipping to the middle of the next
5 paragraph -- next sentence "hereby certify that
6 petitioners have submitted a total of 118,115 valid
7 signatures on behalf of the initiated statute and
8 that signatures from 51 counties meet or exceed 1-1/2
9 percent of the total number of votes cast for the
10 office of governor in the respective counties at the
11 last gubernatorial election. Accordingly, the
12 requirements of Article II, Sections 1b and 1g, of
13 the Ohio Constitution are thereby fully satisfied."
14 So this initiated statute was transmitted
15 to the General Assembly on January 3, 2012, but the
16 petition was not actually certified by the Secretary
17 until January 27, 2012; is that correct?
18 A. Correct.
19 Q. Would you agree -- would you -- I guess
20 would you agree this is contingent certification?
21 Let me rephrase that.
22 So it was transmitted to the General
23 Assembly pending the certification.
24 MR. VOIGT: Is that a question?

1 Q. I guess would that be a fair
2 characterization of what happened with this petition?
3 MR. VOIGT: Objection. The document
4 speaks for itself.
5 A. I don't know if that's a fair
6 characterization or not. I mean, it was transmitted
7 on the 3rd and was not ultimately certified until the
8 27th.
9 Q. Okay. So would you agree that it was
10 transmitted -- the proposed law was transmitted to
11 the General Assembly before the signatures had even
12 been verified?
13 A. Yes.
14 Q. Okay. And then you'll agree the Drug
15 Price Relief Act was not transmitted to the General
16 Assembly because of the re-review, pending the
17 re-review? That it would only be transmitted after
18 verification from the re-review?
19 A. It was transmitted after the re-review
20 was completed.
21 Q. Okay. So why was the Drug Price Relief
22 Act petition treated different than the dog auction
23 petition?
24 MR. VOIGT: To the extent your answer

1 requires you to divulge privileged communication, I
2 instruct you not to include those in your answer. If
3 you are able to answer the question without divulging
4 privileged information, you are able to do so.
5 A. And I can't answer that question without
6 divulging attorney-client privileged information.
7 Q. Would you agree the Drug Price Relief Act
8 petition was treated differently than the dog auction
9 petition?
10 MR. VOIGT: Objection, calls for legal
11 conclusion.
12 A. And I would say that I don't think they
13 were treated differently, but one was transmitted
14 before the total number of signatures was
15 ascertained.
16 Q. Okay. How is that not different?
17 MR. VOIGT: Objection, calls for a legal
18 conclusion.
19 A. So I think the only thing that's
20 different is the dates. I think the term treatment
21 is where I would disagree, but the result is that
22 they were transmitted on different dates.
23 Q. Okay. Now, turning back to Exhibit
24 2016-01.

1 MS. SFERRA: What number was that?
2 MR. CLINGER: I'm sorry, Exhibit 12.
3 Q. The very first sentence in the first
4 paragraph under "Background," it states that "It has
5 come to this Office's attention that several boards
6 of elections have approved part-petitions on which it
7 appears that a person other than the signer of the
8 petition or the circulator may have, contrary to Ohio
9 law, removed one or more signer's name from the
10 part-petition prior to it being filed with the
11 appropriate election official (i.e., striking a
12 signature)." When it says "It has come to this
13 Office's attention," would you agree that's referring
14 to the letter from PhRMA -- or from Bricker & Eckler
15 on behalf of PhRMA?
16 A. Yes, yes.
17 Q. And then when it stays "that several
18 boards of elections have approved part-petitions," do
19 you know how many boards approved part-petitions with
20 that issue?
21 A. I do not.
22 Q. Would it surprise you to learn that
23 nearly all boards of elections accepted
24 part-petitions with those issues?

1 MR. VOIGT: Objection, asked and
2 answered.
3 A. I don't know. I don't know the number
4 one way or the other.
5 Q. And, now, on page 2 of the directive, the
6 first paragraph, it says "Reviewing a large
7 cross-section of part-petitions from across the state
8 has revealed that a strikingly similar method of
9 eliminating a petition signer's name exists across an
10 alarmingly large number of part-petitions, thus
11 raising a question of fact whether someone other than
12 the petition signer or circulator may have illegally
13 removed a petition signer's signature from
14 part-petitions." When it says "Reviewing a large
15 cross-section of part-petitions," is that review
16 referring to the review conducted by Bricker & Eckler
17 in the PhRMA letter?
18 MR. VOIGT: Hold on. If that requires
19 you to divulge privileged information, then I would
20 instruct you not to answer the question.
21 A. Can I have 45 seconds to talk to counsel?
22 Q. I have got a pending question.
23 MR. VOIGT: If you can't answer the
24 question without divulging privileged information,

1 then please do not answer the question.
2 A. Then given that I would say I can't
3 answer the question.
4 Q. Okay. Now, earlier you stated that you
5 are not aware the Secretary of State's Office
6 conducted any sort of independent review of the Drug
7 Price Relief Act petitions?
8 A. So I think what my testimony was about
9 specific to the numbers put forward in Bricker's
10 letters that we did not do the word I initially used
11 was a quantitative evaluation of those. Then you
12 asked me a later question in which my answer was that
13 I couldn't respond to that because of the
14 attorney-client privilege.
15 Q. Now, did you personally conduct a review
16 of large cross-sections of petitions across the
17 state?
18 A. I did not.
19 Q. I guess my question to you, Mr. Voigt, is
20 if you're saying -- or, I'm sorry, Mr. Damschroder.
21 If you are saying that the directive says there was a
22 review -- says "Reviewing a large cross-section of
23 part-petitions from across the state," I mean, did a
24 review take place? Yes or no.

1 MR. VOIGT: If that review was conducted
2 by counsel or implicates work product or privileged
3 information, the witness can't testify to that.
4 MR. CLINGER: It's in the public
5 document. Is that not waiving a review did take
6 place?
7 MR. VOIGT: This -- the statement is what
8 it is. I mean, the underlying bases for that if they
9 are privileged, that doesn't remove the privileged
10 aspect of a review. I put -- I write sentences in
11 briefs all the time. Is my work product associated
12 with coming up with the sentences that I put in the
13 brief suddenly waived because I wrote a sentence in a
14 brief? No.
15 MR. CLINGER: All right.
16 MR. VOIGT: He testified that he is not
17 able to answer that question -- that line of
18 questioning without divulging privileged information.
19 MR. CLINGER: I am just seeking
20 information on what exactly you are claiming
21 privilege to.
22 Q. (By Mr. Clinger) Now, the sentence also
23 says there was -- that this review, which may or may
24 not have taken place, "revealed that a strikingly

similar method of eliminating a petition signer's name." And it says "strikingly similar." What's that compared to? What's that in reference to?

MR. VOIGT: Objection, vague, and it's -- the document speaks for itself. It's self-explanatory. If you are able to add any additional information without divulging privileged information, you can.

A. So I'm going to say that the answer to that question would -- would be -- would provide attorney-client privileged information to answer that question.

Q. Okay. Did you draft this paragraph?

A. I don't remember if I drafted that specific paragraph or not.

Q. Okay.

A. And if we could take a moment so I could talk with counsel, that would be helpful.

MR. CLINGER: Yeah.

(Recess taken.)

MR. VOIGT: So, Mr. Clinger, some recent questions have been calling for privileged information, and so it's been difficult for the witness to answer that. Upon discussion the witness

1 is able to provide a response I think to the
2 questions that you have been giving in such a way
3 that does not divulge privileged information. And so
4 with that I am going to ask the witness to go ahead
5 and provide the nonprivileged information that he can
6 provide in response to your recent questions.
7 THE WITNESS: And so before Directive
8 2016-01 was issued, I personally saw part-petitions
9 that evidenced the same manner of interlineation by
10 big black Sharpie or big black marker across multiple
11 part-petitions in different counties and
12 part-petitions that had where the circulator said
13 that they witnessed more -- more signatures than were
14 on the petition by significant numbers.
15 And that the part that I can't talk about
16 because of the privilege is how I became aware of
17 those but I did personally see examples of these two
18 irregularities, the similar interlineation across
19 counties and the overstatement of circulators --
20 signatures on circulator statements before the
21 directive was issued.
22 Q. Okay. How many examples would you say
23 you looked at?
24 A. I don't remember the exact number, but it

1 was -- it was several. They were not the ones that
2 Bricker had provided, and it was enough that I felt
3 very comfortable with this course of action.
4 Q. Okay. Would you say it was like more
5 than 10 for each issue?
6 A. It was probably around that number.
7 Q. Okay. Okay.
8 MR. VOIGT: Do you want to break now for
9 lunch or do you have -- is this a good time?
10 MR. CLINGER: Yeah.
11 MR. VOIGT: Good?
12 MR. CLINGER: Yeah.
13 (Thereupon, at 12:29 p.m., a lunch recess
14 was taken.)
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1 Tuesday Afternoon Session,
2 May 31, 2016.
3 - - -
4 MR. CLINGER: Back on the record.
5 (Record read.)
6 - - -
7 MATTHEW DAMSCHRODER
8 being by me previously duly sworn, as hereinafter
9 certified, deposes and says further as follows:
10 CROSS-EXAMINATION (Continued)
11 By Mr. Clinger:
12 Q. Point of clarification to back on
13 Directive 2016-01 on page 2, when it says "Reviewing
14 a large cross-session of part-petitions," is that the
15 review you are referring to? The review that you
16 conducted, is that what's being referred to here?
17 A. I would say that the -- what I -- what I
18 saw, the examples that I saw, were a part of a
19 process that I can't talk about because of the
20 attorney-client privilege.
21 Q. Okay. Did any nonattorneys review the
22 part-petitions for these issues?
23 MR. VOIGT: Are you going into the
24 process now?

1 MR. CLINGER: I just want to know what
2 took place.
3 MR. VOIGT: Right. And he's already
4 testified that you're getting into areas that are
5 privileged and what we tried to do is --
6 MR. CLINGER: I am not asking him to
7 explain what any attorneys said or advised in your
8 office. I just want to know when it says "Reviewing
9 a large cross-section of part-petitions," what --
10 what was that review? What did that review look
11 like? Mr. Damschroder testified that the review of
12 approximately 10 part-petitions was a part of that or
13 was it 10 per each category?
14 MR. VOIGT: He's already testified to
15 this -- to that -- to that particular sentence, and
16 he previously -- we can go back on the record if you
17 want, but you had asked about that, and he previously
18 testified he can't explain the nuts and bolts of that
19 review because it implicates the attorney-client
20 privilege.
21 MR. CLINGER: Okay. Now, I am asking if
22 nonattorneys also reviewed part-petitions.
23 MR. VOIGT: Separate and apart from --
24 from the part that he can't talk about?

1 MR. CLINGER: Yeah.
2 MR. VOIGT: Okay. He can answer that but
3 if he -- you know, if that's implicated -- if that's
4 part of the thing that's privileged, I mean.
5 MR. CLINGER: Sure.
6 MR. VOIGT: Okay. You can answer that.
7 A. So the answer is no, no nonattorneys
8 undertook a review.
9 Q. Okay. And how did you pick the petitions
10 that you looked at?
11 MR. VOIGT: Objection. I mean, this goes
12 into the privileged communications. He said he can't
13 talk about how -- he can't talk about the nuts and
14 bolts of that process. He was able to testify that
15 he looked at some petitions as a result of a process
16 but that process itself is privileged.
17 Q. Okay. Did the Secretary of State review
18 any part-petitions?
19 MR. VOIGT: If that -- if answering that
20 would implicate the attorney-client privilege or was
21 part of the process that you previously said you
22 can't testify to, then I instruct you not to answer.
23 If you can answer the question independent of that,
24 in other words, if you are aware that the Secretary

1 looked at something outside of counsel, that's one
2 thing. And that's okay to answer that. But if you
3 can't answer something, just say "I can't answer it."
4 A. So I showed to the Secretary some of the
5 examples that I saw.
6 Q. Okay. And what was his reaction to
7 you -- to you showing him those?
8 A. Well, it was all part of a meeting that
9 we were having with counsel.
10 MR. VOIGT: Well, I am going to stop you
11 there. If counsel was involved in the meeting, then
12 I don't want you to testify as to the specifics that
13 occurred during that meeting. Counsel was present?
14 THE WITNESS: Yeah, counsel was present.
15 MR. VOIGT: Then I instruct you not to
16 answer the question.
17 A. I am just trying to think what I can say.
18 I think -- I think all I can say that would not be
19 privileged from that conversation was that this
20 directive issued.
21 Q. Okay. Was this the only meeting you had
22 with the Secretary about these two issues with the
23 part-petitions?
24 MR. VOIGT: You can answer the question

1 if it doesn't -- if you can answer it without
2 divulging privileged information.
3 A. Can you repeat the question again?
4 MR. CLINGER: Yeah. Can you read it
5 back.
6 (Record read.)
7 MR. VOIGT: Let me clarify. If you had a
8 meeting with the Secretary where counsel was not
9 present, you can answer the question. If you
10 can't -- if you can't answer the question with that
11 instruction, then please do not answer the question.
12 THE WITNESS: Sure.
13 A. So I didn't have any independent
14 conversations with the Secretary --
15 Q. Okay.
16 A. -- that didn't involve counsel.
17 Q. Okay. Did you ever e-mail the Secretary
18 about these issues?
19 A. No.
20 Q. Okay. Did you have any phone calls with
21 him about this?
22 MR. VOIGT: Same instruction on all these
23 questions.
24 THE WITNESS: Sure. I understand.

1 A. No.
2 Q. Okay. And earlier you explained that
3 after you received that December 30 e-mail and letter
4 from Bricker & Eckler, sometime between then and
5 January 4, you presented those to the Secretary? Am
6 I saying that correctly?
7 MR. VOIGT: Objection. You are asking
8 about the conversation he just testified that --
9 MR. CLINGER: What I would like to know
10 is if that's the same conversation.
11 MR. VOIGT: Right. But he said there was
12 counsel present at that.
13 MR. CLINGER: I don't know if these are
14 the same conversations or not.
15 MR. VOIGT: If there was a separate
16 conversation that you had with the Secretary where
17 there was not counsel present, you can answer the
18 question, but if not, you can't answer questions
19 where counsel -- where counsel was involved in the
20 discussion.
21 A. And I didn't have any conversations with
22 the Secretary in any forum or format independent of
23 counsel on this subject.
24 Q. Okay. Now, turning to the section of the

1 directive under the section that says "Striking a
2 Signature" -- I guess a combination of the "Striking
3 a Signature" section and the "Instructions" on the
4 last page, were the implicit instructions that boards
5 should validate the part-petitions if they are struck
6 out by someone other than circulator, signer, or the
7 signer's attorney in fact?
8 MR. VOIGT: Would the court reporter read
9 that one back? I actually didn't hear part of the
10 question.
11 (Record read.)
12 MR. VOIGT: I object as confusing and the
13 document speaks for itself.
14 A. So I think the answer to the question is
15 that the Secretary of State's Office did not have
16 a -- a preferred outcome in terms of a result which
17 is why at the top of page 2 after kind of doing some
18 of the background, under the topic of "Striking a
19 Signature," it concludes "If true, a board of
20 elections could conclude that there is sufficient
21 evidence that a part-petition bearing such a bold
22 strike-through was used to remove a signature
23 contrary to Ohio law."
24 And then at the end in the instructions

1 portion, it talks about the authority for the Boards
2 of Elections to conduct the review of the signatures
3 to determine their validity. So I don't think that
4 there was -- there was not implied instructions for
5 the boards to -- to go through and invalidate every
6 part-petition where there was a strike-through. We
7 were sending it back to them to conduct a review to
8 see if -- if those strike-through -- if those
9 interlineations, those strike-throughs, were done
10 contrary to law.
11 Q. So if the board found that someone other
12 than the circulator, signer, or the signer's attorney
13 in fact struck out signatures, what does this
14 document instruct the boards to do with that
15 part-petition?
16 A. Well, I'm not an attorney but it -- my
17 understanding of the law that it limits the
18 individuals who are allowed to strike-through a
19 signature and so thereby it's a person other than the
20 people who are allowed to do it do it, then it's
21 improperly removed and so a board -- if a board found
22 that a signature was improperly moved or removed
23 contrary to law, then the board could find that that
24 part-petition should be invalidated.

1 Q. Okay. Is it that they must invalidate it
2 if they find that?
3 A. I don't think we explicitly told them in
4 the -- in the -- in the instructions to do that but
5 that would be my personal conclusion, yes.
6 Q. Okay. So it's up to each board then? It
7 was up to each board to decide what to do with the
8 re-review?
9 A. It was up to each board to conduct a
10 re-review and if the evidence and the information led
11 the board to conclude that they were -- that they
12 were struck through in violation of the law, then to
13 remove the -- then to invalidate the part-petition.
14 Q. Okay. And the boards -- does the
15 directive require the boards to conduct an
16 evidentiary hearing?
17 MR. VOIGT: Objection. The document
18 speaks for itself.
19 A. The directive does not prescribe the
20 specific method by which the board is to conduct its
21 re-review or was to conduct its re-review, but it
22 does say that, you know, it may. You know, in the
23 third paragraph on page 3 "Boards of elections must
24 complete this re-review, including any evidentiary

1 hearings that they may believe necessary to complete
2 their duties by January 29." So having an
3 evidentiary hearing is not -- is not an unusual thing
4 for a Board of Elections to do to determine the
5 validity or sufficiency of a petition.
6 Q. Okay. But it was not required?
7 A. It was not required.
8 Q. Okay. So would you agree that these
9 instructions are vague then as to what the boards are
10 supposed to do?
11 MR. VOIGT: Objection. Calls for a legal
12 conclusion.
13 A. And so I would say that this directive
14 clearly communicated to the boards that they needed
15 to conduct a re-review and the -- and the timeline
16 for doing so.
17 Q. Okay. But it doesn't -- it just suggests
18 that they can conduct an evidentiary hearing, and it
19 also does not explicitly state what they are supposed
20 to do if they find evidence that someone other than
21 the circulator, signer, or signer's attorney in fact
22 struck out the signature.
23 MR. VOIGT: I don't understand the
24 question. I object to it that it calls for a legal

1 conclusion and that it is asked and answered.
2 MS. SFERRA: I will just object to the
3 form of the question.
4 A. So I think the directive communicated to
5 the boards their instructions and the timeline for
6 doing that and that there was not really any need for
7 the Secretary to do anything beyond this, that the
8 boards know how to conduct reviews of its
9 part-petitions.
10 Q. Okay. So why not explicitly require the
11 boards to conduct an evidentiary hearing?
12 A. Only in my view an evidentiary hearing,
13 depending on the facts in each county, depending on
14 the petitions each county gets, there might not be a
15 need for an evidentiary hearing.
16 Q. Okay. And does this directive state when
17 there would be a need for an evidentiary hearing?
18 A. It does not. And, you know, that's part
19 of the nature of the bipartisan County Board of
20 Elections process. In the 88 counties who have their
21 own counsel, the prosecuting attorney, is that the
22 board -- the four board members, if they feel there
23 is a need for an evidentiary hearing, they can call
24 for that and get counsel from their -- from the

1 prosecutor on how to do that.
2 Q. Okay. And why not explicitly state that
3 if they find -- the board finds that a signature was
4 struck out by someone other than the circulator,
5 signer, signer's attorney in fact, to invalidate that
6 part-petition?
7 A. I don't think it was necessary to do
8 that.
9 Q. Why?
10 A. Because our office felt that the
11 instructions we were giving to the boards in this
12 directive was the information that the boards needed
13 to have in order to conduct the review of the
14 petitions.
15 Q. Okay. You didn't feel it was necessary
16 then to tell them explicitly what to do if they find
17 that?
18 MR. VOIGT: Objection, asked and
19 answered.
20 A. And we think this directive was
21 sufficient.
22 Q. Okay. With respect to this issue under
23 "Pre-affixing the Number of Signatures Witnessed on a
24 Circulator Statement," were the instructions that

1 boards should invalidate part-petitions that
2 overreport the number of actual signatures appearing
3 on it?
4 MR. VOIGT: Objection. The document
5 speaks for itself.
6 THE WITNESS: Can I hear the question
7 again?
8 (Record read.)
9 A. And so I would say with this -- with this
10 topic, similar to the striking a signature topic that
11 we gave the boards, the information that they needed
12 to have in order to conduct the re-review and if the
13 board came to the conclusion that they were -- if the
14 board came to the conclusion that -- that they were
15 unintentional arithmetic errors, that's fine. But if
16 there was a larger irregularity, then the board
17 needed to make a determination on that.
18 Q. And so now we are back to this -- excuse
19 me. Now we are back to this arithmetic error issue.
20 The directive says "The relevant example in the
21 Election Official Manual recognizes that 'arithmetic
22 errors' may occur" and it cites to the Election
23 Official Manual Chapter 11, which we went over
24 earlier, and you agreed that it did not say anything

1 about mathematical error.
2 A. That's my recollection.
3 Q. So what -- what in the -- turning to the
4 directive, what is a mathematical error, arithmetic
5 error?
6 A. Well, I think it's a fact specific
7 inquiry that the board has to -- has to do in looking
8 at each part-petition. But I think the lead in quote
9 to that section I think is, you know, helpful in
10 framing the issue to the boards that the "Arithmetic
11 errors will be tolerated but only if the error does
12 not promote fraud." And so I think boards needed --
13 we wanted boards as a part of their re-review to look
14 at those part-petitions that had this type of
15 irregularity and determine whether or not, you know,
16 the -- whether they were truly arithmetic errors or
17 whether they were some larger irregularity that could
18 promote fraud.
19 Q. Okay. Now, if this issue came before the
20 Secretary, where would you draw the line between
21 what's mathematical error or arithmetic error and
22 what's something that promotes fraud?
23 A. Well, I think it's a hypothetical that's
24 hard to -- that's hard to answer because I can't

1 think of a scenario in which the Secretary would have
2 to decide, you know, a challenge to a part-petition
3 in a statewide initiative or a referendum.
4 Q. What about a candidate's petition?
5 A. Well, I think if there was an
6 irregularity on a candidate petition, for instance,
7 maybe a -- that the Secretary has done in the past,
8 could appoint a hearing officer to gather the facts
9 related to the petition, and then they make a
10 recommendation to the Secretary.
11 Q. Okay. Let me direct your attention to
12 what is Exhibit 15.
13 (EXHIBIT MARKED FOR IDENTIFICATION.)
14 MR. VOIGT: 15?
15 MR. CLINGER: Yep.
16 Q. This says it's regarding the "Tie Vote on
17 February 11, 2015, on Motion to Invalidate Josh
18 Ford's Nominating Petition for City Council." Have
19 you seen this before?
20 A. I have.
21 Q. When did you see it?
22 A. Before it was issued.
23 Q. Okay. Did you draft it?
24 A. I did not.

1 Q. Who drafted it?
2 A. I don't remember for certain, but
3 ordinarily these type of letters are initially
4 drafted by counsel in the office.
5 Q. Okay. And you can take time to read it
6 if you would like.
7 A. Okay.
8 Q. The facts were the Pickaway County Board
9 of Elections tied on whether to accept two
10 part-petitions that had been submitted by a candidate
11 for local office. "One part-petition contained 21
12 signatures" -- in the second body of the first page,
13 "One part-petition contained 21 signatures. The
14 other part-petition contained eight signatures." But
15 the circulator statement on each stated each
16 part-petition contained 25 signatures. So that's a
17 difference of 17, at least on that second petition
18 that attested, that only had 8 signatures.
19 Now, if you go to the last page, the vote
20 says -- or the decision says "It is well-settled law
21 that a board of elections cannot reject a
22 part-petition solely because the circulator statement
23 indicates that it contains more signatures than it
24 does. Further, I have consistently instructed boards

1 of elections that when examining and verifying
2 candidate petitions," then he goes into an example
3 that we've gone over a couple of times. And then it
4 says "If the number of signatures reported in the
5 statement is equal to or greater than the total
6 number of signatures not crossed out on the
7 part-petition, then the Board does not reject the
8 part-petition because of the inconsistent signature
9 numbers. Instead, the Board must review the validity
10 of each signature as usual." Provides an example.
11 And "In light of this instruction and the
12 long-standing case law, I break the tie in favor of
13 validating Mr. Ford's petition and certifying him as
14 a candidate for third ward councilman in the City of
15 Circleville."
16 Why were these acceptable to the
17 Secretary? Why were these acceptable to the
18 Secretary?
19 MR. VOIGT: Objection, lack of foundation
20 and speculation.
21 A. I would say two things. One is my
22 recollection is that there was -- I think there was
23 testimony at the board that the circulator says --
24 said to the board that he was the circulator and

1 witnessed the signatures. And there's -- there's
2 also a lot of case law about candidates that I don't
3 think necessarily applies to issues about generally
4 favorable candidate ballot access.
5 So I think primarily based on what I
6 recall was information from the board hearing that
7 the petitioner said I witnessed everything here, that
8 that was -- that was the basis for making this
9 decision.
10 Q. Okay. So you're saying there's
11 presumption in favor of the ballot access for
12 candidates but not for ballot issues?
13 MR. VOIGT: Objection, misstates the
14 testimony.
15 A. So what I'm saying is that there are, as
16 I recall, cases where the courts have said in
17 candidate petition situations to kind of err on the
18 side of putting the candidate on the ballot unless
19 there's evidence, you know, such as fraud or of plain
20 violation of the petitioning laws. And in this case,
21 as I said, my recollection is that the petitioner
22 said to the board that he or she was the circulator
23 and witnessed those signatures.
24 Q. Okay.

1 A. So there wasn't an issue or a question of
2 fraud as related to this one candidate's petition.
3 Q. So if -- if that testimony did not exist,
4 would you then have invalidated -- would you have --
5 would the Secretary have broken the tie in favor of
6 not counting petitions?
7 MR. VOIGT: Objection, speculation.
8 A. So I think in the absence of testimony
9 that it was not the product of fraud, I think it
10 would have been a different conversation with
11 counsel.
12 Q. Why's that?
13 A. Well, because I -- I've already
14 testified, you know, one of the -- one of the issues
15 here was that the circulator testified that he or
16 she, I can't remember for sure, was the -- was the
17 circulator and so there wasn't a question of
18 fraudulent activities surrounding the overreporting
19 of signatures and so it wasn't an open-ended
20 question.
21 Q. Okay. Does the tie vote decision mention
22 testimony anywhere in it?
23 A. I don't think so.
24 Q. Okay. And does Directive 2016-01, does

1 it ask the boards to elicit testimony about
2 circulator's statements?
3 A. The -- as I testified already, that the
4 directive doesn't require them to, but it does
5 mention if there is any evidentiary hearing that the
6 board believes necessary to complete their duties,
7 that all of that has to take place before January 29.
8 Q. Okay. And so would you agree this does
9 not explicitly instruct the boards on what to do when
10 they encounter a part-petition where a circulator
11 statement overreports the actual signatures?
12 MR. VOIGT: Which document? Which
13 exhibit are you referring?
14 MR. CLINGER: Directive 2016-01.
15 A. I think I have testified earlier that we
16 believe that the directive was -- was sufficient in
17 communicating what the boards needed to do.
18 Q. Okay. But my question was does it
19 explicitly state what they are supposed to do when
20 they encounter a part-petition with the circulator's
21 statement overreporting signatures?
22 MR. VOIGT: Objection. The document
23 speaks for itself, asked and answered, and
24 argumentative.

1 A. So I would say that the explicit
2 instructions from the Secretary were to conduct a
3 re-review. It talks about the two particular
4 irregularities, that being the overreporting of
5 signatures and the -- and the questionable
6 interlineation, and that one of the ways Boards of
7 Elections ordinarily, I would even say even more than
8 ordinarily, as an existing rule go about reviewing
9 those kinds of things on part-petitions is to conduct
10 an evidentiary hearing when the board feels that's
11 necessary to do so.
12 Q. Okay. And since you've been at the
13 Secretary of State's Office, has the Secretary for
14 the office ever ordered a re-review of a statewide
15 initiated petition?
16 A. No.
17 Q. Okay. How did you settle on January 29
18 as the complete by date?
19 A. I don't recall any conversation about the
20 particulars of any date.
21 Q. Okay. Who would know that answer?
22 A. I don't know that anybody would know. I
23 think we just looked at a calendar and picked a date.
24 Q. Okay. Were there any discussions about

1 maybe any urgency about the timeline and transmitting
2 to the General Assembly?
3 A. Not --
4 MR. VOIGT: To the extent that
5 implicates -- to the extent your answer involves
6 discussions with counsel, please do not answer the
7 question. If it does not involve discussions with
8 counsel, you can answer the question.
9 A. I don't recall any conversation about the
10 date as it relates to the General Assembly. I do
11 recall thinking about it in conversations about if
12 boards were to have evidentiary hearings, that there
13 would need to be a time frame, you know, to do that.
14 And so I think we felt the three weeks there,
15 whatever that is, would be sufficient.
16 Q. Okay. Anything else?
17 A. No.
18 Q. If the boards have questions about how to
19 implement this directive, who are they supposed to
20 contact?
21 A. So the boards' legal counsel is the
22 prosecuting attorney of the county, and so the Boards
23 of Elections are supposed to get legal guidance from
24 that individual. Boards of Elections also ask us

1 questions from time to time, and by us they
2 usually -- they primarily communicate those through
3 an elections attorney in our office. And then
4 depending on the nature of the question, we may or
5 may not answer it. Often -- you know, often we say
6 consult your legal counsel.
7 Q. Okay. Would any of the like field reps
8 be involved with those questions?
9 A. I would say the field reps are only
10 tangentially involved in that process and usually
11 what that looks like is a field rep happens to be at
12 the board meeting when there is a question raised,
13 and the field rep will communicate back to the office
14 that, hey, XYZ county has a question.
15 Q. Okay. And were you aware of any
16 confusion among the Boards of Elections how to
17 implement this directive?
18 A. I don't recall that there was any
19 confusion about how to implement the directive. I do
20 know that we got a couple of questions from some
21 counties as I recall. I do remember that counsel for
22 the petitioners sent e-mails or letters to counties
23 with their viewpoint on how boards should go about
24 the directive, but I don't think there was any -- I

1 don't think there was necessarily any confusion about
2 it.
3 Q. Okay. Now, do you recall counsel for
4 PhRMA sending out e-mails?
5 A. I don't specifically recall, but it
6 wouldn't surprise me if they did.
7 Q. Okay. I am going to direct your
8 attention to Exhibit 16.
9 (EXHIBIT MARKED FOR IDENTIFICATION.)
10 Q. It is an e-mail from Meghan Lee, Deputy
11 Director of Meigs County Board of Elections, Ohio
12 Drug Price Relief Act Petitions. Have you ever seen
13 this e-mail before?
14 A. No.
15 Q. Okay. Sent on Thursday, January 7. It
16 says "We received our Ohio Drug Relief Act Petitions
17 yesterday. Both the Director and I have read
18 Directive 2016-01 and are unsure of what actions you
19 want us to perform. We would appreciate some advice
20 on the matter." Do you know if this was responded
21 to?
22 A. I don't know.
23 Q. Okay. And if no response was listed in
24 the -- I'm sorry. In the interrogatories, if you

still have that handy, it was -- I didn't mark the exhibit number. Yeah. Interrogatory No. 9 on page 10, and the responses are communications that provide date, time -- I'm sorry, "Please provide the date, time, form and a synopsis of any and all communications with any person concerning Ohio Secretary of State Directive 2016-01." And then it lists communications. Now, this e-mail, this particular e-mail, is on page 11 towards the bottom, January 7, 9:37 e-mail from Meghan Lee.

A. I see that.

Q. A response is not listed in the interrogatory. So who would know if this was responded to?

A. Well, it's also possible it wasn't responded to but I think Rachel Kasper as the attorney assigned to that area.

Q. She's elections counsel?

A. Elections counsel with the Secretary of State's Office.

Q. I am going to direct your attention to another e-mail. Exhibit 17.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. Michele, Pickaway, and the interrogatory

1 says that's Michele Lockard, Pickaway County Board of
2 Elections. Do you know Michele?
3 A. Yes.
4 Q. Okay. Do you know if this call was
5 returned?
6 A. I don't know whether it was or wasn't.
7 Q. Okay. Who would know?
8 A. Rachel.
9 Q. Would anybody else know?
10 A. I don't think so.
11 Q. I will direct your attention to Exhibit
12 18.
13 (EXHIBIT MARKED FOR IDENTIFICATION.)
14 Q. Okay. This is not on the interrogatory
15 but the -- it's an e-mail from, at least I don't
16 think it is, Shelby County Board of Elections. It
17 states "Brandi, In re reviewing the petitions I am
18 confused ....how do I determine who crossed out
19 signatures? I am not comfortable with changing valid
20 petitions to invalid based on crossed out names...."
21 Do you know if this was responded to?
22 A. I don't know.
23 Q. Okay. Who would know?
24 A. It was addressed to Brandi, so Brandi

1 would probably know.
2 Q. Who is Brandi?
3 A. Brandi Seskes is an elections attorney in
4 our office.
5 Q. Okay. Would anybody else know?
6 A. I don't think so.
7 Q. And this is a series of e-mails. This
8 will be Exhibit 19.
9 (EXHIBIT MARKED FOR IDENTIFICATION.)
10 Q. Again, this is not on the interrogatory.
11 The e-mail is from Barbara Tuckerman, Sandusky
12 County. Do you know who Barbara is?
13 A. I do.
14 Q. Who is she?
15 A. I think she's the Director or Deputy
16 Director of the Sandusky Board.
17 Q. Okay. And that states "What are we to do
18 with these petitions? Must we go over all of them
19 again or just look for something in particular?" Do
20 you know whether this was responded to?
21 A. I don't know whether it was or wasn't.
22 Q. Okay. And do you know who would know?
23 A. Brandi.
24 Q. Anybody else?

A. Not that I know of.

Q. Okay. Exhibit 20.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. And it looks like this was actually sent prior to the e-mail but also from Barbara Tuckerman to Brandi. "Subject: Holy Toledo." It says "Brandi, Understanding we have basically nothing to do the State sends back petitions to be examined again. Questions: Blacked outlines....how can we determine who blacked them out? IMPOSSIBLE! The 28 number on the back would be our call to disallow the entire petition if that number isn't at least close?" That's a question. "Does state law not read it is the Secretary of State who certify these petitions. Was the job of originally sorting and looking them over done by the blind?" Have you seen this e-mail before?

A. No.

Q. Okay. Do you know if it was responded to?

A. I would assume not because the e-mail the next day of January 6 says "What are we to do with these petitions?" So I would assume the e-mail on the 5th was not responded to.

1 Q. Okay. Who would know for sure?
2 A. Brandi.
3 Q. Anybody else?
4 A. I don't think so.
5 Q. Okay. So this will be Exhibit 21.
6 (EXHIBIT MARKED FOR IDENTIFICATION.)
7 MS. SFERRA: 21?
8 MR. CLINGER: Yeah.
9 MS. SFERRA: Can we go off the record for
10 a minute?
11 (Discussion off the record.)
12 MS. SFERRA: I'm struggling with how
13 these e-mails have anything to do with the protest
14 action and I didn't know how many more you had to go
15 through and I was just inquiring about that.
16 MR. CLINGER: Three more to go to -- go
17 through. With regards to the relevance, the
18 Secretary in his answer stated at all times he acted
19 in good faith and also acted in accordance with Ohio
20 law. And so this relates to whether or not he was
21 acting in good faith.
22 Q. (By Mr. Clinger) All right. So turning
23 to Exhibit 21, it looks like it was originally an
24 e-mail from Barb Tuckerman to Laura Pietenpol. Who

1 is Laura?
2 A. Laura is a Deputy Elections Administrator
3 in our office.
4 Q. Okay. It says "Once again what are we
5 looking for? What question are we trying to answer?"
6 And then it looks like Laura forwarded it to Brandi
7 Seskes. So do you know if this was responded to?
8 A. I don't know whether it was or not.
9 Q. Okay. And who would know?
10 A. Brandi.
11 Q. Okay. Would Laura Pietenpol know?
12 A. No. I would doubt it since she forwarded
13 it to Brandi which is our normal operating procedure
14 when questions come from counties, that election
15 attorneys are to answer or not answer.
16 MR. VOIGT: Mr. Clinger, once you get
17 through those three, can we take a 5-minute bathroom
18 break?
19 MR. CLINGER: Sure. Two more.
20 MR. VOIGT: Two more?
21 MR. CLINGER: The third one was the one
22 we just went over.
23 Q. (By Mr. Clinger) This is Exhibit 22.
24 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 Q. Says Monday, January 11. Isn't that a
2 fourth e-mail from Barb Tuckerman? Subject says "One
3 more time. Good morning Brandi, Your office sent all
4 the petitions back with only a comment to review
5 them. When we first checked them we used the SOS
6 instructions for checking them, the same instructions
7 we have followed for all petitions. There are no
8 detailed instructions for this review.
9 "I have however received a phone call and
10 written instructions from the attorney for the pharma
11 people. Since when should we follow directions from
12 ANYONE except your office? I have made several
13 requests for some directions from your office and it
14 seems no one is reading my e-mails.
15 "At this time there are only two Board
16 Members in town, one has yet to be appointed and the
17 other is in Florida. So far the consensus is our
18 authority comes directly and only from the SOS.
19 "So one more time....WHAT DO WE DO WITH
20 THESE PETITIONS?"
21 Do you know if this was responded to?
22 A. Not to my knowledge.
23 Q. And who would know that?
24 A. Brandi.

1 Q. Anybody else?
2 A. No. I don't think so.
3 Q. Okay. Were Secretary of State staff
4 directed not to respond to questions from the boards?
5 A. I don't think so.
6 Q. Okay. And so why were they not responded
7 to?
8 MR. VOIGT: Objection. He already said
9 he doesn't know whether they responded to the
10 e-mails.
11 MR. CLINGER: Okay.
12 MR. VOIGT: So you mischaracterized his
13 testimony.
14 Q. (By Mr. Clinger) So this e-mail states
15 that "I have made several requests for some
16 directions from your office and it seems no one is
17 reading my e-mails." If that's true, why would they
18 not be responding?
19 MR. VOIGT: Objection, argumentative.
20 A. So I think sometimes, as is the case in
21 elections administration in Ohio, we have situations
22 where the Secretary of State has certain duties and
23 Boards of Elections have certain duties and the
24 Secretary communicates things to the Boards of

1 Elections and they do them to the best of their
2 abilities or not. And sometimes in doing those
3 things boards have questions or they just do it on
4 their own and sometimes the right course of action is
5 to communicate something clearly to the boards. They
6 do their -- and then for the Secretary to not
7 interfere with the Board of Elections conducting
8 their part of their duty. And when there would be
9 situations like that, we would ordinarily not get
10 involved and say, you know, the directive speaks for
11 itself. And by any lack of communication, when
12 especially since our attorneys aren't the boards'
13 counsel, the boards don't much like the answer "talk
14 to your prosecutor" but sometimes that's -- we have
15 to give people instructions and then let them fulfill
16 them to the best of their abilities.
17 Q. How would you have responded to Barb
18 Tuckerman's e-mail?
19 A. If the e-mail had come to me, I probably
20 would have sent her an e-mail back saying follow the
21 directive.
22 Q. Okay. This will be Exhibit 23.
23 (EXHIBIT MARKED FOR IDENTIFICATION.)
24 Q. And so the original e-mail, Wednesday,

1 January 27, from Lisa Hartley, do you know who Lisa
2 Hartley is?
3 A. I do.
4 Q. Who is Lisa Hartley?
5 A. She is one of the -- she is either the
6 Director or Deputy Director in Sandusky.
7 Q. Okay. And have you seen this e-mail
8 before?
9 A. No.
10 Q. Okay. It states "Could you please give
11 me a call regarding the re-review of state petitions
12 when you get a chance....I will be out to lunch
13 between 1 and 2:15." Do you know if that call was
14 returned?
15 A. Looks like Laura forwarded it to Brandi
16 and I don't know whether it was returned or not.
17 Q. Okay. Who would know that, if it was
18 returned?
19 A. Brandi.
20 MR. VOIGT: Good time for a break?
21 MR. CLINGER: Yeah.
22 (Recess taken.)
23 Q. (By Mr. Clinger) On the record.
24 Were you monitoring what the Boards of

1 Elections were doing during the review with respect
2 to how they were implementing the directive?
3 A. No.
4 Q. Okay. Was anybody at the Secretary of
5 State's Office?
6 A. I don't think monitoring. I think after
7 the boards recertified their numbers, they sent them
8 back to us and those were tallied but I don't think
9 we were -- I don't think anybody was keeping track of
10 who was doing what when.
11 Q. Okay. Are you aware that -- strike that.
12 Are you aware that some Boards of
13 Elections did not conduct evidentiary hearings?
14 A. I'm aware of that, yes.
15 Q. Okay. Are you aware that some boards
16 simply made telephone calls to petition circulators
17 or signers and asked them questions and that was the
18 extent of their?
19 A. I hadn't heard that.
20 Q. Okay. Are you aware that some Boards of
21 Elections subpoenaed petition circulators or signers
22 and asked them questions?
23 A. I am aware that a couple of counties did
24 issue subpoenas, and I think at least one had a

1 hearing.
2 Q. Okay. Are you aware that some Boards of
3 Elections just recorded on a spreadsheet the
4 part-petitions that had crossed out signatures or had
5 circular statements that overreported signatures and
6 then recertified the same number of valid signatures
7 from the initial review?
8 A. I am not aware of that.
9 Q. Okay. Are you aware that the Greene
10 County Board of Elections informed the Secretary of
11 State that it did not believe it had the authority to
12 conduct a re-review?
13 A. I don't know that I recall that
14 specifically from Greene County, no.
15 Q. Okay. I am going to show you the Exhibit
16 24.
17 (EXHIBIT MARKED FOR IDENTIFICATION.)
18 Q. And so this is -- originally it was an
19 e-mail from it says Llyn McCoy, Director of Greene
20 County Board of Elections, to Emily Bright. Who is
21 Emily Bright?
22 A. Emily is the constituent liaison in our
23 office.
24 Q. Okay. Why would Emily receive

1 certification forms?
2 A. I have no earthly clue.
3 Q. It looks like Emily forwarded it to
4 Laura.
5 A. Yeah.
6 Q. So if you go to the last page of this,
7 there is a letter from Greene County Board of
8 Elections directed to Rachel Kasper, Elections
9 Counsel, Ohio Secretary of State, dated January 22.
10 The second bodied paragraph, it says "At said
11 meeting, it was the opinion of legal counsel that
12 under statute the Greene County Board of Elections
13 has no authority to perform a re-review of petitions
14 once they have been submitted to the Secretary of
15 State." And then it explains they took a vote to
16 perform a re-review. Are you aware of whether the
17 Secretary of State's Office followed up with the
18 Greene County Board of Elections in response to this?
19 A. Not that I recall.
20 Q. Okay. Who would know?
21 A. If someone did, it probably would have
22 been whatever attorney is assigned to that area which
23 I think is Rachel.
24 Q. Are you aware of prior to the Drug Price

1 Relief Act the Greene County Board of Elections
2 asking advice from the Secretary of State's Office
3 about whether or not it could re-review a ballot
4 issue petition?
5 A. I am not aware of that, if I recall.
6 Q. If that had happened, would that be
7 Rachel Kasper?
8 A. Whatever attorney is assigned to that
9 area. I think it's Rachel.
10 Q. Okay.
11 A. I would argue the county could do it, the
12 attorney for the board could do it, but the board got
13 contrary legal advice from the prosecutor so.
14 Q. Would you agree that some Boards of
15 Elections invalidated any part-petition that
16 contained a circular statement that overreported but
17 did not invalidate part-petitions that contained
18 struck out signatures?
19 MS. SFERRA: Objection to the form of the
20 question.
21 Q. Are you aware of Boards of Elections
22 invalidating any part-petition that contained a
23 circular statement that overreported the number of
24 signatures but did not invalidate part-petitions that

1 contained struck out signatures?
2 A. Did one category and not the other
3 category?
4 Q. Uh-huh.
5 A. I am not aware of that.
6 Q. Would it surprise you to learn that some
7 boards did that?
8 MR. VOIGT: Objection.
9 A. Not necessarily.
10 Q. And why wouldn't that surprise you?
11 MR. VOIGT: Objection.
12 A. Well, I think, as we've seen, some
13 boards, you know, did an evidentiary hearing. Some
14 boards did something. So I think there's -- boards
15 handled the instructions to do this re-review based
16 on their understanding of the directive, the law, and
17 any counsel from the prosecuting attorney.
18 Q. So if Boards of Elections invalidated
19 part-petitions that contained circulator statements
20 that overreported signatures and did not conduct an
21 evidentiary hearing, would you say that's contrary to
22 the directive, Directive 2016-01?
23 A. No.
24 Q. Okay. And why not?

1 A. Because I think as we testified -- as I
2 testified earlier, the directive didn't require them
3 to have an evidentiary hearing. That was something
4 they could do. Some did; some didn't. So I don't
5 think the board would -- if the board didn't feel it
6 needed to do -- have an evidentiary hearing, then
7 they didn't have an evidentiary hearing.
8 Q. Okay. Now, given what we just went
9 through, would you agree the petition was subjected
10 to varying approaches by the Boards of Elections?
11 MR. VOIGT: Objection, unfair
12 characterization and best evidence rule.
13 A. So I would say that the standard that --
14 the process that the law requires Board of Elections
15 to conduct a review and so, you know, there's always
16 going to be a certain level of variation between each
17 of the 88 County Boards of Elections and the review
18 they do of any statewide petition. And so I don't
19 think there was anything -- nothing different about
20 the way these -- the boards approached it in this
21 situation would be the way they approached it in any
22 other situation.
23 Q. You said there is always going to be some
24 variation and what do you mean by that?

1 A. Sure. I would even say there is a
2 variation within a board when you have different
3 people looking at signatures. You know, so it --
4 there's always going to be a situation where the
5 board staff may look at a signature and say that
6 signature is a nongenuine signature. A different
7 county may look at the exact same signature in their
8 county, registered in the other county, and say it's
9 a legitimate signature. So there's always, you know,
10 when you have each -- when you have 88 sets of boards
11 reviewing these, the boards are going to do their
12 duty slightly different. And like I said, even
13 within a county, in Franklin County where we have 100
14 different people reviewing petitions, there is going
15 to be some slight variation from person to person.
16 Q. Okay. And would you agree that elections
17 officials strive for uniformity in application of
18 election laws?
19 A. Yeah.
20 Q. Okay. Did the Secretary of State's
21 Office at any time feel like they needed to clarify
22 the instructions they had issued to the boards?
23 A. No.
24 Q. No? Would you agree that more explicit

1 instructions would have led to more consistent
2 results?
3 MR. VOIGT: Objection, speculation,
4 unfair characterization.
5 A. I would say I don't know the results were
6 inconsistent. But we gave the advice. You know, the
7 directive we issued for the re-review was the
8 directive we felt was sufficient to accomplish that
9 re-review.
10 Q. Okay. At any point has any attorney on
11 behalf of PhRMA or Bricker & Eckler contacted the
12 office about felony convictions of -- felony
13 convictions of any circulators of the petition?
14 A. I believe so but I don't remember when.
15 Q. Okay. Who would know for sure?
16 A. Jack Christopher.
17 Q. Jack Christopher. Anybody else?
18 A. No.
19 Q. And why do you believe that hasn't
20 happened?
21 A. I don't remember. I remember hearing
22 about it. I don't know. It may have come up in
23 depositions. That might have been how I heard about
24 it.

1 Q. Okay. Has anybody from Bricker & Eckler
2 contacted the Secretary of State's Office about
3 permanent residences of circulators?
4 A. I would say it's the same answer on the
5 felony stuff.
6 Q. Okay. That Jack Christopher would know?
7 A. Yeah. If there has been contact with
8 Bricker or with our office on that subject, it would
9 be with Jack, but like I said, it might actually just
10 come up to me if any of those things have come up in
11 depositions in I think these cases. I might have
12 heard about it that way.
13 Q. And why would they have gone to Jack with
14 that information?
15 A. Because Jack is our General Counsel.
16 Q. Okay. Has the Secretary of State's
17 Office conducted any investigations about felony
18 convictions of circulators of the Drug Price Relief
19 Act petitions?
20 A. No.
21 Q. Okay. Has the Secretary of State's
22 office conducted any investigations about permanent
23 residences of any circulators of the Drug Price
24 Relief Act petitions?

1 A. No.
2 Q. Okay. So, now, I'm going to direct your
3 attention to the transmittal letter which is Exhibit
4 25.
5 (EXHIBIT MARKED FOR IDENTIFICATION.)
6 MS. SFERRA: 20?
7 MR. CLINGER: 5.
8 Q. And so this is the -- have you seen this
9 document before?
10 A. Yes.
11 Q. And what is it?
12 A. It's the letter transmitting the Ohio
13 Drug Price Relief Act to the General Assembly.
14 Q. Who drafted this?
15 A. I don't know.
16 Q. Okay. Who would know?
17 A. I think whoever initiated the draft of
18 it. Probably -- probably an attorney in our office.
19 Q. Okay. Did you see any drafts before it
20 went out, before it was transmitted?
21 A. I don't remember if I saw any drafts, but
22 I remember seeing the final version before it went
23 out.
24 Q. Okay. Would you agree that February 4,

1 2016, was not the first day of the General Assembly
2 session in 2016?
3 MR. VOIGT: Object, asked and answered.
4 A. I think my testimony earlier was I didn't
5 know when the General Assembly started, that I
6 believe this was -- this was not on the first day of
7 session.
8 Q. Okay. Now, the re-review in Directive
9 2016-01 is said to be completed by noon on
10 January 29. This was issued on February 4. Why did
11 it take six more days to certify the petition?
12 A. I don't know why. Was there a weekend
13 involved?
14 Q. I think February 4 was maybe a Friday.
15 About six days.
16 A. I don't know.
17 Q. Okay.
18 A. It might have been a county hadn't
19 finished in time. I don't know.
20 Q. Now, after the boards completed their
21 re-review of the petition and before this trans --
22 before the petition was certified, was there a review
23 of the part-petition by anybody in the Secretary of
24 State's Office?

1 A. Not that I recall.
2 Q. Okay. Is it that you don't know or you
3 just don't remember?
4 A. I think I would have been aware if there
5 was an internal review of the petitions as they came
6 back in, and I'm not aware of one so.
7 Q. Okay. Did anyone from Bricker & Eckler
8 contact the Secretary of State's Office about the
9 certification form -- about the certification letter?
10 A. Not to my knowledge.
11 Q. Okay. And so on the first page of this
12 letter it states that the petition is being
13 transmitted, and it states "However, I do so with
14 reservations." And then the first paragraph, it
15 states "Despite having gathered the vast majority of
16 their signatures by mid-November 2015, petitioners
17 waited until December 22, 2015, to file with my
18 office." Skipping a couple of sentences "Because
19 petitioners waited so long to file their petitions,"
20 to -- why was that included in the letter?
21 MR. VOIGT: Objection, speculation. He
22 said he didn't draft the letter.
23 A. I think the only reason that I can think
24 of it was included in the letter is statements of

1 fact. That is what happened.
2 Q. Okay. Now, are you aware of when the
3 deadline was in 2015 to file an initiated statute
4 petition with the board -- with the Secretary of
5 State in order to have it considered by the General
6 Assembly in 2016?
7 A. I don't remember the exact date, but
8 they -- the petition was filed by the deadline.
9 Q. Okay. Do you know when that deadline
10 was?
11 A. I don't remember.
12 Q. Okay. If you could direct your attention
13 back to Exhibit -- I think this is 14. It's the dog
14 auctioning statute initiative. Yeah, that's right.
15 It states that "A petition for a proposed initiated
16 statute regarding dog auction was filed in my office
17 on December 22, 2011, more than ten days prior to the
18 commencement of a session of the General Assembly."
19 Would you agree that the constitutional standard,
20 according to this document, the deadline is 10
21 days -- at least 10 days prior to the commencement of
22 the General Assembly's session?
23 MS. SFERRA: Objection.
24 MR. VOIGT: Objection, confusing and

1 asking for a legal conclusion. Do you understand the
2 question?
3 A. So I think the question is what's the
4 filing deadline for a petition initiated -- initiated
5 statute. And based on this, it seems -- based on
6 this, being the January 3, 2012, letter, it appears
7 the office said it was 10 days before the startup
8 session of the General Assembly.
9 Q. Okay. So if it's -- going back to
10 Exhibit 25, the transmittal letter, if the petition
11 was timely filed, why does this letter attack the
12 petition for "waiting so long" to file it?
13 MR. VOIGT: Objection, unfair
14 characterization, speculation. The witness testified
15 he did not draft the letter and prejudicial and
16 argumentative.
17 A. I don't know why it was included, but
18 it's a statement of fact. They did wait until close
19 to the filing deadline, and we gave the boards then a
20 short time for review which was "an uncommonly quick
21 turn-around time."
22 Q. Are you aware of any transmittal letter
23 from your time at the Secretary of State's Office
24 that has included language like this in it?

1 A. I think, as I testified earlier, the only
2 ones -- the only initiated petitions that I recall
3 are the Drug Price Relief Act, the dog petition, and
4 the Fresh Start Act that we talked about earlier and
5 this is the only one that seems to have that
6 language.
7 Q. Okay. So did the -- this suggests to
8 me -- let me rephrase that.
9 Did the Secretary of State's Office
10 conduct a review of when the signatures were
11 gathered?
12 A. Not that I recall.
13 Q. Okay.
14 A. I do remember several conversations with
15 Mr. McTigue during the ODP litigation they were going
16 to file any day now, but other than that I don't -- I
17 don't know when they were gathered.
18 Q. Okay. I am going to direct your
19 attention to Exhibit 26.
20 (EXHIBIT MARKED FOR IDENTIFICATION.)
21 Q. This was attached to realtors' complaint
22 as Exhibit A. It says "Affidavit of Matthew Walsh."
23 And it appears it is a declaration from the federal
24 court case. Have you seen this declaration before?

1 A. Not that I recall.
2 Q. And so No. 5 on the declaration -- I'm
3 sorry. Who is Matthew Walsh?
4 A. He's counsel in the Secretary of State's
5 Office.
6 Q. Okay. Same Matthew Walsh who is here, I
7 presume?
8 A. He is.
9 Q. Now, down at No. 5 it says "A review of
10 the 'Ohio Drug Price Relief Act' part-partitions
11 found that over 90 percent of the signatures gathered
12 for the initiative petition were collected at least
13 six weeks prior to the December 22, 2015, filing of
14 the part-petitions." So does this suggest to you a
15 review was conducted by the Secretary of State's
16 Office?
17 A. It appears to be the case that someone
18 did, yeah.
19 Q. Okay. And who would know if that review
20 did take place?
21 A. Matt Walsh is saying it did take place.
22 Q. Okay. Would anybody else be aware of
23 this?
24 A. Maybe Jack Christopher.

1 Q. Okay. Are you aware of similar reviews
2 being done on prior statewide initiative petitions?
3 A. Not that I know of.
4 Q. Who would know?
5 A. Well, I can only speak to what I know
6 from my time being at the Secretary of State's Office
7 so anything that would predate Secretary Husted's
8 tenure would have to be somebody who worked for the
9 then Secretary Brunner, then Secretary Blackwell, or
10 going back before that.
11 Q. Okay. Is there anybody in the office who
12 has worked under those prior administrations?
13 A. Pat Wolfe would be the only one.
14 Q. Okay. And who did she work under?
15 A. She was first hired by Taft, and she's
16 worked there ever since.
17 Q. Okay. Skipping to page 3 of the
18 transmittal letter, now down at the footnote No. 2,
19 it says "Interestingly, petitioners could have
20 jeopardized their own efforts by illegally striking
21 signatures. One county prosecutor reported in a
22 letter submitted to me along with their number of
23 certified signatures that only 79 percent of the
24 stricken signatures were truly invalid."

1 MR. VOIGT: I'm sorry. Which page are
2 you on?
3 MR. CLINGER: Page 3 and footnote No. 2.
4 MR. VOIGT: Okay.
5 Q. (By Mr. Clinger) Are you aware of this
6 county prosecutor report that's being referred to?
7 A. I remember hearing about it, yeah.
8 Q. Okay. Do you remember which county it
9 came from?
10 A. I don't remember for certain. I think it
11 was in southwest Ohio, but I don't remember for sure.
12 Q. Okay. I have got a report --
13 A. Well, great.
14 Q. -- from Butler County.
15 A. That's in southwest Ohio.
16 Q. It will be Exhibit 27.
17 (EXHIBIT MARKED FOR IDENTIFICATION.)
18 Q. And I can -- if you would like to read
19 all of it, I will give you time, or I can point you
20 to where I am going to ask about. I am going to ask
21 about the third body of the paragraph but I can --
22 let me know.
23 A. Okay.
24 Q. So you'll see it says "Attached is a

1 spreadsheet prepared by the Butler County Board of
2 Elections to document its re-review of the
3 part-petitions you returned to the Board in
4 accordance with Directive 2016-01. As you can see,
5 79.59% of the signatures which were marked out on
6 these part-petitions were determined by the Board to
7 be facially invalid and would have been determined
8 invalid by the Board if they had not been stricken."
9 So I guess my question is would you
10 believe the footnote incorrectly rounded down?
11 MR. VOIGT: Objection.
12 A. That it should have been --
13 MR. VOIGT: Unfair -- objection, unfair
14 characterization and irrelevant, prejudicial, and
15 argumentative.
16 A. So are you saying we should have said
17 80 percent of the signatures were actually invalid?
18 Q. I am asking you.
19 MR. VOIGT: He testified he didn't write
20 this letter.
21 A. I don't know why we used 79 percent
22 instead of 79.59 percent.
23 Q. Okay. Would you agree that the
24 transmittal letter is critical of the petition?

1 MR. VOIGT: Objection, unfair
2 characterization.
3 A. I wouldn't say that the -- that the
4 letter is critical of the -- of the proposed act or
5 the petition. I think what the Secretary said in the
6 letter that he had reservations and then went on to
7 detail the basis for those reservations which were
8 the same reservations that led the Secretary to send
9 them to the County Board of Elections for re-review
10 of the irregularities and documents the basis for
11 what the -- for the signatures that were ultimately
12 determined valid and invalid which resulted in a
13 sufficient number of signatures being transmitted to
14 the General Assembly. So I think it just -- it
15 documents his reservation and the process that got us
16 from filing to transmittal.
17 Q. What was the intention of documenting his
18 reservations?
19 A. To document his reservations.
20 Q. Okay. But you agree you've testified the
21 other transmittal letters Secretary Husted
22 transmitted did not contain such language?
23 MR. VOIGT: Objection, speculation, asked
24 and answered. The witness has repeatedly testified

1 that he did not draft this letter.
2 A. And so, correct, this language is not
3 contained in either -- in the other two transmittal
4 letters because the circumstances surrounding this
5 petition project differ from the other two that we've
6 discussed, were different in that there were, the
7 Secretary viewed, as substantive allegations of areas
8 that necessitated the Secretary returning the
9 petitions to the boards for re-review. That is
10 documented in his letter to the State's policymakers
11 under his reservations and for transmitting his
12 petition -- the petitions ultimately that resulted in
13 transmittal of the petition to the General Assembly
14 for their consideration after having found a
15 sufficient number of valid signatures.
16 Q. So I understand you testified you did not
17 draft this. Did you provide any edits at any point?
18 A. Not that I recall.
19 Q. Were you a part of any discussions about
20 what this would contain?
21 A. I don't recall that there was any
22 conversation.
23 Q. Okay. Now, with respect to -- would you
24 agree that this letter invalidated a number of

1 part-petitions from Cuyahoga County?
2 A. Well, I would agree that the transmittal
3 letter transmitted the issue to the General Assembly
4 for their consideration based on having a sufficient
5 number of valid signatures, but one of the things
6 that is documented in the transmittal letter is that
7 based on the findings of the Cuyahoga County Board of
8 Elections, the secretary did invalidate a number of
9 signatures from Cuyahoga.
10 Q. Okay. Do you recall whose idea it was to
11 invalidate those signatures from Cuyahoga County?
12 A. And I would say that answer to that
13 question would reveal information subject to the
14 attorney-client privilege.
15 Q. Okay. Are you aware Secretary Husted
16 ever sua sponte invalidated part-petitions that were
17 verified by Board of Elections without -- yeah. I
18 can rephrase that.
19 A. If you would.
20 MR. VOIGT: I didn't understand the
21 question.
22 Q. Has Secretary Husted ever invalidated
23 part-petitions that had been previously certified by
24 Board of Elections on a statewide initiated petition?

1 A. Well, I don't remember what Cuyahoga
2 specifically said when they sent us their -- the
3 results of their re-review along with I think they
4 sent us maybe a transcript or summary of their
5 meeting. So I don't remember if they -- if they had
6 invalidated or if they had just said, you know, here
7 is the information. You decide what to do. I can't
8 remember what they said.
9 But I'm not aware of in the past the
10 Secretary rejecting signatures that Boards of
11 Elections had certified but this is also an instance
12 where the board had evidence before it, if I recall
13 correctly, Cuyahoga forwarded to the Secretary that
14 there was evidence of irregularities, the kind of
15 irregularities that the Secretary had mentioned in
16 his -- in his directive to con -- to conduct the
17 re-review.
18 Q. Do you recall if the Cuyahoga County
19 Board of Elections forwarded the evidence? Did they
20 ask the Secretary of State what to do?
21 A. That I don't remember.
22 Q. Okay. And who would know that?
23 A. That would probably be Carrie Kuruc who
24 is the attorney assigned to Cuyahoga.

1 Q. Okay. Now, when you were with the
2 Franklin County Board of Elections, can you recall
3 either Secretary Brunner or Secretary Blackwell
4 invalidating part-petitions that had been certified
5 by Board of Elections?
6 MR. VOIGT: Objection. No showing he has
7 personal knowledge because he was not at the
8 Secretary's office at that time.
9 A. As it relates to any signatures from
10 Franklin County, I don't -- I don't remember. I
11 don't remember that.
12 Q. Okay.
13 A. I think it is worth noting that to a
14 certain extent what happened when I was at Franklin
15 County is largely irrelevant because the State
16 Constitution has been changed towards the end of my
17 tenure there. It used to be that you would have
18 all -- you would have a different challenge of the 88
19 counties and so there wasn't each county kind of did
20 its own protest process.
21 Q. Okay.
22 A. So this is kind of the first time there
23 was ever precertification accusations of
24 irregularities before the Secretary certification.

1 Q. Okay. So the Cuyahoga County Board of
2 Elections collected evidence, still voted to verify
3 these part-petitions. Where does the Secretary of
4 State's authority come from to invalidate those?
5 MR. VOIGT: Objection, calls for a legal
6 conclusion. Are you asking him to recite from memory
7 statutes and so forth? I think that's very unfair.
8 MR. CLINGER: If he knows it.
9 MR. VOIGT: I object to the question
10 because it calls for a legal conclusion, and it's
11 essentially asking him to recite statutes and
12 constitutional provisions that he may or may not have
13 memorized.
14 A. I'm good but that is one thing, I don't
15 have the code memorized. So I don't -- like I said,
16 I don't have it memorized, but my recollection is
17 that in the Secretary's general duties, I think it's
18 in 3501.05 or something, maybe it's 11, I can't
19 remember, that one of the Secretary's prescribed
20 duties as chief election official of the state is to
21 determine the validity and sufficiency of statewide
22 petitions. I think language similar to that is
23 echoed in the -- I don't remember what it is in,
24 whatever the chapter is that talks about initiative

1 and referendum. And so I think -- I think in my
2 personal view, I am not a lawyer, but as an election
3 administrator, I think the Secretary would be, based
4 on my understanding, would be violating his duty to
5 certify a petition to the General Assembly or to the
6 ballot for that matter in a case of a different kind
7 of project where there was record evidence from a
8 Board of Elections that the law was not followed.
9 So I think the Secretary in this case
10 with the evidence that he had in front of him from
11 the Cuyahoga County Board of Elections had a duty to
12 reject those signatures.
13 Q. Even though the board had certified them.
14 A. Correct.
15 Q. Okay. Do you recall any --
16 MR. VOIGT: Objection, assumes facts not
17 in evidence.
18 Q. Do you recall any discussions when the
19 drafting was going on about whether the Secretary of
20 State has the authority to do that?
21 MR. VOIGT: Objection. To the extent
22 you're -- to the extent you can answer that without
23 referring to any communications that involved legal
24 counsel, you can answer that question.

1 A. I don't remember any conversation about
2 whether the Secretary did or didn't have the duty to
3 do what he did.
4 Q. Okay. So did the Cuyahoga County Board
5 of Elections fail to follow the directive by
6 validating those part-petitions?
7 MR. VOIGT: Objection, calls for a legal
8 conclusion, assumes facts not in evidence, and lack
9 of foundation.
10 A. And, like I said earlier, I think the
11 directive that we issued was sufficient for the
12 boards to conduct the re-review, and whatever
13 Cuyahoga did I'm sure they did in -- in the belief
14 that it was sufficient to carry out the instructions
15 of the directive.
16 Q. Okay. But not what they believed but did
17 the County Board of Elections fail to follow the
18 directive?
19 MR. VOIGT: Same objection.
20 A. Well, I think I've answered it, but I
21 don't think they failed to follow the directive.
22 Q. Then why did the Secretary of State undo
23 their certification if they did not fail to follow?
24 MR. VOIGT: Same objection, asked and

1 answered.
2 A. And I would say I don't think that they
3 failed, and I think the Secretary in the face of what
4 record evidence they had didn't think he could
5 fulfill his duty in transmitting it to the General
6 Assembly without those signatures being invalidated,
7 the outcome of which was transmitting the petition to
8 the General Assembly as having a sufficient number of
9 signatures.
10 Q. Okay. Did the Secretary of State's
11 Office notify the Cuyahoga County Board of Elections
12 about this decision?
13 A. I don't believe so.
14 Q. Okay. Why not?
15 A. I don't believe it was necessary to.
16 Q. Okay. Even though the Secretary undid
17 their decision they did not think it was necessary to
18 inform them?
19 MR. VOIGT: Objection. Are you done?
20 Objection, argumentative and assumes facts not in
21 evidence.
22 A. And I would say -- I would answer the
23 question, but I don't think the Secretary undid what
24 they did. I think the Secretary fulfilled his duty

1 and the Cuyahoga County fulfilled its duty. And so
2 in the Secretary fulfilling his duty he excluded
3 signatures the Cuy -- from evidence the Cuyahoga
4 County Board of Elections had found that signatures
5 should be in the Secretary -- that were invalid and
6 in so doing ultimately transmitted the issue to the
7 General Assembly as having a sufficient number of
8 signatures.
9 Q. Was a list made of the part-petitions
10 that were invalidated? The Cuyahoga County
11 part-petitions that were invalidated.
12 A. I don't believe a list was ever made,
13 no --
14 Q. Okay.
15 A. -- that I'm aware of.
16 Q. Okay. How did you determine which ones
17 were circulated by these two companies?
18 A. And that I would say gets into
19 information if I were to talk about would be
20 violating the attorney-client privilege.
21 Q. And did the Secretary of State notify the
22 County Board of Elections with a list -- sorry. Let
23 me rephrase.
24 Did the Secretary of State's Office

1 provide Cuyahoga County any sort of document that
2 lets them know which part-petitions were invalidated?
3 MR. VOIGT: Objection, asked and
4 answered.
5 A. Like I said before, no, I don't think we
6 ever communicated anything to the Cuyahoga County
7 Board of Elections after transmitting those to the
8 General Assembly.
9 Q. Are there plans to?
10 A. Not that I'm -- I don't have any plans
11 to.
12 Q. Okay. Why not?
13 A. I don't think it's necessary.
14 Q. Okay. If it wouldn't have affected the
15 sufficiency of the petition, what was the rationale
16 for invalidating these signatures in Cuyahoga County?
17 MR. VOIGT: If you can answer the
18 question without going into attorney-client
19 discussion or discussions that you had or that you
20 were part of with counsel, you can answer the
21 question. Otherwise you can't divulge privileged
22 information.
23 A. All right. So I would say in -- I've
24 already kind of answered the question by saying that

1 the Secretary has a duty to determine the validity
2 and the sufficiency and with record evidence from
3 Cuyahoga that there were these kinds of
4 irregularities, it would not have been furtherance of
5 the Secretary's duty even if it didn't have an effect
6 on the outcome of it being transmitted or not. The
7 Secretary still had a duty to make the determination
8 of validity and based on the evidence from Cuyahoga
9 these were invalid signatures and so we withheld them
10 from the total number of signatures. That still
11 resulted in having enough signatures to be sent to
12 the General Assembly.
13 Q. Okay. Why not just send the petitions
14 back to Cuyahoga County with more explicit
15 instructions? Why did the Secretary of State's
16 Office do it and not Cuyahoga County Board of
17 Elections?
18 A. Because this is the path we chose.
19 Q. Why?
20 MR. VOIGT: Objection. Asked and
21 answered.
22 A. I don't think there was a particular
23 reason why. This is the path we chose.
24 Q. Okay. Now, are you aware the Delaware

1 County Board of Elections tied with respect to
2 counting part-petitions and submitted them over to
3 the Secretary of State's office?
4 A. Yes.
5 Q. And are you aware the Secretary has not
6 issued a tiebreaking decision on that?
7 A. I'm aware of the matter of controversy in
8 Delaware, and this is moot because we have
9 transmitted to the General Assembly, and they didn't
10 send their arguments. They didn't send all their
11 arguments by the deadline for doing so.
12 Q. So your position is because the Delaware
13 County Board of Elections was delayed, that's a fair
14 characterization, in submitting a tie vote to the
15 Secretary of State's Office, it doesn't get decided
16 at all?
17 MR. VOIGT: Objection. I don't
18 understand your question. It's unintelligible and
19 he's already answered the question.
20 A. So I think, if I understand your
21 question, the answer would be two things. One is
22 state law sets up a time frame for a Board of
23 Elections to submit -- for the Director to submit
24 essentially the arguments for and against the tie

1 vote. And the board delayed in doing that, and in
2 the intervening time frame, as I recall, we
3 transmitted the issue -- we transmitted the petition
4 to the General Assembly. And in our view that moots
5 the matter in controversy in Delaware County as it
6 relates to this, so it's no longer required for the
7 Secretary to resolve the matter of controversy.
8 Q. Okay. Now, in this action the
9 sufficiency is being challenged, so you are still
10 saying it's moot even though sufficiency of the
11 petition is being challenged?
12 A. Well, I would say as a nonlawyer, that's
13 probably above my pay grade. I think that's
14 something that will be decided, you know, by the
15 court, if it has a valid number of -- sufficient
16 number of signatures or not. Our position with the
17 Secretary of State's Office is that that is an
18 administrative matter. It's no longer a matter in
19 controversy that's required for the Secretary to
20 break the tie.
21 Q. Okay. Has the Secretary ever refused to
22 break a tie vote before?
23 A. Well, again, I think saying that the
24 Secretary is refusing to break the tie I think

1 mischaracterizes my testimony. But I think we've --
2 we, the Secretary of State's Office, have broken --
3 you know, have broken ties to resolve matters in
4 controversy when they were still truly matters of
5 controversy.
6 Q. Okay. Are you aware of any tie votes
7 that were submitted and the Secretary said they
8 were -- he would not decide it because it's moot
9 other than the Delaware County issue before us?
10 A. Not that I remember.
11 Q. Okay. And why doesn't the transmittal
12 letter say anything about Delaware County?
13 MR. VOIGT: I didn't understand what you
14 said. What does?
15 Q. I'm sorry. Why does the transmittal
16 letter not say anything about the Delaware County
17 signatures?
18 MR. VOIGT: Oh, objection, speculation.
19 He has already testified multiple times that he did
20 not write the letter.
21 A. I don't know why the letter doesn't
22 include it. I don't know if -- I don't know if our
23 office even knew about the tie at the time the letter
24 was written. If we did or not, I don't even know if

it's germane to include in the letter.

Q. Okay. And after the Secretary of State's Office certified the petition transmitted to the General Assembly, was there any review of part-petitions by anybody in the Secretary of State's office?

A. Not that I know of. I don't know whether the lawyers have looked at anything to assist in any of the several lawsuits that have been filed back and forth on this, but we haven't to my knowledge for any administrative purpose.

MR. CLINGER: Okay. And I might be done, if we could take a short break.

MR. VOIGT: Sure.

(Recess taken.)

MR. CLINGER: Back on the record. At this point I have no further questions.

MS. SFERRA: I have a question.

- - -

CROSS-EXAMINATION

By Ms. Sferra:

Q. Let me put this this way, has the Secretary's office ever fielded any inquiries from any law firms besides Bricker & Eckler? Not

1 necessarily related to this petition.
2 MR. CLINGER: Objection, vague.
3 A. It's not uncommon for our office to
4 receive input from law firms or other individuals in
5 the exercise of the Secretary's administrative duty.
6 I think two instances. Specifically one is as
7 relates to permanent directives that our office
8 issues. We're required to post those for public
9 comment, and we get -- we receive comments from lots
10 of different people, attorneys, law firms, advocacy
11 organizations who give us input. And in 2014,
12 Mr. McTigue and attorneys in a different firm met
13 with me and others on several occasions to try and
14 craft a directive on how to implement absentee voting
15 and voting laws that had recently passed in Ohio. So
16 it's not uncommon for our office to engage in those
17 conversations in the exercise of the Secretary's
18 duties.
19 MS. SFERRA: I don't have any further
20 questions.
21 MR. VOIGT: I have a few follow-up
22 questions.
23 - - -
24

1 DIRECT EXAMINATION

2 By Mr. Voigt:

3 Q. You just mentioned that Mr. McTigue's

4 office contacted the Secretary's office. Did the

5 Secretary's office ultimately implement any change in

6 election administration that Mr. McTigue had

7 advocated? I am not suggesting that that is the

8 reason why it was changed, but I'm just wondering if

9 a change was made consistent with what he had

10 suggested.

11 MR. CLINGER: Objection, vague and

12 confusing.

13 A. So in -- if I understand your question,

14 in the 2014 example that I raised, Mr. McTigue raised

15 a number of suggestions. We worked through those

16 with him. Many of them were implemented. A couple

17 were not. The things we didn't implement resulted in

18 litigation. And so but he raised a number of good

19 points and we looked at them and evaluated them and

20 there was some agreement and we implemented them and

21 I think we would do that with pretty much anybody.

22 Even with Don after he sued us twice in the last six

23 months.

24 Q. Could you turn to Exhibits 1 and 2,

1 please, counsel marked. Do you recall Mr. Clinger
2 asked you several questions about Exhibits 1 and 2?
3 Exhibit 1 is a directive that was issued during
4 Secretary Blackwell's administration, and Exhibit 2
5 is a directive that was issued during Secretary
6 Brunner's administration. I think you already
7 testified to this earlier, but you were not with the
8 Secretary's office -- were you with the Secretary's
9 office during the Brunner or Blackwell
10 administrations?
11 A. No. I was at the Franklin County Board
12 of Elections during all of Secretary Brunner's and
13 part of Secretary Blackwell's administration,
14 specially the time these directives were issued.
15 Q. And while you were with Franklin County,
16 did you receive other directives during those two
17 administrations?
18 A. Yes.
19 Q. Do you recall every single one of those
20 directives you received?
21 A. No.
22 Q. Is it possible that some practices and
23 procedures related to election administration changed
24 from one administration to the next?

1 A. Yes. Sometimes they even change within
2 an administration.
3 Q. What is the Election Official Manual?
4 I'm sorry. Strike that question.
5 Let's stay on Exhibits 1 and 2. Exhibit
6 1 relates to something called the SmokeFreeOhio
7 initiative petition. Do you see that?
8 A. Yes.
9 Q. Do you know whether there were any
10 concerns of large scale irregularities with the
11 part-petitions related to this particular petition --
12 or this particular initiative petition?
13 A. So my recollection on the SmokeFreeOhio
14 stuff is smoky, no pun intended, because there were
15 actually two petitions at the same time. As I
16 recall, one was a constitutional amendment, and one
17 was a issue statute, that both appeared on the '06
18 general election ballot. I do recall there was --
19 that there were protests filed in a couple of
20 different counties about signatures, but I don't
21 remember specifically whether it was about the
22 petitions on the initiated statute or whether it was
23 the petitions on the constitutional amendment.
24 Q. All right. What is the Election Official

1 Manual?
2 A. The Election Official Manual is the
3 compendium of all of the Secretary's instructions to
4 the Boards of Elections on a wide range of elections
5 administrative -- elections administration topics.
6 Each chapter was issued as its own permanent
7 directive on different subject matter.
8 Q. Does it describe every possible scenario
9 that a board may encounter?
10 A. No.
11 Q. Mr. Clinger had asked you some questions
12 about alleged differences between the dog auction
13 petition and the drug price petition. To your
14 knowledge had allegations of large scale
15 irregularities been made with respect to the dog
16 auction petition?
17 A. No.
18 Q. And I believe you already testified to
19 this, but were allegations of large scale
20 irregularities made with respect to the petition
21 process related -- the drug -- related to the drug
22 price proposed initiative?
23 A. Yes.
24 MR. VOIGT: Those are all the questions I

1 have, although if Mr. Clinger has any additional
2 questions, I may have a follow-up.
3 MR. CLINGER: I have got a couple more.
4 Hang on one second.
5 - - -
6 RECROSS-EXAMINATION
7 By Mr. Clinger:
8 Q. So Directive 2015-40, is that a permanent
9 directive?
10 A. Which one? I'm sorry.
11 Q. Directive 2015-40 which is the one
12 regarding the initial review.
13 A. It is not.
14 Q. Was Directive 2016-01 a permanent
15 directive?
16 A. No.
17 Q. Was there any sort of public comment
18 period on either of these directives?
19 A. There was not.
20 Q. Okay. And you testified that election
21 practices change sometimes even within the same
22 administration. Would you agree that Directive
23 2016-01 represents a change from the existing -- the
24 prior law regarding the review of petitions?

1 MR. VOIGT: Objection, lack of
2 foundation.
3 A. No, I don't think it's a change.
4 Q. Okay. Why not?
5 MR. VOIGT: Same objection.
6 A. I think the -- it's not a change because
7 it's not a reinterpretation of the law. The only
8 thing that's different is that there was an
9 allegation of irregularities and that we transmitted
10 to the counties back -- we transmitted back to the
11 counties for re-review. I don't think that's
12 necessarily a change in interpretation or policy.
13 Q. And had you not received allegations --
14 the only allegations of fraud you received are from
15 the attorneys for PhRMA; is that correct?
16 A. That's correct.
17 MR. CLINGER: Okay. No further
18 questions.
19 MR. VOIGT: Okay. I just wanted to make
20 a final statement on the record. This deposition was
21 noticed in the OMA case and yet nearly every single
22 question clearly related to the Jones matter and,
23 therefore, I feel that this was an improper
24 deposition taken prematurely before permissible

1 discovery in the Jones matter. That case is subject
2 to a current motion to dismiss and for that reason
3 and to preserve -- to preserve this objection, I
4 would move to strike the entire deposition on the
5 record that it's premature and improper.
6 Mr. Clinger referenced that it relates to
7 the Secretary of State's affirmative defenses, but I
8 would note those are affirmative defenses to
9 allegations made by the OMA, O-M-A, petitioners. And
10 there is not a crossclaim by Mr. Clinger's client
11 against the Secretary of State in this particular
12 matter. And so, therefore, this -- these questions
13 were improper, and the deposition should not have
14 gone forward.
15 The one other point I wanted to make I
16 received an e-mail from Mr. McTigue yesterday, and I
17 notice he did not copy all counsel, particularly
18 OMA's counsel, and he noted that he wanted to have
19 this deposition go forward as "a trial deposition."
20 I object to that on the basis that depositions are
21 discovery depositions unless it is established that a
22 witness is unavailable for trial. In the abundance
23 of caution throughout this deposition, I have been
24 attempting to specify my objections rather than

1 specify -- rather than simply say objection to form.
2 However, had this -- had this really occurred in a
3 trial situation, my -- my objections would have been
4 different and also we would have prepared differently
5 and there would have been additional follow-up
6 cross-examination.
7 So I feel that trying to characterize
8 this as a trial deposition is improper under the
9 rules, and we would also oppose that effort. In my
10 view this is a discovery deposition.
11 MS. SFERRA: I guess I would just add to
12 that it was certainly a discovery deposition in my
13 view. I never saw the e-mail to which you are
14 referring, so I'm not certain what the content of
15 that was, but certainly Mr. McTigue has made several
16 statements in his filings with the Ohio Supreme Court
17 that there was an important discovery yet to be done
18 and specifically has referenced this particular
19 deposition. So it was my understanding all along
20 this was a discovery deposition.
21 MR. CLINGER: Okay. I will state that
22 the notice of deposition states for purposes of trial
23 and any other purposes permitted under the Ohio Rules
24 of Evidence and Civil Procedure.

1 MR. VOIGT: My response to that you can
2 put what you want in a deposition -- in a deposition
3 notice, but it doesn't trump the Rules of Civil
4 Procedure which trumps whatever you deem to call a
5 particular deposition.
6 MS. SFERRA: And I also don't think it's
7 very professional to allow a communication where that
8 was the essential point of it to go to one counsel
9 and not the other.
10 MR. CLINGER: And just point to that
11 e-mail, it was -- the bulk of it was with respect to
12 the documents you have not turned over and the
13 documents that were turned over to us late on Friday
14 late afternoon at like 4:40 p.m., and so if you
15 recall, that e-mail asked about the status of the
16 remaining documents.
17 MR. VOIGT: I object to the
18 characterization of the e-mail and let me pull it up.
19 MR. CLINGER: Okay.
20 MR. VOIGT: Okay. In this e-mail --
21 Mr. McTigue sent this e-mail to me. He copied
22 Mr. Conover, who is my co-counsel, and then he also
23 copied Mr. Clinger and Mr. Colombo. Mr. Clinger and
24 Mr. Colombo are Mr. McTigue's co-counsel. Those are

1 the only lawyers on this or individuals on this
2 e-mail.
3 The first part of it discusses a claim
4 that there are documents that -- that he believes
5 have not yet been produced. He does not identify
6 what those documents are. As I noted previously to
7 him, the Secretary's office has produced numerous
8 documents in response to his public records request
9 and also in this litigation. And then he notes that
10 the deposition is "both for trial and discovery
11 purposes." And then he asks about the status of a
12 privilege log. So that's -- that's what he e-mailed.
13 MR. CLINGER: Okay. Now, with respect to
14 the e-mail there was a discussion about leaving the
15 deposition open until we get the remaining documents.
16 MR. VOIGT: Mr. Damschroder, if you could
17 just -- I think it would be a good time for you to
18 depart while we continue to discuss. If you could
19 just wait for me outside.
20 Let the record reflect that the witness
21 and Mr. Walsh are leaving the room.
22 I object to leaving this deposition open.
23 Clearly his deposition was taken, as I stated, for
24 improper purposes. And so it's my position that this

1 deposition is done and the deposition -- Mr.
2 Damschroder is finished. We can discuss that more --
3 in more detail if there happens to be documents that
4 are produced that are actually related to the only
5 matter that's open where discovery is proper. That's
6 certainly something we can discuss.
7 But if we are going to have another
8 deposition where your plan is to go forward with
9 questioning in a case where discovery has not yet
10 begun, we are going to have serious -- we are going
11 to have strenuous objections to that.
12 MR. CLINGER: Okay. Obviously I object
13 to your characterization of how this deposition was
14 undertaken and I guess noted that you object to
15 leaving the deposition open.
16 MR. VOIGT: I object to it, but like I
17 said, if there are documents that are produced and if
18 there are legitimate -- there are areas of further
19 inquiry that need to be taken related to documents
20 that are produced that are related to the OMA case,
21 which is the case where there is discovery, that's
22 something we can talk about, and I am open to talking
23 about that.
24 To the extent you want to call

1 Mr. Damschroder back to ask him more questions about
2 the Jones case, which is not yet in discovery, then I
3 object to that.
4 MR. CLINGER: Okay. And so with respect
5 to documents that have not been produced, is it -- is
6 it your position that everything that is responsive
7 has been produced?
8 MR. VOIGT: No. We are going to be
9 producing additional documents, and Mr. Walsh just
10 left so I --
11 MR. CLINGER: We can bring him back in.
12 MR. VOIGT: Why don't I just -- why don't
13 we just say that they are going to be produced soon.
14 MR. CLINGER: Okay. When is soon?
15 MR. VOIGT: Why don't I step out and ask
16 him.
17 MR. CLINGER: Why don't we bring him in
18 on the record.
19 MR. VOIGT: No, I don't want to bring him
20 in on the record.
21 MR. CLINGER: Why not?
22 MR. VOIGT: We are still on. We will
23 have -- the Secretary's office will have additional
24 documents to produce by the end of next week.

1 However, I note --
2 MR. CLINGER: End of next week?
3 MR. VOIGT: The end of next week but,
4 however, I note in Mr. McTigue's e-mail he raised the
5 allegation documents have not been produced that
6 should be produced. We have yet to receive any type
7 of indication of what he believes should be produced.
8 We are both on the same side of the v. here; and, you
9 know, it would be helpful to have some understanding
10 of what he thinks is still out there --
11 MR. CLINGER: Okay.
12 MR. VOIGT: -- that's responsive.
13 MR. CLINGER: Would you like us to
14 provide you with --
15 MR. VOIGT: Please.
16 MR. CLINGER: -- a written document of
17 that?
18 MR. VOIGT: Yes, please.
19 MR. CLINGER: We'll do that.
20 MR. VOIGT: In addition, like I said,
21 there will be some more documents that are being
22 produced.
23 MR. CLINGER: Okay.
24 MR. VOIGT: And a privilege log.

MR. CLINGER: Yeah. And so then our question about leaving the deposition open was to then respond to those documents that are produced.

MR. VOIGT: Okay. And I have already made my position clear on the record.

MR. CLINGER: Okay.

MR. VOIGT: That's all from me.

MR. CLINGER: Me too.

(Thereupon, at 4:00 p.m., the deposition was adjourned.)

- - -

State of Ohio :
: SS:
County of _____ :

I, Matthew Damschroder, do hereby certify that I have read the foregoing transcript of my deposition given on Tuesday, May 31, 2016; that together with the correction page attached hereto noting changes in form or substance, if any, it is true and correct.

_____
Matthew Damschroder

I do hereby certify that the foregoing transcript of the deposition of Matthew Damschroder was submitted to the witness for reading and signing; that after he had stated to the undersigned Notary Public that he had read and examined his deposition, he signed the same in my presence on the _____ day of _____, 2016.

_____
Notary Public

My commission expires _____, _____.

- - -

1 CERTIFICATE

2 State of Ohio :
: SS:
3 County of Franklin :

4 I, Karen Sue Gibson, Notary Public in and for
the State of Ohio, duly commissioned and qualified,
5 certify that the within named Matthew Damschroder was
by me duly sworn to testify to the whole truth in the
6 cause aforesaid; that the testimony was taken down by
me in stenotypy in the presence of said witness,
7 afterwards transcribed upon a computer; that the
foregoing is a true and correct transcript of the
8 testimony given by said witness taken at the time and
place in the foregoing caption specified and
9 completed without adjournment.

10 I certify that I am not a relative, employee,
or attorney of any of the parties hereto, or of any
11 attorney or counsel employed by the parties, or
financially interested in the action.
12
IN WITNESS WHEREOF, I have hereunto set my
13 hand and affixed my seal of office at Columbus, Ohio,
on this 2nd day of June, 2016.
14

15 _____
Karen Sue Gibson, Registered
16 Merit Reporter and Notary Public
in and for the State of Ohio.
17
My commission expires August 14, 2020.
18
(KSG-6200)
19
- - -
20
21
22
23
24

1 CERTIFICATE

2 State of Ohio :
: SS:
3 County of Franklin :

4 I, Karen Sue Gibson, Notary Public in and for the State of Ohio, duly commissioned and qualified,
5 certify that the within named Matthew Damschroder was by me duly sworn to testify to the whole truth in the
6 cause aforesaid; that the testimony was taken down by me in stenotypy in the presence of said witness,
7 afterwards transcribed upon a computer; that the foregoing is a true and correct transcript of the
8 testimony given by said witness taken at the time and place in the foregoing caption specified and
9 completed without adjournment.

10 I certify that I am not a relative, employee, or attorney of any of the parties hereto, or of any
11 attorney or counsel employed by the parties, or financially interested in the action.

12

IN WITNESS WHEREOF, I have hereunto set my
13 hand and affixed my seal of office at Columbus, Ohio, on this 2nd day of June, 2016.

14

15 Karen Sue Gibson

Karen Sue Gibson, Registered
16 Merit Reporter and Notary Public in and for the State of Ohio.

17

My commission expires August 14, 2020.

18

(KSG-6200)

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- - -

20

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22

23

24

State of Ohio :
: SS:
County of Franklin :

I, Matthew Damschroder, do hereby certify that I have read the foregoing transcript of my deposition given on Tuesday, May 31, 2016; that together with the correction page attached hereto noting changes in form or substance, if any, it is true and correct.

Matthew Damschroder

I do hereby certify that the foregoing transcript of the deposition of Matthew Damschroder was submitted to the witness for reading and signing; that after he had stated to the undersigned Notary Public that he had read and examined his deposition, he signed the same in my presence on the 10th day of June, 2016.

Jack L. Christopher
Notary Public

JACK L. CHRISTOPHER, ATTORNEY AT LAW
NOTARY PUBLIC, STATE OF OHIO
My commission has no expiration date.
Section 147.03 R.C.

My commission expires _____, _____.

- - -

ERRATA SHEET

Please do not write on the transcript. Any changes in form or substance you desire to make should be entered upon this sheet.

TO THE REPORTER:

I have read the entire transcript of my deposition taken on the 31 **day of** May, 2016, **or the same has been read to me. I request that the following changes be entered upon the record for the reasons indicated. I have signed my name to the signature page and authorize you to attach the same to the original transcript.**

Page	Line	Change	Reason
13	7	add "understand the question"	Missing words
93	17	change "stays" to "says"	Misspelling

Date 6/10/16 **Signature:** [illegible]