

Michael Switzenbaum

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN
* * * * *
WILLIAM WHITFORD, et al.,
Plaintiffs,
vs. Case No. 15-CV-421-JDP
BEVERLY R. GILL, et al.,
Defendants.
* * * * *
THE WISCONSIN ASSEMBLY DEMOCRATIC CAMPAIGN
COMMITTEE,

Plaintiff,
vs. Case No. 18-cv-763-JDP
BEVERLY R. GILL, et al.,
Defendants,

* * * * *
VIDEOTAPED DEPOSITION OF MICHAEL SWITZENBAUM
TAKEN AT: Law Office of Peter Earle
LOCATED AT: 839 North Jefferson Street
Milwaukee, WI
January 15, 2019
2:57 p.m. to 5:06 p.m.

REPORTED BY ANITA KORNBURGER
REGISTERED PROFESSIONAL REPORTER
* * * * *

1 APPEARANCES
2 CAMPAIGN LEGAL CENTER, by
3 Annabelle Harless, Esquire and
4 Charquia Wright, Esquire
5 73 West Monroe Street, Suite 302
6 Chicago, IL 60603
7 312-561-5508
8 aharless@campaignlegalcenter.org
9 Appearing on behalf of the Plaintiffs.

10 BARTLIT BECK, LLP, by
11 Joshua Ackerman, Esquire
12 54 West Hubbard Street, Suite 300
13 Chicago, IL 60654
14 312-494-4440
15 joshua.ackerman@bartlit-beck.com
16 Appearing on behalf of the Defendants.

17 INDEX

18 Examination by Page
19 Mr. Ackerman. 4
20 Ms. Harless. 91
21 Mr. Ackerman. 93

22 EXHIBITS

23 Exhibit No. Description Page Identified
24 8 Stack of correspondence that
25 Mrs. Schumann's written to
various representatives. 48
9 Response to interrogatories. 61
10 10 Google map. 85

(Original exhibits attached to original transcript.
Copies provided to all counsel.)

1 TRANSCRIPT OF PROCEEDINGS

2 THE VIDEOGRAPHER: Good afternoon. We
3 are on the record. My name is Jon Hansen, CLVS,
4 videographer with Golkow Litigation Services.
5 Today's date, January 15, 2019. The time is 2:57.
6 This deposition is being held in Milwaukee,
7 Wisconsin, in the matter of William Whitford, et
8 al, versus Beverly Gill, et al., in the Wisconsin
9 State Assembly, United States District Court,
10 Western District of Wisconsin, case number
11 15-CV-00421, JDP, in the matter of the Wisconsin
12 Assembly of Democratic Campaign Committee versus
13 Beverly Gill, et al., and the Wisconsin State
14 Assembly, case 18-CV-00763 JDP.

15 The deponent today is Michael
16 Switzenbaum. The court reporter is Anita Foss. At
17 this time if counsel could please state their
18 appearance for the record, after which our reporter
19 will swear in the witness and we can proceed.

20 MR. ACKERMAN: Joshua Ackerman
21 representing the Wisconsin State Assembly from
22 Bartlit Beck, LLP in Chicago.

23 MS. HARLESS: And Annabelle Harless
24 representing the plaintiffs and Whitford, from the
25 Campaign Legal Center in Chicago. And this is my

1 colleague, Sharkia Wright. She's also with the
2 Campaign Legal Center in DC.

3 MICHAEL SWITZENBAUM, called as a
4 witness herein, having been first duly sworn on
5 oath, was examined and testified as follows:

6 EXAMINATION

7 BY MR. ACKERMAN:

8 Q. Good afternoon, Mr. Switzenbaum. I
9 introduced myself earlier, but I'll do that again
10 for the record. My name is Joshua Ackerman. You
11 understand you're under oath today,
12 Mr. Switzenbaum?

13 A. Yes.

14 Q. Have you given a deposition before?

15 A. No.

16 Q. Is there any reason why you can't give
17 your best answers to all of my questions today?

18 A. No.

19 Q. Are you on any medication that might
20 impair your ability to answer?

21 A. No.

22 Q. I'd ask that you wait for me to finish my
23 question before you answer so that we have a clean
24 break for the benefit of our court reporter. And
25 we should also try to speak as slowly as we can,

1 although that's a rule I violated flagrantly.
2 You're also welcome to take a break at any time you
3 need to today, but I'd ask that if I've asked you a
4 question, you answer the question before we take a
5 break.

6 A. Okay.

7 Q. We've got a couple of hours scheduled
8 here, which is not a lot of time for this, and I
9 hope we're going to get through everything we need
10 to. But as I believe your counsel's told you, we
11 may need to come back and do it again if we're
12 unable to do that.

13 A. Okay.

14 Q. When did you become a plaintiff in this
15 case?

16 A. In the summer of 2018.

17 Q. You're aware that the case had previously
18 gone to trial and had been going on since 2015;
19 correct?

20 A. Yes.

21 Q. Any reason why you were not a plaintiff
22 as early as 2015?

23 A. I don't recall any type of announcement
24 asking for plaintiffs. If there were, I didn't see
25 it. But I did see it in summer of 2018, early

Page 6

1 summer.

2 Q. And what is the "it" that you saw in the

3 summer of '18?

4 A. It was an e-mail. It had a link in it to

5 the League of Women Voters and it explained that

6 this case was sent back from the Supreme Court and

7 they were looking for people to be plaintiffs. And

8 I -- I submitted an application to be a plaintiff.

9 Q. Who sent the e-mail from the League of

10 Women Voters?

11 A. The e-mail itself came from Grassroots

12 North Shore, but it had a hot link to the League of

13 Women Voters.

14 Q. Do you have that e-mail today?

15 A. No.

16 Q. Have you looked for it?

17 A. Yes.

18 Q. And you don't have it?

19 A. Don't have it. I wasn't in the habit of

20 keeping e-mails until I recognized the fact that I

21 should for this case.

22 Q. So the e-mail had a hot link that you

23 followed?

24 A. Right.

25 Q. And it went to the League of Women

Page 7

1 Voters?

2 A. That sounds right.

3 Q. And what was on that page?

4 A. I can't remember.

5 Q. What was it about that web page that made

6 you think to yourself that you were a good

7 candidate to be a plaintiff in this case?

8 A. Well, I wasn't sure that I was, but I was

9 interested in participating, so I mentioned that I

10 was. And then later, must have been July or so, I

11 was asked if I were still interested. And then

12 shortly after that I was interviewed on a phone

13 call.

14 Q. To the best of your recollection, what

15 was on that web page?

16 A. I can't remember.

17 Q. Do you have any idea, sitting here today,

18 what made you decide to contact the League of Women

19 Voters to volunteer to be a plaintiff in this case?

20 A. Well, I'm interested in this. I'm a

21 member of the League of Women Voters. I do

22 volunteer work with them on registering students at

23 Milwaukee Public Schools and -- mostly Milwaukee

24 Public Schools, sometimes Milwaukee Area Technical

25 College.

Page 8

1 Q. Now, to your understanding, this link and

2 this e-mail went out to everyone who volunteers

3 with the League of Women Voters; correct?

4 A. No, it came From Grassroots North Shore.

5 So not everyone who's a member of the League of

6 Women Voters might have been on that e-mail list.

7 Q. But it --

8 A. Now, perhaps it went to other places I'm

9 not aware of.

10 Q. Understood. How many members are in

11 Grassroots North Shore?

12 A. I really don't know.

13 Q. Ten?

14 A. No, more than that.

15 Q. Hundreds?

16 A. Probably somewhere around 100 or so. But

17 I'm not sure.

18 Q. So out of the 100 or so people in

19 Grassroots North Shore who got this e-mail, why did

20 you decide, aside from personal interest, that you

21 would be an ideal plaintiff for this case?

22 A. I didn't know if I was an ideal

23 plaintiff, I just was interested.

24 Q. Did the website, to the best of your

25 recollection, have any criteria or list of reasons

Page 9

1 as to what the lawyers were looking for in a

2 plaintiff?

3 A. I'm sorry, I don't remember. It must

4 have been things I'm interested in, but I don't

5 remember exactly what it said.

6 Q. Have you asked anyone else if they have a

7 copy of this e-mail or website?

8 A. No.

9 Q. When did you first meet Ms. Harless?

10 A. I first talked to Ms. Harless probably in

11 July. She asked me if I was still interested. And

12 then a few weeks after that she interviewed me on

13 the telephone to see if I were relevant for such.

14 Q. That was July of 2018?

15 A. Yes, sir.

16 Q. And I don't want to know what she said on

17 the call, but when was the phone interview?

18 A. It was sometime in the summer. July,

19 maybe early August. I can't remember the exact

20 date.

21 Q. And when was the next time you talked to

22 Ms. Harless or any of the other lawyers

23 representing you in this case?

24 MS. HARLESS: Objection on the -- to the

25 extent you're asking for privileged conversations.

Page 10

1 You can ask for the date, but you can't ask for the
 2 content of any of the calls.
 3 BY MR. ACKERMAN:
 4 Q. I don't think I asked for any content,
 5 but I'd like to know the dates of when you next
 6 spoke to Ms. Harless or any of the other lawyers in
 7 the case.
 8 A. We had e-mail conversations. Personal
 9 conversation, I think November. But I can't -- I
 10 can't say for sure.
 11 Q. When did you decide for sure that you
 12 were going to be a plaintiff?
 13 A. Oh, after the phone interview in the
 14 summer, when it seemed that I was qualified. I
 15 said sure, I'd like to do that.
 16 Q. And you said you met with Ms. Harless in
 17 November, or was that somebody else?
 18 A. Ms. Harless and some other people.
 19 Q. Who was in that meeting?
 20 MS. HARLESS: Objection. So to the
 21 extent you're asking for privileged information,
 22 I'm going to object to that question.
 23 MR. ACKERMAN: I asked who was in the
 24 meeting.
 25 MS. HARLESS: Uh-huh.

Page 11

1 MR. ACKERMAN: Is there any concern about
 2 privilege as to who was present?
 3 MS. HARLESS: Not who was present, but
 4 I -- yeah, I just want to make sure that you're not
 5 asking about the content of any meeting.
 6 BY MR. ACKERMAN:
 7 Q. So Mr. Switzenbaum, as a general rule I
 8 think we can stay on safe ground here if you just
 9 listen to my question and give me the answer that
 10 I'm asking for. So who, aside from Ms. Harless,
 11 was present in that meeting in November?
 12 A. Well, Ms. Greenwood, Doug Poland,
 13 Whitford, and a good number of the other
 14 plaintiffs. I don't think all 40 of us were there,
 15 but a good number were.
 16 Q. To your knowledge, was anyone present at
 17 that meeting who is not one of the plaintiffs, one
 18 of your lawyers, or one of the staff members at
 19 your lawyers' offices?
 20 A. I don't know everybody who was there. I
 21 don't think so, but I don't know. There were
 22 people I've never met before.
 23 Q. You don't know one way or another?
 24 A. Right.
 25 Q. At that meeting did you discuss the legal

Page 12

1 advice given to you by your lawyers? I don't want
 2 to know what it was, I just want to know yes or no,
 3 did you discuss legal advice from your lawyers?
 4 A. Yes.
 5 Q. To your knowledge, were any members of
 6 the press present at that meeting?
 7 A. Not to my knowledge, no.
 8 Q. To your knowledge, were any members from
 9 Grassroots North Shore present at that meeting who
 10 are not parties to this case?
 11 A. I think there was one person, yes.
 12 Q. Who was that?
 13 A. Linea Sundstrom. But do you know --
 14 MS. HARLESS: Can we go off the record
 15 for a second?
 16 MR. ACKERMAN: No, I want him to finish
 17 his answer first, then we can go off the record.
 18 THE WITNESS: I'm not sure if she's a
 19 member of Grassroots North Shore or not. I really
 20 am not sure.
 21 MR. ACKERMAN: We can go off the record
 22 now if you want to.
 23 THE VIDEOGRAPHER: Going off the record
 24 at 3:08.
 25 (Discussion held off the record.)

Page 13

1 THE VIDEOGRAPHER: Back on the record at
 2 3:09.
 3 BY MR. ACKERMAN:
 4 Q. Was there anyone in that meeting in
 5 November known to you who was not one of your
 6 lawyers, another party to the case, or a staff
 7 member who works for your lawyers?
 8 MS. HARLESS: Objection, asked and
 9 answered.
 10 THE WITNESS: Yeah, I don't know
 11 everybody who was there. It was the first time I
 12 met just about everybody there.
 13 BY MR. ACKERMAN:
 14 Q. So let me ask my question again. Was
 15 there anyone known to you in that meeting who was
 16 not one of your lawyers and not a party to the case
 17 or a staff member who works for one of your
 18 lawyers?
 19 A. My wife was there, and I believe some
 20 other spouses were there.
 21 Q. Your wife is Gail --
 22 A. Schumann.
 23 Q. -- Schumann? At that lawyer -- or pardon
 24 me. At that meeting did your lawyers advise you --
 25 Well, strike that. I'm not going to ask that

Page 14

1 question.
2 Have you communicated to anyone else
3 who was not present at that meeting at any time
4 subsequent to it the contents of the discussion
5 that you had in that meeting?
6 A. Have not.
7 Q. So that was in November. When was the
8 next time that you met with Ms. Harless or any of
9 your other lawyers?
10 A. In person?
11 Q. Or by telephone or by e-mail.
12 A. It would be in November. There was
13 correspondence. The correspondence leading up to
14 today in November and December and January.
15 Q. And what about in person or by telephone,
16 when was the next time you talked to one of your
17 lawyers?
18 A. I think January.
19 Q. And that was in person or by phone?
20 A. Phone.
21 Q. When was that?
22 A. Last week.
23 Q. How long?
24 A. It was Wednesday, last Wednesday in the
25 afternoon.

Page 15

1 Q. How long did you speak with them?
2 A. About an hour, hour-and-a-half.
3 Q. Who was present on that phone call?
4 A. Ms. Harless and me.
5 Q. Any other phone calls or meetings with
6 your lawyers?
7 A. Not to my recollections. Mostly e-mail.
8 Q. Did you meet with Ms. Harless today?
9 A. Yes.
10 Q. How long?
11 A. About an hour and a half. Hour and
12 15 minutes it was, yes.
13 Q. Anyone else present?
14 A. Yes.
15 Q. Who?
16 A. Ruth was present, she was present.
17 Q. Anyone who was not a lawyer or a staff
18 member working for one of your lawyers?
19 A. At our meeting we just had?
20 Q. Yes.
21 A. No.
22 Q. Have you had any conversations with
23 anyone other than Ms. Harless about the contents of
24 your phone call with her last Wednesday?
25 A. No.

Page 16

1 Q. Have you ever met anyone named Jowei
2 Chen?
3 A. I've not met him.
4 Q. Know who he is?
5 A. Yes, I know who he is.
6 Q. What about Professor Mayor, have you met
7 Professor Mayor?
8 A. No.
9 Q. Do you know who he is?
10 A. No.
11 Q. Are you aware that trial in this case is
12 scheduled to start on April 23rd?
13 A. Yes.
14 Q. In Madison?
15 A. Yes.
16 Q. Are you planning to come to trial?
17 A. Yeah.
18 Q. Planning to testify at trial?
19 A. If I'm asked to.
20 Q. Is there any reason why you wouldn't be
21 available to testify at trial?
22 A. I wouldn't be available on Friday,
23 April 30th, because I'm leaving for two weeks on a
24 vacation to Ireland, which I arranged before all
25 this.

Page 17

1 Q. Other than Friday, April 30th, is there
2 any reason why you couldn't testify at trial?
3 A. No. No, sir.
4 Q. No problem coming to Madison?
5 A. No problem.
6 Q. Okay. Okay. You moved to your current
7 residence in 2003?
8 A. Yes, sir.
9 Q. Where did you live before that?
10 A. Amherst, Massachusetts.
11 Q. Ellen Story was your rep in Amherst,
12 Massachusetts?
13 A. Yes.
14 Q. She a Democrat?
15 A. Yes.
16 Q. Did you vote for her?
17 A. Yeah, I guess. I can't remember, but --
18 Q. To the best of your recollection, did you
19 vote for Ellen Story every time you had an
20 opportunity to when you were living in Amherst?
21 A. No, I voted for the Democrat.
22 Q. I think you just testified,
23 Mr. Switzenbaum, that Ellen Story was the Democrat;
24 is that right?
25 A. To the best of my recollection, yeah.

Page 18

1 Q. So every time that Story was up for
2 election in Amherst, Massachusetts, and you had an
3 opportunity to vote for her, did you vote for her?
4 A. That would be my recollection.
5 Q. When you were living in Amherst did you
6 vote for anybody who wasn't a Democrat?
7 A. No.
8 Q. Never voted for an independent?
9 A. No, sir.
10 Q. Are you aware that -- well, let me ask
11 you this. Would you consider your district in
12 Amherst, Massachusetts to be fairly liberal in its
13 political leanings?
14 A. Yes.
15 Q. You're aware that that district, except
16 till very recently, was held by an independent?
17 A. I'm not aware. When I lived there, I
18 really wasn't very politically involved. But I did
19 vote.
20 Q. You moved to Wisconsin in 2003?
21 A. Yes. July 2003.
22 Q. And where did you move?
23 A. To Whitefish Bay.
24 Q. Is that your current residence?
25 A. Yep, my current residence.

Page 19

1 Q. And I'll save Ms. Harless a question for
2 later. What is your current address?
3 A. 4970 North Idlewild Avenue, Whitefish
4 Bay, Wisconsin.
5 Q. Haven't been to Whitefish Bay, but I've
6 seen your water tower.
7 A. Sure, sure.
8 Q. So let's change gears a little bit.
9 You're a professor at Marquette for a living?
10 A. I am retired.
11 Q. You were a professor at Marquette?
12 A. Right.
13 Q. How long?
14 A. Nine-and-a-half years.
15 Q. So that was from 2003 to what, 2012?
16 A. Yeah, December 31, 2012, I retired.
17 Q. Before that you were at the University of
18 Massachusetts in Amherst?
19 A. Yes. Yes, sir.
20 Q. How long were you there?
21 A. 22 years.
22 Q. 22 years. Anywhere before that?
23 A. Yes, I was at -- excuse me. I was at
24 Clarkson University, it was called Clarkson College
25 of Technology at that time. And I was there for

Page 20

1 three years.
2 Q. Where's Clarkson College of Technology?
3 A. Potsdam, New York.
4 Q. Potsdam, New York. All right. I think
5 that's sufficiently far enough back in your past
6 for our purposes. Do you need to take a break or
7 anything?
8 A. No, just need a cough drop.
9 Q. Mr. Switzenbaum, have you ever run for
10 public office yourself?
11 A. I have not.
12 Q. Why not?
13 A. Just was never interested. I didn't
14 think it was part of my skill set.
15 Q. Aside from not being interested and it
16 not being part of your skill set, is there any
17 other reason why you've never run for public
18 office?
19 A. No.
20 Q. Your e-mail address is
21 MSwitzbaum@gmail.com; right?
22 A. That's right.
23 Q. Do you have any other -- do you have any
24 other e-mail accounts?
25 A. I have a Yahoo account, and I have my

Page 21

1 e-mail from Marquette University. I'm professor
2 emeritus, so they let me keep my e-mail.
3 Q. What's your Yahoo e-mail address?
4 A. MSwitzbaum@Yahoo.com.
5 Q. And you mentioned you have a Marquette
6 e-mail address. What's that address?
7 A. That would be my name,
8 Michael.Switzbaum@Marquette.edu.
9 Q. Do you have any other e-mail addresses?
10 A. No.
11 Q. Any other e-mail accounts that you use?
12 A. No.
13 Q. Do you have a password to your wife's
14 e-mail account?
15 A. No.
16 Q. Do you ever write e-mails from your
17 wife's e-mail account?
18 A. No.
19 Q. Do you ever sign correspondence, e-mail
20 or otherwise, with your wife's name?
21 A. No.
22 Q. And I think we covered this earlier, but
23 your wife is Gail Schumann; correct?
24 A. Correct.
25 Q. Also a professor?

Page 22

1 A. Retired.
2 Q. Also from Marquette?
3 A. Right.
4 Q. Same residential history that you have?
5 A. Yes.
6 Q. At least so far as we've covered?
7 A. Yes.
8 Q. Have you ever been a party to other
9 litigation aside from this case?
10 A. No.
11 Q. Ever testify in court before?
12 A. I did in 1972.
13 Q. What was that about?
14 A. It was a criminal case. Someone pulled a
15 gun on me, so I was asked to testify.
16 Q. Sorry to hear that. Did you give a
17 deposition in that case?
18 A. No, I wasn't deposed.
19 Q. Have you given -- I think you said
20 earlier you've never given a deposition otherwise.
21 A. No.
22 Q. Who's your state assembly representative
23 currently?
24 A. I'm in district 23, Jim Ott.
25 Q. Mr. Ott is a Republican?

Page 23

1 A. Yes.
2 Q. How long have you been represented by
3 Mr. Ott?
4 A. I think he was elected 2012.
5 Q. Who represented you before Mr. Ott?
6 A. Sandy Pasch.
7 Q. What was Sandy Pasch's partisan
8 affiliation?
9 A. Democrat.
10 Q. Who -- let's see. How long were you
11 represented by Sandy Pasch? Just give me the
12 years.
13 A. I can't remember exactly. First time I
14 voted here was 2004. I'd have to look up who I
15 voted for.
16 Q. Since you moved to Wisconsin, have you
17 had any other assembly representatives aside from
18 Mr. Ott and Ms. Pasch?
19 A. I think Sheldon Wasserman.
20 Q. What was Sheldon Wasserman's partisan
21 affiliation?
22 A. Democrat.
23 Q. So you mentioned that when you were in
24 Amherst, you weren't politically active; correct?
25 A. Correct.

Page 24

1 Q. Would you say you're politically active
2 now?
3 A. More so.
4 Q. When did that change?
5 A. Well, there's a couple factors. One, I'm
6 retired, so I have a lot more time to devote to
7 other things than my job. I was very much
8 engrossed with my job. And also I think Act 43
9 created an urgency to be more involved in things,
10 in my opinion.
11 Q. You mentioned you retired the end of
12 2012; is that right?
13 A. Right.
14 Q. And then you said that Act 43, in your
15 opinion, created more urgency for you to be
16 involved?
17 A. Right.
18 Q. Could you explain why that is?
19 A. Well, I was unhappy with the legislation,
20 and I felt like my vote didn't count anymore the
21 way the lines were drawn. It all happened around
22 the same time.
23 Q. So you were unhappy with Act 43 and you
24 felt your vote didn't count and as a consequence of
25 that, you increased your political activity?

Page 25

1 A. Right.
2 Q. Are you a regular voter?
3 A. Oh, yes.
4 Q. And how long have you been a regular
5 voter, would you say?
6 A. Since 1972.
7 Q. You think you voted in every election
8 since 1972?
9 A. I can't think of any I missed, but I
10 probably did miss one or two here and there. I
11 tell you, I know I missed 1974 because I was -- my
12 legal residence was Maryland, but I lived in New
13 York. And I don't remember getting an absentee
14 ballot.
15 Q. And -- well, fair to say that you've
16 voted in the vast majority of elections?
17 A. Majority.
18 Q. To the best of your recollection since
19 1972?
20 A. The vast majority, yeah.
21 Q. Do you vote in primary elections?
22 A. Yes.
23 Q. Did you vote in the 2008 presidential
24 primary?
25 A. Yes.

Page 26

1 Q. Who did you vote for?
 2 A. Obama.
 3 Q. Did you vote in the '16 primary?
 4 A. I did.
 5 Q. Who did you vote for?
 6 A. Hillary Clinton.
 7 Q. What made you vote for President Obama in
 8 2008 instead of one of the other candidates that
 9 was running in the primary?
 10 A. Well, I liked his view on policies, but
 11 there were other candidates whose policies I liked.
 12 But he seemed electable to me.
 13 Q. So which policies of President Obama did
 14 you like enough to vote for him?
 15 A. Well, traditional Democratic things.
 16 Q. Did the other candidates running in the
 17 Democratic primary in 2018 have traditional
 18 Democratic policies?
 19 A. Yes, they did.
 20 Q. So why Obama?
 21 A. 'Cause I thought he was more electable.
 22 Q. You thought he was more electable. Why
 23 did you think President Obama was more electable in
 24 2008?
 25 A. I think he's a very good speaker; he

Page 27

1 seems to energize people, excite people.
 2 Q. Why do you think it's important that a
 3 political candidate you support be a good speaker
 4 who can energize and excite people?
 5 A. I'm not sure I really do, but I think he
 6 was more electable. I think overall he would be
 7 more electable.
 8 Q. So you think because he was a good
 9 speaker, energetic and excited people that he was
 10 more likely to get elected?
 11 A. Yes.
 12 Q. So you think those qualities of Mr. Obama
 13 made him more likely to win in districts that
 14 Hillary Clinton might have lost?
 15 A. I would say states.
 16 Q. So you think the fact that Mr. Obama is a
 17 good speaker, he's energetic and excites people,
 18 made it more likely that he would win states that
 19 Hillary Clinton might have lost?
 20 A. Yes.
 21 Q. What about 2016, you said you voted for
 22 Hillary Clinton?
 23 A. Yes.
 24 Q. Why did you vote for Hillary Clinton in
 25 2016?

Page 28

1 A. I liked her better than Bernie Sanders.
 2 Q. Why?
 3 A. Again, I thought she was more electable.
 4 I thought Bernie Sanders, as far as being
 5 electable, was too far to the left. So better
 6 aligned with -- with things I believe. I consider
 7 myself left of center, but not far left.
 8 Q. Do you vote in the primary elections for
 9 your state assembly candidates?
 10 A. Yes.
 11 Q. Did you vote in the primary for the 2018
 12 state assembly election?
 13 A. Yes.
 14 Q. Who did you vote for?
 15 A. Liz Sumner. Sumner.
 16 Q. Why did you vote for Ms. Sumner?
 17 A. Well, she came to my door one day and I
 18 talked to her, she gave me some literature. I
 19 liked her.
 20 Q. What caused you to vote for her as
 21 opposed to the other candidates running in that
 22 election?
 23 A. I don't remember there being a great deal
 24 of difference in their views, I just thought she
 25 was a good candidate.

Page 29

1 Q. Why did you think she was a good
 2 candidate?
 3 A. She presented herself well, she was
 4 articulate.
 5 Q. And why was presenting herself well and
 6 being articulate important to you?
 7 A. I think it's part of the job.
 8 Q. Part of what job? Of campaigning?
 9 A. Part of campaigning and also being a
 10 representative.
 11 Q. What about the 2016 state assembly
 12 primary? Did you vote in that one?
 13 A. I don't think there was a Democratic
 14 candidate in 2016. Wait a minute. Let me think a
 15 second. 2016. I'm sorry, I can't remember off the
 16 top of my head.
 17 Q. What about 2014?
 18 A. I voted.
 19 Q. In the assembly primary in 2014?
 20 A. Sure.
 21 Q. Who did you vote for?
 22 A. I can't remember off the top of my head.
 23 Q. Did you think that the fact that
 24 Ms. Sumner was -- presented herself well and was
 25 more articulate made it more likely for her to get

Page 30

1 elected?
2 A. Oh, no, I didn't think she had a shot.
3 Q. Well, that wasn't my question. I said
4 did you think the fact that she presented herself
5 well and was articulate made it more likely that
6 she would get elected?
7 A. Hmm. That's a really good question,
8 'cause I didn't think she had a chance.
9 Q. Did she win --
10 A. But I liked her.
11 Q. Did she win the primary?
12 A. Yeah.
13 Q. Did you talk to anyone else about
14 electing Liz Sumner in 2018?
15 A. Yeah, I talked to my neighbors, people I
16 know.
17 Q. Did you advocate on her behalf?
18 A. It was kind of hopeless.
19 Q. That wasn't my question. Did you?
20 A. We really weren't able to advocate 'cause
21 we knew we didn't have a chance.
22 Q. So you said you talked to your neighbors
23 about Ms. Sumner in 2018; correct?
24 A. Right.
25 Q. So if you weren't advocating for her,

Page 31

1 what were you talking about?
2 A. We were talking about the election and,
3 you know, Ms. Sumner, and it's a shame -- it's a
4 shame we're so gerrymandered that we really don't
5 have a chance.
6 Q. We talked -- talked a bunch about your
7 voting history since I think you've moved to
8 Wisconsin. In all that time has anyone ever
9 prevented you from voting?
10 A. No.
11 Q. Do you have any reason to believe that
12 any of the votes you've cast have not been counted?
13 A. They've been counted, but they've been
14 wasted.
15 Q. Do you have any reason to believe they've
16 not been counted?
17 A. No, sir.
18 Q. Are you politically active and involved
19 in other ways?
20 A. Mostly, you know, donations. I'm very
21 interested in voter registration and voting. So I
22 don't consider these political activities, but I'm
23 active in the League of Women Voters and I'm an
24 election inspector for the city of Milwaukee. And
25 I'm also a trainer for the last election in

Page 32

1 November '18 of Milwaukee Election Commission. I
2 felt they needed more poll workers. So my wife and
3 I conducted a series of training exercises; I think
4 we did seven of them, with about, I'd say, 30 or so
5 students in each session. But I don't consider
6 that political.
7 Q. So you've been involved with donations,
8 voter registration, the League of Women Voters, and
9 training poll workers; correct?
10 A. Yeah, in addition to the things that I
11 answered in interrogatory.
12 Q. And I think you said earlier that your
13 activity on all those fronts has increased since
14 the time you retired and Act 43 was passed?
15 A. Right.
16 Q. Is your wife more politically active than
17 you are?
18 A. Yes.
19 Q. What does she do?
20 A. Pretty much same types of things, but I
21 think she does more of them. Like for instance,
22 we're both members of the Grassroots North Shore.
23 She's done a lot of canvassing and phone calling.
24 I really haven't for Grassroots North Shore.
25 Q. Does she know more about candidates than

Page 33

1 you do?
2 A. I wouldn't think so. We discuss things.
3 Pretty much a team.
4 Q. But fair to say that she's the more
5 politically active of the two of you?
6 A. Yes.
7 Q. Has anyone ever told you that you can't
8 make a donation to a given candidate?
9 A. No.
10 Q. Has anyone ever told you that you can't
11 participate in any of these other political
12 activities that we've discussed?
13 A. No.
14 Q. Going back to your voter history for a
15 moment. Have you ever voted for candidates, aside
16 from Ms. Sumner, who you thought were destined to
17 lose?
18 A. Ever since Act 43, state senate and my --
19 and my assembly district. And I have to say, I
20 voted for presidents, I know not related to what
21 we're talking about here, who I thought didn't have
22 a chance.
23 Q. So for the state candidates, let's start
24 with the assembly.
25 A. Certainly.

Page 34

1 Q. Who are all the assembly candidates that
2 you voted for that you thought were sure to lose?
3 A. You know, I'd have to look at, you know,
4 who I voted for in 2014. You know, '14, '16. Of
5 course I remember Liz Sumner. And I -- off the top
6 of my head, I can't remember, but I did vote for
7 the Democrats. But I wasn't expecting them to win.
8 I voted -- I guess, let me think. In the recall
9 election I voted for Sandy Pasch against Alberta
10 Darling. One election I remember Senator Darling
11 ran unopposed, so -- in the general election.
12 Q. But you voted for other challengers to
13 Alberta Darling that you didn't think were going to
14 win?
15 A. Right.
16 Q. Did you ever campaign on behalf of any of
17 those people?
18 A. Well, putting up yard signs, perhaps
19 making contributions. But I didn't go door to door
20 or canvas or phone call.
21 Q. You mentioned that your wife goes door to
22 door and canvasses and phone calls?
23 A. More phone calls.
24 Q. But fair to say that she does those
25 things?

Page 35

1 A. Yes.
2 Q. And you generally do not do those things?
3 A. I did for the presidential election, and
4 I did in the recall election of 2011. But not
5 otherwise.
6 Q. How come you don't engage in those
7 activities as often as your wife does?
8 A. We kind of split things up.
9 Q. So it's an allocation of your household
10 time, basically?
11 A. Allocation of household times and things
12 we feel more comfortable doing.
13 Q. Does the reason why you engage in those
14 activities less than your wife have anything to do
15 with the shape of your assembly district?
16 A. Could you repeat that, sir? I'm not sure
17 what the question is.
18 Q. Does the reason why you engage in those
19 political activities less often than your wife have
20 anything to do with the shape of your assembly
21 district?
22 A. Yes.
23 Q. How so?
24 A. I feel like it's a hopeless cause in many
25 cases.

Page 36

1 Q. So you think it's hopeless because of the
2 shape of your district to engage in any of that
3 political activity?
4 A. Mostly.
5 Q. But your wife does it anyway?
6 A. She does it anyway.
7 Q. Do you ever sit down at home and tell her
8 you're wasting your time, this is all hopeless,
9 don't bother?
10 A. It wouldn't work with her.
11 Q. So she believes that in spite of your
12 view, those things are all worth doing?
13 A. She agrees with me, but she still does
14 it.
15 Q. So she agrees that it's hopeless, but she
16 still does all those activities?
17 A. Yes, sir.
18 Q. And you've never said to her -- well, we
19 covered that. You mentioned earlier that you also
20 make political donations?
21 A. Right.
22 Q. And do you personally do that?
23 A. My wife takes care of that. We discuss
24 it, you know, how much should we send so-and-so,
25 but she writes the checks. She goes on the

Page 37

1 websites if it's an online donation.
2 Q. So who decides between the two of you who
3 you're going to donate to?
4 A. We discuss it. Usually -- I can't really
5 think of a time when we disagreed. Maybe just
6 sometimes we discuss how much.
7 Q. Fair to say that between you and your
8 wife you've made tens if not a hundred separate
9 political donations since 2002?
10 A. That sounds right.
11 Q. Did you discuss every one of those with
12 your wife?
13 A. I can't say I've discussed every one of
14 them.
15 Q. How many did you discuss with her?
16 A. Most of them. But, you know, we've been
17 together for 45 years, and we pretty much
18 understand how we feel about things.
19 Q. Can you say one way or the other how many
20 of those donations you discussed with your wife
21 before they were made?
22 A. The exact number?
23 Q. Even ballpark.
24 A. Most of them.
25 Q. What's most of them? 50 percent,

Page 38

1 60 percent?
 2 A. No, it would be more than that. Probably
 3 three quarters, 80 percent. You know, she'd say
 4 hey, I'd like to donate, you know, X dollars to Liz
 5 Sumner. Okay, I'd say sure. And she might say how
 6 much should we send, do you think \$100, do you
 7 think \$200, 250. That's where the discussion
 8 usually takes place.
 9 Q. Does your wife have permission to make a
 10 political donation without consulting you first?
 11 A. Yes. But she's a very courteous person.
 12 Q. Has your wife ever asked you about making
 13 a donation and you told her you didn't want to do
 14 it?
 15 A. Not to my recollection.
 16 Q. You consider yourself an informed voter?
 17 A. Yes.
 18 Q. How do you -- how do you inform yourself
 19 as a voter?
 20 A. Mostly through newspapers. Candidates
 21 often have websites, and they put up position
 22 papers. Or I go to -- like if they're having a
 23 fundraising event, I will go and meet the
 24 candidate, hear them talk.
 25 Q. So when you read the newspapers or look

Page 39

1 at their position papers or go meet them, what are
 2 you trying to find out?
 3 A. Where they stand on certain issues,
 4 various issues.
 5 Q. And why do you familiarize yourself with
 6 the issues and the candidate's stance on them?
 7 A. Well, I want to know who I'm voting for.
 8 Q. Is there anything else, aside from the
 9 candidate's stance on various issues, that you take
 10 into account when deciding who to vote for?
 11 A. Well, we talked about before my opinion
 12 of their electability if it's a primary.
 13 Q. Aside from electability and their stance
 14 on a basket of issues, is there anything else you
 15 consider when deciding who to vote for?
 16 A. Well, their political party.
 17 Q. Would you vote for someone just because
 18 they're a Democrat?
 19 A. I would say I've never voted for a
 20 Republican. There might have been some times where
 21 I just didn't vote for that particular office
 22 'cause I didn't like the Democrat.
 23 Q. What year did you start voting?
 24 A. 1972.
 25 Q. So since 1972. What is that, 44 years

Page 40

1 ago?
 2 A. 46.
 3 Q. 48?
 4 A. 48.
 5 Q. No, 46.
 6 A. Yeah.
 7 Q. 46 years ago?
 8 A. Yeah.
 9 Q. So 46 years, you've never voted for a
 10 Republican?
 11 A. I can never remember voting for a
 12 Republican.
 13 Q. And it's your testimony sitting here
 14 today that that's on the basis of an informed
 15 judgment about a series of candidates, and you
 16 decided every time, in every election for 46 years,
 17 that you didn't want to vote for a Republican?
 18 A. As I said, there might have been some
 19 times where I didn't vote in that particular race.
 20 I went to the polls and voted for other candidates,
 21 but I just skipped that one.
 22 Q. But even in those times when you couldn't
 23 bring yourself to vote for the Democrat you would
 24 not vote for the Republican?
 25 A. That's correct.

Page 41

1 Q. So fair to say that you'd never vote for
 2 a Republican no matter what, under any
 3 circumstance?
 4 A. Correct.
 5 Q. Do you contact your elected
 6 representatives?
 7 A. Yes.
 8 Q. Which ones?
 9 A. State assembly person, state senator.
 10 We've contacted Mr. Vos. We used to contact your
 11 Congress person, Congressman Sensenbrenner. We
 12 have contacted Senator Johnson. That's pretty much
 13 what I recall.
 14 Q. So you said "we" a couple times --
 15 A. My wife and I.
 16 Q. -- in that answer. I'll ask you the
 17 question again. I want you to leave out anytime
 18 your wife contacted someone. I want to know
 19 whether you, Mr. Switzenbaum, have contacted any of
 20 your elected representatives.
 21 A. Well, as I was saying before, we have --
 22 we allocate our workload. She takes care of that.
 23 But more recently I have a couple times contacted
 24 our state assembly person and state senator.
 25 Q. So you personally have contacted your

Page 42

1 state assembly person and your state senator?
2 A. Right. But most of the time my wife does
3 it.
4 Q. When was the first time that you
5 contacted either your state assembly person or your
6 state senator?
7 A. Probably within the last year or two.
8 Q. Within the last year or two is the first
9 time that you personally contacted your state
10 assembly person or state senator?
11 A. Right.
12 Q. Can you do any better than within the
13 last year or two?
14 A. Did I do any better?
15 Q. I said can you be any more specific than
16 within the last year or two?
17 A. Well, I know I contacted both my assembly
18 person and senator about the lame-duck session in
19 December.
20 Q. Mr. Switzenbaum, is the first time you
21 contacted your state assembly person or state
22 senator December 3, 2018?
23 A. That's the first one I could find a
24 record of.
25 Q. That wasn't my question. Was that the

Page 43

1 first time you individually contacted your state
2 assembly person or state senator?
3 A. I don't think so. I think I've done it
4 before.
5 Q. Do you have a record of that?
6 A. No.
7 Q. When was it that you contacted them
8 before December 3, 2018?
9 A. I'm sorry, I can't recall.
10 Q. What was it about?
11 A. Well, I know you're asking me about my
12 activity, but as I said, my wife usually takes care
13 of this.
14 Q. Don't want to talk about your wife.
15 A. I understand.
16 Q. I want to know --
17 A. I understand.
18 Q. -- when you personally contacted one of
19 your state assembly or state senators before
20 December 3, 2018.
21 A. I can't recall.
22 Q. Do you recall what that contact was
23 about?
24 A. I'm thinking about things that concerned
25 my wife and I, but I can't say who sent the e-mail.

Page 44

1 Q. Do you remember who it was that you
2 contacted before December 3, 2018?
3 A. Again, sir, I can't remember exactly who
4 I might have. But I can tell you on behalf of me,
5 my wife contacted our assembly person and our state
6 senator.
7 Q. You cannot tell me a single time before
8 December 3, 2018 that you personally contacted
9 either your state senator or your state assembly
10 representatives?
11 A. I can't --
12 MS. HARLESS: Objection, asked and
13 answered. You can answer.
14 THE WITNESS: I can't recall.
15 BY MR. ACKERMAN:
16 Q. Okay. You contact your state
17 representatives even though they're not Democrats?
18 A. Yes.
19 Q. You receive responses from them?
20 A. I did on December 3rd, and a couple after
21 that.
22 Q. So you said earlier that your wife writes
23 correspondence on your behalf?
24 A. Yes.
25 Q. Have you read it all?

Page 45

1 A. I can't say I've read it all, but
2 she's -- she always discusses it with me; I'm going
3 to send a letter to so-and-so.
4 Q. What percentage of your wife's
5 correspondence that she's drafted on your joint
6 behalf have you read?
7 A. Probably three-quarters. Did you say
8 read?
9 Q. Read.
10 A. I think it was more oral.
11 Q. Your testimony is that your wife has read
12 to you orally three-quarters of the correspondence
13 that she's drafted on your behalf?
14 A. Not verbatim.
15 Q. I want to know what percentage of the
16 correspondence your wife has drafted on your joint
17 behalf have you actually seen or had read to you?
18 A. I would say three-quarters. But what I'm
19 saying is she might not have read the entire thing
20 verbatim.
21 Q. So what would she read to you?
22 A. Well, she'd say I'm going to send an
23 e-mail to so-and-so expressing how we disagree with
24 such and such. I'd say okay, I'm with you.
25 Q. She would tell you generally what the

Page 46

1 correspondence is about?
 2 A. Yes. Generally, yes, sir.
 3 Q. You wouldn't look at the specifics -- or
 4 the specific things that she would say in any of
 5 those communications?
 6 A. No. Sometimes. But usually not. That
 7 was enough for me.
 8 Q. Even if she was writing something that
 9 was more than a simple statement that she agreed or
 10 disagreed with a representative on a given issue,
 11 you wouldn't read that communication?
 12 A. No. It was enough for me to know the
 13 general tone of what was going to be said and what
 14 the content was. And I didn't have to hear it
 15 verbatim. Like I said, we've been together
 16 45 years. We pretty much know where we stand.
 17 Q. What percent of the time did you know
 18 that your wife was sending an e-mail or writing a
 19 letter to one of her representatives before she did
 20 it?
 21 A. Somewhere between three-quarters and
 22 90 percent. In that range.
 23 Q. To your knowledge, does your wife sign
 24 your name --
 25 A. No.

Page 47

1 Q. -- on that correspondence?
 2 A. She did not.
 3 Q. Let me finish.
 4 A. Oh, I'm sorry.
 5 Q. Did you ever have a conversation with
 6 your wife about why your name wasn't on that
 7 correspondence?
 8 A. No.
 9 Q. You never talked about how, since it was
 10 coming from both of you, it made sense to have your
 11 name on it?
 12 A. No, never did.
 13 Q. You ever send Christmas cards, holiday
 14 cards?
 15 A. I don't; my wife does.
 16 Q. Is your name on them?
 17 A. Yes.
 18 Q. Do you ever send letters to friends?
 19 A. Sometimes.
 20 Q. From you and your wife?
 21 A. Sometimes, yeah.
 22 Q. Your name on those?
 23 A. Yeah.
 24 Q. Send postcards sometimes?
 25 A. To my grandson.

Page 48

1 Q. If you go on a trip with your wife?
 2 A. Yeah.
 3 Q. Both of you sign your name to them?
 4 A. Yeah.
 5 Q. You said earlier that -- you know, I
 6 think you said 75 to 90 percent of the time that
 7 your wife is going to write to one of her
 8 representatives before she does it; is that right?
 9 A. Yes, sir.
 10 (Exhibit 8 marked for identification.)
 11 BY MR. ACKERMAN:
 12 Q. I'm going to hand you what I'm marking
 13 Defendant's Exhibit 8. Take a minute to look
 14 through this. Let me know when you're ready.
 15 A. Okay. Let me see what else is here.
 16 Okay.
 17 Q. So have you seen these documents before?
 18 A. Yes, sir.
 19 Q. This is a stack of correspondence that
 20 your wife's written to various representatives.
 21 A. Right. For which we have the record,
 22 yes.
 23 Q. Okay. Let's start the first page here
 24 marked Switzenbaum 034. And this is an e-mail from
 25 your wife, Gail Schumann, to representative Jim Ott

Page 49

1 on December 1, 2018. Do you see that?
 2 A. I do.
 3 Q. Are there any other senders or recipients
 4 listed there?
 5 A. No.
 6 Q. And then this proceeds, and there's a
 7 letter about how concerned she is about Republican
 8 legislature. Do you see that?
 9 A. On this page, yes, sir.
 10 Q. And then down at the bottom it's signed
 11 Gail Schumann?
 12 A. Yes.
 13 Q. Is your name there?
 14 A. No.
 15 Q. And then up at the top it says "begin
 16 forwarded messages from Gail Schumann"?
 17 A. Uh-huh.
 18 Q. To M. Switzenbaum. Is that you?
 19 A. That's me.
 20 Q. And that's on December 3, 2018; correct?
 21 A. Right.
 22 Q. Now, it's sent to you again on
 23 December 6th at the top.
 24 A. Right.
 25 Q. Page ending 34 from Gail Schumann to you;

Page 50

1 is that right?
2 A. Let me see.
3 Q. Just focused on page 1 right now.
4 A. Oh, okay.
5 Q. Page 34.
6 A. Uh-huh.
7 Q. So she sent this message that she
8 originally sent on December 1st to Representative
9 Ott she forwarded to you two times on December 3,
10 2018 and December 6, 2018; is that right?
11 A. December 6th and December 3rd. Yes.
12 Q. Why did she send this to you twice?
13 A. Well, she had written e-mails for many
14 years, and we didn't have any documents. If I had
15 known that I'd have been a plaintiff in this case,
16 we certainly would have done a better job of
17 managing such. But mostly it's before, she used to
18 use Yahoo, okay? We had Marquette e-mails but we
19 never would do anything political on our Marquette
20 e-mail. And Yahoo will delete your trash. We
21 didn't keep it. It went into a trash folder. And,
22 you know -- time to time Yahoo just empties out
23 such. So I said, you know, Gail, we gotta collect
24 these things. So I guess she did it twice.
25 Q. So she sent this to you on December 3,

Page 51

1 2018. Is that the first time she sent it to you?
2 A. That's what it's stamped, yeah,
3 December 6th, yeah.
4 Q. Have you read this message at any time
5 before December 3, 2018?
6 A. I can't say I read it verbatim, but she
7 told me she was going to write to Representative
8 Ott about these things.
9 Q. But you hadn't read it until December 3,
10 2018; correct?
11 A. Yes.
12 Q. And then did you ask her to send this to
13 you, or did she send it to you?
14 A. I asked her please, I'm trying to collect
15 documents, could you please send it to me.
16 Q. You asked her to send it to you because
17 by December 3, 2018 you had met with your lawyers
18 in this case, including Ms. Harless, at least three
19 times; correct?
20 MS. HARLESS: Objection, I think that
21 mischaracterizes his -- his testimony, but --
22 BY MR. ACKERMAN:
23 Q. Did I mischaracterize your testimony in
24 some way, Mr. Switzenbaum?
25 A. Well, here's how I look at it. At some

Page 52

1 point my counsel said, you know, we're going to
2 need to document things. And I had not documented
3 things before, so I said we better start keeping
4 track of things.
5 Q. So let me ask my question again.
6 A. Okay.
7 Q. You asked your wife to send this document
8 to you on December 13th, by which --
9 A. December 3rd.
10 Q. Scratch that. You asked your wife to
11 send you this document on December 13th, by which
12 time you had met with your lawyers in this case at
13 least three times? Yes or no?
14 A. December 3rd, sir.
15 Q. Did I say 13th again? I'm sorry. So you
16 asked your wife to send you this document on
17 December 3rd, by which time you had met with your
18 lawyers in this case at least three times?
19 MS. HARLESS: Objection, vague. What do
20 you mean by "met"? Do you mean talk on the phone,
21 e-mail, meet in person?
22 MR. ACKERMAN: Ms. Harless, if you have a
23 form objection, I'd ask you just make it as a form
24 objection without speaking.
25 BY MR. ACKERMAN:

Page 53

1 Q. I'll ask it again, Mr. Switzenbaum. And
2 let me know if any part of this is vague to you or
3 you don't understand it. You asked your wife on
4 December 3, 2018, to send you this document. And
5 by that point you had already met with your lawyers
6 in this case at least three times, yes or no?
7 A. I can't say it was December 3rd. I might
8 have told her like earlier in November that from
9 now on when you send e-mail, please let me have a
10 copy so I can have it for the record.
11 Q. Did you ask your wife to send you copies
12 of her political correspondence before you met with
13 your lawyers in this case?
14 A. No.
15 Q. Let's go to the next page. This one's
16 marked Switzenbaum 35. Do you see that?
17 A. Uh-huh.
18 Q. This is an e-mail, again, from your
19 wife --
20 A. Uh-huh.
21 Q. -- to Representative Ott. Do you see
22 that?
23 A. Uh-huh.
24 Q. At the top of the page -- well, first of
25 all is your name anywhere on this communication

Page 54

1 from your wife to Representative Ott?
2 A. No.
3 Q. At the top of the page your wife sent
4 this to you again on December 6, 2018?
5 A. Yeah.
6 Q. Is that right?
7 A. It's the same as the one on the first
8 page.
9 Q. It's the same date, isn't it?
10 A. Yes.
11 Q. In fact, she sent that to you within one
12 minute of when she sent the one that we just looked
13 at; correct?
14 A. Yeah, that's what it's stamped, yep.
15 Q. Let's go to the next one. This is a
16 letter here from your wife, Gail Schumann, to
17 Representative Ott on February 5, 2017. You see
18 that?
19 A. Uh-huh.
20 Q. Do you see your name listed anywhere in
21 this correspondence --
22 A. Nope.
23 Q. -- between your wife and Mr. Ott?
24 A. No.
25 Q. At the top of the page your wife sent

Page 55

1 this to you on December 6, 2018. Do you see that?
2 A. Yes.
3 Q. Is that the same time she sent you the
4 other e-mails we've just been looking at?
5 A. It's in the same range. It's a minute
6 later.
7 Q. Let's go to the next page. This one
8 starts way down at the bottom, Switzenbaum 37.
9 This is an e-mail from your wife, Gail Schumann, on
10 February 5, 2017, to Senator Darling. Do you see
11 that?
12 A. Yes.
13 Q. And that communication continues on to
14 Switzenbaum 38. And I'd ask you to look at that.
15 Do you see your name anywhere in that?
16 A. No.
17 Q. And then after that is a response from
18 Mr. R.J. Lambert --
19 A. Yes.
20 Q. -- on February 9, 2017, written to your
21 wife, Gail Schumann. Do you see that?
22 A. Right.
23 Q. Take a minute and read that e-mail,
24 familiarize yourself with that e-mail from
25 Mr. Lambert. Let me know when you're ready.

Page 56

1 A. Okay.
2 Q. At any time prior to December 6, 2018
3 have you read that e-mail from Mr. Lambert to your
4 wife, Gail Schumann?
5 A. Well, I must have, because she forwarded
6 it to me on February 9, 2017.
7 Q. Did you read it then?
8 A. Sure.
9 Q. Okay. You can set those aside. Is there
10 anything that's been stopping you from,
11 Mr. Switzenbaum, from writing your own
12 correspondence to your elected representatives?
13 A. Yes, I noticed how my wife early on would
14 send e-mail and never got a response.
15 Q. So because you noticed that your wife
16 never got a response to her e-mails, you decided
17 not to write your own correspondence?
18 A. That's right. Much like the same
19 discussion we had about canvassing.
20 Q. No one ever told you, though, that you
21 couldn't write your own correspondence?
22 A. No one ever said that, no. But it
23 seemed -- you know, didn't seem like it was worth
24 time for both of us to do it in that she never got
25 a response until more recently here.

Page 57

1 MR. ACKERMAN: We've been going about an
2 hour. Now would be a good time to take a break if
3 you wanted to?
4 THE WITNESS: Sure. Thank you.
5 THE VIDEOGRAPHER: Going off the record
6 at 4:01. We'll resume on media two.
7 (Break taken.)
8 THE VIDEOGRAPHER: We're back on the
9 record at 4:13, media number two.
10 BY MR. ACKERMAN:
11 Q. Welcome back, Mr. Switzenbaum. Before
12 the break, we were talking about this set of
13 e-mails your wife sent that I marked, I think as
14 Defendant's No. 8. Do you still have those?
15 A. Yes.
16 Q. You pointed out to me that the e-mail
17 that was on Switzenbaum 37 your wife actually
18 forwarded that to you on February 9, 2017; correct?
19 A. Yes.
20 Q. Did you search your e-mails in this case
21 for any other such correspondence that your wife
22 might have contemporaneously forwarded to you from
23 state representatives?
24 A. I did. I did. I looked in my -- I
25 didn't look in my Marquette e-mail, 'cause I knew

Page 58

1 it wouldn't be there. I looked mainly in my gmail.
 2 But we used to use mostly Yahoo. We switched to
 3 gmail when Yahoo got badly hacked. I can't
 4 remember exactly when that was. But something like
 5 2016, 2017.
 6 Q. Aside from your Marquette e-mail, though,
 7 you conducted a thorough search for any similar
 8 correspondence; correct?
 9 A. Yes, we did.
 10 Q. So we would have that correspondence if
 11 it existed; right?
 12 A. Yes. I couldn't find any.
 13 Q. Okay. What is Act 43?
 14 A. Act 43 was the act passed by the
 15 Wisconsin legislature for the redistricting
 16 following the 2010 census.
 17 Q. When did you first learn about Act 43?
 18 A. I'd say after it was passed.
 19 Q. 2000 --
 20 A. Twelve, I believe it was.
 21 Q. And when did you first learn the
 22 boundaries of your assembly district as set by Act
 23 43?
 24 A. Probably after the election of 2012.
 25 Q. You're alleging in this lawsuit that

Page 59

1 you've been harmed because your district has been
 2 cracked. Do you understand what that means?
 3 A. Yes, sir.
 4 Q. Could you explain to me what the problem
 5 is?
 6 A. Well, I feel like my vote is wasted,
 7 because it's such a strong Republican district the
 8 way the boundaries were drawn, that my vote really
 9 doesn't count. I feel like the politicians pick
 10 their voters as opposed to the voters picking their
 11 representatives.
 12 Q. You understand that you're not the only
 13 plaintiff in this case; correct?
 14 A. Correct.
 15 Q. You understand that some of the other
 16 plaintiffs are complaining that their districts are
 17 packed?
 18 A. Yes.
 19 Q. What does packed mean?
 20 A. Well, like -- I feel like I live in a
 21 packed congressional district. I'm in a
 22 Congressman Moore -- Congresswoman Moore is my
 23 congressional representative, and she's bulletproof
 24 too. I happen to like her, but nonetheless,
 25 putting all the Democrats together like that just

Page 60

1 dilutes out the rest of us.
 2 Q. You understand "packed" to mean there
 3 were too many people from one party in the district
 4 and that's the harm?
 5 A. Right. Right. So my Congress -- my
 6 congressional district I feel is packed, and my
 7 state assembly and state senate districts I feel
 8 are cracked.
 9 Q. What is the partisan composition of your
 10 US congressional district?
 11 A. Democratic.
 12 Q. What percent of the people in your US
 13 congressional district are Democratic?
 14 A. I don't know.
 15 Q. Ballpark?
 16 A. Heavy. I just don't know.
 17 Q. A hundred?
 18 A. No, I don't think a hundred.
 19 Q. 90?
 20 A. Perhaps.
 21 Q. At what point -- well, you said earlier
 22 that you think your congressional district is
 23 packed. What do you mean by that?
 24 A. Yeah, it's heavily Democratic.
 25 Q. Well, heavily is a qualitative measure;

Page 61

1 correct?
 2 A. Right. I don't have a quantitative
 3 number in my head.
 4 Q. Okay.
 5 (Exhibit 9 marked for identification.)
 6 BY MR. ACKERMAN:
 7 Q. Mr. Switzenbaum, I'm handing you
 8 Defendant's Exhibit Number 9. Take a minute to
 9 look at that. Let me know when you're ready to go.
 10 A. Okay.
 11 Q. Have you seen this before?
 12 A. Yes.
 13 Q. What is it?
 14 A. It's my response to the set of
 15 interrogatories and documents, such as
 16 contributions.
 17 Q. I want to focus your attention on pages
 18 four through eight of this document. And on pages
 19 four through eight are your responses to these
 20 interrogatories; correct?
 21 A. Yes.
 22 Q. Did you write these?
 23 A. Yes.
 24 Q. You understand that these are sworn
 25 statements given under oath?

Page 62

1 A. Yes.
2 Q. You understand it's important to tell the
3 truth in these statements?
4 A. Yes.
5 Q. Let's go to page 7.
6 A. Seven, did you say?
7 Q. Yep, page 7. Oh, sorry, these get
8 confusing. We're going to go to page 6.
9 A. Okay.
10 Q. And at the bottom of page 6 you'll see
11 interrogatory number seven.
12 A. Right.
13 Q. And interrogatory number seven asks you
14 to describe any other political activity other than
15 donations, including volunteering for political
16 campaigns that you have engaged in since 2002. You
17 see that?
18 A. Uh-huh.
19 Q. And the answer to that interrogatory
20 number seven is on the following page, page 7, do
21 you see that?
22 A. Yes.
23 Q. Take a minute to look at that answer and
24 let me know when you're ready to go.
25 A. Okay.

Page 63

1 Q. Is that a complete and accurate
2 statement?
3 A. Yes.
4 Q. Of all political activity, including
5 volunteer for political campaigns, you've engaged
6 in since 2002?
7 A. Best of my recollection, yes.
8 Q. Is there anything to add there?
9 A. Can't think of anything.
10 Q. Most of the activity here occurs in the
11 winter of 2011 or later; correct?
12 A. Yes.
13 Q. Let's go to number eight below on page 7.
14 And this interrogatory asks you to identify the
15 people and/or the groups with whom you want to
16 associate but are allegedly burdened in doing so by
17 Act 43. Do you see that?
18 A. Yes, I see it.
19 Q. And your response is below.
20 A. I see it.
21 Q. Did you write that response?
22 A. Yes.
23 Q. Do you have any idea why every other
24 plaintiff in this litigation has those exact words
25 written as their response to interrogatory number

Page 64

1 eight?
2 A. I haven't seen their responses.
3 Q. Just a coincidence? Can you give me an
4 example of a specific person with whom you want to
5 associate but with whom you cannot associate
6 because of Act 43?
7 A. Well, I would say I can associate, but it
8 seems like a waste of time in that our assembly
9 district is so cracked that it seems, you know,
10 kind of hopeless to try to organize something to
11 elect a Democrat to the state assembly.
12 Q. I'd like you to -- were you finished?
13 A. So, yeah, I talk to people in my
14 neighborhood.
15 Q. Can you give me an example of a specific
16 person with whom you wanted to associate and that
17 person said to you you know what, it's so hopeless
18 to try to organize something to elect a Democrat to
19 the state assembly that I don't want to associate
20 with you?
21 A. Well, it's usually not that harsh. It's
22 usually like I don't know what we can do. So it
23 doesn't generate the kind of enthusiasm one would
24 hope for to move something on.
25 Q. So back to my question. Can you give me

Page 65

1 a specific example of a person who told you they
2 did not want to engage in an associational activity
3 with you because they don't know what they can do
4 because of the composition of your district?
5 A. Well, I really can't think of someone's
6 name specifically. Probably 'cause we stopped
7 talking about it. Maybe early on, you know, like
8 around 2012 or so. But over the recent past we
9 seldom even talk about it.
10 Q. You made phone calls and worked for the
11 Democratic party of Wisconsin in the fall and
12 summer of 2016; correct?
13 A. Correct.
14 Q. And then you attended the State Fair and
15 you sat in the Democrat party booth in 2015; right?
16 A. '15, '16 and '18.
17 Q. Three years right there?
18 A. Right.
19 Q. How long did you sit in the booth at the
20 State Fair?
21 A. Three hours.
22 Q. So at least nine hours, fair to say,
23 sitting in the booth?
24 A. Yes.
25 Q. How many people do you think you talked

Page 66

1 to in that booth?
2 A. Oh, each time probably somewhere between
3 50 and 75 people.
4 Q. And that was a State Fair, so not all
5 those people were from your district; right?
6 A. Correct. And not all of them were
7 Democrats.
8 Q. So how many of those folks would you say
9 were Democrats from your district?
10 A. I can't say what district they were from,
11 'cause it was the State Fair, so they were from all
12 over the state.
13 Q. How many people in your district would
14 you say you've talked to about political activities
15 of any kind who are Democrats since 2002?
16 A. Well, I did canvass in 2004, and then I
17 collected signatures in 2011 and we talked -- you
18 know, we went to quite a few houses and, you know,
19 knocked on the door and handed out literature.
20 Some people slammed the door in our face and didn't
21 want to talk to us. But I'd say each time, you
22 know, 50 people or so we talked to. And then on
23 the more casual basis, like my neighbors and people
24 like that, I'd say probably like ten.
25 Q. And what about since 2012, how many

Page 67

1 people have you talked to in your district who are
2 Democrats about political issues?
3 A. Probably like ten.
4 Q. And that includes the phone calls and
5 office work for the Democratic Party of Wisconsin?
6 A. No.
7 Q. Did you not talk to anybody in your
8 district in that effort?
9 A. No. I went to the central office. Let
10 me think, it was on Center Street and Dr. King
11 Boulevard. And we were given phone lists. And I
12 don't believe they lined up with my -- my district.
13 They were mostly in Milwaukee. And I did other
14 things. I did office work; I did a lot of data
15 entry database.
16 Q. Can you name a specific group with whom
17 you want to associate but that you cannot associate
18 with because of Act 43?
19 A. Well, I mean, I can associate with anyone
20 I want. But, you know, it doesn't seem to be a
21 good use of our time for a lot of these things.
22 Q. Can you name a specific group that you
23 decide -- have decided is not a good use of your
24 time to associate with because of Act 43?
25 A. I don't know if I'd call it a group, but

Page 68

1 just, you know, certain activities like canvassing
2 or phone calling, things like that, for -- for the
3 state assembly and state senate.
4 Q. Has anyone asked you, since the passage
5 of Act 43, to engage in canvassing?
6 A. Yeah.
7 Q. And did you tell them that you didn't
8 want to engage in canvassing because of Act 43?
9 A. Not in those exact words. I just said no
10 thank you, I don't think it's a good use of my
11 time.
12 Q. And that is because of Act 43 you did not
13 engage in canvassing?
14 A. That's right. I don't expect to win them
15 all. Just, you know, looking for a level playing
16 field.
17 Q. Aside from what's written here in
18 interrogatory number eight, are there any people or
19 groups with whom you would like to associate that
20 you cannot because of Act 43?
21 A. No. Just what I said before, you know, a
22 general feeling of helplessness.
23 Q. I'm going to direct your attention to
24 interrogatory number nine, which is on that same
25 page, page 7.

Page 69

1 A. Yes, sir.
2 Q. This one asks you to describe all the
3 ways in which Act 43 has impaired your ability to
4 affiliate with like-minded Democrats and to pursue
5 Democratic associational goals. Do you see that?
6 A. Uh-huh.
7 Q. And your answer to that is on the next
8 page, page 8, two bullet points at the top;
9 correct?
10 A. Yes, I see it.
11 Q. Is that a complete and accurate answer
12 listing all the ways in which Act 43 has impaired
13 your ability to affiliate with like-minded
14 Democrats and to pursue Democratic associational
15 goals?
16 A. Yes.
17 Q. Nothing to add today?
18 A. I'm sorry, did you ask me a question?
19 Q. I just asked you if you had anything to
20 add to that response today.
21 A. Oh. No, I have nothing to add. I'm
22 sorry.
23 Q. The second bullet says that you limited
24 your contributions to Democratic state and
25 assembly -- sorry, let me start over.

Page 70

1 The second bullet says that you've
2 limited your contributions to Democratic state
3 assembly and state senate candidates because the
4 campaigns were hopeless. You see that?
5 A. Yes.
6 Q. Then it says you directed your donations
7 and activities to other offices.
8 A. Right.
9 Q. You see that? Can you identify for me
10 what donations you directed to other activities and
11 other offices because you believe that your state
12 assembly and senate candidates were hopeless?
13 A. Yeah. For instance, if you look at my
14 list of contributions, we contributed to Feingold
15 and Senator Baldwin and the new state attorney
16 general, Josh Kaul, Mandela Barnes, Tony Evers,
17 before that Mary Burke, Tom Barrett, Clinton,
18 Emily's List. In other words, I just -- I'm
19 retired; I have a certain amount of philanthropy
20 and I have a certain amount we can look at
21 political contributions. And we just reassessed
22 where we were going to make donations.
23 Q. You donated to all those people you just
24 listed, like Feingold, Baldwin, Kaul, Barnes,
25 Evers, Burke, Barrett, Clinton and Emily's List

Page 71

1 because you felt that those were either candidates
2 or causes that supported your goals?
3 A. Yes, they supported our goals, and I just
4 thought it was a better use of the limited amount
5 of resources we had.
6 Q. And because you have limited resources,
7 you would not have made those contributions but for
8 your decision not to contribute to state assembly
9 or senate candidates; correct?
10 A. No, I still would have donated, but it
11 might have been a different distribution. In other
12 words, if I have, I'm just going to take a number,
13 \$1,000, okay? If I felt that we had a chance in
14 our assembly and senate districts, more money would
15 have gone that -- I did make contributions to the
16 Democrats running for state assembly and state
17 senate, but they were more modest than we would
18 have done if I thought it was a reasonable chance.
19 Q. So the only thing that's different as a
20 result of Act 43 is the specific amount of dollars
21 that happens to wind up in any one of these
22 candidates' hands versus the state candidates?
23 A. Right. State or federal, yeah.
24 Q. Later in this response you said that you
25 felt funny --

Page 72

1 A. Yeah.
2 Q. -- trying to convince anyone else to vote
3 for a candidate with no chance.
4 A. Right.
5 Q. What do you mean by that?
6 A. Well, it's hard to convince somebody to
7 do something that is kind of hopeless. I can
8 accept it, but I just felt -- maybe awkward would
9 have been a better word. But usually they agreed
10 with me anyway.
11 Q. Are you disinclined to engage in any kind
12 of political activity with someone if you think
13 that the cause is unlikely or that they might
14 disagree with you?
15 A. No, I can engage, but it just -- it's
16 very awkward.
17 Q. If you had to select one political issue
18 that was most important to you, what would it be?
19 A. Could you be a little more specific? Do
20 you mean in terms of the state, or do you mean
21 federal, or do you mean in general?
22 Q. I mean let's call it a state or federal
23 public policy issue.
24 A. Well, I'm particularly interested in
25 voter registration. And I feel like the changes

Page 73

1 that were made in terms of voter ID, in terms of
2 shortening early voting, that's important to me.
3 Q. Are you in favor of automatic voter
4 registration?
5 A. Not automatic, but easier.
6 Q. What would you prefer as a voter
7 registration policy?
8 A. Well, I'd like when people get their
9 driver's license or state ID, that they could also
10 register to vote.
11 Q. Do you believe that others in your state
12 or community agree that people oughta be registered
13 to vote when they get their state ID or their
14 driver's license?
15 A. A lot of people I talk to, yeah.
16 Q. You think a lot of people agree with you?
17 A. The people I talk with, yeah. 'Cause I
18 do a lot of voter registration.
19 Q. Are there others that you're aware of who
20 disagree with you?
21 A. Oh, yes.
22 Q. Would you say a majority agrees with you
23 or disagrees with you?
24 A. I think a majority, but my pool is
25 biased.

Page 74

1 Q. Would you be uncomfortable talking to
 2 someone who disagrees with you about that issue?
 3 A. Oh, yeah.
 4 Q. Why would you be uncomfortable talking to
 5 someone who disagrees with you about that issue?
 6 A. No, I wouldn't be uncomfortable. Did I
 7 understand your question, sir?
 8 Q. That's okay, I understand now.
 9 A. No, I talk to -- I talk to everybody.
 10 Q. If you believed that it was hopeless to
 11 pass a reform in the state of Wisconsin whereby
 12 everybody would automatically be registered to vote
 13 when they get their driver's license, would you
 14 still talk to people about it?
 15 A. I don't think it's hopeless.
 16 Q. If it were hopeless, would you still talk
 17 to people about it?
 18 A. I probably would, because I feel so
 19 strongly about it.
 20 Q. So if you feel strongly enough about
 21 something, you talk to people about it even if it's
 22 hopeless?
 23 A. It's like there's degrees of
 24 hopelessness.
 25 Q. Okay. Let's go to number ten, which is

Page 75

1 on the bottom of page 8. Do you see that?
 2 A. I do.
 3 Q. And this one, if I'm tracking correctly,
 4 asked you to list all the ways that Act 43 has
 5 deterred or hindered you from turning out to vote,
 6 registering voters, volunteering for campaigns,
 7 donating money to candidates, running for office,
 8 appealing to independents, and advocating and
 9 implementing your preferred policies. Do you see
 10 that?
 11 A. Uh-huh.
 12 Q. You gave an answer here on page 8;
 13 correct?
 14 A. Yes.
 15 Q. Anything to add to that answer?
 16 A. No.
 17 Q. Is there anything incorrect about that
 18 answer?
 19 A. No.
 20 Q. Have we covered today all the ways that
 21 Act 43 has hurt your ability to affiliate with
 22 like-minded Democrats?
 23 A. I think so. If I might reiterate, it's
 24 more of a philosophical, or kind of like a mental
 25 thing. It's like a weight. Like throwing a wet

Page 76

1 blanket on you. That's how I feel.
 2 Q. When you say a mental thing, you mean
 3 mental on your part?
 4 A. Right. Not crazy, just how I feel.
 5 Q. Limiting yourself in these -- engaging in
 6 these activities?
 7 A. Myself and others. I'm speaking for
 8 myself, though.
 9 Q. So just so we have -- it's clear, you're
 10 talking about your own mind, your own mental
 11 thinking, is limiting you from engaging in these
 12 activities?
 13 A. Yes, sir.
 14 Q. Have we covered all the ways in which Act
 15 43 has prevented you from pursuing your
 16 associational goals?
 17 A. Yes.
 18 Q. Has anyone punished you at any time for
 19 engaging in associational activity?
 20 A. No.
 21 Q. Has anyone deterred or hindered you from
 22 turning out to vote?
 23 A. No.
 24 Q. Has anyone deterred or hindered you from
 25 volunteering?

Page 77

1 A. I would say make me less engaged, but
 2 there wasn't, like, a physical thing that you said
 3 no, you can't do this.
 4 Q. Is that something we discussed earlier?
 5 A. Yeah.
 6 Q. Has anything deterred or hindered you
 7 from donating to candidates?
 8 A. Just what we discussed earlier.
 9 Q. Has anything deterred or hindered you
 10 from running for office?
 11 A. No. I was never interested in running
 12 for office.
 13 Q. Has anything deterred or hindered you
 14 from appealing to independents?
 15 A. Just what we discussed before.
 16 Q. Has anything deterred or hindered you
 17 from advocating for your policies?
 18 A. Just what we discussed before.
 19 Q. I think you said a number of times it's
 20 hopeless for a Democrat to win your district; is
 21 that right?
 22 A. Yes, I've said that, right.
 23 Q. Are you aware that Hillary Clinton
 24 carried your district in 2016?
 25 A. Yes.

Page 78

1 Q. Are you aware that --

2 A. Well, wait a minute. Excuse me. When

3 you say my district, you mean district 23?

4 Q. I mean if you totaled up all the votes

5 for Hillary Clinton in your assembly district, your

6 state assembly district, she would have carried

7 that district. Did you know that?

8 A. I did not know that. I only looked at

9 the results of my village.

10 Q. Are you aware that if you totaled up all

11 the votes for Tammy Baldwin in your state assembly

12 district, she would have won your district?

13 A. I'm not aware of that data.

14 Q. If it turned out that I'm right about

15 that, would you agree that it's at least possible

16 for a Democrat to win your district?

17 A. Sure.

18 Q. Are you familiar with something called

19 computer simulated map 43,995?

20 A. I am -- I am vaguely familiar with it.

21 Q. When did you first hear about simulated

22 map 43,995?

23 A. It was shown to me.

24 Q. When?

25 A. In November.

Page 79

1 Q. What is computer simulated map 43,995?

2 A. Well, my understanding is that, is it

3 Jowei Chen did many simulations and this was one of

4 many that was shown how -- another possible way our

5 district could have been drawn.

6 Q. Have you looked at your house on computer

7 simulated map 43,995?

8 A. I did see my house.

9 Q. Did you see your new district in computer

10 simulated map 43,995?

11 A. I did.

12 Q. And is it your understanding that if you

13 lived in the district that you would have assigned

14 to you under the computer simulated map 43,995,

15 that you wouldn't have any of the injuries you're

16 complaining about in this lawsuit?

17 A. I can't say I'm that familiar with the

18 details.

19 Q. Are you aware that under computer

20 simulated map 43,995, that in your district there

21 would only be 37 percent Republicans?

22 A. I'm not -- I'm not aware of the details.

23 I just had a glance at the map.

24 Q. Well, if I told you then that in your

25 district in computer simulated map 43,995, would be

Page 80

1 63 percent Democrats, would you be satisfied with

2 that?

3 A. I'd like a level playing field. I'm

4 not -- I'm not proposing 50/50, but a district

5 where it's possible for either candidate to win.

6 Q. In your view is having 63 percent

7 Democrats in the district a level playing field?

8 A. Well, it could be. I mean, I'm not aware

9 the data. But you pointed out that Secretary

10 Clinton carried the same boundary of our -- of our

11 state assembly district, and Senator Baldwin did.

12 Again, sir, I'm not familiar with the details here.

13 Q. What is your current state assembly

14 district number?

15 A. 23.

16 Q. Right now, according to Dr. Chen, your

17 district has 57 percent Republicans. Did you know

18 that?

19 A. No.

20 Q. Safe to say if the number now is

21 57 percent Republicans, you're complaining that

22 it's not a balanced playing field; correct?

23 A. Yes.

24 Q. So if it's 57 percent Republicans and it

25 flipped to being 63 percent Democrats, in your view

Page 81

1 does that suddenly become a level playing field?

2 A. Depends what else is involved. My

3 understanding was Chen made many, many, many

4 simulations. I'm not sure this is the optimal

5 simulation choice.

6 Q. So I want you to focus on my question.

7 If your district, in your view, is not a level

8 playing field with 57 percent of the people being

9 in one party, how does it become a level playing

10 field if 63 percent of people are in one party?

11 MS. HARLESS: Objection, asked and

12 answered. You can answer.

13 THE WITNESS: I'm not sure what other

14 criteria are involved.

15 BY MR. ACKERMAN:

16 Q. Tell me all the reasons why you think or

17 everything you'd want to know before deciding

18 whether a district that had 63 percent Democrats in

19 it was a level playing field in light of your

20 positions in this lawsuit that 57 percent is not a

21 level playing field.

22 A. Well, you know, I'm not an expert on

23 drawing district boundaries. And I realize that

24 it's a complicated process, the little bit I've

25 learned about it. Like I say, my personal choice

Page 82

1 would -- would be to have neutral people, like in
2 Iowa, draw the districts. I think people who have
3 a stake in the outcome of the election because
4 they're current representatives or senators, I
5 think it's a conflict of interest. Certainly an
6 apparent conflict of interest.

7 Q. I want to go back to my question. What
8 is it that is preventing you today from making up
9 your mind about whether moving your district from
10 57 percent of one party to 63 percent of another
11 party would make it more of a level playing field?

12 A. I don't know what else is involved. I
13 don't know the details how he did his simulations.

14 Q. So you can't tell me one way or another
15 whether it -- you think it would be fair to have
16 60 -- in your mind it would be fair to have
17 63 percent of your district be Democrats?

18 A. I want to know what else is involved in
19 drawing the district.

20 Q. What else would you want to know?

21 A. I really don't know how people go about
22 drawing districts. See, I'm just looking at the
23 end product. Like I drive a car; I don't really
24 know how they work. I would like a car that's
25 reliable, economical, and I'd like a district where

Page 83

1 any candidate could win depending on their merits
2 or lack of.

3 Q. Do you think it's more likely that any
4 candidate could win in your district by skewing the
5 partisan composition of that district six
6 percentage points further in one direction?

7 A. I don't know.

8 Q. Okay. You said earlier that you want
9 neutral people to draw your districts; is that
10 right?

11 A. Yes.

12 Q. Are you aware that your state
13 constitution vests that authority with the
14 legislature?

15 A. Well, see, I don't know how the
16 district -- see, to me, Act 43, as many other
17 things that have happened since then, was not done
18 in a transparent manner. So I really don't know
19 how it was done. It seemed like it was a secret
20 meeting. And things came out much like the
21 lame-duck session we just had, or the Foxconn, you
22 know. I mean Fox -- people like ask me, what do
23 you think of Foxconn, you know, 'cause I'm an
24 engineer, and I spent a lot of time working with
25 other people on job development and economic

Page 84

1 development. And I say you know, it could be a
2 great idea or it could be not such a great idea.
3 But it was done so opaquely, I don't know the
4 details.

5 Q. You understand I didn't ask you anything
6 about Foxconn; correct?

7 A. I understand.

8 Q. Are you aware that your state
9 constitution assigns the authority to draw the
10 state assembly districts to the legislature?

11 A. Yes.

12 MS. HARLESS: Objection, asked and
13 answered. You can answer.

14 THE WITNESS: Excuse me?

15 MS. HARLESS: You can answer.

16 THE WITNESS: Yes.

17 BY MR. ACKERMAN:

18 Q. I think a minute ago you said that you're
19 not an expert in drawing legislative districts;
20 correct?

21 A. Correct.

22 Q. Do you have any sense of what you think
23 map makers ought to take into account when drawing
24 legislative districts?

25 A. I can't really say. All I can look at is

Page 85

1 the end product. I don't want it skewed one way or
2 the other. I think this is a bipartisan issue.

3 Q. Let's start with maybe some things that
4 we could agree on. Do you think that when drawing
5 legislative districts, it's important to try to
6 keep communities of interest, like a university
7 campus, together in a district?

8 A. I can't say.

9 Q. Do you think it's important that
10 districts be geographically connected, sort of not
11 spread out into little islands?

12 A. That makes sense.

13 Q. Do you agree that districts oughta have a
14 relatively contiguous shape?

15 A. Perhaps.

16 Q. Do you think that districts ought not to
17 be drawn in crazy, weird shapes to pick and pull
18 different pockets of population together?

19 A. Yes.

20 (Exhibit 10 marked for identification.)

21 BY MR. ACKERMAN:

22 Q. Hand you what I've marked Defendant's
23 Exhibit 10. Take a look at that. I'll tell you,
24 Mr. Switzenbaum, that this is a map that I pulled
25 off Google maps on the 14th, which was yesterday.

Page 86

1 Are you familiar with the area depicted in this
2 map?
3 A. Yes, vague -- yeah, yeah.
4 Q. What is it?
5 A. Well, here's Lake Michigan and here's
6 Lincoln Memorial. East side here, moving over
7 toward downtown.
8 Q. Okay. I'm going to give you my pen,
9 Mr. Switzenbaum. And you see in the map on the
10 east side north Lincoln Memorial Drive?
11 A. Yes.
12 Q. And you see that parallels Lake Michigan?
13 A. Right.
14 Q. And then do you see, basically right in
15 the middle, there's East Lafayette Hill Road that
16 comes off?
17 A. Yes.
18 Q. Okay. So I want you to look north of
19 East Lafayette Hill Road along north Lincoln
20 Memorial Drive. You see that, that stretch?
21 A. Hold on. I lost Lafayette.
22 Q. You see the marker for McKinley Beach?
23 A. Yeah, I see McKinley Beach.
24 Q. And you see that space --
25 A. Oh, yes, yes, I see it now. Right by the

Page 87

1 Colectivo, yes, sir.
2 Q. So I want to talk about that space of
3 land that is between north Lincoln Memorial Drive
4 and the lake, from McKinley Beach up to the top of
5 the map, okay?
6 A. Okay.
7 Q. You see that?
8 A. Uh-huh.
9 Q. Can you take my pen and draw a circle
10 around that part of the map that we're going to
11 talk about?
12 A. Okay. You said from McKinley Beach up to
13 North Avenue?
14 Q. To the east of north -- to the east of
15 Lincoln Memorial Drive.
16 A. East of Lincoln Memorial Drive is -- is
17 Lake Michigan.
18 Q. There's a little bit of land there;
19 right? Do you see that between the road and the
20 lake?
21 A. Yeah, it's a beach.
22 Q. I want you to circle that beach. Just
23 the land to the east of the drive between north
24 Lincoln Memorial Drive and the lake.
25 A. Here's a beach here.

Page 88

1 Q. And all the way down to McKinley Beach.
2 A. Oh, okay.
3 Q. East of the -- east of the drive.
4 A. (Witness complies.)
5 Q. That's good right there. Okay. And then
6 circle it all the way back up just so we have a
7 clear record.
8 A. (Witness complies.)
9 Q. So you've now circled a section of land
10 on your map; correct?
11 A. Yes.
12 Q. Are you familiar at least generally with
13 that little spit of land you circled?
14 A. Yes.
15 Q. Does anybody live there?
16 A. I don't think so.
17 Q. How big is it?
18 A. Well, this is 500 feet. So five --
19 2000 feet, looks like.
20 Q. 2000 feet, roughly, from north to south;
21 right?
22 A. Yes.
23 Q. What about east to west, how big is it?
24 A. Looks like it's about 150 feet.
25 Q. Do you think it would be a good idea to

Page 89

1 assemble a district where two pieces were connected
2 by that spit of land?
3 A. I don't know.
4 Q. Does it strike you as a good idea sitting
5 here today?
6 A. Depends what else is involved.
7 Q. So your testimony is that you can't tell
8 me one way or another whether you would be in favor
9 of drawing a district where there are two pieces of
10 population joined only by that strip of land that
11 you circled?
12 A. I'd like to know what else is being
13 considered.
14 Q. Are you aware that is what your lawyers
15 are proposing for your district under the simulated
16 map?
17 A. I'm not aware of a specific proposal.
18 You're talking about the simulation that was number
19 4973?
20 Q. You told me earlier that you'd seen
21 simulated map 43,995; correct?
22 A. I've seen it, but my understanding was it
23 was just an example, not the final recommendation.
24 Q. So my question is, have you seen it?
25 A. Yes, I've seen it.

Page 90

1 Q. And are you aware that under simulated
2 map 43,995 your district, two major parts of it,
3 are connected by that land that you just circled on
4 the map? Are you aware of that?
5 A. I can't say I recall that. I've only
6 just glanced at that map. I didn't look at it in
7 detail.
8 Q. Let's go back to your interrogatory
9 responses.
10 A. Okay.
11 Q. And I want you to turn to page 6,
12 interrogatory number six, which asks you to list
13 all of your donations to political offices,
14 political parties, political action committees or
15 other partisan political organizations you've made
16 since 2002. You see that?
17 A. Yes.
18 Q. Is your answer to this interrogatory
19 response complete and accurate to the best of your
20 knowledge?
21 A. To the best of my knowledge, yes.
22 Q. Anything to add today?
23 A. No.
24 MR. ACKERMAN: Okay. I don't have any
25 further questions.

Page 91

1 MS. HARLESS: Could we take a quick
2 break?
3 MR. ACKERMAN: Yeah.
4 MS. HARLESS: Yeah.
5 THE VIDEOGRAPHER: Going off the record
6 at 4:57.
7 (Break taken.)
8 THE VIDEOGRAPHER: We're back on the
9 record at 5:02.
10 MS. HARLESS: All right. I'd like to ask
11 you a few follow-up questions.
12 EXAMINATION
13 BY MS. HARLESS:
14 Q. Mr. Switzenbaum, can you confirm for the
15 record your residential address?
16 A. 4907 North Idlewild Avenue, Whitefish
17 Bay, Wisconsin.
18 Q. And how long have you lived at that
19 address?
20 A. 15 and one-half years.
21 Q. And would you describe yourself as a
22 Democrat?
23 A. Yes, I'm a Democrat.
24 Q. And why would you describe yourself as a
25 Democrat?

Page 92

1 A. Well, I remember I was in the first
2 grade, it's the first recollection I have of an
3 election. It was the presidential election, and
4 President Eisenhower was running for reelection.
5 And he was very, very popular. And a lot of people
6 were wearing "I like Ike" buttons.
7 And I went home and I asked my father,
8 I said who are you going to vote for? He said
9 well, I'm going to vote for Stephenson. I said
10 don't you like Eisenhower? He said of course I
11 like Eisenhower. I said well, why are you going to
12 vote for Stephenson? He said 'cause we're
13 Democrats. I said why are we Democrats? He said
14 because they stand up for people like us.
15 And that -- I guess that got imprinted
16 on me. I couldn't vote myself until 1972, but I
17 found over the years that the policies that I
18 support, that I agree with, are in line with the
19 Democratic party. For instance, I am pro-choice.
20 I do believe that we are in the middle of
21 potentially disastrous climate change, and it is
22 caused by human activity, to a great deal. I feel
23 like the Republicans are suppressing the vote. I
24 feel like I've been egregiously gerrymandered. I
25 feel like the assembly and senate operate very

Page 93

1 opaquely. I was very upset with Act 10. And these
2 are just my -- my general feelings about policies
3 which align with the Democratic party.
4 Q. And what are the key ways that you've
5 been harmed by Act 43?
6 A. Well, as I've said, mainly just by a
7 terrible feeling of hopelessness and disengagement,
8 where it makes you reluctant to really work hard
9 and be energized for the state assembly and state
10 senate. Not as a Democrat per se for statewide and
11 federal offices, but for those two offices.
12 Q. And that feeling of hopelessness is
13 caused by Act 43?
14 A. Yes.
15 MS. HARLESS: That's it.
16 MR. ACKERMAN: Just one or two more from
17 my side.
18 EXAMINATION
19 BY MR. ACKERMAN:
20 Q. Mr. Switzenbaum, you said a minute ago
21 that one of the things you're upset about is
22 Republicans suppressing the vote --
23 A. Yes.
24 Q. -- correct? Has anyone suppressed your
25 vote?

Page 94

1 A. No.

2 Q. And you mentioned about Act 43 that you

3 are suffering from a terrible feeling of

4 disengagement. Is that something separate and

5 apart from all the issues we talked about earlier

6 today?

7 A. No. I think we discussed that in detail.

8 MR. ACKERMAN: Okay. No further

9 questions.

10 THE VIDEOGRAPHER: Going off the record

11 at 5:06. Media two of two. End of deposition.

12 MS. HARLESS: E-mailed condensed.

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Page 95

1 STATE OF WISCONSIN)

2) ss.

3 COUNTY OF MILWAUKEE)

4 I, ANITA KORNBURGER, Registered

5 Professional Reporter and Notary Public in and

6 for the State of Wisconsin, do hereby certify

7 that the preceding deposition was recorded by

8 me and reduced to writing under my personal

9 direction.

10 I further certify that said deposition was

11 taken at 839 North Jefferson Street, Milwaukee,

12 Wisconsin, on January 15, 2019, commencing at

13 2:57 p.m. and concluding at 5:06 p.m.

14 I further certify that I am not a relative

15 or employee or attorney or counsel of any of

16 the parties, or a relative or employee of such

17 attorney or counsel, or financially interested

18 directly or indirectly in this action.

19 In witness whereof, I have hereunto set my

20 hand and affixed my seal of office at

21 Milwaukee, Wisconsin, this 30th day of January,

22 2019.

23 _____

24 ANITA KORNBURGER, RPR - Notary Public

25

My commission expires May 24, 2021.

Page 96

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2 E R R A T A

3 -----

4 PAGE LINE CHANGE

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Page 97

1 ACKNOWLEDGMENT OF DEPONENT

2

3 I, _____, do hereby

4 certify that I have read the foregoing pages, and that

5 the same is a correct transcription of the answers

6 given by me to the questions therein propounded, except

7 for the corrections or changes in form or substance, if

8 any, noted in the attached Errata Sheet.

9

10

11 _____

12 Michael Switzenbaum DATE

13

14

15 Subscribed and sworn to

16 before me on this _____ day

17 of _____, 20____, by _____

18 _____,

19 proved to me on the basis of satisfactory

20 evidence to be the person(s) who appeared before me.

21

22 Signature _____

23

24

25