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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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VIVIETTE APPLEWHITE; WILOLA
SHINHOLSTER LEE; GROVER FREELAND;
GLORIA CUTTINO; NADINE MARSH; DOROTHY
BARKSDALE; BEA BOOKLER; JOYCE BLOCK;
HENRIETTA KAY DICKERSON; DEVRA MIREL
("ASHER") SCHOR; THE LEAGUE OF WOMEN
VOTERS OF PENNSYLVANIA; NATIONAL
ASSOCIATION FOR THE ADVANCEMENT OF
COLORED PEOPLE, PENNSYLVANIA STATE
CONFERENCE; HOMELESS ADVOCACY PROJECT,

Petitioners,

VS.

THE COMMONWEALTH OF PENNSYLVANIA;
THOMAS W. CORBETT, in his capacity as
Governor; CAROLE AICHELE, in her
capacity as Secretary of the
Commonwealth,

Respondents.

**CERTIFIED
TRANSCRIPT**

C.A. No.

330 M.D. 2012

TRIAL DAY THREE

Honorable Bernard L. McGinley

Harrisburg, Pennsylvania

17th day of July, 2013

9:26 a.m.

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P R O C E E D I N G S

THE BAILIFF: All rise.

THE COURT: Please be seated.

MR. WALCZAK: Good morning, Your Honor.

MS. HICKOK: Good morning, Your Honor.

THE COURT: Do we have a plan of attack today?

MR. WALCZAK: We do, Your Honor.

THE COURT: We have Jonathan Marks to testify.

MR. WALCZAK: We're going to start with

Mr. Marker, who is one of our experts, and he's got some time constraints. So, we're going to take him this morning, and then we have some folks from Philadelphia, a couple of folks from Philadelphia. I believe one, two of our witnesses. I don't know. Mr. Rubin knows more than I about this.

MR. RUBIN: We have one, possibly two fact witnesses, Your Honor, and then we have Jonathan Marks in the afternoon.

THE COURT: Okay.

MR. KEATING: Your Honor, before we begin, we do have a replacement exhibit from yesterday.

MS. HICKOK: Yeah.

MR. HUTCHISON: It's Exhibit 137. One of the -- the version that was up on the screen had an extra line highlighted and the version that we handed out to the Court did not have that line highlighted. The Petitioners received

1 a correct copy of the version by email Monday evening and this
2 is just a replacement for the Court and for the record. It's
3 with regard to I believe Manor University.

4 MR. RUBIN: We have no objection to the
5 substitution, Your Honor, but we do object to the admission.
6 We understand it's not admitted and it's just for the record.

7 THE COURT: Oh, that's something that we
8 should get to.

9 You're usually very good about it, both sides,
10 moving all of the exhibits be admitted, made a part of the
11 record. I don't know if we did that yesterday.

12 MR. RUBIN: The only one that was moved to be
13 admitted was Dr. Siskin's report, which was admitted, Your
14 Honor. I think all of the other exhibits were on cross, and I
15 don't think were properly admitted. There was no moving for
16 them, and I think we object to that.

17 MS. HICKOK: Your Honor, it was my
18 understanding that the things that were created by the
19 Department of State would need to come in through State
20 witnesses during our case, so I was going to move their
21 admission then.

22 THE COURT: All right. So, I'm a little
23 premature. Thank you.

24 MS. HICKOK: No, you're fine. Thank you.

25 THE COURT: Mr. Walczak. The first witness.

1 MR. WALCZAK: Thank you, Your Honor. The
2 plaintiffs call David Marker.

3 DAVID MARKER,
4 a witness, having been first duly sworn, was examined and
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MR. WALCZAK:

8 Q. Good morning, Dr. Marker.

9 A. Hi.

10 MR WALCZAK: Your Honor, I would like to
11 approach the witness with Exhibit No. 2097, which is actually
12 Dr. Marker's report. It's two parts. It's his report and his
13 CV?

14 THE COURT: Certainly.

15 BY MR. WALCZAK:

16 Q. Dr. Marker, what do you do?

17 A. I am a statistician, survey statistician.

18 Q. And can you briefly tell us about your background, your
19 educational background?

20 A. I have a Bachelor's degree in mathematics from the
21 University of Maryland, a Master's in statistics and a Ph.D in
22 biostatistics which is applied statistics both from the
23 University of Michigan.

24 Q. Do you have particular areas of expertise?

25 A. Yes. Most of my work has been in the areas of sampling,

1 survey methods, small area estimation, quality improvement of
2 data collection, and also statistics and public policy.

3 Q. Where do you work?

4 A. I work at Westat.

5 Q. And what is Westat?

6 A. Westat is one of the largest data collectors for the
7 Federal Government. It's employee-owned. We're a private
8 company located predominantly in Rockville, Maryland.

9 Q. Now, in those areas of expertise, is it fair to say that
10 you work extensively with surveys?

11 A. Extensively with surveys. Yes, indeed.

12 Q. Working at Westat in the Federal Government, why does
13 the Federal Government use surveys?

14 A. So in making decisions, making regulations, issuing
15 recommendations, the government needs it to be supported by
16 data that can withstand scrutiny. So, whether it's if you go
17 to your doctor's office and you see growth charts for
18 children, that comes from the national health and nutrition
19 examination survey that Westat collects. If you are
20 developing regulations for environmental discharges, they need
21 to know both information about what companies currently do
22 discharge, but also about the financial capabilities of
23 companies to make sure that the regulations are not too
24 onerous. So, a wide, wide variety.

25 We also did the Don't Ask, Don't Tell survey of the

1 military a couple of years ago.

2 Q. A question I often hear is, you know, how can you
3 sample, say, 2,000 people in Pennsylvania and be able to
4 determine their views or their opinions of 11 million people?

5 A. What, modern survey design and principles date back to
6 about the 1930s, 1940s, when they became -- started to become
7 popular. There were a few attempts before that, but there's a
8 seminal paper in 1934 by Jerzy Neyman about doing a
9 representative sample that pointed out the importance of
10 getting a representative group of people. The mathematics
11 works out that it's the number of people that you ask that's
12 important in the accuracy rather than how many people are you
13 extrapolating to.

14 So, you need the same size sample for Pennsylvania as
15 for the entire country, as long as you represent the entire
16 types of people in those areas.

17 I've done a lot consulting where people said they didn't
18 want to trust a sample. We like to show them a little picture
19 of going into the doctor's office, and the nurse has a huge
20 vial because the patient says, "I don't trust sampling, take
21 all of the blood to check it."

22 Obviously, we rely on our life in taking a very small
23 sample of our blood and drawing conclusions about it. Same
24 idea applies that we don't have to talk to every single
25 person; we just have to talk to a well representative group of

1 people.

2 Q. And has the accuracy of sampling improved over the
3 years?

4 A. In general, it has. We have gotten much better at what
5 we do. Back -- one of the things that gave it an impetus in
6 the 1930s, you may remember that --

7 Q. I'm sorry, I don't remember the 1930s.

8 A. You may have learned in school that in the 1930s, it was
9 predicted that Alf Landon was going to beat Franklin Roosevelt
10 for president because Literary Digest magazine had asked
11 people who got the magazine who they were going to vote for,
12 and they tended to be the upper class literary part of the
13 country, and so they published that Alf Landon was going to
14 win, when he only won one state.

15 And then, so that was when they learned about, okay, you
16 have to expand out and get all types of people.

17 Then in the 1940s, you may remember the picture of
18 "Dewey beats Truman." In particular the polling stopped a
19 couple of weeks before the election, and so, they ended up
20 surveying something that that wasn't relevant to actual
21 Election Day.

22 So, we have gotten much better. It's gotten harder as
23 people are busier and not available to answer their phones as
24 much so it's costing more to collect the data, but we're doing
25 a better job of getting the information.

1 Q. So, as I understand your testimony, the key really is to
2 get a representative sample?

3 A. Yes.

4 Q. Now, as part of Exhibit 2097, there is a -- I believe
5 it's 2797b, there is a CV attached to that. Would you take a
6 look at that?

7 A. Okay.

8 Q. Is that a fair and accurate description of your
9 professional qualifications?

10 A. Yes.

11 Q. I'd like to briefly go over some of these. We have
12 talked about your education. We have talked about Westat. In
13 terms of professional achievements, let's focus on the first
14 one. What is the American Statistical Association?

15 A. It's the largest organization of statisticians in the
16 world. It's about 18, I think a little over 18,000 members at
17 this point. About 10% are international, and it takes the
18 lead on many issues of representing the statistical community.

19 Q. It appears from your CV there that you have had a number
20 of either positions or awards there. Can you talk about those
21 briefly?

22 A. I served on the board of directors. There's a -- I
23 think it's 14 members. I may be off by one or two -- member
24 of board of directors that I served on for a three-year term.
25 Nine years ago I was elected a Fellow of the ASA, which is an

1 award given to less than a half of a percent of the members in
2 any given year, and also, we have a committee on scientific
3 and public affairs that looks at the role of statistics, how
4 statistics are being used or abused, and I chaired that
5 committee for six years.

6 Q. Is this one of the pre-eminent associations for
7 statisticians?

8 A. Yes. I think pretty much without a doubt, it is.

9 Q. So, you actually not only have been a Fellow, you have
10 served in leadership in this organization?

11 A. Yes.

12 Q. Can you briefly tell us about the next entry there.
13 What is the International Association of Survey Statisticians?

14 A. So, in the same way that the ASA has a survey research
15 methods section, it has sections that focus on different areas
16 of expertise.

17 So, there are people who focus on medical statistics.
18 There are people who focus on risk assessment. There are
19 people who focus on doing survey methods. Then there's an
20 International Statistical Institute, that even though it
21 covers a wider range of areas is smaller. It has just a
22 couple of thousand members; and the part of it, the section of
23 it that covers survey statistics is called the International
24 Association of Survey Statisticians.

25 And so in 2010, the president of it who is an Australian

1 at the time asked me to chair the nominating committee. It
2 was a nominating committee with representatives from Africa,
3 South America, Europe and North America, and we nominated
4 people from all over the world. So, we had to become aware
5 and be knowledgeable of people all over the world who worked
6 and take leadership roles in this area.

7 Q. Is this an exclusive kind of appointment?

8 A. Well, one person every other year gets appointed to that
9 position. They meet every -- the main meeting is every other
10 year, so therefore people serve two-year terms.

11 Q. Now, we're not going to go over all of these, but the
12 fifth one down says member, National Academy of Sciences Panel
13 on Research and Development Priorities For the U.S. Census
14 Bureau, State and Local Government Statistics Program.

15 There must have been a lawyer involved in writing that
16 title. What is the National Academy of Sciences?

17 A. National Academy of Sciences was set up by President
18 Lincoln to try and get unvarnished opinions from the leading
19 scientists to assist the Federal Government in research. So,
20 governmental agencies from their funds can give some of that
21 money to the National Academy of Sciences to investigate
22 specific topics, and they then pull together leading experts
23 from around the country to be part of the panel, and the
24 panels can last from one to three or four, I guess -- I don't
25 know if it can go to four years but somewhere in that

1 neighborhood.

2 Q. So, what is it that you did for the National Academy of
3 Sciences?

4 A. So, the government statistics division of the Census
5 Bureau is responsible for collecting information on not only
6 the structure of state and local governments, but their tax
7 revenues, their -- the money, what they spend the money on.

8 It turns out that 14% of the national gross -- gross
9 national product, the GDP that the government estimates, comes
10 from state and local government data collected by this part of
11 the Census Bureau, and they had not had an independent review
12 in at least 20 years, if not possibly ever before this.

13 So, a group of about eight or ten professionals -- there
14 were tax experts, there were government experts. The person
15 who chaired it was a -- had been appointed -- he was the
16 executive director of the old Kerner Commission on civil
17 rights back in the '60s and there were two statisticians
18 chosen. I was one of the two statisticians.

19 Q. What was your role on that panel?

20 A. So, we were very concerned about the quality of the data
21 that the state and local governments have, whether that data
22 confirmed to the structure that the Federal Government wanted.
23 Whether the Federal Government, once it collected the data
24 were properly interpreting the data that were provided by the
25 state and local governments; and we were looking for gaps that

1 may be that the structure needed to be revised so that they
2 could capture -- capture it better.

3 Q. Now, if we go to page two of your CV, it's the start of
4 what looks like five pages of publications and reports. Are
5 any of these related to assessing the quality of surveys?

6 A. Yes. Actually, quite a few of them are. Just going
7 down the list, the fourth one on the list is going back a
8 couple of years. This is 2008. You may remember there was a
9 lot of question in the media about how many people had died in
10 Iraq as a result of either directly or indirectly, as a result
11 of the NATO invasion of Iraq.

12 There was some -- in fact, when people were asked in
13 some surveys, they would quote numbers like 4,000, which was
14 the amount of American soldiers who had died.

15 There was a group in England that kept track of
16 something called the Iraqi body count that was an
17 administrative tracking. So, it was if the news -- news
18 reporters had actually gone to the site and verified that
19 somebody had died, then it was counted.

20 So, everybody that was listed in that count they were
21 very sure had actually been -- had died, and it had around 80,
22 90,000.

23 But when there were provinces that were in the middle of
24 major fighting, no press went there, and so, there was no
25 deaths there according to the Iraqi body count because they

1 couldn't confirm it.

2 So, a survey was done by some university academics, and
3 it came out with hundreds of thousands. I think it was
4 between a quarter million and a million was their estimate;
5 and Tony Blair in England got up and said, this is ridiculous,
6 and a lot of elected officials in the United States did that.

7 So, I did an evaluation. I got ahold of the
8 methodology. I talked with the lead researcher, and I wrote
9 an article for Public Opinion Quarterly which is the main
10 journal of the American Association For Public Opinion
11 Research, which is another very important organization, and
12 pointed out some of the weaknesses in that survey, but also
13 the weaknesses in those alternative counts, and two things.

14 One, I was able to show that I didn't -- I didn't --
15 since I didn't do a separate survey, I couldn't come up with
16 an estimate; but I was able to say that what they had done
17 was -- you know, was probably in the right ballpark, probably
18 a little bit high, and I was able to make recommendations on
19 how future surveys in times of war and crisis could be
20 conducted in a way that could give you much more assurance of
21 the quality for the future.

22 Q. The report that you're discussing is the fourth one
23 under publications and reports which is Marker, D.A., 2008?

24 A. Yes. There's another one, actually a series dealing
25 with the issue of quality of data collection.

1 One of those is on the top of the next page, the second
2 or third one down, depending on how you count. Marker and
3 Morganstein, 2004, Keys to Successful Implementation of
4 Continuous Quality Improvement in Statistical Agencies.

5 And if you go on to the next page, the middle of the
6 next page, Morganstein and Marker, 1997, which is a chapter in
7 a book, Continuous Quality Improvement in Statistical
8 Agencies.

9 So, governmental statistical offices around the world
10 have used those papers and the ideas there and made major
11 improvements in how they collect data, and how they do it
12 efficiently, cost effectively, more accuracy, and there's --
13 biennial conference that grew out of the work that we were
14 doing in Europe on international conference on quality
15 improvement and surveys, and in statistical offices in
16 general.

17 Q. And have you consulted for governments around the world
18 on --

19 A. Yes. Again, on -- we had an ongoing multi-year
20 consulting that I led for the Swedish and Norwegian and the
21 Finnish government, smaller consulting for the British
22 government on it. I have also performed quality audits. So,
23 I have gone in and reviewed what governments were doing to
24 collect data and recommended how they could move forward on it
25 for the Danish, the Netherlands and South African governments.

1 Q. Is it fairly standard in the field, or for you, to
2 review other folks' surveys to assess whether they were
3 well-designed, well-executed, or not so much?

4 A. Yes. It's quite common. There's a very open
5 discussion, exchange of ideas at conferences about lessons
6 that we can learn from each other. Because every survey has
7 its challenges, and you have to be able to try and address as
8 many of them as possible.

9 Q. And when you do this, you are not replicating the study
10 itself; is that correct?

11 A. Sometimes you will do that as a way of reviewing it, and
12 sometimes you will do an assessment of the strengths and
13 weaknesses of -- often of multiple different surveys and
14 comparing them and possibly recommending -- or possibly trying
15 to understand why there are differences in the estimates
16 produced from different your surveys.

17 Q. Now, have you ever been an expert in a court proceeding
18 before?

19 A. Once.

20 Q. When was that?

21 A. That was last summer. It was the State of Texas versus
22 Eric Holder, under the -- about the Texas voter ID case.

23 Q. And who were you hired by in that case?

24 A. The intervenors, which were a variety, but in particular
25 there was the NAACP chapters of Texas and the Mexican-American

1 Legal Defense Fund. I may not have the names exactly right,
2 but...

3 Q. And what were you asked to do in that case?

4 A. In that case, the State of Texas had to try and
5 demonstrate that their law did not discriminate, and so they
6 had had a survey performed by someone at the University of
7 Texas, and it had been presented. The results of that were
8 being presented as part of their attempt to demonstrate that
9 there was no bias.

10 So, I was asked to review the survey methods and
11 findings of Dr. Shaw's survey.

12 Q. What court was that in?

13 A. It was Federal District Circuit. It was a three-judge
14 panel. I think it's district.

15 Q. So, there were three federal judges sitting in that
16 case?

17 A. Yes.

18 Q. And was there a trial?

19 A. Yes. It was a trial before the three judges, yes.

20 Q. And you testified at that trial?

21 A. Yes.

22 Q. Is what you were doing in that case similar to what the
23 petitioners have asked to you do in this case, to assess
24 somebody else's survey methodology?

25 A. Yes.

1 Q. Did the Court refer at all or cite to your testimony?

2 A. Yes. In the findings of the Court, they by name quoted
3 my determination that the data did not meet any standards or
4 practices that would be followed to use to develop estimates
5 that you could depend upon.

6 Q. Is that the only court expert testimony you've ever
7 given?

8 A. Yes.

9 Q. Now, are you being paid for your preparation of a report
10 and testimony in this case?

11 A. Yes.

12 Q. And how much are you being paid?

13 A. \$250 per hour.

14 MR. WALCZAK: Your Honor, we would proffer
15 Dr. Marker as an expert in survey, statistics and public
16 policy.

17 THE COURT: Cross-examination.

18 MS. HICKOK: Your Honor, can I ask for some
19 clarification? I haven't heard any qualifications of him as a
20 public policy expert. I am not opposed to him being qualified
21 as a statistician.

22 MR. WALCZAK: Your Honor, if I may inquire.

23 BY MR. WALCZAK:

24 Q. Dr. Marker, I believe I asked you before if surveys are
25 used to -- by the Federal Government to make various

1 decisions; do you recall that?

2 A. Yes.

3 Q. Can you tell us about some of the policy decisions that
4 have been based on surveys that you have done for the Federal
5 Government?

6 A. I was in charge of the survey that did the first
7 estimate of the number of shelters for the homeless that were
8 available back in the 1980s. That was very important for HUD
9 to decide on public policy in terms of what kind of assistance
10 was needed for the homeless.

11 I organized -- if you go back to the professional
12 achievements, you will see that through the American
13 Statistical Association and its scientific and public affairs
14 advisory committee that I chaired, we organized a workshop on
15 climate change and statistics to bring together and encourage
16 more collaboration between the scientists working on climate
17 change from the physical science perspective and the computer
18 science perspective, with statistical science perspective as
19 well; and that has led to some very nice work that is ongoing
20 in climate change.

21 I drew the -- I was in charge of the initial sample for
22 when the government switched from Section 8 housing vouchers
23 -- housing to giving people vouchers to find where low income
24 people could rent, with one of the main ideas of that policy
25 under Reagan was to spread out, rather than congregate the

1 homeless in high density areas. And so, I designed the first
2 study that could be done to test that out. That is the
3 procedure that is now used.

4 There have been a number of concerns the government has
5 had over the years about lead and more recently and lead and
6 allergen in public housing -- or not public housing, but
7 housing throughout the country. So, I have worked on the
8 study that has determined how much of that there is, and how
9 it's changing over time and what the characteristics are that
10 are used then for policy decisions.

11 Q. And your work on these, does it go beyond just simply
12 the mechanics of putting together a questionnaire or survey?

13 A. Yes. It generally -- I should say, it should always
14 start with understanding what the goals of the study are.
15 What are the, quote, policy issues. What are the questions
16 that need to be addressed. From that, you both work on the
17 questionnaire and also on the sample design, again coming back
18 to the idea of the representative sample that we are going to
19 get all of the parts of the population that need to be
20 surveyed.

21 Because frequently, there are parts that are very easy
22 to get data on, and then there are parts that are harder to
23 get data on.

24 And depending on what the questions are, it may or may
25 not be worth the effort to go after the more difficult one,

1 and so we always have to work out from what the best available
2 information is at the time as to how to optimally allocate the
3 resources to get survey estimates that they are -- that will
4 accomplish what they are, and then I am involved in making the
5 reports of the findings.

6 Q. And so how big a role does public policy play in the
7 work that you do in designing surveys?

8 A. It drives the vast majority of the work that we do.

9 MR. WALCZAK: I would re-tender Dr. Marker as
10 an expert in survey, statistics and public policy.

11 MS. HICKOK: Your Honor, I continue. The
12 testimony that he gave is all about hearing about public
13 policy goals and reducing that to a statistically evaluable
14 report or measurement. It was not about being an expert in
15 public policy or setting public policy, or being a public
16 policy analyst. And I believe there is a distinction between
17 being a public policy expert and being a statistical expert
18 who works with people who are setting public policy.

19 MR. WALCZAK: Your Honor, if I would just
20 clarify, I don't think we're proffering Dr. Marker as a
21 stand-alone expert in public policy, whatever that is.

22 I think what this proffer tries to convey is
23 that survey statistics and public policy are a bundle
24 together, and so, the public policy is as it relates to
25 surveys and statistics.

1 THE COURT: And as to Dr. Baretto's
2 methodology and results?

3 MR. WALCZAK: And Dr. Marker will testify that
4 he did not replicate and did not try to replicate what
5 Dr. Baretto did. And he did exactly what he did in the Texas
6 versus Holder case which is to evaluation Dr. Barreto's survey
7 design and methodology and assess whether or not what he did
8 was reasonable according to professional standards.

9 THE COURT: I'll give you an exception, but
10 I'll let him testify. Okay?

11 BY MR. WALCZAK:

12 Q. Dr. Marker, what is it that you were asked to assess in
13 this case?

14 A. To review the expert report of Dr. Barreto, the
15 testimony on cross-examination at the preliminary injunction,
16 the judge's findings, and then the -- I guess it's the State
17 Supreme Court review, and to look at in those cases, the
18 questions that were raised about Dr. Barreto's methods and
19 findings.

20 Q. Were you asked to address -- I'm sorry. Strike that.

21 In the exhibit, do you have a -- the one that's in front
22 of you there, did you list the sources that you relied on?

23 A. Yes. I think it's at the end of the expert declaration.

24 Q. Page seven?

25 A. Yes. Resource materials on page eight.

1 Q. And source material. Those are documents that you
2 reviewed to prepare your report?

3 A. Yes, yes.

4 Q. And have you looked at any other documents related to
5 this case since then?

6 A. Since then, I received and reviewed two other expert
7 submissions; one was Dr. Siskin and the other was Dr. Mints,
8 Mutz?

9 Q. Mutz.

10 A. Mutz.

11 Q. Let's start with the first point --

12 MS. HICKOK: Your Honor, I would object to any
13 testimony beyond what he disclosed that he relied on in this
14 report. He has said that he has now reviewed other things
15 that he did not disclose to us as an expert opinion in
16 accordance with this Court's scheduling order.

17 So, I would object to any testimony that goes
18 beyond these items.

19 MR. WALCZAK: I'm not sure what Counsel is
20 referring to.

21 MS. HICKOK: Your Honor, the course material
22 that he said that he was going to opine on is the expert
23 report of Dr. Barreto; the trial testimony; the August 2012
24 court opinion; the survey data from Dr. Barreto; the
25 transcript of the June 5th, 2013, deposition of Mr. Ruman; a

1 September, 2012, Penn Perk report; and an April, 2012, Penn
2 Perk report.

3 He has just now testified -- he has just now
4 been asked whether there have been additional materials
5 supplied to him after he provided this report with this list
6 of reliance documents, and he has said that he has; and I
7 would ask that his testimony be limited to what was used to
8 form his opinions in his report that were the only things
9 disclosed to us.

10 MR. WALCZAK: Your Honor, we have no intention
11 of going beyond what's in the report, which -- his report,
12 which did not rely on either Dr. Mutz or Dr. Siskin's reports.

13 I simply wanted to disclose that he had
14 reviewed other materials related to this case prior to
15 testifying.

16 THE COURT: We'll proceed.

17 BY MR. WALCZAK:

18 Q. Dr. Marker, have you formed an opinion to a degree of
19 professional certainty regarding Dr. Barreto's survey
20 methodology?

21 A. Yes.

22 Q. What is that opinion?

23 A. That a survey was conducted according to the reasonable
24 standards of a public opinion survey following reasonable
25 procedures.

1 Q. Let's unpack that a little bit. Can you describe for us
2 the survey design and Dr. Barreto's survey design and
3 methodology; what is it that he did here?

4 A. He conducted a telephone survey of Pennsylvania
5 residents. He used methodology I refer to as random digit
6 dialing, RDD; and he supplemented that with cell phones. So,
7 by doing that, anybody who has a land line, so a line
8 associated with your -- where you live in Pennsylvania was
9 eligible regardless of whether or not you have it listed in
10 any phone book or anything like that. All such lines would
11 have been eligible.

12 And also, anybody who had a cell phone associated with a
13 Pennsylvania area code also was eligible. So, between that,
14 he would have had covered well over 90%, or probably what --
15 probably at least 95% of the population of Pennsylvania was
16 covered. So that's very reasonable. Including the cell
17 phones, it was very important.

18 He then conducted a survey over, with a 12-day period.
19 Every one of the phone numbers was given three chances at
20 three different times of day and days to be reached. He got
21 approximately a quarter of the -- a lot of those phone numbers
22 are not working numbers. In order to give everybody a chance,
23 you dial many numbers that are not working numbers, and so,
24 when you -- so of those that appeared to have working numbers,
25 he got about a quarter of the people to respond.

1 Q. That's what's known as a response rate?

2 A. Yes.

3 Q. And what was his response rate?

4 A. 24%.

5 Q. Now, just to be clear, did you assess Dr. Barreto's
6 demeanor or credibility in terms of looking at the survey?

7 A. No.

8 Q. Now, are Dr. Barreto's demeanor or credibility in
9 testifying relevant to the survey?

10 A. No. They're -- the data were collected -- I only had a
11 written transcript of what he said in his testimony.

12 Q. And did Dr. Barreto in fact collect the data himself?

13 A. He in turn hired a survey research firm that he worked
14 with on previous projects.

15 Q. Let's start with response rates. One of the criticisms
16 that was suggested by the Respondents in examining Dr. Barreto
17 and then referenced by the Court in the preliminary injunction
18 decision was the response rate of 24%.

19 Did you evaluate whether or not that was a reasonable
20 response rate?

21 A. For an RDD survey, that is a reasonable response rate to
22 get. It's consistent with what one would expect. In fact, I
23 mentioned in my testimony, Pew Research organization is very
24 well respected for doing telephone surveys; and last year,
25 they did an evaluation of their own procedures because

1 response rates have been going down, and their standard fairly
2 quick survey that they generate had gone all the way down to a
3 9% response rate, and they have a more extensive version that
4 they do at times, and that got a 22% response rate.

5 And they did a comparison that we can talk about, but
6 the point here is that a -- one of the leading firms doing
7 this kind of research, doing a much more extensive effort to
8 get data collection involving two-and-a-half months of data
9 collection and 25 attempts to reach people, offering
10 incentives, sending out advance letters to those you can get
11 address to only got a 22% response rate. So, for Dr. Barreto
12 to get 24% is quite reasonable.

13 Q. You testified that you have been working for Westat
14 which does surveys for the Federal Government. And typically,
15 the Federal Government aims to have a higher response rate?

16 A. Yes.

17 Q. And what is -- what does a response rate impact? What's
18 the significance of the response rate?

19 A. So, the -- there are a number of ways that a survey
20 estimate's accuracy can be understood, and one of the parts
21 that people are becoming more familiar with is sampling error.

22 So, sampling error sometimes referred to as the margin
23 of error. It's often reported in the newspapers now with the
24 data. It's referring to one of those sources, a very
25 important one; and that is, going back to the point earlier,

1 that we only survey 1,000, 2,000 people, and we're projecting
2 from that up to, in the case of Pennsylvania, 8 or 9 million
3 adults.

4 So, that's the sampling error. But then there are
5 non-sampling errors, and one of the biggest concerns is
6 response rates. That if the people who respond are not like
7 the ones who didn't respond. If there is a substantive
8 difference between them, then the -- there could be a bias in
9 the survey estimate that comes out that is over and above the
10 plus or minus margin of error from sampling.

11 The higher the response rate, the less of a concern in
12 general that that is. So that, you know, if you have a 75%
13 response rate and only 25% who don't respond, then that 75% is
14 going to give you a real good picture unless there's a real
15 extreme difference between the respondents and
16 non-respondents. When you only have 25% there's more of a
17 chance that it, that those differences could impact the
18 results.

19 So, that's why we like to get a higher response rate.
20 It generally costs more. It generally takes more time to get
21 higher response rates.

22 And so the government has a standard that if you do not
23 get an 80% response rate, you have to do some attempts to
24 estimate that non-response bias, and you should include that
25 along with your stats.

1 Q. Now, in the types of surveys that the government
2 conducts are different than the kind of public opinion survey
3 that Dr. Barreto conducted?

4 A. In general, that's true. The government conducts a wide
5 range of studies; but for many of them, and most of the ones
6 that we are involved with, they are going to make some
7 decisions that they need quite tight accuracy on the
8 estimates, and so, therefore, they generally are paying for
9 the resources to be provided.

10 Q. Could you give us an example of -- when you say sort of
11 tight accuracy that you need, can you give an example of a
12 survey like that?

13 A. Well, so one of the examples is -- I mentioned NHANES,
14 the National Health and Nutrition Examination Survey that
15 Westat does for the Centers For Disease Control, part of
16 Health and Human Services.

17 So, that is used to provide estimates of -- as I
18 mentioned, the height and weight of babies. It is where the
19 data on what percent of the country is obese. It was used to
20 help argue for getting rid of leaded gasoline because the --
21 it took blood samples of children. It's been used on -- to
22 push for the dramatic reduction in lead, getting rid of lead
23 paint in the 1970s from residential, because you could see the
24 impact it has on children.

25 And for all of these, it's -- this is an annual survey

1 and they all pull together multiple years to get the accuracy
2 and they want to be able to measure the change to see if
3 changes in regulations and laws have an impact. So, they need
4 to be able to detect very small differences; and therefore, it
5 is done -- this is done as an in-person survey, it is done
6 with a tremendous amount of publicity about the survey, it is
7 does with multiple languages.

8 If somebody in-person -- well, there are different
9 levels of refusals. There are the people who don't you dare
10 come back, slam the door kind of refusals and you respect
11 their privacy.

12 Then there are the ones that just kind of seem to be
13 putting you off. And that survey, we sent a supervisor back
14 to go and try to convert people. So, I mean, there's a
15 tremendous amount of effort because it's so vital to get that
16 data very accurate.

17 So, that's kind of like one of the extreme levels.

18 Q. Now, is that level of accuracy required or was it
19 required in what Dr. Barreto was measuring?

20 A. No, I don't believe it was.

21 Q. So, just to be clear, the fact that you have a 24
22 response rate impacts the survey results how?

23 A. It provides -- it means that there's a potential that in
24 addition to the confidence interval that he gave, the plus or
25 minus 180,000, 160,000 on the number without a -- an ID, that

1 there's the potential that there might be other things, other
2 ways in which the non-respondents are different from the
3 respondents that could impact the results as well.

4 Q. And one potential bias that the respondents suggested in
5 the first trial was that the survey was taken over a 12-day
6 period in the summer. It's a time when people could be away
7 on vacation, so those would be people who would not have
8 responded, and they may have had a higher rate of having ID.

9 Did you assess Dr. Barreto's handling of that potential
10 bias and what impact it had on his results?

11 A. I did.

12 Q. And what did you find?

13 A. So, one of the ways that you can try and examine the
14 potential for non-response bias is to make overly extreme
15 assumptions about what might have happened that are beyond
16 what you really think might be there, but -- and you see how
17 that would impact the results, because you know that the
18 reality is probably something less than that.

19 So, given that the Judge raised this concern about
20 people being on vacation, and that those people might be less
21 likely to have -- less likely to be without an ID, they're --
22 in all likelihood people who are going to be away for a week
23 are on average going to be wealthier. A lot of them are going
24 to be driving on that vacation, so they are probably more
25 likely to have a driver's license.

1 So, what I did was I said, let's assume that explains
2 everybody who didn't respond. The other 76% are all people
3 who were on vacation. And remember, if you are on vacation
4 but had a cell phone, you were still able to be included in
5 the survey. So these are people who are on vacation without a
6 cell phone. Or turned off their cell phone, I guess.

7 Q. I'm sorry. And you're making that -- you're just making
8 that assumption. You don't believe that that's --

9 A. Right. I definitely do not believe that all 74% -- 76%
10 who did not respond were that way.

11 But that's taking the Judge's legitimate concern to its
12 kind of extreme case because that's kind of the biggest impact
13 that this bias might have.

14 And if you looked at some of the results that
15 Dr. Barreto had on high income people and their incidence
16 rate, they were still missing the IDs -- their incidence rate
17 was a little higher than half than for the general population.

18 And so I said, let's assume that that 76% that didn't
19 respond had IDs or were missing IDs only at half the rate. So
20 again, I took it at even somewhat more extreme difference
21 between the respondents and non-respondents than the data
22 suggests, and assumed that all of them were in that situation.

23 That reduced the estimate that Dr. Barreto had of 12.8%
24 of Pennsylvanians not having an ID down to 7.9% would still
25 not have an ID, even in that most extreme circumstance, which

1 corresponded to 660,000 registered voters and 850,000 eligible
2 voters in Pennsylvania, even under that extreme assumption.

3 Q. Now, the Court also raised a concern about name
4 conformity. Did you look at Dr. Barreto's handling of the
5 name conformity issue?

6 A. Yes. The law -- I don't remember the exact word. It's
7 substantial conformity or something like that.

8 Q. Substantial conformity. Yes.

9 A. Substantial conformity. And it's not completely clear
10 how that would be interpreted. So, they're going --

11 Q. What do you mean by that, it's not clear how it would be
12 interpreted?

13 A. So, somebody, Richard Smith, might have an ID that is
14 Rich Smith. That's probably going to be viewed, would assume
15 by most people to be substantially conforming. Dick Smith
16 might be. When you get to names like Elizabeth and Liz.
17 Okay, Betsy, Betty. There's so many versions. Who will --
18 which of those would pass is not clear. It would be very hard
19 to ask in a question, and you know, as to whether or not your
20 ID is close enough.

21 There are also obviously ones where you have an ID that
22 does not match. When you have gotten married, you have
23 changed your name. Not just women.

24 My son changed his middle name when he got married to
25 take his wife's maiden name. So they both have the same

1 middle and last name now. So, he has the same first and last
2 name, but a different middle name. Would that, that be
3 substantially conforming --

4 Q. Substantially conforming.

5 A. -- is not clear.

6 So, because you don't know how to ask that in a
7 question, to say do you have an ID that substantially
8 conforms, what Dr. Barreto did was to ask if you exactly
9 conformed.

10 And so, therefore, on that point, he is getting an
11 overestimate of how many would have an ID that don't match.
12 But he also separated it out. And so, being he first reported
13 how many didn't have a match, not taking that into account,
14 and then he said, and then when we take into account that
15 their name doesn't match exactly, how many.

16 So, what he reported was that less than a third of the
17 people who did not have an ID that matched, it was because of
18 this substantially conforming.

19 So, the 12.8%, I believe it was 4.1%, it was because of
20 this, and 8.7%, it was they didn't have a voter ID that was --
21 that hadn't expired or all of those other conditions.

22 So, the truth, obviously, in terms of how many people
23 have -- don't have any voter ID that would be accepted by the
24 Judge is somewhere in between the 8.7, which is assuming that
25 everybody's ID is accepted there, even when the name -- last

1 name is changed, and the 12.8%, which assumes that an ID that
2 says Dick Smith is not the same as Richard Smith.

3 Q. And did Dr. Barreto acknowledge in his testimony and
4 report the difficulties in measuring name conformity?

5 A. He explicitly said the reason that he reported the data
6 separately was because of trying to address this kind of
7 unknowable part of it.

8 Q. And for that reason, did he in fact separate out in all
9 of his analysis folks who had non-compliant data based on some
10 factor other than name conformity and then separately, if you
11 add non-name conformity, how much that would be?

12 A. Yes.

13 Q. So, it's possible in fact to see in Dr. Barreto's work
14 the number of people who don't have ID without the issue of
15 name conformity included at all?

16 A. Yes, yes, and it's still over half a million people.

17 Q. But some percentage of those people that are in that
18 non-name conformity, you think that it's reasonable to assume
19 that they will fact not be allowed to vote because the names
20 are substantially different?

21 A. Clearly, yes.

22 Q. So, do you believe that Dr. Barreto's handling of the
23 name conformity issue was reasonable?

24 A. Yes.

25 Q. Let me just ask you the same question about the

1 non-response bias.

2 Was his handling of that issue reasonable?

3 A. So, there are two parts to that. One is the one I
4 addressed that he did not do a non-response bias analysis like
5 what I just suggested, which is the kind of thing that we're
6 accustomed to doing in response to the Office of Management
7 and Budget in the Federal Government standards, when you have
8 a response rate below 80%, that kind of analysis.

9 But he did one other thing, which was very important
10 that he did include, and that was that he took the survey
11 estimates and did a post-stratifying or some refer to as a
12 raking adjustment to the American Community Survey totals.

13 This is a very important way to adjust for many sources
14 of non-response bias, and some other types of bias as well
15 that could be present in a survey, and is a very important
16 step, and he did do this.

17 The American Community Survey is conducted by the Census
18 Bureau, is one of the pre-eminent, highest quality surveys
19 that we get. It gets about a 91% response rate. So, its
20 numbers are going to be very accurate, and it provides totals
21 by age, race, sex, for Pennsylvania, and he adjusted his
22 numbers to do that.

23 A key finding of his was that when he made that
24 adjustment, it didn't change the estimates much. The factors
25 weren't much. So, I don't want to get too far into the weeds,

1 but you get a survey estimate. You know what the chance of
2 selecting that person was, and that --

3 Q. I'm sorry. By the person, you mean by demographic data?

4 A. So, we -- he knows out of all of the potential telephone
5 numbers in Pennsylvania, he knows how many he called. So, he
6 knows what the chance that your number got randomly selected.

7 And let's say that was 1 in 10,000, then your base
8 weight, the starting weight for you is 10,000. You represent
9 10,000 other numbers. So, you get a base weight, and then you
10 do an adjustment for non-response to make the weights be a
11 little bit more accurate. So, you then end up with a survey
12 weight that you can use to make your estimates, but by
13 post-stratifying, by raking to these totals from the ACS, you
14 get much more stability, much more accuracy in results.

15 And what he reported was that the adjustments that that
16 post-stratification made to those weights after everything
17 else he had done were very small and that helps you that he
18 was getting similar percentages of people of different ages
19 and races and sex to participate in this survey, and that's a
20 very good sign that it was a well-done survey. So, the fact
21 that he did that is important.

22 Q. So, in the trial court's preliminary injunction opinion
23 that there's a specific reference to post-stratification
24 weighting on page 13, the Court said, there was a concern
25 raised by this post-stratification weighting, especially with

1 regard to age and gender.

2 So, this -- what Dr. Barreto did, is that a acceptable,
3 necessary -- how you would characterize it, part of doing a
4 survey?

5 A. It is acceptable. It's highly, highly recommended. If
6 he had not done it, then criticizing him for not doing it
7 would have been very important thing to do.

8 So, the fact that he did it, it's important. Unlike
9 what the -- what happened during the trial when the question
10 was raised about doing that, that's actually a very positive
11 sign about the survey.

12 Q. So, this is an accepted methodology in the field?

13 A. Whenever possible, yes.

14 Q. Now, the Court also -- the trial court also raised an
15 issue about oversampling. What is oversampling?

16 A. So, if you -- I believe I saw that Pennsylvania is about
17 10% black and about 4% Hispanic, something like that. I think
18 it was in the -- one of those documents that I reviewed.

19 So, if he did a survey of -- was it -- I'm trying to
20 remember the number of completes that they had. Was it 1,200
21 or something like that?

22 Q. It was 1,280, I think it was.

23 A. Yeah. 1200 surveys. If you just do a random sample of
24 telephone numbers, you can expect to get about 10% of those
25 numbers to be black, so about 120, 130 blacks, and about 4% to

1 be Hispanic. So that's something around 50 Hispanics that you
2 would get.

3 Given the interest in -- and so that's what he did for
4 his national survey -- his statewide survey. The estimates of
5 12.8% without an ID of registered and 14.4% of eligible used
6 no oversampling, just that random sample of the state probably
7 has about 50 Hispanics.

8 But then people are interested in wanting to know
9 characteristics of those Hispanics. Well, what was the rate
10 among Hispanics. Well, if you only have 50 Hispanics, you're
11 not going to get a very good estimate of what the rate of IDs
12 are from a sample of only 50.

13 So, he -- so, in a separate, and I guess two separate
14 surveys, I think, he selected a larger sample of Hispanics,
15 and another one larger -- I think he did one of blacks --
16 where he got those from lists of -- a lot of companies out
17 there that try to sell you things, maintain, combine lots of
18 records on you, that there was a high chance that they were
19 Hispanic or black. It's not going to be 100%, but a lot of
20 them on those lists are going to be Hispanics and blacks.

21 So, he was able to investigate further and provide
22 estimates of rates for Hispanics and for blacks from those
23 separate samples.

24 This is very, very common. In more -- in many studies
25 that we do, actually, we oversample as part of the main

1 survey. Going back to the NHANES survey, they oversample --

2 Q. I'm sorry. Which is the NHANES survey?

3 A. The National Health and Nutrition Examination Survey,
4 the one that I was referring to that's considered gold
5 standard of all health surveys in the country.

6 They not only oversample blacks and to a lesser extent
7 Hispanics, but there are certain age by ethnicity groups. So,
8 in some of the years, you know, Mexican-Americans over age 65
9 are particularly oversampled, because there's concern about
10 particular health issues that elderly Hispanics have.

11 So, oversampling is very common, and in effect what they
12 do, since there's an in-person, we go more to neighborhoods
13 that are known to have lots of Hispanics. We do some
14 screening out so maybe we keep every Hispanic that you come in
15 contact with, but only every second black that they come in
16 touch with, and every fifth white that they come in touch
17 with, and then you weight the data back to undo that, so that
18 you end up with proper national estimates, but you have more
19 actual cases of blacks or Hispanics included in the data.

20 This is the cost effective, completely accepted regular
21 way of doing surveys as long as you weight it appropriately.

22 He -- in an RDD survey, that can get quite expensive and
23 would have taken a lot longer, because to oversample -- if
24 instead of 50 Hispanics, you wanted 500 Hispanics or 200
25 Hispanics, to get from 50 to 200, they would have had to

1 contact four times as many people in that one week, in that 12
2 days as they did, and that would have just taken a tremendous
3 amount of resources.

4 So, instead, he did the main survey without any
5 oversampling, and then he did the special surveys just to be
6 able to report characteristics.

7 Q. Now, just to be clear, the -- did the oversampling
8 impact his -- the survey results of how many people don't have
9 ID?

10 A. Not at all.

11 Q. And so, the oversampling was just to sort of fine-tune
12 demographic information about those particular subgroups?

13 A. Yes, it allowed him to produce estimates of the percent
14 without IDs for Hispanics and for blacks to compare that with
15 the overall population.

16 Q. But the oversampling does not in any way affect the
17 survey results in terms of people's not having ID or not
18 having the documents to get ID?

19 A. Correct.

20 Q. And what Dr. Barreto did here is an accepted methodology
21 within the field?

22 A. Absolutely.

23 Q. Now, you mentioned a moment ago that Dr. Barreto sampled
24 both eligible voters and registered voters, and the Court --
25 the trial court in the preliminary injunction also raised some

1 issues about focusing on eligible voters, it says, as opposed
2 to registered voters. Can you just describe what it is that
3 Dr. Barreto did in this survey with respect to eligible and
4 registered voters.

5 A. They -- I don't have the questions in front of me
6 exactly, but he -- the initial question asked about adults 18
7 and older, because that who is eligible to vote in
8 Pennsylvania.

9 I believe he asked questions about how long you've lived
10 in Pennsylvania, because there are some requirements, whether
11 it's 60 days or 90 days, something like that.

12 So, that was the 1,280 -- whatever number of
13 respondents. A subset of that were registered voters at the
14 time of the survey. They were asked, are you registered to
15 vote, and that reduced the number down to I think it was about
16 1,100 or something like that.

17 So, he did parallel analyses for the 1280 who were
18 eligible and for the 1100 who were registered, because
19 clearly, every state has a different cut-off whether it's 30
20 days, 60 days, 90 days, five days or some states, not
21 Pennsylvania, you can actually -- if you are eligible, you can
22 register on Election Day to vote.

23 So, there are many people who were not registered but
24 were eligible who might have wanted to vote as well. So,
25 that's -- that's why he included the eligibles as well as the

1 registered.

2 Q. But in his tables where he reports the survey data, does
3 he in fact rake out and report separately for eligible voters
4 and registered voters?

5 A. Yes, he had parallel tables, separate tables.

6 Q. So, even if the Court were not inclined to consider the
7 eligible voters as being relevant, the measures still show
8 what the rates are for registered voters?

9 A. Yes. Yes. The 12.8% without IDs for eligible voters --
10 for registered voters, and the 12.4% for eligible voters.

11 Q. So, considering all of these aspects of Dr. Barreto's
12 survey, considering all of the criticisms raised either by
13 Respondents' counsel or by the trial court in the preliminary
14 injunction, do you believe that this survey -- do you have a
15 degree of confidence in the reliability of Dr. Barreto's
16 survey findings?

17 A. Yes, I do.

18 Q. Do you recall what those findings were in terms of both
19 eligible and registered voters not having ID?

20 A. Yeah. His Table 1 found that for registered voters was
21 just over a million registered voters, and with a confidence
22 interval, it goes from about 900,000 to 1.2 million registered
23 voters probably do not have an ID.

24 And for eligible voters, it's between about 1.2 million
25 and 1.5 million do not have an ID. That -- those numbers are

1 with the strict interpretation on -- on the exact matching as
2 versus substantially conforming.

3 Q. On the names?

4 A. On the names. And so that was, as we said, a little
5 less than a third of those numbers were due to that issue.

6 Q. So, what are -- and what would be the numbers, if you
7 take out the name conforming requirement?

8 A. So, it would still be well over a half million, if you
9 take that out. I -- oh, okay. Same paragraph.

10 So, for registered voters, if you say that everybody --
11 if you forget about worrying about name at all, so when they
12 change their married name, a person says, oh, you got married,
13 that's okay, I'll allow you to vote. It's still at 700,000.
14 So, that's probably about between 600 and 800,000.

15 Q. So, that's that confidence range?

16 A. Right.

17 Q. And do you -- so, do you have a high degree of
18 confidence or how much confidence do you have that that number
19 is an accurate representation of Pennsylvania voters?

20 A. So, okay -- so, again as we pointed out, the one
21 criticism that the Judge had made that I thought was quite
22 reasonable about the length of time, that that might have an
23 impact on, you know, people who were on vacation, that
24 presumably would lower them a little; but as we saw before, it
25 wouldn't have a huge impact on it.

1 So, you know, that -- that is a slight modification from
2 what Dr. Barreto's numbers were there.

3 Q. Now, I'm going to move on to the second and third
4 questions that Petitioners asked you to examine and we'll do
5 this much more quickly. Do you have an opinion as to
6 Dr. Barreto's findings regarding the percent of eligible and
7 registered voters who don't have a PennDOT ID but may have
8 some other form of ID?

9 A. He found that less than a percent had another form of
10 ID, around .6%, I believe was his estimate. And so, one
11 question that I investigated at that point, in response to
12 that, was that students attending Pennsylvania schools as
13 the -- some of the universities started offering ID --
14 changing their ID structure so they would be compliant with
15 the law, whether that would significantly change the percent
16 of the people who currently don't have one who would have one.

17 So, I looked at the raw data from Dr. Barreto's survey
18 for the people in that approximately 10% who do not have an
19 ID -- the 12.8% who do not have an ID. Oh, excuse me. The
20 number is a little bit smaller. It's 9.3% of registered
21 voters who don't have a PennDOT -- trying to remember the
22 explicit differences. It was approximately 10%.

23 I could go back to Dr. Barreto's to get the exact number
24 who don't have -- who wanted to see whether they had any other
25 form of ID.

1 So, we looked at the people who had said that they
2 didn't, and only just over 3% of those people were 18- to
3 25-year-olds. Now, there are students -- many students who
4 are over 25 years old, but they represent a much higher
5 percentage of the 18- to 25-year-old population than they do
6 of the older population.

7 So, even though there are approximately 800,000 people
8 enrolled in colleges and universities in Pennsylvania,
9 according to the National Center of Education Statistics,
10 given that only about 3% -- there was another 10% who didn't
11 give their age -- so a few percent of the people who don't
12 have an ID are 18 to 22 -- 18- to 25-year-olds, it does not
13 appear that student IDs are the issue that's going to
14 ameliorate the problem.

15 Q. Is it possible that there was a bias built into -- or
16 that created a bias in the other direction as well by the way
17 the sampling was done?

18 A. There is in that if we go back to the Pew study that I
19 mentioned earlier, which tried to look into the problems with
20 the low response rates and whether or not there were any
21 biases being introduced by those response rates like the 22%
22 that they got with their high quality survey.

23 And there's been a lot of research lately in the
24 statistical and survey research community about, as response
25 rates have been dropping, whether that's causing biases. And

1 there's been a pretty consistent finding that on most items,
2 low response rates don't cause a lot of bias; but on some
3 issues, they do.

4 And what Pew found was that in their 22% survey, they
5 were getting on overestimate of college graduates, and an
6 underestimate of people who did not graduate from high school
7 or went to high school only, and did not go on to college.

8 So, it's quite possible, and actually, the expectation
9 would be that in the 24% response rate survey that Dr. Barreto
10 did, he may well have also gotten a higher percentage of
11 college graduates, and a lower percentage of people who did
12 not go beyond high school than the general population.

13 And the survey results showed that the people who
14 graduated from college have a low rate of not having an ID,
15 and the people who only went to high school or didn't go to
16 high school have a higher rate of missing an ID.

17 So, it's quite possible that Dr. Barreto's survey has
18 overrepresented the people who are likely to have an ID.

19 So, if this 24% is like what Pew has found in its 22%
20 surveys, then it's quite likely that there is a bias for and
21 Dr. Barreto has underestimated the population.

22 Q. So, the fact that more Pennsylvania accredited colleges
23 and universities have issued photo IDs since this survey was
24 taken would impact Dr. Barreto's findings that there's about
25 1% or less than 1% of folks who don't have PennDOT ID who have

1 some other form of acceptable ID to vote?

2 A. It presumably would have a -- some impact, but probably
3 very small, given the results of his study.

4 Q. And when you say small, can you quantify that? Just
5 approximately. Are we talking 10%?

6 A. So, if we -- there are 3% who are 18- to 25-year-olds,
7 not all of whom are in college. There was 10% who didn't give
8 an age.

9 So, in all likelihood, something under 10% of that 10%,
10 without ID, probably are -- might be in college. So, if all
11 of those now had IDs, 10% of 10% is 1%. So, it might be a 1%
12 reduction. You know, so, instead of 10% without, there's 9%
13 without. Those kinds of numbers. The Court -- changing that
14 to people, that might be 100,000 of a million.

15 Q. And last, the Court expressed some criticism, this is
16 the preliminary injunction court, of Dr. Barreto's estimates
17 of the people's knowledge about the law. Did you assess that?

18 A. I just reported that asking people about people's
19 knowledge is a common thing to do in surveys, a well accepted
20 thing to do in surveys. It -- like everything, it is not
21 perfect, but it gives you a snapshot picture of the entire
22 adult population in the state, whereas the Judge was
23 contrasting that with the people who came to the Court to
24 testify about the case of the Pennsylvania law, and he
25 commented that they all were aware of it. It's not

1 surprising. They are connected to the case. They may have
2 become aware of part of it. They may have been people who
3 self-selected into being aware of it. But it is much better
4 to get a cross-section picture that a survey can give, which
5 indicated, I think, about a third was -- was it 37% were not
6 aware of the law, I believe.

7 And that indeed raises a very important question,
8 because even if you have an ID, if you don't bring the ID with
9 you, then you're going to have to go back and come back a
10 second time. So, that's quite a burden. So, it's very
11 important that even who have the ID are aware of it, and the
12 surveys are a reasonable way.

13 Q. So, the fact that the Court was able to point to some
14 people who knew about the law impacts the survey results in
15 what, if any, fashion?

16 A. I wouldn't say it has any impact.

17 Q. And so, the survey methodology that Dr. Barreto did to
18 assess the level of people's knowledge about the law was
19 reasonable under -- in the survey industry?

20 A. Yes.

21 Q. Just a couple of follow-up. So, just to ask you again,
22 is Dr. Barreto's methodology, now is that generally accepted
23 in the field?

24 A. Yes.

25 Q. Now, is -- the Court raised some concerns without

1 specifying about Dr. Barreto's demeanor and bias. Is that
2 related to the survey results themselves, in any fashion?

3 A. No. He designed the study, and he contracted with a
4 data collection firm to collect it, and then provided a
5 database from which he produced some tables, and that's what
6 I'm discussing.

7 Q. And so, you have a high degree of confidence in
8 Dr. Barreto's survey results?

9 A. Yes.

10 MR. WALCZAK: I tender the witness, Your
11 Honor.

12 THE COURT: How about if we take a five-minute
13 recess. Okay.

14 (THERE WAS A RECESS FROM 10:48 A.M. UNTIL AT
15 11:04 A.M., AND THE PROCEEDINGS CONTINUED AS FOLLOWS:)

16 THE BAILIFF: All rise.

17 THE COURT: Please be seated.

18 MS. HICKOK: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MS. HICKOK:

21 Q. Good morning, Dr. Barreto. My name is Alicia Hickok and
22 I'm here on behalf of the Respondents, and I'm going to
23 clarify a few things with you this morning, if I may.

24 A. Okay. It's Dr. Marker.

25 Q. To begin with, who engaged you?

1 A. The -- I don't know the formal term for it, the
2 plaintiffs. So, the law firms representing the plaintiffs.

3 Q. Okay. But is it the law firm or one of the petitioners,
4 or do you know?

5 A. Law firm.

6 Q. The law firm. Thank you. And you said that you charged
7 \$250 an hour in this engagement. What rate do you normally
8 charge?

9 A. I do very little consulting outside of my regular job,
10 so I -- this is the rate that I charged here, and in the Texas
11 case, and it's comparable to what Westat charges for my time.

12 Q. And how much of the time that you spent on this matter
13 did you spend prior to your report and how much after the
14 report?

15 A. So far, I spent more before. I mean, but, you know,
16 today, yesterday. It's catching up.

17 Q. I understand. Do you have an estimate of the time that
18 you spent before the report?

19 A. 16 hours.

20 Q. And that includes drafting the report and finalizing it?

21 A. Yes.

22 Q. Thank you. Now, you mentioned that the Texas versus
23 Holder case. Is the only other case that you've ever
24 testified in?

25 A. Correct.

1 Q. And that case was also a case where you were challenging
2 a voter identification card; is that correct?

3 A. Where I was asked to review a survey considering --
4 concerning a challenge to a voter ID law.

5 Q. In favor of challenging it?

6 A. Yes.

7 Q. I mean you were supporting the challenge; is that
8 correct?

9 A. Yes.

10 Q. And why would you, in only these two instances,
11 determine that you would actually become involved in
12 litigation when that's not your ordinary course of business?

13 A. Because it's the only two times I have been asked.

14 Q. It's the only two times you've been asked. Okay. Do
15 you understand that the Texas case was brought in a very
16 different manner than this case?

17 A. Yes. That was the federal, and this is the State
18 Constitution.

19 Q. And do you also understand that in Texas, because of the
20 FTC proceedings, that there was a different standard of review
21 and a different burden in that case?

22 A. I'm not sure what FTC is.

23 Q. The Federal Trade Commission. There's laws about how
24 different states are regulated, and when they have to do prior
25 reporting. Are you familiar with any of those?

1 A. I'm familiar with the general concepts of Section 4 and
2 5 of the Voting Rights Act. I'm not sure that's the same
3 rules that are you referring to.

4 Q. Okay. So, you understand that in Texas that the
5 challenge was one where there had to be a showing by the
6 government; is that correct?

7 A. Yes.

8 Q. And do you understand that here there is no burden of
9 showing by the government?

10 A. Yes.

11 Q. Thank you. Now, I was looking on your website to try to
12 fit you in with the different things that you had explained in
13 your lengthy resume, and I wanted to see whether the
14 categories that I saw on the website are categories that
15 describe what you ordinarily do, and you had on your website a
16 category for outreach and education. And the description
17 under it says, "research shows that the impact of
18 word-of-mouth and influencers is more effective in driving
19 awareness and impacting behavior change than mass advertising.
20 As part of Westat's communication and social marketing
21 practice, outreach to these influencers and educations of
22 program target audiences is a key strategy."

23 Is that an area that you've been working in with Westat?

24 A. Okay. So, it's Westat's website that you are looking
25 at, because I don't have a website. I just wanted to cover.

1 The company --

2 Q. Yes. No, well, your website for your company that
3 you've been --

4 A. Now I understand where you were --

5 Q. Okay.

6 A. -- looking at. I have only had very, very little
7 involvement with the communications staff.

8 Q. Okay.

9 A. It's a fairly recent addition to Westat in the last ten
10 years. So, I'm familiar with a number of the people, but I
11 have not done much -- much, if any, work with them.

12 Q. So, that's not an area that you would say is an area of
13 your expertise.

14 Now, there was another one that was talking about
15 strategic communications, and it said that "Westat provides
16 evidence based strategic communications services that improve
17 lives. We translate research results, develop compelling
18 concepts, messages and materials, employ state of the art
19 tools to communicate through multiple channels, and provide a
20 full range of communication research services. Our expertise
21 helps educate, motivate and change public attitudes and
22 behaviors about issues that affect our lives and our world."

23 Is that an area that you have?

24 A. That's the same health communication staff.

25 Q. That's the same communication. So, that's an area that

1 you have no expertise in?

2 A. No involvement in, yes.

3 Q. No involvement. You may have expertise, but you've
4 never done anything with it. Okay.

5 And when you do surveys for yourself, and for the
6 government, and other commercial entities, do you do that as
7 well?

8 A. Rarely, much more for like foundations, Gates
9 Foundation, MacArthur Foundation.

10 Q. And when you provide the survey results to them, do you
11 report the questions and the responses?

12 A. We provide the data. We definitely provide the
13 questionnaire, you know, a copy of the questions. We provide
14 the data.

15 Q. And when you say data, how would you define the data
16 that you provide?

17 A. In general, we are giving them a data file and data
18 files with documentation, labels, so it's easy to analyze.
19 Different clients ask for different levels beyond that. Some
20 have very strong analysts, and so that's all we give them is
21 the data file documentation, and some of them want us to
22 report the analyses to various levels. And indeed, in some
23 cases, they then ask for us to help with communication issues.

24 Q. Okay. When you are reporting those, do you report
25 selectively as to questions that you ask?

1 A. We provide the data for all of the questions that we
2 asked. The only exclusion is there are times when a question
3 may only get answered by one or two people, and for
4 confidentiality reasons, you end up excluding it and just not
5 including it, because to provide for one or two might have
6 confidentiality issues that I could get into. But, so, in
7 general, we provide all of the data.

8 The reports that you write from it generally summarize
9 the findings from -- for many of the items, but frequently, at
10 least in the initial report, you focus on a subset of the
11 items that the client has identified are the ones they're most
12 interested in getting the initial results for, and there are
13 frequently many items that you collected that are not
14 reflected in the report. They're in the data that you
15 provide, but they're not in the report.

16 Q. And if you were going to be reporting as an independent
17 expert to a court, would you think it important to provide the
18 complete set of the information that you gathered?

19 A. Again, making the data available, yes.

20 Q. And in Dr. Barreto's report, I saw his questionnaire,
21 and I saw the coding on the questionnaire, but in at least the
22 report that I was provided, I never saw the underlying data
23 that showed exactly how the responses were for each of the
24 questions, and how those broke out, and I didn't see you
25 saying that you reviewed anything separately than what I had

1 been given.

2 Did you receive every response to every questionnaire?

3 A. I only asked for, and I received, the responses to every
4 question for those people who did not have any ID, so that I
5 could address the question the -- the second of the three
6 questions that I was asked.

7 The one about the people that didn't have an ID, and if
8 the universities started offering -- that one. I needed to
9 see the people who had said no, and they then got asked a
10 series of questions later in the questionnaire.

11 So, I saw their data. I didn't ask for or see the other
12 data. I relied on the tables which summarized all of the
13 other numbers.

14 Q. And did you find it odd that there was no underlying
15 data that had been provided to the Court?

16 A. I have no idea if it was provided to the Court. I know
17 that the data that I asked for was provided to the Court. I
18 didn't ask for the others. I assume it is available. I don't
19 know.

20 Q. When you say that you know that the data -- in other
21 words, the responses to each individual question, you believe,
22 were provided to the Court?

23 A. For the respondents that I asked for, what I was given I
24 was told was not something special for me. You know, I --
25 that it was available as far as I know. But again, I didn't

1 ask for a complete dataset, so I have no way of knowing.

2 Q. Can we give him Dr. Barreto's report with its
3 appendices. Can you show me where in this report the data are
4 that you are referencing?

5 A. I don't know if this is everything that he was provided
6 or not. What I have, and what I analyzed, there's all of the
7 tables, and there's the questionnaire.

8 Q. Mm-hmm.

9 A. And then I asked for all of the answers for those people
10 who had -- who were in the group that did not have an ID to
11 understand about what information was available for them, and
12 that was given to me, separately from -- after I was reviewing
13 this.

14 So, that came from some dataset. I assumed that the
15 dataset was one that the Court has.

16 Q. Okay.

17 A. I don't know. I'm assuming.

18 Q. That's your assumption?

19 A. Yeah.

20 Q. Now, in your overview in your report, you defined three
21 tasks. You said you were going to review and respond to the
22 submission and testimony of Dr. Matt Barreto at the PI
23 hearing, his cross-examination, and the Commonwealth Court's
24 opinion as to Dr. Barreto's testimony and survey methodology;
25 is that correct?

1 A. Sounds right.

2 Q. And you also said that you wanted to validate his
3 results and comment on whether a survey can estimate knowledge
4 of the existence and substance of a law; is that correct?

5 A. Yes, again, that sounds...

6 Q. Now, when I looked at the materials upon which you
7 relied, I did not see a copy of Act 18 among those materials.
8 Did you draw upon Act 18 and the exact language in the
9 statute?

10 A. There was language from Act 18. I didn't see the entire
11 Act 18, but the relevant language from Act 18 was referenced
12 in -- among those documents. Whether it was in the testimony,
13 you know, at the injunction hearing or the Judge's description
14 where there was a list of the IDs and --

15 Q. And without having seen the actual statute, how do you
16 know whether what Dr. Barreto focused on actually captured
17 what the statute was saying?

18 A. Again, the language was I believe in the Judge's
19 decision, when he was explaining what he did and did not
20 accept, and he had quotations directly from Act 18, and so
21 that's what I relied upon was the Court record documentation
22 of it.

23 Q. So, the only aspects of Act 18 that you understand are
24 those that were quoted by Judge Simpson in his opinion?

25 A. What was in his -- I don't remember if Dr. Barreto

1 quoted any. I did -- I did go on the internet to take a look
2 at the Pennsylvania Constitution, because there was references
3 in there to, you know, whether this is a change in the
4 Constitution or whatever. So, I went.

5 Although, I didn't spend a lot of time on that because
6 the version of the Constitution that came up talked about age
7 21 as a voting requirement. I'm guessing there was some other
8 part that says back in this section, strike that.

9 But at that point, I said I would stop investigating
10 that further. So, yes, I relied on the Court documents I was
11 given.

12 Q. And are you aware that prior to Act 18, there was an
13 identification requirement in the law?

14 A. I believe it had to do with when you initially or first
15 vote or initially register or something like that.

16 Q. Well, I guess you're expressing a little confusion. It
17 actually talks about anytime a person votes in a new election
18 district, which means that if you were to move, you would have
19 to show ID at that time as well as obviously the first time
20 you vote, you're showing -- you're in a new election district,
21 that you've never been anywhere before. So, there are people
22 who would have to show ID multiple times during their lives
23 under the old statute. Were you aware of that?

24 A. I believe so, yes.

25 Q. Do you believe that Dr. Barreto took into account the

1 knowledge of people as to that identification requirement, and
2 whether that impacted them when he was assessing Act 18?

3 A. He was only asking them about their knowledge of the
4 requirements under Act 18 so, that -- I'm not sure what the
5 connection is to what the previous law was in terms of their
6 knowledge.

7 Q. Okay. If we could look at your report on page five, and
8 in the first paragraph, if you could read Item 2 for me.

9 A. Item 2.

10 Q. Mm-hmm.

11 A. Item 2 on page five.

12 Q. Of his report. Dr. Marker's report.

13 A. Oh. Paragraph 2. It is also -- the one that starts,
14 "it is also important"?

15 Q. It starts -- well, on the version that I have, it says,
16 "to test these questions." No, I'm sorry, it's Barreto's --
17 it's Barreto's report. I'm sorry, I misspoke.

18 It's Dr. Barreto's report, page five.

19 A. The first paragraph?

20 Q. Yes, it starts "to test these questions."

21 A. Yes.

22 Q. And then there is a place where he talks about the four
23 critical advantages. And what is he saying in question two?

24 A. "The survey questions were designed to capture the
25 specific nuances of the Pennsylvania law."

1 Q. And can you opine as to whether his survey questions
2 actually were designed to capture the specific nuances of
3 Pennsylvania law?

4 A. With the exception of the -- the substantial conformity,
5 he, as far as I knew, he did match the specific nuances of the
6 Pennsylvania law.

7 Q. Okay. You know that without having actually reviewed
8 the entire text of Act 18?

9 A. From comparing -- from seeing what was referenced in the
10 documents I was given of quotations from Act 18, it appeared
11 that the questions he was asking were consistent with that --
12 with the exception of the one point.

13 Q. Could you do me a favor. Could you go to, I believe
14 it's R Exhibit 1, which is Act 18, and also put up the
15 questionnaire, which I believe is Appendix B to Dr. Barreto's
16 report.

17 MR. WALCZAK: Your Honor, if I -- I understand
18 this is cross, but I'd just like to place an objection that
19 during the initial trial in this case, when Dr. Barreto was
20 examined, the Respondents did not raise any objections to the
21 questionnaire itself, or to the construction itself, except I
22 believe on the name conforming issue. And so --

23 MS. HICKOK: Your Honor, he has said that to a
24 high degree of certainty that he is confident that Dr. Barreto
25 accurately designed and accurately executed this survey, and

1 in order to be -- and as you know, Judge Simpson did not find
2 him credible, and Judge Simpson was looking at his demeanor,
3 at the way he answered the questions, at whether he answered
4 the questions, and other things.

5 In order to be able to ascertain whether
6 Dr. Marker has actually evaluated the design of the survey,
7 given that he didn't redo it, in order to give this Court
8 something meaningful on which to base an assessment, it's
9 important to know whether he agrees that these questions did
10 what Dr. Barreto said they did.

11 THE COURT: We'll permit it.

12 MS. HICKOK: Thank you.

13 BY MS. HICKOK:

14 Q. Now, if you look at Dr. Barreto's questionnaire --

15 A. Yes.

16 Q. I believe it is question...

17 I'm sorry, Your Honor.

18 Here it is. It is question number eight. Can you read
19 that question for us?

20 A. "All right. Instead of those types of identification,
21 do you happen to have one of these other forms of
22 identification with your photo, such as: An official photo ID
23 card issued by the Commonwealth of Pennsylvania; an official
24 employee photo ID from a city, borough, township or county
25 here in Pennsylvania; an official photo ID from a licensed

1 Pennsylvania long-term nursing facility, assisted living
2 residence or personal care home; an official photo ID card
3 issued by the U.S. Federal Government; an unexpired photo ID
4 from an accredited university or college in Pennsylvania; or,
5 no, I have none of these forms of ID.

6 Q. And if you could look at Act 18 for a moment. If you
7 can -- where it lists the forms of identification. Can you
8 put just the line above that in there as well.

9 Now, as you are looking at that list of identification,
10 do you see the word "official" in any of those forms of
11 identification?

12 A. In Act 18?

13 Q. Yes.

14 A. So, it's asking for a document issued by -- so, the word
15 official is your question? No, the word official is not
16 there.

17 Q. And if you go back to Dr. Barreto's questionnaire, was
18 the word official interjected before every single form of
19 identification that's specified here?

20 A. Except for the university one, yes.

21 Q. And so, he actually has added a descriptor that might
22 convey to people that something more is needed, and that their
23 form of photo ID issued by, say, a borough or township may not
24 be suitable, when in actuality, it may be suitable under the
25 law; is that not correct?

1 A. No, I don't -- I agree with you that he added the word
2 official. I don't agree with the rest of what you just asked.
3 I have no way of knowing as to whether someone would -- you
4 know, how they would interpret the word official when you are
5 talking about a government document, whether it has any impact
6 at all. I don't know.

7 Q. Is that something that could have been tested? Could he
8 have --

9 A. Given time, you could cognitively -- what we call
10 cognitively test with and without the word to see whether
11 people react differently to it.

12 Q. Or you could have designed a test question that you put
13 into your questionnaire to validate whether that word had
14 some, you know -- elicited a different response with or
15 without it; could you not have?

16 A. If you are going to build in a test like that, then
17 you're going to have to significantly increase the sample
18 size, because you're going to only have some people who
19 answered this version versus the other version, so that also
20 would have involved additional effort.

21 Q. So, from the work Dr. Barreto did, there's no way of
22 knowing whether his survey underreports the number of people
23 who have ID because of his decision, when he designed this
24 survey, which he did design it, to interject a word "official"
25 in front of these types of forms of identification; is that

1 correct?

2 A. There's no way to know if it had any impact, that's
3 correct.

4 Q. And if you look, he has questions about demographics
5 that talk about income level. Is there anyplace in his report
6 where he backs out persons that would be subject to the
7 indigency exception under Act 18?

8 A. I don't believe so but I'm not sure. I'd have to go
9 back and check.

10 Q. Well, I mean, you are saying that he took into account
11 everything in Act 18 in his report; are you not?

12 A. That he took into account --

13 Q. Everything under the statute. That's what he said --

14 A. All of the rules applying --

15 Q. -- he was fairly capturing the statute.

16 A. So, I did not see him do anything special for people
17 below a certain income level.

18 Q. And so, to the extent that he has captured those people
19 as subject to the photo identification requirements when
20 they're not, he is overstating the numbers of people by some
21 measurement?

22 A. There is that possibility.

23 Q. And if you look at the main questionnaire, question one.

24 A. Let me just check one thing in response to that last
25 question in his tables. Okay. What was your question? Table

1 was -- question one.

2 Q. Question one, please.

3 A. Okay.

4 Q. Is it your understanding that the numbers to the right
5 are actually numbers that represent the code that the person
6 was supposed to -- that was taking the poll was supposed to
7 indicate? These aren't the respondents, right?

8 A. Those are the codes that go into the database.

9 Q. Right. Thank you. So, if you would read that question
10 and the possible answers for me?

11 A. You don't read the numbers when you read the question.

12 Q. Yes. I understand that.

13 A. "Here in Pennsylvania, some people vote in person at
14 their polling place, and some have an absentee ballot sent to
15 them because they're out of town on Election Day, or
16 permanently confined due to age, illness, infirmity or
17 disability. How about you? When you have voted is it usually
18 in person at a polling place, occasionally by absentee ballot,
19 or do you always vote absentee?" And the answers are:
20 Polling place -- actually what I don't know about their
21 procedure is whether they then read the answers, or stop at
22 that point.

23 Q. Okay.

24 A. So, if they read them, the answers are, "polling place,
25 occasionally by absentee, permanent absentee, do not vote,"

1 and you don't read, "don't know, don't share, and refused."

2 Q. So, are you aware that in the law there are different
3 provisions for absentee ballots than there are for in-person
4 voting?

5 A. Yes. I'm not sure of the details on that, but I know
6 there's a difference.

7 Q. And this question would have been designed to get at,
8 therefore, people who were not subject to the photo ID
9 requirements; is that not correct?

10 A. By identifying those that permanently vote absentee,
11 yes.

12 Q. And perhaps taking into account those who vote
13 occasionally by absentee, if there's some maybe follow-up
14 question to determine whether that's because now they are
15 voting absentee, but years ago did not, that might be a
16 different answer; correct?

17 A. It allowed for that. I'm not sure what his purpose was.
18 But it allows for that.

19 Q. And can you tell me where in the report he accounts for
20 the data he collected in this regard?

21 A. Again, I -- as I said, often in the report, you do not
22 have the answers to every question you report. You have them
23 in the database.

24 Q. But even the permanent absentee were not deducted from
25 his numbers, were they?

1 A. I don't believe so. They definitely should remain in
2 among eligible -- okay. The permanent -- the permanent
3 absentee, right. Right.

4 Q. And you did not ask for his records to see what impact
5 it would have had, had you looked at permanent absentee or
6 given any weight whatsoever to occasionally absentee; did you?

7 A. I did not.

8 Q. Are you aware that in the November, 2012, election there
9 were 282,822 persons who voted absentee in Pennsylvania?

10 A. Would you repeat that number.

11 Q. 282,822 persons who voted absentee in Pennsylvania.

12 A. Okay. I assume the vast majority are probably of the
13 occasional by absentee category, perhaps.

14 Q. On what basis do you assume that?

15 A. Because there are, with every election, all kinds of
16 information about, if you are going to be out of town or
17 whatever -- every state has different rules on what absentees
18 are, but if it was focused on permanent absentee, there would
19 not be all of the efforts to get people aware that they might
20 be able to -- might be eligible to vote absentee this time.

21 So, it probably -- it wouldn't be hard for the
22 Department of State to easily see whether -- you know, what
23 proportion of the people who voted absentee vote absentee
24 every time they vote; but I would -- let's put it, I would be
25 surprised if the vast majority of these were not in the

1 occasional category, but I have not looked at that data. I
2 did not know.

3 Q. And when Dr. Barreto took his survey, he didn't account
4 for whether any of the people who didn't have ID were people
5 who were permanently absentee, or even people who were
6 occasionally absentee that might prompt an additional
7 question; is that correct?

8 A. I believe that is correct.

9 Q. And if he were going to be taking into account, as he
10 said -- let's look at that again on page five.

11 A. Page five of his report.

12 Q. Of his report.

13 I believe what he said was "the survey questions were
14 designed to capture the specific nuances of the Pennsylvania
15 law."

16 And to the extent that they were designed to capture the
17 specific nuances of the Pennsylvania law, should they not have
18 deducted people for the indigency exception, people who voted
19 permanently absentee, both of which were data he captured in
20 his survey?

21 A. He clearly captured the permanent absentee. I don't
22 know the definition of the indigency exception, as to whether
23 he collected enough information to be able to capture that. I
24 just don't know if he was able to do that. So --

25 Q. Are you aware --

1 A. So, my anticipation that those, in the scheme of things,
2 are on the small side; but I do not know. I don't have any
3 data, and I wasn't asked to check about this.

4 Q. And --

5 A. I was only asked to address the Court's concerns that
6 were raised, and none of these were among the things that were
7 raised by the Court.

8 Q. And is it your understanding that a court has to spell
9 out in an opinion everything about a person's testimony that
10 causes them to question his credibility?

11 A. I'm not a lawyer. I have no idea.

12 Q. Okay. So, you don't know whether Judge Simpson might
13 have reacted negatively to things other than what is
14 specifically set forth in its opinion.

15 A. They are the only ones that I could respond to.

16 Q. You noted that a high effort survey uses longer survey
17 periods and more attempts to reach each number, as well as
18 follow-up in other ways such as whether in-person visits, and
19 you said that, you know, Dr. Barreto could not do that because
20 of the pending hearing, and that you compared it to the
21 situation that is typical with -- what did you call it the
22 random digit -- RDD?

23 A. Yes.

24 Q. And you said that, you know, that response rate, you
25 would expect to be in the 30 to 50 percent range. His is

1 outside that, but you said given the timing and the short
2 amount of time, that that was justified; is that correct?

3 A. I said it was not surprising that you would get
4 something less than the 30 to 50 because of that.

5 Q. And that study was conducted in late June and early July
6 of 2012; is that correct?

7 A. Yes.

8 Q. And that study predated the DOS ID that didn't require
9 any of the documentation that he asked about in his survey; is
10 that correct?

11 A. I believe that's true.

12 Q. And it also predated the November, 2012, election; is
13 that correct?

14 A. Absolutely.

15 Q. And it also predated the Commonwealth's information
16 dissemination, advertising campaign, all of the other things
17 that were done during the summer prior to the injunction and
18 then afterwards?

19 A. That I'm not sure what -- how it fit in, because I know
20 there was a variety of things attempted, and I don't know when
21 each started.

22 Q. So, you didn't look at that in determining whether --
23 you know, whether the report was done prior to things that
24 might impact the report?

25 A. I -- they did not affect the findings of the report at

1 the time that it was done. It's my understanding that the
2 Department of State, that very few of those were issued, but
3 they were not relevant to the question of did they at the time
4 adequately describe what the state of affairs was for
5 Pennsylvania.

6 Q. And I think during your voir dire that you talked about
7 the Dewey reporting of the election, and you said that the
8 things we have learned from that -- if I -- please correct me
9 if I mischaracterize your testimony -- that the things we have
10 learned from that is that a survey's timing is really critical
11 to the validity of what the survey's going to say, and that
12 because the Dewey survey was taken -- I don't know what you
13 said -- a few weeks before the election, it didn't accurately
14 capture the voters on the day of the election; is that
15 correct?

16 A. It did not capture their voting intent then, because
17 that was something that was highly in flux, which the
18 pollsters did not realize at that time, which is quite
19 different from whether or not you have a voter ID.

20 Q. Are you saying that if a person learned of the voter ID
21 law at the time when it was passed, and it is now a
22 year-and-a-half later, that you don't expect anyone to have
23 gotten compliant ID in some way or form in response to that
24 information?

25 A. I expect that some have, and more people have come into

1 this system as being eligible who probably do not have an ID
2 since that time.

3 Q. On what basis do you opine that they probably don't have
4 an ID?

5 A. Because there are people turning 18 all the time, and
6 people moving into the state all the time, and they have some
7 waiting period, whether it's 60 or 90 days; and many of those
8 people do not have IDs that are Pennsylvania compliant. They
9 have either no driver's license or they have driver's license
10 from other states and have not gotten IDs.

11 So it's a state that's always in flux. The eligible
12 population, the registered population is always in flux, and
13 it is -- you know, to -- and the deadlines by when you can get
14 these IDs, I'm sure, all of the different IDs have different
15 end dates relative to an election of when you could as well.

16 So, the best you can do is identify at that time an
17 estimate, which in this case was well north of a half million
18 people, and unless -- you're absolutely right that you would
19 hope that whatever advertising was done got people, additional
20 people to get IDs, and that the Department of State ID
21 becoming available would get them, and it wouldn't be hard to
22 see if there is an uptick dramatically as a result of that to
23 try and counter over a half million people who did not have an
24 ID at that time.

25 That was beyond of scope of what we're looking at, but I

1 don't know that there's any evidence of that.

2 Q. You said that part of the assessment you undertake when
3 you look at whether a study is valid is whether the study
4 needs to be redone.

5 A. I don't believe I said that.

6 Q. I --

7 A. It -- it's not an unreasonable statement, but it is not
8 a requirement of an evaluation to determine whether it needs
9 to be done. Yeah.

10 Q. And if you felt that the data were anachronistic, in
11 that they captured a point in time like Dewey -- that is weeks
12 before the election, and therefore not predictive of the
13 current moment -- would you then think that in your role as
14 evaluator you would say that, you know, I'm not certain that I
15 can be confident in this data as it applies today, unless I
16 redo the survey?

17 A. No. I don't believe in a situation like this that would
18 apply.

19 Q. Even though everything is in flux, and you've admitted
20 that the world has changed quite a bit since that time?

21 A. Because what you can do is examine -- in the same --
22 analogous to what I did with the non-response bias analysis.
23 It's not that we had to go and do a survey and ask people,
24 were you on vacation during those 12 days without a cell
25 phone, and now let me find out about your ID.

1 If we take the example of how Nate Silver was able to do
2 such a good job predicting this election using the statistical
3 methods, he not only took the survey results that were being
4 done a week, two weeks, a month ahead of time, but he looked
5 at what historically happened from a month out to Election
6 Day, how the numbers changed in those states so he could take
7 that data and see how relevant it continued to be and project
8 it forward.

9 In the same way, we have data from a year ago that gives
10 a very good picture of the State of Pennsylvania that showed
11 over a half million having -- being without IDs, and we could
12 look at the data that the Department of State, Department of
13 Transportation could provide on the number of people who got
14 the Department of State IDs, whether there's been an increase
15 over the kind of steady state there has been in the past of
16 how many people are getting the driver's licenses and other
17 IDs, and we can project it to whatever time period we want;
18 and the survey should be very useful as the basis for that
19 kind of an analysis.

20 That again, was not the question I was asked. I was
21 asked to address the quality of the survey that was done at
22 that time. But it is quite possible to do those things if the
23 Court desired.

24 Q. I see. But you have not undertaken to determine whether
25 any of those data actually could be extrapolated forward?

1 A. That's not what I said. I said I have not tried to
2 extrapolate it. No one asked to try to extrapolate it. I
3 know that -- I know that there are data -- those kinds of data
4 I have to assume exist, are in the public record or could be
5 supplied by the Commonwealth of Pennsylvania. So, one could
6 do it.

7 But we have no evidence at current time that implies
8 that the data from a year ago are in any way not consistent
9 with the current. I would think it would behoove the
10 Commonwealth, if it didn't think it was, to try and update it.
11 I would be happy to help with that.

12 Q. We talked earlier about the fact that it is actually the
13 Petitioners' burden here; is that not correct?

14 A. Yes, and they have demonstrated through this --

15 Q. They have demonstrated something, and we can talk about
16 that something, about a point in time a year ago, and you're
17 saying that you were not asked to test whether that should be
18 redone in the light of everything that's transpired,
19 including, for example, the fact that every voter registration
20 card that is now issued has on its -- on the back of it a
21 statement about the voter ID law. So that all of these new
22 people that you are talking about that are in flux in
23 population, all of these people have something that comes when
24 they register to vote talking about -- learning about the
25 expectation, and none of that was taken into account; am I

1 correct?

2 A. That's correct. Those that are eligible, do they have
3 similar knowledge? I don't know that.

4 Q. Thank you.

5 Now, I am not sure that I fully understand your
6 discussion of raking, and so I -- I'm a visual person so I'd
7 like to walk through a couple of things and see if I can get
8 to understand it.

9 First of all, as I understood the Pew study, one of the
10 things that it was saying was that in determining a random
11 sample, there should be both land line and cell phones that
12 are used?

13 A. Correct.

14 Q. As I understand what Dr. Barreto said here, he took one
15 sample of land line data, which was 997 voters, and then he
16 went out and took a second sample of cell phone voters, and
17 that was 288 wireless exchanges; is that correct?

18 A. I don't remember the numbers, but it's the basic idea.

19 Q. And would the 997 be a statistically significant sample
20 size?

21 A. He did not -- and appropriately did not analyze the two
22 separately. He analyzed them combined to represent the entire
23 population.

24 Q. But they were separately randomized. They weren't --

25 A. Yes.

1 Q. -- a single random sample.

2 A. Well, they are, as we referred to as a stratified random
3 sample. One strata were telephone exchanges assigned to land
4 lines and another strata is assigned to cell phones. With the
5 exception of a few people, that's called portability. They
6 can take a number that was initially one and switch it to the
7 other, with the exception of those very rare people, blocks of
8 phone numbers, thousand -- 10,000 phone numbers, the last four
9 digits, that's assigned either to go to cell phones or to land
10 lines.

11 So, you have to select them separately. But it's just
12 two separate strata.

13 Q. And you said, then, that there were some non-working
14 numbers. Is that non-working numbers out of that 1,200?

15 A. No, that's out of however many they started with.

16 Q. Okay. So, that gets you down to the 1,200. And then
17 the 24% brings you somewhere under 300 response --

18 A. No, no, no. The 1,200 is the respondents. So, with the
19 24% response rate, that means there were about 5,000. I just
20 multiplied by four, eligible, you know, people -- numbers that
21 people lived with, and 1,200 of that 5,000, or 24%, responded.

22 They had to dial a good bit more than 5,000 numbers.
23 Typically, in the procedure they use, around 20% of the
24 numbers you dial are actually working. So, they probably
25 started with 25,000 numbers, randomly generated, 5,000 of

1 those had people living there or were working phone numbers.

2 And a quarter of those, 1,200, responded.

3 Q. Okay. If we could pull up Dr. Barreto's table. I'll
4 tell you which one in just a moment. It's Table 15, I
5 believe.

6 And your earlier testimony was that there would be 50
7 people of Latino descent who were in his survey based upon the
8 demographic analysis that you did, is that correct?

9 A. Approximately. In the 1,200-person survey.

10 Q. What's 1.2% of 50?

11 A. But see, this is where -- this is the table or one of
12 the tables where the separate sample of blacks and a separate
13 sample of Latinos is being used. So, the estimate of what
14 percent of Latinos have a driver's license or don't have a
15 driver's license is coming from the separate sample of Latinos
16 that was done. So, it's not based on --

17 Q. Didn't you just tell counsel that none of the numbers
18 were affected, that this was only used to validate?

19 A. What he asked me was that -- no, I did not say it was
20 for validation.

21 He said that none of the numbers of how many people
22 without IDs for the State of Pennsylvania are affected by it.
23 What are affected by it are the analyses done separately for
24 blacks and Hispanics, that those come from the oversampling.

25 So, those two columns there are what come from the

1 oversample, because we would not be able to produce this table
2 if you only relied on the 1,285 people in the sample.

3 Q. And it could well have been that of the 50 inquired in
4 his sample, that there were zero who did not have ID given the
5 low percentage here because 1.2% of 50 is a fraction of a
6 person; is it not?

7 A. I'm not seeing where your 1.2% you're referring to is.

8 Q. See where it says, "Latino don't have"?

9 A. I see 1.9%.

10 Q. See 1.2 right there?

11 A. Oh, I'm on eligible -- I'm on Table 14 instead of Table
12 15. Sorry.

13 So, the overall -- again, that 1.2 is coming from, I
14 don't know how big his sample of Latinos was, but let's say it
15 was a sample of 500. The 1.2 is coming from the sample of 500
16 or something.

17 Q. I understand, but my question was a little different.

18 My question was: Is it possible, given how small that
19 number is, that the 50 or so that were part of the actual
20 randomized sample may have all answered that they had valid
21 ID?

22 A. It's possible.

23 Q. On a --

24 A. And there would be a confidence interval on that number,
25 and it would go up because the sample is so small, up to a

1 fairly high number. It would be pretty useless because it's a
2 sample that's so small.

3 Q. Now, you have been talking a great deal about the
4 reliability of the ACS table; is that correct?

5 A. Mm-hmm. Yes.

6 Q. If we could call up those statistics.

7 I'm not particularly focused on the age for the moment.

8 If you look at the age breakdown in the ACS table, you will
9 see that it has 15 to 19 years, and then it has 20 to 24
10 years, and then it goes 25 to 34 years.

11 And the numbers for 15 to 19 and for 20 to 24 are pretty
12 consistent, are they not?

13 A. Yes.

14 Q. And what he assumed or you assumed to be college age
15 would fit somewhere in that category; is that correct?

16 A. The reference I made to the 18- to 25-year-old was that
17 those are -- that's the age group where you were more likely
18 to get college age, not -- I didn't mean to imply that all of
19 them were or that none of the others were, but yes.

20 Q. Okay. So, if you look at those numbers, is it fair to
21 say that approximately 900,000 people fit within that age
22 group that you were discussing?

23 A. That's probably more like a million, but okay.

24 Q. Okay. And you said that there were roughly 800,000
25 people who were college students?

1 A. That's the latest data from the National Center for
2 Education Statistics.

3 Q. And that 80%, that 80 -- sorry.

4 That 800,000, when compared to the number of people in
5 the age group, means that roughly 80 to 90% of that age group
6 in Pennsylvania is in college; is that correct?

7 A. No. A couple of reasons that's not correct.

8 First of all, as we just said, many college students are
9 not in that age group. I don't know if it's 100 or 200,000 of
10 the 800,000.

11 And secondly, the number of students -- when you talk
12 about students who are in college, where they end up getting
13 counted in many surveys is always one of the most difficult
14 problems, and one that U.S. Census Bureau spends a lot of time
15 on. So that if they contact me in Maryland to do this survey
16 about my household, and I have a son who is going to Penn
17 State, I may or may not count them in Maryland, so they --
18 even though they're going to Penn State because our household
19 is in Maryland.

20 And so, the 800,000 is the estimate of the number of
21 students reported by the universities from the National Center
22 of Education Statistics. So, by contacting Penn State and
23 Pitt and all of them, they get an estimate of what your
24 enrollment is. It's 800,000. But this is based on surveying
25 households, and whether or not the households include their

1 children who are away at college is always very complicated.

2 There are rules that are very explicit, but it's one of
3 those messy ones that hard to get --

4 Q. So, when you said that it was perfectly legitimate for
5 him to rely on all of the data on the ACS, what you are now
6 telling us is that if you take it with a grain of salt and
7 look behind the numbers, you can rely on these numbers?

8 A. No. No. That's -- that's overstepping the comment.

9 The ACS numbers that they used, that level of
10 aggregation, are quite good. There are in particular -- I
11 mean, two of the biggest groups of problems are always the
12 homeless and students; where they get counted are two of the
13 most difficult areas.

14 So, but these numbers are the accepted, best numbers
15 that we have between censuses.

16 Q. So, looking at the accepted best numbers that we have,
17 and the numbers of college students, if you were simply to
18 divide them, you would get somewhere around 80 to 90%; is that
19 correct?

20 A. No. Again, as I pointed out, out of the 800,000
21 students, some number of them are going to be older than 25
22 years old, and so maybe there's 600,000. So, it might be --

23 Q. No, you were -- okay. I'll leave it where it is.

24 Now, you talked about the fact that there should be some
25 kind of discount for the fact that people were on vacation,

1 and that that was a valid criticism. And in it you looked at
2 licenses, driver's licenses; but there are people, and
3 particularly senior citizens like, you know, my parents, who
4 travel with a passport regularly, who actually are not of
5 driving age any longer.

6 Did you also take into account that people with
7 passports were understated because of the fact that he
8 contacted people on vacation?

9 A. Yeah, it applied to them as well. The data show that
10 even among the wealthy, there are -- the rates of having -- of
11 not having one of the IDs is better -- is above -- this is
12 hard to say.

13 It's above half -- so, if there's 10% in general, it's
14 more than 5%, even among the wealthiest, and that those ID --
15 those rates applied whether we're talking about driver's
16 license -- we can look them up here, but it applies with all
17 of the IDs.

18 So that taking the extreme position I took was to say,
19 to assume that they added in half the rate the people that we
20 couldn't reach. So, instead of having 90% with, and 10%
21 without, we had 95% with and 5% without.

22 That's the kind of assumption I made, and it was just
23 referring to the not having an ID, so it includes the whole
24 category.

25 Q. And you're aware of the magnitude of the number of

1 persons who have passports in Pennsylvania?

2 A. No, I don't know.

3 Q. Maybe we can call up the government statistics on that.

4 And the way they report it by state is they only report
5 it by state by -- this is for the past six years, so this is
6 2012, '11, '10, '09, '08, '07, and they just state issuances.

7 A. Okay.

8 Q. So, if you want to know kind of the rolling universe,
9 you're going to have to add it together and then add some
10 years for the ten years that passports are before they expire
11 because this is only data for six years.

12 A. And is it data for the location where you get the
13 passport or where you live when you get the passport?

14 MR. WALCZAK: Your Honor, if I could ask
15 Mrs. Hickok if she might be able to show us a little bit more
16 than this tiny -- I can't tell what --

17 MS. HICKOK: I'm sorry. I thought they gave
18 you a copy of the table.

19 MR. WALCZAK: Okay. Thank you.

20 MS. HICKOK: We can look at it. I was hoping
21 to be able to let him -- we have got the whole table here.

22 THE WITNESS: Page five of six is what you
23 just handed out. Oh, it goes from left to right.

24 BY MS. HICKOK:

25 Q. Yeah, it's a little confusing that way.

1 A. So the 436 is the most recent one.

2 Q. That's correct.

3 A. Okay.

4 Q. That's 436,000 new passports that were issued during
5 2012; is that correct?

6 A. That's what it says here. Again, I am not sure if you
7 answered my question. If I live in Cherry Hill, New Jersey,
8 and the closest passport office is in Philly, do I show as up
9 as Pennsylvania or New Jersey here?

10 Q. I didn't conduct this survey, but my -- or the data, I
11 didn't collect the data for the government. My understanding
12 is that it's the state in which they live, in which they're
13 issued, but I can't attest to what -- you know, whether
14 there's some overlap between New Jersey and Pennsylvania, I
15 don't know.

16 But, to get a rough estimate here, if you add up the six
17 years, you get about 3 million passports in the State of
18 Pennsylvania. Does that seem roughly what the addition comes
19 to?

20 A. Something like that.

21 Q. And so, given that these numbers are increasing, and
22 given -- you know, as you were saying, in flux each year, so
23 you had 436,000 new passports being issued, bringing the total
24 to 3 million in Pennsylvania, do you think that those numbers
25 should have been taken into account in determining whether

1 there needed to be a revisiting of how many people had
2 alternative forms of identification?

3 A. He started off by asking people if they have a passport,
4 so it was taken into account in his survey estimates.

5 Q. As of a year ago?

6 A. Right, but we have no way of knowing how many of the 436
7 are new versus replacing old ones that they had. It doesn't
8 necessarily represent an increase or a decrease. I have no
9 way of knowing which direction it's going. These numbers are
10 decreasing over time. The six, I have no idea of over ten
11 years if it's decreasing over time.

12 Q. Okay.

13 A. So, it may be showing that more people do not have an ID
14 now. I don't know.

15 Q. Okay. Now, in the Pew report that you relied on, it was
16 talking about the fact that declining response rates have a
17 consequence. And it also said that a significant area of
18 potential non-response bias that they had identified in its
19 study is that survey participants tend to be significantly
20 more engaged in civic activity than those who do not
21 participate; do you recall that statement?

22 A. Yes. Yes, I do.

23 Q. And if the voter ID law as of June, 2012, was something
24 as to which people had strong opinions, would they be more
25 likely to have participated in the survey to reflect those

1 strong opinions in the way that it discusses here, since they
2 tend to be people who are more civically active?

3 A. What Pew is referring to as civically active, the kinds
4 of questions were things like, have you talked to an elected
5 official in the last 12 months. Have you -- and it's a series
6 of questions about that kind of involvement. I have a copy of
7 it. I'd be happy to pull out some of the other questions.

8 So, it's a separate question from the -- if there is a
9 general discussion of a topic, like the voter ID law, that
10 permeates society in general that you're asking. But the
11 people who are more likely to respond to a question with a
12 response rate down at these levels are the people who follow
13 the laws more carefully, who interact with their elected
14 officials more frequently.

15 So, the concern is that, again, that the survey is
16 likely to overrepresent people with IDs because they are the
17 ones who are more involved. We don't know, but the potential
18 for bias on civic connectiveness on low response rates is that
19 the survey is missing the ones who are less connected, and
20 therefore, the ones who are most likely to be missing the IDs.

21 So, it's one of those potential biases that goes the
22 direction of saying he may have undercounted the problem.

23 Q. But it could also go the other way; correct? That if
24 you have people who speak out vocally, and who are concerned
25 about issues and are likely to contact their -- you know,

1 elected officials about those issues, that they would be more
2 likely to speak up and say, oh, that's right, I don't have ID,
3 because of their desire to express that opinion.

4 Is that not correct?

5 A. On both sides of the issue. So, unless you have data
6 about the people feeling overwhelmingly one direction, the
7 big, the big concern here is that you're not going to get to
8 talk to them, they're not going to answer their phone, they're
9 not going to cooperate with a public policy surveyor who calls
10 them on the phone if they are less connected.

11 Q. And that's the reason that the non-response bias that
12 was not investigated was important to investigate; is that
13 correct?

14 A. Say that question again.

15 Q. Did you not testify that this was not corrected for
16 non-response bias?

17 A. I said it corrected for some sources of non-response
18 bias through the post-stratifying raking work that they did
19 that was very good. It was not -- it's not adjusted -- they
20 did not analyze the potential non-response bias associated
21 with the vacation from the short time period of the field
22 period, and that's what I did.

23 Q. And they also did not evaluate non-response bias based
24 upon how, how active --

25 A. Civic engagement issues?

1 Q. Right. Exactly.

2 A. Yes, it would be very difficult to do that, but the Pew
3 finding is that it is probably in the direction of having
4 undercounted the people who don't have IDs. The same as where
5 I mentioned the fact that those surveys over -- get more
6 people who have college education rather than only having a
7 high school education. The people who participate in surveys,
8 unless you go to those exorbitant extra efforts to get the
9 higher, much higher response rates, tend to be people who are
10 more engaged, better educated; and therefore, there's a
11 potential that a survey like this will underestimate the
12 amount of people with -- who do not have IDs.

13 So, I didn't try to estimate how much it underestimated
14 it, because the Judge's concern was that it was overestimating
15 by missing these people who are on vacations, and so I tried
16 to estimate how much of an overestimate it is.

17 I haven't tried to estimate how much it underestimated.
18 That's just out there.

19 Q. But it also could have overestimated. If you were to
20 test, you might find that it overestimated.

21 A. It could, but given Pew's findings, the expectation
22 would be that it's an underestimate for those reasons. For
23 those reasons.

24 THE COURT: I suggest we take a break. I was
25 hoping to get --

1 MS. HICKOK: I actually only have one more
2 question for him.

3 THE COURT: Okay.

4 BY MS. HICKOK:

5 Q. During your testimony today, there have been a lot of
6 answers that you have given that say you assume, you think,
7 you -- you know, it would seem to you that.

8 Given how much of what you are saying is based upon
9 that, how can you say that there is a reasonable degree of
10 certainty in the answers that you're giving?

11 A. From 30 years of experience of designing, analyzing,
12 reporting these surveys, being called upon by people to advise
13 how best to do it, I can recognize that the basic approach
14 that they -- that Dr. Barreto took was reasonable, consistent.

15 He got the response rates we would expect. The fact
16 that the post-stratification adjustment, A, was done, and B,
17 did not have much of an impact, is a very strong sign that the
18 survey was well done and represents what the State of
19 Pennsylvania -- the Commonwealth of Pennsylvania was like last
20 summer.

21 MS. HICKOK: Thank you, Your Honor.

22 THE COURT: Okay. Now we'll take a break.

23 Doctor, I was hoping that we would get you on
24 your way, but I'm sure Mr. Walczak has some questions that he
25 wants to ask on redirect.

1 MR. WALCZAK: I wonder if we could ask -- I'm
2 not sure I recall what his -- because I know he has a flight
3 to catch later, I think, this afternoon.

4 THE WITNESS: I mean, if we're talking like 15
5 minutes or something, if we could stay and do it now rather
6 than --

7 THE COURT: Okay. We'll stay for 15.

8 THE WITNESS: Thank you.

9 MR. WALCZAK: Just one moment, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. WALCZAK:

12 Q. Dr. Marker, you were asked a number of questions by
13 Ms. Hickok about I guess it's specific market research data
14 collection.

15 Were you asked to review specific market research data
16 collection efforts?

17 A. Their efforts, no.

18 Q. Do you recall any questions or concerns being raised by
19 the data collection efforts in any of the trial transcripts or
20 court opinions that you read?

21 A. The only question that was raised had to -- that I
22 remember had to do with how the random selection of phone
23 numbers was done, and as Dr. Barreto pointed out, and I can
24 confirm, that there are a variety of available programs to
25 randomly select numbers, and that that is not -- and just are

1 used and are commonly accepted by everybody.

2 Q. So, the one question that was raised by the Respondents
3 or the Court about data collection is one that you in fact
4 have testified to today?

5 A. Yes.

6 Q. Both the data collection and Dr. Barreto's design of
7 that is within reasonably accepted practices?

8 A. Correct.

9 Q. You were also asked a number of questions about the
10 specific language of the questionnaire?

11 A. Yes.

12 Q. Were you asked to assess the details of the -- of
13 Dr. Barreto's questionnaire?

14 A. Not the details, no.

15 Q. Do you recall any questions or concerns being raised by
16 the Respondents in the trial transcript or by the Court in the
17 opinion about the questionnaire design itself?

18 A. I don't believe so.

19 Q. Would the eligible and registered voters be one?

20 A. Okay. That was as to why they asked eligible versus
21 registered voters, not how they asked about it. Yes, that the
22 tables were presented for both, and there was some -- the
23 Judge -- I don't know whether it was the Judge or the
24 cross-examining lawyer, raised questions about why the
25 eligible voters were considered; but given that at that time

1 and today people who are eligible can become registered, it
2 seems quite reasonable that we would include the eligible
3 voter numbers, not just the registered.

4 Q. Now, I know Miss Hickok raised a number of questions
5 about how permanent absentee voters were counted, or whether
6 folks who may meet the indigence exception were counted.

7 If, assuming that those are factors that should have
8 been taken into account somehow, what, if any, impact would
9 they have on the overall findings about folks not having ID in
10 Pennsylvania; what would the impact on those findings be, if
11 you can say?

12 A. It wouldn't affect the basic finds that -- you know,
13 there are hundreds of thousands of people without the IDs. I
14 mean, the number that was quoted by Miss Hickok was 200 and
15 some thousand voted absentee; and as I said, I -- it wouldn't
16 be hard to track down, but my anticipation would be that the
17 vast majority of those are not permanent ones.

18 I don't know the size of the indigent population in
19 Pennsylvania. I don't know the definition that would be used
20 for it, but again, it's not -- it's going to lower the
21 numbers. It's going to say that the numbers are not quite so
22 bad, but it's by no means going to overcome the basic
23 findings.

24 Q. Do you know that the indigence exception is not simply
25 if you are poor, you don't need an ID, but it's if you can

1 affirm that you cannot afford to get an ID, there's an
2 exception, and Pennsylvania gives free IDs?

3 A. Do you still need to go to one of those 70 or so places
4 to affirm that before the election and get some ID, or do you
5 just do that on a questionnaire?

6 Q. That's done on -- I believe that's done on Election Day.

7 A. Okay. I was not aware.

8 THE COURT: Miss Hickok.

9 MS. HICKOK: I don't know if he's done.

10 THE COURT: I would think he is aware of
11 whether he's done.

12 BY MR. WALCZAK:

13 Q. Dr. Marker, you were provided, at your request, with the
14 raw data, on the respondents who did not have the IDs.

15 A. Yes.

16 Q. And would the -- so, the raw data would have been in
17 there on the absentee voters as well, the folks who indicated
18 that they were --

19 A. The answer to that question would have been there, yes.

20 Q. And in fact, that raw data was provided to the
21 Respondents at the same time. I believe it was. The report
22 was provided to you all?

23 MR. KEATING: Are you asking him a question as
24 to whether it was or not?

25 MR. WALCZAK: Well, I'm pointing out actually

1 to the Court that the raw data was the same data that was
2 provided to Dr. Marker was provided to Respondents' counsel.

3 MS. HICKOK: I don't have those specific
4 responses. So, if they were provided, I'd just say --

5 MR. RUBIN: Your Honor, if I may represent
6 that on July 1st, at 1:13 p.m., a copy was emailed to
7 Mr. Keating, Miss Hickok and her colleagues as well; and there
8 are emails back and forth with them concerning other data as
9 well, so they do have and we could provide that to the Court,
10 and we can also provide another copy of that email to the
11 Court, and we'll pull it up on the screen right now.

12 THE COURT: You can ask the Doctor assuming
13 that, okay.

14 MR. WALCZAK: All right. Assuming -- well,
15 let me -- can we pull up the data on the absentee voters.

16 BY MR. WALCZAK:

17 Q. Do you have that, Dr. Marker?

18 THE COURT: What is that, Counsel?

19 BY MR. WALCZAK:

20 Q. Do you recognize this, Dr. Marker?

21 A. It looks like it might be the Excel spreadsheet. Sure.
22 It looks to be about the right number of cases and everything.
23 This is the format it looked like it was in.

24 Q. So, if you look on there right -- if you look across the
25 top, it has the question numbers there?

1 A. Yes. Q1 is in column R.

2 Q. Right. And then it has their responses.

3 A. So, those without an ID, I see one person. No, there's
4 a second. So, two of the respondents out of the 100 -- 117
5 answered three.

6 Q. Let me show you -- if you could look at that
7 questionnaire, it would be helpful.

8 A. Question one, an answer of three is permanent absentee.
9 And also look -- actually, if you select two and three only,
10 not select all, just select two and three. So, there are out
11 of the 117 cases here, there are two that were permanent
12 absentees, and three that were occasional absentees.

13 And there are weights on there, so you could slightly
14 change it. So, we're in the neighborhood of 2% of the 10%.

15 So, two-tenths of a percent of the state -- from this
16 very small sample, but on the order of two-tenths of the state
17 did not --

18 Q. Two-tenths of a percent.

19 A. Two-tenths of a percent do not have an ID, but are
20 permanent absentee, so it wouldn't apply to them, is the kind
21 of numbers that could be affected.

22 Q. So, the concern that Miss Hickok raised about absentee
23 voters perhaps not being appropriately counted, how would that
24 impact Dr. Barreto's findings?

25 A. So, if we have about 9 million -- 8 million registered

1 voters, so 1% is 80,000. A tenth of a percent is 8,000. So
2 something on the order of 16,000. 10 to 20,000 kind of
3 numbers, permanent absentee voters who don't have an ID.

4 There are probably more than that permanent absentee
5 voters, but they apparently -- but they have IDs; but that --
6 so that's all that would be affecting the numbers.

7 Q. So, if I recall earlier, your testimony was that for
8 registered voters, the low end taking in the error range was
9 about 600,000?

10 A. That was I think when you exclude all of the match --
11 when you include all of the people who don't exactly match,
12 assume that that would be okay.

13 Q. You mean excluding the names, the naming conformity?

14 A. That don't -- when you say that because they didn't
15 quite match, that it would be allowed, that it would be
16 accepted as still being an ID, then it was down in that kind
17 of neighborhood, yes.

18 Q. So, if you subtracted for the absentee ballots, that
19 would bring it down to 580,000?

20 A. Right.

21 MR. WALCZAK: Thank you.

22 MS. HICKOK: Your Honor, at this time, we
23 would renew our motion in limine to exclude the testimony of
24 this witness.

25 THE COURT: I'll deny that motion. Thank you.

1 We'll recess.

2 THE BAILIFF: Recess for lunch.

3 THE WITNESS: Am I excused?

4 MR. WALCZAK: Is the witness dismissed, Your

5 Honor?

6 THE COURT: He's dismissed.

7 MS. HICKOK: Your Honor, what time would you

8 like to resume?

9 THE COURT: 1:30.

10 MS. HICKOK: Thank you, Your Honor.

11 THE COURT: Is that enough time for you or do

12 you want 1:45?

13 MS. HICKOK: 1:45.

14 THE COURT: 1:45.

15 (THERE WAS A RECESS FROM 12:31 P.M. UNTIL 1:44

16 P.M. AND THE PROCEEDINGS CONTINUED AS FOLLOWS:)

17 THE BAILIFF: All rise.

18 THE COURT: Please be seated. Okay. Who is

19 next up.

20 MR. RUBIN: Your Honor, as a housekeeping

21 matter, we received the Court's order denying the Motion in

22 Limine against Dr. Marker.

23 We'd like to move Dr. Marker's report and CV,

24 which is Exhibit 2097a and b into evidence, that's what was

25 used during his examination.

1 MS. HICKOK: Your Honor, we would object to
2 that admission.

3 THE COURT: Okay. We'll overrule your
4 objection.

5 MS. CULLITON-GONZALEZ: Good afternoon, Your
6 Honor. I'm lime Katherine Culliton-Gonzalez of the
7 Advancement Project for the petitioners. We call Adam
8 Bruckner to testify.

9 THE COURT: Have you given us an entrance of
10 appearance.

11 MS. CULLITON-GONZALEZ: Yes, sir. I have it
12 right here.

13 THE COURT: You might have to go around. It's
14 sort of a maze.

15 DAVID ADAM BRUCKNER, having been
16 first duly sworn according to the law was examined and
17 testified as follows:

18 DIRECT EXAMINATION

19 BY MS. CULLITON-GONZALEZ:

20 Q. Please introduce yourself for the Court.

21 A. My name is David Adam Bruckner. I go by Adam.

22 Q. Where do you live?

23 A. In Philadelphia.

24 Q. How long have you lived in Philadelphia?

25 A. I have been there 12 years.

1 Q. Okay. Do you run an organization called Philly Restart?

2 A. Yes, I do.

3 Q. And what is Philly Restart?

4 A. Philly Restart is an outreach to the homeless in
5 Philadelphia where we serve a meal and help men, women and
6 children get proper identification.

7 Q. When was it founded?

8 A. We started working out there in 2002 and officially gave
9 it a title in 2003.

10 Q. And who founded it?

11 A. I did.

12 Q. Why did you found Philly Restart?

13 A. Well, I had travelled around the country for a number of
14 years meeting a bunch of homeless. I was actually hitchhiking
15 around, and I met a bunch of guys at train stops and just all
16 over the country. Buy them a piece of pizza or give them a
17 dollar, and I would think, why wouldn't you just get a job,
18 and they told me they couldn't get jobs because they didn't
19 have proper identification.

20 And I heard the same story over and over. And as I was
21 just moving along, I ended up in Philadelphia, and I wanted to
22 just help one person to get their life turned around, and I
23 knew that was going to start with helping them get an ID.

24 So, we kind of tried to set somebody up and got them the
25 ID, and it just kind of sprang from there.

1 Q. Has Philly Restart grown since you founded it?

2 A. Yeah.

3 Q. How has it grown?

4 A. It's grown into -- it's really an established program
5 now where we meet every week on the parkway. And we serve
6 thousands of people food every year and thousands of people we
7 help to get their IDs and birth certificates, so it's become a
8 non-profit.

9 Q. How exactly do you help people get IDs?

10 A. Well, it's -- people show up, and they to have a
11 referral letter from a shelter, rehab or halfway house. And
12 they come and they'll line up on a Monday afternoon, and I
13 will speak to all of them individually. And whether -- it's
14 an outdoor program, so everything that we do is outside. And
15 I will help them just to assess what they need, and then I
16 write them a check for the government agency, not a check to
17 them, but either to PennDOT or Vital Statistics so they can
18 either get their birth certificate or their state ID card.

19 Q. Let me follow you. You do this on certain days of the
20 week, on Mondays, you said?

21 A. On Monday, yes.

22 Q. And do you do this every Monday?

23 A. We do it every Monday.

24 Q. And about how many people come each Monday to get a
25 check for the ID?

1 A. It will depend on the season and the weather and the
2 time of the month, but it will be between 100 and 170.

3 Q. How many people get a check for an ID for the PennDOT
4 ID?

5 A. Usually about 80% of those. So, depending on the week
6 day, if there's 125, then 100 will be for PennDOT and 25 will
7 be for the birth certificates.

8 Q. Every Monday?

9 A. Every Monday.

10 Q. What is your source of funding for Philly Restart?

11 A. It's private, so I -- we have some people that help out
12 with fund raising, and I have got a family that will donate
13 \$1,000 a month from their foundation, and I have girl that
14 donates \$10 a month, and a church that will give \$150 a month.
15 And over the course of the year, I have about \$20,000 that I
16 will know that I can count on being raised, and the rest I
17 just have to kind of hustle up, or we'll get a one-time
18 donation s or we'll come along that way.

19 Q. And how much do you spend each year on the ID program?

20 A. The ID program is \$50,000.

21 Q. And have you ever had to turn people away?

22 A. Yes. Starting -- the numbers had swelled so high last
23 year, that I started to -- I implemented a little bit
24 different of an approach.

25 I tightened up my program. So, you have to have a

1 shelter, rehab or halfway house or an official letter from
2 someone in government for us to be able to help.

3 So what this really did is focused on the poorer of the
4 poor and cut out kind of those that might be living with their
5 brother and sister and not be connected to a government
6 agency.

7 And so every week, I will get at least ten of those
8 where I just won't be able to help, and I try to push them in
9 the direction of getting connected with one of those agencies.
10 But a lot of people really fall through the cracks and have
11 fallen through since we have made that change.

12 Q. Okay. When did you first hear that PennDOT was going to
13 issue a free ID for voting?

14 A. It was last year in the months before the election.

15 Q. And how did you find out about it?

16 A. I read it in the newspaper.

17 Q. And what was your reaction?

18 A. All -- I mean, all political things aside, I was really
19 excited. I was super-relieved because the program with the
20 IDs is just -- it's stressful, and it's very difficult to
21 raise that money, and if I don't raise the money, it comes out
22 of my pocket.

23 So my first reaction was oh, my gosh, this is over.
24 This part of -- this chapter of helping out with this PennDOT
25 things is going to go away, and I can do a little bit with the

1 birth certificates and focus on some other things.

2 Q. Okay. Thank you. What did you do after that, when you
3 first heard the news about the free PennDOT voter ID?

4 A. I tried to make -- I tried to make the availability of
5 that service known as much as possible. And so, I mean, we
6 have a long line that stretches, and I would just go up and
7 down the line and I would announce -- our beginning
8 instructions, I said, if you need a PennDOT ID, you do not
9 need to stand in line today. And you can go down to PennDOT
10 and there are free IDs available. And I wrote out slips that
11 I had people take back to the rehab shelters and halfway
12 houses about the availability of the free PennDOT ID card.

13 Q. Were you clear that it was the free voter ID card?

14 A. I do not remember. I can't remember what we were saying
15 at the time. I remember -- I think I was just saying free ID
16 card.

17 Q. Okay. Then what happened next?

18 A. Well, the next week and then the week after that, those
19 people that I had sent away returned and said they were unable
20 to get their cards. Many of them.

21 Q. Okay. Did you continue to make the announcement on
22 Monday that folks could get a free PennDOT voter ID?

23 A. For a little bit and then I stopped because I had such
24 an enormous number of people returning saying they were unable
25 to do that and that their agencies had been unable to assist

1 them in doing that, that eventually, almost defeatedly, I
2 stopped making the announcements. I looked into what was
3 going on, and we just took on the burden ourselves.

4 Q. And did they tell you what was the problem, did they
5 tell you what happened if their ID was lost or stolen?

6 A. If -- oh, yeah. There are a number of things that were
7 confusing and kind of discombobulated, but one of the problems
8 was that if somebody had lost their ID, but it had not been
9 expired for over a year, that they were unable to qualify for
10 a free identification card.

11 And so that was a very frequent occurrence. And I
12 looked into that, and that was -- that was what the situation
13 was, as I was told, and so, there was really nothing I could
14 do about that except help those people who were in need.

15 Q. In your experience doing this for ten years, is it
16 frequent that homeless people are the folks who you help, the
17 poorest of the poor, who lose or get their IDs stolen?

18 A. You know, not all of these guys sleep on the streets.
19 They're a lot of these guys that are in shelters or kind of in
20 transitional places. A lot of times go and your bag is
21 stolen, and you go to the shower and you leave your stuff out
22 and people go through and grab it quickly, and unfortunately,
23 it's a high risk situation that they're in.

24 So, the street guys get their bags stolen when they're
25 sleeping, but even the shelter guys and the guys in the

1 transitional housing are sometimes going to lose their stuff
2 also. It happens a lot.

3 Q. So going back to the Monday lines in the time before the
4 election, when do you estimate that you stopped announcing the
5 free ID?

6 A. I probably announced it for a month, maybe four Mondays,
7 and then it just kind of faded and it just -- it went away.

8 Q. Okay. And this was a month before the election?

9 A. Yeah. So, I had heard about it in the months before and
10 then leading up to the election. There was a good number of
11 Mondays before the election that we were still -- serving, but
12 we had not -- I was not making the announcements about the ID.

13 Q. And after that did your lines get longer on Mondays?

14 A. Yeah. I mean, there was an increase in the people that
15 were coming out, and it was noticeable around that time.

16 Q. Okay. Tell us what agencies refer people to you to go
17 to get the checks for the PennDOT IDs?

18 A. We just did a -- we recently just put them all together.
19 There's over 170. So it will be shelters for men, shelters
20 for women, shelters for families, halfway houses, rehab
21 centers, health clinics, Action Aids, the Red Cross -- really,
22 any kind of a spectrum of someone that is need, where there's
23 a person that is really below the ability to pay for an ID
24 themselves is -- if they're connected with that, there's some
25 ministries and some churches, those sort of things, so there

1 are a good number of them.

2 Q. And has anyone ever told you that PennDOT sent people to
3 you to get help to get an ID?

4 A. Yes. You know, that's -- that's happened quite a number
5 of times, and it -- when the confusion was going on around the
6 ID, with the voter ID stuff, it increased our numbers of those
7 people who were coming around.

8 Saying -- we -- we have a relationship with them in that
9 way. I don't mind them doing that because it serves -- these
10 are people that are coming to them in need that can't be
11 helped, so they shoot them our way, and we end up -- we are
12 able to help them then.

13 Q. And you help them by providing a check for \$13.50, you
14 said?

15 A. For the IDs, correct.

16 Q. Okay. Has this been since March 14th, 2012, when the
17 voter ID requirement was signed into law that folks were sent
18 from PennDOT to you?

19 A. There have been since then, yes.

20 Q. And how often?

21 A. Around -- in that gap of time between -- it is -- it is
22 less frequent now that the election is kind of in the
23 distance.

24 Q. Okay. Did the voter registration groups come to you or
25 tell people to come to you to get an ID to go because folks

1 couldn't get a free voter ID?

2 A. Correct. I think at first they were really trying to
3 help the people as advocates to bring them to PennDOT, and
4 then once that became frustrating and confusing, then the next
5 step was for them to bring their clients to us on Mondays.

6 Q. Okay. Thank you. Let's talk more about the checks and
7 the process. Who are the checks made out to, the \$13.50
8 checks for IDs?

9 A. Yeah. They're made out to either PennDOT or to Vital
10 Records. And so, obviously, we don't write them out to the
11 individuals themselves. We write them out to those agencies.

12 Q. How many are written to PennDOT as compared to Vital
13 Records?

14 A. 80% I would write to PennDOT and 20%, on average, I
15 would write to -- whatever of whatever number that was that
16 week.

17 Q. And how many checks do you write to PennDOT each week?

18 A. I mean, again, it would depend on the season, but that
19 would range between 80 and 150.

20 Q. And how many of the checks are cashed?

21 A. Again, it fluctuates, but in the -- over 60% is a low
22 number, so it's going to go between 60 and 75%.

23 Q. Okay. How do you know that the people use the checks
24 for an ID?

25 A. I get my bank statements both online and in-hand, and so

1 I can go through and see which checks were -- I can see a
2 photo of copy of the ones that were cashed, and I can see --
3 or the ones that were used, and then I can see the reverse
4 side that I will look at to make sure it was PennDOT that was
5 stamping it and that someone had not figured out a system to
6 take it a check cashing place and the PennDOT seal is on the
7 back and Vital Records is on the back of the other ones.

8 Q. So you review the checks through an account?

9 A. I review them through my account online, and I also go
10 through my paper statements when I get them.

11 Q. Is this your personal checking accounts?

12 A. I have two checking accounts set up through my bank. It
13 is a personal account, but I only use it for the purposes of
14 the PennDOT and the Vital Records.

15 Q. Why do you use your personal checking account?

16 A. Well, it looked into some other ways, but it was really
17 the only option to do it. There had been some suggestions to
18 do money orders, but money orders are 20 to 70 cents each, and
19 with a money order, you have to pay up front.

20 If I was just getting 10 money orders for \$13.50, and I
21 have to put that money out right away, and if only 60% of
22 those get cashed, those that don't get cashed are lost money
23 to me. There isn't information I could trace back with a
24 little slip who didn't get cash. It's a paperwork nightmare.

25 Q. How much do you spend on the checks for ID programs each

1 year?

2 A. The ID program last year was \$50,000, and of that, like
3 I said, about 80% of that was for the PennDOT and the other
4 20% was for Vital Records.

5 Q. As you have been doing this since 2002, how many people
6 would you estimate have you helped to get an ID?

7 A. I was thinking through that number. It's -- I mean, I'm
8 on check for 45,000, or something like that. And of course,
9 there's a few -- I would say 38,000 was the number that I came
10 up with, about 38,000 people.

11 Q. Can you tell us how you arrived at that number?

12 A. Well, just the number of checks that I have written. I
13 make a very small number of errors in that. There's a small
14 percentage of duplicate people that would come for both a
15 birth certificate sometime and the ID the other time, and
16 those people would overlap, and just putting those percentages
17 together, 38,000 is a safe number.

18 Q. Okay. Are there other groups who do what you do?

19 A. I don't know of any other group that does -- that helps
20 with PennDOT ID cards, no.

21 Q. Mr. Bruckner, are you aware that a video was made of
22 Philly Restart?

23 A. Yes.

24 Q. Who made the video?

25 A. Teresa Giuliana.

1 Q. And how do you know Miss Giuliana?

2 A. She is a wonderful volunteer that comes for us every
3 Monday and makes peanut butter and jelly sandwiches.

4 Q. When was the video made?

5 A. June 24th.

6 Q. Have you reviewed it?

7 A. Yes.

8 Q. Is it a fair and accurate representation of what happens
9 at 19th and Vine Streets on Mondays with your Philly Restart
10 program?

11 A. Yes.

12 MS. CULLITON-GONZALEZ: Okay. If it please
13 the Court, I'd like to play the video and ask Adam to narrate
14 it, and I'd like to enter it into evidence as Exhibit No.
15 1995.

16 BY MS. CULLITON-GONZALEZ:

17 Q. So, let me focus your attention ton the screen over
18 here. Is this the video that was made in June of this year?

19 A. Yes.

20 Q. And can you tell us -- could you play the video, please.

21 (VIDEOTAPE STARTED.)

22 A. So, this is on Vine Street between 18th and 19th Street
23 across from the juvenile courthouse. And it's a rainy day, so
24 you can see on the left hand side, that's our line for food,
25 and the right hand side with the lady in the screen shirt is

1 our line for the ID program.

2 Now, that line will almost always stretch to the right
3 and make a bend almost all the way down the block. Since but
4 it's raining, the guys are on the cement. And the line
5 continues to build, so this is right about 4:00, right when
6 we're starting. And these men, women and children have
7 gathered as early as 1:00 from what I'm told.

8 Q. I don't see any children in the line. Do you provide
9 IDs for children?

10 A. We do. There are always going to be birth certificates,
11 but we let them come to the front of the line, and I try to
12 get them out of there as soon as possible.

13 Q. And how many children?

14 A. A few a week. I would say no more than five, but
15 usually a few children will be there.

16 Q. Okay. This is -- the majority of are adults.

17 A. Correct.

18 Q. Okay. Can you continue to tell us what we see. We're
19 moving up the line. Where are you in this video?

20 A. Yes. These are all our clients. They all have papers
21 in their hands that will be from rehab shelters, halfway
22 houses, or whatever agency has referred them.

23 I'll get up to the right hand side, there's a little
24 curb. I'll be standing on that curb, and I will make a number
25 of announcements. Every 20 people or so, I will make that

1 same announcement just so the people understand the
2 qualifications of what needs to happen.

3 From the front of the line, we just start to move. The
4 line will stay still, and I will move my way backwards. You
5 can see some of the guys holding those papers there. Those
6 would be their referral letters.

7 Q. And that's you?

8 A. That's me in the red shirt.

9 Q. What are you standing on top of?

10 A. There's just a curb right there.

11 Q. So outside in front of the library there at 19th and
12 Vine?

13 A. It's a block away from the library. It's the juvenile
14 courthouse.

15 Q. You would say that's a typical Monday for the Philly
16 Restart program?

17 A. Yes.

18 (THE VIDEOTAPE CONCLUDED.)

19 Q. Let me ask you, are there people you serve interested in
20 voting?

21 A. Yes. You know, when I first started working with the
22 homeless, my impression was that it was going to be bums and
23 drunks and invalids, and that was based on the people that I
24 saw sitting outside while I was in 7-Elevens.

25 When I came to Philly and I started working with these

1 guys, I was truly shocked about how much they cared about
2 sports and politics and even the arts. And what I had learned
3 more and more and is the humanity of these guys and the number
4 -- yes, they care about voting because they care about life.

5 And they're not people that are just wasting away. Of
6 course, you will have a few that are not really making a
7 genuine effort. But their vote means a lot to them because
8 it's sometimes the only voice that they have.

9 Q. And has their interest in voting grown over time or
10 decreased?

11 A. I believe it's increased. And the awareness and the
12 voter ID thing, and the push to have the poor involved in the
13 process, from my experience over ten years, it's increased a
14 lot.

15 Q. Let me just ask you, why is it so hard for them to get
16 ID. Why do they have to come to you.

17 MR. SCHMIDT: Your Honor, I have to object at
18 this point. This whole line of questioning is based on
19 hearsay. I haven't heard one ounce of testimony as to his
20 personal experience. It's just what he is testifying about
21 other people and what they're telling him at these events.

22 MS. CULLITON-GONZALEZ: Your Honor, we would
23 purport that this falls under Rule 701, opinion testimony by a
24 lay witness. Mr. Bruckner has been serving the homeless and
25 providing them IDs for over ten years now.

1 THE COURT: We'll let it come in.

2 BY MS. CULLITON-GONZALEZ:

3 Q. So, we were asking, why is so hard for the folks that
4 you serve to get ID?

5 A. It's a wide range of things, but in order to get a
6 Pennsylvania plastic PennDOT ID card, you need to have a birth
7 certificate with a seal, which is \$10. You have to have a
8 Social Security card or a printout and proof of your address.

9 One of the main problems in order to get a state ID, you
10 need a birth certificate. In order to get the birth
11 certificate, you need a voter ID card. So it's a vicious
12 cycle that PennDOT and Vital Records and the Social Security
13 Department, Social Security office have worked through really,
14 really remarkably to make available.

15 You have still have the \$10, the \$13.50 and the money
16 for the money orders, and just the ability to know how to do
17 this stuff. The transportation, getting the letters of
18 residence from whatever place it would be, and then keeping
19 that stuff safe long enough to actually get your ID card and
20 just the organization of it.

21 Q. If you didn't provide the \$13.50 checks to PennDOT,
22 could the person you serve get ID?

23 A. I don't think so.

24 Q. And can you tell me why?

25 A. They don't have money. A lot of these guys just have

1 very, very, very little. The street homeless would have
2 pennies, pennies to dimes. Those who live in shelters, rehabs
3 and halfway houses have no ability to get money. They can't
4 even panhandle. They're oftentimes on lockdown or unable to
5 have the freedom to go out and hustle up a few dollars washing
6 windows or whatever it might be.

7 So to put together what essentially would be \$25 to get
8 the birth certificate and state ID card is a really tall
9 order. And not to mention just the poor, the face of the
10 homeless has changed so much that it's not just the street
11 guys. It's with the economy and the jobs and the state of
12 Philadelphia, the condition of Philadelphia, it's just -- it's
13 just really tough to have money. And for those who fall
14 between that line, we have been able to step in and help.

15 MR. SCHMIDT: Your Honor I'm going to move to
16 strike that response as purely speculative on the witness's
17 part.

18 THE COURT: Noted.

19 BY MS. CULLITON-GONZALEZ:

20 Q. In all of your experience and all of the work that you
21 have done over the last ten years with the homeless providing
22 ID for tens of thousands of people, if someone were to suggest
23 that everyone in society has a phot ID and can get it, what
24 would your reaction be?

25 MR. SCHMIDT: Your Honor, same objection.

1 THE COURT: I'll sustain that objection.

2 MS. CULLITON-GONZALEZ: Let me ask another
3 question, then. Thank you, Your Honor.

4 BY MS. CULLITON-GONZALEZ:

5 Q. What would happen if you couldn't run Philly Restart?

6 MR. SCHMIDT: Your Honor, same objection.
7 Again, she is asking the witness to speculate.

8 THE COURT: Yeah. I think we can go from what
9 he has testified to, counsel. We'll sustain the objection.

10 MS. CULLITON-GONZALEZ: Okay.

11 BY MS. CULLITON-GONZALEZ:

12 Q. Are you the only person who runs Philly Restart?

13 A. The ID program, yes.

14 Q. Okay. Is there anybody to step into your shoes if you
15 were no longer able to do it?

16 A. No. I have not --

17 MR. SCHMIDT: Your Honor, it's the same
18 objection. Now she is just trying to bring in the testimony
19 from the backdoor.

20 THE COURT: Nothing wrong with that. We'll
21 permit it.

22 MS. CULLITON-GONZALEZ: It's his own personal
23 experience, sir.

24 MR. SCHMIDT: Your Honor, she's still asking
25 the witness to speculate about what would happen.

1 THE COURT: I permit some speculation.

2 MR. SCHMIDT: Thank you, Your Honor.

3 BY MS. CULLITON-GONZALEZ:

4 Q. So Mr. Bruckner, you care very deeply about the Philly
5 Restart program?

6 A. Correct.

7 Q. Have you thought through what would happen if you were
8 no longer able to run it?

9 A. Well, my mom died two years unexpectedly, and I missed
10 weeks of the program. And I don't have a replicable model.
11 It's a failure of mine not to be able to do that, but I just
12 don't have someone to step in for me, and it hasn't worked.

13 And when I miss time, people show up by the hundreds.
14 They don't get the help. They can get the food. We have a
15 wonderful food model, but the ID model is not replicable for
16 us.

17 Q. It requires your personal attention?

18 A. I have to be there, yes.

19 Q. One last question: Could you possibly serve all of the
20 people who would need an ID to vote?

21 MR. SCHMIDT: Objection, Your Honor.

22 THE COURT: Noted.

23 MS. CULLITON-GONZALEZ: I have no further
24 questions. Thank you.

25 THE WITNESS: Thank you.

1 MR. SCHMIDT: May I proceed, Your Honor.

2 THE COURT: Sure.

3 MR. SCHMIDT: Thank you.

4 CROSS-EXAMINATION

5 BY MR. SCHMIDT:

6 Q. Mr. Bruckner, my name is Kevin Schmidt. I represent the
7 Respondents in this lawsuit. I'm just going to ask you a few
8 follow-up questions about your testimony.

9 Now, you're the founder of Philly Restart; is that
10 correct?

11 A. Correct.

12 Q. Okay. That organization you started in 2002, but I
13 think you testified it was officially titled in 2003; is that
14 correct?

15 A. Yeah. I mean, I started working with the homeless by
16 just walking up to a guy and saying, hey, how did you end up
17 homeless, can you tell me your story?

18 So, I would not have given that a title at the time. It
19 wasn't until we started the actual weekly meal where we were
20 going to be there every Monday. And then when we started to
21 help out with the IDs that we started to call it something.

22 Q. Are you a legal -- is Philly Restart a legal entity
23 that's been filed with the Commonwealth?

24 A. It's a 501c3 through the Helping Hand Rescue Mission.

25 Q. And when was that filed, what year?

1 A. Well, it was changed over -- it used to be through the
2 South Jersey Youth Alliance, through a different organization,
3 that would have been '03 or maybe '04, and then it -- I just
4 switched over to non-profit umbrella that I'm under this last
5 year.

6 Q. Okay. So, when you were with the South Jersey Youth
7 Alliance, were you filed in the state of New Jersey?

8 A. I do not know how that stuff works. I know that we were
9 given non-profit status. I'm sure -- we were under their
10 guidance, under their insurance. The question you're asking
11 me, I don't understand. I don't have the answer to it.

12 Q. Let me ask you this: Whose insurance were you under?
13 I'm not following you.

14 A. The South Jersey Youth Alliance.

15 Q. The South Jersey Youth Alliance, is that a New Jersey
16 entity?

17 A. It is a New Jersey entity that has an umbrella that
18 spreads across the tri-state area, I believe.

19 Q. Okay. Are they an entity that's filed with the State of
20 New Jersey as a non-profit?

21 A. I -- yes. Okay.

22 Q. Now, your mission -- and I went on your website, which
23 was very impressive. Your mission is to provide photographic
24 identification cards to homeless people; is that correct?

25 A. Correct.

1 Q. Okay.

2 A. In part, yes.

3 Q. Your mission is not to provide photographic
4 identification card for homeless people to vote; is that
5 correct?

6 A. That's incorrect. I mean, we provide photo
7 identification for anybody who needs it for anything that they
8 need it for --

9 Q. Okay.

10 A. And that includes voting.

11 Q. Okay. Well, let me ask it to you this way: Your
12 clients, the homeless, do they need photographic
13 identification cards to get jobs?

14 A. Yes.

15 Q. Okay. Do they need it to get meals?

16 A. To get into a shelter, they might need it, but not to
17 get a free meal outside like ours.

18 Q. They need it to get into rehab?

19 A. Yes.

20 Q. Okay. They need it to get into shelters; is that
21 correct?

22 A. Some of the shelters, yes.

23 Q. And do they need these IDs immediately, or can they wait
24 until the next election to get these IDs?

25 A. It's going to depend on the situation in the shelter. I

1 try to get them as soon as I -- I try to get them to them as
2 soon as possible. What they need them for and when they need
3 them by is going to be speculation from me.

4 Q. But you try to get them for them as soon as possible
5 because they have very pressing needs; is that correct?

6 A. That is true.

7 Q. And in your opinion would you agree with me that their
8 pressing needs are more important than voting in the next
9 election, which is not until November, 2013?

10 A. I don't -- I guess I don't follow what you are saying.
11 I just help out wherever I can help out.

12 Q. Okay.

13 A. I wouldn't say -- if somebody's pressing need was to get
14 the IDs so that they could vote in the next election, then I
15 would get it to them as soon as they could -- as soon as I
16 could.

17 Q. But, so you don't care what the need is for the ID; is
18 that correct, sir?

19 A. I mean, I care, but I'll just do whatever they need it
20 for, so --

21 Q. Okay. So, your goal is to get them an ID as soon as
22 possible; is that correct?

23 A. That is correct.

24 Q. Okay. Now, let's talk about some of your clients. You
25 describe them as homeless. Your clients don't have jobs; is

1 that correct?

2 A. There are -- there are some who have jobs, but many do
3 not have jobs.

4 Q. Okay. Your clients don't have homes; is that correct?

5 A. For the most part. Sometimes I will have somebody
6 that's in a home that is a -- that has no income, and as long
7 as they're associated with a reputable organization, then I
8 will help them out, if they bring that letter along. We try
9 to help out everybody. I don't try to filter through that.

10 Q. Sure, and I think that comes across, and we appreciate
11 that.

12 A. Yeah.

13 Q. Your clients are transient; is that correct?

14 A. You'd have to define that for me.

15 Q. Do they have a regular address, or do they move from
16 spot to spot?

17 A. You have both. I mean, you're talking about -- there's
18 thousands of people, and so, some sleep on a park bench and
19 some stay between their mom's, their friends and all of these
20 different places. But everybody has to have an address to
21 receive -- they have to have an address that's listed.

22 Q. Okay. And why do they need an address?

23 A. They need an address because those are the requirements
24 for PennDOT to have -- to get a state-issued ID, and the
25 agency that sends them over will put their address on there,

1 and they can use that as their address, so that's also one of
2 ours.

3 Q. So everyone that comes to you and receives a check from
4 you has a valid address that would satisfy the PennDOT
5 requirement; is that what you are testifying to here, sir?

6 A. I don't know what PennDOT -- I believe that, but I don't
7 know that from PennDOT, if they would accept --

8 Q. Are you sure about that, because you just testified
9 about it?

10 A. I was going to finish what I was saying.

11 Q. Please do.

12 A. I don't think that a P.O. box or a general -- if you
13 just have a St. John's Hospice P.O. box, I don't know that
14 PennDOT accepts that, but I accept that.

15 I believe that -- my guess, my speculation, would be
16 that they would, but I don't know. I don't think you can have
17 a P.O. Box on your PennDOT ID, but other than that, yes.

18 Q. Now, have you studied the voter ID law since it was
19 enacted in 2012?

20 A. I have read through it. I wouldn't use the word
21 studied.

22 Q. Okay. Are you familiar with certain changes that have
23 occurred at PennDOT as far as getting licenses to people who
24 can't afford them?

25 A. You'd have to just ask me a specific question, and I'll

1 tell you if I knew it or not, because there's been so many
2 different changes that I don't know what changes you mean.

3 Q. Are you aware that -- it sounds like your clientele
4 could qualify for a free PennDOT ID at this point.

5 A. For a free voters ID card?

6 Q. Well, either a PennDOT secure ID or a DOS ID for voting
7 purposes; are you aware of that?

8 A. I'm sorry. I am unaware that one of my clients would be
9 available -- would be eligible to receive a PennDOT
10 non-voters' ID card. I have not ever heard that.

11 Q. Okay. Now, you testified earlier about a partnership
12 that you have with PennDOT; is that correct, sir?

13 A. I wouldn't use the word partnership, I would say that we
14 have a relationship.

15 Q. Okay. I thought you said partnership earlier, so maybe
16 be I --

17 A. If I did, I misspoke.

18 Q. Could you describe that for me, please.

19 A. If somebody comes in there and needs an ID that doesn't
20 have one and they can't get one, they send them over to us.
21 And they say, Adam will be on Vine Street between 18th and
22 19th Street, and he will be there on Monday afternoons between
23 4:00 and 5:00.

24 Q. And how did PennDOT become aware of Philly Restart?

25 A. Because the volume of checks that we had come through

1 there are just -- there are -- so, they would be -- after a
2 while, they're saying who are all of these guys? I'm
3 repeating what they told me. They'd say who is this that sent
4 you, giving all of these checks there. Just from the
5 relationship where they were asking their clients who I was
6 and what was going on they became aware of that.

7 Q. Do you provide any identification paperwork from PennDOT
8 at your meals at Monday to your clients?

9 A. What do you mean by paperwork?

10 Q. Meaning paperwork that your clients would need in order
11 to go to PennDOT along with the check that you give them to
12 get a photographic identification card?

13 A. Do I have PennDOT forms there for them?

14 Q. Yeah.

15 A. No, I do not.

16 Q. Do you provide any clinics when you give them this check
17 about what they need to do when they go to PennDOT to obtain
18 an ID.

19 A. I tell them what they need to do, yes.

20 Q. So, what do you tell them?

21 A. So, a typical conversation would be, I would say, do you
22 need a birth certificate or a state ID card. They would say,
23 I need -- a typical answer is I need a state ID card. I would
24 say, have you had a state ID card before, and if you said no,
25 I would say, you need a birth certificate with a state seal on

1 it. What state were you born in?

2 If they were born in Pennsylvania, then we start to
3 work -- and they don't have the birth certificate, then we
4 start to work on the Pennsylvania birth certificate.

5 If they were born out of the state, that's a whole
6 different monster and I would have to --

7 Q. Let me stop you there. Are you aware that if your
8 clients went to PennDOT and stated that the ID to vote, they
9 wouldn't need that birth certificate?

10 A. I'm aware of that it's part of what's going on, but it
11 has been a difficult thing to --

12 Q. Are you instructing your clients to take advantage of
13 that option?

14 A. I stopped instructing them once the number of clients
15 became obnoxious that were returning that -- the number was
16 obnoxious, not the clients -- that were returning and saying
17 they were unable to go get this and their caseworkers were
18 telling me the same.

19 Q. But wouldn't your instructing those clients alleviate
20 that amount and assist you in lowering the amount of people
21 that come to you for checks to get ID?

22 A. I would love it. I'm telling you that I tried it, and
23 it did not work for our program to send people there. They
24 came back, and they were frustrated because they were a week
25 behind where they had been the last time, and they wasted a

1 trip down to see me, and they stood in the sun and the heat.

2 If there was a way for me to send everybody there, I
3 would do it. I don't want to do what I do. I do it literally
4 because we started with one, and it became a huge line of
5 people, and there's just a desperate need for it.

6 Q. But it sounds like you have only down it for four weeks.
7 Isn't that what you testified to, you tried it for four weeks
8 and then you stopped?

9 A. I did, yeah.

10 Q. Any interest in starting it up again?

11 A. If it was an effective thing, I absolutely would.

12 Q. But you don't want to figure that out for yourself?

13 A. I do want to figure that out for myself. I would love
14 to do it. I'm sure that, honestly, when the next election
15 comes around, it will be a big stomping ground.

16 Q. Okay.

17 A. The problem was I contacted -- the problem was the
18 people that fell through the cracks at PennDOT. Those who had
19 the IDs, that -- and I don't know if PennDOT's rectified that
20 situation or not. The last time I looked into it, it hadn't.

21 Those who had the IDs that had lost the IDs, but they
22 had not been expired for the year. That was the great
23 majority of people.

24 Q. When was the last time you looked into that?

25 A. The last article I read. It was -- not within the last

1 three months.

2 Q. But you only let -- came to it by reading an article.
3 You haven't gone to PennDOT and asked what the new procedures
4 are?

5 A. I apologize for cutting you off. No. I spoke with the
6 local advocates, those that were in the voting thing, the
7 Homeless Advocacy Project in Philadelphia.

8 I did my homework on it, and if it has changed since
9 then and become more readily available, I have known about it,
10 and I would be glad to start up again.

11 Q. But your homework didn't include going to PennDOT?

12 A. I have been to PennDOT, yeah. I don't remember if I
13 went regarding that issue. I had other people that were
14 working with PennDOT on that, the Homeless Advocacy Project in
15 Philadelphia. I did not personally go to PennDOT to have a
16 meeting about the voter ID thing, no.

17 Q. Now, your clients, do they come from all parts of the
18 City of Philadelphia.

19 A. Yes.

20 Q. Okay. So, they travelled from northeast Philadelphia,
21 southwest Philadelphia, Center City, to come to get a check
22 from you and a meal on Monday; is that correct?

23 A. The meals are usually a closer vicinity. The IDs -- the
24 people -- for the check, the people will travel, or they'll
25 get dropped off by their vans or whatever the community

1 shelter place would be. Yes, there's travelling involved.

2 Q. What do you mean by van; could you elaborate on that?

3 A. Sometimes a place will have 15 people staying at their
4 facility that need IDs or that need the check, and so they'll
5 drive the van down. Some will need birth certificates, some
6 will need state IDs cards, so they'll drive all of those
7 people down at the same time.

8 Q. After they receive a check from you on Monday, do you
9 know if any day following thereafter they go to PennDOT to get
10 the ID?

11 A. I know that on Tuesday -- what I have been told is that
12 Tuesday morning is the very -- the line stretches. I go over
13 there. I go by there sometimes, and I will see some of the
14 clients there, but I don't do a survey of when they use the
15 checks.

16 Q. When you say there, you say PennDOT?

17 A. PennDOT on Eighth Street.

18 Q. Which PennDOT facility?

19 A. The only one that I ever go by -- the only one I'm near
20 is the one on Eighth Street. So I would travel by that on the
21 way to the bus stop.

22 Q. Eighth and Arch Street?

23 A. Correct.

24 Q. So, you don't do any independent confirmation that the
25 people that you are providing these checks to from your bank

1 account use them at PennDOT?

2 A. No, I do, because I go on my site and the flip the check
3 so I can see the front and I can see the back. Because you
4 know, it's important for me to know they're being used at
5 PennDOT to get the PennDOT stamp on it and PennDOT deposit at
6 the Citizen's Bank, that kind of a thing.

7 Q. Absolutely. You said about 60% of the checks that you
8 provide are used at PennDOT?

9 A. That's a low number. So, that's probably the lowest
10 number that I will have. In May -- in May the number was --
11 May of 2013, the number was -- I think I had 423 checks
12 cashed, and I had written in the high 300s, so that number was
13 probably over 80%. Whatever that would be.

14 Q. What happens to the checks that are not used at PennDOT?

15 A. Oftentimes -- well, sometimes someone will get a check
16 wet. Sometimes they will not be allowed out of the facility.
17 Sometimes it will be lost or stolen. Sometimes they go to
18 PennDOT, and even though they thought they had the information
19 correct, there will be a mistake in the system, a misspelling.
20 Since there's so many clients, there's so many different
21 reasons why it goes wrong.

22 Q. Why did you choose not to list the individual's name as
23 payable on the check?

24 A. Because then they would just cash the checks.

25 Q. Okay. And they wouldn't use them at PennDOT?

1 A. I can't say if they would or they wouldn't, but I would
2 say that it would -- because I'm giving -- it would waste
3 money because then they would cash the check, and they would
4 have to get a 70 cent money order, and then it would cost me
5 another 70 cents, and it just doesn't make sense.

6 Q. So, it's a security provision to make sure that your
7 clients go to PennDOT and obtain an ID; is that correct?

8 A. Yes.

9 Q. Now, you talked about Philly Restart's funding stream,
10 and it was completely private; is that correct?

11 A. If by private you mean -- yeah, what I listed before.

12 Q. Do you receive any state subsidy?

13 A. No.

14 Q. No. Now, when your clients come to the Monday meals,
15 they have a letter from a shelter; is that correct?

16 A. They have to have a formal letter. So, the Mayor's
17 office might send them down. Shelters, rehabs, halfway
18 houses, mailing address -- I just want them to be connected in
19 the city, really, one to one of the programs.

20 Q. What does the letter say?

21 A. Sometimes it's just a residency letter, and sometimes
22 the letter will say, John Q. needs a state ID. Adam, will you
23 please help him to obtain this. He has his ID already.

24 Q. Okay. When it says --

25 A. He had it and he lost it. Something like that.

1 Q. Give me the example of the content of a residency
2 letter?

3 A. The content of a residency letter would say Mark Somers
4 lives at the Laverne shelter, and he has been here since
5 January 1st. He had a 30-day blackout. He is able to receive
6 mail here.

7 Q. And that's only to obtain the check for the ID; correct?

8 A. They can use that to obtain the check for the ID, for
9 the birth certificate, or they can use those as residency
10 letters to set up mailing stuff sometimes, where they might
11 need another piece of mail totally apart from us.

12 Most times I don't keep the letter. Most times they
13 would like to keep the letter to get some other things going
14 in their lives.

15 Q. Yeah. And it's important for them to have ID to do
16 that, to obtain the job, or to get into rehab; correct?

17 A. You're asking me if it's important for them to have
18 identification to get a job?

19 Q. Correct.

20 A. Correct.

21 Q. Yeah. That requirement, that's only for the IDs,
22 correct? You don't have to have that letter in order to get a
23 meal?

24 A. No. You do not have to.

25 Q. Now, what location do you currently have the Monday

1 meals and the ID check issue?

2 A. It's between 18th and 19th Street along Vine Street,
3 which is between City Hall and the Rocky art museum stairs.

4 Q. You were previously at the Philadelphia Public Library;
5 is that correct?

6 A. We were across the steps from there. They did
7 renovation a few years ago, and so we moved down to the
8 courthouse space in that time when they were doing that, and
9 we just stayed.

10 Q. Okay. I thought I read an article that there was some
11 opposition to you conducting the meals on Mondays in front of
12 the library from the City; is that correct?

13 A. I don't think -- I don't think that the opposition was
14 because it was in front of the library. I think the
15 opposition was because it was an outdoor meal. Not
16 specifically because it was in front of the library, but
17 because there was a meal being served outside.

18 Q. Are you aware of the Department of State's partnership
19 with public libraries in the Commonwealth to promote voter ID
20 education?

21 A. No. I work with a guy that -- no. I'm on a board with
22 someone from the library. They have never mentioned it.

23 Q. Okay. When were you at the library? What were the
24 dates where you had your meetings at the library?

25 A. Right. 2002, '03 and '04 I was along the strip on the

1 parkway, and then we moved over to the library probably from
2 '04 to 2010, and 2010 to 2013. Those are guesses, though.

3 Q. At your Monday meals, do you take -- or do you make any
4 efforts to educate your clients on the voter ID law?

5 A. Around the time of the -- I do not personally. We have
6 had a good presence of people, advocates for voting rights
7 that have come down and have tried to register people to vote.
8 They have registered people to vote, and they have done that
9 work for us. That happened around election. So, I'm much too
10 busy to deal with the other stuff, and so we welcome all sorts
11 of groups that come down.

12 Q. Do they also take them to PennDOT to obtain ID?

13 A. There have been -- this same story I shared before,
14 there were groups that were trying to get these clients to
15 PennDOT, and when it didn't work, they brought the clients
16 back down to us.

17 Q. What groups were that?

18 A. These were -- I don't have the names of these groups.
19 These were -- I think names pop into my mind, but I'm not
20 positive if they're right, so I wouldn't say them.

21 Q. Just to clarify for my last point, you only provide a
22 check to get the ID. You do not assist them in getting the
23 ID; is that correct?

24 A. I have assisted homeless men in getting the IDs. I walk
25 them down to PennDOT and sat with them there before. Week to

1 week, I just give them the check. So, 99% of the time I just
2 help them. I don't go down to PennDOT with them, no.

3 MR. SCHMIDT: Thank you, Your Honor. That's
4 all I have for you.

5 THE WITNESS: Thank you.

6 MR. SCHMIDT: Thank you, Your Honor.

7 MS. CULLITON-GONZALEZ: Your Honor, if it may
8 please the Court, I have some further questions for
9 Mr. Bruckner.

10 REDIRECT EXAMINATION

11 BY MS. CULLITON-GONZALEZ:

12 Q. Mr. Bruckner, have your clients gone to PennDOT to get
13 the free ID for voting?

14 A. Yes.

15 Q. Okay. Have they come back to you and told you what
16 happened when they asked to get the free ID for voting?

17 MR. SCHMIDT: Objection, Your Honor.

18 MS. CULLITON-GONZALEZ: The door was opened on
19 cross.

20 MR. SCHMIDT: Your Honor, it's hearsay.

21 THE COURT: I'll sustain the objection.

22 BY MS. CULLITON-GONZALEZ:

23 Q. Did you change your behavior personally based on hearing
24 that people came back and told you what happened when they
25 asked for the free ID card for voting at PennDOT?

1 A. Yes.

2 Q. What did you do?

3 A. I stopped announcing that there was free ID card at
4 PennDOT.

5 Q. Okay. How did you know that they needed to pay \$13.50?

6 A. For the --

7 Q. The free ID. For a voter ID.

8 A. That was the -- because that's the -- that's the fee for
9 the PennDOT ID card, and that was what -- that was the only
10 way that I could get the guys the card.

11 Q. Do you know if PennDOT only takes checks or money
12 orders?

13 A. I do know that.

14 Q. Have your clients told you that one reason they want an
15 ID is for voting?

16 A. Yes.

17 MR. SCHMIDT: Objection, Your Honor. Calls
18 for hearsay.

19 MS. CULLITON-GONZALEZ: He's a lay expert.

20 THE COURT: It's already in the record,
21 Mr. Schmidt, so we'll let it go.

22 THE WITNESS: Yes.

23 BY MS. CULLITON-GONZALEZ:

24 Q. Have voter registration groups approached you wanting to
25 help get IDs for voting for people who couldn't afford it?

1 A. Yes.

2 Q. Do your clients have any other photo ID that they can
3 use for voting?

4 A. I don't think so because they -- it's a wide range, so
5 there are some that would, there are some that wouldn't.
6 There are many who would not.

7 Q. Okay. Has there been publicity about Philly Restart ID
8 work?

9 A. Yes.

10 Q. Are you in the papers, in the media, on the newspapers;
11 can you describe the publicity?

12 A. Sometimes the Philadelphia Inquirer will do a story or
13 the City Paper or some of the local publications or there's
14 been a few. I believe Comcast did a piece that tied it in a
15 few years ago. Philly Magazine did a piece that tied it in,
16 so --

17 Q. And how many different agencies send people to you to
18 get the checks to get an ID?

19 A. We have a list of over 170.

20 Q. Okay. Has anyone from the Department of State come to
21 19th and Vine outside the library to talk to you and your
22 clients about getting an ID, a free ID for voting?

23 A. No.

24 Q. Okay. Do you think that the homeless deserve and want
25 to vote?

1 A. Yes.

2 MR. SCHMIDT: Objection, Your Honor.

3 THE COURT: That's already been asked and
4 answered.

5 THE WITNESS: Yes.

6 MS. CULLITON-GONZALEZ: No further questions,
7 Your Honor.

8 MR. SCHMIDT: Nothing further, Your Honor.

9 THE COURT: Thank you.

10 THE WITNESS: Thank you.

11 MR. WALCZAK: Your Honor, may we call the next
12 witness?

13 THE COURT: Please.

14 MR. WALCZAK: The plaintiffs call Jonathan
15 Marks.

16 JONATHAN MARKS, having been
17 first duly sworn according to the law was examined and
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MR. WALCZAK:

21 Q. Good afternoon, Mr. Marks.

22 A. Good afternoon.

23 Q. My name is Vic Walczak. I am one of the lawyers for the
24 Petitioners, but you know that; don't you?

25 A. I do.

1 Q. We have had this dance on a number of occasions.

2 A. We have, yes.

3 Q. It's nice to see you again.

4 A. Good to see you as well.

5 Q. You are the Commissioner of the Bureau of Commissions,
6 Elections and Legislation?

7 A. I am, yes.

8 Q. And you've held that position continuously since 2011?

9 A. That's correct. October of 2011.

10 Q. Now, does that make you the top non-political appointee
11 official overseeing Pennsylvania elections?

12 A. The top non-political --

13 Q. Appointee.

14 A. -- appointee overseeing elections. I don't know if it
15 does or not. I do know that I oversee the administration of
16 elections at the Department of State, and work with the
17 counties directly, more so than anyone else at the Department
18 of State.

19 Q. Maybe you could pull that mic a little closer.

20 A. Sure. Is that better?

21 Q. And before you became the Commissioner, you were
22 responsible for the SURE database?

23 A. I was. I was the chief of the division of SURE from
24 2008 until I believe May of 2008 through October of 2011, yes.

25 Q. And the SURE database is the one that contains all of

1 the data regarding Pennsylvania voters?

2 A. It is, yes.

3 Q. You have in total worked for the Department of State for
4 19 years; is that right?

5 A. I believe it is 19 years now, yes.

6 Q. Now, Pennsylvania voter ID law, otherwise known as Act
7 18, was passed in March of 2012?

8 A. It was, correct.

9 Q. It has not yet actually been in effect for an election,
10 has it?

11 A. Not fully in effect, no.

12 Q. So, it was what was termed a soft rollout in May of 2012
13 election; is that right?

14 A. Correct. We had a soft rollout in May of 2012 as well
15 as in November of 2012.

16 Q. And a soft rollout is that people would be asked for ID,
17 but if they didn't have it or didn't want to show it, they
18 would still be allowed to vote?

19 A. That's correct, yes.

20 Q. So, in strict terms, the actual photo ID requirement has
21 not been applied for Pennsylvania election?

22 A. Right. The in-person photo ID or voter ID requirement
23 hasn't. The absentee has, the first time in November of 2012.

24 Q. You have confidence in the integrity of Pennsylvania's
25 November 2012 election; don't you?

1 A. I do.

2 Q. And you have confidence in the integrity of
3 Pennsylvania's 2013, May, primary elections?

4 A. I do.

5 Q. And you in fact have confidence in the integrity of
6 every Pennsylvania election that has occurred over the past 11
7 years, don't you?

8 A. I do, yes.

9 Q. During those 11 years the requirements of the voter ID
10 law that was passed in March of 2012 have not been in effect,
11 have they?

12 A. No, they have not.

13 Q. I want to go over the operation of the voter ID law
14 starting March 14th of 2012. That is the passage date of the
15 law?

16 A. Yes, it is.

17 Q. Now, before we do that, any person who meets the
18 qualifications in the Pennsylvania Constitution can register
19 to vote; is that right?

20 A. Correct. If they're qualified to register, yes.

21 Q. And the qualifications are that they must be 18 years of
22 age?

23 A. Correct.

24 Q. They must be a United States citizen?

25 A. That's correct.

1 Q. And they must have lived in the state for, is it 30
2 days?

3 A. Yes. They must have been a resident of the state for 30
4 days prior to the election.

5 Q. And they can get -- they can register without having any
6 type of identification; is that right?

7 A. They can. They are required to -- this is actually a
8 federal requirement. They're required to provide either their
9 driver's license or the last four digits of their Social
10 Security number at the time they register on the voter
11 registration application.

12 Q. But they can provide the last four digits of the Social
13 Security number, correct?

14 A. Correct, yes.

15 Q. So, they do not need a photo identification to register?

16 A. They do not, no.

17 Q. And in fact, even if they don't have a Social Security
18 number, they can still register to vote; isn't that right?

19 A. Correct. If they indicate on the form that they do not
20 have a Social Security number, they can register, yes.

21 Q. And the Department of State -- or is it the county or
22 the Department of State will assign a unique identifying voter
23 ID number for them?

24 A. The system actually assigns a unique identifier. The
25 county makes the determination on each individual record.

1 Q. All right. So, it is possible to register to vote and
2 be an eligible voter without having any type of photo ID or
3 even having a Social Security number in the State of
4 Pennsylvania?

5 A. It is, yes.

6 Q. Now, let's talk about the identification requirements
7 for voting prior to the passage of Act 18, all right? So,
8 prior to March 12th -- are you with me?

9 A. I am.

10 Q. I'm sorry March 14th of 2012.

11 A. I'm with you.

12 Q. So, when a voter -- let's assume, properly registered,
13 shows up at the polls or showed up at the polls, they would in
14 fact have to sign the poll book; is that right?

15 A. They would, yes.

16 Q. And then that signature was in fact matched to the
17 signature that would be on file from the voter registration;
18 is that right?

19 A. Correct. There is an inverted copy of the signature
20 that the poll worker can see, and it's compared to the
21 signature that's provided at the time that the voter enters
22 the polls.

23 Q. And if the signature doesn't match, what happens?

24 A. If the signature's not a match, the poll worker has the
25 option, and typically, the person signing that individual

1 would go to the judge of elections to make a determination as
2 to the qualifications; and if it does not match, a provisional
3 ballot would be provided to the individual.

4 Q. So, there is some attempt made by the poll worker to
5 establish that the person who is voting, at least that their
6 signature matches the signature that's on file?

7 A. Yes. That's the expectation, yes.

8 Q. Now, in addition to having to sign the poll book and
9 match the signatures, since I believe 2004 -- and you will
10 have to help me out here -- there's also another
11 identification requirement for first-time voters.

12 Do you know about that?

13 A. I do, yes.

14 Q. And is 2004 the year that went into effect?

15 A. I -- I can't recall if it was 2004 or 2006. There were
16 some provisions that went into effect in '04 and some in '06.
17 I can't recall if that was one, but at least since 2006 for
18 sure.

19 Q. And in fact, that ID requirement for first-time voters
20 is required by both federal and state law; do you know --

21 A. It is, yes.

22 Q. Now, the range of IDs that a person can show as a
23 first-time voter includes more than just photo IDs; is that
24 right?

25 A. It does. And I want to make an important distinction I

1 think might be relevant. First-time voter, meaning somebody
2 who is voting for the first time in a precinct or polling
3 place, so it wouldn't necessarily be a brand new voter, but
4 the first time in that location.

5 Q. Absolutely. So, let's just make sure this is perfectly
6 clear. So, if you either become of age and register for the
7 first time, or you move into state and register for the first
8 time in Pennsylvania, you have to show some form of ID as a
9 first-time voter; correct?

10 A. Correct.

11 Q. But also if you have been a long-time registered voter
12 in Pennsylvania, or a short-time registered voter and you move
13 and your polling place changes, you have to present ID the
14 first time you show up at the polling place; is that right?

15 A. That's correct, yes.

16 Q. You certainly -- any of the identification, the photo
17 identification that is allowed under Pennsylvania's new voter
18 ID law, under Act 18, would satisfy that requirement; is that
19 right?

20 A. I believe so, yes.

21 Q. But in addition to that, individuals could show pretty
22 much any kind of official mail that is sent to them that has
23 their name and address on there; is that right?

24 A. I believe it would be mail from a government agency or a
25 utility bill counts. I don't have the list committed to

1 memory, but my recollection is that those things would
2 suffice.

3 Q. So, it could be a telephone bill?

4 A. Yes, a utility bill, absolutely.

5 Q. Could it be a voter registration card?

6 A. Yes, under the current state law, it could be a voter
7 registration card.

8 Q. And anytime somebody registers for the first time, they
9 get a voter registration card.

10 A. They are issued a card by the county voter registrar,
11 yes.

12 Q. And those cards are free?

13 A. They are, yes.

14 Q. And you don't pay to register to vote?

15 A. No.

16 Q. You don't pay for the voter registration card?

17 A. No.

18 Q. And that's sent to you by mail?

19 A. It is, yes.

20 Q. So, you don't have to go anywhere to get that form of
21 ID?

22 A. No, it's sent to you by non-forwardable mail.

23 Q. You're not aware of any legal challenges to this
24 first-time voter ID requirement, are you?

25 A. I'm not aware and I do not recollect any at the time.

1 Q. Now, the 2012 photo ID law created a shorter list of
2 acceptable IDs; is that correct?

3 A. The 2000 --

4 Q. I'm sorry. The 2012 law created a shorter list of
5 acceptable photo IDs.

6 A. I don't know if the list of acceptable photo IDs was
7 shorter. I don't know if that's true, but --

8 Q. Let me rephrase that. Created a shorter list of IDs
9 that can be used to vote; correct?

10 A. That would be correct, yes.

11 Q. So, for instance, you have to now have a photo on the
12 ID; correct?

13 A. Correct.

14 Q. It has to have an expiration date, unless it's a
15 military ID that says there is no expiration date.

16 A. Correct.

17 Q. And the name must substantially conform to the name in
18 the voter registration; is that correct?

19 A. That's correct, yes.

20 Q. If we could put up a copy of Exhibit 19, which is the
21 formally introduced, I'm sorry, at the trial last July.

22 Now, I show you what's been marked as Petitioners'
23 Exhibit 19. Do you recognize this document?

24 A. I do, yes.

25 Q. This is a voter ID law guide put out by your agency?

- 1 A. It is.
- 2 Q. If you will turn to page two at the bottom of the page,
3 it says, updated May 24, 2012?
- 4 A. That's correct.
- 5 Q. Is that correct.
- 6 A. Yes.
- 7 Q. So, there is a more recent version of this guide --
- 8 A. There is.
- 9 Q. -- correct?
- 10 A. Yes.
- 11 Q. I'm just going to use this for a limited purpose. I'm
12 not trying to trick or deceive you here. I'm trying to
13 establish the requirements at the time of the law's passage.
- 14 A. I trust you, Vic.
- 15 Q. So, if you will turn to what is page one at the bottom,
16 says page one of six, which is the second page of the exhibit,
17 it actually has the IDs that are acceptable for purposes of
18 voting; do you see that?
- 19 A. I do, yes.
- 20 Q. On the left, it says, what is an acceptable form of ID?
- 21 A. Correct.
- 22 Q. So, the IDs are Pennsylvania driver's license or PennDOT
23 photo ID card; correct?
- 24 A. Correct, yes.
- 25 Q. U.S. passport is the second one, correct?

1 A. Correct.

2 Q. U.S. military ID?

3 A. Correct.

4 Q. An employee photo identification issued by the federal,
5 Pennsylvania, a Pennsylvania county or Pennsylvania municipal
6 government; did I read that correct?

7 A. Yes.

8 Q. Photo identification issued by accredited Pennsylvania
9 public or private institution of higher learning; is that
10 right?

11 A. Correct.

12 Q. And photo identification issued by a Pennsylvania care
13 facility, including long-term care facilities, assisted living
14 residences, and personal care home; is that right?

15 A. That is right.

16 Q. Now, there is one other one at the bottom of that block
17 which is in the case of a voter who has a religious objection
18 to being photographed. Acceptable IDs are Pennsylvania valid
19 without photo driver's license and PennDOT valid without photo
20 identification card; is that right?

21 A. That's right.

22 Q. And what are those?

23 A. Those are IDs issued by the Pennsylvania Department of
24 Transportation specifically for individuals who have religious
25 objections so that they can either drive or board a plane or

1 any of the other reasons that you need a valid ID.

2 Q. Is it primarily the Amish who take advantage of that
3 exception?

4 A. And, yes, in Central Pennsylvania, there's a fair amount
5 of Amish; and as I understand it, they would fall into that
6 category of individuals.

7 Q. Do you know how many of those licenses are issued in a
8 year?

9 A. I do not.

10 Q. Now, coming back to -- I want to focus on the accredited
11 Pennsylvania or public or private institutions of higher
12 learning.

13 Now, there's no law -- are you aware of any law in
14 Pennsylvania that requires accredited institutions of higher
15 learning to issue an ID card?

16 A. I'm not aware of any.

17 Q. And you're not aware of any law that requires them to
18 issue an ID card with an expiration date, are you?

19 A. I'm not, no.

20 Q. And the Department of State did not instruct
21 institutions of higher learning in Pennsylvania, after passage
22 of the voter ID law, to issue identification cards with
23 expiration dates?

24 A. We didn't instruct them. We didn't reach out to
25 colleges and universities and instruct them to do it.

1 Q. And did you -- the Department of State has no authority
2 to instruct institutions of higher learning to issue such IDs.

3 A. Correct. We couldn't mandate it.

4 Q. Does the Department of State monitor or keep track of
5 which institutions and how many issue ID cards with expiration
6 dates?

7 A. We do periodically, but it's not a day-to-day function
8 of the Department that I'm aware of.

9 Q. So there's no systematic effort to track which
10 institutions are issuing IDs that would comply with the photo
11 ID law?

12 A. Not that I'm aware of.

13 Q. I want to run through the same questions in terms of
14 personal care homes. You're not aware of any law requiring
15 licensed personal care homes in Pennsylvania to issue a photo
16 ID with registered -- with expiration date?

17 A. I am not.

18 Q. And the Department of State did not, and in fact has no
19 authority to direct these personal care homes to issue such an
20 ID?

21 A. That's correct.

22 Q. And the Department of State does not undertake any
23 systematic monitoring of these personal care homes to
24 determine which ones issue an ID with an expiration date.

25 A. Systematic, no.

1 Q. Are you aware of any attempt made by the Department of
2 State to track which personal care homes maintain or issue
3 IDs, compliant IDs?

4 A. I don't recall if we surveyed them at any point in time,
5 so I'm not aware of that.

6 Q. So, as you sit here now, you can't identify any such
7 effort to survey Pennsylvania personal care homes?

8 A. I cannot.

9 Q. Now, some of the IDs that are allowed for voting under
10 this law are what's known as secure; correct?

11 A. Correct, yes.

12 Q. So, by secure, that means that there has been a process
13 undertaken that is recognized by, say, the Federal Government
14 to allow people to board an airplane?

15 A. Correct. There's a more rigorous vetting process, yes.

16 Q. And the IDs on here that would be considered secure for
17 that purpose would be the license -- the PennDOT license, the
18 PennDOT non-driver ID, the U.S. passport, and the U.S.
19 military ID; is that correct?

20 A. I would think they would all fall under that category,
21 and certainly the PennDOT IDs would be considered secure IDs.

22 Q. Right. Now, the next one there is employee photo ID.
23 Do you know if that one's considered secure?

24 A. I don't know that generally it is. I would imagine some
25 Federal Government IDs are considered secure based on the

1 vetting process for obtaining them.

2 Q. Now, you as an employee in the State of Pennsylvania
3 have a photo ID issued by the Department?

4 A. I do.

5 Q. And could you use that to board an airplane?

6 A. I don't believe I could. I have never tried, so I
7 couldn't tell you whether --

8 Q. But the law also for instance authorizes municipal
9 governments to issue photo IDs; correct?

10 A. Correct.

11 Q. And so if for instance, we had Podunk Borough in Butler
12 County decided to issue employees to its five employees,
13 including the dog catcher, that person could use the ID as
14 long as it had a photo and it had an expiration date; is that
15 right?

16 A. That's correct. And be careful. I live in one of those
17 Podunk small boroughs.

18 Q. I did not mean to disparage, certainly.

19 A. We value our two employees at the water plant.

20 Q. And the same is true for college IDs, college and
21 university IDs and personal care home IDs, those are not
22 secure either; are they?

23 A. Not that I'm aware of, no.

24 Q. Now, there are a number of commonly used photo
25 identifications that are not authorized by this law; is that

1 correct?

2 A. That's correct, yes.

3 Q. So, for instance, while this allows IDs from municipal,
4 county, state and Federal Governments, it does not allow
5 school district photo IDs; is that correct?

6 A. Not that I'm aware of, no.

7 Q. A category that's just not a permissible ID that could
8 be used to vote --

9 A. Correct.

10 Q. -- correct?

11 A. Yes.

12 Q. Veterans IDs are not authorized for voting purposes.

13 A. That's my understanding, yes.

14 Q. So that's distinct from the military ID which is
15 somebody who is on active duty, correct?

16 A. Yes, or retired military.

17 Q. Well, and if you are a veteran, you're out, but it has
18 no expiration date, so it is not authorized for use to vote;
19 correct?

20 A. Yeah, I think -- I think the distinction is whether it's
21 veteran's ID card or it's a military ID card issued by the
22 Department of Defense. I believe there are some retired
23 military ID cards issued by the DOD.

24 Q. But if it's an ID card issued by the Department of
25 Veterans Affairs, then it is not acceptable for voting even

1 though it has a photo of the individual and the name.

2 A. I believe that's correct, yes.

3 Q. And driver's licenses or passports -- start with
4 driver's licenses or non-driver PennDOT IDs that are expired
5 more than a year cannot be used to vote; is that right?

6 A. Correct, yes.

7 Q. And even though the name hasn't changed, the address
8 hasn't changed, there is a likeness in the photos, that still
9 cannot be used to allow the person to vote under the photo ID
10 law?

11 A. Run that by me again, please.

12 Q. So, if the -- if you have one of these PennDOT products
13 that is more than a year expired, correct, that ID cannot be
14 used to vote, even though the name, the address, the photo
15 likeness --

16 A. Correct, yes.

17 Q. -- are accurate, that cannot be used?

18 A. Correct.

19 Q. Now, there's a new ID on the scene, a new kid on the
20 block, which is the Department of State ID; is that correct?

21 A. That's correct.

22 Q. And that became available August 27th of 2012?

23 A. Yes, I believe that date is accurate, yes.

24 Q. Okay. I don't want the DOS ID to feel neglected. We
25 will return to that, and spend some extended time discussing

1 the implementation of the DOS ID.

2 Let's talk briefly about what happens, now, under the
3 photo ID law when you come to vote on Election Day. Okay.
4 So, this is now under the new law how it would work, so you
5 show up at the polls, and you don't have ID. You either
6 didn't know, you didn't have it, you forget, whatever reason.

7 You stood in line, you get to the front and you're asked
8 for the ID, and you don't have it. Okay? Now, at that point,
9 it's too late to vote by absentee ballot; is that right?

10 A. Yes, that's correct.

11 Q. If you do not have a compliant ID when you show up at
12 the polls, you must vote provisionally; is that right?

13 A. That's correct. You have the option of, I believe,
14 filling out an indigency affirmation, but you still would be
15 voting by provisional ballots.

16 Q. Now, let's talk about that indigency affirmation. Under
17 that affirmation it says -- I'm going from memory so I'm
18 paraphrasing, that you have to affirm that you neither have an
19 ID nor can afford to get a valid ID; is that correct?

20 A. I don't know if that's the exact language, but that's
21 the gist of it; yes.

22 Q. And Pennsylvania makes its PennDOT non-driver ID and the
23 Department of State ID available for voting purposes for free;
24 correct?

25 A. That's correct, yes.

1 Q. So people -- it would be very difficult for people to
2 actually sign that affirmation saying they cannot afford a
3 free voter ID, correct?

4 A. I would expect so, yes.

5 Q. So, you don't get to vote on a regular ballot if you
6 don't have an ID on Election Day; you have to vote
7 provisionally. Is that right?

8 A. That's correct, yes.

9 Q. Now, in order for that provisional ballot to count, the
10 only way you can do that is to actually go out and procure one
11 of the acceptable forms of identification under the law that
12 we just reviewed; is that right?

13 A. Correct. If you forgot it, I would imagine that would
14 be easy enough, but if you did not have one, you would have to
15 procure it.

16 Q. So, if you have it, you forgot it at home, obviously
17 then you can use that. If you don't have one, your only
18 option is to go out and get one of this list of acceptable
19 photo IDs; is that right?

20 A. That's correct, yes.

21 Q. Now, for most people who are not in personal care home,
22 who are not students, who are not in the military, the only ID
23 on that list that will be available to them is to go to
24 PennDOT; is that right?

25 A. That's correct, yes.

1 Q. In order for that provisional ballot to count, the voter
2 must in fact obtain that ID, whether they had it at home or
3 whether they have to go out and secure it and present it to
4 the county Bureau of Elections within six days of Election
5 Day; is that right?

6 A. That's correct, yes.

7 Q. So, it's got to be there by close of business or 5:00
8 six days after Election Day?

9 A. Correct.

10 Q. So, if you are a person who does not have a compliant
11 ID, say, you're -- you're just not engaged. You had no idea
12 there's an ID requirement. You find out for the first time
13 when you show up on election. And they say, ID. And you say,
14 what do you mean ID? And they say, you need ID. They have to
15 find a PennDOT location to go and get an ID; is that right?

16 A. That's correct.

17 Q. And there are only 71 locations across the state where
18 an individual can go to get a valid PennDOT ID that can be
19 used for voting; is that right?

20 A. That's correct.

21 Q. And in fact, there are nine counties in the Commonwealth
22 of Pennsylvania that don't have a single Department of
23 Transportation bureau where somebody could go and get an ID
24 like that?

25 A. I believe that's correct, yes.

1 Q. And then there's another 11 counties that have an office
2 that's open one day a week and another 11 that have an office
3 that's open two days a week; is that right?

4 A. Correct.

5 Q. So, depending on where you are, there may not be a
6 single place in your county where you can go to get an ID, or
7 there may be one that's open one or two days a week between
8 the time of election and the time you have to turn in that
9 photo ID to the Bureau of Elections; is that right?

10 A. That's correct.

11 Q. Now, once you get that ID, it has to be delivered to the
12 county Bureau of Elections by the deadline on the sixth day
13 after the election; is that right?

14 A. That's correct.

15 Q. And that can be done either in person, by mail, by fax
16 or by email; is that right?

17 A. I believe that's correct, all of those.

18 Q. And if you don't do that, if you don't get one of those
19 compliant IDs to the Bureau of Election by the close of
20 business on the sixth day after Election Day, that provisional
21 ballot will not count?

22 A. That's correct.

23 Q. Now, are you aware that in some other states there is
24 what is often referred to as a safety net where if somebody
25 comes to the polls and for whatever reason doesn't have a

1 compliant ID, they can simply sign an affirmation saying that
2 they are who they are, they're registered, and they will be
3 allowed to vote? And I'm thinking of states like Michigan and
4 New Mexico. Are you aware of that?

5 A. As I recall, there are states that would have such a
6 document that you would sign on Election Day.

7 Q. And Pennsylvania does not have that kind of safety net;
8 is that right?

9 A. Other than the indigency affirmation, that would be a
10 provisional ballot.

11 Q. Right. And again, the indigency affirmation, you have
12 to affirm that you cannot afford to get one of the free IDs at
13 PennDOT?

14 A. Correct.

15 Q. Now, in some other states, they have a different form of
16 safety net, which is that anybody can vote by absentee ballot;
17 is that right?

18 A. Yeah. I believe the term of art that's in use, a
19 no-excuse absentee ballot. There are states like that, yes.

20 Q. So, let's talk a little bit about Pennsylvania's
21 absentee ballot rules.

22 First of all, I believe as you testified, if you show up
23 on Election Day and don't have an ID, you can't say, oh, no, I
24 want to vote by absentee. It's too late; is that right?

25 A. There is an emergency absentee provision, but it would

1 be practically -- it would be pretty late if you show up on
2 Election Day.

3 Q. Let's talk about how in fact that works. Normally, to
4 get an absentee ballot, you have to submit an application to
5 the county Bureau of Elections by 5:00 p.m. on the Tuesday
6 before Election Day; is that right?

7 A. That's correct, yes.

8 Q. So, one week in advance. Now, there is an emergency
9 application process to get an absentee ballot, and that could
10 be submitted by 5:00 on the Friday before Election Day --

11 A. Correct.

12 Q. -- is that right? Okay.

13 Now, and there is a way to vote on Election Day by
14 absentee ballot, but it requires going to the Court of Common
15 Pleas and getting a court order; is that right?

16 A. Correct. It's issued through the courts after Friday at
17 5:00 p.m.

18 Q. Can I, I don't know if --

19 A. I'm sorry. It's --

20 THE COURT: Before Friday or after Friday?

21 THE WITNESS: After Friday. Between Friday at
22 5:00 p.m. and Election Day, there is an emergency process
23 through the courts, the various Courts of Common Pleas, that
24 is specifically provided for in the Election Code.

25 BY MR. WALCZAK:

1 Q. But if you can't vote at the polls and you have not
2 gotten an absentee ballot application in by Friday at 5:00
3 before Election Day, the only way you're going to be able to
4 vote by absentee ballot is with a court order?

5 A. Correct.

6 Q. Now, let's talk about who can vote absentee in
7 Pennsylvania.

8 Now, you used the term a moment ago, I believe it's
9 no-excuse absentee voting?

10 A. Correct.

11 Q. And there are states that have no-excuse absentee
12 voting, correct?

13 A. That's correct.

14 Q. Georgia would be one of those states; is that right?

15 A. I believe it is.

16 Q. In Pennsylvania, there are restrictions on who can vote
17 absentee; is that right?

18 A. That's correct, yes.

19 Q. If you don't have those, I can show you some documents,
20 but let's try going through this. I suspect that you probably
21 know these by heart.

22 So, the only people who are eligible to vote absentee in
23 Pennsylvania are members of the military; correct?

24 A. Correct.

25 Q. I'm going to go to the list and ask you to agree --

1 A. Yes.

2 Q. -- on each. A military spouse, if they are away from
3 the election district?

4 A. Correct.

5 Q. County election workers?

6 A. Correct.

7 Q. Not sure why, because they're already there and it's
8 Election Day.

9 A. Well, they may not be in their polling or municipality.

10 Q. Good point. People with a religious objection to voting
11 on Election Day.

12 A. Correct.

13 Q. And then there's two others that would apply to other
14 folks, and the first one is, "an individual who, because of
15 the elector's duties, occupation or business, includes leaves
16 of absence for teaching, vacations and sabbatical leaves,
17 expects on Election Day to be absent the entire time that the
18 polls are open." Does that sound right?

19 A. That's correct, yes.

20 Q. So, in fact, you have to be absent from the voting
21 district for the entire day or from 7:00 to 8:00 in order to
22 take advantage of this absentee ballot allowance?

23 A. Correct. I don't know if we covered the illness or
24 physical disability, but that's also a reason.

25 Q. I knew you knew this by heart. That's the last one I

1 was going to cover. A person who, because of illness or
2 physical disability, is unable to attend his/her polling place
3 or to operate a voting machine and obtain assistance by
4 distinct and audible statements.

5 Is that the one you were just referring to?

6 A. That sounds correct, yes.

7 Q. So, there's six exceptions or six categories of people
8 that are allowed to vote absentee, and unless you can satisfy
9 one of those six, you can't vote by absentee ballot; is that
10 right?

11 A. That's correct, yes.

12 Q. And in fact, to get an absentee ballot, you have to sign
13 an affirmation, which is under oath, that says that you will
14 not be in the polling district for business or cannot vote due
15 to illness or disability on Election Day; is that right?

16 A. That's correct.

17 Q. And if you are doing it in terms of illness or
18 disability, you actually need to put down the name of a
19 physician to satisfy that.

20 A. I don't know that you need to in all cases. I believe
21 if you have a permanent, you may not need to do that. I don't
22 recall if you have to put the name of the physician down, but
23 I could be wrong. Sometimes it all gets jumbled up in my
24 head. I know you have to put a reason, for sure.

25 Q. I'm not going to dispute you on these election matters.

1 Now, so, there is a -- there is a situation where
2 somebody can be -- is it permanent -- is it permanently
3 disabled or folks who can -- I'm sorry, alternative ballots;
4 right?

5 A. Yes. That's a distinction.

6 Q. So, these are folks who have some medical authorization
7 saying that they cannot go to the polls or somehow are unable
8 to vote; and once you can vote alternatively, then you can
9 vote absentee all the time; is that right?

10 A. I -- the alternative -- the alternative ballot is a
11 provision to satisfy the requirements of the voting
12 accessibility for the elderly and handicapped. It's a federal
13 law. It would include anyone who is 65 or older or disabled,
14 provided they're assigned to a -- 65 or older if they're
15 assigned to an inaccessible polling place or any disabled
16 voter.

17 Q. And how many of those inaccessible places are there
18 across the state?

19 A. I don't recall. We actually just recently did our
20 annual survey with the counties and I don't have a firm
21 number; but I know there are a significant number of them in
22 XXX ^ CK #23I68y, but for the most part, it's a relatively
23 small number across the state.

24 Q. And it's getting smaller every year.

25 A. Correct.

1 Q. Now, the photo ID law established a -- let's make sure
2 we're getting terms. The photo ID law, when I say that I'm
3 referring to Act 18; okay?

4 A. Correct.

5 Q. So the photo ID law also established some new document
6 requirements for people who vote by absentee ballot; is that
7 right?

8 A. Correct, yes.

9 Q. So, in order now for your absentee ballot to count, you
10 have to either submit with your application or with your
11 ballot either a photocopy of one of the allowable forms of
12 photo ID; correct?

13 A. Correct.

14 Q. That's one option. Another option is your driver's
15 license number, correct?

16 A. Correct.

17 Q. A -- and a third option is the last four digits of your
18 Social Security number?

19 A. Correct.

20 Q. Is that correct?

21 A. Mm-hmm.

22 Q. Now, for -- not on this list are people who don't have a
23 Social Security number, but have a voter ID number; is that
24 right?

25 A. Yes. A SURE or unique identifier.

1 Q. So, if you are one of -- we talked earlier about when
2 you go to register, if you don't actually have a Social
3 Security number, the Department assigns you a unique voting
4 number. Can you use that number on your absentee ballot in
5 order to validate your absentee ballot?

6 A. I don't believe I can. I think -- you have to indicate
7 that you do not have a Social Security number.

8 Q. Now, when that absentee ballot application or the actual
9 ballot comes in with this ID, the county must be able to
10 verify whatever form of ID is being used; is that right?

11 A. Correct.

12 Q. So, for instance, if somebody submits a driver's license
13 number, and that number does not match what is on the SURE
14 database, what happens?

15 A. Well, the county ultimately makes a determination in
16 counting the ballot, but an investigation would occur at that
17 point in time --

18 Q. And what happens --

19 A. -- to determine the veracity of the information.

20 Q. -- in that investigation?

21 A. To determine if the voter simply transposed a number,
22 that would be kind of the administrative process; but the
23 provisional ballots are done in an open meeting, and any
24 decision could be appealed, if the county ultimately decides
25 to not count the ballot for that reason.

1 Q. Well, let's -- so, I guess I'm not clear.

2 So, let's say a voter submits an absentee ballot, and on
3 the ballot, the ID is the last four digits of the Social
4 Security number.

5 A. Correct.

6 Q. And on the ballot they put 1234 as the last four digits,
7 and when it comes in and they check the SURE database, it says
8 4321. Is that ballot counted?

9 A. At that point, it may or may not be counted; but
10 ultimately, the county will do -- you know, this is the
11 distinction between the statutory requirement, and what
12 happens in practice.

13 Obviously, the county may have an opportunity to verify
14 with the voter whether a mistake was simply made. These
15 decisions, as I said, are all done at county -- official
16 county Board of Elections meets and the ballots are opened and
17 counted and canvassed, is the term used in the election code,
18 publicly.

19 Q. Now, you're saying -- as I understood you, are you
20 saying there may be a variance between what the law requires
21 or allows and what happens in practice?

22 A. What I'm -- no, I'm not saying there's a variance
23 between it. What I'm saying is there's an administrative
24 process that occurs prior to that counting of the ballots,
25 which may enable counties to get corrected information from

1 the voter.

2 Q. It may allow them; but in a busy presidential election
3 year, is that always done?

4 A. I couldn't answer that question, if it's always done.

5 Q. But the bottom line is that if you show up on Election
6 Day without an acceptable ID, you can't use the absentee
7 ballot as a safety net?

8 A. Correct.

9 Q. So, on Election Day, if you show up for whatever reason
10 without an acceptable form of ID, you have to vote
11 provisionally; and the only way that you can make that
12 provisional ballot count is to deliver within six days to the
13 county Bureau of Elections one of the list of valid photo IDs;
14 is that right?

15 A. Correct, yes.

16 Q. Now, the Department of State has acknowledged that not
17 everyone has a form -- one of these forms of approved ID; is
18 that accurate?

19 A. That's correct, yes.

20 Q. And the debate has been, in this courtroom and
21 elsewhere, just exactly how many people fall into that
22 category; is that right?

23 A. Yes, I believe I have heard the term used quite a bit.
24 Numbers game.

25 Q. Big numbers.

1 A. Yes.

2 Q. Yes. I think we have heard big numbers bandied about
3 this courtroom.

4 Now, the initial estimate put out by the Department of
5 State was that there were 89,000 voters, registered voters
6 without photo ID; do you recall that?

7 A. Roughly 1%, I think the initial estimate was 1%.

8 Q. And I believe that's an estimate that came from Rebecca
9 Oyler; is that right?

10 A. I don't know if it came from her directly, but I believe
11 ultimately that she is the one that provided that.

12 Q. And you would think that number is low?

13 A. It could potentially be low. It was based on comparison
14 of the number of voting age population and individuals out of
15 the total U.S. census estimate that had a PennDOT product of
16 some sort.

17 Q. Would you call that a scientifically rigorous analysis?

18 A. I believe it was a high level analysis for initial bill
19 analysis, and it had to be turned around rather quick.

20 Q. So, that was an analysis while the law was being debated
21 and prior to passage.

22 A. As I recall, yes.

23 Q. Now, in June of 2012, the Department of State undertook
24 what has been referred to as a database match; is that right?

25 A. That's correct, yes.

1 Q. The database match included or -- involved comparing the
2 SURE database with the PennDOT database; is that right?

3 A. That's correct, yes.

4 Q. And there were two reasons for doing this match. All
5 right, one is to determine the -- kind of the realm of voters,
6 how many voters could not be matched or could not be
7 identified as having a PennDOT ID; correct?

8 A. I think the primary reason was to backfill the driver's
9 license and Social Security number information into the SURE
10 system in preparation for the absentee requirement.

11 Secondly, it was used as a -- as an informational
12 tool to determine potentially how many people did not have a
13 PennDOT product, but it was really an exercise in matching the
14 two databases.

15 Q. Okay. So, you say the primary reason was to backfill.

16 A. Correct.

17 Q. So, the SURE database did not have many driver's license
18 or Social Security numbers entered into the database; correct?

19 A. I don't know that I would characterize it as not many,
20 but there was a significant portion of the records that did
21 not have either; correct.

22 Q. And after the passage of the photo ID law, it was
23 important to have those numbers in there, because those could
24 be the identification numbers that voters used on their
25 absentee ballots; is that right?

1 A. Correct. We believed the most efficient way to process
2 absentee ballots was to obtain that information upfront and
3 backfill in the system so it was already there.

4 Q. Now, if a voter turns in an absentee ballot and puts
5 1234 as the, are the last four digits of my Social Security
6 number, and there's no Social Security number entry in the
7 SURE database, what happens to that absentee ballot?

8 A. It is run through the same hopper, the Help America Vote
9 Act verification process that's in place for voter
10 registration applications.

11 It will check the number if it's a driver's license
12 number against PennDOT's database or against the Social
13 Security Administration's database for verification.

14 Q. And the second reason you mentioned for running this
15 database match was to get a sense of how many people might be
16 lacking ID; is that right?

17 A. I don't know that it was done to find out how many
18 people might be lacking ID. It was done as we were going
19 through our voter education and outreach campaign as well as
20 the advertising campaign. We wanted to get a sense of the
21 realm of people that might need additional information
22 regarding the voter ID law.

23 Q. So, these are people who might not have a valid ID?

24 A. That -- correct, may not have a valid ID.

25 Q. Now, on -- I'm sorry, coming back to the backfill issue.

1 Now, normally, that's a county's responsibility to input
2 data into the SURE database?

3 A. Correct, yes.

4 Q. So, the voter registrations when they come in go to the
5 county, and the county workers are responsible for entering
6 that data into the database?

7 A. That's correct, yes.

8 Q. And once it's entered, then's available to the
9 Department of State and it's part of a statewide integrated
10 database?

11 A. Correct. It's available to all of the counties through
12 the statewide database, maintained by the Department of State.

13 Q. And outside of this one backfill effort, normally, the
14 Department of State is not responsible for entering additional
15 Social Security numbers and driver's license numbers; is that
16 correct?

17 A. That's correct, yes.

18 Q. And at this point, you have no plans to do that again;
19 correct?

20 A. No, we do not.

21 Q. Now, in terms of the numbers that came out through that
22 Department of State, June, 2012 match -- and I'm going to use
23 somewhat round numbers here. We can look at the exact ones,
24 but the match found that there were 759 votes -- I'm sorry,
25 759,000 voters in the SURE database for whom you could not

1 find a match in PennDOT; is that right? Does that sound about
2 right?

3 A. That's right, yes.

4 Q. And then there was another 130,000 voters for the SURE
5 database where they couldn't actually validate the PennDOT
6 number; is that right?

7 A. I believe that number is correct, yes.

8 Q. And then there was about another 500,000 voters whose
9 IDs, who had PennDOT IDs, but that would be expired by the
10 November, 2012, election, correct?

11 A. That's correct, yes.

12 Q. So, when you look at all of those totals, it's about 1.4
13 million voters who either could not be matched or would not
14 have a valid ID on Election Day; is that right?

15 A. It's -- well, it's 759,000 records that cannot be
16 matched between the two databases. The additional numbers
17 were matches, but there was question as to whether they would
18 obtain ID or renew ID prior to election.

19 Q. So, there was questions about whether those additional
20 130 and 500,000 could obtain ID before Election Day?

21 A. And -- I think that would be a fair assessment, yes.

22 Q. Now, the Department of State has no plans to do any more
23 data matching between PennDOT and DOS databases; correct?

24 A. That's correct, yes.

25 Q. And you haven't done any other data matching since this

1 June, 2012, effort; is that right?

2 A. Correct. We have not compared the two databases.

3 Q. Now, before the November election, Secretary Aichele --
4 she is the Secretary of State?

5 A. She is, yes.

6 Q. Mentioned that DOS might do another database match after
7 the election to determine the number of voters without ID. Do
8 you recall that?

9 A. She may have said that in the press, yes.

10 Q. Do you recall hearing --

11 A. I do recall hearing about that statement, yes.

12 Q. But that's never happened, correct? You've not --

13 A. We have not.

14 Q. She made that statement but no matching effort has been
15 done, correct?

16 A. Correct, no additional matching effort by PennDOT has
17 been done, no.

18 Q. And there's no plans to do an additional matching
19 effort.

20 A. Correct.

21 MR. WALCZAK: Exhibit 2072.

22 BY MR. WALCZAK:

23 Q. Before I turn to this, let me just clear up one issue
24 from when we were talking about the allowable IDs. I was
25 asking you about personal care homes and that those were in

1 fact authorized IDs if they have a photo or -- and an
2 expiration date; is that right?

3 A. A photo and expiration date and they would need a name,
4 essentially, of course.

5 Q. And when I use the terms personal care homes, it
6 actually, I believe in the statute says care facility; is that
7 right?

8 A. I believe that's the term that's used, yes.

9 Q. And so, let me just ask those questions again, to insure
10 that we have accuracy here in the record. So, facilities --
11 care facilities may issue photo IDs that satisfy Act 18?

12 A. Correct. I believe they have to be licensed care
13 facilities or there is a distinction, but they -- the term of
14 art is care facilities.

15 Q. But neither the Department of State nor any other
16 Commonwealth agency has the authority or the power to direct
17 care homes to issue such IDs, correct?

18 A. That's correct. Certainly, the Department of State does
19 not. Whether any other state agency does, I don't know.

20 Q. And there has been no effort to track which of these
21 care facilities in fact have issued a compliant photo ID.

22 MS. HICKOK: Objection. Mischaracterizes his
23 prior testimony. The question is mischaracterizing his prior
24 testimony on this. He was asked whether it's systematically
25 tracked, and he answered that question; and he just asked him

1 that his testimony was that it did not at all track.

2 MR. WALCZAK: I believe I will let the witness
3 answer. He is now alerted to the issue.

4 THE WITNESS: Yeah, I --

5 BY MR. WALCZAK:

6 Q. So, has there been -- has the Department of State made
7 an effort to track how many care facilities issue compliant
8 IDs?

9 A. I am not aware of any personally, no. I know for sure
10 that an effort was made with colleges and universities, and it
11 is possible that someone at the Department of State surveyed
12 care facilities; but we certainly do not systematically do it
13 on a regular basis.

14 Q. Now, but you are the Commissioner of the -- whatever the
15 long agency name is that I have trouble remembering; correct?
16 You are the top official in the Department, correct?

17 A. I'm certainly not the top official in the Department.

18 Q. You are the Commissioner of Bureau of Commissions,
19 Elections and Legislations.

20 A. Believe me. I am reminded repeatedly that I'm not the
21 top official in the Department.

22 Q. I guess I can't promote you, either.

23 A. No, you cannot.

24 Q. And if such a study had been done, would you not expect
25 that you would know about that?

1 A. I may have heard about it. I would think that in most
2 cases, I would be told about it, but that's not necessarily
3 always the case.

4 Q. But as you -- I'm sorry.

5 A. I'm not even -- I want to be clear, too. I'm not even
6 the Chief Election Official in the Commonwealth of
7 Pennsylvania. That would be the Secretary of the
8 Commonwealth, so --

9 Q. I think that's clear.

10 A. Okay.

11 Q. We understand CYA here.

12 But as you sit here today, you cannot tell me how many
13 of the care facilities in the State of Pennsylvania have
14 issued compliant photo IDs that can be used for voting?

15 A. I cannot.

16 Q. All right. So, let's look at what's been marked as
17 Exhibit 2072. Now, do you recognize this document?

18 A. I don't specifically recognize it, but it does appear to
19 be -- it appears to be a list of PennDOT facilities.

20 Q. If I told you this is a printout from an Excel
21 spreadsheet, would that help you recognize this?

22 A. Yes, it's certainly a printout in an Excel spreadsheet
23 and it appears to be PennDOT sites with the data relating to
24 probably IDs issued by date.

25 Q. Okay. And so, in fact -- if you want to dispute this,

1 by all means, but the first two pages are the tab printout
2 from the Excel spreadsheet on PennDOT non-driver IDs issued
3 for voting purposes, and then the second two pages are the tab
4 for the Department of State IDs?

5 MS. HICKOK: Your Honor, he has not
6 established whether he's even seen this document, whether he
7 created it. Object to any questioning without that
8 foundation.

9 THE COURT: We'll proceed.

10 MR. WALCZAK: Your Honor, this document was
11 presented by the Department of State pursuant to order of this
12 court, and this is -- I represent to the Court that this is
13 the most recent database that was presented, I believe, last
14 week which provides the numbers of IDs that have been issued
15 by the Commonwealth.

16 MS. HICKOK: Your Honor, I believe that
17 document was produced by the Department of Transportation
18 under an agreement that had been made earlier to update those
19 numbers.

20 THE COURT: It's a good time for us to take a
21 five-minute recess, but I'll have counsel stay here and we'll
22 iron this out. Okay.

23 We'll recess for five minutes.

24 THE BAILIFF: Court is in recess.

25 (COURT RECESSED AT 3:30 P.M. AND RECONVENED AT

1 3:40 P.M.)

2 THE BAILIFF: Court's in session. Remain
3 seated.

4 MS. HICKOK: Your Honor, this document was
5 produced by the Pennsylvania Department of Transportation and
6 was generated by the Pennsylvania Department of
7 Transportation.

8 Subject to those limitations, the fact that he
9 did not create it, and I don't know if he ever even saw it, I
10 do not have any objection to his being questioned about it to
11 the extent of his knowledge.

12 MR. WALCZAK: I'll just be very brief with
13 this, Your Honor.

14 THE COURT: That's what I really expected to
15 see, what's happened since the first injunction and the
16 hearing today. I mean, isn't that what we're here to find
17 out? If it's been seamless and what efforts the State has
18 made to facilitate voter ID; but this is at least going to
19 something that I think is pertinent for all of us to look at.
20 Thank you.

21 MR. WALCZAK: Thank you, Your Honor.

22 BY MR. WALCZAK:

23 Q. So, Mr. Marks, if you look at 2072, you heard the
24 representation from your counsel, and I just want to focus on
25 the totals here. If you go to the second page of this

1 document, at the bottom, is a number 12981; do you see that?

2 A. I do, yes.

3 Q. Is that number of non-driver photo IDs that the -- that
4 PennDOT has issued for voting purposes since the Act went into
5 effect?

6 A. Yes, that appears to be that.

7 Q. Now, as you look at that spreadsheet, there are what
8 appear to be totals for each month; do you see that?

9 A. I do, yes.

10 Q. And starting in March of 2012, there were 485 IDs; is
11 that right?

12 A. That is correct, yes.

13 Q. And it peaked in August and September of 2012; do you
14 see that?

15 A. That's correct, yes.

16 Q. So, the high month was September with 4,183 IDs?

17 A. Correct.

18 Q. Is that right? Since November, the number of IDs for
19 voting purposes, PennDOT IDs for voting purposes being issued
20 has dropped below 100; is that right?

21 A. Yes, it appears it's dropped below 100 per month; yes.

22 Q. And for instance in June, there was only 37 IDs issued?

23 A. That's correct.

24 Q. Now, PennDOT non-driver photo IDs are not the only ID
25 card that is available for voters now. We made reference

1 earlier to the Department of State ID; correct?

2 A. That's correct, yes.

3 Q. We'll go through the genesis of that in just a minute.

4 If you turn to the third and fourth pages, this is a
5 spreadsheet similar to the first one that represents the
6 number of DOS IDs that have been issued by PennDOT site, and
7 by month. At the bottom of the fourth page there is a number,
8 3,830; do you see that number?

9 A. I do, yes.

10 Q. So, would that be the total of Department of State IDs
11 that have been issued since this product went online at the
12 end of August, 2012?

13 A. Yes.

14 Q. When you look at the column totals, the IDs started in
15 late August, is that right, of 2012?

16 A. It did, yes.

17 Q. So, there were 248 issued in August, and then peaked in
18 September with just under 200 IDs; is that correct?

19 A. Correct, yes.

20 Q. And since November the total number of DOS IDs being
21 issued by month has dropped to below 50; is that correct?

22 A. That's correct, yes.

23 Q. And there was only eight issued in July; is that
24 correct?

25 A. Correct, yes.

1 Q. So, the total number of IDs issued by PennDOT for voting
2 purposes since March of 2012, when the law was passed would be
3 the sum of 12,981, and 3,830; is that correct?

4 A. That's correct, yes.

5 Q. Is that 16,811? Is that --

6 A. I believe so. I used to be able to do math in my head.
7 It gets harder as I get older.

8 Q. I'm impressed with myself, but I think that's right, but
9 somebody with a calculator should be checking that.

10 A. I believe you're correct.

11 Q. So, that's the total number of IDs issued by PennDOT
12 which includes the Department of State ID to people without
13 IDs who need them to vote since the law went into effect in
14 March of 2012; is that right?

15 A. That's correct.

16 Q. Now, neither you nor the Department of State has made a
17 projection about how many more IDs are likely to be issued
18 before the November '13 election; is that right?

19 A. Correct. We have not issued a projection or made a
20 projection.

21 Q. But you do not expect that you're going to issue very
22 many between now and this November's election, for instance?

23 A. I would think relatively speaking, no. Municipal
24 election is typically not a well attended election, so.

25 Q. So, again, you do not expect that you're going to issue

1 very many between now and this November's election; is that
2 right?

3 A. Correct.

4 Q. All right. Let's now talk about this Department of
5 State ID. In approximately June of -- or in early June of
6 2012, the Commonwealth recognized that some voters were unable
7 to get a PennDOT secure ID, so that's either a driver's
8 license or the non-driver photo ID because of the strict
9 document requirements; is that right?

10 A. The timing sounds about right, but --

11 Q. And the strict document requirements were that you need
12 a raised -- an original or an official raised sealed birth
13 certificate or citizenship papers, correct, to show your
14 citizenship; correct? You need the official Social Security
15 card, correct?

16 A. Correct.

17 Q. And you need two proofs of residence, correct?

18 A. Correct.

19 Q. And by this time, the Department was seeing that there
20 in fact were categories of individuals who were having
21 difficulty or in fact unable to get the secure PennDOT ID; is
22 that right?

23 A. Correct. There were the general, the requirements you
24 just talked about. There were some various exceptions that
25 PennDOT made for groups of individuals, but ultimately, we

1 made that determination, yes.

2 Q. Where were those exceptions publicized?

3 A. I'm -- I don't know whether they were publicized or not.
4 This is based on information we were given by PennDOT.

5 Q. Can you identify for me one document that the Department
6 of State put out publicizing these exceptions that you just
7 referenced?

8 A. We did not publicize them.

9 Q. I'm sorry, you did not?

10 A. The Department of State did not. Whether PennDOT did it
11 or not, I don't know.

12 Q. You are going to need to --

13 A. Sorry.

14 Q. You can't point to a PennDOT document right now that
15 publicized these exceptions, either?

16 A. No, I can't.

17 Q. Let's look at Exhibit 20, which was previously
18 introduced last summer.

19 Do you recognize what was previously marked and admitted
20 as Petitioners' Exhibit 20?

21 A. I do, yes.

22 Q. Now, this is a June 12 email from Kathleen Kotula; is
23 that correct?

24 A. That's correct, yes.

25 Q. And who is Kathleen Kotula?

1 A. She is counsel for the Department of State.

2 Q. And you are one of the people that this email was sent
3 to; is that correct?

4 A. I am, yes.

5 Q. And it's dated June 12 of 2012?

6 A. That's correct, yes.

7 Q. In that first paragraph, it talks about starting to work
8 on issuing a Commonwealth of Pennsylvania Department of State
9 photo ID card, or DOS ID for voting purposes only; is that
10 right?

11 A. That's correct, yes.

12 Q. And it talks about, "we had a preliminary meeting last
13 Friday to discuss what the card would look like." Is that
14 correct?

15 A. Yes, that's correct.

16 Q. So, that would be on June the 8th?

17 A. Yes.

18 Q. If June --

19 A. Yeah, June 8th. Are you referring to the --

20 MR. KEATING: Are we going to object to this?
21 Are we going to object?

22 MS. HICKOK: Well, we were told that we would
23 be asked before they would disclose privileged documents, and
24 they have not consulted with us about this one.

25 MR. WALCZAK: Your Honor, this is a document

1 that was testified to last year, was offered and admitted into
2 evidence. So, this is something that's already been in
3 evidence.

4 MS. HICKOK: Your Honor, as you know, we have
5 been consulting on documents. This was not one of the
6 documents that they raised with us. We had identified
7 documents that were privileged.

8 THE COURT: Did you identify this document?

9 MR. RUBIN: No, they did not, Your Honor.

10 MS. HICKOK: I guess not.

11 THE COURT: You didn't identify it. It's been
12 admitted previously, so we'll let them go along with it.

13 BY MR. WALCZAK:

14 Q. So, further in that first paragraph, it says, "the
15 Department needs to develop the process and criteria for who
16 can obtain the card and how they obtain it." Is that correct?

17 A. Correct, yes.

18 Q. So, the process for starting to develop this DOS ID was
19 in early June of 2012; is that right?

20 A. That's correct, yes.

21 Q. And then, the email identifies four categories of people
22 that may need to obtain the DOS ID because they may not be
23 able to obtain the free non-driver's license photo ID from
24 DOT; is that right?

25 A. That's right, yes.

1 Q. And just to briefly categorize these four groups of
2 people, let me try to summarize them. The first one are
3 people born in another state or country without a certified
4 copy of either the birth certificate or citizenship papers and
5 either can't get them free or can't get them at all; is that
6 correct?

7 A. Correct.

8 Q. That's the first category of voter who would have a hard
9 time getting or can't get the PennDOT ID; is that right?

10 A. Correct.

11 Q. And the second category would be Pennsylvania born
12 residents who can't get the official Social Security card
13 because they don't have the original birth certificate,
14 correct.

15 A. Correct.

16 Q. Okay. So, you need -- it's kind of a Catch-22: To get
17 the Social Security card, you need to have the birth
18 certificate; is that right, your understanding of the process?

19 A. Yes, that is my understanding; yes.

20 Q. And then the third category of individuals who will have
21 a difficult time getting the PennDOT ID are Pennsylvania-born
22 people for whom the Department of Health has no record of
23 birth; is that correct?

24 A. That's correct, yes.

25 Q. And the fourth one would be out-of-state drivers who

1 don't want to relinquish their driver's license or other ID in
2 order to get one for voting; is that right?

3 A. That's right, yes.

4 Q. So, if you have another -- that form of ID, you would
5 have to give it up to get the PennDOT ID; is that right?

6 A. That's correct, yes.

7 Q. So, this is a problem largely for out-of-state students;
8 is that right?

9 A. This category 4?

10 Q. Yes.

11 A. Yes, that would address out-of-state students.

12 Q. And in fact it's legal for a student from, say,
13 Maryland, who goes to Penn State, may have a Maryland driver's
14 license, he could register to vote in State College, as long
15 as he's not registered to vote in Maryland as well.

16 A. Correct.

17 Q. Right, so he would be ineligible and could become a
18 registered voter in Pennsylvania even though he has a license
19 for Maryland?

20 A. Correct.

21 Q. Is that right?

22 A. That's right.

23 Q. So, the Department of State ID card was the
24 Commonwealth's response to these problems -- these four
25 categories of people were having, getting an ID; is that

1 right?

2 A. That's right, yes.

3 Q. Now, the ID was announced publicly for the first time on
4 Friday, July 20th with a press release; is that right?

5 A. I believe the date is correct, yes.

6 Q. Can we get Exhibit 1328.

7 Okay. I show you what's marked as Petitioners' Exhibit
8 1328. Do you recognize this?

9 A. I do, yes.

10 Q. Is this the first public announcement by the Department
11 of State of the new Department of State ID?

12 A. Yes, I believe it is.

13 Q. And can we just agree to call it the DOS ID from here on
14 out?

15 A. You can. That's what I call it.

16 Q. And so the issuance date at the top there is July 20th,
17 2012; is that right?

18 A. That's correct, yes.

19 Q. And second -- the first paragraph there, it says,
20 "Secretary Aichele announced the creation of a new card that
21 can be issued to voters who need photo identification under
22 Pennsylvania's voter ID law." Did I read that correctly?

23 A. You did.

24 Q. In the third paragraph there -- I'm sorry, in the fourth
25 paragraph there, it says we believe that these new -- this is,

1 I'm sorry, quoting I believe Secretary Aichele. "We believe
2 these new cards will be a safety net for those who may not
3 currently possess all of the documents they need for standard
4 photo ID from PennDOT. Our goals are to continue making
5 voters aware of the new voter ID law and helping those who may
6 not have proper identification obtain it."

7 Did I read that correctly?

8 A. You did.

9 Q. Does that accurately reflect the sentiments of the
10 Department of State?

11 A. Yes.

12 Q. And in that next paragraph, it says that these DOS IDs
13 will not be available until the last week of August; is that
14 right?

15 A. That's correct, yes.

16 Q. And in fact, they will be available only at PennDOT's
17 driver's license center; is that correct?

18 A. That's correct, yes.

19 Q. So, the only way you can get this DOS ID is to go to one
20 of the 71 bureau licensing offices run by PennDOT; is that
21 right?

22 A. Correct, yes.

23 Q. And one of the purposes of this lawsuit was to mitigate
24 issues raised in the law -- I'm sorry. One of the purposes of
25 this ID was to mitigate issues raised by this lawsuit; is that

1 right?

2 A. I believe -- I believe so. It was, a lot of these
3 issues that are outlined in the previous memos we discussed
4 were things that we learned as we were moving forward with
5 implementation of the law. I don't know that it was all tied
6 to the law. I don't want to be too loud. I have not found
7 the sweet spot yet.

8 Q. The lawsuit was filed on May 1st, 2012?

9 A. That sounds right, yes.

10 Q. And the lawsuit pointed out some examples of the
11 problems people had getting secure PennDOT IDs, correct?

12 A. That's correct.

13 Q. And the ones in Kathleen Kotula's email that we just
14 discussed, right?

15 A. Yes.

16 Q. And at timing of the announcement for the new ID which
17 was July 20th or five days before the trial started was linked
18 to the start of the trial in this lawsuit.

19 A. It may have been. I don't know if that's, if that was
20 the primary reason. I think a lot of that was linked to when
21 PennDOT would be able to start issuing the DOS IDs.

22 Q. Well, the ID wasn't going to be issued until the end of
23 August.

24 A. Correct, but we couldn't do it earlier than that because
25 they wouldn't be available until later in the summer.

1 Q. Now, you, as the Commissioner, are the Department of
2 State official ultimately responsible for implementation of
3 the card; is that right?

4 A. That's correct, yes.

5 Q. And as the responsible Commonwealth official, you took
6 whatever measures are necessary to insure that the individuals
7 who need ID will be able to get it; is that correct?

8 A. Correct, yes.

9 Q. Has the Department of State made a continuous effort to
10 try to help people get this DOS ID to the present?

11 A. Yes, we continue to work with PennDOT to issue the DOS
12 IDs, and that work continues and we expect that it will
13 continue throughout this year.

14 Q. And I ask -- on October 2nd, there was an injunction
15 entered saying that the ID couldn't be required, the photo ID
16 couldn't be required for voting in November. Did the
17 Department of State stop their efforts to helping people or
18 trying to insure that people got the DOS ID or some form of
19 ID?

20 A. No, we continued to issue DOS IDs.

21 Q. All right. So, the ID went online, became available on
22 August 27th; is that right?

23 A. That's correct, yes.

24 Q. And initially, when the ID first came online, there was
25 what was -- we have referred to often as an exhaustion

1 requirement; is that right?

2 A. Correct, yes.

3 Q. So, when somebody came to PennDOT and said, I need an ID
4 for voting, they had to in fact sign an affirmation saying
5 that they didn't already have an ID, and that they were unable
6 to get a secure PennDOT ID; is that correct?

7 A. That's correct, yes.

8 Q. And if they had not tried to get an ID, so they couldn't
9 sign that affirmation, they were required first to apply for a
10 secure PennDOT ID; is that right?

11 A. That's correct.

12 Q. And to get that secure PennDOT ID, you need the
13 documents; is that right?

14 A. That's right, yes.

15 Q. Birth certificate, Social Security card, two proofs of
16 residency.

17 A. That's right.

18 Q. And so if a voter came in when the DOS ID initially went
19 online and said, I came -- I need to get a voting ID, the
20 protocol was for the PennDOT worker to ask if they had
21 attempted to get a secure ID, and if they said no, I haven't,
22 they were required to apply; right?

23 A. Correct.

24 Q. And so, if they showed up and didn't have any documents
25 with them, they would have to go home and bring their

1 documents; is that correct?

2 A. I believe that's correct, yes.

3 Q. And if they said, I don't have a birth certificate, then
4 there was a process in place whereby PennDOT would contact the
5 Department of Health to try to establish or to verify the
6 birth certificate; correct?

7 A. Correct, yes.

8 Q. But under that process, the voter was also sent home,
9 and told that in about ten days, they would be contacted to
10 advise them whether or not they had been able to corroborate
11 their birth; is that correct?

12 A. I believe initially, that was the case. There were
13 several days or a couple of weeks.

14 Q. So, quite often, initially, when the DOS ID went online,
15 voters were required to take two trips to PennDOT before they
16 could get an ID?

17 A. Last summer that was the case, yes.

18 Q. Now, the new DOS ID initially was also not
19 document-requirement-free. In other words, you still needed
20 some documents; is that right?

21 A. Correct.

22 Q. So, you didn't need the birth certificate. Let's say
23 you went through the exhaustion and you had demonstrated that
24 you can't get the secure ID. Even to get the DOS ID, while
25 you didn't need a birth certificate or Social Security card,

1 you did need to provide a Social Security number; is that
2 right?

3 A. That's correct, yes.

4 Q. And if you said I don't know my number or I forgot my
5 card and I don't know my number, the person would be sent home
6 or told they have to go get their number; is that correct?

7 A. Yes, they forgot or don't know. Unless they were able
8 to indicate that they did not have a Social Security number,
9 they didn't have to provide that.

10 Q. So, if you showed up at PennDOT and said, yeah, I tried
11 many times to get a secure ID, I can't get it, so I just need
12 this for voting purposes. If they didn't know their Social
13 Security number, then they would be -- and they admitted that
14 they had one, they would be sent out to track down what that
15 number was and then they'd have to come back yet again.

16 A. Correct. If they couldn't truthfully sign that they did
17 not have -- they were not issued a Social Security card.

18 Q. So, it's only if they said, I have never been issued a
19 number, at that point --

20 A. Right. I believe the wording is "do not have a Social
21 Security number."

22 Q. And you also still need to provide two proofs of
23 residency, correct?

24 A. At that time, yes.

25 Q. We're talking August 27th to September 27th -- or

1 September 25th, correct?

2 A. Correct.

3 Q. And there was another requirement, and that is that you
4 must be registered and entered in the SURE database; is that
5 right?

6 A. Correct, yes.

7 Q. So, what happened is the person would come up, they had
8 the Social Security number, they had the two proofs of
9 residency, the PennDOT worker would call the Department of
10 State, a hotline set up there, and the hotline person would
11 check the SURE database to see whether or not they could find
12 that individual's voter registration; is that right?

13 A. That's correct, yes.

14 Q. And if they couldn't find the person's voter
15 registration, they would not be given an ID; is that right?

16 A. Correct.

17 Q. So, even if they had their Social Security number and
18 two proofs of residency, if they didn't show up in SURE
19 database or they couldn't be identified in SURE database, no
20 ID; correct?

21 A. Correct, yes.

22 Q. And they would be sent home and advised that they will
23 get a letter advising them what to do next; is that correct?

24 A. Correct, yes.

25 Q. Now, on September the 15th, the Pennsylvania Supreme

1 Court remanded for reconsideration the trial court's denial of
2 a preliminary injunction saying, among other things that there
3 had to be, quote, liberal access, end quote, for voter ID; do
4 you recall that?

5 A. I do, yes.

6 Q. And after that Supreme Court decision, and right before
7 the start of the remand trial in this case, which was on
8 September the 25th, the Commonwealth announced that the
9 procedures for getting a DOS ID would be changed; is that
10 right?

11 A. That's correct, yes.

12 Q. And in fact, that announcement was literally made in the
13 wee hours of the morning before the start of the first day of
14 the remand trial; is that right?

15 A. That's my recollection, yes.

16 Q. And that's September the 25th.

17 A. I believe so, yes.

18 Q. So, and this was a new process that was designed to make
19 it easier for voters to be able to get a DOS ID; correct?

20 A. Correct. It was to comply with the liberal access
21 direction from the higher court.

22 Q. So one of the things that was eliminated was this
23 exhaustion requirement. So, now if you came in to get a DOS
24 ID, there's no requirement that you have to demonstrate that
25 you have tried and have been unable to get a secure ID;

1 correct?

2 A. That's correct, yes.

3 Q. There's no longer a document requirement to show two
4 proofs of residency; is that right?

5 A. That's correct, yes.

6 Q. There still is that requirement to provide -- is it the
7 entire Social Security number or the last four digits of the
8 Social Security number?

9 A. It's the last four digits.

10 Q. And again, as before, if you stated that you have a
11 Social Security number, but you don't know the last four
12 digits, then you would be sent -- you would be sent out and
13 told that you need to get those numbers; is that right?

14 A. Correct. Essentially, the requirements for the DOS ID
15 card were tied to the requirements for voter registration.

16 Q. And the requirement that the voter still show up in the
17 SURE database remained in place; is that right?

18 A. That's correct, yes.

19 Q. Now, PennDOT had no direct -- or the PennDOT employees
20 who work in the driver's licensing centers have no direct
21 access to the SURE database; is that right?

22 A. That's correct, yes.

23 Q. There's no computer hookup for them as there is for
24 Department of State employees; is that right?

25 A. Correct.

1 Q. So, the mode of verification is for the PennDOT employee
2 to call the Department of State hotline and somebody at the
3 Department of State would check the SURE database while the
4 person waited at the counter; is that right?

5 A. Correct. It was a -- there was a helpdesk provided for
6 at the Department of State to take those calls.

7 Q. And the Department of State had assigned I believe three
8 people to sit at that desk to field those calls from the 71
9 bureau of driver licensing offices across the state.

10 A. Actually, we have five folks on our helpdesk and we also
11 have additional four that are direct backup if volume demands
12 it.

13 Q. And that was at the -- that was in late September, early
14 October, largely because it was a presidential election year;
15 is that right?

16 A. Correct. Actually, we still have five primary and four
17 backups.

18 Q. Now, and these rules that we just covered are still in
19 effect today; is that right?

20 A. The -- the requirement that the individual be a
21 registered voter, that's the remaining requirement; yes.

22 Q. Now, the procedures in addition to sort of the document
23 requirements, the procedures for the DOS ID also changed a
24 little bit. You still have to go to one of the 71 driver's
25 licensing centers; is that right?

1 A. That's correct.

2 Q. And you have to present personally there, correct?

3 A. Yes.

4 Q. All right. Let's talk about the checking of the voter
5 registration. So, when the person shows up, they got the last
6 four digits of their Social Security number, at that point,
7 there is a check made of whether or not that person is in the
8 SURE database; correct?

9 A. Right. They have to provide their name, address, last
10 four of the Social Security number, yes.

11 Q. And one of the problems that was encountered in
12 September and October and indeed to the present day, is that a
13 person shows up, says I'm registered, I know I'm registered,
14 and the check is done, and that person's registration cannot
15 be found in the database; correct?

16 A. Correct.

17 Q. And there are a number of reasons why newly registered
18 voters might not show up in the database right away, correct?

19 A. Correct. Primary reason is they're not registered.

20 Q. But they could also be registered, but it hasn't been
21 entered in the SURE database; correct?

22 A. Correct.

23 Q. Now, would you agree with me that presidential election
24 years are different than any other election?

25 A. They are, yes.

1 Q. And they're different because the volume that -- just
2 the sheer number of voters is greater than during any other
3 election period?

4 A. That's correct, yes.

5 Q. And at least in the past several presidential election
6 years, there have been a number of voter registration efforts
7 undertaken by what are called third party voter registration
8 groups?

9 A. Right. Registration drives. Correct.

10 Q. So, these are folks who go out and try to get
11 unregistered voters to fill out voter registrations; correct?

12 A. That's correct, yes.

13 Q. One phenomenon that the Department of State and counties
14 have seen is that some of these drives will wait until they
15 have collected a critical mass of registrations, and then
16 bring them all at one time to the county elections bureau; is
17 that right?

18 A. That's correct, yes.

19 Q. One of the times when the largest number of these
20 registrations comes in is right at the registration deadline,
21 prior to the presidential election?

22 A. That's correct, yes.

23 Q. And the registration deadline is 30 days before the
24 election; is that right?

25 A. Correct, yes.

1 Q. So, the registration deadline for the November election
2 was actually October the 9th?

3 A. Yes, I believe that the 30th day always falls on a
4 Sunday, so it goes to the -- the next business day.
5 Periodically, Columbus Day falls on Monday, and that would
6 move you one day further.

7 Q. So, that's how you get to October the 9th for the
8 registration deadline?

9 A. Correct.

10 Q. And then, another problem that arises is when the county
11 elections bureau, which is responsible for entering the voter
12 registration -- is that right?

13 A. That's correct, yes.

14 Q. So, especially during presidential election years when
15 they get a large number of these registrations, it takes them,
16 it may take them some time to actually enter those
17 registrations into the SURE database; is that right?

18 A. That's correct.

19 Q. And the lag could be two weeks to enter those
20 registrations; is that right?

21 A. Correct. I don't know that that's the majority of
22 counties, but certainly larger counties that see -- that see a
23 larger volume of applications coming in, that's not unusual.

24 Q. And so, by larger county, I assume you mean like
25 Philadelphia?

1 A. More populous counties, yeah, Philadelphia County.

2 Counties in the southeastern part of the state, and Allegheny,
3 of course, in the west.

4 Q. And you have in fact sometimes on occasion seen that it
5 takes longer than two weeks for counties to enter these
6 registrations from the time they are delivered to their
7 office; is that right?

8 A. That's correct. One county in particular.

9 Q. And which county is that?

10 A. I hate throwing counties -- but Philadelphia County is
11 typically the most backlogged in terms of voter registration
12 data entry.

13 Q. So, if -- even if a voter entered -- registered on
14 October 8th at the county, it could be three weeks later
15 before they show up in the SURE database; is that right?

16 A. It's possible, yes.

17 Q. So, if the voter registered on October 8th, or say they
18 registered on the 15th through a third party voter
19 registration, and there was that kind of lag, if the voter
20 went in on October 9th or thereafter, they would not be given
21 an ID on the day they show up, correct, because there was no
22 verification of them being in the SURE database?

23 A. Correct, if the county has not entered them and they're
24 not, and the application isn't approved, registered voter will
25 not show up; correct.

1 Q. And one of the changes made by the Department of State
2 on this new process is that in order to avoid voters coming in
3 a second time to PennDOT, that the protocol that was developed
4 is that the voter was given a voter registration mail
5 application; is that right?

6 A. Correct. If they were not -- we were not able to verify
7 them, they were provided with a voter registration ^ CK XXX
8 NOT SURE OF RENEWAL WORD XXX ^ CK renewal application.

9 Q. And there was a form filled out documenting why that
10 person was not given an ID; is that called an exceptions form?

11 A. Exceptions form, yes.

12 Q. And in fact, PennDOT was directed to in fact make the
13 actual ID of the individual; correct?

14 A. Correct, yes.

15 Q. But not give it to the individual, all right, they would
16 hang on to it; is that right?

17 A. That's right, yes.

18 Q. That exception -- and then the voter would be sent home;
19 correct?

20 A. Correct.

21 Q. And then the idea was that once that registration was
22 confirmed, the Department of State would send the ID to the
23 individual by mail?

24 A. Correct, yes.

25 Q. All right. And the transmission of information there

1 was that when that voter came in, couldn't be verified, the
2 exceptions sheet was sent electronically to the Department of
3 State; is that right?

4 A. Correct, yes.

5 Q. And then the ID that was made was sent via mail over to
6 the Department of State.

7 A. Correct, as well as the voter registration application.

8 Q. And then once it got to the Department of State, you had
9 employees assigned to try to verify or figure out why that
10 person was not registered or whatever other problem existed
11 for not giving them the voter ID; is that right?

12 A. Correct.

13 Q. And this process that we've just gone over, it is the
14 same process that remains in effect today; is that right?

15 A. By and large, yes.

16 Q. And there are no plans to change this process that
17 you're aware of?

18 A. The mechanics, there are plans to change the process
19 moving forward, yes; but there are no plans to change the
20 general process for issuing the ID card.

21 Q. Wait. I'm sorry, you are saying there are changes --
22 there are plans to change the mechanics?

23 A. Correct. We're looking for more efficiency and that's
24 always the case with whatever we do, including this process as
25 well.

1 Q. As of June 6th, when you were deposed, you could not
2 identify any changes that were in the works; correct?

3 A. No specific change, no.

4 Q. And can you identify specific changes as you sit here
5 right now?

6 A. Well, at this point, we have a plan in place to work
7 with PennDOT going into next year to make changes, but none
8 have been implemented yet.

9 Q. Have you shared those changes with counsel for
10 Petitioners in this case, those plans?

11 A. We have in recent days.

12 Q. And what are those changes?

13 A. We're going to work with PennDOT, and this has been an
14 iterative process all along, on how we transmit information;
15 but we're working with PennDOT right now to figure out how we
16 can give them access to our database, not direct access to our
17 database, but access to the application that's used by our
18 helpdesk.

19 Q. But that's not --

20 A. To search.

21 Q. -- in effect right now?

22 A. It's not in effect right now, no.

23 Q. Is it going to be in effect next month?

24 A. No.

25 Q. Now, there was actually one other change that we didn't

1 discuss that the Department of State made to the process, and
2 that's the change to the affirmation; is that right?

3 A. That's correct, yes.

4 Q. And this is not something we have discussed yet. So,
5 the affirmation that a voter had to sign when they came in to
6 get an ID was that they did not have an ID that would be --
7 I'm sorry, strike that.

8 When they came in with an expired ID, right? They came
9 in with an expired PennDOT ID, they had to -- he -- the
10 affirmation said that the ID had to be expired at that time by
11 more than a year before you were eligible to get a free voting
12 ID; is that right?

13 A. Correct.

14 Q. Okay. And that created some difficulties for people
15 whose expiration was, let's say, on November the 1st of 2011,
16 which means that ID was good through November 1st of 2012;
17 correct?

18 A. That's correct.

19 Q. But if you came in on October 15th, and wanted to renew
20 that ID, you were not allowed to do that, because your ID had
21 not been expired for more than a year; is that right?

22 A. That's correct, yes.

23 Q. Even though your ID clearly would not be usable on
24 Election Day, November 6th, you still couldn't get that new ID
25 until after it had expired by more than a year or after

1 November 1st; correct?

2 A. Right. In practice, they were not issuing free IDs.
3 You would have to pay for it.

4 Q. So, the affirmation, there was a change made to the
5 affirmation, I believe, in November of this year, which said
6 that if you have an idea that's not going to be usable on
7 Election Day, even though it was not more than a year expired
8 on that particular date, you could get that ID; is that right?

9 A. That's correct, yes.

10 Q. So, and that would eliminate that problem; correct?

11 A. Correct.

12 Q. Now, the Department of State did not go to the General
13 Assembly for a statutory change to make this alteration, did
14 it?

15 A. No.

16 Q. And the Department of State did not need to promulgate
17 and pass some sort of regulation after notice and comment.

18 A. No.

19 Q. Now, to the best of your knowledge, nothing in Act 18 or
20 any other Pennsylvania statute authorizes the Department of
21 State ID; is that right?

22 A. Nothing specifically provides for it, no.

23 Q. There isn't even a mention of the DOS ID in any
24 Pennsylvania statute.

25 A. Not an explicit reference to the DOS ID. There are

1 references to the IDs issued by Commonwealth agencies but
2 beyond that, no.

3 Q. But there's no mention of the Department of State ID you
4 created and put online in August 27th, 2012.

5 A. Correct.

6 Q. And DOS has not -- the Department of state has not
7 promulgated any regulations to the rulemaking process that
8 governing how the DOS ID operates?

9 A. That's correct, yes.

10 Q. So, the Department of state unilaterally has made all of
11 the changes to the DOS ID that we have talked about earlier.
12 So, it's imposed the exhaustion requirement; correct?

13 A. Correct.

14 Q. That was a decision made by the Department of State,
15 correct?

16 A. Correct.

17 Q. It removed the exhaustion requirement, correct?

18 A. Correct.

19 Q. It imposed the residency document requirement, correct?

20 A. Correct.

21 Q. And it then removed the residency document requirement,
22 correct?

23 A. Correct.

24 Q. It directed PennDOT to make ID for people who cannot get
25 it on the first visit, correct --

1 A. Correct.

2 Q. -- to create the actual card?

3 A. Correct, yes.

4 Q. And the Department of state directed a change in the
5 affirmation for getting the DOS ID, correct?

6 A. Correct, yes.

7 Q. So, these are all choices made by the Department of
8 State on the requirements and procedures of the DOS ID;
9 correct?

10 A. They are. Most of them were made at the time of the
11 Supreme Court's ruling, but --

12 Q. But the Department of State has the authority to make
13 these choices, to establish these requirements; correct?

14 A. That's correct, yes.

15 Q. Or to eliminate the requirements, correct?

16 A. Correct.

17 Q. The Department of State controls the requirements for
18 how the DOS card is to be issued, correct?

19 A. I would say to some extent, correct yes.

20 Q. And the Department of State could also eliminate the DOS
21 ID card altogether, is that right?

22 A. Yeah. Theoretically, we could.

23 Q. All right. Let's talk about the exceptions process.

24 Now, the exceptions process is for those individuals we
25 were just talking about who go to get the DOS ID at PennDOT

1 and, for whatever reason, are not given an ID when they go
2 there. So, they leave without an ID; correct?

3 A. That's correct.

4 Q. So, there's a separate process to identify those people
5 and track those people who are denied an ID when they go the
6 first time --

7 A. That's right, yes.

8 Q. -- correct? So, people in that exceptions process would
9 be somebody like Nadine Marsh. Are you familiar with Miss
10 Marsh?

11 A. That name does sound familiar.

12 Q. She is a Petitioner, or I guess was a Petitioner, in
13 this case; is that right?

14 A. I believe so, yes.

15 Q. Are you familiar with her story?

16 A. A little bit. Sometimes I mix up the players, so you
17 might have to remind me.

18 Q. Okay. Let's look at Exhibit 2071.

19 MS. HICKOK: Your Honor, Your Honor, can we go
20 off the record just a moment. I haven't had verification on
21 something on this document.

22 (A DISCUSSION HELD OFF THE RECORD AMONG
23 COUNSEL.)

24 MR. WALCZAK: Your Honor, thank you for the
25 indulgence in having a sidebar with Miss Hickok.

1 We have a spreadsheet of the database that
2 PennDOT uses to track people in this exceptions process, and
3 as it was turned over to us, one of the fields that is visible
4 on the sheet are -- is the last four digits of the Social
5 Security number, which it's not the whole Social Security
6 number. It's the last four digits. We still think there's a
7 significant privacy interest and that is not data that should
8 be revealed publicly.

9 Our proposal would be to delete that from this
10 document, but we didn't know whether the Court would prefer
11 for us to black out the numbers, and there are about
12 600-something entries, or the other possibility would be us to
13 reprint this document with that entire column of numbers
14 removed from that.

15 But I'm trying to figure out what would be the
16 best way to put it in the record. If Your Honor wants, I can
17 show you this spreadsheet.

18 THE COURT: Mr. Brown, would you take a look
19 at that spreadsheet. How much time are we talking about, if
20 you were to black out the 600-some names?

21 MR. WALCZAK: Black out by hand?

22 THE COURT: By hand. What is your other
23 proposal?

24 MR. WALCZAK: The other proposal, it's on an
25 Excel document. You could either hide or delete that entire

1 column.

2 THE COURT: So, you could do this this
3 evening, right?

4 MR. WALCZAK: We could do it over -- certainly
5 could do it overnight and present it.

6 THE COURT: Let's do it over.

7 MR. WALCZAK: And should we just delete that
8 entire column?

9 THE COURT: That's fine with me.

10 MR. WALCZAK: Okay.

11 THE COURT: Final four are okay.

12 MR. WALCZAK: Well, that's what's on here.

13 THE COURT: Only the final four, I think --
14 did Judge Simpson okay the final four of the SOSH?

15 MR. WALCZAK: I don't believe what -- the
16 dispute that we had over the databases was over the entire
17 Social Security number. That's the information that was
18 turned over to Dr. Siskin, and we have never seen those, and
19 never had access.

20 MR. RUBIN: We only -- Dr. Siskin only got the
21 last four digits as well.

22 MR. WALCZAK: Did he? I don't believe Judge
23 Simpson authorized publication of those last four digits.

24 MR. RUBIN: No. They were specifically
25 covered under order. One option is to file these under seal.

1 THE COURT: Mr. Keating.

2 MR. KEATING: I was going to say, Your Honor,
3 I don't think the Judge ever ruled one way or the other on the
4 final four, because there were other identifying factors in
5 the cross-matching of the databases.

6 MS. HICKOK: Your Honor, actually, the final
7 four digits were in the Department of State privacy documents
8 that has data that was not to be disclosed.

9 THE COURT: Oh, very good. Black out the
10 whole column.

11 MR. WALCZAK: Your Honor, I think I've got
12 about 15 more minutes or 20 more minutes. Would it make more
13 sense to finish this up in the morning, this is a
14 self-contained piece of the last piece of his testimony, or we
15 can finish this.

16 THE COURT: Unless the Reporter wants to go
17 on, we'll recess.

18 (THE PROCEEDINGS WERE ADJOURNED FOR THE DAY AT
19 4:30 P.M.)

REPORTER'S CERTIFICATE

I, Marjorie Peters, a Registered Merit Reporter, Certified Realtime Reporter, and Notary Public in and for the State of Pennsylvania, that the foregoing record was taken at the time and place stated herein and was recorded stenographically by me and then reduced to typewriting under my direction, and constitutes a true record to the best of my skill and ability.

I certify that I am not a relative or employee of either counsel, and that I am in no way interested, directly or indirectly, in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office this day of 2013.

Marjorie Peters, RMR, CRR

My commission expires March 13, 2016

Original Certification is on file at the office of Miller Verbano Reporting.

Adam R. Miller, Custodian











































































