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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 FOUR

Honorable Bernard L. McGinley

Harrisburg, Pennsylvania

Thursday, July 18, 2013

9:25 a.m.

REPORTED BY:

Marjorie Peters, RMR, CRR

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## P R O C E E D I N G S

THE BAILIFF: Commonwealth court is now in session, the Honorable Bernard L. McGinley presiding.

THE COURT: Good morning.

COUNSEL: Good morning, Your Honor.

THE COURT: Is Mr. Marks here? He is, indeed.

THE BAILIFF: I want to remind you, Mr. Marks, you are still under oath.

MR. WALCZAK: May I inquire, Your Honor?

THE COURT: Yes, please.

## CONTINUED DIRECT EXAMINATION

BY MR. WALCZAK:

Q. Good morning, Mr. Marks.

A. Good morning. How are you doing?

Q. Have you had any contact with your attorneys since you stepped down from the bench yesterday afternoon?

A. I haven't had any contact with one exception. One attorney over there said --

Q. I'm sorry, he said?

A. I said good night to one attorney before I left the office.

Q. Which is very gracious of you. That's perfectly fine. Yeah. Thank you.

A. We're usually the only ones left after 5:00.

Q. Before we take a close look at how the DOS ID

1 distribution process has worked since we were last in court on  
2 September 27, I just want to clean up a couple of issues here.

3 There was -- I think there's some confusion about the  
4 difference between active and inactive voters and ineligible  
5 voters.

6 So, could you tell us what is an active voter?

7 A. An active voter is somebody who is -- has voted  
8 regularly. They're in active status. They have maintained  
9 the same address. Essentially, functionally, it means that  
10 they haven't received a list maintenance mailing that they  
11 didn't respond to or some other action that would put them in  
12 inactive status.

13 Q. I'm sorry. Let me stop you there because you used a  
14 term that may not be familiar to everybody. List maintenance.  
15 What is list maintenance?

16 A. List maintenance is how voter registration rolls are  
17 maintained. In fact, addresses are updated, for example.

18 Sorry, I'm still trying to figure out where the sweet  
19 spot is.

20 An example is the national change of address program  
21 whereby the counties use information obtained through the U.S.  
22 Postal Service. We actually get the information on their  
23 behalf, and provide it to them through the SURE system.

24 If there's a record for a voter who appears to have  
25 changed their address within the last year, they send a



1 mailing to that individual requesting that they update their  
2 address.

3         Depending on the response to that mailing, the  
4 individual may be placed in inactive status until the second  
5 general election for federal office, at which time they will  
6 be cancelled if they do not respond or otherwise update the  
7 record.

8 Q.     So, now, is it fair to say that list maintenance is  
9 something that has become both legally required and kind of a,  
10 an important policy -- practice of Pennsylvania Department of  
11 State and all state elections bureaus since the 2000  
12 presidential election?

13 A.     I think that's fair. It was already important prior to  
14 the 2000 federal election, but --

15 Q.     There were all of these stories about dead voters on the  
16 rolls and 25 -- the same voter being on there 25 times. I  
17 mean, you remember those stories; correct?

18 A.     I do, yes.

19 Q.     And in fact, sometimes that was true because there was  
20 too little attention paid to who remains on the registration  
21 list; correct?

22 A.     I think that's an accurate assessment.

23 Q.     But since 2000 -- primarily, I guess since 2004 -- there  
24 have been federal requirements for elections bureaus to  
25 periodically go and clean up those lists to get rid of

1 duplicates, get rid of people who may be deceased, and that's  
2 something that all county elections boards in Pennsylvania are  
3 required to do; is that correct?

4 A. Correct. There are -- there's federal law on the  
5 National Voter Registration Act. There's also state law  
6 that's been in place much longer. The current voter state  
7 registration law has been in place since 2002 and it does  
8 mandate that annual list maintenance being conducted,  
9 including the national change of address program.

10 Q. How often is this list maintenance done?

11 A. It's done annually.

12 Q. Is there --

13 A. In a --

14 Q. Is there a certain time of period that it's regularly  
15 done.

16 A. It's typically done during the summer months. That's  
17 probably more of a function than work flow or workload than  
18 anything else.

19 Q. So, would it be fair to say that you are comfortable  
20 with the State of Pennsylvania's voter registration lists at  
21 this point in time, that they --

22 A. For the most part, yes, I -- if we have gotten anything  
23 from our exchanges before, always moving forward. So,  
24 certainly want it to be done, but we're in much better stead  
25 than we were ten years ago.

1 Q. Not to say that it's perfect, but it's way better and  
2 really pretty good.

3 A. Yes, I think that's accurate.

4 Q. Now, back to the inactive, the active and inactive  
5 status.

6 So, if -- explain to us now who -- you talked about the  
7 contacting certain voters when something happened, right?  
8 What's the trigger? I mean, how do you go from active to  
9 inactive status?

10 A. Well, there are two primary ways. The two things that  
11 are certainly mandated are the national change of address  
12 program and the five-year mailing. The five-year mailing goes  
13 out to anyone who has not voted or otherwise updated their  
14 record for five years since the -- from the date of the  
15 notice.

16 Those are the two primary methods by which someone can  
17 be placed in inactive status. There are other methods.

18 Q. All right. So, there's -- does -- is there some  
19 automatic notification that the SURE database prompts counties  
20 to do this? So --

21 A. There is.

22 Q. Sorry. Go ahead.

23 A. The counties can run lists. There are a variety of jobs  
24 inside the SURE system that allow them to run lists to  
25 ascertain who may not have had an update to their record or

1 voted in the last five years.

2 As I said, we provide specific data on voters through  
3 the national change of address program, indicating that an  
4 address change has occurred.

5 Q. So, in those two ways, if there's an address change, the  
6 county sends a letter to that voter at the new address to  
7 confirm that that really has happened, and then to update the  
8 address in the voter registration book?

9 A. Correct.

10 Q. And then, the second one is if the -- if there's no  
11 record of the person voting, and no activity, no change of  
12 address within five years, you send a, a letter saying, are  
13 you alive, are you still there, et cetera?

14 A. Correct.

15 Q. Now, on that second one, if -- well, I guess -- yeah, on  
16 the second one, if the letter doesn't come back, what happens  
17 to that individual; do they have to affirmatively respond?

18 A. They do. They will be placed in inactive status, if  
19 they don't respond. If they respond confirming the change or  
20 confirming that they have moved out of the jurisdiction, they  
21 will go into inactive status, or they can be cancelled if they  
22 confirm that they have moved out of the jurisdiction.

23 If they do not respond, then they go into inactive  
24 status, and they would remain there through two federal  
25 election cycles.

1 Q. So, just to be clear. If you send a letter and it comes  
2 back, that person is put on inactive status?

3 A. If it comes back undeliverable and they don't respond,  
4 yes.

5 Q. Undeliverable. You get something back, either at some  
6 point you get a change of address to Maryland, or there's some  
7 affirmative response saying "I died" -- probably not that  
8 likely, but saying for whatever reason I'm no longer a voter  
9 in Pennsylvania, that person is cancelled; they're not put on  
10 inactive.

11 A. Correct. What the federal law requires is that you  
12 cannot cancel a voter unless you obtain something from them in  
13 writing, generally. You do have the two federal election  
14 protections, if you don't get any response.

15 Q. Okay. Now, obviously, if you are in active status, if  
16 you show up at the polls, you're going to be allowed to vote;  
17 correct?

18 A. Correct.

19 Q. And if you are inactive status and you show up at the  
20 polls, you're also going to be allowed to vote?

21 A. That's correct.

22 Q. So what is an ineligible voter? Is that a term that's  
23 used with the SURE database?

24 A. Actually, we -- with the SURE database, there are two  
25 general categories of voters. Valid voters which would

1 include active and inactive, and invalid voters which would  
2 include cancelled records primarily.

3 Q. So you don't actually delete the entire record; you just  
4 have a field that says cancelled?

5 A. Correct. We maintain for auditing purposes that trail.

6 Q. So, when you show up to vote, if it -- unless it says  
7 invalid or cancelled, then you're either active or inactive  
8 and allowed to vote.

9 A. Correct. If you're an invalid voter, you would not  
10 appear on the poll at that point. The poll book would only  
11 generate names of active and inactive voters.

12 Q. And that's a way to prevent people who aren't duly  
13 registered to vote from voting, right?

14 A. That's correct, yes.

15 Q. All right. One other -- and now we're getting closer to  
16 the DOS ID. I want to talk about the actual number of people  
17 that have received the DOS ID since it became available on  
18 August 27th of 2012.

19 So, if you will recall, and I'm happy to put the  
20 spreadsheet up, but it showed that as of early July, there had  
21 been 3,830 IDs produced by PennDOT; is that correct, DOS IDs?

22 A. Yes.

23 Q. In fact, that's the number of IDs that were printed by  
24 PennDOT, but not all of those IDs were necessarily given to  
25 voters; is that right?

1 A. That's correct, yes.

2 Q. To understand that, as we talked about at the end of the  
3 day yesterday, there is this exceptions process where the  
4 voter comes to -- under the new system, since September 27th,  
5 the voter comes to get a DOS ID card, and for whatever reason,  
6 they cannot be given that card when they show up at PennDOT,  
7 okay; is that right?

8 A. That's right, yes.

9 Q. And the process is supposed to be despite not being able  
10 to give a card to PennDOT, and it's often because they can't  
11 verify registration, they produce the card anyway. They take  
12 the picture, they make the card, but they don't give it to the  
13 voter, they send it to the Department of State, which has it  
14 pending verification of their status; is that right?

15 A. That's right, yes.

16 Q. And since September 27th, out of those IDs that have  
17 been sent to Department of State, not given to the voter,  
18 there's 265 -- 275 of those that have actually not been  
19 delivered to the voter; is that right?

20 A. No, that's not.

21 Q. How many -- do you know how many there are that have not  
22 been?

23 A. We have received -- my recollection is we have received  
24 a total of 335 exceptions records with cards. Out of that,  
25 281 of them have been delivered.

1 Q. Okay.

2 A. Which I believe the balance is 54.

3 Q. We'll come back to this when we do the exceptions  
4 spreadsheet.

5 All right. Let's talk about how the process has worked  
6 since September 27th. Everybody who has not gotten an ID on  
7 their first trip to PennDOT has been -- has gone into  
8 something called an exceptions process; is that right?

9 A. That's correct, yes.

10 Q. And they're put into a -- into a -- they have been put  
11 into a spreadsheet; is that right?

12 A. They're actually, since September 27th, they have been  
13 put into a database, SharePoint database. The spreadsheet is  
14 a report extracted from that database.

15 Q. Thank you. Thank you for that clarification. So  
16 they're in a database, you can see that data in a printed out  
17 spreadsheet that is put into Excel?

18 A. Correct.

19 Q. And so that spreadsheet includes both voters who  
20 attempted to get an ID before the new streamlined process on  
21 September 25th and those who have tried to get an ID since the  
22 new process went in effect on September 25th; is that right?

23 A. That's correct.

24 Q. Let's --

25 MR. WALCZAK: Your Honor, we have this mega



1 spreadsheet which we have now updated by redacting all of the  
2 Social Security four-digit numbers on there, and we're going  
3 to spend some time going over that.

4 Your Honor, this is Plaintiff's Exhibit 2071,  
5 it's a little cumbersome, but I assure you it's a lot easier  
6 than having this on tiny pieces of paper where you have to  
7 match them next to each other.

8 BY MR. WALCZAK:

9 Q. Mr. Marks, do you recognize what's been marked as  
10 Plaintiffs' Exhibit 2071?

11 A. I do.

12 Q. Now, is this the spreadsheet printout of the exceptions  
13 process that has been in effect under the DOS ID since August  
14 27th of 2012?

15 A. Yes. This appears to be a copy of the spreadsheet of  
16 the data that was extracted from the SharePoint.

17 Q. And a copy of this actually included the Social Security  
18 number field was provided to your counsel earlier this week;  
19 is that right?

20 A. Yes. I believe, as I review this, this may be from  
21 early July, July 2nd, perhaps.

22 Q. And you've had an opportunity to review this sheet --  
23 well, this sheet with the Social Security field filled in;  
24 correct?

25 A. Correct, yes.

1 Q. All right. What I want to do is quickly explain how  
2 this spreadsheet works. Okay. So, the first thing we want to  
3 do is identify the fields. Okay. So that the fields  
4 correspond with the columns; is that right?

5 A. Correct, yes.

6 Q. So, going across the top, starting at the left, you have  
7 ID number; is that right?

8 A. Correct, yes.

9 Q. What is that?

10 A. That's a unique ID for the record in the SharePoint  
11 database.

12 Q. So, it's -- we can use that to identify the voters --

13 A. Correct.

14 Q. -- right? So, we don't necessarily have to discuss  
15 specific individuals here. If we say six, that is going to be  
16 a unique identifier for the person from York County listed  
17 there; is that right?

18 A. That's right, correct.

19 Q. The next column, that's simply the Department of State  
20 person who has been responsible for addressing whatever  
21 problem exists with this voter not getting the ID; is that  
22 right?

23 A. Correct. This is the individual who has been assigned  
24 to that record.

25 Q. Okay. Now, created column. That's automatically

1 generated by the database whenever the record is opened,  
2 correct?

3 A. Correct. This is a system generated field. Whenever  
4 the record is created in the system or entered into the  
5 system, it will timestamp it.

6 Q. And so, the first entry here is 9/27, 2012; is that  
7 right?

8 A. That's correct, yes.

9 Q. So, this went into use actually during the second day of  
10 the remand trial last September; correct?

11 A. That's correct.

12 Q. Now, just to be clear, that's the date that the  
13 exceptions information from PennDOT reaches the Department of  
14 State; is that right?

15 A. Not always but typically, yes. It coincides with that.

16 Q. The day of or the day after, close in time.

17 A. Correct; in most cases, yes.

18 Q. If I recall correctly, the exceptions sheet that's  
19 filled out at the PennDOT office is transmitted electronically  
20 to the Department of State; is that right?

21 A. It is.

22 Q. The next column file close date, that's the date the  
23 file is closed and after that no more work on it; is that  
24 right?

25 A. Correct.

1 Q. The last name would be the voter's last name, correct?

2 A. Correct.

3 Q. The first name, the voter's first name?

4 A. Correct.

5 Q. The middle name is the person's middle name, if given.

6 A. Correct.

7 Q. There's a lot of empty fields there or just one initial.  
8 Does that create any problems?

9 A. No. It doesn't create any problems, necessarily.

10 Q. Then there's a field for suffix, which on the first  
11 page, I see none filled out?

12 A. I think there's one. Senior, No. 21. So, that would be  
13 like, the Third, Senior, those types of things.

14 Q. So, those four columns are identifying the person's  
15 name?

16 A. Correct, yes.

17 Q. The next column is date of birth. DOB; is that what  
18 that stands for?

19 A. It does, yes.

20 Q. That's the voter's date of birth?

21 A. That's correct, yes.

22 Q. And then there's an SSN field, and we have -- in this  
23 sheet, we have redacted the Social Security. It was the last  
24 four digits of the Social Security number and those have now  
25 been redacted; is that correct?

- 1 A. That's correct.
- 2 Q. But if they were not redacted, what you would see there
- 3 is for some of the voters, there would be a four digit number;
- 4 correct?
- 5 A. Correct.
- 6 Q. But not all of them.
- 7 A. I think for the majority of them, there would be but not
- 8 all of them.
- 9 Q. Then the next field is address, line one, and that tends
- 10 to be a street address; is that right?
- 11 A. Correct. House number and street address.
- 12 Q. Address line two, it looks like mostly apartment, so
- 13 apartment 1 or apartment B; correct?
- 14 A. Correct.
- 15 Q. Then the city, which would suspiciously represent the
- 16 city where the person lives; correct?
- 17 A. Correct. Or the municipality as the case may be.
- 18 Q. And then the state, and they all seem to say
- 19 Pennsylvania; correct?
- 20 A. That's correct, yes.
- 21 Q. Zip code, is self-evident.
- 22 A. Self-explanatory.
- 23 Q. The county, that's the county where they are registered;
- 24 is that correct?
- 25 A. Yes, the county where they reside.

1 Q. Now, the next field is reason for exception; is that  
2 correct?

3 A. That's correct, yes.

4 Q. What is that?

5 A. That's kind of a high level description of the reason  
6 the exception record was created.

7 Q. So is it fair to say that's the reason the voter was not  
8 given an ID when they went to PennDOT?

9 A. It would -- it generally would be the reason, but it  
10 wouldn't necessarily capture all of the details; but, yes.

11 Q. So, what are some of the reasons that are listed under  
12 reason for exception?

13 A. The first one, record No. 6, not registered, hyphen  
14 VRMA. The first part of that is self-evident, not registered  
15 based on --

16 Q. So, now, not registered meaning that there was -- as we  
17 talked about yesterday, the person at PennDOT picks up the  
18 phone, calls one of the hotline workers at the Department of  
19 State and says, is the person represented by ID No. 6  
20 registered to vote, and there is some check done at the  
21 Department of State?

22 A. Correct.

23 Q. And if that Department of State person, for whatever  
24 reason, cannot determine that that person was registered, then  
25 there's no ID issued to that individual?

1 A. Correct.

2 Q. And VRMA is what? It says not registered, and then  
3 VRMA.

4 A. VRMA is voter registration mail application. This was  
5 included under the new process. As you recall, an individual  
6 goes to PennDOT. They take the picture, generate the card,  
7 send it to us, along with that, in overwhelming majority of  
8 cases, they would -- if a reason for the exception is that  
9 they're not registered, they would provide the applicant with  
10 a voter registration form that they could fill out on the spot  
11 and that would be submitted along with the card.

12 We then forward it to the county voter registration  
13 office for processing. So that indicates that we received a  
14 voter registration mail application with the ID card.

15 Q. And now by row 8, it says not registered, no VRMA; what  
16 does that mean?

17 A. That means that they couldn't be verified by the  
18 helpdesk. When we received the exception records from  
19 PennDOT, it was not accompanied by a voter registration mail  
20 application.

21 Q. And is there any indication from this why that was?

22 A. There's no -- there's no obvious indication. A couple  
23 of columns over there's comments, and I'm just scanning over  
24 there to see if there's anything in that that would explain.

25 Q. Couple more reasons -- if you look at row 7, ID 7, it

1 says multiple matches. So, the reason ID was not issued is  
2 there's multiple matches. What does that mean?

3 A. That means that there are multiple possible records that  
4 could match that voter.

5 Q. And they couldn't be sure whether it was the person at  
6 PennDOT, and so, they said, we can't issue the ID?

7 A. Correct.

8 Q. Now, there's another one. Look at column ID No. 51. It  
9 says, DOB, no match; what does that mean?

10 A. That means date of birth, no match.

11 Q. So, how does that work?

12 A. That means that there may have been a record found, but  
13 we could not match the date of birth.

14 Q. So, there's some discrepancy between what the date of  
15 birth given by the person standing at PennDOT and what's in  
16 the registration SURE database?

17 A. Correct, yes.

18 Q. All right. Now, after the reason for exception column,  
19 there's another county column. And they all appear to be the  
20 same entry as the county column before. What's the  
21 significance of that one?

22 A. It's basically means the same thing. Link to item, it's  
23 a database column essentially. It doesn't have a function.

24 Q. It's not a question for us at this --

25 A. No, it's not. It's just reiteration of the county of



1 residence.

2 Q. And next column, SURE ID; what is that?

3 A. SURE ID would be the voter's unique identifier as  
4 assigned in the SURE system.

5 Q. So, even if a person has a Social Security number, they  
6 are assigned a unique voting number?

7 A. That's correct, yes.

8 Q. The next column says "comment"; what is that?

9 A. Comment is a purely free text field, whereby an  
10 individual at the Department of State could enter relevant  
11 comments into the record.

12 Q. And so, let's look at examples of what might be there.  
13 If you look across on ID No. 7, it says, 10/25/2012. Card  
14 shipped to applicant, file closed. Does that mean exactly  
15 what it says?

16 A. Yes.

17 Q. That that's the date that the ID card was sent to the  
18 applicant?

19 A. That's correct, yes.

20 Q. Now, for instance, look at column nine. It says, under  
21 comment -- I'm sorry, row 9, under comment, it says, 11/1 /12,  
22 ID card delivered. So, would that be the date that the card  
23 was delivered?

24 A. Correct, yes.

25 Q. All right. Next column at the top, it says registered;

1 is that right?

2 A. That's correct.

3 Q. And then as you look down the entries in that column, it  
4 says either true or false. Now, true means that that person  
5 is in fact registered; correct?

6 A. That's correct, yes.

7 Q. And false means that there's no record of that person  
8 being registered, correct?

9 A. Correct.

10 Q. And that determination -- the designation put in here is  
11 what is made at the latest possible date, right? So, if it  
12 says false, then as of today, you just have -- or as of early  
13 July, you have not been able to verify that that person is  
14 registered; correct?

15 A. Correct.

16 Q. If it says true, then they are eligible to vote; they  
17 are valid voters?

18 A. Correct.

19 Q. And duly registered. All right.

20 The registration date column, is that the date on which  
21 the person was actually registered?

22 A. Correct.

23 Q. And then the mailed column, where it says true, does  
24 that mean that the ID was mailed?

25 A. Yes.

1 Q. Okay. So, this is -- this is supposed to be the ID that  
2 PennDOT took, but did not give to the voter, sent to the  
3 Department of State and then the Department of State verified  
4 that the voter is registered and otherwise a valid voter; and  
5 when it says mailed, that means the ID card that PennDOT  
6 created was mailed by the Department of State to the voter.

7 Correct?

8 A. Correct, yes.

9 Q. And the next column, the mailed date, that would be the  
10 date that the ID was mailed to the individual; correct?

11 A. Correct, yes.

12 Q. And the IDs are sent by UPS from Department of State to  
13 the voter; is that right?

14 A. That's right, yes.

15 Q. And the next column where it says UPS tracking, that  
16 would be the UPS tracking number for purposes of insuring or  
17 determining the status of the package to the voter with the  
18 ID; correct?

19 A. That's correct, yes.

20 Q. And then delivered column, if it says true, that means  
21 it's verified that the voter received the ID; correct?

22 A. Correct, yes.

23 Q. And if it says false, that means that the voter did not  
24 receive the ID; correct?

25 A. That's correct.

1 Q. And then the next column is delivered date. That would  
2 be the date on which the ID was delivered, correct?

3 A. Correct.

4 Q. So any column in the -- or any entry in the preceding  
5 column, delivered, where it says false, would not have a date  
6 on the delivered date column; is that right?

7 A. That would be true.

8 Q. And then the next column after delivered date is  
9 returned. So, if it says true, it would mean the package that  
10 you sent to the voter, I guess it's registered mail, was  
11 returned to the Department of State; correct?

12 A. Correct. It's sent UPS, and a request that it would be  
13 returned if the delivery is not accepted.

14 Q. And if it says false, that means it wasn't returned;  
15 correct?

16 A. Correct.

17 Q. And then return date would be the date you got it back,  
18 correct?

19 A. That's correct, yes.

20 Q. Created by. That's who actually did the initial entry  
21 of the information for this voter?

22 A. Correct.

23 Q. Modified. That's the last -- modified column, that's  
24 the last time somebody at the Department of State worked on  
25 this particular voter's information?

1 A. Correct. That would be the last time updates were made  
2 to the record.

3 Q. And then the next column, modified by, would be the  
4 identity of the Department of State worker?

5 A. Correct.

6 Q. Now, there's a "reason for exception" column. Is that  
7 any different than the first reason for exception we looked at  
8 about 12 columns earlier?

9 A. No, it should coincide, and it has the comment, would be  
10 the same as the county. You will see a title linked to items,  
11 system, functional column, but it means the same thing.

12 Q. So that it's for purposes of the database?

13 A. Right.

14 Q. Sort of linking.

15 A. Right.

16 Q. Now, the next column says ID received. That is whether  
17 or not the Department of State received the ID from PennDOT;  
18 is that right?

19 A. That's correct, yes.

20 Q. And if it says true, that means that Department of State  
21 received the ID made by PennDOT; correct?

22 A. Yes.

23 Q. And if it says false, for whatever reason, you did not  
24 receive the ID.

25 A. Correct.

1 Q. And then ID received date is the date on which you  
2 received the ID from the -- from PennDOT, correct?

3 A. That's correct, yes.

4 Q. Now, scan is -- that's really not operational yet?

5 A. Scan and emailed, and the following field, scan and  
6 emailed date are not -- we have not used them.

7 Q. And shipping label, and shipping label generated date,  
8 those are not columns that really affect the analysis of what  
9 happened to these voters; correct?

10 A. Correct.

11 Q. Now, the notes field. That provides a little bit more  
12 information about why the voter did not receive the ID  
13 initially?

14 A. In most cases, it actually initially was intended to  
15 capture the multiple matches. And you will see, for example,  
16 column No. 9 or row No. 9, excuse me, this is the fourth one  
17 down from the top, the -- you will see a bunch of numbers  
18 there. Those would be --

19 Q. Yes.

20 A. -- potential matches. Those are ID numbers, SURE ID  
21 numbers. So, initially, that's where that data -- the system  
22 goes out and searches for a record. If it comes back with  
23 multiple match, it will actually insert in that field  
24 automatically the potential matches for someone to take a look  
25 at.

1 Q. And then the last two columns, we can ignore. Those are  
2 database related columns, right?

3 A. That's correct, yes.

4 Q. All right. What I want to do is limit our analysis to  
5 people who applied for a DOS ID after the Department of State  
6 simplified the process on September 25, correct.

7 A. Okay.

8 Q. Are you following me?

9 A. Yes.

10 Q. And that simplified process was designed to make sure  
11 that voters didn't have to go back a second time, didn't have  
12 to produce any documents; and if there was a problem, the  
13 Department of State would timely mail them a copy of their ID  
14 card, if they are determined to be a valid voter.

15 Correct?

16 A. That's correct, yes.

17 Q. Now, in order -- and this spreadsheet includes people  
18 who applied both before the change in process, and after the  
19 change in process; correct?

20 A. Correct. There's a number of records here that were  
21 entered later, so that we could collect all of the exceptions  
22 in one location.

23 Q. And for reasons I don't think we need to get into here,  
24 but the -- there were actually 108 people put into the  
25 exceptions process prior to September 27; is that correct?

- 1 A. I believe the number was 109, but --
- 2 Q. 108 -- I think for our purposes we can be off by a  
3 couple of numbers.
- 4 A. So -- correct.
- 5 Q. 108, 109. And we can identify those because they were  
6 actually backfilled by the Department of State sometime in I  
7 believe May; is that correct?
- 8 A. That's correct, yes.
- 9 Q. So, if you go to -- if you go to pages 13 to 16. Let's  
10 start on 13 and look -- sorry. Page 12. It coincides with  
11 rows 533 to 641?
- 12 A. That's correct, yes.
- 13 Q. And the reason we know that is that when you look at the  
14 created date, it says, May 23rd; correct? Or most of those  
15 say sometime May 23rd or a few days after.
- 16 A. Correct.
- 17 Q. And then the file close date is sometime earlier in the  
18 year, or actually last year, or earlier in the year; correct?
- 19 A. Correct.
- 20 Q. So, you can't really have a created date after the close  
21 date, unless you are backfilling it?
- 22 A. Correct, yes.
- 23 Q. Okay. So, and my math was that 633 to 641 is 108, but  
24 can we say about 108; are you comfortable with that?
- 25 A. I think it would include 641.



- 1 Q. I'm sorry. It includes --
- 2 A. Subtract 533 to 641. I'm not going to argue with you  
3 about the math, but I think if you include 641, so I think  
4 that would be 109, from that range.
- 5 Q. I'm not going to argue with that.
- 6 A. That's what you get paid to do, isn't it?
- 7 Q. So the total number of entries on this spreadsheet is  
8 615 -- no, 644. Actually, it's not 644, because these don't  
9 go sequentially.
- 10 A. Correct.
- 11 Q. Is that correct?
- 12 A. There were some duplicate records created that had to be  
13 accounted for, so, it wouldn't necessarily --
- 14 Q. Do you know how many entries there are on this  
15 spreadsheet?
- 16 A. I do not know off the top of my head. I think it is  
17 closer to the 615 number. I think it's less than 641, but I  
18 can't recall off the top of my head.
- 19 Q. Okay. So 6 -- somewhere around 615?
- 20 A. Yeah. 615 to 620 sounds --
- 21 Q. So if we back out that 108 or 109 that were entered  
22 prior to the change in process, that brings us down to about  
23 507 or 506?
- 24 A. That sounds good, yes.
- 25 Q. Is that right?

1 A. Yes.

2 Q. So, that would be the number of voters who went to  
3 PennDOT after the new streamlined process went into effect,  
4 which was the last day of the remand hearing, and were not  
5 actually given an ID when they showed up at PennDOT; is that  
6 right?

7 A. It's a number of exceptions records that occurred after  
8 that point in time. I don't know that necessarily it  
9 coincides with the number of voters who went to obtain an ID.

10 Q. Well, how else do you get into this exceptions process  
11 other than going to PennDOT and asking for an ID, and then not  
12 being given one at that point?

13 A. Well, one point in time, we were -- there were a number  
14 of records, and we could probably find specific examples in  
15 the spreadsheet of individuals who we received only a voter  
16 registration mail application for, not a -- not an ID card.

17 And after researching those, we determined that there  
18 was a group of like 144 that actually obtained PennDOT  
19 products, PennDOT IDs, the day they visited PennDOT; but for  
20 whatever reason, the individuals at PennDOT sent the wrong  
21 voter registration mail application, which are not -- they're  
22 laying around in PennDOT's facilities, so it's not surprising.

23 We treated them all like exceptions because we didn't  
24 know.

25 Q. Now, is there some way to determine from this data

1 whether that happened?

2 A. There's no readily available way to determine from this  
3 data.

4 Q. And this is the data that was produced to us by the  
5 Commonwealth analyzing what happened to people who were put  
6 into the exceptions process, correct?

7 A. Correct. I -- I don't know that I would say it's  
8 analyzing this. This again is an extract from the database.  
9 The primary purpose of the database is to track exceptions.

10 Q. So, we're going to stick with what's on here. So, if  
11 there's about 615 entries, you take off 108 or 109, you got  
12 507 or 506 people who were put into the exceptions process in  
13 this spreadsheet since September 27th?

14 A. That sounds about right.

15 Q. Okay. Now, the total number of people who have gotten a  
16 DOS ID since September 27th is -- let's -- I want you to --  
17 I'm going to do the math here. So, it would be 3,830 is the  
18 total number of IDs issued since it went into effect?

19 A. Correct.

20 Q. Correct? Now, you testified at the remand hearing that  
21 as of that point, which I think was September 25th, there was  
22 close to 1,300 DOS IDs that had been issued by that point; do  
23 you recall that?

24 A. I do, and that number sounds correct.

25 Q. So, we would take off 1,300 from 3830, and that leaves

1 2530; is that right?

2 A. Sounds right, yes.

3 Q. And then there are -- all right, let's -- we had a  
4 disagreement over this number. So, we're now at about 2530  
5 PennDOT products that were created since the remand hearing,  
6 correct, since the new process went into effect?

7 A. That sounds right.

8 THE COURT: PennDOT products or --

9 MR. WALCZAK: PennDOT products that -- well,  
10 sorry. It's Department of State.

11 THE WITNESS: DOS.

12 MR. WALCZAK: It's Department of State IDs  
13 that were issued.

14 BY MR. WALCZAK:

15 Q. Now, the way we would tell, looking at the database,  
16 whether the individual received an ID through this process,  
17 through the DOS process, is by looking at the mailed and  
18 delivered columns; is that correct?

19 A. The way we determine whether or not an individual  
20 received an ID card, the voter received an ID card?

21 Q. Yes.

22 A. I would focus more on the mail date, yes, but the UPS  
23 tracking number. That's what I do personally, because that  
24 tells me that a package went out with an ID card.

25 Q. Okay. Well, so, if we looked at the delivered date,

1 that's actually the date on it that's actually the date on  
2 which --

3 A. Yeah, I'm sorry. I meant the delivered date. I would  
4 look at the UPS tracking number and the delivered date. The  
5 delivered date is when the person actually received the  
6 package.

7 Q. And in the preceding column, it asks, it says delivered.  
8 So, it says either true or false. Now, if it says false, then  
9 that would mean that the ID wasn't delivered through this  
10 process; correct?

11 A. Correct, yes.

12 Q. And in fact, if you look down on the first page, every  
13 entry where you have a false, there is indeed no delivered  
14 date; correct?

15 A. That's correct, yes.

16 Q. Because the ID was not delivered?

17 A. Right.

18 Q. Now, if you ran on the spreadsheet how many false are on  
19 there, do you know how many there would be?

20 A. I don't, off the top of my head.

21 Q. Would you agree with me that the number of entries that  
22 say false would be the number of voter applicants in this  
23 exceptions sheet who were not delivered a DOS ID from the  
24 Department of State?

25 A. It would be indicative of the number of exceptions for

1 which a DOS ID was not delivered.

2 Q. All right. So, just to be clear, so, it's the -- it's  
3 voters who were put -- who went to PennDOT, were put into the  
4 exceptions process, and for whatever reason were not delivered  
5 a DOS ID?

6 A. Correct.

7 Q. If I say to you that there are 275 of those, would you  
8 disagree?

9 A. I wouldn't. That number sounds right.

10 Q. Okay. So, let's go back to the math here.

11 So, since the new DOS ID process went into effect, we  
12 had the total -- I'm sorry, the total is 3,830 issued since  
13 August of 27. We're going to take your estimate from the  
14 trial in September of 1300, so we subtract those, and then we  
15 subtract from that 275 which are the people who are in here,  
16 but who did not actually get the ID -- presumably, it's still  
17 sitting at the Department of State -- and that number would be  
18 2,255; is that correct?

19 A. Sounds right.

20 Q. Okay. Let's --

21 A. I'm going to --

22 Q. And I'm sure we would be happy to provide --

23 A. Trying to do all of the math in my head is going to give  
24 me a headache.

25 Q. -- corresponding numbers to your counsel --

1 A. Right.

2 Q. -- and we can work out the details.

3 All right. So, if we have approximately 507 or 508  
4 voters who were put into this exceptions process since  
5 September 25th or 27th, the database starts the 27th, a change  
6 in policy started the 25th, but there's 507 of those voters,  
7 we established; correct?

8 A. Correct.

9 Q. And so, if there's a total amount of 2,255 cards issued  
10 to voters since September 27th, then if you do the math, if  
11 you divide that, it comes out to...

12 It's like a comedian telling a joke and getting to the  
13 punch line and not having it readily available.

14 Is 22.48%. Does that sound about right?

15 A. I would think so. 500 out of 2500, roughly.

16 Q. So, what I did was I took 22. -- I'm sorry, I took 507  
17 times 100, divided by the number of cards, 2,255.

18 So, that would mean that 22.5% of the people who went to  
19 PennDOT since the new streamlined, easy process to get DOS ID,  
20 did not actually get the ID when they went to PennDOT on that  
21 first visit; correct?

22 A. I would make a distinction. I wouldn't say that 22.5%  
23 of the people who went to get an ID. As I mentioned earlier,  
24 we have learned through research that 144 records probably  
25 never should have been exceptions in the first place.

1           This spreadsheet is indicative of how we track  
2 exceptions. It doesn't tell the entire story.

3   Q.     It may not say whether the person got a PennDOT ID, or a  
4 DOS ID through some other way; is that what you are saying?

5   A.     Correct.

6   Q.     All right. So, they may have gotten an ID from some  
7 other way?

8   A.     Correct.

9   Q.     But this is representative of how the exceptions process  
10 set up by the Department of State was operating here, and they  
11 may have gotten an ID outside the exceptions process; but in  
12 this, this is an accurate representation of what Department of  
13 State was doing. Correct?

14 A.     It's an accurate representation of the workload  
15 associated with the process for obtaining the DOS ID. This is  
16 a tracking database.

17 Q.     Okay. But there's no -- there's no information on this  
18 database or anything we have been given about how any of these  
19 folks may have gotten an ID in some other fashion. Are you  
20 aware of anything that's been presented to us?

21 A.     Correct. I'm not aware of anything off the top of my  
22 head, no.

23 Q.     All right. So, let's continue with math here. So,  
24 there's 265 individuals who are shown here -- I'm sorry, 275  
25 individuals who are shown in here as having false next to ID



1 being delivered, and then no delivered date?

2 A. Correct, I'll concede that.

3 Q. Sounds about right?

4 A. Right.

5 Q. Okay. And then if you take -- and none of those are  
6 from pre-September 27th; correct?

7 A. As it appears, none of them are from pre-September 27th,  
8 yes.

9 Q. So, that's the 533 to 641 rows we talked about earlier.

10 A. Correct.

11 Q. So, there's 265 out of the 507 or 508 people who were  
12 put into the exceptions process since September 27th, have not  
13 gotten an ID; correct?

14 A. Correct.

15 Q. And so, when I do that math, it comes out to about 52%;  
16 correct?

17 A. It would be roughly 52%.

18 Q. A little bit higher than 52%. So, of those people who  
19 were put into the exceptions process, people who went to  
20 PennDOT, could not be given an ID on the first time, and  
21 there's 507 or 508 of those, about 52% of those have not  
22 gotten an ID through this process; is that correct?

23 A. Correct, yes.

24 Q. Now, one of the reasons you modified the process after  
25 the Supreme Court decision was to provide for simple access,

1 right, to this ID?

2 A. Correct, yes.

3 Q. All right.

4 A. Liberal access.

5 Q. Liberal access. Thank you.

6 So, that's to avoid people having to go to PennDOT a  
7 second time?

8 A. That's correct, yes.

9 Q. Now, as of the 507 people in here -- in the exceptions  
10 process, the people who went to PennDOT, could not be given an  
11 ID, do you know how many were told to return to PennDOT to get  
12 an ID?

13 A. I'm not aware of how many were told to return to  
14 PennDOT.

15 Q. Let's go over how we might be able to determine that  
16 from this spreadsheet.

17 So, looking at the comment column let's look at row 55,  
18 voter 55. Now, this is somebody from -- we don't need to  
19 identify the individual. We don't need to drag them into this  
20 lawsuit unnecessarily. 55 is a Philadelphia voter, correct?

21 A. Correct, yes.

22 Q. In the comment column, it says, 3/22/13, applicant sent  
23 letter instructing them to go to PennDOT for their free DOS  
24 ID; do I read that correctly?

25 A. That's correct, yes.

1 Q. And then the next day the file was closed; is that  
2 right?

3 A. Correct, yes.

4 Q. And then if you look at the created date on that, it is  
5 10/1/2002; is that right?

6 A. 2012.

7 Q. I'm sorry, 2012.

8 So, that means the person would have gone to PennDOT  
9 sometime on October 1st or shortly before that?

10 A. Correct. Sometime before October 1st. Keep in mind,  
11 this is the date that we received the information and created  
12 the records. It's not necessarily indicative of the date that  
13 the person went to PennDOT.

14 Q. They would have gone to PennDOT before that date, but  
15 not after that date.

16 A. Correct. Right.

17 Q. Then if you continue on 55, when you go to the mailed  
18 column, it says, false; do you see that? So, that means a DOS  
19 ID was not mailed to this individual; is that right?

20 A. That's correct, yes.

21 Q. And then the delivered column also says false, so it  
22 wasn't delivered to the individual; is that right?

23 A. That's correct, yes.

24 Q. So, this would be an individual who applied for a  
25 PennDOT ID on or shortly before October 1st who has not gotten

1 an ID, and who was instructed in March of this year to go back  
2 to PennDOT to get their free ID; correct?

3 A. Correct, yes.

4 Q. So, if we were to look at every comment field where it  
5 says, where it tells person to go back to PennDOT to get an  
6 ID, that would be indicative of somebody who had applied the  
7 first time at PennDOT, and then was told they needed to take a  
8 second trip; is that correct?

9 A. Not necessarily, but in most cases, it would be.

10 Q. Why not necessarily?

11 A. Again, it's -- I'll go back to the 144. We're -- in an  
12 abundance of caution, we treat -- we knew in December that  
13 there were 194 records that we did not have ID cards with. We  
14 sent information over to PennDOT. And I believe this is  
15 something that you would have been provided with, from my  
16 records.

17 We learned that 144 of those never should have been in  
18 this exceptions process in the first place. They probably  
19 weren't -- they probably went to PennDOT to get a driver's  
20 license or some other product under normal circumstances, and  
21 were provided with a voter registration application.

22 Because we have to treat all of them the same, we sent a  
23 letter in an abundance of caution, telling them that if they  
24 need an ID, still need an ID card, they need to go back to  
25 PennDOT.

1 Q. But for our purposes is what I understand you saying is  
2 we're looking at whether or not people had to make two trips  
3 to PennDOT?

4 A. Correct.

5 Q. And so if -- I don't believe we have information on this  
6 144 you talk about, but let's just try and understand what you  
7 are saying.

8 You're saying that person could have gone to PennDOT at  
9 another time and gotten some form of ID that could be used for  
10 voting.

11 A. What I'm saying is it appears they went to PennDOT and  
12 got it the day they were there.

13 Q. There's nothing --

14 A. We received the voter's -- that's correct.

15 Q. There's nothing on this that indicates that, on this  
16 spreadsheet.

17 A. Correct, we -- we did not know at the time which 144  
18 they were, they were. PennDOT as you have probably learned  
19 through this process is not -- is very secure about how they  
20 release their information, even to another state agency.

21 Q. So, we may have to get information on this 144, and we  
22 may have to recall you to do this some more. We're going to  
23 stick with what we have been given and what's in this  
24 spreadsheet here. So, let's take another example, just to  
25 make sure that I'm reading this correctly.

1           We looked at row 55. Let's look at row 53. So, this is  
2   somebody who would have applied on or slightly before October  
3   1st; correct?

4   A.     Correct, yes.

5   Q.     And then the comment field that says on March 22nd, they  
6   were sent a letter and directed to the local DLC to obtain a  
7   free DOS card, to go get the DOS card?

8   A.     Correct.

9   Q.     And then it says mailed -- I'm sorry, delivered or  
10  delivered date, they both said false.

11  A.     Correct, yes.

12  Q.     Correct? All right. So, the indication from this  
13  spreadsheet is that this individual came in prior to Election  
14  Day, and after the process, new streamlined process started,  
15  did not get an ID and was directed in March to return 20  
16  PennDOT; correct?

17  A.     Correct.

18  Q.     That's what this would signify?

19  A.     Correct.

20  Q.     All right. And --

21  A.     And it's important on these -- both records that you  
22  referenced to, too, look at I believe the notes column,  
23  because it identifies the ID card not being received from  
24  PennDOT.

25  Q.     I'm sorry. Say that again.

1 A. There's a note on both of the records that we just  
2 discussed that indicates that an ID card was not received,  
3 with that exception record.

4 Q. Okay. So, PennDOT -- I'm not saying this is a problem  
5 with the Department of State.

6 A. No, I'm just saying this -- you know, we probably need  
7 as we go through these records to look at all of the columns  
8 to understand the complete picture, as it's tracked in here.

9 Q. Absolutely. If I'm not pointing to something that you  
10 think is relevant, by all means, I want you to bring that up,  
11 because we're trying to get this right.

12 So, that would mean -- and you're looking under both 53  
13 and 55 on the notes column, and it says ID card not received  
14 from PennDOT. And as we talked about, the new process is  
15 supposed to be that the voter comes in, they can't be verified  
16 for whatever reason. PennDOT is supposed to create that ID at  
17 that time, take the picture, make the ID, hold on to it, send  
18 it to Department of State, so the person doesn't have to come  
19 back; correct?

20 A. That's correct.

21 Q. And this is an indication that PennDOT did not do that  
22 in these situations, correct?

23 A. It's an indication that we didn't receive the card with  
24 the exception record. We don't -- I'll go back to the date  
25 created column. That is only indicative of the date we create

1 the record. It's not necessarily indicative of when the  
2 person showed up at PennDOT.

3 Q. Right. Except that you did testify that that exceptions  
4 sheet is delivered electronically from PennDOT to the  
5 Department of State, correct?

6 A. Correct. But --

7 Q. And -- and --

8 A. That may not mean that that's the date that the record  
9 was created.

10 Q. But I do believe your testimony earlier was that it  
11 would be very close in time, correct?

12 A. It is. It's typically within a few days, but these --  
13 you know, even October 1st is within a week of the 9/25 date  
14 that we discussed.

15 Q. And the change to the new process actually began as we  
16 discussed late yesterday, in the wee hours of the morning on  
17 September 25th?

18 A. Correct.

19 Q. Is that correct?

20 A. Yes.

21 Q. So there's 30 days in September, so this would be six  
22 days. And if you have an October 1st date, that's six days  
23 after the process was started?

24 A. That's correct.

25 Q. And if that exceptions sheet is delivered to Department



1 of State electronically, it should certainly have been entered  
2 within six days; correct?

3 A. If it's delivered electronically, yes, it would be  
4 entered within six days.

5 Q. And under the process, it is supposed to delivered  
6 electronically; correct?

7 A. Right.

8 Q. And there is the technology and the facilities --

9 A. Right.

10 Q. -- to do that?

11 A. Right. I'm saying it's likely. What I'm -- I just want  
12 to be clear that that date -- I can't tell you when the  
13 individual arrived at PennDOT because we do not track that in  
14 this spreadsheet.

15 Q. So, if I told you that if we went through and counted  
16 the number of rows in which the comment says go back to  
17 PennDOT or some variation of that, that there are 169  
18 individuals in this spreadsheet that meet that criteria, would  
19 you disagree?

20 A. I wouldn't argue the point. I don't know the exact  
21 number, but that is possible.

22 Q. So, what that means, that out of the 507 people since we  
23 started this new simplified DOS process who were not able to  
24 get ID on that first trip to PennDOT were in fact directed by  
25 the Department of State to make a second trip to PennDOT; so

1 that's a third of the voters?

2 A. Correct. If we did not receive an ID card, and were not  
3 able to contact them in any other way, we would send a letter.

4 Q. So, even under the simplified process, a third of the  
5 folks who couldn't get the ID, couldn't be verified right  
6 away, were told they have to go back and make another trip to  
7 PennDOT?

8 A. Yeah, if they --

9 Q. Is that right?

10 A. If they had not received an ID card at that point, they  
11 would be able to go back and obtain one at PennDOT.

12 THE COURT: Was PennDOT supposed to take a  
13 picture for the DOS ID?

14 THE WITNESS: Correct, yes.

15 THE COURT: Sometimes they didn't take the  
16 picture. They just --

17 THE WITNESS: It, it is possible. I can't --  
18 I can't testify as to, you know, what happened in all cases.

19 Obviously, there's some back and forth that  
20 needs to occur with PennDOT to determine what exactly happened  
21 in an individual case.

22 THE COURT: And under the Motor-Voter they  
23 have the registration, the voter registration right at the  
24 driver centers?

25 THE WITNESS: The Motor-Voter can register

1 voters. That's typically for -- and I'm sure I will risk  
2 boring the Court with the details, but the Motor-Voter process  
3 is tied into the SURE system as well.

4 And individuals can register to vote at  
5 PennDOT driver license centers when they apply for a PennDOT  
6 product.

7 The way the system is built now, because we  
8 verified that the individual who comes through the Motor Voter  
9 file has a driver's license and has been vetted at PennDOT,  
10 that record does not have to go through the verification  
11 process required under federal law, which is checking the last  
12 four of the Social Security number or the driver's license.  
13 That's already been done on the front end.

14 A DOS ID applicant doesn't fall into that  
15 category, so they're distinguished in that way.

16 BY MR. WALCZAK:

17 Q. So, make sure we're clear here. So, the process we're  
18 discussing here only relates to the DOS ID; correct?

19 A. That's correct, yes.

20 Q. And the new simplified process after the remand hearing  
21 was that if a voter showed up and could not be verified to be  
22 in the SURE database or they're in there and there's a  
23 mismatch with the date of birth or whatever reason, to prevent  
24 them from having to take that second trip to PennDOT, which  
25 have become obvious and a problem prior to this change in

1 process, and PennDOT was supposed to take a photo and make an  
2 ID, make this DOS ID, that would not be given to the voter,  
3 but would be sent to DOS which could then send it to the voter  
4 whenever they established that they were registered, and that  
5 was supposed to prevent the voter from having to make that  
6 second trip to PennDOT; correct?

7 A. Correct, yes.

8 Q. And in fact, what we find is that a third of the voters  
9 since this new process went into effect, 169 out of 507 were  
10 actually sent a letter at some point after they applied  
11 telling them that they could now go back to PennDOT to get an  
12 ID?

13 A. Correct. If they did not already have one, they could  
14 go back.

15 Q. Couple more of these and we're almost done, Your Honor.  
16 So, some of the voters who were not given an ID were  
17 simply not registered; correct?

18 A. Correct, yes.

19 Q. Some of -- and subsequently, it turns out that some of  
20 those are -- to this day, there's no indication they're  
21 registered; right?

22 A. Correct.

23 Q. Some of them, it turns out that they were not registered  
24 until after the deadline, which was after October the 9th of  
25 2012; correct?

1 A. Correct.

2 Q. So, if you're all excited, there's an election coming  
3 up. I got to vote. Oh, no, I'm not registered. I got to go  
4 register. And either you go to the county elections board or  
5 mail to the county elections board or a third party  
6 registration group delivers your registration on October 18th,  
7 right, you're registered on October 18th; but if you show up  
8 on Election Day, November 6th, to vote, you're not going to be  
9 allowed to vote. Right?

10 A. Correct, yes.

11 Q. Because under Pennsylvania law, your registration has to  
12 be logged at the county elections department as of October the  
13 9th, 2012?

14 A. Correct.

15 Q. Okay. What I want to do now is focus on voters in this  
16 exceptions process who are registered prior -- on or before  
17 October 9, 2012; correct?

18 A. Okay.

19 Q. Thank you. So, if we go to the registered column, all  
20 right, it would not only say true, right, that the voter is  
21 properly registered, because they could be --

22 A. Correct.

23 Q. -- they could be properly registered but it was too late  
24 to be able to qualify to vote on November 6; correct?

25 A. That's true.

1 Q. So, what we need is both that the registered and that  
2 the registration date is on or after October the 12th, 2012;  
3 correct?

4 A. Correct. Yeah. Most cases, that would be what you use  
5 to ascertain that, yes.

6 Q. So, am I -- is it fair to say that every voter that's on  
7 this spreadsheet who it says is registered to vote, there's a  
8 true, and has a registered date on or before October 12th is  
9 eligible to vote; is a valid voter in Pennsylvania?

10 A. Yes, they're definitely valid voters.

11 Q. There's no question, if they show up on Election Day on  
12 November 6th, they have every right to cast a ballot.

13 A. That's correct, yes.

14 Q. Correct? Okay. Now, this database will tell us the  
15 date on which the ID that the voter came to get was mailed;  
16 correct?

17 A. Correct, yes.

18 Q. There's a mailed date and then there's a delivered date,  
19 correct?

20 A. Correct, yes.

21 Q. Now, if I take every voter on this spreadsheet where  
22 it's created prior to November 6th -- and we're being  
23 conservative because, you know, there may be the lag, so it's  
24 November 7th or 8th.

25 A. Right.

1 Q. So, if I take every voter that -- every file here that's  
2 created on or before November 6th, it's fair to say that that  
3 person was at PennDOT to get an ID before Election Day; is  
4 that right?

5 A. Yeah, I think in most cases that would be true, yes.

6 Q. And in what cases wouldn't that be true?

7 A. Generally, if are you looking at the organized  
8 spreadsheet, unless there's some file was created later or,  
9 you know, we go back to the backfill, but typically that would  
10 -- that date range, that would be correct, yes.

11 Q. But that's an auto generated date, correct?

12 A. The date created is an auto generated date. The  
13 registered date is not auto generated. The -- well, the easy  
14 way to tell, actually, if it's system generated is it will  
15 have a timestamp as well.

16 For example, in the first record, 6, you will see not  
17 only a date but you will also see 1454 which is military time  
18 I believe is 2:54 in the afternoon.

19 Q. So --

20 A. Any other date in here may have been manually entered.

21 Q. Okay. But what the significance of that created date is  
22 that the voter must have been at PennDOT before that date,  
23 correct?

24 A. That's true, yes.

25 Q. So, if I take every entry in here that is on or before

1 November 6th, that would represent all of the people who  
2 applied for a DOS ID that were not given an ID, but were --  
3 went prior to Election Day of 2012; is that right?

4 A. Correct, yes.

5 Q. And then I filter out every one of those voters who  
6 applied for an ID prior to Election Day, on or before Election  
7 Day, who are duly registered, right, and as we just discussed,  
8 that would be somebody who, it says, not only true under the  
9 registered column, but also the registered date is before the  
10 deadline, which was October 9th, 2012; correct?

11 A. Correct.

12 Q. All right. So, those are all duly registered. And then  
13 I went and looked at the delivery date. Okay. That's the  
14 date on which you now have confirmation from UPS that the  
15 voter actually received the ID?

16 A. Correct.

17 Q. Correct? Now, if that date is after November the 6th,  
18 that would be an indication that the person applied for the ID  
19 prior to Election Day, but in fact did not have the ID  
20 delivered to them until after Election Day; correct?

21 A. Correct.

22 Q. And these would be voters who have every right to cast a  
23 ballot, who are legitimately registered to vote; correct?

24 A. Correct, yes.

25 Q. Do you know how many of those voters are in this



1 spreadsheet?

2 A. I don't, off the top of my head.

3 Q. Let's look at a couple of examples, just to make sure  
4 that we're doing this right. Let's look at row 12.

5 So, we look at the created date, it says 9/28; correct?

6 A. Correct, yes.

7 Q. That means that the voter went to PennDOT on or before  
8 September 28th, correct?

9 A. Correct, yes.

10 Q. And we're not going to identify the voters, but this is  
11 from Schuylkill County. I'm never quite sure how you say  
12 that.

13 A. Schuylkill.

14 Q. Schuylkill County. When you go to the registered  
15 column, it says this person is registered?

16 A. Correct.

17 Q. And then when you go to the registered date column, it  
18 says 8/29/1944; is that right?

19 A. Correct, yes.

20 Q. So, that would mean that this individual's registration  
21 date was in 1944.

22 A. Correct.

23 Q. Out of curiosity, when you go back -- when you go back  
24 to the date of birth, this is a voter who was born in 1918; is  
25 that right?

1 A. Correct, yes.

2 Q. More math. 80 -- 90 -- 94 right now. 94-year-old  
3 person?

4 A. That sounds right.

5 Q. So, they went to PennDOT at some point on or before  
6 September the 28th. They have been registered since 1944, and  
7 the date that their card was mailed to them is March 9, 2013;  
8 did I read that correctly?

9 A. You did, yes.

10 Q. And the delivered date on that is March 13th, 2013;  
11 correct?

12 A. Correct, yes.

13 Q. So, everything that we have on the spreadsheet indicates  
14 that this 94-year-old voter has been registered since 1944,  
15 went to PennDOT to get a DOS ID prior to Election Day, is duly  
16 entitled to vote, did not get their DOS ID until March of  
17 2013. Did I do that correctly?

18 A. You did, yes.

19 Q. Let's take another example.

20 Let's go to row 59. Okay. The creation date there,  
21 it's near the bottom of the first page. The creation date  
22 there is October 1th, 2012. All right? So, this person went  
23 to PennDOT on or before October 1st of 2012; is that right?

24 A. Correct.

25 Q. And this person is from Armstrong County, is that right?

1 A. That's right, yes.

2 Q. And there it says they are registered and their  
3 registration was on October 8, 2012. So, this is a newly  
4 registered voter; right?

5 A. Correct, yes.

6 Q. But -- newly, but duly registered. This is somebody who  
7 has every right to vote on November 6; correct?

8 A. That's correct, yes.

9 Q. Then when we go to the mailed date, it says November  
10 3rd, 2012; is that right? Oh, I'm sorry. I'm looking at the  
11 wrong -- right, no, it does, yeah.

12 A. Yes, the mail date is November 3rd. For 59.

13 Q. And then -- so that's the date that DOS, which had  
14 received the card from PennDOT, would have mailed it to the  
15 voter; correct?

16 A. Correct. That's the date it was mailed to the voter.

17 Q. And the delivery date there is November 7th, 2012; is  
18 that correct?

19 A. Correct, yes.

20 Q. So that means the person would have applied for their ID  
21 either October 1st or before, been duly registered, but did  
22 not receive their DOS ID, which would entitle them to vote,  
23 until the day after Election Day; is that correct?

24 A. Correct.

25 Q. Let's take just one more of these to make sure that some

1 of these other pages are -- all right, let's take -- let's go  
2 to 142, which is on page three. I'm sorry. We're laughing  
3 because we had another case with Mr. Marks where we also had  
4 spreadsheets.

5 A. I'm fairly uncoordinated, too, so, that doesn't help.

6 Q. So, we're looking at ID No. 142 on page three of the  
7 spreadsheet. Now, this is -- the created date is October 4th;  
8 correct?

9 A. Correct.

10 Q. And so that's more than a week after the new process  
11 went into effect, correct?

12 A. That's correct, yes.

13 Q. And it means that that voter in fact went to PennDOT  
14 prior to that date, correct?

15 A. Correct.

16 Q. All right. And as you go over, this is Philadelphia  
17 County voter, right? Okay. When I look at whether they're  
18 registered, it says true. So, they are registered. And the  
19 registered date is October 4 of 2004; correct?

20 A. Correct, yes.

21 Q. So, that means this is also a -- somebody who is duly  
22 registered, and a valid voter in Pennsylvania?

23 A. Correct.

24 Q. So, they had every right to vote on November 6th, 2012;  
25 correct?

1 A. Correct.

2 Q. And when I go to the mailed date, that would be the date  
3 on which the Department of State mailed their ID, it says  
4 April 4, 2013; is that right?

5 A. Correct, yes.

6 Q. And then tracking through UPS the delivered date is  
7 somehow also April 4th, 2013; correct?

8 A. Correct. It -- it occurs from time to time. UPS is  
9 usually, in a lot of cases it's almost overnight, and this is  
10 system tracked. The tracking number. So, depending on the  
11 time of day, it's a nightly -- it checks nightly, so it's  
12 possible it probably actually arrived -- it appears it arrived  
13 the same day, but it probably arrived the next day.

14 Q. In any event, this is another duly registered voter who  
15 went to PennDOT to get a DOS ID probably in early October,  
16 certainly before Election Day, and was not delivered a DOS ID  
17 until well after Election Day, April of 2013; is that correct?

18 A. Correct.

19 Q. Now, do you know how many of those voters are in here  
20 where, if we continued with the methodology we were just  
21 using, applied for an ID prior to November 6, are duly  
22 registered prior to on or before October 9, 2012, and whose  
23 delivery of the ID is after November 6th, do you know how many  
24 there would be in there?

25 A. I don't recall off the top of my head how many

1 exceptions fall into that category.

2 Q. So, would 42 -- the number 42 surprise you?

3 A. No. It wouldn't.

4 Q. Now, I believe when Mr. Rubin made his opening argument,  
5 he used the number 44 or 42. That's the number he gave and  
6 that's the number we thought, but there's another way to  
7 analyze this data. There's another field. There's another  
8 way of looking at it that does not capture duly registered  
9 voters who applied for an ID prior to Election Day, who didn't  
10 get it, and that's not people whose ID was mailed after  
11 Election Day, but people who never were mailed an ID at all;  
12 right? Are you following me?

13 A. Correct. I'm following you.

14 Q. So, let's do an example here. Let's see if we're doing  
15 this right. Let's go to row 53. It's on the first page.

16 A. Sorry. Excuse me. If anyone was asleep, I just woke  
17 them up.

18 Q. It may be a good thing. So, this is an individual whose  
19 created date is October 1, and so that means they were at  
20 PennDOT on or before October 1; correct?

21 A. That's correct.

22 Q. And this is a Delaware County voter. And then when you  
23 go look at the registered date, it is September 24th, 2004;  
24 correct?

25 A. Correct, yes.

1 Q. So, this is somebody who is eligible to vote on November  
2 6th; is that right?

3 A. That's correct, yes.

4 Q. And when you look at the mailed and delivered columns,  
5 it simply says false.

6 A. Correct.

7 Q. And that signifies that no ID was ever mailed or  
8 delivered to them through this process?

9 A. Correct.

10 Q. So, this is an individual who was duly registered to  
11 vote, goes to PennDOT to get their ID. They're motivated.  
12 They're doing what the Commonwealth wants them to do. They  
13 show up. They're not given an ID. They're told we're going  
14 to verify that you're registered. If you registered, we're  
15 going to send you your ID, and this person never got an ID to  
16 vote through this process; correct?

17 A. That's what appears to be the case, yes.

18 Q. Let's look at row 55. Okay? This is created 10/1/2012;  
19 right?

20 A. Correct.

21 Q. Philadelphia County, correct?

22 A. Correct. Yes.

23 Q. Registered, true. Registration date, 4/11/2012. So,  
24 that's timely; right?

25 A. Correct.

1 Q. So, this is a voter who can vote --

2 A. Right.

3 Q. -- right? And then if you look at mailed or delivered,  
4 it says false; correct?

5 A. Correct.

6 Q. So, the Department of State never mailed them a DOS  
7 ID --

8 A. Correct.

9 Q. -- correct? Let's do a few more. Sorry.

10 THE COURT: In the comment section, I see that  
11 the applicant was sent a letter instructing them to go to  
12 PennDOT for their free DOS ID.

13 Now, that letter was sent, but the false  
14 column means strictly the ID wasn't sent?

15 THE WITNESS: Correct. The false column, that  
16 column that we were referencing earlier tracks the card. And  
17 I -- I noted -- I think 55 may actually have been covered  
18 previously, that one and the previously did not receive an ID  
19 card.

20 BY MR. WALCZAK:

21 Q. But that person, that letter -- correct me if I'm wrong,  
22 the comment on row 55 is an indication that a letter was sent  
23 to the voter on March 22 of this year, and it says,  
24 instructing them to go to PennDOT for their free DOS ID;  
25 correct?



1 A. Correct.

2 Q. So, that's five months after Election Day?

3 A. Correct.

4 Q. Okay.

5 MR. WALCZAK: Is that -- Your Honor, any other  
6 questions on that?

7 THE COURT: Do we have an idea -- are you  
8 going to tell me later on, Counselor -- some voters waited  
9 months before the DOS ID was sent and received, and some  
10 received them after Election Day. So are you going to tell me  
11 how many?

12 MR. WALCZAK: How many? I can tell you right  
13 now, and we can avoid going through some more of these rows.

14 BY MR. WALCZAK:

15 Q. But would it surprise you if I told you that there were  
16 in fact, Mr. Marks, 82 individuals who show up in this  
17 spreadsheet who the created date is prior to on or before  
18 Election Day, who are duly registered to vote, that says that  
19 no ID was ever mailed or delivered to them?

20 A. It wouldn't surprise me.

21 Q. So, the number of voters indicated in this spreadsheet  
22 who were duly registered to vote, who went to PennDOT prior to  
23 Election Day to get an ID, had every right to vote and should  
24 have gotten an ID, there are a total of 42 who were delivered  
25 late, or 82 -- and 82 who were not delivered at all for a

1 total of 124 voters; is that right?

2 A. The math sounds right. I won't dispute the number at  
3 this point.

4 Q. This is under -- this is just under the new streamlined  
5 DOS ID process that was put into effect after the Supreme  
6 Court's liberal access dictate, and it was put into effect on  
7 September 25th; is that right?

8 A. Correct.

9 Q. So, if we take the total number of cards, DOS IDs that  
10 were issued since September 27th, and we said that was  
11 2,255 -- so what I'm doing is I'm taking 124 voters out of  
12 2,255 cards, and I get 5.49%. About 5.5%.

13 So, that would signify that of the -- that 5.5% of the  
14 people who applied for a DOS ID card since the new streamlined  
15 process went into effect were duly registered voters who went  
16 to PennDOT to get an ID but did not receive an ID that would  
17 allow them to vote prior to Election Day on November 6th?

18 A. Your math sounds right.

19 Q. So, if the photo ID law had in fact been in effect last  
20 year, those 124 duly registered voters would not have been  
21 able to cast a regular ballot on Election Day; correct?

22 A. Yeah. Under that hypothetical, that would be true.

23 Q. And so in fact, they would have to cast a provisional  
24 ballot; correct?

25 A. Correct, yes.

1 Q. And as we talked about yesterday, the only way to make a  
2 provisional ballot work is to bring in or to show to the  
3 county Department of Elections that you have a valid ID within  
4 six days of Election Day; correct?

5 A. That's correct, yes.

6 Q. So, if one of these voters has a delivery date of  
7 before -- now is it November 12th, November 13th? Do you  
8 remember what the cut-off was last year?

9 A. Yeah, it would have been -- six days after would have  
10 been the 12th, I believe.

11 Q. November. So, if the delivery date is before November  
12 12th, that individual would actually have an ID that they  
13 could show to validate their provisional ballot; correct?

14 A. Yes; that's how it would appear, yes.

15 Q. But that individual would actually -- beyond having to  
16 go to the polling booth in order to make that vote count,  
17 would have to take additional measures to get that ID to the  
18 county elections board; correct?

19 A. Correct.

20 Q. So, they either have to go there, they could fax it if  
21 they have a fax machine; right?

22 A. Right.

23 Q. And I guess they would also need a copy machine, because  
24 they have to -- you can't fax a card, right? You have to copy  
25 the card?

- 1 A. Right.
- 2 Q. So, you have to have a copier and then a fax machine.
- 3 Or you could email it?
- 4 A. Yeah, I mean --
- 5 Q. Is that --
- 6 A. I would assume a flatbed. You could probably fax a
- 7 card, depending on the type of fax machine.
- 8 Q. But you have to either have or have access to a fax
- 9 machine, correct?
- 10 A. To fax, yes.
- 11 Q. And you have to have, have or have access to a
- 12 photocopier to put the card on a piece of paper that's
- 13 faxable; correct.
- 14 A. Correct, if are you making a photocopy.
- 15 Q. You could also email it, right?
- 16 A. Yes, you can scan it and email it.
- 17 Q. Right. So, but that means that you have to have access
- 18 -- have or have access to a scanner, correct?
- 19 A. Correct.
- 20 Q. You have to have access to the internet, correct, and a
- 21 computer, correct?
- 22 A. Correct.
- 23 Q. And you have to have in fact an email account, correct?
- 24 A. I would think so, yes.
- 25 Q. So, there's some number of these voters -- and we

1 haven't looked at those -- who may have gotten an ID card in  
2 time, but they would have to take all of these additional  
3 measures in order to convey a copy of that DOS ID or the  
4 actual ID to the county elections board?

5 A. Correct.

6 Q. And that's the only place it can go. You can't go back  
7 to your polling place. There's only one place in the entire  
8 county where that ID has to be delivered, correct?

9 A. Yes, it would have to get to the county board of  
10 elections.

11 Q. But everybody else, all of these other duly registered  
12 voters would be voting provisionally, and then have no way to  
13 validate that provisional ballot before November 12th; is that  
14 right?

15 A. Correct.

16 THE COURT: It's a good time to give our court  
17 reporter a break.

18 MR. WALCZAK: Your Honor, that was my last  
19 question. Thank you.

20 THE COURT: We'll take a five or ten-minute  
21 recess.

22 THE BAILIFF: Commonwealth Court is now in  
23 recess.

24 (THERE WAS A RECESS FROM 10:59 A.M. UNTIL  
25 11:10 A.M. AND THE PROCEEDINGS CONTINUED AS FOLLOWS:)

1 MS. HICKOK: Good morning, Your Honor.

2 Your Honor, I would like to ask grace to go in  
3 reverse order and stay on this subject for a few minutes and  
4 then go back and pick up the cross in the other areas, if  
5 that's okay with you.

6 THE COURT: Sure. Thank you.

7 MS. HICKOK: If we could pull up on the  
8 screen -- and Your Honor, I apologize. I didn't know it would  
9 be at issue today, so we will get copies to the Court by  
10 tomorrow.

11 But if you could pull up on the screen the  
12 document from the fourth production, the sixth RFP in April,  
13 2013.

14 CROSS-EXAMINATION

15 BY MS. HICKOK:

16 Q. Mr. Marks, if you could look at that document and --

17 MR. WALCZAK: I'm sorry, Your Honor. Could I  
18 get a copy?

19 MS. HICKOK: I don't have a copy. I didn't  
20 know that you were going to talk about it.

21 MR. WALCZAK: Talk about what?

22 MS. HICKOK: That document. It's on your  
23 screen. It has your Bates number on it.

24 MR. WALCZAK: We didn't talk about --

25 MS. HICKOK: You did talk about that document.

1 BY MS. HICKOK:

2 Q. Mr. Marks --

3 MR. WALCZAK: I'm sorry, Your Honor. I'm not  
4 sure what --

5 THE BAILIFF: What is being shown.

6 MS. HICKOK: What is being shown is a document  
7 that has their Bates number on it that was produced to them in  
8 the April 2013 production in response to the sixth request for  
9 production of documents, and it is a document that he asked  
10 Mr. Marks if it had ever -- if they had ever provided any  
11 information, and Mr. Marks said yes, and he said he didn't  
12 believe there had been.

13 So I wanted to start by clearing up when it  
14 was the Petitioners got the information that was testified to  
15 today. And we will produce copies of the document as soon as  
16 we have got it. We didn't know it would be at issue.

17 MR. WALCZAK: Your Honor, I can't -- I have no  
18 way to examine this document on the screen here.

19 THE COURT: Let's take it quickly and you can  
20 strike it if it deserves to be stricken later.

21 BY MS. HICKOK:

22 Q. Mr. Marks, if you could look at this document. Can you  
23 identify it?

24 A. Yes, this appears to be an email from December 12th,  
25 sent from Scott Shenk over at PennDOT to me.

1 Q. Is there a document on -- is it an email chain?

2 A. I believe it is an email thread. He was probably  
3 responding to an email from me.

4 Q. And does this document discuss the 194 and 144 numbers  
5 you mentioned in your testimony today?

6 A. It does, yes.

7 Q. Was this document turned over to be produced to counsel?

8 A. Yes.

9 Q. Is it your understanding that it was then produced to  
10 Petitioners' counsel?

11 A. It is my understanding, yes.

12 Q. And this document talks about numbers, but it does not  
13 talk about specific names; is that correct?

14 A. That's correct, yes.

15 Q. So, from this number or from this communication that you  
16 were given from Scott Shenk of PennDOT, were you able to go in  
17 into the exceptions spreadsheet and delete the proper 144  
18 records?

19 A. We were not.

20 Q. And were you told that PennDOT considered the  
21 information that it had as to who had received PennDOT  
22 driver's licenses was confidential?

23 A. As I recall, I was told that it was confidential; yes.

24 Q. So, you knew that this document contained records that  
25 actually were not people who were seeking DOS IDs, but you did



1 not know which of these specific records they were?

2 A. Correct.

3 Q. You did, however, know that of the records where you did  
4 not receive DOS ID cards, that 144 of those records were  
5 actually records where people had walked in to a PennDOT  
6 center, had gotten a driver's license, had also filled out a  
7 VRMA form, which was then forwarded to you, you just didn't  
8 know which people those were; is that correct?

9 A. Correct, yes.

10 Q. At your deposition with Mr. Walczak, he had asked you  
11 some questions about the record created date; do you recall  
12 that?

13 A. Yes, I do.

14 Q. You had responded to him that there was a way to  
15 determine when a person had actually come to PennDOT; is that  
16 correct?

17 A. Yes.

18 Q. What did you tell him was the way to determine that?

19 A. The most effective way to determine that is to look at  
20 the call log for our helpdesk support.

21 Q. And did he ask you to produce those call logs?

22 A. I -- I don't recall. I believe he may have at the time  
23 of the deposition.

24 Q. Do you believe that those call logs were produced?

25 A. Yes. I believe they were produced, iterations of them

1 were produced probably earlier as well. I can't recall which  
2 round of discovery.

3 Q. And would those call logs have also been a way to verify  
4 which people should not have been on the exceptions list?

5 A. It could be. I don't know that it could be considered  
6 an absolute certain way of doing that, but it could be used as  
7 a tool.

8 Q. Okay.

9 MR. WALCZAK: Your Honor, I'd like to  
10 interpose an objection that we had called Mr. Marks as if on  
11 cross. This is Commonwealth's own witness, and so, I would  
12 interpose a leading objection here.

13 THE COURT: That's overruled. We're going to  
14 try to move forward as quickly as we can.

15 BY MS. HICKOK:

16 Q. Mr. Marks, you were asked to calculate a series of  
17 numbers based upon information that Mr. Walczak was giving  
18 you.

19 Given that there were a number of records that were  
20 unaccounted for, do those records -- do those numbers that he  
21 was asking you to calculate accurately reflect how the  
22 exceptions process actually worked as it pertains only to DOS  
23 ID cards?

24 A. That's accurate, yes.

25 Q. That those --

1 A. Does not -- it does not accurately reflect it.

2 Q. And today, as of this date, how many DOS ID cards are  
3 sitting at the Department of State waiting to be sent out?

4 A. I believe there are currently 54 cards.

5 Q. 54 cards. And of those 54 cards, have you -- are those  
6 people that you believe not to, or that you have shown on your  
7 records as not having been registered?

8 A. That's correct, yes.

9 Q. And have you done any investigation into those 54 or  
10 however many, just over 50 people?

11 A. We have some -- done some investigation, yes.

12 Q. And have some of them made application?

13 A. Yes. Some -- a handful of them have made application to  
14 register or did at some point in time in the past.

15 Q. And why, then, would those people still be on that list  
16 as not registered?

17 A. Those applications, I believe, were rejected.

18 Q. And if an application is rejected, is a person  
19 registered to vote?

20 A. No.

21 Q. And if a person is not registered to vote, can a person  
22 get a card from the Department of State that was issued by  
23 PennDOT that says, a voter card?

24 A. The DOS ID card, if that's what you are referring to,  
25 no, they would have to be registered for that to vote.

1 Q. And do you have any idea how many of those were  
2 rejected?

3 A. I believe it was eight.

4 Q. So, there's roughly 40-some people for which you have  
5 DOS ID cards at the moment; and is it possible that some of  
6 those people, even though they originally applied for the DOS  
7 ID card, subsequently decided that they would prefer a secure  
8 ID card?

9 A. It's possible. I have no way of determining that at  
10 this point.

11 Q. And let me clarify one thing. Are you someone who has  
12 rights to the PennDOT database?

13 A. I'm not, no.

14 Q. So, can you verify for yourself which people come in to  
15 PennDOT each day or whether anybody on the exceptions list is  
16 on or off of that list at any given moment?

17 A. No.

18 Q. Now, you were asked about some specific people, and I  
19 want to -- I want to respect the same prerogatives that  
20 Mr. Walczak did, but there are times when the first name field  
21 might be significant. So, I'm going to ask for leave to show  
22 just the first name, and see if we can hide the last name  
23 field.

24 MR. WALCZAK: Your Honor, if I might ask if  
25 Miss Hickok could return my copy so I could follow along and

1 perhaps she could use her copy.

2 MS. HICKOK: I didn't know that yours was up  
3 here.

4 BY MS. HICKOK:

5 Q. Mr. Marks, I believe you were asked about row 12.

6 A. I believe I was, yes.

7 Q. Do you recall that testimony?

8 A. I do.

9 Q. And were you asked about this person at your deposition?

10 A. I believe I was asked at the deposition as well.

11 Q. And after the deposition, did you look into why it was  
12 that this person had been registered since 1944, but had not  
13 shown up?

14 A. I did, yes.

15 Q. And what did you find out?

16 A. I found that at the time there was a discrepancy, and I  
17 believe there still is, with the first name.

18 Q. And what kind of discrepancy was there?

19 A. In this particular case, as I recall, there's a  
20 different first name on the voter record that says Mrs. and  
21 then a male name on the voter record versus the name that's on  
22 this field.

23 Q. So, on the voter record, it actually shows her husband's  
24 name and then Mrs. So his first name. So, if it were --

25 A. Correct.

1 Q. -- John Doe, it would be Mrs. John Doe. But when she  
2 filled out her DOS application, she filled it out with this  
3 first name of Helen?

4 A. Correct, yes.

5 Q. How many records are in the SURE database?

6 A. How many records or how many active or inactive voter  
7 records?

8 Q. No, entire. If you were to take the entire database,  
9 how many records?

10 A. I think there's probably nearly 15 million. I may be  
11 completely wrong, but there's well over 8 million. 8 million  
12 is the number of registered voters, but there are a lot more  
13 records maintained, cancelled records, et cetera.

14 THE COURT: But 8 million voters in the SURE  
15 system?

16 THE WITNESS: Correct.

17 BY MS. HICKOK:

18 Q. So, how easy would it be to understand whether somebody  
19 was in a database as Mrs. John Doe if they had applied using  
20 their actual first name?

21 A. It wouldn't be easy. It would be difficult.

22 Q. And are there times in this process when you have had to  
23 reach back out, either to the voter or to the county, in order  
24 to reconcile some of these pieces of information?

25 A. There have been times in the process where that was the

1 case, yes.

2 Q. And I notice that this person has a date of birth of  
3 1918. Are there other records that were generated back a long  
4 time ago like this?

5 A. In other words, folks who have been registered and --  
6 for a long time or people who have been alive for a long time?

7 Q. People who have been -- well, I think that means -- she  
8 had registered in 1944 --

9 A. Yes, both.

10 Q. -- so, that's a long time ago?

11 A. Yes, it's a long time in either case. Yes, there are  
12 records that -- that have been there for a long time.

13 Obviously, they haven't been maintained in the SURE  
14 system for a long time unless you consider roughly, you know,  
15 eight, nine years a long time; but, they have been registered  
16 voters for a long time, yes.

17 Q. And how did the records originally get put into SURE  
18 when you created the SURE database?

19 A. As I recall, each county either -- either maintained  
20 their voter records, small counties may have still maintained  
21 them primarily on paper. A lot of counties had databases of  
22 their own for their own county. We refer to them as legacy  
23 databases. And that data had to be brought over, converted  
24 and brought into SURE, so that we had a starting point of  
25 current, accurate voter lists for the entire Commonwealth.

1 And then when we moved forward, they were maintained in the  
2 SURE system, exclusively.

3 Q. Were all of the counties maintaining their databases in  
4 the same way?

5 A. No.

6 Q. Were they all entering data in the fields in the same  
7 way?

8 A. No.

9 Q. Over time, have you tried to make the entries uniform?

10 A. We have. We have tried to make the entries uniform,  
11 yes.

12 Q. Would it have captured all of the older records in that  
13 attempt at uniformity?

14 A. It wouldn't capture the older records unless we did some  
15 sort of -- you know, in conjunction with the county, some sort  
16 of data cleanup to address a specific anomaly; but typically,  
17 it was a point forward from the moment that county came on to  
18 SURE. We provided a specific policy regarding the entry of  
19 names, entry of addresses, et cetera.

20 Q. Thank you. You were asked about letters that you sent  
21 out in March and April asking -- telling customers that if  
22 they needed an ID, they should return to PennDOT. Do you know  
23 why you sent out those letters?

24 A. We sent out those letters primarily to close the files.  
25 We had so many open files, including the 194 that were



1 questionable with PennDOT, that we needed to have just for  
2 purposes of, you know, administrative -- I won't call it  
3 administrative ease, but to have a cleaner record of what  
4 occurred. And we had to have some point in time where we  
5 would close.

6 So, a final letter went out to those individuals that  
7 kind of marked the closing point on that record.

8 Q. So, those letters were not because PennDOT had told you,  
9 please have this customer come back; they were your way of  
10 kind of signalling to a customer that there might be something  
11 wrong; is that correct?

12 A. Correct, yes.

13 Q. You were asked about the number of people who were  
14 backfilled, and I believe you were asked if those people were  
15 backfilled in May. Were all of them backfilled in May?

16 A. I don't know that every single record that was  
17 backfilled, was backfilled in May. I think the majority of  
18 them were earlier, as I recall.

19 Q. And Mr. Walczak said that one of the ways you could tell  
20 is if the created date was at a time that was at -- subsequent  
21 to the record close date; is that the way that is basically  
22 the best way to tell whether data were backfilled?

23 A. It is, yes.

24 MS. HICKOK: Your Honor, at this point, I'm  
25 going to go back to yesterday's testimony and do the cross, if

1 you will, on that.

2 BY MS. HICKOK:

3 Q. Mr. Marks, you were asked yesterday some questions about  
4 the process that you are currently involved in with PennDOT,  
5 whereby you were looking to automate the transaction when a  
6 help call comes in; do you recall that testimony?

7 A. I do, yes.

8 Q. Have you ever testified about that process before, about  
9 the desire to automate?

10 A. I believe so. I believe last summer.

11 Q. Last summer. Would that have been in deposition?

12 A. I'll be -- I don't recall whether it was deposition or  
13 trial, but I know certainly, it's been our intent from the  
14 beginning to automate this process more and more over time.

15 Q. That was something that was discussed last year?

16 A. Correct, yes.

17 Q. You were asked a question yesterday about whether  
18 college and care facility identifications were secure. How  
19 would you define a secure identification?

20 A. I define it -- at least in the context of this trial, I  
21 define it as one issue by PennDOT that has certain vetting --  
22 certain requirements, underlying requirements -- birth  
23 certificates, Social Security number. It's a term of art  
24 that's been used over the past year, year-and-a-half.

25 So, when I'm saying secure ID, I'm primarily talking

1 about a PennDOT issued ID, a PennDOT product. I wouldn't  
2 know -- I would suspect that those issued by the Department of  
3 Defense are secure IDs, but I don't know that for a fact.

4 Q. But you don't know whether, for example, college ID may  
5 be treated by the college as one measure of its security;  
6 you're just saying it's not a secure identification card in  
7 the sense that a PennDOT card is?

8 A. Correct.

9 Q. You were also asked about veterans yesterday, and is  
10 there -- are there any statutes in effect that have  
11 implications for veterans in voting?

12 A. That have implications for veterans in voting. There  
13 are protections under -- under the Pennsylvania election code  
14 that I'm certainly aware of.

15 Q. And what sorts of protections are there?

16 A. Well, veterans are -- I believe it's hospitalized  
17 veterans explicitly are able to vote absentee, and there are  
18 specific provisions under the absentee voting article of the  
19 Election Code.

20 Q. Do you -- is there a name for that act; do you recall?

21 A. The act that provided for the -- well, at current, the  
22 Pennsylvania law is UMOVA. There's so many acronyms running  
23 around in my head from time to time, but UMOVA is the most  
24 recent enacted legislation by the General Assembly to address  
25 military voters and overseas voters, and in this case veterans

1 as well.

2 Q. And was that designed to protect veterans?

3 A. Yes.

4 Q. You were asked a series of questions about absentee  
5 ballots, and I'm not sure that he ever got to clarify all of  
6 the types of them because you were kind of skipping around a  
7 little bit.

8 Is there -- what classifications might there be of  
9 ballots that might be voted in absentia? Let's start with  
10 that.

11 A. What types of --

12 Q. If somebody were going to vote not in person --

13 A. Right.

14 Q. -- what are the different things that you would call  
15 those ballots? Like would they all be absentee or --

16 A. No, generally -- no, they wouldn't all be absentee  
17 ballots. I believe we may have discussed absentee versus  
18 alternative ballots and the distinction between the two.  
19 Those are the two primary categories.

20 Q. And are there permanent absentee ballots as well?

21 A. There are permanent absentee ballots provided for in the  
22 Election Code.

23 Q. And how does a person get a permanent absentee ballot?

24 A. They submit an application with certification from their  
25 attending physician to the county board of elections

1 requesting that status.

2 Q. And are there federal laws that impact absentee ballots?

3 A. There are, yes.

4 Q. Can you tell me any of those laws?

5 A. In reference to military and overseas voters, there is  
6 the UOCAVA, which is an acronym for the Uniformed Overseas  
7 Civilian -- Uniformed and Overseas Civilian and Absentee Voter  
8 Act.

9 Q. And are there other statutes that have absentee or  
10 alternative ballot provisions?

11 A. We discussed UMOVA. Alternative ballots are a specific  
12 type of a ballot provided for by the Voting Accessibility for  
13 the Elderly and Handicapped Act, which is a federal law as  
14 well.

15 Q. And are all of those ballots, even though they're  
16 absentee, are they all subject to the identification  
17 requirements that are set forth in Act 18 for absentee  
18 ballots?

19 A. They're not, no.

20 Q. You were also asked a number of questions about PennDOT  
21 and PennDOT's operations. Now, are you a PennDOT employee?

22 A. I'm not.

23 Q. Have you, through the course of this litigation, come to  
24 know some things about PennDOT and how it operates?

25 A. I have, yes.

1 Q. You were asked some questions about centers and their  
2 hours. Did you have any understanding as to whether those  
3 hours have been the same from the time this case started  
4 through the election and to now?

5 A. Over that entire span of time, no, the hours have not  
6 always been the same.

7 Q. And were you involved in any efforts to extend hours at  
8 PennDOT prior to the election?

9 A. Yes. We were involved in discussions with PennDOT to  
10 extend hours in certain locations.

11 Q. Did PennDOT extend hours in some locations?

12 A. They did.

13 Q. Are you the person who supervises the helpdesk at the  
14 Department of State?

15 A. I don't directly supervise the helpdesk, but I do --  
16 they come under the -- they actually come under our IT  
17 Department primarily, but they're a support staff for us, so I  
18 don't directly supervise them, no.

19 Q. When PennDOT extended its hours, did you request or  
20 direct that the helpdesk's hours be increased commensurate  
21 with that?

22 A. Yes.

23 Q. Did you do that through the election?

24 A. We did, yes.

25 Q. You were asked some questions about people who were

1 being issued DOS ID cards shortly before the election. If the  
2 injunction had not been in effect, would it have been  
3 important to you to see to it that that ID card or a facsimile  
4 thereof or something would have been with the county so that  
5 that person could vote in person?

6 A. Yes.

7 Q. Now, that might not have captured, or would it have  
8 captured some of these people like the Mrs. Carl that you had  
9 not been able to verify?

10 A. I'm sure it would have.

11 Q. It would have captured those people? They would have --

12 A. Yes.

13 Q. -- still been with the county -- with the --

14 A. Information could have been provided to the counties,  
15 yes.

16 Q. You were asked a series of questions about the backfill  
17 that was done last summer between the PennDOT database and the  
18 Department of State SURE database; do you recall those  
19 questions?

20 A. I do, yes.

21 Q. And who actually ran that match?

22 A. Who ran the match? Which agency ran the match?

23 Q. Yes.

24 A. PennDOT matched our data against their database.

25 Q. Thank you. Do you recall there was some questioning of

1 you about whether you could become a registered voter in

2 Pennsylvania as long as you were not registered in Maryland?

3 A. I -- I do recall testimony about being registered in two  
4 locations simultaneously, yes.

5 Q. Is it okay to be registered in two locations?

6 A. It's not okay. It's certainly not okay to vote in two  
7 locations, but you should not be registered in two locations,  
8 either.

9 Q. How does one determine in which location they should be  
10 registered?

11 A. Well, typically, there are residency requirements for  
12 voter registration. So, therefore, it would be the state or  
13 the jurisdiction in which you currently reside.

14 Q. I believe this came up in the context of college  
15 students. If a college student determined to reside in  
16 Pennsylvania, would it be legitimate for that person to  
17 register to vote and vote in Pennsylvania?

18 A. Yes, if they determined that their address at the  
19 college, at the college or university was a residence address  
20 at that time, they would be entitled to vote in Pennsylvania;  
21 yes.

22 Q. And if they determined instead that their residency  
23 would be in their home state, then that is where they should  
24 be voting; is that correct?

25 A. That's correct. If they maintain their residence, they



1 would presumably vote absentee in their home state.

2 Q. When you first set up the DOS ID card, you were asked  
3 about the requirement that people put in a Social Security  
4 number or the last four digits of the Social Security number,  
5 or else say that they had none.

6 Is that requirement something that was created  
7 specifically for the DOS ID card?

8 A. I don't know if it was, I would characterize it as  
9 specifically for the DOS ID card. The last four digits of the  
10 Social Security number is -- I believe what I testified to  
11 yesterday is that the DOS ID card, and certainly at this point  
12 in time, has been tied entirely to the qualifications of  
13 registering to vote.

14 And one of those is the provision of a driver's license  
15 number or the last four digits of a Social Security number.

16 Obviously, this individual would not have a driver's  
17 license as it says on the line, so a Social Security number  
18 would be required.

19 Q. If a person didn't have a Social Security card, could  
20 they register to vote and get a DOS ID card?

21 A. If they didn't have a Social Security number, then  
22 irrespective of whether they had a card or not, as long as  
23 they had a Social Security number, they can register and vote.

24 And if they were never issued a Social Security number,  
25 they would simply affirm that fact on the -- on the voter

1 registration application or the DOS ID form affirmation,  
2 whichever the case may be.

3 Q. You were asked a series of questions about how hectic it  
4 was in November 2012 prior to the election; do you recall that  
5 questioning?

6 A. I do, yes.

7 Q. What kind of an election was November 2012?

8 A. What kind of an election? Well, it was a presidential  
9 election.

10 Q. And are presidential elections typically busier times?

11 A. They are. There's a larger volume of work across the  
12 board.

13 Q. How many election cycles have you worked through with  
14 the Department of State?

15 A. Now, you're going to make me do math again. And I have  
16 been around for a while. I have been working in the election  
17 bureau since 2002. So, I would be through -- that would be  
18 through 10 November election cycles.

19 Q. And are there also election cycles in the spring?

20 A. There are primaries in the spring and we have a  
21 smattering of special elections, too, throughout the time.

22 Q. And of all of those elections, can you give us an idea  
23 of, you know, how your volume changes from election to  
24 election?

25 A. It does change significantly. Certainly, a presidential

1 election is unlike any other in terms of volume of new --  
2 newly registered voters, that the volume of voter registration  
3 activity, the percentage of people who show up to vote is  
4 significantly higher than any other election.

5 An off-year, as it's been referred to, a federal  
6 election like the one that we have coming up in 2014, that's  
7 pretty much the same experience; but sometimes it varies  
8 depending on whether you have a U.S. Senate race, for example.

9 I remember the Santorum race several years ago was  
10 probably more active than a normal off-year election.

11 So, it varies, depending on the political dynamic at the  
12 time, in some cases.

13 Q. And the recent election in May 2013, how well attended  
14 was it?

15 A. Not very well.

16 Q. And how many new registrations did you get, if you know?

17 A. I don't know the number off the top of my head, but I  
18 know it was very low.

19 Q. Does it surprise you that there were very few DOS IDs in  
20 advance of that election?

21 A. It doesn't, no.

22 Q. Going back to the database again for a minute, when --  
23 to clarify how this process works, you had testified that the  
24 county enters the SURE data -- the data into the SURE  
25 database; is that correct?

1 A. That's correct, yes.

2 Q. And if somebody comes with a voter registration  
3 application, is that application forwarded to the county?

4 A. Yes, it is.

5 Q. And are the counties instructed to check for duplicates?

6 A. They are.

7 Q. And how do they check for duplicates?

8 A. They check for duplicates. We actually have built  
9 functionality into the SURE system to check for duplicates.

10 Q. So, they hit a button?

11 A. Yeah, in the SURE system -- as a matter of fact, it is  
12 hitting a button. It's a key that they select for every  
13 record. There's two mandatory levels of checking based on the  
14 name and date of birth and Social Security number, I believe,  
15 for verification purposes.

16 But the first two levels of checks are required.

17 Q. And those are checking for duplicates?

18 A. Right. It's checking to make sure that the individual's  
19 not registered elsewhere within the county or elsewhere within  
20 the Commonwealth.

21 Depending on the response there, the individual would be  
22 transferred, if they were in fact registered either in-county  
23 or out of county, if you didn't find duplicate or if you found  
24 potential duplicates based on the information provided, then  
25 you could do additional levels of searching.

1 Q. If you were to do the first level search, do you know  
2 what it searches for to look for a duplicate?

3 A. I -- I'm trying to recall now. I get them mixed up, but  
4 I believe the first one is last name and date of birth.

5 Q. What is the second one?

6 A. I think the second one might be first name and date of  
7 birth or first name and last name and date of birth. I think  
8 it narrows. As I recall, I think it narrows as you go  
9 forward.

10 Q. And the first two levels are automatic; they're a single  
11 key?

12 A. Correct, and then you're required to do them before you  
13 can approve the application. Right.

14 Q. Are you required to go further that that and try to see  
15 if there's any way that the data are duplicated by doing it  
16 manually?

17 A. You're not required to go beyond that, no.

18 Q. Is it possible that some married -- some people who file  
19 a new voter registration application upon getting married  
20 would actually not be caught in those first two level checks?

21 A. It's possible, yes.

22 MS. HICKOK: Your Honor, I will provide that  
23 document to the Court as soon as I can get copies of it, and  
24 I'll obviously also to counsel; but at this time, I'll  
25 relinquish the witness.

1 THE COURT: Thank you Ms. Hickok.

2 MS. HICKOK: Thank you.

3 REDIRECT EXAMINATION

4 BY MR. WALCZAK:

5 Q. Mr. Marks, Miss Hickok asked you about the federal laws  
6 designed to protect veterans; is that right? So, UMOVA and  
7 UOCAVA.

8 A. UMOVA is actually a state law. UOCAVA is a federal law.

9 Q. So, both -- one is a state and one is a federal, and I  
10 believe, as she characterized it, designed to protect  
11 veterans; is that right?

12 A. UMOVA is designed to protect veterans.

13 Q. What's UOCAVA? That's overseas -- I'm sorry, that's the  
14 military folks that are overseas.

15 A. Correct. UOCAVA is a specific federal law that protects  
16 military voters and overseas civilian voters.

17 Q. So, under UMOVA, you're not saying that that law is  
18 designed to protect the right of all veterans to vote; are  
19 you?

20 A. I would think that under Pennsylvania law, it would  
21 certainly protect a class, and I believe it's veterans who  
22 are -- disabled veterans primarily. I can't recall the exact  
23 language used in the Election Code, but there's a specific  
24 category of veterans, and UMOVA protects them.

25 Q. And I believe that your testimony before was that you

1 thought it was hospitalized veterans; is that right?

2 A. I believe that's the language. Without looking at the  
3 code to refresh my memory, I couldn't say for sure.

4 Q. So, there is no state laws that actually protects  
5 veterans' right to vote even if they don't have an ID card?

6 A. That --

7 Q. Well, let me -- strike that. Let me ask that a  
8 different way.

9 So, in essence what UMOVA is, it gives hospitalized  
10 veterans the right to vote absentee; is that right?

11 A. Correct.

12 Q. So, if they vote absentee, they don't need an ID; they  
13 either need the last four digits of the Social Security number  
14 or the driver's license number itself?

15 A. Correct.

16 Q. But that law does not somehow magically give all  
17 veterans who don't have a valid form of ID the right to cast a  
18 ballot on Election Day without ID.

19 A. I believe it is limited to that category of hospitalized  
20 veterans.

21 Q. So, it's not an exemption from the photo ID  
22 requirements?

23 A. No, I don't believe it is.

24 Q. Now, Miss Hickok asked you about steps you might have  
25 taken if the photo ID law was in effect in November to help

1 some folks get IDs, and I wasn't clear on what you said there.

2 You said something about faxing an ID to the county?

3 A. Well, I think our discussion was about providing copies  
4 of the information we had on our files with the county boards  
5 of elections, which may include even a scanned image of an ID,  
6 if necessary.

7 Q. That might have helped the folks for whom you had issued  
8 an ID prior to November 6th, correct, or say mailed an ID  
9 prior to the 6th, correct?

10 A. Correct, yes.

11 Q. That that wouldn't have helped on people who may not  
12 have been identified as needing an ID after the 6th, correct?

13 A. Correct. Someone who didn't show up as registered to  
14 vote. It would help anyone who we had received an ID card or  
15 information from PennDOT for -- on or before Election Day.

16 Q. So, it would only be those voters for whom in the  
17 spreadsheet are designated as having had an ID mailed to them  
18 prior to the 6th, regardless of delivery date, but mailed to  
19 them prior to the 6th?

20 A. I don't believe it would just cover that category. It  
21 would cover anyone who we had documentation for prior -- on or  
22 before November 6th. If it was an ID card and a voter  
23 registration application, for example, or even information  
24 providing them just with an exception. Irrespective of  
25 whether we had mailed the card out. It's possible that we



1 could have received on Election Day information from PennDOT,  
2 so --

3 Q. But if you had information prior to Election Day that,  
4 in fact, the applicant for the ID had -- was duly registered  
5 and could vote, presumably, you would have mailed them the DOS  
6 ID card; right?

7 A. Correct. But what I'm saying is we would provide -- if  
8 we -- we're getting these every day, including Election Day.  
9 Last time I checked, PennDOT's not closed on Election Day.

10 So, if we obtained information, even up to the day of  
11 the election, and even through six days beyond the election,  
12 that we thought was relevant, we would send that off to the  
13 county boards of elections.

14 Q. But you would have had to have accurately determined by  
15 that date that the person is actually registered and entitled  
16 to vote?

17 A. That's correct, yes.

18 Q. And as you said, there's a lag between when PennDOT gets  
19 you the eligibility sheets and the documentation, and when  
20 it's actually created the database; right?

21 A. There's typically a lag. I don't know at that point in  
22 time there would be. Obviously these steps are mitigation  
23 steps that would be taken within a certain window.

24 Q. Now, you're not saying that on Election Day, which is  
25 especially busy for the Department of State, that PennDOT is

1 all of a sudden going to be transmitting anybody who comes in  
2 on that date for an ID, transmitting the eligibility form  
3 exactly on that date; is that right?

4 A. I -- if -- it would be treated like any other day, from  
5 our perspective.

6 Q. So, if they come in on Election Day to get the ID to  
7 PennDOT, and even if they're duly registered but they can't  
8 verify that, the Department of State may not find out about  
9 that until the next day or two days later in fact; right?

10 A. Yeah. It's possible. If we -- you know, as I said,  
11 these discussions were around mitigation steps, so we may have  
12 changed the -- temporarily, the way information was  
13 transmitted from PennDOT to the Department of State during  
14 that entire window of time, not just the day of the election.

15 Q. So, you would have to change the process and tweak the  
16 process again to make it more efficient in order for that to  
17 happen; correct?

18 A. Correct. I think we would -- as we did with a lot of  
19 election administration things, there's a kind of a -- I call  
20 it the red zone, where you treat things with a lot more  
21 urgency, a lot more immediacy, because of the time frame  
22 you're in, and I think that's probably true that the county  
23 boards of elections as well.

24 Q. And right at the time when this Court was scrutinizing  
25 the Department of State's DOS ID process in late September,

1 because the case had been remanded from the Supreme Court,  
2 would that have been a red zone time for the Department of  
3 State and PennDOT to perform at their optimum?

4 A. We would have -- typically, I call the red zone that  
5 period from close of registration through Election Day and  
6 even past Election Day, but roughly that same time period.

7 Q. Right, but you knew at that time that your agency was  
8 under close scrutiny; correct?

9 A. Yes. I think that's accurate.

10 Q. And you were making your best efforts to get this  
11 process exactly right, correct?

12 A. Correct, yes. And those efforts continue.

13 Q. Just a couple more questions. So, we had reference to  
14 these 144 voters who apparently got ID through some other  
15 process; do you recall that?

16 A. I do, yes.

17 Q. And I believe you testified you do not know the identity  
18 of the those 144 voters, is that right?

19 A. I did not in December, no.

20 Q. And do you know it now?

21 A. Yes.

22 Q. Have you provided that to the Petitioners?

23 A. No, we learned that within the past several days.

24 Q. And has -- have you done any kind of analysis to look at  
25 which of the voters on that spreadsheet may be affected and

1 how?

2 A. It -- we did take a look at which ones on -- in our  
3 database are the 144.

4 Q. You didn't testify to that today.

5 A. I'm sorry?

6 Q. You didn't testify to that today.

7 A. That we ID'ed them? No.

8 Q. You didn't testify what impact those 144 had on, for  
9 instance, the 124 voters that we had identified earlier --

10 A. Yes, I did not.

11 Q. -- as -- do you know how many of those 124 voters that  
12 did not get ID in time or did not get ID at all under the  
13 spreadsheet would have a different result if we looked at the  
14 144?

15 A. I don't know at this time, no.

16 Q. Now, we talked about row 12, so -- so, Miss Hickok asked  
17 you again about row 12. This was the Schuylkill County voter  
18 who was registered in 1944; is that correct? Am I looking at  
19 that right?

20 A. Yes, this is the one with the 1918 birth date. Yes,  
21 that's correct.

22 Q. And I believe the explanation was that you could not  
23 match her in the SURE database because apparently, when she  
24 registered during World War II -- that puts things in  
25 perspective --

1 A. It does.

2 Q. -- that, as I think many wives would have done at the  
3 time, registered as Mr. husband's first name and then the last  
4 name.

5 A. Correct.

6 Q. So, there was no -- there was no -- that made it  
7 difficult to match those, correct?

8 A. It did initially, yes.

9 Q. And that's certainly understandable how that would  
10 happen, why there would not be a match.

11 A. Correct, yes.

12 Q. That makes perfect sense. But if it wasn't for the  
13 voter ID law, that wouldn't be an issue at all; would it?

14 A. I don't know that it would be an issue typically. I  
15 guess it depend on -- depends on what it maintained on the  
16 voter registration record versus what information the voter  
17 provides at the time they present themselves to vote.

18 Q. Well, and I'm going to make some presumption here, but  
19 somebody who has been voting since 1944, at least registered  
20 and presumably voting since 1944, has been going to polling  
21 places for a long time, she would go in and, as so often  
22 happens, say hello to Millie and Fred and they would say, sign  
23 your name, and they would match the signature, and if they  
24 knew her -- and I know the poll workers, they're probably not  
25 looking all that close because everybody knows Helen -- and

1 she would be allowed to cast her regular ballot; is that  
2 right?

3 A. That's correct, yes.

4 Q. So, it's only because of the photo ID law that that  
5 comes into question; correct?

6 A. Right. In her specific case, certainly.

7 Q. There's no question, though, that this is an individual  
8 who is eligible to vote and likely voted at her polling place  
9 for a long time?

10 A. That's correct.

11 Q. Now, I know you said at the outset of your testimony  
12 yesterday that you had confidence in the integrity of  
13 Pennsylvania elections going back 11 years, since you have  
14 been working with elections; correct?

15 A. That's correct.

16 Q. Now, if 124 voters, or some subset of those, were  
17 precluded from voting on Election Day because maybe I just  
18 couldn't match Mrs. John X to Helen X, but they were not  
19 allowed to vote, and that became known, would that undermine  
20 your faith in the integrity of Pennsylvania elections?

21 A. I don't know that it would undermine my faith in the  
22 integrity of elections overall. When I say integrity of  
23 elections, I have confidence in the integrity of our  
24 elections. Whether I have confidence in the integrity of  
25 every person who votes in elections, I couldn't answer that

1 question.

2 Q. All right.

3 A. But on balance, I have confidence in the integrity of  
4 our elections, yes.

5 Q. And the confidence you have is during a period where  
6 there has been no voter ID -- the 2012 voter ID law has not  
7 been in effect, correct?

8 A. Correct, yes.

9 Q. And so, now, with the voter ID law going into effect,  
10 potentially there's 124, or at least some voters like this  
11 individual, who would not have been able to vote because they  
12 didn't have the ID; correct?

13 A. That's correct, yes.

14 Q. And does that undermine your confidence in the integrity  
15 of elections if this law goes into effect?

16 A. It doesn't.

17 Q. It does not?

18 A. It does not.

19 MR. WALCZAK: Nothing further, Your Honor.

20 MS. HICKOK: Your Honor, I have only two  
21 things.

22 RECROSS-EXAMINATION

23 BY MS. HICKOK:

24 Q. Mr. Marks, you were asked a moment ago about the woman  
25 that is Mrs. John Doe, and you were asked whether there would

1 be any circumstances aside from the effect of the voter ID law  
2 where her name might become an issue.

3 What would happen if she moved from her home to another  
4 election district under the old law?

5 A. If she moved from her home to another election district,  
6 she would have to provide proof of identification as a  
7 first-time voter in that election district.

8 Q. And if her proof of identification was in the name of  
9 Helen, might that cause an issue that needed to be resolved?

10 A. It could, yes.

11 Q. And would the counties work to resolve it?

12 A. I would expect they would, yes.

13 Q. And under the voter ID law, would you expect them to  
14 work to resolve it?

15 A. I would, yes.

16 MS. HICKOK: Thank you. That's all I have.

17 MR. WALCZAK: We have nothing further for this  
18 witness.

19 THE COURT: Can we dismiss Mr. Marks? We can  
20 always find him.

21 THE WITNESS: I won't go far, I promise.

22 MS. HICKOK: Your Honor, we'll be bringing him  
23 back in our case in chief.

24 MR. WALCZAK: Your Honor, I would just ask to  
25 expressly reserve the right to re-examine him if the



1 Commonwealth belatedly produces information about this 144  
2 mystery voters.

3 THE COURT: Okay. We'll recess until 1:30.

4 (THERE WAS A RECESS FROM 12:04 P.M. UNTIL  
5 1:27 P.M., AND THE PROCEEDINGS CONTINUED AS FOLLOWS:)

6 THE BAILIFF: Remain seated, please.

7 Commonwealth Court is now in session.

8 THE COURT: Mr. Rubin.

9 MR. RUBIN: Yes, this is housekeeping, Your  
10 Honor, in terms of exhibits. We'd like to - I believe  
11 Exhibit, which was the video that was played with Adam  
12 Bruckner, was moved into evidence, which was Exhibit 1995. I  
13 just wanted to confirm that for the record.

14 THE COURT: Very good.

15 MR. SCHMIDT: Your Honor, we would object to  
16 that video. We don't think it was properly authenticated by  
17 the female, Ms. Giuliana, who took the video and Mr. Bruckner  
18 didn't give us a time and date when it took place.

19 THE COURT: Okay. Should have done that the  
20 other day. I'll overrule the objection.

21 MR. RUBIN: Your Honor, we move into evidence  
22 the exhibits that were used with Mr. Marks, Exhibit 2071,  
23 which is the big cell file. Logistically, Your Honor, we  
24 obviously gave you the very large file. We have a small  
25 version that might fit better in the official record, plus we

1 have electronic versions of the native Excel file as well.

2 I'm not sure if you would like copies of those as well.

3 THE COURT: No, I'll keep this copy. That  
4 will be fine.

5 MR. RUBIN: Then we'd also move into evidence,  
6 Exhibit 1328 and Exhibit 2072.

7 THE COURT: No objection, they'll be admitted.  
8 Now, I noticed we're off track a little bit on  
9 these.

10 MR. RUBIN: Yes, we are, Your Honor.

11 THE COURT: On your tentative trial schedule.  
12 Have you made any additions, modifications,  
13 deletions?

14 MR. RUBIN: A lot, Your Honor. I believe  
15 we're going to call Mr. Rogoff, a short fact witness, followed  
16 by, out of turn, the Respondents are call to call for the rest  
17 of this afternoon, Shannon Royer, followed by our cross; and  
18 then we may try to get Professor Mutz on, but that is very  
19 unlikely, to at least start, but we will try to call her  
20 tomorrow, and then the witnesses for tomorrow are likely going  
21 to fall into next week.

22 At this point, I think we probably think given  
23 the speed at which we're going and the short days next week  
24 that our case will take most of next week; but we can provide,  
25 as we sort of figure out where we end today, an updated

1 schedule for tomorrow for Your Honor.

2 THE COURT: Okay. Now, on Monday morning, I  
3 would like all of you to get together off the record and have  
4 a meeting, and see if we can't get some stipulations hammered  
5 out. I think we have got to get to the bottom line, and  
6 that's what's happened since Supreme Court's remand. And even  
7 before then, a couple of months before that, I suspect.

8 So, I want the closed period identified. I  
9 want you to tell me where you're going, where you think you've  
10 gone, what you've tried to accomplish, what you intend to  
11 accomplish; and the same with the State, with the  
12 Commonwealth. If the Commonwealth would sort of lay a plan of  
13 action out for me, I would appreciate it.

14 Meet at 9:30 on Monday while we're driving up  
15 from Pittsburgh, and see if you can't get together on a couple  
16 of things. I think we could save some time. Some of this  
17 testimony is laborious, and it's necessary if you have to do  
18 it through the live witnesses; but some of it, the things we  
19 went through this morning, I think it could have been hammered  
20 out and maybe done in a lot less time. So, do that for me on  
21 Monday, okay, Counsel?

22 MR. RUBIN: Yes, Your Honor.

23 MS. HICKOK: Yes, Your Honor.

24 THE COURT: Okay. Let's take some testimony  
25 here.

1 MR. GEFFEN: Your Honor, I am Ben Geffen for  
2 the Petitioners. We'd like to call our next witness, Andrew  
3 Rogoff.

4 THE COURT: Did you get a Notice of Appearance  
5 filed, have you not? I don't think I have one for you.

6 MR. GEFFEN: I'm sorry. If none has been  
7 filed yet, I will file one if there isn't one yet.

8 THE COURT: Very good. Thank you. Sorry to  
9 interrupt.

10 ANDREW ROGOFF, having been  
11 first duly sworn according to the law, was examined and  
12 testified as follows:

13 DIRECT EXAMINATION

14 BY MR. GEFFEN:

15 Q. Mr. Rogoff, would you please state and spell your name  
16 for the record?

17 A. Andrew Rogoff, R-O-G-O-F-F.

18 Q. How are you employ, Mr. Rogoff?

19 A. I'm counsel with the law firm of Pepper Hamilton in  
20 Philadelphia.

21 Q. How long you have been with the Pepper Hamilton firm?

22 A. I have been with Pepper Hamilton since 1985.

23 Q. And what positions have you held at that firm?

24 A. I was an associate when I started in 1985. I became a  
25 partner in 1990; and on January 1st of this year, I took the

1 position of counsel.

2 Q. Have you ever practiced law anywhere but Pepper  
3 Hamilton?

4 A. I began my career at Ballard Spahr Andrews and Ingersoll  
5 in Philadelphia in 1977. I left there in early 1980, became  
6 an assistant district attorney in the Philadelphia District  
7 Attorney's office where I practiced until the middle of 1985  
8 when I went to Pepper.

9 Q. Now, who is Herbert Ginensky?

10 A. He was my father-in-law.

11 Q. And could you spell the name for the court reporter's  
12 benefit?

13 A. Sure. G-I-N-E-N-S-K-Y.

14 Q. Where did Mr. Ginensky live?

15 A. Well, he lived in two places in Philadelphia. Eight  
16 years ago, he and my mother-in-law moved to Philadelphia and  
17 lived at 2401 Pennsylvania Avenue, which is a high-rise; and  
18 in late 2011 or early 2012, they moved into the Watermark at  
19 18th and Vine Streets in Philadelphia, which is a senior  
20 housing -- apartment complex.

21 Q. Okay. Is there anything that prompted them to move to  
22 the Watermark?

23 A. Well, they moved to Philadelphia because their health  
24 was declining, and they moved to the Watermark because they  
25 really -- we were really concerned about them being able to

1 take care of themselves, and the Watermark provided care for  
2 them, or the opportunity for care, if necessary.

3 Q. Okay. Before they moved to Philadelphia, where did they  
4 live?

5 A. They were born and bred in New York. They lived in  
6 several places in New York City, until they moved to  
7 Philadelphia.

8 Q. And what sort of work to your father-in-law do in New  
9 York?

10 A. Well, he -- after he graduated from high school, soon  
11 after he graduated from high school, he joined the -- he was  
12 drafted, I guess, into the Army Air Corps. He served in Iwo  
13 Jima as an airplane mechanic, he came back after the war, and  
14 was employed in body repair work for a Cadillac dealer in New  
15 York. Then he and a partner opened up a delicatessen in  
16 Brooklyn where he labored 30 out of 31 days every month until  
17 my wife graduated from law school; and after that, he managed  
18 a couple of apartment buildings in New York, and then retired,  
19 and a few years later moved to Philadelphia.

20 Q. Okay. Then once he moved to Philadelphia, how often did  
21 you see him?

22 A. Well, when they first moved about eight years ago, it  
23 was about maybe once a week or so; but in the last few years  
24 of my mother-in-law and father-in-law's lives, we would see  
25 them pretty often because their health was failing, and where

1 they lived was just about three blocks from our offices, so we  
2 could have dinner with them a couple of times a week, at  
3 least.

4 Q. Was he still taking care of paying his own bills, doing  
5 other things like that?

6 A. Not recently. About three years ago, when things got a  
7 little disorganized in his house, I was appointed to take care  
8 of his financial matters. Appointed by the family, not in any  
9 formal sense, and I took care of his -- his bills, his mail,  
10 paid his bills, watched his bank accounts, and handled his  
11 mail, and my mother-in-law's mail.

12 Q. Did your father-in-law vote?

13 A. He voted, I think, almost every year. I know when they  
14 were in Philadelphia, I'm sure they voted because we spoke  
15 about the elections each time. In the off-year elections,  
16 since my wife and I are both lawyers, he sought our advice on  
17 things like judicial elections. He voted all the time here.

18 And he was very proud of having voted really for the  
19 first time I think for Franklin Delano Roosevelt as president  
20 when he was living in New York.

21 Q. Do you know, when he was living at the Watermark, his  
22 final residence, where did he go to vote?

23 A. Well, he -- in the November 2012 election, he wasn't --  
24 he didn't go to vote because his wife was in -- kind of  
25 in-home hospice there. He wouldn't leave her. She died two

1 days after the election. Had he voted on that day, he would  
2 have taken the elevator down and voted in the building.

3 In his previous residence, he voted in the building.  
4 Just took the elevator down.

5 Q. Now, it's my understanding that at some point you  
6 started helping Mr. Ginensky get a new photo ID?

7 A. I did. That was after the last general election in  
8 2012.

9 Q. Did he hold a Pennsylvania driver's license?

10 A. When they moved here, he took out a Pennsylvania  
11 driver's license; but he hadn't driven probably since around  
12 his 90th birthday, but he still had -- he had a valid license  
13 as of the November election.

14 Q. And you said his 90th birthday. About when would that  
15 have been?

16 A. April 23rd, 2009.

17 Q. Okay. So, what prompted you to start looking into his  
18 ID situation?

19 A. Well, I was well aware of the voter ID law. He had a  
20 license that would have expired in April of 2013 on his -- the  
21 day after his birthday, so I suggested to him in November of  
22 last year that he -- you know, hold on to his license, but  
23 after the election that we should file the papers to get him  
24 an ID because there was no point in renewing his driver's  
25 license. He had to renew it anyhow, so let's just get the ID



1 for him.

2 Q. And did you take any steps to fill out the papers that  
3 you just mentioned?

4 A. Oh, sure. I filled out the paperwork. I downloaded it  
5 from the internet, filled it out for him. He signed it. I  
6 checked the box that we were surrendering his license, and  
7 getting a replacement ID card for free, and we sent that in on  
8 November the 20th of 2012.

9 Q. And what happened next?

10 A. Well, not a lot. There was -- we got nothing back in  
11 the mail from sending it in for about a month or so, so  
12 sometime I guess in December, I started calling PennDOT to see  
13 what the status was of his paperwork.

14 I called several times. Most of the time I wasn't  
15 talking to anybody from PennDOT. I was just typically on  
16 hold, but I got different stories. Although everyone told me  
17 his ID card was being processed, someone suggested that he  
18 could go in, for example, to a PennDOT license center, and get  
19 a replacement card that way. And I said, well, he uses a  
20 walker. He really can't stand in line if there are long  
21 lines. He would be -- he wouldn't be able to do that.

22 Anyhow, why does he have to do that. I sent in the  
23 form. Someone else said that we'd have to send in -- on  
24 another call, someone said we'd have to send in money. And I  
25 knew that was wrong. I had filled out the form. But I kept

1 getting reassured that it was being processed.

2 And that on another call, I was told, you don't have to  
3 worry about coming in to have your picture taken because -- or  
4 his picture taken, because if he had a valid license, PennDOT  
5 would have I guess an electronic image of that photograph.

6 Q. Okay. You mentioned that you -- you -- I think you said  
7 someone said. These were people you were talking to when you  
8 called PennDOT.

9 A. I was calling in to the 800 number that was on the forms  
10 or on the PennDOT website.

11 Q. Did anything ever arrive from PennDOT?

12 A. Well, in late February or early March, he received a  
13 letter from PennDOT, and it had -- it said enclosed is your ID  
14 card and there was a little glue spot at the bottom where the  
15 ID card should have been, but there was nothing enclosed,  
16 nothing on the glue spot, nothing in the envelope.

17 Q. So, this was about three months after you surrendered  
18 the driver's license for him?

19 A. About that, yes.

20 Q. What did you do next after that letter came?

21 A. Well, I went to the PennDOT website, and I got --  
22 downloaded a form that we -- I filled out for him, and he  
23 signed to obtain a replacement card for one that hadn't been  
24 delivered or had been issued, but not delivered.

25 We took that form downstairs. He signed it in front of

1 a notary, and he was charged about \$5 for the -- having his  
2 signature notarized so I could send it in to PennDOT.

3 MR. GEFFEN: I'd like to show the witness an  
4 exhibit.

5 THE COURT: Sure.

6 MR. HUTCHISON: Your Honor, the document that  
7 counsel has provided has some private information on page  
8 three. I think it should be redacted before it's entered into  
9 the record.

10 MR. GEFFEN: No objection to redacting Social  
11 Security number and birth date on page three of this exhibit.

12 MR. HUTCHISON: And driver's license number,  
13 Your Honor.

14 MR. GEFFEN: And -- or that.

15 THE COURT: Let's redact all of that after we  
16 finish with Mr. Rogoff, okay?

17 MR. GEFFEN: Thank you.

18 THE COURT: Thank you, Counsel.

19 BY MR. GEFFEN:

20 Q. So, this is an exhibit that's been marked Petitioners'  
21 Trial Exhibit 1519, and if you will turn with me to page  
22 three. It's the page that's been stamped in the bottom right  
23 corner vote 2113.

24 A. Yes.

25 Q. Is this the form that you mentioned sending in?

1 A. Yes.

2 MR. HUTCHISON: Your Honor, I'm sorry to  
3 interrupt, but now they're putting the private information up.  
4 They're just putting the private information on the screen.

5 THE COURT: Why don't we get some black Magic  
6 Marker and just --

7 MR. HUTCHISON: No objection to black Magic  
8 Marker.

9 THE WITNESS: Just his license number. Just  
10 his license number is what you want?

11 MS. HICKOK: And the Social Security.

12 THE WITNESS: There's no Social Security  
13 number. There's a phone number.

14 BY MR. GEFFEN:

15 Q. Phone number and date of birth and license ID number on  
16 page three that we're redacting now, and there's also on the  
17 first page of this Exhibit, on the top right corner, that same  
18 birth date and license ID number appear, and we're going to  
19 cross that out as well.

20 A. First page, the license number and the --

21 MR. GERSCH: The top right corner.

22 THE WITNESS: -- date of birth?

23 BY MR. GEFFEN:

24 Q. Yeah, do you see that?

25 A. On the third page, just the license number or something

1 else?

2 Q. Also the date of birth.

3 A. Oh, okay.

4 MR. RUBIN: Your Honor, we removed it from the  
5 electronic copy as well.

6 THE COURT: Very good.

7 MR. GEFFEN: Your Honor, if you would like, we  
8 can provide a more neatly redacted copy to the Court or we  
9 can --

10 THE COURT: It will be good.

11 THE WITNESS: Actually, his birthday is up  
12 there if you want to redact that, if it matters.

13 THE COURT: There is.

14 THE WITNESS: I think I may have given it to  
15 you anyhow.

16 BY MR. GEFFEN:

17 Q. Going back to where we were, this page, 2113, the third  
18 page of the exhibit, this is the form that you were referring  
19 to that you sent in to PennDOT?

20 A. Yes, sir.

21 Q. And at the bottom, I notice there's a, notary has dated  
22 it March 8th, 2013; is that correct?

23 A. Yes.

24 Q. So, that would be -- I think you said that the letter  
25 with the glue spot but no ID came in late February or early

1 March of 2013.

2 A. About ten days before we sent this in.

3 Q. All right. So --

4 A. This being the page I have up on the screen.

5 Q. Okay. So what happened after you sent this form in?

6 A. Well, after we sent this form in early March, we got the  
7 letter back that's at the beginning of your Exhibit 1519  
8 that's dated April 3, 2013.

9 Q. Okay. So, you're referring to the letter that's  
10 pages -- stamped on the bottom right corner, vote 2111 and  
11 vote 2112?

12 A. Yes.

13 Q. And did anything strike you as odd about this letter?

14 A. Well, a couple of things. In the second paragraph, it  
15 said that the, or wrote the application for free replacement  
16 of your driver's license knowledge test authorization or  
17 learner's permit must be received by the bureau within 90 days  
18 of the original issuance of the document.

19 I have no idea what that was talking about. The last  
20 sentence of that paragraph says, "please resubmit your  
21 application with the required fee."

22 Now, I knew there was no fee required for what we had  
23 done, and the letter then continues that my -- that my  
24 father-in-law's request was received in the bureau with one  
25 partial fees, or two, no fees. In either case, the bureau of

1 driver licensing cannot complete the processing of your  
2 request until the full fee is received.

3 And then I was informed, or we were informed in this  
4 letter that the balance due was zero dollars and zero cents.

5 Q. So, what did you do after receiving this letter?

6 A. Well, I went to the bottom of it on the second page is  
7 an 800 number, and you want me to probably also -- oh, you did  
8 that. I will redact on this copy, the license number.

9 I called the 800 number to find out how we could rectify  
10 this situation and what I should do about sending in no money.

11 I reached somebody at PennDOT at the 800 number who told  
12 me I had called the wrong number. After explaining the  
13 situation, I told them, the person that my father-in-law had  
14 surrendered his license, and the person from PennDOT said I  
15 should speak to the -- someone in what I think was the medical  
16 section of PennDOT, and she gave me a number that I believe  
17 was a 717 area code number. I called that -- and I was -- she  
18 also told me, it's a little hard to get through to them. That  
19 was correct.

20 I called time and again. I have a redial button on my  
21 phone which I pressed and I remember waiting a half hour until  
22 I got through to a human being, and when that person answered  
23 the phone, and I explained the situation, she told me that I  
24 had called the wrong number, and I should call PennDOT's 800  
25 number that was on the, on this Exhibit.

1 I said I called them and they directed me to you and I'd  
2 really -- I'd like to know what has to be done here.

3 This person then explained to me that the form we had  
4 sent in, which was page 2113, had been sent in late -- out of  
5 time, I guess, beyond the 90-day period, which period I had  
6 never heard of and didn't know anything about, and didn't  
7 frankly understand when that would run, when it started or  
8 when it ended.

9 And I said, but the import of your letter is that we owe  
10 money, but that we owe nothing, and I sort of half jokingly  
11 said to her, should I send in a check that says zero dollars  
12 and zero cents? Should I send in an empty envelope? What can  
13 I do to pay nothing to you to make up for what deficiency is  
14 in this application?

15 The person put me on hold, and came back a little while  
16 later, and she said to me, we'll take care of it, which I took  
17 to mean that my father-in-law would get his ID card, and in  
18 fact, a few weeks later, one did arrive in the mail.

19 Q. Did he receive that new ID card in time for the primary  
20 that took place on May 21st of this year?

21 A. Got it on May 24th.

22 Q. Did he end up voting in the May 21st primary?

23 A. No, he didn't. He was in the hospital that week during  
24 the primary election with congestive heart failure, so he  
25 wasn't able to vote.



1 Q. I understand that he recently died.

2 A. June 27th.

3 Q. Why didn't he do all of this work himself to get the new  
4 ID?

5 A. Well, in April of this year, my father-in-law turned 94.  
6 He was mentally sharp as a tack, but really wouldn't have the  
7 patience to deal with these forms, and certainly as a matter  
8 of personality wouldn't have had the temperament to sit on the  
9 line for hours with PennDOT being told inconsistent things.  
10 It would not have been a happy ending if he had to deal with  
11 PennDOT.

12 In addition, he was losing his hearing, and I have  
13 little doubt there would have been misunderstanding in any  
14 communications he would have had over the phone.

15 So, I thought I could handle it, and that I should  
16 handle it for him.

17 Q. So, in sum, Mr. Ginensky got his ID a little more than  
18 six months after you initiated the process by sending in his  
19 driver's license?

20 A. That's correct.

21 Q. And how much time did you spend on this whole effort?

22 A. Well, I didn't keep records, but I know that I was --  
23 most of the time that I spent doing this, I spent on hold.  
24 But I would say over the months and the several phone calls,  
25 it had to have been two to three hours, probably 90% of which

1 was on hold.

2 Q. Changing topics just a little, I understand that you  
3 recently looked into getting information about the photo ID  
4 law from some local libraries?

5 A. Well, two libraries, one in my township and one in the  
6 City of Philadelphia.

7 Last night, I called the Ludington library in Bryn Mawr,  
8 Pennsylvania, to find out if I could get any information about  
9 how to comply with the voter ID law. I spoke with the  
10 reference librarian and she said that she had --

11 MR. HUTCHISON: Objection, Your Honor;  
12 hearsay.

13 MR. GEFFEN: We're not offering this testimony  
14 for the truth of what the librarian told him but as evidence  
15 of what a member of the public is told when contacting the  
16 librarian.

17 THE COURT: We'll admit it.

18 MR. HUTCHISON: That is for the truth.

19 THE COURT: It's overruled.

20 MR. HUTCHISON: Thank you, Your Honor.

21 THE WITNESS: The reference librarian told me  
22 that she had no documents or pamphlets but she said she would  
23 check with the front desk and the person who puts pamphlets  
24 out for the public.

25 She got back on the phone and said, we had

1 some things last November, before the election, some brochures  
2 or pamphlets. We don't have any now that are out and we don't  
3 know where any are.

4 This morning, before I came to Harrisburg, I  
5 went to the Free Library at Philadelphia at 19th and Vine  
6 Streets. I walked in, and asked the person at the desk close  
7 to the entry if I could get any information about how to  
8 comply with the voter ID law. He told me to go to the --

9 MR. HUTCHISON: Your Honor, same objection for  
10 the record.

11 THE COURT: I will note your objection. Thank  
12 you, Counsel.

13 THE WITNESS: He told me to go to the  
14 government publications office in the Free Library.

15 I went down the hall to the government  
16 publications office, and I asked the person behind the desk  
17 whether the library has any pamphlets, brochures or  
18 information that I could read to help me comply with the voter  
19 ID law.

20 The person sitting at the desk said, we have  
21 nothing now. At the last election, we got something off of a  
22 website which we printed up and we put out, but we have  
23 nothing now.

24 I turned around to walk out and I said --  
25 turned around to her and I said, what is your position with

1 the library, and she told me she was a librarian.

2 MR. GEFFEN: Thank you. I have no more  
3 questions at this point.

4 MR. HUTCHISON: May I inquire?

5 THE COURT: Sure.

6 CROSS-EXAMINATION

7 BY MR. HUTCHISON:

8 Q. Good afternoon, Mr. Rogoff. My name is Todd Hutchison.  
9 I have some follow-up questions for you.

10 A. Okay.

11 Q. You were discussing your experience trying to get your  
12 father-in-law a replacement ID and the multiple phone calls  
13 and efforts you went through with PennDOT. Have you ever had  
14 an experience like that before, with any other organization?

15 A. You mean, as a consumer?

16 Q. As a consumer, as a citizen, having to make multiple  
17 phone calls to get answers.

18 A. Multiple phone calls, being on hold?

19 Q. To get an answer.

20 A. Airlines.

21 Q. Any others?

22 A. I'm sure I have had those kinds of experiences as a  
23 consumer. I can't think of anything in particular.

24 Q. So, it was nothing new, to you?

25 A. Being on hold?

1 Q. Yes.

2 A. I'm an American. I spend a lot of time on hold.

3 Q. You said your father-in-law received or you received in  
4 the mail the ID on May 24th?

5 A. Yes.

6 Q. And the general -- and I'm sorry, the primary was on May  
7 21st?

8 A. I believe so.

9 Q. That within six days of May 21st?

10 A. I'm sorry.

11 Q. Was that within six days of May 21st?

12 A. It was three days later.

13 Q. And when you received the empty envelope, did you think  
14 that was intentional?

15 A. I didn't conclude one way or the other. I just  
16 concluded that it was empty.

17 Q. Do you know if it left PennDOT empty?

18 A. I have no idea how it left PennDOT.

19 Q. So, the ID could have been in the envelope when it left  
20 PennDOT.

21 A. I have no idea. It would be hard for me to believe that  
22 since, when the envelope was opened, it was empty; and I don't  
23 think that it would have left the envelope through some  
24 magical means.

25 Q. Did you see the envelope throughout the entire transfer?

- 1 A. No, I did not.
- 2 Q. Now, was that addressed to your father-in-law?
- 3 A. It was.
- 4 Q. Was that received at his address?
- 5 A. It was.
- 6 Q. You said that the water -- he votes at the Watermark.
- 7 A. He would have.
- 8 Q. He would have. In November of 2012, did he vote at the
- 9 Watermark.
- 10 A. He didn't, because as I said, his wife was dying. She
- 11 died two days later, and he didn't want to leave her apartment
- 12 at any -- for a moment.
- 13 Q. But he would have voted there?
- 14 A. Yes.
- 15 Q. And did he vote there before?
- 16 A. No. They moved in late 2011, so if there was a primary
- 17 election, they may have voted there. I don't remember. There
- 18 was one -- if there was a primary, I'm sure there was, and
- 19 they voted. If they voted, they would have voted at the
- 20 Watermark. I just don't know if they voted in the primary in
- 21 2012.
- 22 Q. So, November, 2012, if he had voted, that could have
- 23 been his first -- the first time that he voted at that
- 24 location?
- 25 A. Since it was only one previous election, it could have

1     been the first. I just -- I don't know for sure.

2     Q.     Do you think it's a regular practice of PennDOT to send  
3     empty envelopes?

4     A.     I have no idea what PennDOT's practices are.

5     Q.     But he did get the ID, correct?

6     A.     Yes. Finally, after six months.

7     Q.     Do you know if the Watermark issues IDs?

8     A.     I remember earlier this year, they had some signs up  
9     encouraging senior citizens who didn't have IDs to come get  
10    them. I know we -- there was some process that existed there,  
11    but we didn't bother with it, because we were going through  
12    the regular process with PennDOT.

13    Q.     But it was available at the Watermark?

14    A.     There was something. I don't know -- I didn't look into  
15    it. I remember seeing a sign up there.

16    Q.     You never asked any questions about it?

17    A.     No. I did not.

18                   MR. HUTCHISON: Thank you. That's all I have.  
19                   Thank you, Your Honor.

20                   THE WITNESS: Thank you.

21                   THE COURT: Thank you, Mr. Rogoff. Thank you,  
22    Mr. Hutchison.

23                   MR. GEFFEN: Your Honor, I have no further  
24    questions for this witness, but would like to move into  
25    evidence Petitioners' Trial Exhibit 1519, which we will be

1 providing the Court with a more neatly redacted copy of.

2 THE WITNESS: Thank you, Counsel.

3 MR. HUTCHISON: With the redactions, no  
4 objection, Your Honor.

5 MR. GEFFEN: Thank you.

6 THE WITNESS: Thank you, Your Honor.

7 MR. GERSCH: Your Honor, David Gersch for the  
8 Petitioners. Before the next witness is called, I just wanted  
9 to put an agreement on the record which is that we have agreed  
10 to let Respondents call Mr. Royer out of order because he is  
11 going on vacation and Respondents have kindly agreed that if  
12 we have any questions that would be in the nature of direct  
13 that is beyond the scope of cross, that we may exceed the  
14 scope of cross. I don't know that there will be any.

15 THE COURT: Is this Rebecca Oyler?

16 MS. HICKOK: No, this is Shannon Royer, Your  
17 Honor.

18 THE COURT: How do you spell that?

19 MS. HICKOK: His last name is R-O-Y-E-R, and  
20 his first name is S-H-A-N-N-O-N.

21 Your Honor, Respondents call Shannon Royer.

22 SHANNON ROYER, having been  
23 first duly sworn according to the law, was examined and  
24 testified as follows:

25 DIRECT EXAMINATION



1 BY MS. HICKOK:

2 Q. Good afternoon, Mr. Royer.

3 A. Good afternoon.

4 Q. Could you please state your full name for the record?

5 A. Shannon Royer.

6 Q. What is your role, Mr. Royer?

7 A. I am the Deputy Secretary of the Commonwealth.

8 Q. What Department of the Commonwealth do you work for.

9 A. The Department of State.

10 Q. What is the responsibility of the Department of State?

11 A. The Department of State is an organization that has many  
12 responsibilities. We have 500 employees, plus 300 members of  
13 boards and commissions. We have a Bureau of Professional  
14 Occupational Affairs which issue about 150,000 licenses to  
15 health care professionals and business professionals.

16 We have a Corporation and Charities Bureau, which  
17 contains the filings of all 2.6 million corporations in  
18 Pennsylvania, regulating 11,000 charities in Pennsylvania,  
19 investigate charity fraud.

20 We are home to the State Athletic Commission, which  
21 regulates wrestling, boxing, mixed martial arts, licensed  
22 sports agents and about 1500 athletes in Pennsylvania.

23 And we have within the Department, the Bureau of  
24 Commissions, Elections and Legislation, which on behalf of the  
25 Secretary of the Commonwealth administers the State Election

1 Code, contains all of the filings for keeping expense reports  
2 for candidates and committees, lobbyist disclosure reports and  
3 provides copies to the public, notary licenses, all state  
4 government commissions, and we are the official record keeper  
5 for all state legislation.

6 Q. How many other deputy secretaries are there?

7 A. One other.

8 Q. So, of the things that you named, which of those are  
9 your responsibility?

10 A. I oversee the Bureau of Commissions, Elections and  
11 Legislation, the State Athletic Commission, the policy office  
12 within the Department, the press office within the Department,  
13 and the Legislative Affairs Office within the Department.

14 Q. How many people do you supervise?

15 A. There are approximately 45 individuals that work in the  
16 State Athletic Commission, somewhere in the neighborhood of 25  
17 individuals that work in our Bureau of Commissions, Elections  
18 and Legislation. Two people in our Policy office, three  
19 people in our Press office, and two people in our Legislative  
20 Affairs office.

21 Q. And we heard testimony this morning from Mr. Marks --  
22 and yesterday from Mr. Marks. Does he work for you?

23 A. Yes, he does.

24 Q. And do you report directly to the Secretary?

25 A. Yes, I do.

1 Q. And how frequently do you meet with her?

2 A. Weekly, sometimes daily.

3 Q. What areas do you report on when you meet?

4 A. For all of those offices under me.

5 Q. Does the Department of State interact with other  
6 agencies?

7 A. Yes, it does.

8 Q. Which other agencies does it interact with or have  
9 business dealings with?

10 A. Many other state agencies, Bureau of Professional  
11 Occupational Affairs, one of the bureaus within the  
12 Department, interacts with DPW, Department of Health, Revenue  
13 on business and health care issues. We interact with PennDOT  
14 quite frequently. The Department of Aging and others.

15 Q. Would that always be you that does that interaction?

16 A. It would not.

17 Q. And you mentioned that you have worked with PennDOT.  
18 Have you worked with PennDOT on election affairs?

19 A. Yes.

20 Q. How long has that relationship gone on?

21 A. For the two-and-a-half years I have been with the  
22 Department, that entire time, we have agreements with PennDOT  
23 on election-related issues going back to the 1990s.

24 MS. HICKOK: Your Honor, I would like to  
25 provide Respondents' Exhibit No. 2.

1 BY MS. HICKOK:

2 Q. Mr. Royer, do you recognize this document?

3 A. Yes. This is a Memorandum of Understanding between the  
4 Department of State and the Pennsylvania Department of  
5 Transportation dated June 10th, 2002.

6 Q. What is it governing?

7 A. In essence, this establishes electronic recordkeeping  
8 for VRAs, which are voter registration applications, with  
9 PennDOT.

10 Q. And I would like to hand you Exhibit No. 3. Do you  
11 recognize this document?

12 A. I do.

13 Q. Can you tell us what this document is?

14 A. This is a Memorandum of Understanding between PennDOT  
15 and the Department of State dated October 5, 2005, and it in  
16 essence deals with the HAVA verification check where PennDOT  
17 would assist the Department of State in verifying Social  
18 Security and other information for voter records.

19 Q. And is that in response to a federal act?

20 A. Yes, HAVA is the Help America Vote Act. It is a  
21 requirement of HAVA.

22 Q. And are there other jurisdictions that also work jointly  
23 between their departments, whichever department oversees the  
24 elections, and their Department of Motor vehicles?

25 A. Yes, it is fairly common.

1 Q. And I would like to give you another document. Do you  
2 recognize this document?

3 A. I do.

4 Q. What is this document?

5 A. This is a Memorandum of Understanding dated August 15th,  
6 2012, between PennDOT and the Department of State.

7 Q. What is this in reference to?

8 A. This establishes the process for the DOS ID cards.

9 Q. Why would you work with PennDOT on establishing a  
10 process for ID cards for elections?

11 A. This is a requirement of Act 18 to provide cards to  
12 voters free of charge, in this case Department of State cards  
13 issued by PennDOT.

14 Q. Pursuant to this Memorandum of Understanding have you  
15 been issuing Department of State ID cards or has PennDOT been  
16 issuing them on your behalf?

17 A. Yes.

18 Q. Do you, as you sit here today, do you happen to have a  
19 sample card? I think we have done all of this in the  
20 abstract. Do you have a DOS ID card?

21 A. A sample DOS ID card. Yes, I do have one that I would  
22 carry around when I speak at events.

23 MS. HICKOK: Your Honor, it would be helpful  
24 to see what the actual card looks like.

25 THE COURT: If he has it, we'll take a look at

1 it.

2 Did you have any difficulty getting that?

3 THE WITNESS: Piece of cake.

4 BY MS. HICKOK:

5 Q. So, is this what a Department of State identification  
6 card looks like?

7 A. Yes.

8 Q. Yeah. It's hard to see from here. Does it look  
9 somewhat similar to a driver's license?

10 A. It does not.

11 Q. And why does it not look like a driver's license?

12 A. Well, first of all, at the top, it says, Commonwealth of  
13 Pennsylvania, Department of State.

14 Q. Okay. Any other things that distinguish it?

15 A. If you revert it back to the version that you had  
16 earlier, I could see. It also says "for voting purposes  
17 only." Lists the name of the individual and the birth date.  
18 It has the date of issuance and the date of expiration, which  
19 is approximately ten years in this case. And it says that the  
20 individual who has this card is a confirmed registered voter  
21 as of the date of the issuance.

22 Q. Can you -- I'll give you back your card. Can you  
23 explain to the Court why it is that this card does not say  
24 PennDOT on the top of it?

25 A. This is a Department of State card that is issued by the

1 Department of Transportation.

2 Q. And why didn't PennDOT just put its own name on it?

3 A. Because this is a card that is issued for voting  
4 purposes only.

5 Q. Does it require the same documentation as PennDOT's  
6 other products that have their name on them?

7 A. It does not.

8 Q. And in what way -- at the current time, in what way does  
9 the documentation differ to get a card?

10 A. To get a card, you need no documentation. You need to  
11 state your name, date of birth, last four digits of Social  
12 Security number, and the PennDOT employee then communicates  
13 with the Department of State to confirm that you are in fact a  
14 registered voter.

15 Q. Going back to your responsibility for elections, what is  
16 the Department's goal in administering elections?

17 A. To insure that people have confidence in our elections,  
18 and to encourage participation in the election process.

19 Q. Does the Department of State have sole responsibility  
20 for administering elections in the Commonwealth?

21 A. We do not. It is a partnership with all 67 county  
22 boards of election.

23 Q. Do you also have accountability to the Federal  
24 Government?

25 A. Yes, we do.

1 Q. I'd like to show you an exhibit which is Respondents'  
2 Exhibit No. 229. Mr. Royer, do you recognize this document?

3 A. I do. It is a page that appears on the Department of  
4 State website.

5 Q. What is being captured on this document?

6 A. The information that is essential on this page is the  
7 chart at the bottom, which details voter turnout in  
8 presidential elections in Pennsylvania going back to 1960.

9 Q. Can you walk us through what these data are, what the  
10 columns are, and what it's showing?

11 A. Sure. In the first column, from most recent to last  
12 election, it is the election year, which of course, is every  
13 four years beginning with 2012 and ending with 1960.

14 It indicates the highest number of votes cast for any  
15 particular candidate in that year's election. It is always a  
16 presidential candidate, one of the presidential candidates.  
17 It also indicates in the next column the number of registered  
18 voters as of Election Day.

19 Next column indicates the percent of those registered  
20 voters voting in that election, that presidential election.

21 The next column indicates what we call the VAP, which is  
22 the voting age population, percent of voting age population in  
23 the next column, and then the percent, that is the voting age  
24 population that is actually registered.

25 Q. This shows presidential elections. Are the numbers



1 comparable for other elections?

2 A. No, not at all. Off-year elections are dramatically  
3 lower than the turnout in presidential elections.  
4 Presidential elections in Pennsylvania and around the country  
5 by far tend to be the highest turnout of elections.

6 Other elections, federal elections and off-year  
7 elections tend to be much lower, particularly off-year  
8 elections.

9 Q. When you say much lower, is it 40% instead of 60% or  
10 20%? Can you give me an approximation?

11 A. Sure. Well, in 2012, according to our chart, turnout  
12 was close to 68%. In 2008, the presidential turnout was a  
13 little bit over 68%. In this year's primary, the 2013  
14 primary, which occurred May 21st of this year, turnout was  
15 11%.

16 In non-presidential federal elections, turnout is also  
17 dramatically lower. In 2010, which was a gubernatorial  
18 election but not a presidential election, the primary turnout  
19 was 22%. That general election in 2010 was approximately 46%.

20 So, whether you are talking about a non-federal year or  
21 a federal year but a non-presidential election, the turnout is  
22 dramatically different.

23 Q. Okay. Thank you. I neglected to ask you, I'm sorry,  
24 how long have you been in your role with the Department?

25 A. Two-and-a-half years.

1 Q. So, how many elections have you lived through in that  
2 time?

3 A. Too many. It would have been the primary of 2011, the  
4 general election of 2011, primary of 2012, general election of  
5 2012, and the primary of 2013.

6 Q. When you took on your role, were you aware of any of the  
7 media outreach efforts that were done during 2008 during the  
8 last presidential election?

9 A. By the Department of State?

10 Q. Yes, just generally.

11 A. Yes, the Department of State in 2008 had a media  
12 campaign entitled, "Ready, Set, Vote" using HAVA funding.

13 Q. And who was the company that worked with you on that --  
14 or with the Department on that campaign?

15 A. The media buyer in that campaign was Harmelin  
16 Communications.

17 Q. And in 2012 after Act 18 passed, did you also look to  
18 Harmelin?

19 A. That is correct. Harmelin Communications was the sole  
20 source media buyer for the last administration. The contract  
21 continued into the current administration, and we used them in  
22 2012.

23 Q. Now, when you met with Harmelin after Act 18 passed, was  
24 your goal solely to talk about Act 18 in terms of what you  
25 were looking for?

1 A. The education campaign in 2012 was, of course, to talk  
2 about the voter law, to make sure that the public was aware of  
3 this new law, and to direct them to where they could get more  
4 information about the law, and information about how to obtain  
5 further ID, if they didn't have one for voting purposes.

6 Also, embedded in our message was to encourage citizens  
7 to vote. That's one of the missions of our agency.

8 Q. Has that been a mission of the agency for some time?

9 A. Yes.

10 Q. Now, turning to Act 18, what did you perceive the  
11 Department's role to be in implementing the statute?

12 A. Well, we work with all 67 county boards of election --  
13 boards of election to provide guidance, disseminate  
14 information to them about the things that needed to be done.

15 Lots of information, lots of paperwork, especially  
16 pertaining to what we sometimes refer to as the soft rollout  
17 of the law which is Act 18. The Secretary of the Commonwealth  
18 has other responsibilities in Act 18 that she is responsible  
19 for. Her name is mentioned specifically.

20 The Act also requires us to provide information to the  
21 public, and to conduct voter education efforts.

22 Q. And in the process, did you reach out to work with other  
23 agencies besides what we have already looked at with PennDOT?

24 A. Absolutely. We worked with many agencies using the  
25 resources that they have, and their client list to make sure

1 that we were able to piggyback on whatever they were doing to  
2 make people aware of the law.

3 For example, we provided inserts for Department of  
4 Aging, Department of Health, DPW, so that the clients that  
5 they serve could receive information in the mail with  
6 regularly scheduled mail that that particular agency was  
7 sending out.

8 Q. You mentioned three, the Department of Public Welfare,  
9 the Department of Aging, and the Department of Health that  
10 came to your mind right away. Why would you reach out to  
11 those three in particular?

12 A. Well, we wanted to make sure that everyone is aware of  
13 the law. We worked very hard to conduct an education effort  
14 that touches everyone, all corners of the state; but we also,  
15 especially, wanted to make sure that those people who perhaps  
16 don't have an ID for voting purposes knew about the law.

17 Those agencies, in this particular case, serve elderly  
18 individuals. So, we wanted to take extra steps above and  
19 beyond what the paid advertising campaign and the Harmelin  
20 media buy would reach, and we wanted to take steps above and  
21 beyond that to reach individuals.

22 Q. Now, if you know -- and I understand you're not a member  
23 of those agencies, but you said that the three agencies you  
24 reached out to for seniors, do they have all -- all of them  
25 have responsibilities with senior citizens?

1 A. In my way or another, yes. We also worked with L & I,  
2 Labor and Industry, Department of Veterans and Military  
3 Affairs. Certainly PennDOT. Yes. That was the case.

4 Q. When the law was passed, what was the first thing you  
5 did?

6 A. The very first thing we did was held a organizational  
7 meeting. It was either the day the law passed, the night  
8 before, within that 24-hour period when the Governor signed  
9 the bill with the leaders of the Department of State and  
10 PennDOT to discuss the immediate steps that needed to be taken  
11 to implement the law.

12 We also provided right away information to the counties,  
13 copies of the law, started fielding questions from the  
14 counties setting up conference calls, since they are partners  
15 in making sure that Act 18 was implemented as intended.

16 We did those things and many others.

17 Q. And I'm going to hand you what is Exhibit No. 42. Do  
18 you recognize this document, Mr. Royer?

19 A. I do.

20 Q. Was this document prepared at your direction?

21 A. Yes, it was.

22 Q. What is this document?

23 A. This is an overview -- it does not provide detailed  
24 information. It is an overview of many of the outreach  
25 initiatives that the Department of State engaged in when

1 notifying the public about Act 18.

2 Q. Does it have certain populations that are targeted in  
3 particular?

4 A. Yes, it does. This document reveals information where  
5 we were reaching all voters such as television advertising,  
6 direct mailers, direct mailer sent to every household in the  
7 state with a registered voter, and also at the same time  
8 provides information about targeted advertising for some of  
9 the communities we wanted to make sure were aware of this law  
10 above and beyond what we were doing with our broader campaign.

11 Q. Why would these groups in particular be of concern to  
12 you?

13 A. These individual groups -- some of them minority groups,  
14 elderly, young people, college students -- we wanted to take  
15 the extra effort to reach them because if there were some  
16 people who would not be reached by the broader campaign, such  
17 as television and radio and mailings, there were other tools  
18 available to be able to reach out to them.

19 These are also individuals who may not be that in tune  
20 with traditional media. And these are also individuals who  
21 may not currently have a product that they could use, for  
22 example, to vote in an election under Act 18.

23 Q. And does Act 18 make any provision for any of these  
24 groups specifically?

25 A. Yes. In terms of the IDs issued for individuals, sure.

1 Act 18, for example, allows college students, if you are  
2 attending a college or university, seminary, and you have a  
3 college ID with an expiration date on it, either printed or  
4 affixed, that ID can be used. So, the law specifically  
5 mentions that.

6 The law also talks about care facilities. We have about  
7 2,000 care facilities in Pennsylvania, and it has the ability  
8 under Act 18 to provide IDs. Health care facilities are able  
9 to, if they are licensed by DPW, Aging, or --

10 THE COURT: I'm sorry. Are they photo IDs  
11 which are required?

12 THE WITNESS: Yes, sir. Under Act 18, the  
13 health care facility has the ability to produce their own ID,  
14 would have the name of the voter, a photo of the voter and an  
15 expiration date of their choosing.

16 BY MS. HICKOK:

17 Q. Now, when you say expiration date of their choosing,  
18 could they make it 20 years, if they wished?

19 A. They could.

20 Q. Sorry. I didn't mean to interrupt.

21 A. That's okay. What was your question again?

22 Q. I was just asking you if the statute had any specific  
23 provisions for any of the groups you were targeting.

24 A. Yes. College students, seniors, military IDs. There's  
25 a whole menu of IDs that can be used.

1           What you see on this first page are some of the ways in  
2   which we targeted those groups to make sure that they received  
3   extra messaging.

4           The second page of the handout talks about things that  
5   were done more internally and not part of the broad message,  
6   not part of the larger campaign. These are things that we  
7   worked on with other agencies.

8           You will see at the top, for example, that Aging, Labor  
9   & Industry, DPW, I mentioned earlier, had inserts. We sent  
10   out close to 7,500 inserts piggybacking on the mailings for  
11   those agencies.

12          We printed a couple of thousand posters that were  
13   distributed in service agencies, human services agencies  
14   around the state, senior centers and other agencies.

15          Some of them related to state government. Many of them  
16   not. Handouts in English and Spanish. You will also see on  
17   here information about our website, VotesPA website, which is  
18   the primary source of detailed information along with the  
19   phone number that we give out; and it indicates the number of  
20   unique visitors, about 1 million unique visitors listed here  
21   from August of last year going through April of this year.

22   Q.     Now, on your website, in addition to a phone number, is  
23   there an email address?

24   A.     Yes.

25   Q.     So, people could, that are visiting your website, could



1 email with specific questions?

2 A. Yes.

3 Q. Are there people who are assigned to respond to those  
4 emails?

5 A. That is correct.

6 Q. And is that currently the case as well?

7 A. That is correct.

8 Q. And the VotesPA phone number, how long has it been in  
9 effect?

10 A. The VotesPA phone number and the VotesPA site were in  
11 existence before Act 18.

12 What we decided to do, since we had the website  
13 established, it was intended as a -- as a source of  
14 information for voters to go to, generally speaking, about  
15 voting issues. You could go for your polling place. You  
16 could print out a voter registration form and then mail it in  
17 to your county board of elections. It can talk about voting  
18 machines and show you which counties use certain voting  
19 machines.

20 What we did when Act 18 was passed was converted the  
21 toll free number and the VotesPA website into the main source  
22 of detailed information about voter ID.

23 So, the toll free number and the website existed before  
24 Act 18.

25 Q. Did you expand services at all to handle voter ID

1 related questions?

2 A. Oh, yes. We hired many people in 2012, temporary  
3 individuals. We received in some weeks in the fall a few --  
4 several thousand phone calls, and so, we had extra staff hired  
5 to handle those phone calls, and also to respond to emails  
6 that were coming in about voter ID.

7 Q. Now, when you say in the fall, was this both prior to  
8 and subsequent to the injunction?

9 A. Yes. The people started coming on board sometime around  
10 Labor Day, and continued to work with us until after the  
11 November 6th election for any follow-up work that needed to be  
12 done.

13 Q. And is there also a way that the Department of State or  
14 more than one way that the Department of State would track  
15 whether somebody wanted to raise an issue or post a complaint  
16 either generally or related specifically to the election?

17 A. Yes. Well, certainly, any voter or any county election  
18 official was able to contact us at any time about issues.

19 Every Election Day, we divide the entire state up  
20 amongst our Bureau of Commissions, Elections and Legislation  
21 staff. We assign people to keep in contact with county  
22 election officials all day long for any incidents. We call it  
23 an incident report.

24 We closely monitor that to see how they're handling  
25 issues and see if they need our assistance or our guidance on

1 handling issues.

2 There's also a mechanism called a voter complaint form,  
3 which is available on the Department of State website, and  
4 also the VotesPA website where voters are able to lodge a  
5 complaint or an incident in any particular county where the  
6 election is occurring. Those reports are then passed along to  
7 the county boards of election, and in some cases to the  
8 district attorneys.

9 The Department of State is not authorized under the  
10 statute to investigate election related incidents. That power  
11 resides with the county boards of election, but we do provide  
12 that pass-through mechanism so that any individuals that have  
13 problems on Election Day, before the election and after  
14 Election Day as well, are able to provide that information to  
15 the appropriate authorities.

16 Q. And to your awareness in the May 2013 election, which is  
17 the one just passed, have there been any concerns or incidents  
18 or complaints related to voter ID?

19 A. None that were incident reports, and I was not briefed  
20 on any.

21 Q. And how about in the November 2012 election?

22 A. No voter ID related incidents occurred, and were  
23 reported in the incident reports, and I did not hear of any.

24 Q. And what about in the spring 2012 primary?

25 A. Same thing.

1 Q. And those three elections, are those elections -- you  
2 referred earlier to the term soft rollout. Were all three of  
3 those elections soft rollouts?

4 A. Yes. All three of those elections are what we call soft  
5 rollouts. I don't believe it's described as a soft rollout in  
6 that particular language in the act.

7 The 67 counties in each of those three elections were  
8 asked to distribute information to voters as they came in to  
9 vote. They were asked -- the county election members and the  
10 poll workers with the paid poll workers, were to ask for ID  
11 when people were coming to vote on Election Day in those three  
12 soft rollouts.

13 If they did not have an ID for that particular election,  
14 they were given a printout which the Department of State  
15 provided to all 67 counties indicating the kinds of IDs that  
16 would be required in future elections. They were also told,  
17 of course, that the ID was not required to vote, but it was  
18 part of the education process.

19 So, these three soft rollouts were very successful in  
20 that regard.

21 Q. I think you told me that the November 2012 election  
22 would be the largest turnout that you would expect for quite a  
23 while?

24 A. Yes. The turnout was about 68%, which is similar to --  
25 similar to the last two presidential elections.

1 Q. Now, for a person who newly registers to vote, is there  
2 any way that that person is apprised of the requirements of  
3 Act 18?

4 A. Yes. Since April of 2012, a few weeks after the  
5 Governor signed Act 18 into law, on the back of the voter  
6 registration cards that are printed by the county, but  
7 designed by the Department of State, there's notification  
8 listed of a photo identification requirement.

9 That changed when we -- when the Court issued an  
10 injunction in October. We changed the message. That message  
11 is still being printed on the back of every card that is given  
12 to every newly registered voter by the county board of  
13 election.

14 Q. Thank you. I'm going to show you what has been marked  
15 as Respondents' Exhibit 40. Can you identify this document,  
16 Mr. Royer?

17 A. This is a document that was sent to me in November of  
18 last year by our media buyer, Harmelin media. It is a  
19 standard document that they issue at the conclusion of a  
20 certain phase of an educational effort or an advertising  
21 effort. In this case, it is a recap of the work that they did  
22 regarding voter ID during 2012.

23 Q. Did that work stop when the injunction took effect?

24 A. It did not, and in some instances, things accelerated.

25 Q. Can you sort of walk us through what the highlights of

1 this were to you?

2 A. Sure. This is a document that provides lots of  
3 information and details the manner in which certain groups of  
4 individuals were targeted to get information.

5 The key areas for me, and something that is standard in  
6 every educational effort, public relations effort, would be  
7 starting on page three. You will see there it is basically a  
8 recap of all the different types of mediums that Harmelin used  
9 to get our message out to voters that there is a voter ID law  
10 in Pennsylvania, where they could go to get additional  
11 information and information as well about getting an ID for  
12 free.

13 The television campaign, as you can see at the top under  
14 TV/cable started August 27th, and ran through Election Day  
15 last year.

16 Radio around the state started October 1st. You also  
17 see on here, by the way, the amounts of money that we spent on  
18 each of these individual mediums, if you look further to the  
19 right.

20 The print advertising in ethnic newspapers which was  
21 African-American, Hispanic, Chinese, Vietnamese, Korean and  
22 Russian, that occurred in October.

23 Magazines targeting the African-American community to  
24 get the message out in August and October.

25 College publications. Every university newspaper,

1 college or university newspaper in the state, we published  
2 information about voter ID listing the kinds of IDs that could  
3 be used and where people could get additional information  
4 during the month of October.

5 Page four you will see something called  
6 OOH-slash-transit. That stands for "out of home messaging."  
7 You will see in certain parts of the state, particularly urban  
8 areas, we use bus advertising extensively, public  
9 transportation advertising.

10 In Philadelphia, targeting African-American and Latino  
11 neighborhoods. In the Pittsburgh metro area, targeting  
12 African-American neighborhoods during the month of October.

13 In the Lehigh Valley starting earlier, Latino  
14 neighborhoods. African-American neighborhoods in the City of  
15 Harrisburg. We also had mobile billboards around the state.  
16 Philadelphia and Pittsburgh for ten days, the nine days before  
17 the election and on Election Day in neighborhoods where we  
18 thought it would be helpful to get the message out about voter  
19 ID.

20 You will see something called 30 sheet posters in  
21 certain neighborhoods, in North Philadelphia, Pittsburgh.  
22 Those are billboards. So, we had billboard advertising.

23 And then at the very bottom, the last thing, you will  
24 see extensive digital-slash-online campaign targeting everyone  
25 who uses the internet.

1 Q. Did that include social media kinds of outreach?

2 A. Social media was handled with a different consultant  
3 that we worked with, an outreach specialist. We did have --  
4 we do have a Facebook page, and a Twitter page listed on the  
5 VotesPA site.

6 Q. And when you say VotesPA, is that VotesPA.com?

7 A. Correct.

8 Q. When you chose to do the outreach that you chose to do,  
9 was it based upon your own decision making, or did you have  
10 advice?

11 A. No, we trusted the professionals that we hired to  
12 provide guidance at the beginning and throughout the campaign.  
13 So, we took our guidance from them.

14 Q. You had said that Harmelin had been the exclusive  
15 company that had been contracted during the 2008 election. Do  
16 you have any awareness whether Harmelin was also used during  
17 2004?

18 A. I do not.

19 Q. Okay.

20 MS. HICKOK: Your Honor, I have exemplars of  
21 the particular kinds of advertising that are mentioned in here  
22 that I would like to have him verify were actually those, but  
23 there are actually quite a few of them. I'm not sure whether  
24 you want me to have him look through and move them in as a  
25 group, or what the best way is, because I don't want to take



1 up hours walking through each one.

2 THE COURT: Why don't we take a 10 minute  
3 recess and Mr. Royer can take a look with counsel and we'll  
4 see if we can't do it as a group.

5 MS. HICKOK: That would be great.

6 Thank you very much, Your Honor.

7 THE COURT: Court recesses for ten minutes.

8 THE BAILIFF: Commonwealth Court is now in  
9 recess.

10 (THERE WAS A RECESS FROM 2:44 P.M. UNTIL 2:57  
11 P.M. AND THE PROCEEDINGS CONTINUED AS FOLLOWS:)

12 THE BAILIFF: Commonwealth Court is now in  
13 session.

14 MS. HICKOK: Your Honor, we have reached an  
15 agreement, and what we would like to do is that I will go  
16 through and tell you what is the list of what you have just by  
17 numbers. We have gone over the list with them. I will then  
18 take one of each sort of ad and verify that as an example with  
19 Mr. Royer, but you will have the entire group.

20 THE COURT: Sure.

21 MS. HICKOK: Thank you, Your Honor.

22 BY MS. HICKOK:

23 Q. Mr. Royer, do you have in front of you a file folder of  
24 -- Mr. Royer, beginning at Exhibit 153, which should be the  
25 one that is at the top, is that a pre-injunction example of an

1 interior bus advertisement?

2 A. Yes, it is.

3 Q. Is there also at 154, 155, 156, 157, 158, 159; are those  
4 also bus advertisements that are pre-injunction?

5 A. What was the last one?

6 Q. 159.

7 A. That is correct.

8 Q. If you could look at 160; is that an example of  
9 newspaper and magazine English versions of advertisements that  
10 were pre-injunction?

11 A. That is correct.

12 Q. And 161?

13 A. Same thing.

14 Q. But is that in English as well?

15 A. No. This is Spanish.

16 Q. Thank you. If you could look at -- are 162, 163, 164,  
17 165, 166, 167 also examples of advertisements that appeared in  
18 newspapers or magazines?

19 A. That is correct.

20 Q. If you could look at Exhibit 168; is that a  
21 pre-injunction online banner?

22 A. That is correct.

23 Q. Is 171 also a pre-injunction online banner?

24 A. Yes, it is.

25 Q. Is 172 the Spanish version of that?

1 A. Yes. This is the Spanish version of the banner.

2 Q. Is 173 a pre-injunction commercial.

3 (THE AD WAS PLAYED.)

4 A. Yes. That's a sample of one of our pre-injunction  
5 commercials.

6 Q. Thank you. Did you also have Spanish versions of those  
7 commercials?

8 A. Yes, we did.

9 Q. Is that what 174 is?

10 (THE AD WAS PLAYED.)

11 A. That is one example, yes.

12 Q. Okay. To go back for just a second. Are 169 and 170  
13 emails between you and Grace Calland about those online  
14 banners that we looked at a moment ago?

15 A. Yes. This is an August 28th email from Grace Calland of  
16 Red House to me.

17 Q. If you could look at 179. Is that a pre-injunction post  
18 card?

19 A. Yes, it is.

20 Q. Then if you begin at 180; is 180 an example of the way  
21 that the bus advertisement changed when it became  
22 post-injunction?

23 A. Could you show me 180, because that number -- there's no  
24 -- yes. The message changed post-injunction to, "If you have  
25 it, show it," on our bus campaign.

1 Q. Are 181, 182, 183, 184, 185, 186, 187, 188, 189 also  
2 forms of transit advertisements in English and Spanish that  
3 are all post-injunction?

4 A. That is correct.

5 Q. And on 190, is that a post-injunction mobile  
6 advertisement?

7 A. That is correct.

8 Q. Can you explain to the Court what a mobile advertisement  
9 is?

10 A. Mobile ads are in Philadelphia and Pittsburgh. For ten  
11 days -- well, nine days leading up to the election and  
12 Election Day itself, or for a total of ten days, large  
13 billboards on wheels, essentially commercial trucks, driving  
14 around targeted neighborhoods to make sure that the voter ID  
15 message was communicated to voters prior to the election.

16 Q. If you could look at Exhibit 191; is this a college  
17 newspaper advertisement after the injunction?

18 A. That is correct.

19 Q. And is 192 also such an advertisement?

20 A. Yes.

21 Q. If you could look at 193; is it a post-injunction  
22 Thelacian (PHONETIC) advertisement?

23 A. Yes, it is.

24 Q. Can you explain to the Court what that is, a Thielacian  
25 (PHONETIC) advertisement?

1 A. I'm sorry. Say that again?

2 Q. Can you explain to the Court what a Thielacian  
3 (PHONETIC) advertisement?

4 A. Thielacian (PHONETIC)?

5 Q. I may be pronouncing it incorrectly.

6 A. I don't know what you are talking about.

7 Q. It's spelled T-H-I-E --

8 MR. GERSCH: I'm glad you said so.

9 THE WITNESS: This was a college newspaper  
10 advertisement.

11 BY MS. HICKOK:

12 Q. Got it. And is 194 a college advertisement. It says  
13 it's Triangle Advertisement.

14 A. That is correct.

15 Q. And 195 is a Tioga Publishing; is that also a college  
16 advertisement?

17 A. No. In a couple of parts of the state, the media  
18 markets were actually located outside of the state,  
19 particularly in this case New York. So, we had to advertise  
20 in general newspapers of record instead of a large television  
21 buy, which was actually outside of the state showing people  
22 outside the state about Pennsylvania's voter ID law.

23 So, what we did was we ran a over a two-month period  
24 newspaper ads and extended our billboard buy in a couple of  
25 parts of the state to make up for the fact that the primary

1 media market was outside the state, across state lines.

2 Q. Would that include places like the Buffalo/Niagara  
3 market and the Youngstown, Ohio, market?

4 A. Exactly.

5 Q. Could you look at 196 for me; is this a post-injunction  
6 Korean advertisement?

7 A. It is a Korean advertisement. I cannot say with  
8 certainly if this particular example is pre- or post, but I  
9 take your word.

10 Q. Okay. And is 197 like that, but in Chinese.

11 A. I think so.

12 Q. And 198, is that a post-injunction Neighborhood Leader  
13 advertisement?

14 A. That is correct.

15 Q. And 199, is a Latin news advertisement?

16 A. Yes.

17 Q. And now, really, challenging you is 201, a  
18 post-injunction Russian market advertisement?

19 A. Yes, it is.

20 Q. Is 202 a post-injunction online banner?

21 A. Yes, it is.

22 Q. How does this differ from the pre-injunction version?

23 A. The message on this banner, which provides people with a  
24 mechanism if they choose to get additional information by  
25 clicking on the "learn more" button.

1           The message was changed that says you will be asked but  
2   not required to show photo ID.

3   Q.     Okay. And is 203 an online banner, but in Spanish, and  
4   204 a post-injunction web advertisement in Spanish.

5   A.     That is correct.

6   Q.     205, is that a post-injunction commercial?

7                   ( THE AD WAS PLAYED. )

8   A.     Yes. That is a post-injunction television ad.

9   Q.     And is 206 of the same thing, but in Spanish.

10                   ( THE AD WAS PLAYED. )

11   A.     Yes, it is.

12   Q.     And 207, is that a Clearchannel billboard?

13   A.     That is correct.

14   Q.     And is it is post-injunction?

15   A.     That is correct.

16   Q.     And 208, 209, 210, 211, 212; are they all billboards as  
17   well, and post-injunction versions?

18   A.     Yes, they are.

19   Q.     And 213; is it a pre-injunction radio advertisement?

20                   ( THE AD WAS PLAYED. )

21   A.     Yes. That was one of our pre-injunction radio  
22   advertisements.

23   Q.     And is 215, the post-injunction version of that radio  
24   advertisement?

25                   ( THE AD WAS PLAYED. )

1 A. Yes. That is one of our post-injunction radio  
2 advertisements.

3 Q. And 214 and 216, which I don't think we need to play,  
4 are those the Spanish versions of the radio advertisements?

5 A. Yes, we produced those.

6 Q. And is 217 a pre-injunction television advertisement.

7 (THE AD WAS PLAYED.)

8 A. Yes. That was one of our pre-injunction television  
9 spots.

10 Q. And is 220 the post-injunction version of that  
11 advertisement?

12 (THE AD WAS PLAYED.)

13 A. Yes. That's an example of a post-injunction television  
14 spot.

15 Q. And are Exhibits 218 and 221, which we won't play, the  
16 Spanish version of those?

17 A. Yes.

18 Q. And is Exhibit 219 an email about the PSA links?

19 A. That is correct.

20 Q. And is 222, Exhibit 222, another version of a  
21 post-injunction Spanish television advertisement?

22 (THE AD WAS PLAYED.)

23 A. That is correct.

24 Q. Were those advertisements, taken together, the  
25 advertisements that were summarized in the exhibit we looked



1 at earlier that was talking about what media were being done  
2 at what point in time?

3 A. That was representative of most of those, correct.

4 Q. And those were prepared for you at your request?

5 A. That is correct.

6 Q. They were disseminated throughout the Commonwealth; is  
7 that correct?

8 A. Yes, it is.

9 Q. Was the pre-injunction version disseminated up until the  
10 time of the injunction?

11 A. Yes.

12 Q. Was the post-injunction version disseminated from the  
13 time of the injunction through the election?

14 A. Yes. Although there was a period -- because  
15 Pennsylvania is such a large state, we had to pull down all of  
16 our television ads, radio ads, billboards, change the  
17 content -- planned consent of our newspaper ads, all of our  
18 web banners. We pulled everything down, and within a matter  
19 of days, changed the message to what you saw in the  
20 post-injunction materials and put them back up.

21 Q. Okay.

22 MS. HICKOK: Thank you very much. As a  
23 housekeeping matter, I realize that I had left out one of the  
24 Memoranda of Understanding, and I just want to verify with him  
25 now that this is an amendment to bring the memorandum current.

1 BY MS. HICKOK:

2 Q. Mr. Royer, I'm showing you what is marked as Exhibit 5.  
3 Can you identify that for the record, please.

4 A. This is a Memorandum of Understanding between PennDOT  
5 and the Department of State which encompasses a change in the  
6 DOS ID process.

7 Basically at this point, voters were allowed to choose  
8 which ID they wanted rather than trying to obtain a more  
9 secure PennDOT ID first, and this MOU is reflective of that.

10 Q. Okay. So, was that just amending the earlier  
11 memorandum that we looked at?

12 A. In essence, yes.

13 Q. Thank you. When the election was over, did the  
14 information that was put on the voter registration cards get  
15 removed?

16 A. No. To this day, when someone registers to vote, a  
17 county board of election prints the voter registration card  
18 that is sent to the voter. There is a notice on the back of  
19 the card itself that indicates there is a photo identification  
20 law in place in Pennsylvania, and you need to contact those --  
21 go to VotesPA.com or contact the phone number to get  
22 additional information if you have it.

23 Q. Or that email address that we looked at up there?

24 A. Correct, correct.

25 Q. After the November election, did you instruct the

1 counties not to hand out materials at the May 2013 election,  
2 or were they asked to continue what they had done?

3 A. Well, the idea is that we were in the process of  
4 preparing for a third soft rollout of the law, so it really  
5 did not change that much what the counties were doing, gearing  
6 up for a third soft rollout, printing all of the handouts.

7 As I said earlier during the soft rollouts, when a voter  
8 would show up at a polling place, the polling place official  
9 would ask for ID, let them know that it wasn't required. If  
10 they didn't have it, they would give the voter information as  
11 to the kinds of IDs that could be used for voting purposes in  
12 the future election.

13 So, the planning for the primary election continued  
14 right after the November 2012 election.

15 Q. Now, in July 2012 -- I know you were not here this  
16 morning and yesterday afternoon when Mr. Marks testified, but  
17 he testified in anticipation of the absentee voter provisions  
18 that there was a cross-filling done between the PennDOT  
19 database and the Department of State database, and did that  
20 cross-filling point out certain persons who did not seem to  
21 have compatible data between the two databases?

22 A. Yes. Last year, we initiated over a couple of month  
23 period comparing the two databases with each other the 8.2  
24 million registered voters at the time with PennDOT's database  
25 of about 9-and-a-half million products to try to ascertain the

1 individuals who may or may not have a PennDOT product.

2 Q. Was there a group of people that were identified as  
3 potentially being people who might not have a PennDOT product?

4 A. Yes. There were approximately 759,000 individuals from  
5 that comparison that we could not say with 100% certainty had  
6 a PennDOT product.

7 Q. And can I mark Exhibit 43.

8 THE COURT: Were any of these pre-injunction  
9 advertisements and media presented to Judge Simpson, if you  
10 know?

11 THE WITNESS: Sir, I do not believe Judge  
12 Simpson, when I testified in Commonwealth Court in July of  
13 last year and again in September, he did not see any of those  
14 materials.

15 BY MS. HICKOK:

16 Q. Can you identify what Exhibit 43 is for us.

17 A. This exhibit is a copy of the letter that was sent to  
18 the 759,000 individuals I mentioned earlier. These  
19 individuals again were people who we could not say with 100 %  
20 certainty had PennDOT product.

21 We felt it was important after we did that comparison to  
22 reach out to those voters over the summer to notify them about  
23 the law and the kinds of IDs that they could use for voting  
24 purpose, if in fact they didn't have IDs that could be used  
25 for voting and also provide them a mechanism where they could

1 get detailed information.

2 In this case it's our VotesPA website and phone number,  
3 along with PennDOT phone number and PennDOT website. PennDOT  
4 website.

5 Q. Were you notified afterwards or contacted afterwards by  
6 any of the recipients of these letters?

7 A. Yes. A few of them personally contacted me, or phone  
8 calls came in to our office from some of these individuals,  
9 that is correct.

10 Q. What did those individuals say to you?

11 A. They said thank you for sending us -- some of them,  
12 thank you for sending us this letter. Why did you send it to  
13 me? We already have ID.

14 Q. Were there any people that the judge might be familiar  
15 with who were among the people that received the letter?

16 A. There were legislators, county commissioners -- I can't  
17 remember their names at this point, but it was people --  
18 people that knew the secretary, people who were active in  
19 legislature, Republicans and Democrats, asking why we had sent  
20 this because they in fact had ID for voting purposes through  
21 PennDOT.

22 Q. Those people who contacted you, did they actually have  
23 PennDOT ID?

24 A. Yes.

25 Q. What did you learn from them as to why they were

1 identified as a potential mismatch?

2 A. Well, there were different reasons, primarily because  
3 the way PennDOT formats its information in its database and  
4 the way that the voter registration database is formatted,  
5 voter registrations are contained in the SURE system, the  
6 Statewide Uniform Registry of Electors, the way the data is  
7 entered by PennDOT and the way the data is entered by county  
8 election officials is very different.

9 So, for example, some who have Irish heritage and Irish  
10 last names, there would be a space between the MC and the rest  
11 of the word. McDonald, MC space, or McDonald as one word, for  
12 example. Every other piece of information would be the same;  
13 the same, the address, other information that would be  
14 contained on both records matched, but because of that one  
15 difference in how the data was entered, that turned out as a  
16 possible non-match, and that generated one of these 759,000  
17 letters.

18 "Philadelphia Inquirer" did a story last year, took a  
19 sampling of several thousand of these, and found that many of  
20 them in fact -- the ones that they investigated, did have  
21 PennDOT ID.

22 Q. Now, did you also receive back some number of letters?

23 A. Yes, we did. I can't remember the exact amount, but we  
24 had somewhere in the neighborhood of 150,000 that were  
25 returned as -- for various reasons, but basically because the

1 individual no longer lived there.

2 Q. Thank you very much. As part of your outreach efforts,  
3 did you work with your press people to generate press  
4 releases?

5 A. Absolutely.

6 Q. Were those press releases picked up sometimes by AP or  
7 other wires so that they got wider dissemination?

8 A. Yes.

9 Q. I'm going to show you a couple of them and ask you  
10 questions about them. If I could start with Exhibit 113.  
11 Mr. Royer, do you recognize this exhibit?

12 A. I do.

13 Q. Can you tell us about this exhibit?

14 A. This is a press release issued by the Department's press  
15 office in April of 2012, in essence, thanking Temple students.  
16 The Temple Republicans and Democrats contacted the  
17 administration at Temple University asking them to start  
18 providing dates, expiration dates, on their student IDs so  
19 that Temple IDs could be used for voting purposes.

20 Q. And did the university respond?

21 A. Yes, they did.

22 Q. If I could show you Exhibit No. 123, can you identify  
23 this document?

24 A. This is a September 26th press release issued by the  
25 Department of State's press office very similar to the one

1 that you just showed me.

2 In this case it's Penn State Main Campus, University  
3 Park, congratulating the university for insuring that students  
4 could use their IDs for voting purposes by having expiration  
5 dates on their IDs.

6 Q. Did only Main Campus do that, or were there other  
7 campuses for Penn State?

8 A. Other campuses around the state.

9 Q. I mean, but for Penn State, was Penn State doing it only  
10 on Main Campus, or was it doing it for all of its campuses?

11 A. In their satellite campuses as well.

12 Q. And if I could show you Exhibit No. 118, could you  
13 identify this document for me?

14 A. This is a June 6, 2012 press release issued by the  
15 Department of State Press Office announcing a partnership with  
16 the 630 libraries around the state.

17 We thought it was important to work with as many  
18 different entities, whether they were state agencies or other  
19 agencies or individual associations representing folks around  
20 the state, in this case the Library Association, to try to get  
21 information out.

22 The Pennsylvania Library Association was very supportive  
23 of this, and what they ended up doing in June of last year was  
24 send information to all of their member libraries around the  
25 state. This mentions 632.



1           We also, for computers that are accessible to voters in  
2   the libraries -- many libraries today have computers and  
3   internet access for the public. We also provided them with  
4   our voter ID button that they could put on their home pages so  
5   that people who came in off the street and wanted to get  
6   information about photo ID requirements could click the button  
7   on their home screens, and it would take them to our VotesPA  
8   site where they could get detailed information.

9   Q.     Thank you. And Exhibit 114, can you identify this  
10  document.

11  A.     Yes. This is a press release from April 18, 2012,  
12  issued by the Department of State trying to make sure that  
13  people were aware that there is a simplified process for  
14  individuals who no longer have a PennDOT product, but once  
15  did.

16           And the gist of this press release is to inform the  
17  public that if you were once in the PennDOT system but no  
18  longer had a PennDOT product, you don't need to get the  
19  information or the -- or the records that you normally would  
20  need to get a secure ID from PennDOT.

21           You simply would go into PennDOT, and because you were  
22  once already in the system, they would produce an ID for  
23  voting purposes for free without you bringing the  
24  documentation, the theory being that they had done that when  
25  they first applied for a PennDOT product many years ago.

1 Q. Did the Department of State support PennDOT in doing  
2 this?

3 A. Yes.

4 Q. Did the Department of State mandate that PennDOT do it?

5 A. No. It was a joint discussion.

6 Q. Exhibit 116. Can you identify this?

7 A. Yes. Secretary Aichele, in the primary of 2012, along  
8 with one of our press folks, visited a number of polling  
9 places in Philadelphia, and this is a press release discussing  
10 that. I talked to her after she visited as well, and she said  
11 that things went very well.

12 Q. Now, this would have been the first soft rollout?

13 A. That is correct.

14 Q. Did she report people being hostile or complaints that  
15 were levied at her as she travelled around?

16 A. Absolutely not.

17 Q. Exhibit 117. Can you identify this?

18 A. Yes. This is a Department of State press release from  
19 May 23, 2012, announcing a simplified method for individuals  
20 to obtain an ID for voting purposes for free from PennDOT.

21 This is in essence a partnership between the Department  
22 of State, the Department of Health, and PennDOT, which  
23 provided for electronic communication between PennDOT and  
24 Department of Health to confirm the birth certificate  
25 information of voters coming to PennDOT to obtain an ID for

1 voting purposes.

2 Previously to this you were required, to get a secure ID  
3 such as a non-driver's license ID from PennDOT, to provide  
4 copy of your -- a raised seal copy of your birth certificate  
5 or passport or some other information.

6 With this process implemented in May of last year,  
7 people could go to PennDOT, if they were Pennsylvania-born  
8 residents, and PennDOT would confirm electronically. You need  
9 not bring any documentation with you.

10 Q. Thank you. You said that three agencies had to  
11 coordinate together in order for that to happen?

12 A. Correct.

13 Q. And had the Department of Health, if you know, been  
14 providing electronic access to its records to PennDOT prior to  
15 that time?

16 A. I don't know the answer to that question. This was a  
17 new process.

18 Q. So, it was an innovation?

19 A. Yes.

20 Q. If you could look at Exhibit 120, can you tell me what  
21 this is.

22 A. Yes, this is a July 20, 2012, press release issued by  
23 the Department of State announcing the new DOS cards. The  
24 second paragraph says, "The Department of State voter cards,  
25 which will be issued by the Pennsylvania Department of

1 Transportation, will be available to registered voters who are  
2 not able to provide all of the documents they would normally  
3 need to obtain a photo ID from PennDOT such as a birth  
4 certificate."

5 The press release goes on to say that these cards will  
6 be available the third week of August.

7 Q. And Exhibit 124, can you identify this document?

8 A. This is a November 5, 2012, press release issued by  
9 Department of State, the day before the November 2012  
10 election, reminding voters to vote, and also reminding them  
11 about the kinds of offices that are on the ballot in that  
12 particular election, and also notes that people will be asked,  
13 but not required, to show photo ID when they vote the next  
14 day.

15 Q. Is this consistent with the message that you were trying  
16 to convey that you wanted voters to turn up and vote?

17 A. Yes.

18 Q. If you would look at Exhibit 126, can you identify this  
19 document? It's 125. I'm sorry. I have the wrong number.

20 A. This is a press release issued by the Department of  
21 State, May 14th, 2013, leading up to the May 21st primary,  
22 urging people to vote. And it also reminds voters once again  
23 that ID is not necessary to vote in this election, but it will  
24 be asked for by the poll workers.

25 Q. In 2011, which was your first year in your current

1 position, is that correct? In advance of the November  
2 election, did you spend a great deal of time travelling around  
3 the Commonwealth.

4 A. In 2011, yes.

5 Q. And did the Secretary?

6 A. Yes.

7 Q. And did other members of your staff?

8 A. Yes.

9 Q. In 2012 did you also spend time travelling around the  
10 Commonwealth?

11 A. Yes.

12 Q. What kinds of places did you visit?

13 A. Many places in 2012; senior facilities, churches,  
14 community centers, township buildings. I attended an event at  
15 a funeral parlor in West Chester talking about voter ID.  
16 Breakfast that legislators hosted for constituents, some as  
17 large as 300 individuals attending. It was a very, very busy  
18 year. I was all over the state. I was focused primarily on  
19 southeastern Pennsylvania.

20 Q. And was the Secretary also travelling all over the  
21 state?

22 A. Yes, she was.

23 Q. Were any of the presentations that you or the Secretary  
24 made done in conjunction with civic organizations?

25 A. Yes. I appeared at events last year, in 2012, with the

1 NAACP, League of Women Voters, Committee of Seventy, Voter ID  
2 Coalition, which is a coalition of organizations in  
3 southeastern Pennsylvania who were working to try to get the  
4 message out about the voter ID law last fall. Many others as  
5 well.

6 Q. Were there other people from your office which attended  
7 events such as this?

8 A. Yes.

9 Q. Were there outside people that you also had to attend --  
10 that you asked or directed to attend events?

11 A. Yes. As part of our voter education effort, we worked  
12 with an outreach company who was a company that -- one of the  
13 companies that participated in the RFQ process.

14 They attended events all over the state on our behalf,  
15 and also helped to disseminate information to groups around  
16 the state.

17 Q. Can you identify that company?

18 A. That's the Bravo Group. B-R-A-V-O.

19 Q. Was that also the company that was maintaining the  
20 Facebook page and Twitter feed at the time?

21 A. That is correct.

22 Q. Just talking now about you personally, you had mentioned  
23 that you had gone to senior centers, and that you were  
24 concentrating primarily in the southeastern part of the state.  
25 Are there any that are particularly memorable to you?

1 A. Well, they're all -- they're all memorable. Information  
2 was provided, lots of great questions were asked, handed out a  
3 lot of handouts.

4 I attended events at senior centers, but also senior  
5 facilities, residences in southeastern Pennsylvania, very  
6 large ones. Lots of people attending. Marist Grove in  
7 Delaware County, and twice I attended an events with Senator  
8 Pileggi and Representative Barrar to provide information about  
9 voter ID cards, and Montgomery county was a great event with  
10 Representative Harper at Normandy Farms.

11 Q. Is Normandy Farms a senior community?

12 A. That is correct.

13 Q. And both with Marist Grove and Normandy Farms, do they  
14 have various levels of facilities under one umbrella  
15 organization?

16 A. They do. They are assisted living and independent  
17 living facilities. They are an assisted and an independent  
18 living facility, yes.

19 Q. And skilled nursing?

20 A. Correct.

21 Q. In those complexes, are they entitled under Act 18 to  
22 issue ID to all of their residents and employees?

23 A. Yes, they are.

24 Q. So, it doesn't matter if somebody is in an independent  
25 living facility, who is in a place that is part of a licensed

1 care facility?

2 A. It does not matter. If you are licensed by DPW, Health  
3 or Aging, if you are one of those 2,000 facilities across the  
4 state, are you able to issue IDs to everyone within that  
5 complex.

6 Q. And when you went to those two complexes in particular,  
7 did you have any sense of the size or the number of people who  
8 came to hear you?

9 A. There were over 100 people at the two events that I  
10 attended at Marist Grove. I would say 75 or 80 people at the  
11 Normandy Farms event. They are enormous complexes.

12 They also, at least at Marist Grove, taped, I believe,  
13 our presentations, and the residents could watch it later on  
14 their in-house cable channel.

15 Q. Okay. Great. Thank you. If I could show you Exhibit  
16 79. I believe there was some testimony earlier about the  
17 voter registration cards. Is this an exemplar of a voter  
18 registration card?

19 A. Yes, it is. What you see on this card is the front and  
20 back of the card. So, the section on the left hand side is  
21 the front, and the section on the right hand side is the back.

22 Q. And in the banner there is the part that talks about the  
23 Act 18 requirements?

24 A. That is correct.

25 Q. Thank you. If you could look at Exhibit 53. Can you



1 identify that for the Court.

2 A. Yes, I can. This is an internal Department of State  
3 document which serves as a record for us of events from 2012  
4 that Department of State employees, along with employees for  
5 the Bravo Group, attended providing information and answering  
6 questions about voter ID around the state.

7 Q. Was this prepared either by you or under your direction?

8 A. It was prepared under my direction, yes.

9 Q. And was it maintained in the ordinary course of  
10 business?

11 A. Yes.

12 Q. If you could take a look at Exhibit No. 54, can you  
13 identify this for the Court?

14 A. Yes. This is a document similar in nature. It is a  
15 Department of State document that provides a record for us of  
16 press calls, and sometimes indicates when stories appear, that  
17 sort of thing during 2012. I believe in 2012, we received  
18 somewhere in the neighborhood of 240 press calls in our press  
19 office about voter ID.

20 Q. So, these two documents are capturing -- this is 53 and  
21 this is 54; they're capturing different kinds of outreach  
22 contacts; is that correct?

23 A. That's correct.

24 Q. 52, do you recognize this document?

25 A. I can't read the document that you provided, but I can

1 try to look at it on the screen.

2 Q. I can't read it, either, so -- spreadsheets.

3 A. Yes. This is similar to the other documents that you  
4 provided. What you will see on the far left is the name of  
5 the individual either working at the Department of State or  
6 from the Bravo Group, a date of a certain event, the  
7 organizations involved in that particular event, because  
8 sometimes they were joint events, and sometimes they were  
9 events such as one organization or one legislator, and then  
10 some of the miscellaneous information on the far right column.

11 Q. Okay. And there had been some discussion at a point in  
12 time about doing things right before the election in order to  
13 insure that people did not forget their ID. Was there a  
14 decision made to avoid -- I mean not to avoid, but not to do  
15 those things that had been originally thought about?

16 MR. GERSCH: Objection, Your Honor. Could we  
17 just have the question rephrased.

18 MS. HICKOK: Okay. I'll rephrase it.

19 BY MS. HICKOK:

20 Q. Were there certain forms of outreach that you were  
21 hoping to do before -- right before the election?

22 A. Yes.

23 Q. And what kinds of outreach were those?

24 A. Originally we had intended, and I believe Harmelin at  
25 one point initiated a contract with a -- we called it robo

1 calls, but an automated calling company.

2 Our initial plan when the law was passed in March of  
3 last year was right before the election, either the weekend  
4 before or the day before the election, to have automated phone  
5 calls delivered to every voter we could find within our system  
6 with a phone number to remind them to bring their ID with them  
7 on Election Day.

8 Q. After the injunction, did you rethink that decision?

9 A. Yes, we did.

10 Q. Why did you do that?

11 A. Well, we didn't want to confuse voters the day before  
12 the election with the message that they had been receiving  
13 during the month of October that the ID is requested, but not  
14 required.

15 There wasn't the great sense of urgency for people to  
16 actually have the ID on Election Day because it wasn't  
17 required to vote in the November election.

18 So, what we did was we decided not to do the robo calls.  
19 We would have done them if the law were fully implemented.

20 Q. And had you thought about doing a lottery crawl?

21 A. Yes, we did. That was a joint discussion that we had  
22 with the Department of Revenue which oversees the Pennsylvania  
23 lottery.

24 Q. And was that also going to happen right before the  
25 election?

1 A. Yes, that was the plan.

2 Q. Was it also a reminder?

3 A. Yes, it was.

4 Q. And for both the lottery crawl and the robo calls, were  
5 they again dual purpose, both to tell people to show up and to  
6 bring ID?

7 A. They would have been, yes.

8 Q. You again made a determination that you didn't want to  
9 do the lottery crawl after the injunction?

10 A. Yes, we did.

11 Q. And what was the reason for that?

12 A. Similar to the reason of the phone calls. We did not  
13 want to put, during the lottery drawing during the week,  
14 information that indicates that people would have to bring an  
15 ID to vote.

16 Keep in mind, also on television we had over 9,000 spots  
17 running around the state beginning in August all the way  
18 through Election Day. So, we were fairly covered on Election  
19 Day, but we intended the lottery crawl concept to be a last  
20 minute reminder for folks to bring their ID on Election Day,  
21 but when the injunction was issued in October, we decided to  
22 scrap that idea.

23 Q. In the May 2013 primary, did you have any county  
24 officials reporting to you that people were unaware of the law  
25 or expressed confusion or surprise?

1 A. No. I think I indicated earlier that we keep in close  
2 contact with county election officials. The Bureau of  
3 Commissions, Elections and Legislation employees divide up the  
4 67 counties, and through phone calls, primarily, keep in touch  
5 with the election officials. And an incident report is  
6 created throughout the day, and then a final incident report  
7 is logged in to our system.

8 In the May soft rollout primary, May 21 of this year, we  
9 had no incidents regarding voter ID.

10 Q. In the course of business at the end of one election, do  
11 you begin to look toward the next?

12 A. We do.

13 Q. As you evaluated what had happened at the May primary,  
14 did you make a determination as to what would be a prudent way  
15 to reinforce your education efforts going forward to the next  
16 election?

17 A. Absolutely, and that's something that we do every year.  
18 I suspected that the turnout would be very light in the May  
19 21st primary, and in fact, it was. It was a little bit over  
20 11% of registered voters coming in to vote. That's typical.

21 Only the most committed voters, only the most  
22 knowledgeable and informed voters, come out in the off-year  
23 elections, and we saw that in the May 21 primary.

24 So, looking at that turnout result and knowing from  
25 experience the kinds of voters turn out this year as opposed

1 to the more casual voters that turn out every four years in  
2 presidential elections, that also provides us with guidance as  
3 to what we need to do moving forward to continue our voter  
4 education efforts.

5 Q. So, as you made that assessment, did you make a  
6 determination that it would be good to reinforce your  
7 education efforts with additional advertising in advance of  
8 the November election?

9 A. Yes, I did.

10 Q. If I could show you exhibit -- which I can't read. I  
11 believe it's 33. Do you recognize this?

12 A. I do.

13 Q. Can you tell the Court what it is?

14 A. This is a memo from me dated June 3, 2013, to John  
15 Guyer, G-U-Y-E-R.

16 Q. Who is Mr. Guyer?

17 A. Mr. Guyer works for the administration's budget office.

18 Q. What is the subject matter of this communication?

19 A. I had had a conversation with Mr. Guyer previous to  
20 that, I believe it was the week before, although I can't  
21 remember for certain, about the -- our desire to move ahead  
22 and continue our voter education efforts for the upcoming  
23 elections.

24 Two elections would be in this budget cycle, the  
25 November 2013 and the primary of 2014. After having that

1 conversation with Mr. Guyer, I sent him this email, which he  
2 asked for so he could document the ballpark figure, which I  
3 was asking for him from the budget.

4 Q. And what ballpark figure was that?

5 A. The amount is listed on the bottom of the first page,  
6 \$2,065,000.

7 Q. Do you believe that that is enough money to reinforce  
8 the ongoing education efforts?

9 A. I do, particularly considering a couple of things: One  
10 is that what we will experience in the November election and  
11 also in the primary of 2014 is far different than what we  
12 experienced in 2012. The turnout will be much lower. The  
13 kinds of voters who will be voting are much more knowledgeable  
14 and committed.

15 I also think it's important to note that I didn't make  
16 these numbers up by myself. I consulted with Harmelin Media  
17 before I talked to Mr. Guyer to get a ballpark figure from  
18 that company, which is our media buying company, considering  
19 the kind of political environment we were in terms of turnout,  
20 what would be a very good media buy that could reach voters at  
21 a different level than what we had in 2012.

22 So, this number was derived in part by my conversations  
23 with those professionals.

24 Q. So, this was something that together you assessed what  
25 you thought would be the optimal reinforcing advertisements,

1 and then you developed a budget based upon that, and then made  
2 that request?

3 A. That is correct.

4 Q. And if you would look with me at Exhibit 230; do you  
5 recognize this document?

6 A. I do.

7 Q. What is this document?

8 A. This document is reflective of a part of a final budget  
9 that the General Assembly passed and the Governor signed. It  
10 reflects amounts pertaining to the Department of State.

11 Q. Is there an appropriation in there that reflects the  
12 request that you had made to Mr. Guyer?

13 A. Yes. On the top of page 306, lines one, two, and three.  
14 You will see it says for voter registration and education  
15 programs, state appropriation, the amount in that category is  
16 \$2,506,000. 2,065,000, of that is what we have budgeted for  
17 voter ID education.

18 Q. Have you made plans going forward as to how that money  
19 will be spent?

20 A. Yes. After the budget passed, I once again reached out  
21 to Harmelin, informed them that we had secured funding, as I  
22 discussed with them several weeks before, in this new budget,  
23 and as is required by their contract, they're in the process  
24 of putting together a media plan, most of which encompasses  
25 the things you see on that original June 3 email and a few



1 other things such as newspaper advertisements for ethnic  
2 groups.

3 Q. In assessing the amount of outreach that you have done,  
4 have you relied solely on what your outside companies have  
5 said, or have you asked people to do research into what other  
6 states have spent?

7 A. Well, our own policy office has provided research about  
8 what other states have done in terms of outreach. This was  
9 done in 2012.

10 Our policy office has established somewhat of a  
11 relationship with other states that have implemented voter ID  
12 laws, checking with them about how the laws were implemented  
13 during the first year, second year, third year, the kinds of  
14 outreach that they did early on, and the amount of money that  
15 they spent on voter education.

16 Q. Where does Pennsylvania come in that group of states?

17 A. We have not found any other state that has done as much  
18 as Pennsylvania in terms of educating voters about a new voter  
19 ID law both in size and scope.

20 Most of what other states did was -- when they did their  
21 advertising, they limited their buys, very low radio, very  
22 little television. They printed lots of things and handed  
23 them out. And they had posters and did grassroots kinds of  
24 things, which we did as well.

25 But the magnitude of what we did in the \$5 million that

1 we spent to educate voters so far, far exceeds in size and  
2 scope anything that any other states that done.

3 Q. That's not counting the \$2 million-plus that you intend  
4 to spend in this next election cycle?

5 A. That is correct.

6 Q. Have you been given a message from any of those other  
7 states that their outreach was woefully inadequate?

8 A. Not at all.

9 Q. And if I could show you, finally, Exhibit 41. Do you  
10 recognize this document?

11 A. Yes, I do.

12 Q. Can you identify it for me?

13 A. This is an internal Department of State document which  
14 provides information about the money that we spent last year  
15 on voter ID effort. Each individual line is a line item  
16 within the Department of State's budget for the nearly \$5  
17 million that we spent on voter ID.

18 You will see, for example, on the second page for  
19 advertising services under Harmelin Media, you will see the  
20 television buy. Not the production, but the television buy  
21 was about \$1.2 million. Radio was about \$210,000. Online  
22 media, close to a half million dollars.

23 You will see at the bottom under third party cost,  
24 appearing under Red House Communications, a line item for \$1.6  
25 million. That would encompass the postcard mailer that we

1 sent to every household in the state. 5.8 million postcards,  
2 every household in the state with at least every voter  
3 notifying them of the voter ID law and the kind of ID they  
4 need, and where they can get information about the law.

5 And in the middle of this, on the final page under the  
6 spent category \$4,953,652.43 was spent last year on voter ID.

7 Q. Was this document prepared at your direction?

8 A. This is a normal document that our budget office would  
9 produce, but I did ask for it.

10 Q. This is maintained in the ordinary course of business by  
11 your budget office?

12 A. Yes, it is.

13 Q. Mr. Royer, going forward to the next two elections, do  
14 you have any concerns that the people of Pennsylvania are  
15 unaware of the voter ID law, unaware of what the voter ID law  
16 requires, and incapable of being able to fulfill the  
17 requirements of the voter ID law?

18 MR. GERSCH: Objection, Your Honor. It's  
19 without foundation. I don't think the witness knows what all  
20 Pennsylvanians.

21 THE COURT: He will tell us what he knows, and  
22 I think he does.

23 THE WITNESS: I do not.

24 MS. HICKOK: Thank you, Mr. Royer. Your  
25 Honor, would you like me to move the exhibits at this point.

1 THE COURT: Sure.

2 MS. HICKOK: I can try and go through them.  
3 Todd, do you want to move them for me.

4 MR. HUTCHISON: We move into the record, Your  
5 Honor, Exhibits 2, 3, 4, 5, 229, 43, 41, 42, 40, 153 through  
6 174, 176 through 222, 113, 123, 118, 52, 53, 54, 114, 116,  
7 120, 124, 125, 79, 230, 33, and that's it.

8 THE COURT: Will you check with the Court  
9 Reporter later on and see if she needs a copy of that list.

10 MR. HUTCHISON: I will, Your Honor.

11 MR. GERSCH: No objection, Your Honor.

12 MS. HICKOK: Your Honor, I pass the witness.

13 THE COURT: Thank you.

14 MR. GERSCH: Your Honor, before getting  
15 started, you had inquired about whether of the pre-injunction  
16 ads had been testified to before Judge Simpson.

17 I know Mr. Royer testified to the best of his  
18 recollection that he didn't think so. In fact, there's about  
19 six or seven pages of testimony about that. I don't think  
20 Your Honor wants me to refresh his recollection.

21 THE COURT: No.

22 MR. GERSCH: If Your Honor is interested, we  
23 could just submit those six or seven pages to you on Monday  
24 morning.

25 THE COURT: Very good.

1 MS. HICKOK: Your Honor, as a further point of  
2 clarification, I believe that after the injunction was  
3 entered, there was motion practice in which it's possible that  
4 certain other of the advertisements were brought to the  
5 Court's attention, but that would have been after the remand.

6 CROSS-EXAMINATION

7 BY MR. GERSCH:

8 Q. Good afternoon, Mr. Royer.

9 A. Good afternoon.

10 Q. You've testified before, right?

11 A. Yes, I have.

12 Q. In the two previous hearings in this matter?

13 A. Yes, I did.

14 Q. And you and I know each other?

15 A. Yes, we do.

16 Q. You are a proponent of Act 18; is that right?

17 A. I have supported voter ID, yes.

18 Q. You are not what's considered a career employee of the  
19 Department of State?

20 A. That is correct.

21 Q. You're what's called a political appointee?

22 A. Yes. I served almost 15 years in the Pennsylvania House  
23 of Representatives working there, and then went to the  
24 Department of State after that.

25 Q. All right. I want to go through some of the matters you

1 testified on direct.

2           You were asked about a backfill or a matching that was  
3 done last summer; do you recall that?

4 A.       I do.

5 Q.       You testified about the notion that the results were  
6 approximately 759,000 no-matches; do you recall that  
7 testimony?

8 A.       I believe I said there were 759,000 individuals, you  
9 couldn't say with certainty matched.

10 Q.       Sure. What I want to focus on something else, which is  
11 that in addition to those 759,000, isn't it true that you also  
12 found another 500,000 individuals who were registered voters  
13 who had ID, PennDOT ID, but that ID would be expired and not  
14 valid for the November 2012 election?

15 A.       I received a memo describing the comparison between  
16 PennDOT and Department of State databases, the voter  
17 registration database, and the PennDOT product database at  
18 some point last year prior to the letter being mailed we  
19 talked about earlier.

20           I don't remember if there were other figures in there.  
21 I know that 759,000 was determined by the match that was done  
22 and by the IT work that was done, or we couldn't say with  
23 certainty. I don't remember the figures from last year.

24 Q.       You're not denying that there were another 500,000  
25 registered voters uncovered by this analysis whose PennDOT ID

1 would have been invalid for voting because it would have been  
2 expired too long before the November 2012 election?

3 A. I --

4 MS. HICKOK: Objection, Your Honor. Asked and  
5 answered.

6 THE COURT: It's cross-examination. We'll let  
7 him.

8 THE WITNESS: Could you say that again,  
9 please.

10 BY MR. GERSCH:

11 Q. Yeah. You're not denying that there were another  
12 500,000 registered voters on top of the 759,000. Another  
13 500,000 registered voters whose PennDOT ID would have been  
14 invalid for voting in November 2012 because it would have been  
15 expired for too long?

16 A. I'm not denying that, but I can't remember exactly how  
17 those were defined by the IT folks when the work was done.

18 Q. With regard to -- now let's go back to the 759,000.

19 You said that when you did a mailing in connection with  
20 that, you got some communications from folks saying why did  
21 you send that to me; do you remember that testimony?

22 A. Yes, me personally.

23 Q. How many such communications did you get?

24 A. Not many. Less than 20.

25 Q. I want to talk a little bit about the ads that you were

1 shown. You had a budget of about \$5 million for the last  
2 election; is that right?

3 A. That is correct.

4 Q. I see on Respondents Exhibit No. 41, which I guess is  
5 the line item budget showing what expenditures were made, that  
6 at least approximately \$1.8 million of that went to Red House  
7 purely for production?

8 A. Yes and no. I think I indicated earlier that in the Red  
9 House section toward the bottom under third party costs, you  
10 will see \$1,635,977. The bulk of that was the most expensive  
11 part of our campaign, which was the mailing that was done to  
12 every household in the state, approximately 5.8 million  
13 households in the state that contained at least one registered  
14 voter.

15 So, it wasn't just production. In that case, it  
16 included the most expensive part of our campaign.

17 Q. Okay. I appreciate that. I had missed that.

18 So, let's finish on that item. That was a mailing that  
19 was sent in September; is that right?

20 A. I believe so. It was sent over a period of a couple of  
21 weeks. Not all 5.8 million were mailed at the same time.

22 Q. It was the postcard, right?

23 A. That is correct.

24 Q. And the reason it was expensive was the postage?

25 A. Postage primarily, and then the printing secondary, yes.



1 Q. All right. We'll come back to that. You spent about  
2 \$1.2 million on television ads; is that right?

3 A. In Harmelin's budget you will see in the document that  
4 you asked me to look at \$1,226,171.03 was the size of the buy  
5 for the television ads. That did not include the production  
6 cost, which appears separately in the Red House Communications  
7 section of the budget.

8 Q. Just trying to get an proximate. By the way, I'm not  
9 trying to do this without showing you the documents. Just in  
10 the interest of time. If you want to see a document, just let  
11 me know and we'll put it up there.

12 But those television ads, none of those television ads  
13 mention the Department of State ID; is that right?

14 A. The Department of State IDs were not mentioned  
15 specifically in the ads. What the advertising did and what is  
16 fairly common in advertising is if you think you need an ID  
17 for voting purposes in this particular case, or you want more  
18 information about the law, you are directed to a website, you  
19 are directed to a toll-free number where you can get  
20 information, ask questions, that sort of thing.

21 One of the things about the Department of State ID  
22 that's important for us to remember, this was a decision made  
23 at the Department of State about the IDs. It is our belief  
24 that most people voting under voter ID law in Pennsylvania  
25 would be using a PennDOT product.

1           If we had made the Department of State ID the  
2     centerpiece of our campaign, put it on the front of the  
3     postcard, the television advertising, talked about it in our  
4     radio ads, it is our belief it would have caused confusion  
5     with voters that they would think they would have to get some  
6     kind of a new ID for voting purposes.

7           So, we made a decision not to focus with television ad,  
8     making it the centerpiece or the radio ad, making it the  
9     centerpiece with the web advertising, et cetera. We wanted to  
10    make sure that people knew that they didn't have to get some  
11    new card for voting purposes, because most people have a  
12    PennDOT ID.

13    Q.     Okay. But you spent \$1.2 million or thereabouts on TV  
14    ads, and not one of them mentions the Department of State ID;  
15    that is right, isn't it?

16    A.     What they do is direct people to the website, and  
17    provide a phone number where they can get all of the detailed  
18    information they would ever want.

19    Q.     Mr. Royer, am I not correct when I say you spent \$1.2  
20    million on TV ads, and not one of them mentions the Department  
21    of State ID?

22    A.     They don't, but they also mention that you can get IDs  
23    from PennDOT and the Department of State IDs; one of them.

24    Q.     You said that you directed them to a website and a phone  
25    number; is that right?

1 A. Yes. I believe all of our advertising, which was one of  
2 the things we talked about early on, directed people to  
3 VotesPA.com, and the toll-free number that people could call  
4 if they didn't have internet service or wanted to ask  
5 questions and not email questions. That was a very important  
6 part of our campaign because that's where people could go to  
7 find detailed information.

8 Q. My questions are going to be very simple, and we'll get  
9 out of here soon if you answer. Most of them are very short,  
10 but I'm not going to interrupt you, either.

11 That part of those ads that direct people to the  
12 website, what portion of the people who don't have ID to vote,  
13 what portion of them have computers?

14 A. I wouldn't know the answer to that question.

15 Q. Did you do any research on that?

16 A. We did not.

17 Q. Okay. Phone sounds good. Let me ask you this:  
18 Certainly for the financially disadvantaged, for a number of  
19 those people, do you understand that they use -- that a number  
20 of them use prepaid phones, prepaid cell phone kind of things?

21 A. What do you mean by financially disadvantaged; I'm not  
22 sure what the definition is of that.

23 Q. People who are poor.

24 A. Poor people? Well, if you are indigent, you do not need  
25 an ID for voting purposes under the voter ID law. I don't

1 have any information about the number of people who have  
2 prepaid phones.

3 Q. When you say that you don't need ID to vote if you are  
4 indigent under the law, are you sure of that?

5 A. Correct.

6 Q. There's no provision in the law that says that if you're  
7 indigent and you go to your polling place, they'll let you go  
8 and cast an ordinary ballot, just like anyone else, and you  
9 don't have to show any ID; is that right?

10 MS. HICKOK: Your Honor, if he's going to ask  
11 him a question about the Act, he should show it to him.

12 MR. GERSCH: He brought it up, Your Honor.

13 THE COURT: We'll permit the question.

14 THE WITNESS: Could you say the question  
15 again, please.

16 BY MR. GERSCH:

17 Q. Yeah. An indigent person comes to the polls, and he  
18 says, I'm indigent, they're not going to wave him through to  
19 the poll, are they?

20 A. The law specifically mentions that those individuals who  
21 come to the polling place, who claim they're indigent and do  
22 not have an ID for voting purposes, are able to vote by  
23 provisional ballot.

24 Q. So, they're not going to get a cast a regular ballot,  
25 right?

1 A. They cast a provisional ballot, and no work is needed  
2 after that point in time. They do not need to show ID after  
3 that.

4 Q. Let's take this one step at a time. They're not showing  
5 -- they're not going to get -- they won't be permitted to cast  
6 a regular ballot, they're going to have to cast a provisional  
7 ballot; is that right?

8 A. They have access to the ballot and to all of the  
9 candidates and to all of the races by using the provisional  
10 ballot. They do not have access to the machine.

11 Q. Okay. Let's focus on the provisional ballot.

12 In order to cast the provisional ballot, they're going  
13 to have to say not merely that they're indigent, but they  
14 cannot vote -- I'm sorry, that they cannot get ID because of  
15 the cost, right?

16 A. There's a little description on the cover of the  
17 absentee ballot envelope. They simply check it off indicating  
18 that they are indigent and not able to get ID for voting  
19 purposes because of that, and then they are given the  
20 provisional ballot to vote. That is the process at the  
21 polling place on Election Day.

22 Q. Okay. But the ID that you are supposed to be giving  
23 out, the Department of State card, the PennDOT ID; that's  
24 supposed to be free, right?

25 A. It is free.

1 Q. All right. So, an indigent person isn't going to be  
2 able to say that the reason I don't have ID is I can't pay for  
3 the free PennDOT ID, or I can't pay for the DOS ID; isn't that  
4 right?

5 A. The indication box on the provisional ballot is that  
6 they are claiming that they are indigent, and it is a  
7 self-proclamation.

8 Q. Yeah, but you also said that it says they can't get ID  
9 because they're indigent; you did say that, right?

10 A. Presumably, if they are indigent, and as you described  
11 earlier, I believe the word was used was disadvantaged, poor  
12 people, I think you said, if they claim that as a reason not  
13 for getting ID, they're able to vote using the provisional  
14 ballot process and never having to produce a photo ID of any  
15 kind.

16 Q. That's all right. I don't want to belabor this point  
17 because it's late. The law is what the law is, but let me ask  
18 you this: Did you ever run an ad saying, if you're indigent,  
19 no problem. You don't need photo ID?

20 A. No.

21 Q. No. You haven't, have you? That would be an easy ad to  
22 run, wouldn't it?

23 A. Could you state the content of the ad?

24 Q. If you're indigent, you don't need photo ID to vote.  
25 You have never run an ad like that, right?

1 A. No.

2 Q. And that would be an easy ad to run, wouldn't it?

3 A. No.

4 Q. Why not?

5 A. Because the message is very confusing. All of our  
6 messaging indicates that if people want a free ID for voting  
7 purposes, television, radio, web advertising, phone calls to  
8 the Department of State, information about the law, and if you  
9 need a free ID for voting purposes, contact us. We'll give  
10 you the information. We'll provide the detailed information.  
11 Our website has an entire section on the homeless, for  
12 example, for people who want to information.

13 That is a more reasonable way to communicate that  
14 message.

15 Q. You don't think it would be easy to add in on the bottom  
16 of the ads, if you're indigent, you don't need photo ID to  
17 vote, would that be too hard?

18 A. I'm not a marketing professional. I don't know that  
19 that would be an effective message.

20 Q. I put it to you that one reason you have no ads that say  
21 that is because it's not enough merely to be indigent to vote  
22 without ID. You also have to be able to say truthfully that  
23 the reason you can't vote, or the reason you don't have ID, is  
24 because you couldn't afford it; isn't that right?

25 A. I'd have to look at the law to say exactly, to look at

1 exactly what it said and how it defines an indigent voter.

2 Q. All right. You have got -- you paid for some radio ads  
3 also, right?

4 A. That is correct, for the production and placement of  
5 ads.

6 Q. Not one of those radio ads says anything about a  
7 Department of State ID, right?

8 A. No. It directs people to the website and phone number,  
9 and also says you can get a free ID from PennDOT, if you need  
10 it.

11 Q. When you said no, you're agreeing that not one of the  
12 radio ads says anything about the Department of State ID,  
13 correct?

14 A. Yes. We didn't want to confuse voters by putting out a  
15 message that the ID that most people have never heard of would  
16 somehow be needed for voting, and therefore, causing  
17 confusion.

18 Q. You also talked about the bus ads; do you recall that?

19 A. Yes.

20 Q. About \$125,000, roughly, spent on that.

21 A. Somewhere in the neighborhood.

22 Q. Sure. Those don't mention the Department of State ID,  
23 either?

24 A. They do not.

25 Q. Now, the ads are before the Court, so I'm not going to



1 run through all of them.

2 A terrific number of them don't mention the Department  
3 of State ID. You would agree with that, right?

4 A. Well, the mailing that we sent to every household in the  
5 state, 5.8 million households, which was every household with  
6 a registered voter, every registered voter was able to see  
7 that mailing, if they decided to look at it, did in fact  
8 mention the Department of State ID.

9 Q. That says it in really small print, and it doesn't  
10 explain what it is, right? If you need to see it, I'll bring  
11 it up.

12 A. I would like to see a copy of the postcard. Could you  
13 repeat the question, please.

14 Q. Sure. I just asked on Exhibit -- let's -- Exhibit 115.  
15 That's the postcard we're talking about, right?

16 A. That is correct.

17 Q. Okay. The mention of the Department of State ID that's  
18 in small print in the middle of that lighter block of text,  
19 right?

20 A. The Department of State ID is mentioned as one of the  
21 IDs people can use for voting purposes. This in essence is  
22 the standard laundry list of IDs that we put in this postcard  
23 and newspaper advertising, certainly on our website. This is  
24 a bit more detailed information than we're able to provide in  
25 any television or radio ad or any website banner kind of a

1 thing.

2 So, it is included in that list, and again this went to  
3 every household in the state with a registered voter.

4 Q. You would agree with this is small print where it says  
5 Department of State ID for voting.

6 A. Well, I can read it. I don't know what you mean by  
7 small.

8 Q. Okay. It will be whatever it is.

9 It doesn't explain what a Department of State ID is,  
10 right?

11 A. It does not.

12 Q. It certainly doesn't say the Department of State ID is  
13 intended to allow people who can't get PennDOT ID to obtain ID  
14 without having to produce all of information that's required  
15 by PennDOT?

16 A. It is true that this mailing does not do that.

17 Q. As you testified, people don't know what the Department  
18 of State ID is, right?

19 A. People who need an ID for voting purposes and were to  
20 get information by calling us or going to our website would  
21 find all of that information out.

22 Q. Okay. But as you testified before, most people don't  
23 know what the Department of State ID is?

24 A. No, I didn't say that. What I said was we didn't want  
25 to make the Department of State ID the centerpiece of an

1 advertising campaign and confuse voters to think that they  
2 needed some kind of new separate ID for voting purposes when  
3 they most likely had some other kind of ID. So, it was an  
4 attempt on our part not to confuse voters.

5 Q. Mr. Royer, is it your testimony now that you didn't  
6 earlier that the people didn't know what the Department of  
7 State ID was.

8 A. I believe I said that we didn't want to make it  
9 centerpiece of the advertising campaign so we didn't -- as to  
10 not confuse voters.

11 Q. You're not an advertising professional, are you?

12 A. I am not. My background is not in public relations.

13 Q. Not an expert in public education campaigns either,  
14 right?

15 A. I am not. We hire professionals to do that.

16 Q. There are tools that professionals in this area use to  
17 evaluate the effectiveness of advertising campaigns and public  
18 education, right?

19 A. I suppose so.

20 Q. That would make sense to you, right?

21 A. I suppose it's been done. I know -- I read the  
22 testimony of Miss Blint. I'm sorry, the deposition of Miss  
23 Blint, and she indicated in front of you all that many times  
24 that's not done. Sometimes it is done. It just depends on  
25 the client.

1 Q. Well, in any case you didn't use any kind of tool to  
2 evaluate the effectiveness of your advertising or public  
3 education campaigns; isn't that right?

4 A. Effectiveness in my mind is partially based on the size  
5 and scope of the campaign, how many times an ad is run, how  
6 many people see it.

7 I think if you look at the document that I was shown  
8 earlier from Harmelin, their recap document, as it is  
9 sometimes called, it talks about the reach, the frequency. It  
10 talks about the sheer number of ads that were run. I would  
11 say that that is an effective campaign.

12 Q. You're not saying, for example, that just because you  
13 spend a lot of money that the campaign is effective, are you?

14 A. No. What I'm saying is that's an indication of the  
15 effectiveness.

16 Q. Okay. But I'd put it to you that merely spending a lot  
17 of money, that doesn't mean the advertising campaign is  
18 effective, does it?

19 A. That alone does not.

20 Q. All right. We'll come to some of the other items that  
21 you mentioned in a minute. You didn't conduct any focus  
22 groups, right?

23 A. We did not. We didn't feel it was necessary.

24 Q. Didn't do any polling information to see what people  
25 have learned from the ads?

1 A. We did not feel that was necessary.

2 Q. Didn't use -- withdrawn.

3 You didn't hire anyone to evaluate the effectiveness of  
4 your advertising campaign?

5 A. To the extent that Harmelin provided us a recap with the  
6 size and scope of the campaign and the reach of the campaign  
7 and reaching the key demographics that I talked about earlier,  
8 above and beyond that, no.

9 Q. Can we put up Respondents Exhibit No. 42.

10 Mr. Royer, is Exhibit 42 the document you were just  
11 referring to?

12 A. It is not. I was referring to the recap document from  
13 Harmelin, but this has similar information on it.

14 Q. All right. Let me let you get your water, and we'll  
15 walk through this.

16 A. May I see a copy of that. This screen is a little  
17 fuzzy.

18 Q. Sure.

19 A. He blew it up. I can now see it. It's larger now.  
20 Thank you.

21 Q. When you're talking about the effectiveness, is one of  
22 the things that you're referring to the number of impressions?

23 A. Yes. It could be, but what I was referring to was the  
24 sheer amount of items. So, for example, television, 9,154  
25 spots, radio, 210,000. I'm sorry, radio, 3,405 spots. That

1 sort of a thing. I wasn't referring specifically to  
2 impressions.

3 Q. Okay. Fair enough. In looking at the sheer number of  
4 spots, what you were just referring to, how many people -- how  
5 many registered voters don't have ID?

6 A. I don't know the answer to that question.

7 Q. Don't you think you would need to know something about  
8 that to know how many the volume of advertising you would  
9 need?

10 A. No. The advertising campaign was -- the voter ID  
11 campaign was designed around the notion of making sure that  
12 people were aware of the law, and where they could go to get  
13 detailed information about the law, including about where they  
14 could get information about getting a voting ID for purposes  
15 if they didn't have one of the acceptable IDs.

16 In any given election, as I talked about earlier, many,  
17 many people choose not to vote. I think in the information I  
18 was shown earlier, even in presidential elections in  
19 Pennsylvania, over 30% of the voters choose not to vote, and  
20 that's the highest number turnout election that we have every  
21 four years.

22 So, our goal is to make people aware of the law, to  
23 inform them about the law, to provide detailed information and  
24 allow them the ability to ask questions by email or by phone  
25 or in person, and to reach out to individuals around the

1 state, which is what we did with about 200 groups; whether  
2 voters choose to get an ID, whether they choose to vote,  
3 whether or not they choose to register to vote, that's  
4 completely up to them.

5 Q. Mr. Royer, is your testimony that it's not important  
6 know how many registered voters or how many eligible voters  
7 don't have ID?

8 A. I don't think it's not important, and that is one of the  
9 reasons why we did the comparison that we talked about earlier  
10 with PennDOT's 9-and-a-half million product database and 8.9  
11 million voters in Pennsylvania to see if we could pick out  
12 which ones with certainty had a PennDOT ID.

13 So, we do constantly reach out to voters making them  
14 aware of this law, but we do not operate under the assumption  
15 that the key element, the key driving factor, on any given  
16 day, morning, afternoon, evening, as it changes daily, and how  
17 many people have an ID and don't have an ID.

18 What our goal is is to make sure that people know about  
19 the law. If they are interested in voting and do not have an  
20 acceptable ID, we want to make sure that they're able to get  
21 an ID for free for voting purposes. That is our mission.

22 Q. So, if I could just focus on the first part of your  
23 answer, it is important to know how many people don't have ID,  
24 and that's one of the reasons you conducted that exercise in  
25 which you were unable to find matches for 759,000 registered

1 voters, right?

2 A. Yes. We thought it was important to reach out to those  
3 759,000 people that we couldn't say with certainly one way or  
4 the other had a PennDOT ID.

5 Q. Now, after the election was over, the Secretary,  
6 Secretary Aichele, went to Temple University and she talked  
7 about doing another matching exercise; do you recall that?

8 A. Yes. I recall reading a news story about that, and I  
9 did talk to her about that after she made that statement.

10 Q. Okay. What you told the Secretary was that this was not  
11 a wise idea, that it was not -- it was not a good idea to do  
12 another match, right? That's fair, isn't it?

13 A. No. No, it's not fair. What I told her, and I believe  
14 I said this at my deposition in front of you all, was that a  
15 new match a few months later after the match that we had done  
16 in the summer wouldn't really yield anything different. You  
17 would still find the same situations where people who would  
18 fall into the category of being possibly a mismatch did in  
19 fact have PennDOT ID.

20 The systems are still the same. The databases were  
21 still the same. The McDonald spelled one way and McDonald  
22 spelled other way in the two different databases wouldn't have  
23 given you anything particularly new.

24 That's what I told her when I talked to her about it  
25 after she gave that statement.



1 Q. Sure. So, you were telling her this is not a good idea,  
2 don't do it; that's fair, isn't it?

3 A. What I said to her was it wouldn't really yield anything  
4 different.

5 Q. The intent behind your telling that to her was to  
6 suggest to her that it not be done?

7 A. She is free to direct people to have that done, if she  
8 so chooses. That's entirely up to her. My belief and my  
9 advice to her was that it would still yield a similar result.

10 You would have people, I believe to be a lot of people,  
11 falling into that category, who in fact had PennDOT ID.

12 Q. Mr. Royer, I don't want to be miscommunicating. All I'm  
13 asking is when you told the Secretary all these things about  
14 how you wouldn't get any different result, and you still had  
15 the same issues that you used to have, your purpose was to  
16 persuade her that it was not a wise idea to conduct another  
17 match; isn't that fair?

18 A. I didn't tell her that we shouldn't do another match. I  
19 didn't advise her not to do another match. What I said was,  
20 it would not yield anything different, and I believe I said  
21 that repeatedly to you.

22 Q. Yes, we're on a slightly different point, which is why  
23 you told her that. You're not suggesting you told her all of  
24 those things because you wanted her to conduct another match,  
25 are you?

1 A. I'm not suggesting that.

2 Q. But there's no way you're going to give me that the  
3 reason that you told her there would be all of these problems  
4 is because you didn't want to conduct the match, right?

5 A. I never said that to her.

6 Q. And in any case since the last time you testified in  
7 September, the Department of State has done nothing more to  
8 measure the number of Pennsylvania voters who lack ID to vote;  
9 right?

10 A. We did not.

11 Q. You attended the Supreme Court argument in this case?

12 A. I did. I saw you there.

13 Q. And you read the opinion, right? Short opinion?

14 A. I did. I don't remember the, word for word what it  
15 said; but I do remember reading it, yes.

16 Q. Sure. If you need it, I'll grab it in a second. But do  
17 you recall the part where the Court said the persons who were  
18 affected by having to obtain access to ID, and here I'll  
19 quote --

20 MS. HICKOK: Your Honor, I object. If he's  
21 going to ask him if the words say that, he should have the  
22 document in front of him.

23 MR. GERSCH: I think it will become obvious  
24 it's not relevant to whether the words are exactly right. I'm  
25 going to quote --

1 THE COURT: The witness can tell us that  
2 himself, Counselor.

3 BY MR. GERSCH:

4 Q. You recall the part where the Supreme Court said that  
5 the persons who are affected by having to get access include  
6 members of some of the most vulnerable segments of our  
7 society, the elderly, the disabled members of our community,  
8 and the financially disadvantaged.

9 A. I take you for your word as to that, that's what it  
10 said.

11 Q. Do you want to see the opinion?

12 A. No, I don't.

13 Q. You recall the concept?

14 A. I recall reading something like that last year, yes.

15 Q. Okay. Nothing's been done to determine the number of  
16 elderly who lack the ID to vote; isn't that right?

17 A. We are not engaging in any efforts that I'm aware of to  
18 ascertain the numbers of individuals in this category, no.

19 Q. Same thing for the disabled members of the community.  
20 The Department of State is doing nothing to determine how many  
21 of those folks lack the ID to vote?

22 A. We did extensive outreach to the homeless, as you are  
23 aware; but in terms of trying to figure out what that exact  
24 number is, no.

25 Q. These are the disabled.

1 A. Correct.

2 Q. Okay. And you've done nothing to determine the number  
3 of financially disadvantaged members of the community who lack  
4 the ID to vote?

5 A. We don't have any information as to what that exact  
6 number would be, and we're not trying to determine that at  
7 this point.

8 Q. And you've not done anything before this point to  
9 determine that number, either?

10 A. I'm not quite sure what you mean by that. We have done  
11 outreach to all of these groups. They have been part of our  
12 grassroots effort, our outreach effort; but in terms of trying  
13 to figure out exact numbers, no.

14 Q. You haven't figured out general numbers, either?

15 A. I don't know what the number of people in Pennsylvania  
16 is that don't have an ID.

17 Q. Or for --

18 A. I do know that everyone who wants an ID can get one for  
19 free.

20 Q. While we're getting the next exhibit, let me just clear  
21 up a couple of quick points. You were asked questions about  
22 college and university IDs; do you recall that?

23 A. Yes.

24 Q. All right. I just want to point to a general area.

25 You're not saying that all colleges and universities provide

1 ID with expiration dates so that their students can vote?

2 A. I did not say that, correct.

3 Q. And you would not say that?

4 A. I would not say that.

5 Q. Okay. And same thing for the health care facilities;  
6 you wouldn't say that all nursing homes and qualified health  
7 care facilities are providing identification so that their  
8 members can vote?

9 A. I would not say that all 2,000 licensed homes issue  
10 those IDs, that is correct.

11 Q. You were asked some questions about inserts to mailings  
12 by other agencies. Do you recall those questions?

13 A. I do.

14 Q. All right. Exhibit 68; that's the insert, correct?

15 A. I believe this is one of the inserts that an agency  
16 uses. I can't say for sure. The copy that I have is kind of  
17 grayed out. These were in color. But I think it is  
18 reflective of the kind of inserts that were included with  
19 agency mailings.

20 Q. Let's bring up Petitioners' Exhibit 2067.

21 Mr. Royer, that's one of the letters sent out by another  
22 agency; right?

23 A. Yes. I don't know that I have ever seen this, but it  
24 appears to be the case.

25 Q. Okay. And in the middle, if you go three pages in, that

1 -- that's the insert? Pages three and four?

2 A. I take you at your word that it was included in this  
3 mailer.

4 Q. Can you read this one better?

5 A. I can, thank you.

6 Q. Does it look to be about the same as Respondents'  
7 Exhibit 68?

8 A. It looks similar, yes.

9 Q. These were sent out before the injunction; is that  
10 right?

11 MS. HICKOK: Your Honor, he testified that he  
12 doesn't know of this mailing.

13 MR. GERSCH: The inserts were sent out.

14 BY MR. GERSCH:

15 Q. Without regard to this -- I wanted you to see an insert  
16 that you could read.

17 Without regard to this particular letter, you understand  
18 that these inserts that you testified about in your direct,  
19 that they were sent out before the injunction?

20 A. Yes, I believe with some of these agencies that we were  
21 working with -- and keep in mind, it was around 750,000  
22 inserts, some were before and some I believe were after the  
23 injunction. So, they would have been different versions.  
24 Excuse me, I'm losing my voice. There would have been  
25 different versions of the inserts like there were everything

1 else.

2 Q. I'll represent to you and for the Court that if there's  
3 a version that's different for the post-injunction period, we  
4 haven't seen it, and I'll request that from the Respondents.

5 Let me show you -- withdrawn.

6 With respect to the advertising and education campaign  
7 that you have budgeted now, there's nothing in the budget for  
8 evaluating the effectiveness of that advertising or public  
9 education campaign, correct?

10 A. Are you talking about focus groups, polling, that sort  
11 of thing?

12 Q. Yes.

13 A. No.

14 Q. There's nothing in the budget for anything that -- other  
15 than for what -- withdrawn.

16 To the extent there is any evaluation of the  
17 effectiveness, there's nothing budgeted that's any different  
18 than what you did the last time around; that's fair, isn't it?

19 A. This is a version of that, yes.

20 Q. You're not planning to do anything differently in terms  
21 of evaluating the success of your efforts than you did last  
22 time?

23 A. I understand your question. No, we didn't feel that was  
24 necessary the last time.

25 Q. Right. All right. Let me show you what Respondents put

1 into evidence, Exhibit 54. It's the grid of the press calls.

2 Put up that Exhibit.

3 You should still have that in front of you, if you have  
4 trouble reading it. All right. Do you see that?

5 A. I do, thank you.

6 Q. This is, if I understood your testimony, this is a list  
7 of the press calls that you have done in your outreach  
8 campaign that you had generated?

9 A. I'm not quite sure what you mean by generated. I  
10 believe this is a list of calls coming in to our press office  
11 about voter ID.

12 Q. Right. I simply meant I thought you had -- were asked  
13 and testified that you had had this document created.

14 A. Correct, as an internal document to log the number of  
15 calls that were voter ID related, and in this case to our  
16 press office.

17 Q. All right. It's fair to say that most of these calls,  
18 although not all, predate the injunction; is that right?

19 A. I don't have the complete list in front of me.  
20 Certainly, the majority of calls came in during the time this  
21 was in Commonwealth Court up to the Supreme Court, and then  
22 back to Commonwealth Court, and an injunction was granted by  
23 this Court on October 2nd that did generate an enormous number  
24 of calls into our press office. So, there were some after  
25 that, but there were a lot of them certainly before that



1 October 2nd injunction.

2 Q. And most of these calls are also before the Department  
3 of State decided that it would modify the eligibility for the  
4 DOS card to make it easier to get?

5 A. I'd have to go through -- I understand what you are  
6 asking me, and I'm not trying to be disingenuous, I'd just  
7 have to go through and look at what percentage and what that  
8 date was, so I can't say that with certainty.

9 Q. Okay. But if the calls were before September 25th, then  
10 the calls would have been taken before the Department made the  
11 decision to make it easier to get the Department of State ID?

12 A. That's correct.

13 Q. And that's true for the other documents that counsel  
14 reviewed with you showing outreach efforts; right? If the  
15 date is before September 25th, then you would not have been  
16 talking about the period in which you had decided to make the  
17 DOS card easier to get.

18 A. That is correct.

19 THE COURT: I'm sorry, what's that date again,  
20 Counselor?

21 MR. GERSCH: September 25th of last year,  
22 2012.

23 BY MR. GERSCH:

24 Q. All right. Let me change gears a little bit. You had  
25 some communications with Representative Metcalf regarding the

1 Department of State card -- ID, is that right?

2 A. That is right.

3 Q. And he told you that he did not believe the Department  
4 of State ID card was consistent with Act 18; right?

5 A. No, he didn't say that. He called for the Secretary. I  
6 took his phone call. I had a conversation with him about it,  
7 which was very cordial; and he asked me about the Department  
8 of State card, component to the cards that were issued by  
9 PennDOT, he asked me where that fit into Act 18.

10 Q. So, is it your testimony that he said nothing negative  
11 about the use of the Department of State ID?

12 A. Not at that time, no.

13 Q. Do you recall coming to the view with Representative  
14 Metcalf that you and he would agree to disagree?

15 A. That is correct.

16 Q. And that the subject you were disagreeing about, wasn't  
17 that subject about whether the Department of State ID was  
18 consistent with Act 18?

19 A. What we were disagreeing about whether it was  
20 specifically listed as one of the IDs in that laundry list of  
21 IDs that appear in Act 18. What I told him was that the  
22 Commonwealth issued IDs, and I also referred him to the part  
23 of the statute of the duties of the Secretary and our  
24 relationship with PennDOT. That's what I talked with him  
25 about as well, and so that is what we disagreed about.

1 MR. GERSCH: Your Honor, can I have a moment  
2 to confer with counsel? I'm getting toward the end.

3 BY MR. GERSCH:

4 Q. All right, Mr. Royer, just a couple more areas to cover.  
5 Real quick on the Department of State ID, and if you want me  
6 to go slower, I will. Just to recap, the Department of State  
7 ID, there's no statute that says there shall be a Department  
8 of State ID; right?

9 A. There's no -- you're asking me if there's a statute that  
10 specifically mentions the Department of State ID?

11 Q. There's no statute that says, "there shall be a  
12 Department of State ID."

13 A. There is no statute worded that way.

14 Q. It's not mentioned in Act 18?

15 A. The Department of State ID is not mentioned specifically  
16 in Act 18 as a kind of ID. Most IDs are not. It talks about  
17 Commonwealth issued IDs, university IDs, care facility IDs.  
18 Under that umbrella of IDs, there are literally thousands of  
19 IDs that could be used for voting purposes under each one of  
20 those categories or those categories combined. It does not  
21 specifically say Department of State ID.

22 Q. Right. And when Act 18 was passed, there was no  
23 Department of State ID?

24 A. That is correct.

25 Q. And the act was passed March of 2012, correct?

1 A. The Governor signed the legislation on March 14th, 2012.

2 Q. Perfect. And a month later, April 14th, there was no  
3 Department of State ID?

4 A. Not in April, no.

5 Q. Not in May?

6 A. Not until the summer. I believe they were released in  
7 August.

8 Q. Okay. So, for the first months, there was no such thing  
9 as a Department of State ID; right?

10 A. That is correct.

11 Q. The reason there is a Department of State ID is because  
12 the Secretary, along with the certain others, including  
13 yourself, decided that you would create such a thing; right?

14 A. Well, the authority to issue these IDs is referred to in  
15 the statute under the duties of the Secretary in Act 18.

16 During the beginning part of when Act 18 was  
17 implemented, it became clear to us, and to PennDOT, that  
18 individuals attempting to get a secure ID for voting purposes,  
19 sometimes referred to as a non-driver's license ID, did not in  
20 fact possess some of the documentation that they needed to get  
21 that ID. Mostly birth certificates, mostly dealing with  
22 people born out of state were unable to get those document.

23 Looking at Act 18 and what it says about our  
24 relationship with PennDOT, it's clearly an ability to issue  
25 those cards.

1 Q. Yeah, I'm not questioning whether you have the ability.  
2 I might have at a different time, but I'm not questioning  
3 that. I'm just asking for now, the reason there is a  
4 Department of State ID is because you, the Secretary, other  
5 personnel within the Department of State, decided it would be  
6 good to have one; right?

7 A. It's permitted under the statute as we read it, and it  
8 is our effort to make sure that everyone who needs an ID for  
9 voting purposes is able to get one for free, as the law  
10 stipulates.

11 Q. It's a discretionary act on the part of the Department  
12 of State; fair?

13 A. It's a necessary part of the law, as far as I'm  
14 concerned.

15 Q. The law doesn't mention the Department of State ID, does  
16 it?

17 A. The law mentions the Secretary -- under the Secretary's  
18 authority working with PennDOT to make sure that voters have,  
19 free of charge, an ID they can use for voting purpose,  
20 notwithstanding to the contrary, other parts of the law.

21 When it's clear that a voter going into PennDOT trying  
22 to get a non-driver's license ID, but does not have and is not  
23 able to get a birth certificate but still needs an ID for  
24 voting purposes, we feel entirely comfortable, with this DOS  
25 ID card being issued by PennDOT to make sure that everyone who

1 needs an ID can get it for voting purposes.

2 Q. I accept the part that Shannon Royer believes that. Is  
3 your testimony the law mandates that; are you saying the law  
4 requires you to have a Department of State ID?

5 A. I'm saying --

6 MS. HICKOK: Your Honor, he's not a lawyer.

7 MR. GERSCH: It would be fine to have a ruling  
8 that the law doesn't say that or that he's not testifying that  
9 the law says that. I'm inviting you to say he's not giving  
10 that testimony.

11 THE COURT: He can answer the question.

12 THE WITNESS: It is clear under a reading of  
13 Act 18 that there is guidance in the law that would allow us  
14 to issue the Department of State cards?

15 BY MR. GERSCH:

16 Q. You're not a lawyer, are you?

17 A. I am not.

18 Q. Over time you've changed the requirements for what you  
19 need to get the Department of State ID; that's fair, isn't it?

20 A. That is correct. What we did was we changed the  
21 process. People are able to decide which ID that they wanted,  
22 the more secure ID or the Department of State ID. First when  
23 the ID was introduced, people had to apply for the more secure  
24 non-driver's license ID from PennDOT; and if they didn't have  
25 the documentation they needed for that ID, then they would

1 fall into the DOS ID category.

2 What we did last year -- and this has been in effect now  
3 for many months, almost a year -- is that people can choose  
4 which ID they want for voting purposes. So they're able to,  
5 without documentation, get an ID from PennDOT.

6 Q. Okay. My question was over time, you've changed the  
7 requirements for the Department of State ID; you'd agree with  
8 that, right?

9 A. Yes.

10 Q. Okay. Now, there's nothing in any law that says that  
11 the Department of State ID -- withdrawn.

12 If you want a Department of State ID, you have got to go  
13 to PennDOT; right?

14 A. Yes, it's only distributed at the PennDOT driver's  
15 license centers.

16 Q. Okay. There's nothing in the law that says that  
17 Department of State ID can only come from PennDOT offices, is  
18 there?

19 A. Those exact words are not in law.

20 Q. The reason you have to go to PennDOT to get a Department  
21 of State ID is because that's the way the Department of State  
22 made the ID, right?

23 A. There's a section of the law under the duties of the  
24 secretary, and it describes our interaction with PennDOT,  
25 where it says, notwithstanding the Election Code to the

1 contrary, IDs are issued by PennDOT free of charge.

2 Q. We're talking about the Department of State ID. You  
3 don't -- there's nothing in the law that says if you want to  
4 have a Department of State ID, it has to come from PennDOT's  
5 offices.

6 A. Those exact words are not in the law.

7 Q. There's nothing that says if you want to get a PennDOT  
8 -- if you want -- I'm sorry, if you want to get a Department  
9 of State ID, you have to go to a PennDOT office?

10 A. Those exact words are not in the law.

11 Q. There's nothing like that in the law, is there?

12 A. No.

13 Q. Okay. And in fact, other kinds of ID acceptable under  
14 Act 18 don't require you to go to PennDOT, right?

15 A. That is correct.

16 Q. So, the health care facility, the IDs we talked about  
17 before, you don't have to go to PennDOT to get those?

18 A. That is correct. There is an entire menu of options  
19 that voters can choose from, from which to have an ID for  
20 voting purposes. PennDOT is one of them.

21 Q. Okay. The reason that people have to go to PennDOT to  
22 get the Department of State ID, people like the people who  
23 have been testifying in this case, the reason they have to go  
24 to PennDOT is because you, the Secretary and others of the  
25 Department of State decided to make it that way.



1 A. I think the law provides us guidance. It clearly, under  
2 the duties of the Secretary, describes our interaction with  
3 PennDOT, and ID being issued free of charge to voters by  
4 PennDOT, notwithstanding other provisions of the law. So, I  
5 think we are bound by the law to issue the IDs in that manner.

6 Q. You think you're required -- that you can only issue  
7 them from PennDOT; is that your testimony now?

8 A. I do.

9 Q. Mr. Royer, didn't you participate in the process of  
10 deciding what Department of State ID would look like, and  
11 where it would come from and what the requirements would be?

12 A. Yes. There were a group of us internally with PennDOT,  
13 others, formulating the requirements with the guidance of the  
14 law in mind as to -- I'm sorry, as to what the ID would look  
15 like, how it would be issued by PennDOT.

16 Q. And you were the point guy for the Department of State,  
17 right? You're the point man?

18 A. On voter ID.

19 Q. On the Department of State ID. This was your baby,  
20 right?

21 A. It was a team effort. I wouldn't exactly call it my  
22 baby.

23 Q. Or your Frankenstein.

24 A. I object to that.

25 Q. But you were the person that the Secretary charged with

1 getting this done, right?

2 A. There were a team of us, which included the Department  
3 of State employees, attorneys, PennDOT, policy individuals,  
4 all of us working together to devise, manner in which under  
5 guidance of the law these IDs could be issued.

6 Q. Mr. Royer, I'm not trying to deny anyone else credit for  
7 this, but you were the direct report to the Secretary on this;  
8 right?

9 A. That is correct.

10 Q. And she wasn't taking the lead on creating the  
11 Department of State ID, right?

12 A. Well, she was fully aware of it, and supportive of it.

13 Q. Sure, but she delegated the job of getting it done to  
14 you.

15 A. Me and a lot of other people, yes.

16 Q. Another quick issue -- well, I guess it's related to  
17 this topic.

18 There came a time when at least one state legislator  
19 suggested that the Department of State IDs be issued from --  
20 or be able to be issued from state legislators' offices; do  
21 you recall that?

22 A. Vaguely, I do.

23 Q. That was Senator Fontana?

24 A. Yes, I do recall that.

25 Q. And he suggested that, and you said -- not in so many

1 words, but you said that was a bad idea, an unwise idea.

2 A. My belief at the time and still today is that if you  
3 look at Act 18 under the provisions of the Secretary and our  
4 interactions as we are bound to perform Act 18 with relation  
5 to PennDOT, those IDs could only be issued by PennDOT.

6 Q. I'm sorry, I didn't hear the last part of what you said.

7 A. Those IDs can only be issued by PennDOT.

8 Q. Can only be issued by PennDOT.

9 A. Right.

10 Q. Mr. Royer, I just have a few more questions. Do you  
11 recall being asked any questions about whether anyone had  
12 complained about the voter ID law at the May 2013 elections?

13 A. I do.

14 Q. Okay. Correct me if I'm wrong, I took down that you  
15 testified that no one complained?

16 A. Yes. We have an incident report that is put together by  
17 our -- an official report that is put together by our Bureau  
18 of Commissions, Elections and Legislation. It changes  
19 throughout the day as calls come in, and communications are  
20 had with the county election folks.

21 There is nothing on that incident report pertaining to  
22 voter ID.

23 Q. You're not suggesting that because you didn't receive  
24 complaints in your incident reports that there are no  
25 complaints about the law, are you?

1 A. I think that the context of that question was am I aware  
2 of any complaints regarding the May 21st primary, and I am  
3 not --

4 Q. Okay.

5 A. -- pertaining to voter ID.

6 Q. Fair enough.

7 Earlier in your testimony, you had been asked questions  
8 about the place on your website where people could write in  
9 messages; do you recall that?

10 A. You were talking about having the ability to email?

11 Q. Yes.

12 A. Yes.

13 Q. Okay. And you recall that you said that no one -- I'm  
14 not now focusing on the May election, but that you hadn't  
15 gotten any complaints about the voter -- the photo ID law?

16 A. I think the questions that were asked were -- if I'm  
17 mistaken, please let me know -- revolved around the three soft  
18 rollouts and what happened on Election Day and our official  
19 documentation of incidents; and we were in touch with all 67  
20 counties coming into the Department of State. The incident  
21 reports from those days suggest there were -- there was  
22 nothing reported about voter ID.

23 I am not suggesting that there are some people who don't  
24 like the voter ID law.

25 Q. Okay. I had understood you -- and you correct me if I'm

1 wrong -- I had understood you to say that there was a place  
2 where people could email you; if they went to a place on your  
3 site, they could email you, and then no one was emailing you  
4 complaining about the photo ID law; is that -- did I  
5 understand you correctly?

6 A. Kind of. The voter complaint form that I was discussing  
7 earlier that I was asked about, is a page on the Department of  
8 State website and the VotesPA website where on Election Day --  
9 and even before Election Day and after Election Day -- on  
10 Election Day voters, if there is illegal activity, suspicious  
11 activity, questions, laws are not being enforced the right  
12 way, all kinds of different choices, voters are able to log  
13 that information on to that particular voter complaint site.

14 That information is passed on to the counties. We never  
15 see it. At least I never see it. It could end up as an  
16 investigation by the counties and the district attorneys. So,  
17 that's what I was referring to earlier.

18 Q. Now I'm a little confused because I hear you saying that  
19 you don't see that information. But I thought that you  
20 testified that you received no complaints.

21 A. I did not receive any complaints, nor did they log any  
22 incident reports.

23 Q. But regardless of whether -- well, withdrawn.

24 Would you agree with me, at least, that if you're not  
25 getting any complaints through these modes of communication

1 about the photo ID law, that one possibility, at least one  
2 possibility, is that those modes of communication aren't  
3 picking up people's complaints rather than that there are no  
4 complaints? Would you at least agree with that?

5 A. Sure. If someone, for example, had a complaint and  
6 discussed it with the local judge of elections in a polling  
7 place, and it was taken care of on Election Day, and it never  
8 bubbled up to that level, that is entirely possible.

9 Q. In fact, Mr. Royer, you know that plenty of people have  
10 complaints about the photo ID law. Isn't that right?

11 A. I don't know that to be the case. I do know that public  
12 opinion polling on Pennsylvania's voter ID law indicates that  
13 it is very popular.

14 Q. You don't know that plenty of people complain about the  
15 photo ID law?

16 A. I know that it is a very popular law according to public  
17 opinion polling.

18 Q. You don't know that plenty of people complain about the  
19 photo ID law?

20 A. Hmm-mm.

21 Q. Is that a no?

22 A. That is a no.

23 MR. GERSCH: I have nothing further, Your  
24 Honor.

25 MS. HICKOK: Your Honor, I have just a couple

1 of minutes, if that's all right?

2 THE COURT: You may proceed.

3 MS. HICKOK: Thank you.

4 REDIRECT EXAMINATION

5 BY MS. HICKOK:

6 Q. Mr. Royer, you were asked a question about directing  
7 people to the toll free number and the website. Was there any  
8 analysis of whether the voter ID law required individualized  
9 responses to some people?

10 A. In the -- in terms of information coming in to our  
11 election office, Bureau of Commissions, Elections and  
12 Legislation, we have reports that indicate calls coming in,  
13 emails coming in, and the responses that were made by  
14 Department of State employees and temporary staff that we had  
15 on line during the November 2012 election.

16 So the questions coming in by phone and email and  
17 requests coming in and how many were answered, responded to,  
18 if in fact they required a response, we did in fact tie in all  
19 of that information.

20 Q. My question was a little bit different. When you were  
21 determining -- and I apologize. When you were determining how  
22 you wanted to direct people, was there any discussion as to  
23 whether you wanted to be able to give people individualized  
24 options with regard to their questions about the voter ID law?

25 A. Sure. That -- that's why we have the ability, allow the

1 ability for people to communicate by phone and by email. The  
2 questions are on an individual basis. Not everyone fits into  
3 the same category. All of those questions that come in, they  
4 are answered on an individual basis.

5 Q. And does your website have drop-down choices where a  
6 person can say, this is my kind of question?

7 A. Absolutely. We have detailed FAQs for all categories of  
8 voters and general FAQ about the voter ID law itself on our  
9 websites. Lots of great information, but the FAQs especially,  
10 if you are a certain kind of voter, such as a homeless  
11 individual, a military background, college student, if you  
12 live at a care facility, all of that information is provided  
13 on our website, and also people can call and ask. And again,  
14 people email us or call us, we do respond on a one-on-one  
15 basis.

16 Q. And would you have been able to individualize or tailor  
17 the message if it were in a, say, a radio ad?

18 A. Not really. The -- to the extent that we change  
19 languages, of course, for individual groups, or to the extent  
20 that a college newspaper ad would feature a college looking --  
21 a college student or a -- an ad geared towards senior citizens  
22 would feature a senior, we did in our marketing attempt to  
23 make sure that those kinds of things were done.

24 But the message itself, the broad message itself, that  
25 the law's in effect, here's where you can get more information



1 about the law, that was the driving factor and that in fact is  
2 a broad message that affects all voters.

3 Q. Do you recall that you were asked questions about your  
4 education efforts and the advertising that you were doing,  
5 that Mr. Gersh asked you follow-up questions on that?

6 Do you believe that your education efforts taken  
7 together are reasonable?

8 A. Absolutely. They are extensive. As I indicated  
9 earlier, no other state has done as much as Pennsylvania in  
10 promoting the fact that they have a voter ID law in place.

11 We used professionals in marketing and outreach and  
12 message development. People with decades of experience in  
13 their fields. It was a well run and well executed campaign  
14 that reached all corners of Pennsylvania.

15 Q. Do you recall what the dates were on the Metcalf calls  
16 that he was referring you to?

17 A. I don't. I do believe, though, generally speaking, it  
18 was sometime last summer during the hearings, either this  
19 Court or at the Supreme Court. It was around that time. A  
20 year ago.

21 MS. HICKOK: Thank you very much.

22 MR. GERSCH: Nothing further, Your Honor.

23 MR. RUBIN: Your Honor, just for housekeeping,  
24 we have redacted copy of 1519, and we would like to offer it  
25 into evidence.

1                   We would also move into evidence 2067, which  
2   was used with Mr. Royer.

3                   MS. HICKOK: Your Honor, he didn't  
4   authenticate this document. I think it needs to come in  
5   through a witness who can authenticate it. He had said that  
6   he hadn't seen it.

7                   THE COURT: Which document are you talking  
8   about?

9                   MS. HICKOK: This is 2067. It's -- it's  
10   created by another agency.

11                  MR. RUBIN: The attachment, Your Honor, is the  
12   mailing, that insert that was created by the Department of  
13   State that is also Respondents' Exhibit 68 already, Your  
14   Honor. I believe there was foundation laid with Mr. Royer.

15                  MR. KEATING: 68 is okay, but not 2067, Your  
16   Honor. 2067 was introduced just so he could get a better view  
17   of what he believed was the mail MRG and not the document  
18   itself. Remember he said, oh, I'm just showing you this one  
19   so you can see it better. So that exhibit itself is not being  
20   introduced. It just assisted the witness in his testimony.

21                  THE COURT: I might have gotten the wrong  
22   exhibits. The exhibits that I received from court personnel  
23   are Mr. Ginensky. Was that his name?

24                  MR. RUBIN: I'm sorry, Your Honor, that one  
25   was moved into evidence earlier. That was the one that had to

1 be redacted.

2 THE COURT: Yes, okay.

3 MR. RUBIN: We gave you the redacted version.

4 2067 was handed up during Mr. Royer's  
5 cross-examination.

6 THE COURT: Is this -- was that one of the  
7 advertisements?

8 MS. HICKOK: No, Your Honor. It's a mailing  
9 from another agency that had an insert that was a replica of a  
10 document that was introduced by us.

11 THE COURT: I'll permit it.

12 I need some more documents.

13 MR. KEATING: We have them, Your Honor.

14 MS. HICKOK: We will try to accommodate you.

15 THE COURT: Okay. We'll recess until  
16 tomorrow, 9:30.

17 MS. HICKOK: Thank you very much, Your Honor.

18 (THE PROCEEDINGS WERE ADJOURNED FOR THE DAY AT  
19 5:16 P.M.)

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## 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 on file at Miller Verbano Reporting.

Adam D. Miller, Custodian





















































































