



1 CAROL AICHELE, in her capacity \*

2 as Secretary of the Commonwealth,\*

3 Respondents \*

4 \* \* \* \* \*

5  
6 BEFORE: HONORABLE ROBERT SIMPSON

7  
8 HEARING: Monday, July 30, 2012

9 10:00 a.m.

10

11 LOCATION: PA Judicial Center

12 601 Commonwealth Avenue

13 Harrisburg, PA 17110

14

15 WITNESSES: Jonathan Marks, Tia Sutter, Danny Rosa,

16 Joyce Block, David Burgess, Beatrice

17 Bookler

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19 Reporter: Nicole Montagano

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A P P E A R A N C E S

MARIAN K. SCHNEIDER, ESQUIRE

Law Offices of Marian K. Schneider

295 East Swedesford Road, #348

Wayne, PA 19087

COUNSEL FOR PETITIONERS

DAVID P. GERSCH, ESQUIRE

MICHAEL A. RUBIN, ESQUIRE

Arnold & Porter, LLP

555 Twelfth Street, NW

Washington, DC 20004-1206

COUNSEL FOR PETITIONERS

JENNIFER CLARKE, ESQUIRE

Public Interest Law Center of Philadelphia

United Way Building

1709 Benjamin Franklin Parkway, Second Floor

Philadelphia, PA 19103

COUNSEL FOR PETITIONERS

## 1 A P P E A R A N C E S (cont.)

2

3 PATRICK S. CAWLEY, ESQUIRE

4 CALVIN R. KOONS, ESQUIRE

5 Office of Attorney General

6 Litigation Section

7 Strawberry Square, 15th Floor

8 Harrisburg, PA 17120

9 COUNSEL FOR RESPONDENTS

10

11 KEVIN P. SCHMIDT, ESQUIRE

12 Governor's Office of General Counsel

13 333 Market Street, 17th Floor

14 Harrisburg, PA 17101

15 COUNSEL FOR RESPONDENTS

16

17 ALSO PRESENT:

18 KELBY BALLENA

19

20

21

22

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MR. TURNER:

Commonwealth Court is now in session.  
Honorable Robert E. Simpson presiding.

JUDGE SIMPSON:

Thank you. Please be seated. It is  
Monday, July 30th. Right. Bear with me a moment  
while I get my notes in order. All right. How are  
you?

ATTORNEY GERSCH:

Very fine, Your Honor.

JUDGE SIMPSON:

Did you have a good weekend?

ATTORNEY GERSCH:

We did. We did. It was nice to have  
the time off. I think we have one preliminary matter  
before we call witnesses, unless Your Honor has ---.

JUDGE SIMPSON:

No, go ahead. I anticipated something.

ATTORNEY GERSCH:

It's a minor matter.

ATTORNEY CLARKE:

It's a minor matter, Your Honor. This  
is the order for the voluntary dismissal that we

1 mentioned on Friday.

2 JUDGE SIMPSON:

3 If you hand that up to Mr. Mazin,  
4 please?

5 ATTORNEY CLARKE:

6 Yes.

7 JUDGE SIMPSON:

8 I had a series of very, very difficult  
9 trials two years ago, almost exactly two years ago,  
10 and real high powered lawyers from all over the  
11 country, excellent lawyers, very difficult factual  
12 and legal issues, and we would break --- it was --- I  
13 had two problems. They were each five weeks, so I  
14 was getting tired. I get tired. We took Fridays  
15 off, which meant that there was a long weekend. The  
16 problem with that was that the attorneys came in on  
17 Monday morning and they were all fresh, and they had  
18 been rested and they had their associates do all  
19 sorts of research. And you know, I would get a  
20 blizzard of motions every Monday morning. There  
21 would always be some new problem that came up. So as  
22 provided under the elevator today, I'm talking to my  
23 staff saying I dread Monday mornings because I'm  
24 going to face well-rested attorneys. We'll see where  
25 we are from here.

1                   ATTORNEY GERSCH:

2                   We are sorry to have disappointed you  
3 on the motions front.

4                   JUDGE SIMPSON:

5                   I'm not disappointed. It's very  
6 unusual to have a court that does appellate work and  
7 trial work, and it's a challenge for me to shift back  
8 and forth between --- usually if I'm in something  
9 like this, I ask to be relieved of my original  
10 jurisdiction. Sometimes I am, sometimes I'm not. We  
11 don't have much appellate work right now, but  
12 probably by the time I'm finished with this, we'll be  
13 getting ready for our big September argument, which  
14 will be right here. So it's in Harrisburg. So  
15 that's my story. Are you ready to present a witness?

16                   ATTORNEY GERSCH:

17                   We certainly are. Thank you, Your  
18 Honor. Petitioners call Jonathan Marks.

19                   JUDGE SIMPSON:

20                   This is a Commonwealth witness?

21                   ATTORNEY GERSCH:

22                   Yes, Your Honor.

23 -----

24 JONATHAN MARKS, HAVING FIRST BEEN DULY SWORN,  
25 TESTIFIED AS FOLLOWS:

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DIRECT EXAMINATION

BY ATTORNEY GERSCH:

Q. Good morning, Mr. Marks.

A. Good morning.

Q. Please state your full name.

A. Jonathan Michael Marks.

Q. And we met at your deposition; is that right?

A. We did.

Q. How are you employed?

A. I'm employed as the Commissioner of the Bureau of Commissions, Elections and Legislation with the Pennsylvania Department of State.

Q. And you are the head of the Bureau of Elections?

A. I am. Correct.

Q. And you've held that position since October of last year?

A. That's correct.

Q. Before you became head of the Bureau of Elections, you were chief of the division that was responsible for SURE?

A. That's right.

Q. And tell us, what does SURE stand for?

A. SURE stands for the Statewide Uniform Registry of Electors.

1 Q. I'm sorry?

2 A. It's the Department of Statewide Voter  
3 Registration.

4 Q. Right. So if there's a question as to whether  
5 Sally Smith is a registered voter, they look that up  
6 in the SURE database?

7 A. Correct.

8 Q. And one of the important things that has gone on  
9 with the SURE database over the years has been what  
10 they call cleaning up the names of the persons who  
11 are registered; right?

12 A. Correct.

13 Q. And so one example of that would be back in the  
14 old days, if someone moved from one location to  
15 another, they continue to be registered at the first  
16 location and then they have a registration card for  
17 the next location; right?

18 A. Correct.

19 Q. And working with the counties, the Department of  
20 State has worked to make sure that the SURE database  
21 has one location for each voter now?

22 A. Correct.

23 Q. An effort has also been made to clean up issues  
24 where voters die?

25 A. That's correct.

1 Q. So that if a voter is deceased, they should be  
2 taken out of the SURE database?

3 A. Yes.

4 Q. And that's one of the advantages of having one  
5 centralized database for all voters?

6 A. It is, yes.

7 Q. Now, a lot of my questions are going to deal  
8 with the photo ID law, which, I guess, is officially  
9 known as Act 18. You're familiar with that; right?

10 A. I am.

11 Q. And that law is a significant change in the way  
12 elections work?

13 A. It is, yes.

14 Q. And any time you have a change, especially a big  
15 change that's going to create work around the  
16 elections for the DOS, for the Bureau of Elections,  
17 for the elections officials, for the poll workers; is  
18 that right?

19 A. It will certainly change the dynamic of the  
20 election, yes.

21 Q. And when you say it will change the dynamic, one  
22 of the things that's important is there's a lot of  
23 new information for the director to administer the  
24 elections?

25 A. That's correct, yes.

1 Q. And in the end, that information is going to  
2 have to get transferred all the way down from the  
3 people in the policy making positions at the  
4 Department of State, eventually all the way down to  
5 the poll workers?

6 A. That's correct, yes.

7 Q. But the Department of State, it doesn't have  
8 responsibility for training the poll workers?

9 A. It does not, no.

10 Q. The poll workers are trained by the county?

11 A. That's correct.

12 Q. And while the county puts on training for poll  
13 workers, the poll workers are not legally obligated  
14 to attend?

15 A. I would argue that they are, but we know that  
16 some poll workers do not attend.

17 Q. Okay.

18 A. They're elected officials, so it's difficult,  
19 too.

20 Q. You would say that as a practical matter you  
21 know from experience that there are poll workers who  
22 don't get trained?

23 A. There are some that don't. Correct.

24 Q. Now, as it stands now under the photo ID law  
25 today, the PennDOT ID, that's supposed to be the

1 universal ID that everyone can vote with; is that  
2 right?

3 A. As it stands ---.

4 Q. Today.

5 A. Yes, the PennDOT photo ID.

6 Q. And there are other kinds of photo ID that are  
7 permissible for voting, but they're not ID that  
8 everyone can get; is that right?

9 A. That's correct, yes.

10 Q. So, for example, you could vote with a photo ID  
11 showing that you're an active member of the United  
12 States Armed Forces if it has an expiration date;  
13 correct?

14 A. Correct. Yes.

15 Q. But not every one is an active member of the  
16 Armed Forces?

17 A. That's correct.

18 Q. You could vote with a college ID if it has a  
19 sticker showing what the expiration date is; is that  
20 right?

21 A. Correct. Yes.

22 Q. But not everyone is in college?

23 A. That's correct.

24 Q. Okay. The ID that in theory everyone is  
25 supposed to be able to get was the PennDOT ID?



1 A. That's correct. I suppose everyone could  
2 qualify for a passport.

3 Q. By the way, I mentioned colleges, not all  
4 colleges are going to put stickers on their cards; is  
5 that right?

6 A. I don't believe that all colleges will, no.

7 Q. And for those colleges that are unwilling to put  
8 stickers on their IDs, those student won't be able to  
9 vote?

10 A. Those students will have to use another form of  
11 ID or obtain a form of ID.

12 Q. Thank you for the clarification. I didn't ask  
13 the question correctly. Those students will need  
14 another form of ID?

15 A. That's correct.

16 Q. They won't be able to use their college  
17 identification card?

18 A. That's correct.

19 Q. Now, even though the PennDOT ID is supposed to  
20 be the universal form of identification, in fact,  
21 there are people who have great difficulty or are  
22 unable to get a PennDOT ID?

23 A. That's correct.

24 Q. There are some people that don't have a birth  
25 certificate; is that right?

1 A. That's correct.

2 Q. There are some people for whom they don't have a  
3 Social Security card?

4 A. That's correct.

5 Q. There are some people who not only don't have a  
6 birth certificate, there's no birth record for them?

7 A. Correct.

8 Q. For some people, particularly transient people,  
9 homeless people, it's hard to get two proofs of  
10 residency?

11 A. Yes.

12 Q. And for other people, it may be hard just  
13 getting to PennDOT?

14 A. It may be, yes.

15 Q. You are aware that there are nine counties in  
16 the Commonwealth where there's no PennDOT driver's  
17 license center?

18 A. I believe that's correct, yes.

19 Q. And that there are another about ten counties  
20 where their driver's license center is open only one  
21 day a week?

22 A. I can't confirm that, but that does sound  
23 correct.

24 Q. And regardless of whether we're talking about  
25 people who can't get a PennDOT ID, there are, in

1 fact, a lot of registered voters today who don't have  
2 PennDOT ID?

3 A. I guess it would depend on how you define a lot.

4 Q. Fair enough. At one point, the Department had  
5 estimated that there were approximately 89,000  
6 eligible voters who didn't have PennDOT ID. Do you  
7 recall that?

8 A. I think the initial estimate was one percent did  
9 not, so 89,000.

10 Q. And tens of thousands of people, that's a big  
11 number?

12 A. It is.

13 Q. All right. In fact, if we were across the  
14 boarder in Delaware, 89,000 would be, what, 15  
15 percent of the elector?

16 A. Right. Here it is one percent.

17 Q. So the percentage may be small, but it's a lot  
18 of people by any measure?

19 A. It is, yes.

20 Q. All right. Now, there also came a time more  
21 recently where your Department of State working  
22 together with the Department of Transportation tried  
23 to match the voters and the SURE database with  
24 PennDOT's database to see whether it could find  
25 PennDOT ID numbers for the folks in the SURE

1 database; is that right?

2 A. That's right.

3 Q. And when all was said and done, what was found  
4 is that there were 759,000, just under that number,  
5 who --- registered voters for whom they could not  
6 match with a PennDOT ID number; is that right?

7 A. With a PennDOT record we're matching names,  
8 dates of birth. That's correct.

9 Q. So 759,000, in round terms, registered voters  
10 for whom the computer couldn't find the PennDOT ID  
11 number; is that right?

12 A. Correct.

13 Q. And in addition to that 759,000, there were  
14 another 130,000 odd people who had a PennDOT number  
15 in the SURE database, but PennDOT couldn't validate  
16 that number?

17 A. That's correct, yes.

18 Q. And then there were another half a million or  
19 more people in the SURE database, registered voters  
20 who had a PennDOT number, but it was expired?

21 A. That's expired, would be expired by the number.  
22 That's correct.

23 Q. It would be expired long enough that by November  
24 those IDs couldn't possibly be used unless they're  
25 renewed. Couldn't possibly be used to vote under the

1 photo ID system?

2 A. Correct. If they were expired, yes.

3 Q. Okay. So by any stretch, there's a big number  
4 of people today who don't have a PennDOT ID that will  
5 be valid for voting come November?

6 A. I would argue that that's not true. I think the  
7 match was matching the voter registration database  
8 against PennDOT's database. So what we're finding  
9 out is that many of those people do have PennDOT IDs,  
10 we were just unable to match the information between  
11 the two databases.

12 Q. Sure. So some of the 759,000, you're saying  
13 somewhere around there there is a PennDOT number for  
14 them, the computer just didn't match; is that right?

15 A. That would be fair, yes.

16 Q. You don't know how many of those people?

17 A. I do not have an estimate.

18 Q. And likewise, the 130,000 people --- registered  
19 voters who have a PennDOT number in their SURE  
20 database, but the computer couldn't find the valid  
21 PennDOT number. You don't know how many of those  
22 people really do have a valid PennDOT number?

23 A. I don't.

24 Q. And 500,000 or more people who don't have a  
25 valid or an unexpired PennDOT number, you don't have

1 any information about whether or when or even if they  
2 know to get a new PennDOT number?

3 A. Right, I don't know whether that will renew.

4 Q. All right. So as we stand here today, today  
5 there are a lot of people, a lot of people who don't  
6 have PennDOT ID that would be valid to vote in  
7 November?

8 ATTORNEY CAWLEY:

9 Objection. I'm just going to object to  
10 the characterization ---.

11 JUDGE SIMPSON:

12 Sustained.

13 ATTORNEY GERSCH:

14 I'll rephrase.

15 BY ATTORNEY GERSCH:

16 Q. As we sit here today, you would agree there are  
17 a large number of registered voters in the  
18 Commonwealth of Pennsylvania who do not have a valid  
19 PennDOT ID that they can use to vote come November?

20 ATTORNEY CAWLEY:

21 Same objection.

22 JUDGE SIMPSON:

23 Sustained as to form.

24 A. There is ---.

25 JUDGE SIMPSON:

1                   Wait.

2     A.   I'm sorry.

3                   JUDGE SIMPSON:

4                   You may rephrase.

5                   ATTORNEY GERSCH:

6                   I thought I phrased that correctly.

7     Can I inquire, Your Honor, what the basis for the  
8     ruling is?

9                   JUDGE SIMPSON:

10                   The form of the question refer to large  
11     numbers that is too indefinite for me.

12                   ATTORNEY GERSCH:

13                   Fair enough.

14                   JUDGE SIMPSON:

15                   I actually have a point --- I think the  
16     numbers are actually more useful to me than a  
17     characterization by you for the witness' adoption of  
18     whether it's a big or small or medium size number.

19                   ATTORNEY GERSCH:

20                   I understand, Your Honor.

21     BY ATTORNEY GERSCH:

22     Q.   Mr. Marks, if we total all the numbers that  
23     we've talked about, the 759, the 130, the 500, we're  
24     going to get to a number that's over a million;  
25     right?

1 A. Correct.

2 Q. And you don't know exactly which of those people  
3 don't have a valid ID that they can use to vote come  
4 November?

5 A. Correct. We were unable to match that number.

6 Q. And the Commonwealth has done no work to  
7 determine which of those people or how many of that  
8 over a million people don't have a valid ID that they  
9 could use to vote come November?

10 A. We sent the letter out to the 759,000 that we  
11 couldn't match, so I guess it depends on what you  
12 mean by has done their work.

13 Q. As you sit here today, you haven't done an  
14 analysis that would allow you to further refine the  
15 numbers we're talking about?

16 A. Right. We have not contacted all 759,000 and  
17 asked them.

18 Q. And you didn't send out any letter to the  
19 130,000?

20 A. That's correct, yes.

21 Q. Or the 500,000?

22 A. Correct.

23 Q. Now, this PennDOT ID that's supposed to be the  
24 universal form of ID that anyone in Pennsylvania can  
25 vote with come November, that's what they call a



1 secure ID?

2 A. That's the term of art that we have heard used  
3 by PennDOT, yes.

4 Q. And you don't --- withdrawn.

5 You don't need a secure ID in order to vote?

6 A. That's correct, yes.

7 Q. The PennDOT ID was designed for specific  
8 purposes for which there are federal and Commonwealth  
9 regulations that have to do with creating a secure  
10 ID?

11 A. That is correct, yes.

12 Q. And that's because people want the driver's  
13 license to be a secure ID; right?

14 A. Correct.

15 Q. And they want you to be able to use it to get on  
16 the airplane; right?

17 A. Right. Yes, that's a good example.

18 Q. But you don't need those kind of things to vote?

19 A. You do not.

20 Q. And so, in fact, we talked about that the  
21 college ID would be permissible to vote with provided  
22 it had a sticker on it; right?

23 A. Correct. Yes.

24 Q. That's not a secure ID?

25 A. No.

1 Q. You'll be able to vote --- under the photo ID  
2 law, you'll be able to vote with an ID from a nursing  
3 home; is that right?

4 A. Correct. Yes.

5 Q. And that certainly won't be a secure ID?

6 A. Correct.

7 Q. You'll be able to vote come November absentee if  
8 you can meet the requirements for an absentee ballot;  
9 right, and that's not a secure ID?

10 A. Correct. Yes.

11 Q. And you'll be able to vote come November with a  
12 driver's license that you qualified for back before  
13 9/11 when you didn't have to meet the requirements  
14 for secure ID?

15 A. Yes.

16 Q. So they're --- just looking at what the photo ID  
17 law requires, there's plenty of reason to believe  
18 that you don't need a secure ID to vote?

19 A. Correct. There are a number of IDs that are  
20 valid for voting and not all of them are secured.

21 Q. But as we stand here today, the ID that was  
22 supposed to be universal for all Pennsylvania, the  
23 one ID that everyone is supposed to be eligible for,  
24 that's a secure ID that has more hoops, more hurdles,  
25 more things you have to produce, you got to go

1 someplace, you don't need all those things; right?

2 A. Yes. It's a secure ID.

3 Q. And you don't need those things to vote?

4 A. No, you don't.

5 Q. And indeed, there was an announcement this week  
6 that the Department of State wants to create yet  
7 another ID; is that right?

8 A. Correct. I believe that announcement was last  
9 week.

10 Q. All right. Did you see the Commonwealth  
11 Secretary's press conference this week?

12 A. You're talking about over the weekend or late  
13 last week?

14 Q. I'm sorry, last week. You're quite right. Let  
15 me withdraw that and put it back to you.

16 Last week, before this trial started there was,  
17 excuse me, a press conference where the Commonwealth  
18 Secretary appeared and she announced that there  
19 would be a new ID; right?

20 A. That's correct.

21 Q. The Department of State wants to create another  
22 ID?

23 A. Correct.

24 Q. And that ID will not be a secure ID?

25 A. It will not.

1 Q. You first heard about the idea about a  
2 Department of State ID from your boss?

3 A. I believe that's correct. I received an e-mail.

4 Q. Your boss is Shannon Royer?

5 A. That's correct.

6 Q. He's the Deputy Secretary of the Commonwealth?

7 A. He is.

8 Q. You believe you received an e-mail, but you also  
9 spoke to him?

10 A. I did, yes.

11 Q. And you don't recall the precise words of the  
12 conversation?

13 A. No, I don't.

14 Q. But you understood from the conversation that  
15 one of the purposes of this new form of ID was to  
16 mitigate the problems caused by this lawsuit?

17 A. Yes. It was to mitigate --- it was basically to  
18 address any individual who could not obtain the  
19 secure ID despite all of PennDOT's exceptions,  
20 processes, et cetera.

21 Q. But it was your understanding from the beginning  
22 that this was to mitigate issues raised by the  
23 lawsuit?

24 A. Yes.

25 Q. You also learned that there was a plan to

1 announce that DOS wanted to create a new form of ID  
2 right before this trial?

3 A. Yes, I was aware of the time frame, yes.

4 Q. And what you and your colleagues of the  
5 Department of State discussed was that the timing was  
6 linked to this lawsuit?

7 A. Yes, there was questioning about the timing of  
8 the lawsuit, yes.

9 Q. And you and your colleagues understood that the  
10 timing was linked?

11 A. Yes.

12 Q. Now, this card the Department wants to create,  
13 the Department of State wants to create, does not  
14 exist today?

15 A. It's not in production today, no.

16 Q. And the target date is end of August?

17 A. That's right.

18 Q. And one of the things that remains to be done is  
19 there's an outside vendor that the Department of  
20 Transportation has contracted with, and that vendor's  
21 got to do some work; right?

22 A. Correct. Yes.

23 Q. And that's not done under your jurisdiction?

24 A. It's not.

25 Q. From the Department of State's view, as of last

1 week --- as of two weeks ago, when you were deposed,  
2 there were still items you referred to as exceptions  
3 that needed to be completed; is that right?

4 A. Correct. Yes.

5 Q. And exceptions mean what happens if the person  
6 presents a case that's not what we'll call the base  
7 or ordinary case?

8 A. Correct. Yes.

9 Q. So one issue would have been what happens if a  
10 person shows up and they have no Social Security  
11 number, that's an exception?

12 A. Correct. Yes.

13 Q. What happens if a person shows up and they have  
14 a Social Security number, but it links to a name  
15 which is not the name in the SURE database?

16 A. Correct. Yes.

17 Q. Those are all exceptions?

18 A. Right.

19 Q. Had you resolved all the exceptions today?

20 A. We have, yes.

21 Q. Okay. Today, is it your plan that if someone  
22 shows up with a Social Security number that links to  
23 a name that is different than the name in the SURE  
24 database, what will happen to that person?

25 A. If it's different than the name on the SURE

1 database, we'll actually check the number in the  
2 Social Security Administration's database. We will  
3 have the wherewithal at that point to check the  
4 number against the Social Security Administration's  
5 database.

6 Q. Yes. I'm positing the situation that Sally  
7 Smith shows up at the voting place, she gives you a  
8 Social Security number, and the Social Security  
9 number is for a woman named Sally Johnson. So in the  
10 SURE database, it's Sally Smith which is the name she  
11 goes by, but in the Social Security Administration  
12 it's Sally Johnson, which may or may not have been  
13 her birth name. Is she allowed to vote?

14 A. We'll check previous names. We actually --- on  
15 the form it'll give the individual the opportunity to  
16 put down previous names, so if her name is different  
17 as a result of marriage, for example, she would have  
18 the opportunity to indicate that. So when we check  
19 the voter registration database, we look for both  
20 names.

21 Q. So if Sally Smith has written down on her  
22 application I used to go by Sally Johnson, will you  
23 let her vote?

24 A. Yes, if we can verify that in the voter  
25 registration database, yes.

1 Q. I want to understand, you mean verify the name,  
2 the voter ---?

3 A. In other words, if we ---.

4 Q. Let me finish my question, sir.

5 A. Sure.

6 Q. The name in the voter registration and in the  
7 SURE database I'm positing is Sally Smith, which I'm  
8 positing is the name she uses today; okay?

9 A. Right.

10 Q. The name in the Social Security Administration's  
11 database is Sally Johnson. She writes down on her  
12 application for a photo ID that she used to use the  
13 name Sally Johnson, that's the name that's on the  
14 Social Security database, it is not the name in the  
15 SURE database, will you let her vote?

16 A. If it's --- if we can verify either name in the  
17 voter registration database, we'll let her obtain the  
18 card. In terms of the Social Security Administration  
19 match, if it comes back as a no match, it will be an  
20 exception for us to deal with and ultimately that  
21 will require us to communicate with the voter.

22 Q. When you said that --- withdraw that. I want to  
23 make sure I understood your testimony.

24 I understood you to say that if you could verify  
25 the name in the SURE database, you would let her



1 vote; is that right?

2 A. Either name, yes. If her voter registration  
3 record's different than the name she currently has  
4 and she's able to provide us with the old name, yes.

5 Q. And what proof are you requiring for the name in  
6 the SURE database if the Social Security number  
7 doesn't match?

8 A. Well, we are a --- we'll have --- in some cases  
9 we'll have the Social Security number in the  
10 database, but we'll also check that against the  
11 Social Security Administration database.

12 Q. I understand.

13 A. You can't control whether it's a match there or  
14 not. It ultimately will depend on whether she  
15 updated her record with the Social Security  
16 Administration.

17 Q. Mr. Marks, my hypothetical to you is that the  
18 Social Security database is going to contain the name  
19 Sally Johnson. You got Sally Smith, that's her name  
20 in the SURE database. When you go and you try and  
21 match her Social Security number with the Social  
22 Security Administration's database, it's going to  
23 come up, no, there's no Sally Smith, there's a Sally  
24 Johnson; okay? So my question to you is, you haven't  
25 been able to verify Sally Smith through the Social

1 Security Administration's database, are you going to  
2 let her vote?

3 A. If it comes back in no match with the Social  
4 Security Administration's database, PennDOT will not  
5 issue her card at the moment and will become an  
6 exception that we have to address. We'll have to  
7 contact the voter and find out why it came back as a  
8 no match.

9 Q. Okay. And when you say you will have to address  
10 that, how is that going to happen?

11 A. And we may do that --- we'll ultimately do that  
12 in conjunction with County Board of Elections. We'll  
13 try to verify her identity. I mean, ultimately if it  
14 comes back as a no match, that's a flag that this  
15 person may be using someone else's Social Security  
16 number, so we have to check into that.

17 Q. Yes, my question is really how are you going to  
18 do that, and let me be more concrete. Sally Smith is  
19 standing at the window at the driver license center;  
20 right? She's got a PennDOT technician, I think  
21 that's their title, in front of her?

22 A. Correct.

23 Q. The PennDOT technician, if I understand  
24 correctly, is going to have made a phone call to the  
25 Department of State; right? Am I right so far?

1 A. Yes.

2 Q. And at the Department of State you have what's  
3 called a help desk, it's your IT help desk; right?

4 A. Right.

5 Q. And they will have taken the phone call from  
6 PennDOT, PennDOT will have given your help desk Sally  
7 Smiths' information, the help desk is going to look  
8 up on their computer whether she's in the SURE  
9 database; right?

10 A. Correct.

11 Q. And they're also going to look up whether they  
12 can find Sally Smith and her Social Security number  
13 in the Social Security database; right?

14 A. Correct. If it's not already in the voter  
15 registration database, then they would check it  
16 against Social Security Administration's database.

17 Q. Okay. So here we are, and Sally Smith is told  
18 by PennDOT we can't find a match for your Social  
19 Security number. Now I'm back to the question,  
20 physically how are you going to take it from there.  
21 She's standing next --- at the booth next to the  
22 PennDOT fellow.

23 A. If she has her Social Security card, she only  
24 needs the number. If she has her Social Security  
25 card with her, we'll accept that. We'll take that

1 number, knowing that there's a certain error rate  
2 even in the Social Security Administration's  
3 database.

4 Q. Let me stop you there. I want you to assume  
5 that she does not have a Social Security card.

6 A. Then it will --- PennDOT will not issue her ID.  
7 They will refer her to us and we will do whatever  
8 additional verification we need to do to issue her an  
9 ID.

10 Q. And when you say they will refer to her to us,  
11 okay ---.

12 A. The Department ---.

13 Q. No, I understand you mean the Department of  
14 State. Take it again from Sally Smith's perspective.  
15 She is standing there with the PennDOT technician.  
16 What's going to happen? Is he going to say go home?  
17 Is he going to say go visit Mr. Marks over in  
18 Harrisburg? What's he going to say?

19 A. She is going to receive a notice with a 1-800  
20 number to contact us. PennDOT is going to refer it  
21 to us and we'll do whatever additional verification  
22 we need to do to verify that she is who she says she  
23 is.

24 Q. When you say she's going to get this 1-800  
25 number, is the PennDOT technician going to hand it to

1 her?

2 A. Yes.

3 Q. Is he going to give her by hand?

4 A. Hand it to her or else we're going to send a  
5 notice out to her as well. And we obtain a phone  
6 number as part of the process, so you will be  
7 contacted by phone if necessary.

8 Q. Okay. So Sally Smith, she's not going to get a  
9 driver's license then from PennDOT, there's going to  
10 be some further communication between the Department  
11 of State and her, and it could be by phone, it could  
12 be by letter; is that right?

13 A. Correct.

14 Q. Sally Smith, if she ends up calling your 800  
15 number, who's she going to get?

16 A. She's going to get someone with the Department  
17 of State, someone within the Bureau.

18 Q. Bureau of Elections?

19 A. Correct. Yes.

20 Q. Are there people assigned to that task today?

21 A. Yes, there are.

22 Q. Are they a subset of the Bureau of Elections?

23 A. They are.

24 Q. What's the subset?

25 A. The subset, actually virtually everyone in the

1 Bureau of Elections has been trained to answer voter  
2 ID question. We've also brought in a couple of  
3 additional staff specifically for that task.

4 Q. Now, it may be that I did this out of order, but  
5 when Sally Smith first arrives at PennDOT, the first  
6 thing PennDOT will do is not try and give her a  
7 Department of State ID, the first thing they will try  
8 and do is to give her a PennDOT ID if she can qualify  
9 for that?

10 A. That's correct. Yes.

11 Q. Okay. And to get a PennDOT ID, Sally Smith is  
12 going to need to have in the base case --- and we'll  
13 work down from there. Starting with the base case,  
14 she should have a raised seal birth certificate, a  
15 Social Security card and two proofs of residence?

16 A. Correct.

17 Q. Now, if she's from Pennsylvania and she does not  
18 have the raised seal birth certificate, they will  
19 tell Sally Smith that they can check with the  
20 Department of Health and see if they can locate her  
21 birth record?

22 A. That's correct, yes.

23 Q. All right. And they will also tell Sally Smith  
24 that they can't do that while she waits, she is to go  
25 home, and it will take them seven to ten days to find

1 out if she has a birth record?

2 A. That's correct, yes.

3 Q. And if there is a birth record, Sally Smith will  
4 get a letter from either the Department of Health or  
5 the Department of Transportation saying we found your  
6 birth record, come back in?

7 A. Correct. Yes.

8 Q. Okay. And I take it, if they can't find a birth  
9 record for Sally Smith, they will also send her a  
10 letter and they will say we can't find your birth  
11 record; is that right?

12 A. Correct. Yes.

13 Q. Does that letter say come back in? Have you  
14 seen that letter?

15 A. I have not seen the letter.

16 Q. All right. But the basic concept is that when  
17 Sally Smith comes to PennDOT, the idea is that  
18 PennDOT should try and run through its processes and  
19 see if she can qualify for a PennDOT ID?

20 A. Correct. Yes.

21 Q. And then if she can't get a PennDOT ID and only  
22 if she can't get a PennDOT ID, does she then become  
23 eligible for the Department of State ID?

24 A. That's correct.

25 Q. And you call the PennDOT --- the Department of

1 State ID the ID of last resort?

2 A. Yes. That term has been used, yes.

3 ATTORNEY GERSCH:

4 Let's mark as an exhibit ---.

5 BY ATTORNEY GERSCH:

6 Q. I'm going to show you what had been marked

7 Exhibit 29.

8 (Petitioners' Exhibit 29 marked for  
9 identification.)

10 ATTORNEY GERSCH:

11 Your Honor, can I have a moment to  
12 confer with Counsel?

13 BY ATTORNEY GERSCH:

14 Q. Sir, you have what's been marked Exhibit 29?

15 A. Yes.

16 Q. Okay. And that's a combination form or a  
17 request for a Department of State ID and the  
18 affirmation that the applicant would have to give?

19 A. That is correct, yes.

20 Q. All right. And in the lower right-hand corner  
21 there is a date; is that right?

22 A. That's correct, yes.

23 Q. And that date is July 16, 2012?

24 A. Correct.

25 Q. Okay. And that would have been the date that



1 would have been in effect, roughly, the time of your  
2 deposition?

3 A. That's correct, yes.

4 Q. But this is a working document; right?

5 A. Yes.

6 Q. It's still being refined?

7 A. Yes, the back of the form or page two of the  
8 form specifically, it's the exceptions process. When  
9 I said the matter would be referred to us, we added  
10 an area where the Department of Transportation would  
11 identify the reason that they could not issue the ID  
12 that date and then refer it to us.

13 ATTORNEY GERSCH:

14 Your Honor, I'd just like to make a  
15 request in open court that we receive a copy of this  
16 Bureau document with the back page. I've been given  
17 and I'm going to mark what I take to be a more recent  
18 copy of the front page. Let's have this marked as  
19 Exhibit 30.

20 (Petitioners' Exhibit 30 marked for  
21 identification.)

22 BY ATTORNEY GERSCH:

23 Q. Mr. Marks, I'm going to show you what's been  
24 marked Exhibit 30, and I'm going to ask you if that's  
25 a newer version of the application and affirmation

1 that we've been discussing. I only have this copy at  
2 the moment, so I may be looking on with you.

3 ATTORNEY GERSCH:

4 Your Honor, may I approach?

5 JUDGE SIMPSON:

6 Yes. Do you have an extra?

7 ATTORNEY CAWLEY:

8 I do have another copy.

9 ATTORNEY GERSCH:

10 Thank you.

11 ATTORNEY CAWLEY:

12 Sure.

13 BY ATTORNEY GERSCH:

14 Q. So Mr. Marks, what you have in front of you is  
15 Exhibit 30?

16 A. Correct. Yes.

17 Q. Direct your attention to the lower right-hand  
18 corner where it gives the date July 20, 2012. Do you  
19 see that?

20 A. I do, yes.

21 Q. Okay. Do you --- have you seen this version of  
22 the affirmation before?

23 A. I have, yes.

24 Q. Okay. And I notice --- and thanks to Mr. Cawley  
25 pointed out to me --- that there is a difference at

1 least in the second row of boxes all the way over in  
2 the right, there's a box for I have never been issued  
3 a Social Security number. Do you see that?

4 A. I do, yes.

5 Q. I have just received this, so I haven't had a  
6 chance to make a detailed comparison. Are there  
7 other differences that you're aware of between these  
8 two?

9 A. I'm not aware of any other substantive  
10 differences. I believe between the 16th and the  
11 20th, that was the only change.

12 Q. Okay. But this is the form that someone will  
13 have to fill out sometime in the future if they can't  
14 get a PennDOT ID and they want the Department of  
15 State ID?

16 A. Correct. Yes.

17 Q. And the information that the Department of State  
18 will have once all this is done is you'll have the  
19 name of the applicant; right?

20 A. Correct.

21 Q. And that's got to check out against the SURE  
22 database; right?

23 A. Correct.

24 Q. You'll have the date of birth of the applicant?

25 A. Correct.

1 Q. And that's got to check out against the SURE  
2 database?

3 A. Right.

4 Q. You'll have an address; right?

5 A. Correct.

6 Q. That address does not have to check out against  
7 the SURE database?

8 A. It does not.

9 Q. The only thing you're going to check is to make  
10 sure --- or that PennDOT will check to make sure that  
11 the address is, in fact, a real address somewhere in  
12 the Commonwealth?

13 A. Correct.

14 Q. All right. If the person has a Social Security  
15 number, then you will verify that?

16 A. Correct.

17 Q. If you're unable to verify the Social Security  
18 number, you will try and employ some other means to  
19 verify the name of the person?

20 A. Correct. Yes.

21 Q. Okay. And in theory if that's all that's  
22 provided and the person's willing to sign the form,  
23 the affirmation, you say you'll issue them a  
24 Department of State card; is that right?

25 A. That's correct. Yes.

1 Q. Now, when the photo is taken at the Department  
2 of Transportation, after the photo has been taken  
3 after Sally Smith has left, they will run the photo  
4 through what's called their facial recognition  
5 system?

6 A. Correct. Yes.

7 Q. And the facial recognition system just checks  
8 Sally Smith's photograph against everything else in  
9 the PennDOT database; right?

10 A. Correct. That's my understanding, yes.

11 Q. It's not checking with the FBI and Washington or  
12 Homeland Security? No. They're checking against the  
13 other driver's licenses; is that right?

14 A. That's my understanding, yes.

15 Q. Okay. As we talked about, the card is not in  
16 existence yet, so we do not know how many people will  
17 ask for the card, but you are anticipating a small  
18 number, several thousand at the most?

19 A. That's my anticipation, yes.

20 Q. And we talked before about the bigger numbers,  
21 remember the number of several hundreds of thousands,  
22 over a million, you would say there's absolutely no  
23 evidence in your mind to suggest that there will be  
24 more than several thousand at the most who will get  
25 this card?

1 A. No, I haven't seen any evidence that suggests  
2 that.

3 Q. And the evidence that you're working off of is  
4 the number of people who have come to PennDOT for a  
5 non-driver's license photo ID since March 14 when Act  
6 18 was passed?

7 A. That's part of it, yes.

8 Q. And you understand that that's a number like  
9 3,000?

10 A. Yeah, I believe that last check it was roughly  
11 3,000.

12 Q. So that's April, May, June, July, we're going on  
13 four and a half months, and only 3,000 people have  
14 gotten a driver's license --- non-driver's license  
15 photo ID from PennDOT?

16 A. Correct.

17 Q. And the other figure, you know, is that in the  
18 last couple of months PennDOT made it possible, we  
19 talked about this, to check a birth record for a  
20 native born Pennsylvanian even if the Pennsylvania  
21 submission doesn't have the raised seal birth  
22 certificate?

23 A. That's correct, yes.

24 Q. And you know that the number of people who  
25 PennDOT has processed that way is about 70?

1 A. That's my understanding, yes.

2 Q. Part of your mission in your job is to make sure  
3 that all persons who are eligible to vote can  
4 register to vote?

5 A. That's correct, yes.

6 Q. And another part of your mission is to make sure  
7 that all registered voters who want to vote get to  
8 vote?

9 A. Yes.

10 Q. And if even one eligible and registered voter  
11 who wants to vote can't vote, that will be a bad day?

12 A. It will, yes.

13 Q. And if registered voters cannot vote come  
14 November because PennDOT doesn't get the word out as  
15 to what you need to vote, that will be a bad day?

16 A. I would expect so, yes.

17 Q. And if registered voters can't vote come  
18 November because PennDOT --- I'm sorry, because the  
19 Department of State gets the word out, but the word  
20 is sufficiently confusing that numbers of registered  
21 voters can't figure out what to do about, that will  
22 be a bad day?

23 A. Yes, if it's confusing. If they don't know what  
24 to do to vote, yes.

25 Q. And if the Department of State does a great job

1 of getting the word out, and it's not confusing at  
2 all, but registered voters don't get to vote because  
3 they can't get to PennDOT, that will be a bad day?

4 A. Yes.

5 ATTORNEY GERSCH:

6 I don't have any further questions,  
7 Your Honor.

8 JUDGE SIMPSON:

9 You may inquire.

10 ATTORNEY CAWLEY:

11 Thank you, Your Honor.

12 CROSS EXAMINATION

13 BY ATTORNEY CAWLEY:

14 Q. Mr. Marks, were you involved with the effort to  
15 match the data contained in the SURE system with the  
16 PennDOT database of driver license and photo ID  
17 holders?

18 A. Yes.

19 Q. What was your role in that process?

20 A. My role was essentially overseeing the project.

21 Q. Explain why that effort was undertaken in the  
22 first place.

23 A. The effort was undertaken primarily to obtain  
24 driver's license information and Social Security  
25 number information for the purpose of backfilling the



1 voter registration database.

2 Q. And why did you want to do that?

3 A. We wanted to do that to streamline compliance  
4 with the absentee ballot and the provision of Act 18.

5 Q. And as you undertook this effort, did any other  
6 interest arise for the Department of State in doing  
7 it?

8 A. Yes, we also wanted to use the information we  
9 gleaned from it to inform our decision making  
10 relative to voter outreach and education.

11 Q. And was that specific to the voter ID law?

12 A. Yes. Correct.

13 Q. Okay. So how did you determine matching these  
14 two databases what would constitute a true match?

15 A. True match or a statistically significant match  
16 would be basically first name, last name, date of  
17 birth primarily, and if the names match between the  
18 two databases up to 35 characters, there's a slight  
19 difference between the two databases. Ours will  
20 accept 40 characters for the first and last name,  
21 PennDOT's will only accept 35, but if we are able to  
22 match up with 35, then it is a match.

23 Q. Okay. So if one letter was off in one name,  
24 would that be a match?

25 A. No.

1 Q. If somebody had their full name of James on  
2 their photo ID, but the nickname Jim on their voter  
3 registration, would that be a match?

4 A. No.

5 Q. So at the end Mr. Gersch asked you some  
6 questions about the numbers that were reached as a  
7 result. Do you and your colleagues at the Department  
8 of State believe that 759,000 is an accurate number  
9 of people who lack a PennDOT product?

10 A. No.

11 Q. Explain to the Court why you do not believe that  
12 is an accurate number.

13 A. I think taking into account the discrepancies  
14 that you just mentioned and based on the feedback  
15 we've already gotten after the first couple of waves  
16 of letters that have gone out I think it's apparent  
17 that a lot of individuals who received the letters do  
18 have qualifying forms of ID and, in fact, have  
19 PennDOT issued IDs. We were just not able to match  
20 them between the two databases.

21 Q. So you raise a good point. Did this effort of  
22 matching these databases account for passports,  
23 military ID, college and university IDs and all the  
24 other forms of ID?

25 A. It did not.

1 Q. So focusing just on the PennDOT products,  
2 explain for the Court what would account for voters  
3 who have a valid photo ID from PennDOT not showing up  
4 as a reliable match in these databases.

5 A. It would be primarily differences in the name.  
6 That's essentially what we have seen in terms of  
7 feedback from the individuals. Date of birth was  
8 different. Basically any discrepancy between the two  
9 databases including an extra space in the name. I  
10 think one of the prime examples that has been used is  
11 McDoogle (phonetic), for example. There may be a  
12 space in one database between MC and the D and not in  
13 the other database, that would come back as no match.

14 Q. And you mentioned the letter. Explain for the  
15 Court which letter you're referring to.

16 A. The letter is the letter that was sent out by  
17 the Secretary of the Commonwealth to all of the  
18 individuals we cannot match between the two databases  
19 notifying them of the requirements of Act 18 and what  
20 they needed to do if they did not have a qualifying  
21 form of ID.

22 Q. You mentioned that you received feedback after  
23 those letters went out. Explain what kind of  
24 feedback you received.

25 A. We've gotten telephone calls as well as return

1 letters from individuals who have indicated that they  
2 do, in fact, have an ID, that their first name may be  
3 different on the voter registration record or the  
4 last name may have changed due to marriage. For  
5 example, I was at an event speaking last week and  
6 several people in attendance at the event had gotten  
7 letters as well and indicated that there were slight  
8 differences between the two records.

9 Q. Did those people have a valid PennDOT driver's  
10 license?

11 A. The majority of them did, yes.

12 Q. When you received this kind of feedback,  
13 especially in the form of a phone call, are you  
14 giving any instruction or guidance to the people who  
15 are calling as to how to clear up any issues?

16 A. Yes, we've asked our staff to ask two important  
17 questions, number one, if they received a letter,  
18 first question, do they have a qualifying form of  
19 identification. If they have to run through the  
20 list, we will. And second question is --- well, we  
21 try to determine why they received a letter. If, for  
22 example, their last name was changed, then we are  
23 notifying them that they --- how to --- instruct them  
24 on how to change their name on the voter registration  
25 record to make sure the two records match.

1 Q. Mr. Gersch asked you about the number of 130,000  
2 voters who had provided a PennDOT driver's license or  
3 photo ID number, but were not found to be a match.  
4 Can you explain to the Court why that 130,000 number  
5 was not included as part of the group that was  
6 determined to be a non-match?

7 A. Ultimately those were considered matches because  
8 there was some information on the voter registration  
9 database and there are a variety of reasons why the  
10 numbers may not match. In many cases it's simply  
11 data entry error on the part of the voter  
12 registration record.

13 Q. Do you have any reason to believe that --- I'll  
14 back up. When people register --- when those people  
15 registered in that 130,000, how did you get their  
16 PennDOT driver's license number or photo ID number?

17 A. It is supplied by the voter on their  
18 application.

19 Q. Is there any reason that the Department of State  
20 is aware of why people would make that up or give a  
21 false number when they register?

22 A. I'm not aware of any reason, no.

23 Q. So when you say that they were considered to be  
24 people who were in the PennDOT system, was it for the  
25 reasons you already stated, that there was characters

1 or spaces or that sort of thing?

2 A. Correct, yes.

3 Q. And why --- please explain to the Court why the  
4 500,000 number of people with expired driver's  
5 licenses or photo IDs are not included in the 759,000  
6 figure of people who are not matches.

7 A. The 500 I believe was 574,000 if memory serves.  
8 They'll receive a notice later on this summer  
9 regarding photo ID requirements. Those individuals,  
10 because they had a record in PennDOT's database, need  
11 to simply show up and have another ID issued.

12 Q. Will the 130,000 people receive any sort of  
13 communication from the Department of State about  
14 voter ID?

15 A. Correct, all 5.9 --- roughly 5.9 million  
16 households will receive a mailing later on this  
17 summer.

18 Q. Okay. I would like to talk about the Department  
19 of State voter ID card itself. Have you been  
20 involved in the development of that ID card?

21 A. I am, yes.

22 Q. Are you responsible for the implementation of  
23 that card?

24 A. Ultimately, yes.

25 Q. Why as a general matter are --- is the

1 Department of State issuing its own voter ID card?

2 A. The Department of State is issuing its own voter  
3 ID card because as implementation of the Act moved  
4 forward it became apparent that despite PennDOT's  
5 best effort there are situations under which they  
6 could not issue a secure ID. You simply wouldn't be  
7 able to verify to their own required satisfaction  
8 that the individual was able to obtain secure ID.

9 Q. And did this lawsuit point out some examples of  
10 those issues?

11 A. It did.

12 Q. What categories of voters do you expect may  
13 qualify for this Department of State voter ID card?

14 A. I would expect individuals who, for example, are  
15 born --- are not born in Pennsylvania, but born in  
16 another state that are unable to obtain a birth  
17 certificate from their home state, individuals who  
18 are homeless, for example, individuals who could not  
19 register under their out-of-state driver's license to  
20 obtain a secure ID.

21 Q. Who would fall under that last category?

22 A. I think primarily college students.

23 ATTORNEY CAWLEY:

24 Mark this as Respondents' Three.

25 (Respondents' Exhibit Three marked

1 for identification.)

2 BY ATTORNEY CAWLEY:

3 Q. Okay. You've been handed a copy of what we've  
4 marked at Respondents' Exhibit Three. Just take a  
5 moment to look that over.

6 A. Okay.

7 Q. Does this exhibit include, quote, picture or an  
8 image of what the Department of State voter ID card  
9 will look like?

10 A. It does, yes.

11 Q. And where is it on the exhibit?

12 A. It's to the right of the words Option B.

13 Q. So Option A is not going to be what the card  
14 looks like?

15 A. No.

16 Q. And just to clarify questions from your Direct  
17 Examination, will a voter need a birth certificate  
18 with a raised seal to get this Department of State  
19 voter ID card?

20 A. No.

21 Q. Will there need to be a record in Pennsylvania  
22 of the voter's birth in order to obtain this  
23 Department of State voter ID card?

24 A. No.

25 Q. And what kind of proofs of residence must be



1 provided in order to obtain the card?

2 A. A utility bill of any kind and basically  
3 anything --- official mailing that comes to the  
4 voter's residence.

5 Q. How does a homeless voter satisfy the proof of  
6 residence requirement?

7 A. They can obtain a letter from a soup kitchen or  
8 a shelter.

9 Q. And I think you were asked by way of  
10 hypotheticals, but I'll ask a more general open-ended  
11 question. Explain to the Court what happens in a  
12 general way when a voter comes into the PennDOT  
13 center and either doesn't have the proofs of  
14 residence required or on the Department of State's  
15 end does not show up in the SURE database. Explain  
16 what happens at that point.

17 A. What will happen at that point, the Department  
18 of Transportation technician will identify on the  
19 form the reason that the individual cannot obtain the  
20 ID at that moment. So, for example, if it is because  
21 they did not bring with them proofs of residence,  
22 they will identify that and submit it to us and we  
23 would handle it as an exception on our end.

24 Q. In most cases will the voter receive the  
25 Department of State voter ID card at the same time

1 when they walk into the driver's license center?

2 A. Yes, I would expect them to be able to the  
3 majority of the cases. Yes.

4 Q. And how long do you expect the person to be  
5 waiting there at the window before they get that  
6 card?

7 A. Once there with the technician this process will  
8 take several minutes.

9 Q. What's the status of this voter ID card as we  
10 are in this courtroom today?

11 A. We're moving forward. Planned implementation is  
12 still the end of August. I've not received any  
13 communication from PennDOT that they won't be ready  
14 and we are ready to go. It's just a matter of  
15 training to help the staff to deal with any of these  
16 oddball exceptions.

17 Q. The issue has come up in questions about a name  
18 differing from the voter registration to the photo  
19 ID. What's the solution for somebody who, for  
20 example, got married and has a different last name on  
21 the photo ID than from the voter registration?

22 A. If an individual has changed their name since  
23 the time they were registered vote to the time they  
24 go to PennDOT to obtain this ID, we're going to make  
25 the name change --- voter registration name change

1 application a part of this process.

2 Q. Okay. Is this an issue that's come up when  
3 people call about the letter that they're receiving  
4 from the Secretary?

5 A. It is, yes.

6 Q. And had you advised those people on what to do?

7 A. Yes, we have advised them to submit a name  
8 change to the County Board of Elections.

9 Q. Is there a requirement that people change their  
10 registration when their name changes or their address  
11 changes?

12 A. They are required to update their voter  
13 registration records as necessary. I don't know that  
14 there's necessarily a specific penalty for not doing  
15 so.

16 Q. I'd like to ask you a question about the  
17 indigence exception in the law to the photo ID  
18 requirement. If a voter comes in to a polling place  
19 and claims that they don't have a photo ID because  
20 they can't afford the fees to get it, what sort of  
21 proof of indigence does that person have to provide  
22 the poll worker?

23 A. They basically just have to sign the affirmation  
24 swearing to that effect.

25 Q. Do the poll workers or the County Boards of

1 Election do any sort of investigation into that claim  
2 of indigence?

3 A. No.

4 Q. Will the provisional ballot cast by that voter  
5 receive scrutiny at any level by the county?

6 A. It will at the official --- that scrutiny  
7 typically comes from the parties' watchers, et  
8 cetera, interested parties.

9 Q. And what happens at the canvassing?

10 A. At the canvassing, essentially the county goes  
11 through and reviews all of the counts from the  
12 various districts and they will canvass the  
13 provisional ballots that have been sent back from the  
14 polling places to determine if the individuals are  
15 qualified and whether those provisional ballots  
16 should be counted. So in the case of somebody who  
17 has completed the indigence affirmation and submitted  
18 it within the six to eight period required by the Act  
19 that provisional ballot will be counted.

20 Q. Do the candidates have a right to have  
21 representatives there?

22 A. They do, yes.

23 Q. So if somebody is there and says I know that  
24 person, they're quite wealthy, is there an  
25 opportunity to challenge that indigence application

1 or affirmation?

2 A. There is and there's also the opportunity to  
3 appeal any decision made by the County Board of  
4 Elections to the Court of Common Pleas.

5 Q. Speaking of the provisional ballots, have you  
6 communicated at all with the counties about making  
7 provisional ballots available at the polling places?

8 A. We have, yes.

9 Q. And what have you instructed them or advised  
10 them to do?

11 A. We've instructed them --- we've essentially  
12 advised the county, because the law was new and there  
13 will be a period --- and this is the case where there  
14 would be change in the law. There will be a period  
15 of adjustment that they may want to order additional  
16 professional ballots for the polling places and they  
17 also may want to make additional space available on  
18 the polling places to complete provisional ballots.

19 Q. Now, are you in charge of communicating with the  
20 counties to provide this kind of guidance on election  
21 matters?

22 A. I am, yes.

23 Q. What kind of communications have you had since  
24 the law was enacted in March?

25 A. We sent out a multitude of e-mails and

1 memorandum to the various counties, updating them,  
2 answering their various questions.

3 Q. And what sort of guidance or training will you  
4 be providing to the counties with regard to the voter  
5 ID law between now and November?

6 A. We'll be providing --- basically we'll be going  
7 in to kind of train the trainers. We'll be providing  
8 them with new updated poll worker training video that  
9 they can use as part of their poll worker training  
10 methods. We'll also be providing them with a guide  
11 in addition to the ones we've already provided to  
12 them that they can use to train their poll workers,  
13 and the conference that's coming up the third week of  
14 August will be providing additional information  
15 specifically about how all this will work in the SURE  
16 system in terms of the absentee ballot and verifying  
17 the numbers, et cetera.

18 Q. Who all attends that conference in August?

19 A. The majority of the counties send their election  
20 directors to that conference.

21 Q. And will the Department of State be sending any  
22 information straight to the poll workers at their  
23 home address?

24 A. We will, yes.

25 Q. Could you explain for the Court what that is?

1 A. Our plan is to send the packet out by the end of  
2 August or early September, a packet out to all poll  
3 workers based on the addresses and information that  
4 had been provided by the County Board of Election,  
5 but we'll essentially send them the print on voter ID  
6 which will include samples of qualified IDs.

7 Q. Will the Department of State voter ID card be  
8 represented in that mailing?

9 A. It will, yes.

10 Q. And finally I just have a question about the  
11 absentee ballot process. Has the voter ID law  
12 affected the ability to vote absentee for those who  
13 by reason of illness or disability cannot attend  
14 their polling place?

15 A. It hasn't other than --- they will have to  
16 provide Social Security --- or driver's license or  
17 Social Security number on the application, but that's  
18 the only change.

19 ATTORNEY CAWLEY:

20 Those are all the questions I have.

21 Thank you.

22 ATTORNEY GERSCH:

23 Brief Re-Examination, Your Honor.

24 REDIRECT EXAMINATION

25 BY ATTORNEY GERSCH:

1 Q. You oversaw the match that led to the 759,000  
2 number?

3 A. Correct. I was not involved in the actual  
4 matching piece of that, but I oversaw the submission  
5 to the Bureau.

6 Q. You anticipated my next question. John (sic)  
7 Burgess was more down in the details than you?

8 A. Right, Deputy Secretary Burgess was, yes.

9 Q. Okay. And you testified that there was a match  
10 that was first name, last name, exact to 35  
11 characters plus date of birth. Do you recall that  
12 testimony?

13 A. Yes.

14 Q. Isn't it your understanding that before they got  
15 to that level they ran a match that was just driver's  
16 license number plus first two letters of the last  
17 name?

18 A. Driver's license number and first two letters of  
19 the last name, that may have been the initial match  
20 of the material, yes.

21 Q. Right. And if that match was done, then at  
22 least for people whose driver's licenses are in the  
23 system, then you'd get a match even if there are  
24 hyphens in one database and not in the other, you get  
25 a match even if it's spelled differently than one



1 name than the other. As long as the first two  
2 letters of the last name matched and the driver's  
3 license number matched you would get a match?

4 A. I think if you are referring to the 130,000 ---.

5 Q. I'm not. It's a separate question. Do you have  
6 my question in mind?

7 A. Yes, that was the first level of match, yes.

8 Q. Okay. And isn't it your understanding that that  
9 was the first level of match that was performed and  
10 it was done by PennDOT?

11 A. I believe that's correct, yes.

12 Q. It was done by PennDOT before the Department of  
13 State got its hands on the numbers?

14 A. Correct.

15 Q. You also said that a lot of people had been  
16 calling to say they had received your letter, but  
17 that they had, in fact, been both a registered voter  
18 and had a PennDOT ID; is that right?

19 A. Correct.

20 Q. And when you say a lot ---?

21 A. Not you're a lot.

22 Q. Right. We're not talking 10,000; right?

23 A. Correct.

24 Q. We're not talking 1,000?

25 A. Right. We're talking at this point probably a

1 couple hundred. We're having staff track those as  
2 closely as possible.

3 Q. You gave some testimony which I understood to  
4 mean that some of the people who couldn't be matched  
5 might have other ID. Did I get that right?

6 A. That's correct, yes.

7 Q. Military ID, what have you?

8 A. Right.

9 Q. Okay. But you don't know how many people who  
10 there are no PennDOT matches have other ID?

11 A. I do not.

12 Q. And by the way, you've done no other work,  
13 there's been no survey, for example, done by the  
14 Department of State or PennDOT or any other organ of  
15 the Commonwealth, no other work to figure out how  
16 many people who don't have PennDOT ID have some other  
17 form of identification?

18 A. We have not done so.

19 Q. You've not done the survey or any other work  
20 other than what you've testified to today to figure  
21 how many people don't have PennDOT ID?

22 A. Correct.

23 Q. So let's move to the 130,000 from --- the  
24 130,000, those are people who did not match when you  
25 ran the numbers; right?

1 A. I believe those individuals, their PennDOT ID  
2 did not match what PennDOT had on file. Also the  
3 voter registration record didn't match what was in  
4 the ---.

5 Q. Right. There's a person in the SURE database  
6 who has a PennDOT number; right?

7 A. Right.

8 Q. And when the computer goes over and looks where  
9 is Sally Smith with driver's license 12345678910,  
10 where is this person, they can find Sally Smith, but  
11 they can't find driver's license 12345678910?

12 A. Right, they weren't a match between the two  
13 databases.

14 Q. Now, you're guessing that some people in Sally  
15 Smith's position, some of those people maybe the  
16 driver's license was entered wrong?

17 A. Right. We haven't had a chance to look at all  
18 130,000 records.

19 Q. But again, you don't really know --- you don't  
20 know which of those 130,000 people don't have valid  
21 PennDOT ID or which of those 130,000 have some other  
22 explanation?

23 A. Correct.

24 Q. You said that at some point later there will be  
25 a letter mailed to some 5.9 million households?

1 A. That's correct.

2 Q. Did I understand those are all the households in  
3 Pennsylvania?

4 A. Yes.

5 Q. Okay. That letter is not going to be targeted  
6 to the particular issues of 130,000 or the 500,000?

7 A. No, it's going to provide information about what  
8 you need, and if you want it, here's how you get it.

9 Q. That letter will be in English?

10 A. It will. And I believe there will also be a  
11 bilingual version of it.

12 Q. You say you believe. Will there be?

13 A. Yes, that is part of the --- we're working with  
14 a vendor, that is one of the requirements I believe,  
15 a request for composing it.

16 Q. Is the requirement that there be a Spanish  
17 version?

18 A. Yes.

19 Q. Is there a requirement that there be any other  
20 language besides English and Spanish?

21 A. No.

22 Q. You talked a little about the provisional  
23 ballots and proof of indigence. Do you recall that?

24 A. Yes.

25 Q. Okay. Regardless of any guidance from the

1 Department of State, it's the counties who will have  
2 to implement what proof of indigence means?

3 A. Ultimately, yes.

4 Q. You don't have jurisdiction over them for these  
5 purposes?

6 A. Correct, we provide guidance, but we do not have  
7 jurisdiction.

8 Q. There is no ---.

9 A. We don't count votes if that's what you're  
10 asking.

11 Q. Yes. There's no Department of State regulation  
12 that requires the counties to do X or to do Y?

13 A. No, there are statutory requirements and they  
14 certainly have the duties under the Election Code,  
15 but beyond that ---.

16 Q. And as long as we're talking about regulations,  
17 all this that you've been testifying about, this  
18 proposed new Department of State card, there are no  
19 regulations; right?

20 A. Regulations outlining the Department of State  
21 card?

22 Q. Regulations setting forth legal binding  
23 requirements which will be binding on the Department  
24 of State, other organs that govern --- there are no  
25 actual regulations?

1 A. No.

2 Q. The Department is just going to do this by  
3 issuing rules; right?

4 A. Correct.

5 Q. And if the Department decides tomorrow to issue  
6 different rules, they can change the rules?

7 A. Theoretically, yes.

8 Q. Well, when you say theoretically, you understand  
9 when PennDOT --- before 9/11 it was easier to get a  
10 PennDOT ID than it is afterward; right?

11 A. Correct.

12 Q. They didn't issue any regulations; right?

13 A. Right.

14 Q. They just decided by administrative, by  
15 executive force that they would tighten the  
16 requirements?

17 A. I'm not an expert on PennDOT and their  
18 processes, but I believe some of that was as a result  
19 of federal requirements and regulations being  
20 updated.

21 Q. There are federal regulations that were updated;  
22 right?

23 A. Yes.

24 Q. In the wake of 9/11?

25 A. Correct.

1 Q. But PennDOT did most of what it had to do  
2 without regulations, it just enacted what rules it  
3 saw fit?

4 A. I don't know that.

5 Q. Well, in any case, back to the Department of  
6 State, in terms of whatever this card will look like,  
7 you've enacted whatever rules you see fit?

8 A. Yes, we've taken whatever measures are necessary  
9 to ensure that the individuals who need ID will be  
10 able to get it.

11 Q. And if tomorrow someone decides that different  
12 measures are necessary, they can change those rules?

13 A. Yes.

14 Q. There's no regulation in the rule book where we  
15 lawyer types or the Court could go and say oh, here  
16 are the regulations enacted by the Department of  
17 State, I can measure this card against some set of  
18 legal rules?

19 A. Correct, we did not go through the regulatory  
20 process if that is your question.

21 ATTORNEY GERSCH:

22 I have nothing further at this time,  
23 Your Honor.

24 ATTORNEY CAWLEY:

25 No further questions, Your Honor.

1                   JUDGE SIMPSON:

2                   I actually have a few questions. Mr.  
3 Marks, the request in this case is that I enter an  
4 injunction against the Commonwealth and its agencies  
5 to enjoin them and others acting in concert with them  
6 such as local --- all local election authorities from  
7 enforcing or otherwise implementing the photo ID  
8 requirement of Act 18. Now let's say I do that, I  
9 enjoin everyone?

10                  A. Yes.

11                   JUDGE SIMPSON:

12                   Everybody stops. And then in October  
13 the Supreme Court rules on this and says, Judge  
14 Simpson, you made a mistake, this should be enforced,  
15 this should be implemented. Will you be able to do  
16 that?

17                  A. The time frame would be very tight at that point  
18 if we stop our education efforts, for example.

19                   JUDGE SIMPSON:

20                   Let's look at it the other way. Let's  
21 say I don't grant an injunction, but in October the  
22 Supreme Court says, Judge Simpson, you made a  
23 mistake, would you be able to comply with the  
24 ultimate decision of the Supreme Court in that  
25 circumstance?



1 A. I think ultimately in either circumstance, we  
2 would find a way to comply, but the education efforts  
3 would probably be what's most impacted. What I mean  
4 by that is money will have been spent by October to  
5 educate voters about the new ID requirements. And it  
6 will make our communications with the counties a  
7 little more fast-paced more so than we would like,  
8 but I think ultimately we would pull it off.

9 JUDGE SIMPSON:

10 We had a lot of discussion, we had a  
11 lot of testimony about name conforming issues. There  
12 was some discussions today about that. Have there  
13 been name conformity issues that your Bureau has had  
14 to deal with even before Act 18?

15 A. Yes, there was an --- there has been for several  
16 years a first time voter ID requirement and that  
17 issue has come up before and it's primarily maiden  
18 name versus married name, and ultimately those are  
19 addressed by the counties or poll workers.

20 JUDGE SIMPSON:

21 Are there questions that were prompted  
22 by my inquires?

23 ATTORNEY GERSCH:

24 No, Your Honor.

25 ATTORNEY CAWLEY:

1 No, Your Honor.

2 JUDGE SIMPSON:

3 Mr. Marks, thank you. You may step  
4 down.

5 A. Thank you, Your Honor.

6 ATTORNEY CLARKE:

7 Your Honor, we have another witness who  
8 will only take about 10 or 15 minutes if Your Honor  
9 would like to continue.

10 JUDGE SIMPSON:

11 Yes, let's continue.

12 -----  
13 TIA SUTTER, HAVING FIRST BEEN DULY SWORN, TESTIFIED  
14 AS FOLLOWS:

15 -----  
16 A. Good morning, Your Honor.

17 JUDGE SIMPSON:

18 Good morning.

19 DIRECT EXAMINATION

20 BY ATTORNEY CLARKE:

21 Q. Good morning, Ms. Sutter.

22 A. Good morning, Ms. Clarke.

23 Q. What is your name?

24 A. My name is Tia Sutter.

25 Q. And where do you live?

1 A. I live in East Falls, Philadelphia.

2 Q. And where were you born, Ms. Sutter?

3 A. I was born in Queens, New York, New York.

4 Q. And when were you born?

5 A. On December 17th, Kitty Hawk Day, 1951.

6 Q. 1951. Tell me about your parents.

7 A. My father died recently at the age of 99 on  
8 Thanksgiving and he was a --- he was born in  
9 Pennsylvania as his people were going back to like  
10 1850. And my mother is 93, she lives in New York.  
11 She was also born in Pennsylvania. Her family came  
12 here in about 1750. They were both veterans in World  
13 War II. My mother was a master sergeant in the WAAC.  
14 She served under Eisenhower in Algiers and in the  
15 European Theater. My father was a captain in the  
16 U.S. Army and they met in Rome.

17 Q. Now, when you were growing up in New York, did  
18 you go to college?

19 A. I did. I went to Bard College in upstate New  
20 York. I graduated in 1973.

21 Q. And did you receive a degree from Bard College?

22 A. I did. I got an AB they called it, a BA in  
23 languages and literature and psychology.

24 Q. Did you attend any other school after you  
25 received your degree from Bard College?

1 A. I did. I attended the Hunter College School of  
2 Social Work for a year and part of the year.

3 Q. And where is Hunter College School of Social  
4 Work?

5 A. That's in Manhattan in New York City.

6 Q. And did you receive a degree from Hunter  
7 College?

8 A. I did not. I did not complete the MSW. I  
9 decided to save my money and go to law school.

10 Q. So did you go to law school?

11 A. I did.

12 Q. And where did go to law school?

13 A. I went to Boston College Law School. I  
14 graduated from there in 1993 with a Juris Doctorate,  
15 a law degree.

16 Q. And then did you practice law?

17 A. I did. I came directly from there to here ---  
18 well, to Philadelphia, and I worked as an assistant  
19 district attorney. I interned there the summer  
20 before.

21 Q. And you worked as an assistant district attorney  
22 for how long?

23 A. I worked there until the beginning of 1995.

24 Q. So 1983 to '95?

25 A. Twelve (12) years.

1 Q. And what units were you in when you were in the  
2 district attorney's office?

3 A. I started in the Municipal Court Unit and then I  
4 worked in the Family Waivers Unit, then the Major  
5 Trials Unit, which is jury trials for major cases,  
6 and been in the Homicide Unit as a homicide  
7 prosecutor.

8 Q. And why did you leave the district attorney's  
9 office?

10 A. I had started becoming ill and it really  
11 interfered with my performance and I had a very young  
12 baby boy and it was too much stress. They suggested  
13 I find a job. They asked me to leave.

14 Q. And what was your illness?

15 A. Well, it's craniomandibular disorder. It's the  
16 bones in my head aren't straight and it led to  
17 musculoskeletal problems, diagnosis fibromyalgia, and  
18 I also smoked and I got emphysema.

19 Q. Now, have you worked since you left the district  
20 attorney's office in 1995?

21 A. Yes, I did. I worked doing temporary legal  
22 work. I worked for about a year on a project with  
23 --- regarding foster children. Then I was ---  
24 paralegal work, I became really unable to do that as  
25 well. I worked then as a home healthcare aide and

1 some other temporary work, and then I really wasn't  
2 able to work. And also, I had been in a car accident  
3 and kind of seriously injured so that was sort of the  
4 end of my earning capacity.

5 Q. Now, you mentioned you had a young son, you have  
6 a child?

7 A. Yes, he's 20 years old now.

8 Q. And what's he doing?

9 A. Nico (phonetic) is --- he will be a senior at  
10 York College here in York, Pennsylvania.

11 Q. Are you registered to vote, Ms. Sutter?

12 A. I am.

13 Q. And when did you register to vote?

14 A. I registered the last time in April of 2008.

15 Q. And what is the name on your voter registration?

16 A. Tia Sutter.

17 Q. Now, are you aware of Act 18, the new photo ID  
18 law?

19 A. I didn't know the Act number, but I know about  
20 the law, sure.

21 Q. And when did you find out about the law?

22 A. I'm not quite certain when it was, pretty  
23 recently.

24 Q. Now, are you aware that it requires you to have  
25 a photo ID in order to vote?

1 A. Yes, ma'am.

2 Q. Do you have the necessary photo ID to vote?

3 A. I do not.

4 Q. Do you have any photo ID?

5 A. I do and I have a very old photo ID from 1977 or  
6 '78.

7 Q. Let me just stop you for a minute. We'll mark  
8 another exhibit.

9 (Petitioners' Exhibit 31 marked for  
10 identification.)

11 BY ATTORNEY CLARKE:

12 Q. Ms. Sutter, I'm showing you what we marked as  
13 Exhibit 31.

14 A. Yes, ma'am.

15 Q. And I also have the originals here that --- you  
16 brought with you today the originals of the  
17 documents?

18 A. Yes, I did. I gave them to you, I believe.

19 Q. Okay. So I'm going to give those to you, too.

20 A. Okay. Thank you.

21 Q. Now, I had asked you about whether you had any  
22 photo identification and you mentioned a very old  
23 card from Hunter College?

24 A. Right.

25 Q. And that was the college in New York?

1 A. That's right. It was actually the School of  
2 Social Work.

3 Q. Okay. And does that card have any kind of  
4 expiration date on it?

5 A. It does not. It has my Social Security number  
6 and my signature, but it has some stickers on it  
7 indicating when it was in use, fall of '77 and fall  
8 of '78.

9 Q. Does this picture look like you?

10 A. Not anymore.

11 Q. Not anymore?

12 A. No. My mother thinks it looks like me.

13 Q. Now, do you have any other photo identification?

14 A. I do. You know, I dug up my photo ID from when  
15 I was a legal intern at the DA's office in  
16 Philadelphia in the summer of '82. My district  
17 attorney's ID, unfortunately, my purse was lost or  
18 stolen years ago and I lost that years ago, but this  
19 is what I got the summer of '82 as a legal intern.

20 Q. Okay. Now, does that one have any kind of  
21 expiration date?

22 A. It doesn't. It has my name and my height,  
23 weight and date of birth, but --- and Ed Rendell's  
24 signature, but no expiration date.

25 Q. And does the photo on that look like you?



1 A. I wish, but it no longer does.

2 Q. Now, have you ever had a driver's license?

3 A. No, I haven't.

4 Q. Had you ever had a PennDOT ID?

5 A. No, not from any city.

6 Q. Have you ever had a passport?

7 A. I did. When I was a teenager, we went to

8 England, so when I was 15, I had a passport.

9 Q. Have you ever renewed that passport?

10 A. No.

11 Q. So have you ever then tried to get together the

12 documents so that you could go get a PennDOT ID in

13 order to vote?

14 A. Oh, yes, I did.

15 Q. Okay. So let's just first talk about the

16 documents that you need to get a PennDOT ID. Do you

17 have any kind of record of your birth?

18 A. I have a birth certificate that I ordered

19 through --- well, I contacted the Bureau of Vital

20 Statistics in New --- New York City has its own birth

21 certificates, not the state, and they sent --- when

22 you go to that website, they send you to a site

23 called --- or an agency called Vital Check, and I

24 ordered from them a couple of years ago this birth

25 certificate that is in your exhibit.

1 Q. Okay. So the document that you received is the  
2 document that's at the top of Exhibit 31?

3 A. Yes.

4 Q. And does this --- does the document at the top  
5 of Exhibit 31 have a raised seal on it?

6 A. No.

7 Q. And what is the name on this certificate?

8 A. Christine Sutter.

9 Q. So that's a different name than the name that  
10 you are registered to vote in; is that right?

11 A. There's the rug.

12 Q. Now, did you ever try to go get a raised seal  
13 birth certificate?

14 A. I did.

15 Q. Tell me what happened.

16 A. Well, I went --- I thought this was good. I  
17 mean, they told me this was official, but it has a  
18 heat seal thing that's supposed to change colors on  
19 the back. Anyway, I wanted to get the full deal with  
20 the raised seal, so I went back online and back to  
21 the City of New York's birth certificate thing and  
22 they sent me back to Vital Check and I indicated that  
23 I wanted the --- I think they call it the long form.  
24 Anyway, it has more --- like the hospital and a  
25 raised seal, so I indicated that I wanted to get

1 that.

2 Q. And did you get it?

3 A. I did not.

4 Q. Why not?

5 A. Because I put the card, you know, my bank card  
6 in and that was fine, they would only send it to the  
7 name --- under Christine Sutter. So they were going  
8 to send it to Christine Sutter at the billing address  
9 which is my address and all that was fine I thought.  
10 And I gave them the card and they took the money and  
11 then they said oops, the City of New York now  
12 requires further information from you, can we have  
13 your Social Security number. So I put that in and  
14 turned red and said that doesn't match and it's  
15 rejected.

16 Q. Okay. So now why didn't your Social Security  
17 number match?

18 A. Because when I got my Social Security number I  
19 think when I was a teenager and got working papers, I  
20 think is when I got it, I got it under the only name  
21 I had ever used which was Tia Sutter.

22 Q. So your Social Security name is Tia Sutter and  
23 your birth record is under Christine Sutter; is that  
24 right?

25 A. Yes.

1 Q. And so the only reason --- so what New York said  
2 to you was those names don't match?

3 A. Correct.

4 Q. Then what happened? Did you ever resolve that  
5 problem with New York?

6 A. Well, no, because they said you can mail them  
7 photocopies of your photo ID or the requisite  
8 documents, which I didn't have, or I could go in  
9 person and give them my photo ID or my other records  
10 of documents, which I didn't have. So I didn't have  
11 any in person, by mail or online, and so they just  
12 said, well, we're keeping I think \$10 and we're not  
13 keeping \$25, which was the total thing, but \$10 for  
14 us looking so far and that's it.

15 Q. So I just want to make sure I understand. So  
16 they said, well, your name doesn't match, if you send  
17 us an ID, that will solve the problem?

18 A. Yes.

19 Q. And you didn't have that ID?

20 A. I'm sorry?

21 Q. You didn't have the ID that they told you you  
22 needed?

23 A. No, that's why I was trying to get the birth  
24 certificate so I could get photo ID.

25 Q. Okay. So now did you also --- so at the end of

1 the day you weren't able to get the birth certificate  
2 with the raised seal; is that right?

3 A. That's correct, and it cost me \$10 to find that  
4 out.

5 Q. Okay. Now, did you then try to and get a Social  
6 Security card? Well, let me just stop. Do you have  
7 a Social Security card?

8 A. I don't. I don't know. I lost track of it, I  
9 don't know, maybe 30, 40 years ago. I've never  
10 needed to show it to anyone.

11 Q. Okay. But you have a Social Security number?

12 A. I do, and I have a Medicare card.

13 Q. Okay. And what is the name on your Social  
14 Security card?

15 A. Tia Sutter.

16 Q. So you have Tia Sutter on your Social Security  
17 card, you have Christine Sutter on your birth record?

18 A. Right.

19 Q. And you're registered to vote as Tia Sutter; is  
20 that right?

21 A. It's really --- yes.

22 Q. Okay. And now, when you --- so then you tried  
23 to get a Social Security card; is that right?

24 A. Correct.

25 Q. And did you go somewhere to try to get the

1 Social Security card?

2 A. Yes, I was directed to go to --- there's a  
3 Social Security card office specifically for that at  
4 15th or 16th and JFK in Philadelphia. I went  
5 downtown.

6 Q. And what happened there?

7 A. I'm sorry?

8 Q. What happened there when you went --- when did  
9 you go there?

10 A. Oh, goodness, the end of May, the beginning of  
11 June.

12 Q. And what happened when you went down to JFK to  
13 see if you could get a Social Security card?

14 A. They asked me for photo ID.

15 Q. Okay. And did you try to show them the Hunter  
16 College ID and the intern ID that we have on Exhibit  
17 31?

18 A. I did. And Ms. Clarke, I had dyed my hair from  
19 --- it was white and I thought, well, maybe they'll  
20 recognize me if I dye it. So they said, well, you  
21 know, I guess that's you, but that isn't acceptable  
22 ID. It's old. It has to be current.

23 Q. And did they give you any other option in terms  
24 of any other kind of documentation you could submit  
25 to get a Social Security card?

1 A. There was a list of things.

2 Q. Okay. And were you able to get any of the other  
3 documents on the list?

4 A. No, because the primary one, they're sort of  
5 like --- the big deal is your birth certificate or a  
6 passport or a current Veterans Administration thing,  
7 and all I have out of that major category is my birth  
8 certificate and that's in the wrong name according to  
9 them.

10 Q. Now, did you follow-up with the Social Security  
11 Administration after you left JFK and they said your  
12 IDs didn't work?

13 A. I did.

14 Q. And what did you do?

15 A. There's a --- if you look online, you know, you  
16 start with the fact that you have a problem with  
17 getting a new card and so forth, what did I look  
18 under, change of name on Social Security card because  
19 I figured maybe I could get that done.

20 Q. So your thought was if you could get your Social  
21 Security name to match at least your birth name maybe  
22 that would help?

23 A. Yes.

24 Q. And what did they tell you?

25 A. I needed a --- to change the name on my Social

1 Security account and the Social Security card I  
2 needed to have a court order indicating that there  
3 had been a legal change of name.

4 Q. And were you able to go through that process?

5 A. No.

6 Q. Why not?

7 A. Well, for one thing there was no good way to  
8 proceed because my name legally is --- well, I'm not  
9 sure now. I used to know. My --- I'm sorry, could  
10 you ask me the question again?

11 Q. You learned that you could have changed your  
12 name in order to have your birth record and your  
13 Social Security record match, but you decided not to  
14 do that. Why did you decide not to do that?

15 A. Well, because to get a court order to change my  
16 name from --- well, to get the Social Security name  
17 changed to Christine, I needed a court order saying I  
18 had a legal name change to Christine. My legal name  
19 is Christine, so that didn't seem like that would  
20 work. So I figured okay, well, I'll change my name  
21 to Tia and then I'll be good and I went online to see  
22 how to do that and I found, you know, the City of  
23 Philadelphia it would cost me \$400, which I didn't  
24 have. But anyway \$400 and it would take months and  
25 months, it looked like six months or more, a long



1 time, but the --- which I was willing to start doing,  
2 but in order to file the petition in the Court of  
3 Common Pleas, I need photo ID, and if I don't have  
4 photo ID, then I need two acceptable forms of proof  
5 like my birth certificate and my Social Security  
6 card, and I don't have it.

7 Q. So we're going through things you would need to  
8 get the free PennDOT ID in order to be able to vote,  
9 so we talked about your birth certificate, which you  
10 haven't been able to get, we talked about your Social  
11 Security card, which you haven't been able to get.  
12 Do you have two proofs of residency?

13 A. Well, my lease ---.

14 Q. You have a lease?

15 A. My landlord --- which is Tia and my utility  
16 bills, which I pay with my bank account, is in the  
17 name of Christine.

18 Q. So at this point have you been able to get  
19 together the documents you need to get free ID to  
20 vote?

21 A. No, and --- no.

22 Q. Do you want to vote in November?

23 A. I absolutely --- I want to insist on it, but I  
24 guess I can't do that, but yes, I do.

25 Q. Why?

1 A. Well, I want to vote because it's my right and  
2 it's my duty. I want to vote because I spent happy  
3 years, but dedicated years for the peace and dignity  
4 of the Commonwealth. My parents, they didn't carry  
5 guns, but they were in World War II and my cousins  
6 served in Vietnam. And my life, my roots and my  
7 future, and my son and my parents are all  
8 Pennsylvanian, and if I ever thought, well, it's late  
9 in the day and I don't feel well and what difference  
10 does it make because it's not going to be by a margin  
11 of one in Pennsylvania, if I ever thought, well, it's  
12 not worth my voting, I would never feel that way  
13 again because it's hurtful to me that it's now a  
14 question of your papers, please, madam, if your  
15 papers aren't in order, then you can't vote and  
16 that's why.

17 ATTORNEY CLARKE:

18 Thank you. I have no further  
19 questions.

20 CROSS EXAMINATION

21 BY ATTORNEY CAWLEY:

22 Q. Hello, Ms. Sutter. I just have a few follow-up  
23 questions for you.

24 A. Good morning, sir.

25 Q. I'm unclear from your testimony. Have you

1 attempted to change the name on your voter  
2 registration?

3 A. On my voter registration?

4 Q. Yes.

5 A. I didn't know I could.

6 Q. Okay. So if there's an office in the county, is  
7 that an option that you're willing to consider,  
8 changing the name one way or the other from what it  
9 currently is?

10 A. I'm sorry. I don't really understand the  
11 question.

12 Q. That's fine. I'll rephrase. Have you  
13 investigated whether there is an office in your  
14 county to change the name that is on your voter  
15 registration?

16 A. Well, everywhere that I've --- I called  
17 initially Pennsylvania Senior Law and they directed  
18 me to the Committee of Seventy and they directed me  
19 to the ACLU. I've been online and to various  
20 offices. No one has ever mentioned, oh, well, just  
21 get the name changed on your voter registration.  
22 Everything I've seen about changing my name requires  
23 me to file a petition for a name change, which I'm  
24 not able to do right now with the documents that I  
25 have.

1 Q. Okay. And your name on your registration to  
2 vote as I understand it is Tia Sutter?

3 A. Yes.

4 Q. Is the name Christine on there at all?

5 A. No.

6 Q. Okay. And you mentioned your Social Security  
7 card. What is the full name on your Social Security  
8 card? I understand you don't have the card, but what  
9 is the full name?

10 A. On the Social Security card and my Medicare card  
11 it's Tia Sutter.

12 Q. Okay. And Christine is not mentioned?

13 A. Correct.

14 Q. And your utility bills and your lease, any  
15 documents you have to show where you live, does that  
16 just say Tia Sutter?

17 A. My lease says Tia. My bill --- the bills that I  
18 get on paper, not online, say Christine.

19 Q. Okay.

20 A. That's my bank account.

21 Q. And you were a member of the bar of the  
22 Commonwealth of Pennsylvania?

23 A. Yes, sir.

24 Q. You're not still practicing law, I assume?

25 A. Correct.

1 Q. Okay. And when you became a member of the bar,  
2 your name for the purposes of the Supreme Court was  
3 Tia Christine Sutter?

4 A. That's correct.

5 Q. And your bar number was 40873, does that sound  
6 familiar?

7 A. I would not know, although I did furnish a copy  
8 of the paper that I received. One of the papers, I  
9 furnished that to Ms. Clarke. So if that's the  
10 number, I'll take your word for it.

11 Q. Do you still have your --- any of the bar cards  
12 that were issued to you?

13 A. I had forgotten that I ever had one.

14 Q. Okay. But when you became a member of the bar,  
15 you were able to establish who you were for purposes  
16 of getting admitted?

17 A. Oh, they didn't ask me for photo identification.  
18 And to get admitted, you need a person who's a member  
19 of the bar --- if I recall correctly, you need a  
20 person who's a member of the bar to like ---

21 Q. To move for your admission?

22 A. --- sponsor for your move for you, and my chief  
23 at the Municipal Court Unit at the district's  
24 attorney's office, Richard Carol, was that person, so  
25 he sent a member of the bar --- he sent a document

1 that signed off on it.

2 Q. In addition to the option of changing the name  
3 on your voter registration, you wouldn't have any  
4 objection to listing both the name Tia Sutter and  
5 Christine Sutter as names that you've used if that  
6 was available to you to get a photo ID; right?

7 A. Would I object?

8 Q. With listing your alternative --- the names  
9 you've used?

10 A. No, I wouldn't object to that if they --- I've  
11 tried to get people to accept that all through all of  
12 these processes, but they don't want to take my word  
13 for it or any of the myriad of documents I have  
14 establishing my identity. They just want one from  
15 this column and one from that column and that I don't  
16 have.

17 ATTORNEY CAWLEY:

18 Thank you. Those are all the questions  
19 I have.

20 ATTORNEY CLARKE:

21 No further questions.

22 JUDGE SIMPSON:

23 Thank you. You may step down.

24 A. Thank you, Your Honor.

25 JUDGE SIMPSON:

1                   It is about 10 of 12:00. Why don't we  
2 take a half hour break?

3                   MR. TURNER:

4                   Commonwealth Court is now in recess.

5 RECESS TAKEN

6                   MR. TURNER:

7                   Ladies and gentlemen, Commonwealth  
8 Court is now in session.

9                   JUDGE SIMPSON:

10                  Thank you. Please be seated. Yes?

11                  ATTORNEY GERSCH:

12                  Your Honor, before we call our next  
13 witness, we'd like to move into evidence Exhibit ---  
14 Petitioners' Exhibits Numbers 25 through 31. And I  
15 have consulted with Mr. Cawley and I believe I can  
16 represent without objection.

17                  ATTORNEY CAWLEY:

18                  No objection.

19                  JUDGE SIMPSON:

20                  All right. I just thought we had  
21 everything in from Friday.

22                  ATTORNEY GERSCH:

23                  I wasn't sure whether I had moved the  
24 admission of the exhibits I had introduced with Mr.  
25 Myers.

1                   JUDGE SIMPSON:

2                   I don't have any ---.

3                   ATTORNEY GERSCH:

4                   In any case, we move 25 through 31, so  
5 each of those.

6                   JUDGE SIMPSON:

7                   In the absence of objection, they're  
8 received.

9                   ATTORNEY CAWLEY:

10                  If this is a convenient time, Your  
11 Honor, we would also move for the admission of  
12 Respondents' Three, which was introduced this  
13 morning.

14                  JUDGE SIMPSON:

15                  Any objection?

16                  ATTORNEY GERSCH:

17                  No objection, Your Honor.

18                  JUDGE SIMPSON:

19                  It's received.

20                  ATTORNEY SCHNEIDER:

21                  Thank you, Your Honor. The Petitioners  
22 call Danny Rosa.

23                  MR. TURNER:

24                  Could you have a seat, sir? Could I  
25 ask you to raise your right hand?



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DANNY ROSA, HAVING FIRST BEEN DULY SWORN, TESTIFIED  
AS FOLLOWS:  
-----

MR. TURNER:

Thank you.

DIRECT EXAMINATION

BY ATTORNEY SCHNEIDER:

Q. Good afternoon, Mr. Rosa. Can you please state  
your name for the record?

A. My name is Danny Rosa.

Q. And where do you live, Mr. Rosa?

A. I live at 222 North Church Street, Pennsylvania.

Q. Is that --- what city?

A. West Chester.

Q. And how long had you been living there?

A. I've been there for about two or three years, I  
think.

Q. And how did you come to live there? Were you in  
the hospital?

A. Excuse me?

Q. Were you in the hospital?

A. I can't hear you that well.

Q. I said were you in the hospital?

A. Yes, I was in the hospital. And when I got

1 discharged, my job didn't want me to go back to work  
2 there.

3 Q. And so that's when you moved to ---?

4 A. And I was living before that, before 222 Church  
5 --- North Church Street, I was living at --- I think  
6 it was 215 North Everhart Avenue.

7 Q. And that's also in West Chester?

8 A. And that's also in West Chester.

9 Q. And does someone help you with things in  
10 your ---?

11 A. I have an advocate who helps me pay my rent and  
12 pay my bills.

13 Q. And how do you know the advocate?

14 A. She happens to be a member of my church.

15 Q. And where do you go to church?

16 A. I go to Cornerstone Christian Fellowship.

17 Q. And also West Chester?

18 A. And that's also --- I don't leave West Chester  
19 for anything, because I can't move around too much.

20 Q. Okay. Where were you born?

21 A. I was born in New York City.

22 Q. Okay. And when were you born?

23 A. I was born in Manhattan and I was ---.

24 Q. When's your birthday?

25 A. Excuse me?

1 Q. What's your birthday?

2 A. My birthday is 10 --- October 9th, 1949.

3 Q. Okay.

4 ATTORNEY SCHNEIDER:

5 Can we show the birth certificate?

6 A. And I'm 62 years old.

7 BY ATTORNEY SCHNEIDER:

8 Q. Mr. Rosa, I'm going to go put up on the screen,  
9 and you'll see on the screen in front of you, a  
10 document I'd like you to look at.

11 A. That is my birth certificate.

12 Q. Okay. Now, do you have the original birth  
13 certificate with you today?

14 A. Yes, I do.

15 Q. And does it have a raised seal?

16 A. Yes, it does.

17 Q. And what's the name on the birth certificate?

18 A. The birth certificate --- excuse me. The birth  
19 certificate says Danny Guerra.

20 Q. Okay. Now, ---.

21 A. The word means war in Spanish.

22 Q. Okay. Now, what was your mother's name?

23 A. My mother's name was Rafaella Jiminez.

24 Q. And where was your mother from?

25 A. Puerto Rico.

1 Q. So how did it come that your birth certificate  
2 says Danny Guerra. Who's name was Guerra?

3 A. It's my --- Guerra happened to be my  
4 grandmother's maiden name.

5 Q. And what was your grandmother's name?

6 A. Her name was Adella Tion (phonetic) Guerra.

7 Q. And so do you know why your ---?

8 A. I really don't know why.

9 Q. Okay. But that Guerra was your grandmother's  
10 maiden name?

11 A. That's her name.

12 Q. So how did you get the name of Rosa?

13 A. Well, I got it from a --- I used to call him my  
14 father, but he was my stepfather. And his name's  
15 Pedro Andrew Rosa.

16 Q. And he was married to your mother?

17 A. He married my mother.

18 Q. And so all through school was your name Danny  
19 Rosa?

20 A. All through first grade to today, I still carry  
21 that name.

22 Q. Okay. Now, you were born in Manhattan. And  
23 where did grow up?

24 A. I grew up in Brooklyn.

25 Q. And did you go to high school in Brooklyn?

1 A. At high school, I was in East New York  
2 Vocational.

3 Q. Did you graduate?

4 A. Excuse me?

5 Q. Did you graduate?

6 A. No, I dropped out in my senior year. Then I  
7 went back to school to night school and graduated  
8 from there.

9 Q. And you got a diploma?

10 A. Yes.

11 Q. Okay. And after high school, what did you do?

12 A. After high school, I did a couple of odd jobs,  
13 worked at a restaurant mostly. And then I entered  
14 the Air Force.

15 Q. And when were you in the Air Force?

16 A. I was in the Air Force from 1973 to 1977.

17 Q. And where were you stationed?

18 A. I was stationed at Edwards Air Force Base.

19 Q. And that's in California?

20 A. And that's in California.

21 Q. And what did you do in the Air Force?

22 A. I was an oil burner mechanic.

23 Q. And what rank did you achieve?

24 A. I moved up to the ranks to an E-4, sergeant.

25 Q. And were you honorably discharged?

1 A. Yes, I was.

2 ATTORNEY SCHNEIDER:

3 Kelby, can you show the honorable  
4 discharge?

5 JUDGE SIMPSON:

6 Is this an exhibit number?

7 ATTORNEY SCHNEIDER:

8 Oh, I'm sorry. This is --- and I  
9 should ---.

10 JUDGE SIMPSON:

11 Thirty-two (32)?

12 ATTORNEY SCHNEIDER:

13 Actually, the birth certificate is  
14 Exhibit 32. Let's mark this as Petitioners' Exhibit  
15 33. Actually, Your Honor, I'd like to mark a  
16 multi-page document as Exhibit 32. That has various  
17 pages. And we'll turn to the page with the honorable  
18 discharge. Your Honor, what we're looking at is the  
19 last page of Petitioners' Exhibit 32 with the Bates  
20 numbers Vote-0002056.

21 (Petitioners' Exhibit 32 marked for  
22 identification.)

23 BY ATTORNEY SCHNEIDER:

24 Q. Is this a copy of your honorable discharge, Mr.  
25 Rosa?

1 A. Yes, it does.

2 Q. And what's the name --- what name is it in?

3 A. Daniel Rosa.

4 Q. And where do you keep the copy of your honorable  
5 discharge?

6 A. I keep --- the original is --- my advocate has  
7 it, and I have a copy of it at home hanging on my  
8 wall.

9 Q. Okay. So you're pretty proud of that; right?

10 A. Excuse me?

11 Q. You're pretty proud of your honorable discharge?

12 A. Yes, I am. It's about the only thing I really  
13 completed.

14 Q. Okay.

15 A. I feel like it's the only thing.

16 Q. Now, after you left the Air Force, you moved to  
17 --- when did you move to Pennsylvania?

18 A. I moved to Pennsylvania somewhere around '77.

19 Q. Okay. And then did you come ---?

20 A. I came ---.

21 Q. Sorry.

22 A. Let's see, I came to Philadelphia because my  
23 sister told me that my father had a paper that is ---  
24 he had a house on Erie Avenue in Philly. And I  
25 worked --- stayed there for awhile. And then from

1 there I left his home, I tried to find a job. Let's  
2 see. I did go into the VA to kick my alcohol and  
3 drug habit.

4 Q. Okay. And then after you were in the VA, where  
5 did you live? Did you move to West Chester?

6 A. First, I went to Glenmoore, and then I moved  
7 down to West Chester.

8 Q. And when you lived in West Chester, did you have  
9 a job in West Chester?

10 A. Yes. At first I had a job at Frazer. That's  
11 also close to Glenmoore. I had a job at a pizzeria.  
12 And then I got the job --- I got a job at a nursing  
13 home, Brandywine Hall, and I worked there for 18  
14 years.

15 Q. And what did you do for Brandywine Hall?

16 A. At Brandywine Hall, at first I worked  
17 housekeeping, then I worked the laundry.

18 Q. Okay. Now, did you --- after you left the  
19 service, did you ever have a driver's license?

20 A. No.

21 Q. Have you ever had a Pennsylvania driver's  
22 license?

23 A. Never.

24 Q. So how do you get around?

25 A. I either walk or I get --- somebody with their



1 cars give me a ride.

2 Q. Okay. Now, looking at the first page of Exhibit  
3 32, do you see that on this screen? Do you see that  
4 on your screen?

5 A. Yes, that's my Social Security card.

6 Q. Okay. And turning to the third page, can you  
7 tell us what the document ---?

8 ATTORNEY SCHNEIDER:

9 Kelby --- yes.

10 BY ATTORNEY SCHNEIDER:

11 Q. What is this document?

12 A. That there is my veterans card.

13 Q. Does that have your picture on it?

14 A. Yes, it does.

15 Q. Does it have an expiration date?

16 A. It doesn't have an expiration date.

17 Q. Do you have any other ID with your photograph on  
18 it? Do you have a U.S. passport, for example?

19 A. No, I can't get a passport.

20 Q. Why can't you get a passport?

21 A. Because --- why can't I get a passport?

22 Q. That's all right. But you don't have a  
23 passport; right?

24 A. No, I don't.

25 Q. Okay. Now, I want to talk about voting. Are

1 you registered to vote?

2 A. Yes.

3 ATTORNEY SCHNEIDER:

4 And if you go to the next screen,  
5 Kelby?

6 BY ATTORNEY SCHNEIDER:

7 Q. And what is that a picture of?

8 A. That's my voting card.

9 Q. Okay. And what name is on your voter  
10 registration card?

11 A. The name? Danny Rosa.

12 Q. Where do you vote?

13 A. I vote at the library.

14 Q. That's in West Chester?

15 A. In West Chester.

16 Q. Is that close to where you live?

17 A. Yes, it's only about two blocks away from my  
18 house.

19 Q. Two blocks, okay. Is voting important to you?

20 A. For me it's --- the way I see it, I served in  
21 the service for four years and I don't do it just for  
22 kicks, you know. I don't know how anybody else feels  
23 about it, but it's about the only real --- it means  
24 something special to me, you know.

25 Q. Is that why it's important to vote for you?

1 A. I think it should be important for anybody.

2 Q. Do you plan to vote in November?

3 A. Yes, I do.

4 Q. Okay. Now, we're going to talk about the  
5 Pennsylvania's voter ID law. When did you hear about  
6 the voter ID law?

7 A. I was just listening to the radio one day and I  
8 heard about --- I heard something like somebody ---  
9 what do you call that? Something that they were  
10 making up a law about people who vote and they're  
11 going to need some kind of identification. And I  
12 felt it kind of ludicrous, you know, so I got  
13 involved.

14 Q. What did you do? Where did go after you heard  
15 about it?

16 A. Well, first, I had asked my advocate about it,  
17 and I asked a couple of other people I know. And  
18 they gave me what information they knew on it. And I  
19 just went down to the Democratic where I do that ---  
20 I think I did --- and I went down there to the  
21 Democratic office that's on High Street. And I  
22 talked to the woman that was behind the desk that  
23 told me about that I needed a --- you got to have an  
24 ID up at the motor vehicle place.

25 Q. And then what happened? Did you go to the motor

1 vehicle place?

2 A. Let's see, she called somebody up, somebody ---  
3 a woman named Bonita. And Bonita came over to my  
4 place a couple of days later to take me down to  
5 Frazer, to the motor vehicle place.

6 Q. In fact, did she drive you there in her car?

7 A. Yes.

8 Q. About how long a drive is it for you? Is it  
9 far?

10 A. Excuse me?

11 Q. Is it far? How long a drive is to the motor  
12 vehicle place?

13 A. It took something like about maybe an hour and a  
14 half.

15 Q. To drive there?

16 A. To drive down to Frazer.

17 Q. So what happened when you got to the PennDOT  
18 center?

19 A. Well, when we got down to PennDOT, we --- I got  
20 the number. I got a ticket with a number, and I  
21 waited there for about maybe an hour. And then they  
22 called me, and I brought over my information. And  
23 the woman looked at it and she told me that I have to  
24 get two pieces of information.

25 Q. Was that two proofs of where you live?

1 A. That's true.

2 Q. And then what happened?

3 A. What I did, I went --- we went all the way back  
4 down to West Chester, I got two pieces. Let's see, I  
5 got one piece of information from my place and then I  
6 went down to a place that I bank and I got them to  
7 make a statement for me about what proof, and I  
8 brought it down to PennDOT at the time.

9 Q. Wait a second. I want to look on the screen.

10 Is this the document ---

11 A. Yes, that's from the bank.

12 Q. --- that you went to your bank and they gave you  
13 this document?

14 A. Yes.

15 Q. And you see the date on that. It says July  
16 17th, 2012; right?

17 A. Yes.

18 Q. Is that the day that you did all this?

19 A. Yes, that's the day that we went.

20 Q. Okay. So then what? So then you went back to  
21 PennDOT?

22 A. I went back to the motor vehicle place, and I  
23 was there --- I can't get exactly the exact time, but  
24 I know it took to almost 11:00, quite a while, you  
25 know.

1 Q. Did you have to take another number?

2 A. I had to take another number.

3 Q. And then did you have to wait again to see a  
4 clerk?

5 A. I had to wait, yes. And now I got a second  
6 woman who called my number. I went up there and I  
7 showed her the same paper, like my birth certificate  
8 and everything. And she just said --- I think it was  
9 she saw the birth certificate. She said this isn't  
10 good, you know, because the name's not the same.

11 Q. She said she wouldn't accept your birth  
12 certificate?

13 A. She wasn't going to accept it.

14 Q. But you had your birth certificate and you had  
15 your Social Security card?

16 A. And I had my VA card out, too.

17 Q. You had your VA card.

18 A. And I also showed her my voting card.

19 Q. And you had the two proofs of your address;  
20 right?

21 A. Uh-huh (yes).

22 Q. And she wouldn't accept it?

23 A. Wouldn't accept it.

24 Q. So what did you do?

25 A. Well, I really wanted to curse or holler at

1 something out loud. But instead I banged the desk  
2 real hard, and I just stormed out of there.

3 Q. You were angry?

4 A. Yes, very.

5 Q. And so how long did that take you from the ---  
6 you started in the morning. Did that take the better  
7 part of the day, the whole time that you were ---  
8 this whole process?

9 A. I couldn't remember that part, because, you  
10 know, I mean, I was ---.

11 Q. Well, would it be hard for you to go back to  
12 PennDOT?

13 A. Yes. Because I don't have a car. I don't have  
14 a license. And it's not easy for me to get a ride  
15 because most of my friends that do have cars are  
16 working.

17 Q. Well, do you need a photo --- would you need  
18 this photo ID for any other purpose or is it just  
19 for ---?

20 A. I just want to have a photo ID when I get  
21 stopped by the police or anybody, yeah.

22 Q. Now, so Mr. Rosa, do you have --- you have all  
23 of the documents that PennDOT says you needed to get  
24 a photo ID; right?

25 A. Yeah.

1 Q. And so if someone put a paper in front of you  
2 and they said --- and they asked you --- and they  
3 said to sign it, and the paper says that by signing  
4 the paper, you'll be saying I don't have all the  
5 documents PennDOT says I need, would you be able to  
6 sign that?

7 A. Yes.

8 Q. Because you do have all the documents, though,  
9 you have the birth certificate, ---

10 A. Yes, I do.

11 Q. --- you have your Social Security card, you have  
12 two proofs of residency; correct?

13 A. Yes.

14 Q. So you do have all the documents you need  
15 for ---?

16 A. Yes.

17 Q. Okay.

18 ATTORNEY SCHNEIDER:

19 I have nothing further.

20 ATTORNEY CAWLEY:

21 We have no questions, Your Honor.

22 JUDGE SIMPSON:

23 You may step down. Thank you. You may  
24 call your next witness.

25 ATTORNEY SCHNEIDER:



1           Your Honor, at this time, we would like  
2 to show a video trial --- video deposition for trial  
3 of Joyce Block, who is one of our Petitioners. And  
4 in it, Your Honor, during the deposition, we  
5 introduced some exhibits, so I'd like to mark those  
6 and --- before, so that you can have them while  
7 you're watching the video. Your Honor, they've been  
8 marked collectively as one exhibit.

9           JUDGE SIMPSON:

10          Thank you. It's 33?

11          (Petitioners' Exhibit 33 marked for  
12 identification.)

13          ATTORNEY SCHNEIDER:

14          Yes.

15          JUDGE SIMPSON:

16          I'm assuming this is the same type of  
17 exhibit which is identification cards and ---

18          ATTORNEY SCHNEIDER:

19          Yes, Your Honor.

20          JUDGE SIMPSON:

21          --- personal identifying documents?

22          ATTORNEY SCHNEIDER:

23          Yes, Your Honor.

24          JUDGE SIMPSON:

25          Can you turn the lights down a little

1 bit, please?

2 VIDEO BEGINS

3 VIDEOGRAPHER:

4 The time is 1:37. This deposition is  
5 being taken at 97 Valley Green Road, Doylestown,  
6 Pennsylvania. The caption of this case is  
7 Commonwealth Court of Pennsylvania, Applewhite, et  
8 al. versus the Commonwealth, et al. Case Number 330  
9 MD 2012. The name of the witness is Joyce Block.

10 Will the attorneys present please state  
11 their names and the parties they represent?

12 ATTORNEY SCHNEIDER:

13 Marian Schneider on behalf of  
14 Petitioners.

15 ATTORNEY CAWLEY:

16 Patrick Cawley on behalf of the  
17 Respondents. And because I have the microphone, I'm  
18 joined by Kevin Schmidt, also on behalf of  
19 Respondents.

20 VIDEOGRAPHER:

21 The court reporter can now swear in the  
22 witness.

23 COURT REPORTER:

24 Raise your right hand.

25 -----

1 JOYCE BLOCK, HAVING FIRST BEEN DULY SWORN, TESTIFIED  
2 AS FOLLOWS:

3 -----

4 VIDEOGRAPHER:

5 You may begin.

6 DIRECT EXAMINATION

7 BY ATTORNEY SCHNEIDER:

8 Q. Good morning, Joyce. Can you please state your  
9 full name and address for the record?

10 A. Joyce Block, 97 Valley Green Road in Doylestown,  
11 Pennsylvania.

12 Q. Do you live alone, Joyce?

13 A. Yes, I do.

14 Q. And where were you born?

15 A. Brooklyn, New York.

16 Q. And what's your birthday?

17 A. July 14th, 1923.

18 Q. And tell me about --- tell me the story about  
19 your birthday. When did you think your birthday was?

20 A. I always thought it was 1922, until I got my ---  
21 looked at my birth certificate. I had never looked  
22 at it before, and started laughing. I remember now  
23 what had happened. I come from a family,  
24 vaudevillians and theatre people. And my mother  
25 helped me with the theatre. She was very active in

1 the theatre. And when she'd take me to auditions in  
2 those days, you had to be younger, and I was very  
3 tiny. And she made me younger. And I was very  
4 confused when I found out my birth was 1923, I was  
5 perfectly happy being born in 1922.

6 ATTORNEY SCHNEIDER:

7 I'm going to mark as Block Exhibit  
8 Number One ---.

9 BY ATTORNEY SCHNEIDER:

10 Q. Joyce, I'm showing you the document that we just  
11 marked as Exhibit Number One. What is that document?

12 A. This is my birth certificate.

13 Q. And what name is on your birth certificate?

14 A. Joyce Altman.

15 Q. And is that your maiden name?

16 A. That's my maiden name, yes.

17 Q. Okay. You can put that aside. Tell me about  
18 your childhood. Where did grow up?

19 A. I grew up in Brooklyn. And it was a childhood,  
20 I imagine, just like anybody else's, except I studied  
21 dance and piano. And it was then that I decided to  
22 be a dancer.

23 Q. And were you a professional dancer?

24 A. Yes.

25 Q. And tell us a little bit about that. What kind

1 of shows were you in?

2 A. I was in the original cast of Oklahoma and in By  
3 Jupiter. I worked in nightclubs. The Havana-Madrid  
4 was one. The Jack and Jill Club. And I did that  
5 until I met my husband.

6 Q. Tell me about your husband. How did you meet  
7 your husband?

8 A. He was up at the Poconos playing with the big  
9 bands. He played saxophone and clarinet. And I was  
10 going up to the same place he was to see Betty  
11 Garrett. She was going to be there just for a couple  
12 of days on vacation. And I went up, saw my husband  
13 and forgot about Betty.

14 Q. So approximately when were you married? It  
15 doesn't have to be the exact date, but in decade  
16 wise.

17 A. Oh, sometime in very early '40s, '41, '42, '43.  
18 I can't remember.

19 Q. And do you remember how old you were when you  
20 got married?

21 A. I think I was 21.

22 Q. Okay. Joyce, I'm going to show you a document  
23 that we already marked as Block Exhibit --- that has  
24 been previously identified as Block Exhibit Two at  
25 your deposition. And we'll mark it as the same,

1 Block Exhibit Two, here. What is this document?

2 A. This is my marriage certificate.

3 Q. And what language is it written in?

4 A. It's in Hebrew.

5 Q. Do you read Hebrew?

6 A. No, I don't.

7 Q. And this was issued at the time you and Carl  
8 were married; correct?

9 A. Yes.

10 Q. You can put that aside. Do you have any  
11 children?

12 A. Yes, I do.

13 Q. How many children do you have?

14 A. Six marvelous children.

15 Q. And do you have any grandchildren?

16 A. Yes.

17 Q. How many grandchildren?

18 A. I think about 14 wonderful grandchildren.

19 Q. How about great-grandchildren?

20 A. Eleven (11) of them, and they're even more  
21 marvelous.

22 Q. Do your children live nearby?

23 A. Yes.

24 Q. Now, when you first got married, did you live in  
25 New York?

1 A. Yes.

2 Q. Now, tell me about when you moved to  
3 Pennsylvania.

4 A. Well, we came here after Carl could not blow  
5 anymore because he was ill. And we opened up a  
6 chocolate shop and an ice cream shop here. The  
7 family did, some of the family, and we ran it.

8 Q. Was that in Doylestown?

9 A. No, that was in New Hope.

10 Q. And so when you moved to Pennsylvania, did you  
11 get your Pennsylvania driver's license?

12 A. No.

13 Q. Why didn't you get a driver's license?

14 A. As I stated, I think everybody was much safer  
15 off the road --- with me off the road.

16 Q. Now, do you have any other ID with your picture  
17 on it ---

18 A. No.

19 Q. --- other than before what happened with the  
20 photo ID?

21 A. Right. No.

22 Q. I'm going to show you --- but you have some ID  
23 cards that you gave to me before; right?

24 A. Yes.

25 Q. For example, can you tell us what kind of ID

1 cards you --- we talked about before? I'll show  
2 you ---.

3 ATTORNEY SCHNEIDER:

4 Let's mark this Block Exhibit --- this  
5 will be Block Exhibit Three.

6 BY ATTORNEY SCHNEIDER:

7 Q. What is that that I've just shown you?

8 A. Oh, this is my Medicare and my health insurance,  
9 yes.

10 Q. Okay. And what name is your Medicare card in?

11 A. Block, Joyce Block.

12 Q. Okay. Great. So other than your Medicare card  
13 and --- oh, okay. I'm sorry. We're going to ---  
14 thank you.

15 ATTORNEY SCHNEIDER:

16 We're a going to identify Mrs. Blocks'  
17 original Social Security card as Exhibit Three.  
18 However, we will substitute a copy of this card as  
19 Exhibit Three for the transcript for the record. I'm  
20 sorry. We're on Four. Sorry. That's Exhibit Four.  
21 So I'm going to show it to the witness, but we'll  
22 substitute Exhibit Four later.

23 BY ATTORNEY SCHNEIDER:

24 Q. Joyce, what is that document I just handed you?

25 A. This is my Social Security card.



1 Q. And what name is your Social Security card  
2 issued in?

3 A. Joyce Lucille Altman.

4 Q. And is that your maiden name?

5 A. That's my maiden name.

6 Q. You can put that aside. We are going to talk  
7 about voting now. Are you registered to vote?

8 A. Yes.

9 Q. When did you first register to vote?

10 A. When I was 21. And I don't know, I guess that  
11 may have been 1940, early '40s, '41, '42 or something  
12 like that.

13 Q. So do you remember the first election you voted  
14 in?

15 A. Yes.

16 Q. What was that election?

17 A. That was for Roosevelt.

18 Q. So was that in 1944, the Presidential election  
19 in 1944?

20 A. Possibly then.

21 Q. Okay. Do you vote regularly?

22 A. Never missed an election.

23 Q. Why do you vote so regularly?

24 A. I think it's not a privilege. It is a right.

25 It is a need to vote. We have to let our voices be

1 heard, and everyone should vote.

2 Q. And do you talk about politics with your  
3 children in your home?

4 A. Yes, I do.

5 Q. Now, are you registered here in Bucks County?

6 A. Yes.

7 Q. Do you know what name you're registered to vote  
8 in Bucks County?

9 A. Yes.

10 Q. What name is that?

11 A. Joyce Block.

12 Q. Now, I want to talk to you a little bit about  
13 --- your polling place is nearby, isn't it?

14 A. Yes.

15 Q. Where do you vote?

16 A. At Pebble Hill Church.

17 Q. And how do you usually get to the polling place?

18 A. I'm driven.

19 Q. Who drives you?

20 A. Anybody in the family.

21 Q. Tell me about the general election in 2010. Did  
22 you vote in that election?

23 A. Yes, I did. I was ill at the hospital during  
24 that time, and the election came up. And I was  
25 determined to get out of the hospital and vote. I

1 didn't want an absentee ballot. I wanted to make  
2 sure that I voted. And I carried on and carried on  
3 until they finally released me in a wheelchair. And  
4 it was pouring out, and my girls took me and I got up  
5 there in the wheelchair and voted.

6 Q. Now, at this time, would you have needed a photo  
7 ID to get an emergency absentee ballot?

8 A. No.

9 Q. No? Okay. How did you find out about the voter  
10 ID law?

11 A. Well, I am politically active, and I don't miss  
12 --- I do a lot of reading. And so I certainly knew  
13 about it.

14 Q. And what did you think when you heard about it?

15 A. I thought it was unconstitutional. I thought it  
16 was to disenfranchise many people like me, seniors  
17 and minorities, and felt very strongly about it.

18 Q. At the time that the photo ID bill was passed,  
19 did you have a photo ID?

20 A. No.

21 Q. So what happened after that? Tell me about your  
22 attempts to get a photo ID.

23 A. Well, I called the Senator's office and was told  
24 what I would need. And then I called the ACLU, and  
25 they were just wonderful. They responded

1 immediately. And after that I got --- I did get  
2 everything I need. I complied with everything they  
3 asked me for. And I went to the ID --- the motor  
4 vehicle center --- motor vehicle center, and it was  
5 then that they wouldn't accept what I had.

6 Q. Now, when you said you had everything you need,  
7 do you remember what all you brought with you?

8 A. Yes, I brought my Social Security card.

9 Q. That card that we just looked at?

10 A. Yes, I brought my birth certificate, my marriage  
11 certificate. I brought the bills that I needed, and  
12 whatever else was needed, I had.

13 Q. Now, before you went to the Department of Motor  
14 Vehicles, did you go to a meeting at the Bucks County  
15 Commissioners?

16 A. Yes.

17 Q. And tell me what happened at that meeting.

18 A. I got up and complained about the law and let  
19 them know how difficult it was to comply with it for  
20 many, many people. And I was told then that I can  
21 vote absentee. Now, I knew that was illegal because  
22 I'm perfectly capable of going to the polls.

23 Q. Who told you you could vote absentee? Do you  
24 remember?

25 A. Yes, Charlie Martin.

1 Q. And who is Charlie Martin?

2 A. He's one of the people on the Commissioners.

3 Q. Okay. Now, you mentioned that you had called  
4 Senator McIlhinney's office?

5 A. Yes.

6 Q. Now, how do you know Senator McIlhinney?

7 A. Well, he has his office right next to my  
8 grandson-in-law. And being active and everything,  
9 I've met him a couple of times at several functions.

10 Q. What's your grandson in-law's name?

11 A. Det Ansinn.

12 Q. And what's his position?

13 A. Det is president of the Borough Council in  
14 Doylestown.

15 Q. Okay. So now let's talk about the PennDOT photo  
16 ID center. Where is that located? Do you remember?

17 A. I think it's in Dublin.

18 Q. And how far is that from here?

19 A. That's about 25 minutes --- 25 to 30 minutes.

20 Q. By car?

21 A. By car.

22 ATTORNEY SCHNEIDER:

23 Now, I'm going to mark a collection of  
24 documents as block Exhibit Five.

25 BY ATTORNEY SCHNEIDER:

1 Q. And Joyce, I'm just going to hand you your  
2 magnifying glass in case you need it.

3 A. Yes. Thank you.

4 Q. I've marked a couple of documents together, and  
5 I'd like you to look at them and tell me what these  
6 documents are.

7 A. Well, the first one is the Michener Museum here  
8 in Doylestown that I'm a member of.

9 Q. Well, let me rephrase my question. Are these  
10 the documents you brought with you when you went to  
11 the Department ---?

12 A. Yes.

13 Q. Just wait until I finish and then the Judge will  
14 be able to hear us better, if you wait until I finish  
15 my question. Okay? So these are the documents you  
16 brought with you to PennDOT?

17 A. Yes.

18 Q. Okay. And what is the name --- in what name are  
19 all of these documents?

20 A. Joyce Block.

21 Q. Okay. You can put that aside. So tell me what  
22 did the clerk say when you brought your birth  
23 certificate and your Social Security card and these  
24 bills that you just looked at to get your photo ID?

25 A. Well, he looked at the Social Security card

1 which is in my maiden name. He looked at the other  
2 documents, which is in my married name. And he said  
3 I don't know who you are, you have two different  
4 names here. And he suggested I change the deed of my  
5 house to my maiden name.

6 Q. And what did you think of that?

7 A. I thought he was nuts.

8 Q. Now, did you have your marriage certificate with  
9 you?

10 A. Yes, I did.

11 Q. And when he said that, did you show him your  
12 marriage certificate?

13 A. Yes.

14 Q. And what happened then?

15 A. Well, he said he couldn't read it. I suggested  
16 I would bring someone in to read it for him, and he  
17 just discarded that.

18 Q. Okay. What else did they tell you about  
19 obtaining your ID that day? Was there going to be a  
20 fee associated with it?

21 A. Yes, he charged me \$15.

22 Q. Did you actually pay the ---?

23 A. I was ready to pay it. I thought it was  
24 incorrect. I thought that would be a poll tax.  
25 Voting is free, but I did make a money order out to

1 pay him. I didn't have the cash --- I mean a check.

2 Q. And then what happened?

3 A. Well, I didn't have to pay him because he didn't  
4 give me the ID.

5 Q. So then after that first visit, what did you do  
6 next to try to get your photo ID?

7 A. My son-in-law spoke to --- my grandson-in-law  
8 spoke to the Senator and told them what was happening  
9 and what happened to me. And he told Det, don't  
10 worry about it, we'll get that fixed. And the  
11 Senator called the ID center and talked to them. And  
12 the next time I went back I got my ID.

13 Q. Did you have to bring all your documents again?

14 A. Yes, I did.

15 Q. And what did the clerk say the second time  
16 around?

17 A. Everything was all right.

18 Q. Okay. And did you have to pay for the ID the  
19 second time?

20 A. No, I didn't.

21 Q. Well, what did they tell you about having to pay  
22 a fee? Is there ever going to be a time when you  
23 have to pay a fee?

24 A. I was told that I would have to pay a fee the  
25 second time I got my ID.



1 Q. Do you mean at the time it's renewed?

2 A. I thought that's what he meant.

3 Q. Okay. Now, why do you think you were able to  
4 get your ID the second time around?

5 A. Well, I think the help from the Senator must  
6 have done that.

7 Q. Okay. And what do you think it takes to get an  
8 ID? Do you think it's easy to get one?

9 A. No, even if the Senator didn't do anything, I  
10 would have been consistently persistent. I  
11 threatened to sit in the wheelchair in front of the  
12 courthouse and just picket it until I got it. I  
13 would have continued on.

14 Q. Your situation, though, is a little different  
15 because of your family, isn't it?

16 A. Yes, I have the great support of my family.  
17 They're wonderful, and so it is different. People  
18 don't have the support that I have.

19 Q. And again, do you believe that Senator  
20 McIlhinney's assistance helped you get your ID?

21 A. Yes.

22 ATTORNEY SCHNEIDER:

23 I have nothing further.

24 CROSS EXAMINATION

25 BY ATTORNEY CAWLEY:

1 Q. Ms. Block, I have some follow-up questions based  
2 on your testimony.

3 ATTORNEY SCHNEIDER:

4 Do you want to switch?

5 ATTORNEY CAWLEY:

6 I'll just move over a little bit.

7 BY ATTORNEY CAWLEY:

8 Q. Okay. So you have a number of family members  
9 nearby who drive you places?

10 A. Yes.

11 Q. So you never have any problems getting around  
12 town to places you need to go?

13 A. No.

14 Q. So you have family members who took you to the  
15 PennDOT driver's license center?

16 A. Yes.

17 Q. And they take you to vote on election day?

18 A. Yes.

19 Q. Focusing on your voter registration, you are  
20 registered under the name Joyce Block; correct?

21 A. Yes.

22 Q. And we'll talk about the documents that you took  
23 with you to the PennDOT center the first time you  
24 went there. Before you went, of course, you  
25 contacted Senator McIlhinney's office before going to

1 find out what documents you needed?

2 A. Yes.

3 Q. And you took documents consistent with what his  
4 office told you?

5 A. Right.

6 Q. And one of those documents was your Social  
7 Security card?

8 A. Yes.

9 Q. And your attorney has identified that as Trial  
10 Exhibit Four. And I'll just ask you to look at the  
11 card that you have sitting in front of you. And  
12 there's a typewritten name, as there is on every  
13 card. And what is your name? How does your name  
14 appear on that card?

15 A. Joyce Lucille Altman.

16 Q. And did you sign that card in your handwriting?

17 A. Yes.

18 Q. And what name did you sign?

19 A. Joyce Block.

20 Q. And, of course, we have Trial Exhibit One, which  
21 is your birth certificate. And again, your birth  
22 certificate has your maiden name on it; right?

23 A. Yes.

24 Q. And that's Joyce Altman?

25 A. Yes.

1 Q. So the second time that you went to the PennDOT  
2 center, they issued you a photo ID card?

3 A. Yes.

4 ATTORNEY CAWLEY:

5 And we can mark the photo ID card ---  
6 which was a deposition exhibit, we can mark this as  
7 Trial Exhibit Six.

8 COURT REPORTER:

9 Trial Exhibit Six?

10 ATTORNEY CAWLEY:

11 Yeah. Block Six.

12 ATTORNEY SCHNEIDER:

13 Well, Block.

14 BY ATTORNEY CAWLEY:

15 Q. I'll ask you just to take a look at that  
16 document, which I think you looked at earlier. Is  
17 that Exhibit Six that you have in your hands the  
18 photo ID card that you were issued on your second  
19 trip to PennDOT?

20 A. Yes.

21 Q. Okay. And on the right side where it has some  
22 printed information, it indicates that that was  
23 issued to you on April 25th, 2012; is that right?

24 A. I guess so, yes.

25 Q. That's right above your signature?

1 A. Yes.

2 Q. Okay. And do you see that it expires on April  
3 30th, 2016?

4 A. Yes.

5 Q. And do you intend to take this card with you on  
6 election day?

7 A. Yes.

8 Q. You didn't have to pay any money for this card?

9 A. No.

10 Q. When you were at the PennDOT center, did you  
11 tell them that you were getting this ID card  
12 specifically for purposes of voting?

13 A. Yes.

14 Q. And when they told you that you were going to  
15 have to pay a fee when you renewed it in 2016, did  
16 you tell them that you were using this to vote?

17 A. Yes.

18 ATTORNEY CAWLEY:

19 Those are all the questions I have.

20 ATTORNEY SCHNEIDER:

21 I have some Redirect.

22 REDIRECT EXAMINATION

23 BY ATTORNEY SCHNEIDER:

24 Q. Joyce, when you went to the driver's license  
25 center the second time and they gave you the photo

1 ID, was the card that they gave you called a  
2 temporary ID?

3 A. Yes.

4 Q. And did it --- was it marked across temporary ID  
5 on it? Did it have that marking on it?

6 A. I don't recall.

7 Q. But do you remember getting a second ID ---

8 A. Yes.

9 Q. --- in the mail afterward?

10 A. Yes.

11 Q. Okay. And so is this Block Exhibit Six --- is  
12 this the ID that was mailed to you ---

13 A. Yes.

14 Q. --- later? Okay. So is that the basis for your  
15 statement in the petition that you were worried about  
16 the temporary ID because it had --- they told you it  
17 was temporary at the time they issued it?

18 A. Yes.

19 Q. Okay.

20 ATTORNEY SCHNEIDER:

21 I have nothing further.

22 ATTORNEY CAWLEY:

23 I have nothing further either. Thank  
24 you.

25 VIDEOGRAPHER:

1                   Okay. The deposition is concluded at  
2 2:02.

3 VIDEO ENDS

4                   JUDGE SIMPSON:

5                   I didn't get some of that. I didn't  
6 quite understand, what was the name on the Social  
7 Security card?

8                   ATTORNEY SCHNEIDER:

9                   It's her maiden name, Joyce Altman.

10                  JUDGE SIMPSON:

11                  Altman?

12                  ATTORNEY SCHNEIDER:

13                  But she signed --- she had signed  
14 it ---

15                  JUDGE SIMPSON:

16                  She signed it Block.

17                  ATTORNEY SCHNEIDER:

18                  --- Joyce Block. Right. But, Your  
19 Honor, the Social Security card unfortunately was  
20 substituted later and is not in this packet of  
21 exhibits. But we will have that for you and mark it  
22 later. I do not have a copy in the courtroom today,  
23 but I can get it to you either this afternoon or  
24 tomorrow.

25                  JUDGE SIMPSON:

1 All right.

2 ATTORNEY SCHNEIDER:

3 Your Honor, we have one more witness  
4 and then another video. And I was just wondering  
5 what you would like to do as far as the schedule.

6 JUDGE SIMPSON:

7 You mean that's all you have today?

8 ATTORNEY SCHNEIDER:

9 Well, two videos. One about the length  
10 of --- this length.

11 JUDGE SIMPSON:

12 So you have, let's see, two videos,  
13 each about this length?

14 ATTORNEY SCHNEIDER:

15 No. No, Your Honor. We're  
16 calling ---.

17 JUDGE SIMPSON:

18 How much time do you think you have?

19 ATTORNEY SCHNEIDER:

20 Probably about another hour, maybe an  
21 hour and a half.

22 JUDGE SIMPSON:

23 Okay.

24 ATTORNEY SCHNEIDER:

25 Would that be right?



1                   JUDGE SIMPSON:

2                   Does that sound right? Well, why don't  
3 we take lunch now? Anybody else want lunch? We'll  
4 take a lunch break for an hour and then we'll  
5 reconvene until that --- until you're ---.

6                   ATTORNEY SCHNEIDER:

7                   Okay.

8                   JUDGE SIMPSON:

9                   Then we'll just finish for the day.

10                  ATTORNEY SCHNEIDER:

11                  Okay. Thank you, Your Honor.

12                  JUDGE SIMPSON:

13                  All right?

14                  MR. TURNER:

15                  Commonwealth Court is now in recess.

16 RECESS TAKEN

17                  MR. TURNER:

18                  Ladies and gentlemen, Commonwealth  
19 Court is now in session.

20                  JUDGE SIMPSON:

21                  Thank you.

22                  ATTORNEY SCHNEIDER:

23                  Your Honor, I have some ---.

24                  JUDGE SIMPSON:

25                  Did you have lunch?

1                   ATTORNEY SCHNEIDER:

2                   Yes.

3                   ATTORNEY CAWLEY:

4                   I did, Your Honor.

5                   JUDGE SIMPSON:

6                   Are we ready to go?

7                   ATTORNEY SCHNEIDER:

8                   Yes, Your Honor. I just wanted to  
9 clear up some of the exhibits from the last  
10 examination. First of all, we would like to  
11 introduce the video as an exhibit.

12                  JUDGE SIMPSON:

13                  Great.

14                  ATTORNEY SCHNEIDER:

15                  The video would be Exhibit 34.

16                  JUDGE SIMPSON:

17                  And you're moving that?

18                  ATTORNEY SCHNEIDER:

19                  Yes, and we're moving that into  
20 evidence.

21                  (Petitioners' Exhibit 34 marked for  
22 identification.)

23                  JUDGE SIMPSON:

24                  It's received.

25                  ATTORNEY SCHNEIDER:

1                   And, Your Honor, I also have the  
2 exhibit that was missing in the packet. The  
3 Petitioner Block Social Security card, I'd like to  
4 mark as Exhibit 35.

5                   (Petitioners' Exhibit 35 marked for  
6 identification.)

7                   JUDGE SIMPSON:

8                   Okay.

9                   ATTORNEY SCHNEIDER:

10                   And also move that into evidence. And  
11 I don't believe that I moved the other exhibits into  
12 evidence, so I'd like to move those into evidence at  
13 this time.

14                   JUDGE SIMPSON:

15                   Any objections?

16                   ATTORNEY CAWLEY:

17                   No objection, Your Honor.

18                   JUDGE SIMPSON:

19                   Thirty-two (32) is received, 33 is  
20 received, 34 was previously received. Actually,  
21 let's go back to Sutter. Okay, we did that one.  
22 That's in. And 35 was received.

23                   ATTORNEY SCHNEIDER:

24                   Thank you, Your Honor. Petitioners  
25 call David Burgess.

1                   MR. TURNER:

2                   Please raise your right hand.

3 -----

4                   DAVID BURGESS, HAVING FIRST BEEN DULY SWORN,

5                   TESTIFIED AS FOLLOWS:

6 -----

7                   MR. TURNER:

8                   Thank you.

9                   DIRECT EXAMINATION

10                  BY ATTORNEY SCHNEIDER:

11                  Q.    Good afternoon, Mr. Burgess.

12                  A.    Good afternoon.

13                  Q.    We met before at your deposition.  Would you  
14                  please state your name for the record?

15                  A.    My name is David Burgess.

16                  Q.    And you're currently the Deputy Secretary for  
17                  Planning and Service Delivery at the Department of  
18                  State; correct?

19                  A.    Correct.

20                  Q.    And you've held that position since 2008?

21                  A.    Correct.

22                  Q.    And before that you were the Chief Information  
23                  Officer for the Department of State; is that correct?

24                  A.    That's correct.

25                  Q.    And even though your title changed, your current

1 job title changed, you're still the Chief Information  
2 Officer for the Department of State?

3 A. That's correct.

4 Q. And as part of your job, you oversee all  
5 technology systems for the Department of State?

6 A. That's correct.

7 Q. And that oversight includes the Statewide  
8 Uniform Registry of Electors or SURE; is that  
9 correct?

10 A. Correct.

11 Q. And SURE includes a computer database of all  
12 registered voters in Pennsylvania?

13 A. Correct.

14 Q. And the SURE voter registration or SURE VR is a  
15 computer system that the counties use to enter data  
16 for their individual counties?

17 A. That's correct.

18 Q. So when we speak about the SURE database today  
19 at the trial, we're referring to the Department of  
20 State's records of all registered voters in  
21 Pennsylvania. Do you agree with that?

22 A. For today, yes.

23 Q. Okay. Now, the Department of State started  
24 developing SURE in 2002?

25 A. Correct.

1 Q. And it was fully implemented in 2007?

2 A. December of 2006 for January 1st, 2007, correct.

3 Q. Okay. So that means all the counties were  
4 connected to SURE at that time; is that right?

5 A. That's correct.

6 Q. But since 2002, changes in the law, new voter  
7 registrations had to include either a PennDOT ID  
8 number or a Social Security number; is that right?

9 A. Since HAVA.

10 Q. Since HAVA.

11 A. Correct.

12 Q. So 2003, in that area when HAVA was enacted;  
13 correct?

14 A. Yes.

15 Q. But before that time, voters did not have to  
16 provide a driver's license number or Social Security  
17 number with their voter registration?

18 A. To my knowledge, that's correct.

19 Q. So up until this year up until --- the  
20 Department of State did not have either PennDOT  
21 driver's license numbers or Social Security numbers  
22 for more than half of the registered voters in its  
23 database; is that true?

24 A. I'm not exactly sure of the number, but it was  
25 around there, yes.

1 Q. Okay. Well, it was more than half; is that  
2 right?

3 A. Correct.

4 Q. Now, are you familiar with Act 18 of 2012, the  
5 Pennsylvania voter ID law?

6 A. Yes, I am.

7 Q. And so when we talk about the voter ID law, the  
8 photo ID law, you'll understand that we're talking  
9 about Act 18; right?

10 A. Correct, yes.

11 Q. And Act 18 requires voters to show a specific  
12 form of photo ID at the polls; is that your  
13 understanding?

14 A. Correct, yes.

15 Q. Now, we're going to talk about --- after passage  
16 of the photo ID law, did there come a time when the  
17 Department of State decided to do a project where it  
18 compared the PennDOT database of people who had a  
19 PennDOT license with the SURE database of people who  
20 are registered voters in Pennsylvania?

21 A. I don't know if it happened after or during or  
22 right before, but yes, we have done that.

23 Q. Was it this year that you did that project?

24 A. Yes.

25 Q. And do you remember --- it started in April, you

1 started that project in April of 2012; is that right?

2 A. The current project, yes. It had been talked  
3 about for awhile.

4 Q. You call that the backfill project; is that  
5 right?

6 A. Correct, yes.

7 Q. And was that completed in June of this year?

8 A. Yes.

9 Q. So the backfill project was designed to match  
10 the records in the two databases, the records in  
11 PennDOT's database with the records in the SURE  
12 database; right?

13 A. It was designed to basically bring our records  
14 up-to-date. So yes, it was to match the Department  
15 of State with PennDOT so that we could fill in the  
16 driver's license.

17 Q. Right. So the point of the project was to  
18 capture --- to capture the PennDOT data into the SURE  
19 data that may not have been there; is that right?

20 A. Correct.

21 Q. But another result of the backfill project would  
22 reveal the number of registered voters who did not  
23 --- who you had not captured PennDOT data for; is  
24 that right?

25 A. It would reveal which ones could not be matched



1 between the two databases, that is correct.

2 Q. So that subset of voters would not have PennDOT  
3 information associated with them; right?

4 A. It wouldn't have the PennDOT information from  
5 PennDOT. That is correct.

6 Q. So if through this process, if the SURE database  
7 didn't have a PennDOT number ID already in it, you  
8 would be able to import or, as you say, backfill it  
9 into the SURE database; is that right?

10 A. Correct.

11 Q. So that's why it was called the backfill  
12 project; is that ---?

13 A. Yes.

14 Q. So you supervised the matching process from the  
15 Department of State site, didn't you?

16 A. I oversaw it as a Deputy Secretary. There were  
17 project managers who ran the project.

18 Q. But they reported to you; right?

19 A. Yes.

20 Q. And you had a role in determining what would  
21 constitute a match between the two databases; right?

22 A. In discussions we talked about how you would  
23 match it, correct.

24 Q. But did you have a role in helping to define  
25 what would constitute a match between the two

1 databases?

2 A. Yes.

3 Q. So a match would mean that a person --- if there  
4 was a match, it meant the person was in both  
5 databases, they were in both PennDOT and SURE; right?

6 A. If there was an exact match, yes.

7 Q. So to start the match process, the Department of  
8 State sent the computer files of the SURE database  
9 over to PennDOT?

10 A. That's correct.

11 Q. And then after PennDOT received the files, they  
12 compared the two databases and then they generated  
13 files to send back to Department of State; correct?

14 A. Correct.

15 Q. And PennDOT did that before the Department of  
16 State even looked at the data; right?

17 A. That is correct.

18 Q. So PennDOT's first match in your understanding  
19 is that they compared the driver's license number and  
20 the first two characters of the last name?

21 A. And the date of birth.

22 Q. And the date of birth? That was their  
23 first ---?

24 A. That was the start and then they went down from  
25 there, just name, date of birth, if there were no

1 driver's license in our --- they couldn't compare.

2 Q. Right. So but if they had --- if there were ---  
3 if the records both had a driver's license number,  
4 they compare the driver's license and the first two  
5 characters of the last names ---

6 A. And the date of birth.

7 Q. --- and the date of birth?

8 A. Correct.

9 Q. And that was the exact match. And then --- but  
10 you have understanding also that they also compared  
11 the first name, last name, date of birth and Social  
12 Security number?

13 A. I'm not sure about the Social Security number.  
14 They did compare the names and date of births if  
15 there was no driver's license. But if there was a  
16 Social Security number as well, I'm not sure if they  
17 did or didn't check that.

18 Q. But they did do a comparison --- after they did  
19 the first run, they did a comparison of the first  
20 name, last name and date of birth?

21 A. Correct.

22 Q. And that process allowed PennDOT to generate all  
23 the results that were sent back to the Department of  
24 State?

25 A. Correct.

1 Q. And when you sent the SURE database, it's a  
2 large file, right, so you divided it into ten  
3 separate files; correct?

4 A. That is correct.

5 Q. And so when the Department --- when PennDOT  
6 compared it and they got the result, they sent you  
7 back two files for each of those one; right?

8 A. Correct.

9 Q. And one file had the matches or no match?

10 A. Correct.

11 Q. And the other file had possible matches?

12 A. Correct.

13 Q. So when PennDOT --- after PennDOT sent the files  
14 back to the Department of State, you reviewed those  
15 files; right?

16 A. Yes. The project team reviewed the files, yes.

17 Q. So when I say review, I mean people who were  
18 working on the project who reported to you and were  
19 under your supervision?

20 A. Correct. We did all the matches, yes.

21 Q. Now, the --- you reviewed --- you did other  
22 matches you said, so you looked to see if you could  
23 find more matches?

24 A. In the possible matches we looked to see if we  
25 could find the exact match.

1 Q. Okay. And when you did this review, you checked  
2 things like people's Social Security number or their  
3 date of birth?

4 A. Uh-huh (yes). Yes.

5 Q. And you were able to find more matches?

6 A. We were able to exactly match or statistically  
7 match the --- those that were possible, yes.

8 Q. And you called these matches --- when you did  
9 the comparison after you got the data back from  
10 PennDOT, you called them statistical matches because  
11 they --- you had some judgment calls to make about  
12 it; right?

13 A. Correct.

14 Q. Now, I'd like to talk about the match results  
15 now. So after the Department of State's review, your  
16 project managers reported the results to you; is that  
17 right?

18 A. Correct.

19 Q. And you looked at those results. There were  
20 several refinements of those results; right?

21 A. Yes.

22 Q. And you received communications from your team  
23 that conveyed the results to you; right?

24 A. Yes.

25 ATTORNEY SCHNEIDER:

1           Your Honor, I would like to mark as  
2 Exhibit 36 this demonstrative exhibit. Your Honor,  
3 this is a summary of the result of the backfill  
4 matching project that we've been discussing and I  
5 prepared this document. It's not a document that was  
6 produced by Respondents in this litigation, but it is  
7 a summary of the data from the documents that were  
8 produced. And I disclosed it in advance to Mr.  
9 Cawley and he has expressed no objection.

10                   (Petitioners' Exhibit 36 marked for  
11 identification.)

12                   JUDGE SIMPSON:

13                   Are you here as an observer?

14                   ATTORNEY CAWLEY:

15                   I'm sorry, Your Honor. Are you asking  
16 for confirmation of that from the Respondents?

17                   JUDGE SIMPSON:

18                   No, I'm asking if Senior Judge Friedman  
19 is here as an observer or if she is here on an  
20 official visit.

21                   JUDGE FRIEDMAN:

22                   No, just as an observer.

23                   JUDGE SIMPSON:

24                   Okay. Thank you. My colleague just  
25 came in the room. I need to make sure I'm on my best

1 behavior. Anyway, I set you off your pace there.

2 ATTORNEY SCHNEIDER:

3 That's okay.

4 JUDGE SIMPSON:

5 This is something that you put together  
6 to make representation of the results of these ---  
7 the backfill project.

8 ATTORNEY SCHNEIDER:

9 Yes, Your Honor.

10 BY ATTORNEY SCHNEIDER:

11 Q. Mr. Burgess, I'm going to go walk you through  
12 the matching results on this summary document. So if  
13 you would look at the first number, 8,232,928, that's  
14 the total number of registered voters in the SURE  
15 database; is that right?

16 A. It's the active voters --- I mean valid voters.  
17 I'm sorry. I used the wrong term. It's valid  
18 voters.

19 Q. Valid voters.

20 A. Yes.

21 Q. But these are people that even are --- their  
22 registration has not been cancelled; is that correct?

23 A. Correct.

24 Q. So these represent any voter who could show up  
25 to the polls in November and vote?

1 A. Correct.

2 Q. And looking at the next line, the 4,573,848,  
3 that represents the number of registered voters that  
4 match exactly between the PennDOT database and the  
5 SURE database?

6 A. Correct.

7 Q. And so if you subtract that four million number  
8 from 8.2, that leaves about three million --- and I  
9 don't have that number on here, but there's about  
10 3,659,080 voters left to match. Does that appear  
11 correct to you?

12 A. Yes, it's the addition of the next two numbers.

13 Q. So the next number, 2,769,952, that's the number  
14 of registered voters that your team reviewed and  
15 concluded that they were statistically --- they  
16 statistically match between the two databases; is  
17 that right?

18 A. We were able to find another record in that  
19 database based on the data, yes. So they  
20 statistically matched.

21 Q. So you considered those a match, though;  
22 correct?

23 A. Correct.

24 Q. So subtracting that number from the others, the  
25 remainder is 889,128 voters; is that correct?



1 A. That's correct.

2 Q. So the 889,128 voters is the number of  
3 registered voters for which neither DOS nor PennDOT  
4 could find a match in the two databases; is that  
5 right?

6 A. That's correct.

7 Q. So continuing down, the next number, 130,189,  
8 those people didn't match in the database; is that  
9 correct?

10 A. Correct.

11 Q. But they were subtracted out of the --- they  
12 were subtracted from the 889,000 number, weren't  
13 they?

14 A. Yes, they were.

15 Q. And so that left 758,939; is that right?

16 A. That's correct.

17 Q. And that's the number that was publicly  
18 disclosed; correct?

19 A. Correct.

20 Q. Even though there's 130,189 that did not match  
21 the database, that was not what was disclosed to the  
22 public; is that right?

23 A. I don't know if that number was or when it was  
24 disclosed. The 130,000 are people who said that they  
25 had PennDOT IDs.

1 Q. But they went through the matching system that  
2 you described?

3 A. Correct.

4 Q. And PennDOT tried to match them and didn't come  
5 up with a match; is that right?

6 A. Correct. So the number was probably fat  
7 fingered either on the registration or one that was  
8 typed into the system.

9 Q. But the bottom line is that PennDOT was unable  
10 to find a match for them?

11 A. PennDOT was unable to find a match.

12 Q. Even though they matched the first name, last  
13 name and date of birth as you described?

14 A. Correct.

15 Q. Okay. I would like you to turn to the second  
16 page of this document. So at the top, again, we have  
17 the 758,939 voters that were publicly disclosed as  
18 not matching in the databases; correct?

19 A. Correct.

20 Q. And then below that is again the 130,189 that  
21 also did not match. Those are the ones that couldn't  
22 be found, couldn't be matched from the DOS databases  
23 and with PennDOT?

24 A. Correct.

25 Q. Now, below that, isn't it true that your

1 analysis revealed that 574,630 voters had a PennDOT  
2 ID, but that it expired October 1st, 2011 or earlier?

3 A. That is correct.

4 Q. And so those voters --- those 574,000 voters  
5 were not included in the number of voters that ---  
6 I'm sorry, they were included in the numbers that  
7 matched; is that right?

8 A. Correct.

9 Q. But according --- so according to your analysis,  
10 574,000 voters have an ID that wouldn't be valid for  
11 voting in November; is that right?

12 A. They have a PennDOT ID that is expired. They  
13 would not be valid today unless it gets updated or  
14 they get a state ID, which being in the system is  
15 very easy to do. But correct, today, it's not valid.

16 Q. So they couldn't vote. They couldn't show that  
17 ID --- if they don't get that renewed, they can't  
18 show that ID to vote in November?

19 A. Correct, if they do not get it renewed.

20 Q. So adding these three numbers together, the  
21 758,000 that you publicly disclosed don't match, plus  
22 the 130,000 that did not actually match, plus the  
23 574,000 whose ID is expired and won't be valid for  
24 voting today, adding all three of those together  
25 equals 1,463,758?

1 A. That's correct.

2 Q. So your analysis shows that there's 1,463,758  
3 voters who don't have an ID that's valid for voting;  
4 is that right?

5 A. Today, correct.

6 Q. Okay. I want to talk about another phase of the  
7 project that came up after you finished the analysis.  
8 After you finished the backfill project, the  
9 Department decided to send letters to the voters  
10 whose records didn't match; is that right?

11 A. Well, there was a voter outreach that's going to  
12 go anyway, but the 758,000, it was decided to send a  
13 specific letter to them, correct.

14 Q. You had some responsibility for the mailing of  
15 those letters; is that right?

16 A. All the responsibility I had was to send the  
17 data to DGS. DGS did the actual printing and  
18 sending.

19 Q. And DGS is the Department of General Services?

20 A. That is correct.

21 Q. So your job was to send them the list of the  
22 voters?

23 A. The 758,000, that's correct.

24 Q. Right. But the mailing list that you sent  
25 didn't include the 130,189 voters who didn't match in

1 the database?

2 A. That is correct.

3 Q. And it didn't include the 574,000 voters whose  
4 ID was already expired?

5 A. That's correct. Because both of those will be  
6 getting a letter before the election in the voter  
7 outreach.

8 Q. So they haven't received any mailing from  
9 Department of State now; correct?

10 A. Correct.

11 Q. And you're saying that they're going to receive  
12 a mailing when the Department of State mails to all  
13 households of registered voters in the Commonwealth;  
14 is that right?

15 A. Correct.

16 Q. And that hasn't gone out yet?

17 A. It has not gone out yet, as far as I know.

18 Q. And is your job going to be to provide that list  
19 for that mailing as well?

20 A. All of this out of the SURE system would come  
21 through my Department, yes.

22 Q. Okay. So plans aren't to send that until the  
23 fall; is that right?

24 A. That is correct.

25 ATTORNEY SCHNEIDER:

1 I would like to mark as Exhibit 37 the  
2 Department of State's press release from July 3rd.

3 (Petitioners' Exhibit 37 marked for  
4 identification.)

5 BY ATTORNEY SCHNEIDER:

6 Q. Mr. Burgess, before we move on to that press  
7 release, when are you planning to do the mailing to  
8 the more than five million households in the fall?

9 A. I don't actually know the date at this point.

10 Q. Has it not been determined?

11 A. I believe it has. I have not been part of that  
12 process at this point.

13 Q. Okay. So you don't have a deadline for when you  
14 have to send the list over, do you?

15 A. Not at this time, no.

16 Q. Okay. Mr. Burgess, I'm showing you what we  
17 identified as Petitioners' Exhibit 37, which is a ---  
18 do you recognize this document? Have you seen this  
19 press release before?

20 A. I do believe I've seen it before, yes.

21 Q. And this press release announces the results of  
22 the SURE database match; is that right?

23 A. Yes, it does.

24 Q. And the numbers that are reported in this press  
25 release are the numbers that we just went over; is

1 that correct?

2 A. Yes.

3 Q. Now, do you see on the first page about the  
4 middle of the page where it talks about inactive  
5 voters? It's about middle way down, it says of the  
6 758,939 voters who could not be matched between the  
7 Department of State and PennDOT databases, 22 percent  
8 or 167,566 are inactive voters, most of whom have not  
9 voted since 2007? Do you see that?

10 A. I do.

11 Q. And, in fact, you queried the database for the  
12 number of inactive voters, didn't you?

13 A. Yes.

14 Q. And now that 167,566 inactive voters, out of  
15 those, 44 percent of those have voted within --- in a  
16 time period shorter than five years; is that correct?

17 A. Yes, if you put the ---.

18 JUDGE SIMPSON:

19 Okay. I didn't hear the question. I  
20 don't understand the question.

21 ATTORNEY SCHNEIDER:

22 Sorry.

23 BY ATTORNEY SCHNEIDER:

24 Q. Okay. So this says that 22 percent --- you're  
25 saying 167,566 are considered inactive voters; is

1 that right?

2 A. That's correct.

3 Q. And it says in here that most of those have not  
4 voted since 2007; is that right?

5 A. Correct.

6 Q. But when you look at those numbers and you query  
7 the database for inactive voters, isn't it true that  
8 approximately 44 percent of them had voted since  
9 January 1st, 2008, when this query was --- which was  
10 the date you did the query, that there were voters  
11 who voted since 2007 election?

12 A. There are voters, yes.

13 Q. And that the inactive voters could be voters who  
14 were inactive for a variety of period of times?

15 A. Correct.

16 Q. And some of those are quite short; is that  
17 right?

18 A. Like the NBRA that just --- the national change  
19 of address just ran a five year notice with inactive  
20 individuals, correct.

21 Q. But there were some individuals who in this  
22 group might have voted in the last Presidential  
23 election; isn't that true?

24 A. There were some.

25 Q. But so it was only a portion of them that hadn't



1 voted since January 2007?

2 A. I don't remember the exact numbers, but there  
3 was a number that hadn't and there were some that  
4 had.

5 Q. Well, but you have --- there's a document here  
6 that shows the exact numbers; is that right?

7 A. Yes, there would be, yes.

8 Q. When the Department of State classifies or the  
9 counties classify voters as inactive, isn't it true  
10 that they have simply not responded to a  
11 communication from the counties?

12 A. Yeah, there's many reasons why they would be  
13 inactive, but yes, they get placed inactive.

14 Q. Now, looking at this press release, this does  
15 not mention the 574,630 voters who have an expired  
16 ID, does it?

17 A. It does not appear to, no.

18 Q. And those voters don't have an ID that's valid  
19 for voting in November; correct?

20 A. Currently, no.

21 Q. I'd like to talk a little about the new  
22 Department of State ID that's going to be issued.  
23 Are you familiar with that ID?

24 A. I am.

25 Q. And PennDOT is going to be issuing the ID card

1 for the Department of State; isn't that right?

2 A. That is my understanding, yes.

3 Q. So the voters will have to go to a PennDOT  
4 center to get this new ID card; right?

5 A. Correct.

6 Q. And the Department of State is planning that  
7 this ID card is going to be available for the 2012  
8 election; right?

9 A. Correct.

10 Q. But in order to issue the Department of State ID  
11 card, the PennDOT clerks are going to have to check  
12 and see whether the person seeking the ID is a  
13 registered voter; is that right?

14 A. That is correct.

15 Q. And so they're going to have to check in the  
16 SURE database?

17 A. Correct.

18 Q. And PennDOT doesn't have a way for their clerks  
19 to check through their computers right now, do they?

20 A. No, they do not.

21 Q. So the clerks are going to have to call the SURE  
22 help desk to verify that applicant's registration;  
23 is that right?

24 A. That's correct.

25 Q. And the help desk is a group of individuals that

1 work in your department that field calls relating to  
2 the SURE database; is that right?

3 A. That's correct.

4 Q. And so the PennDOT clerks are supposed to call  
5 the Department of State help desk while the voter's  
6 waiting at the PennDOT driver's license center?

7 A. That's correct.

8 Q. And the SURE help desk is currently staffed with  
9 four employees; is that right?

10 A. Yes, we're increasing by one.

11 Q. And you've got authorization to add an  
12 additional employee?

13 A. Yes.

14 Q. But has that person started yet?

15 A. August 13.

16 Q. Okay. Now, currently the SURE help desk fields  
17 calls from all 67 counties about SURE questions; is  
18 that right?

19 A. That's correct.

20 Q. And they also field inquiries from the general  
21 public?

22 A. Yes, sometimes.

23 Q. Those are by telephone or e-mail?

24 A. Yes, by both.

25 Q. By both. And so they answer the calls and they

1 have to respond to e-mails?

2 A. Uh-huh (yes). Yes.

3 Q. So they're already doing this?

4 A. Yes.

5 Q. And they have other duties as well; is that  
6 right?

7 A. If time allows, yes.

8 Q. Excuse me?

9 A. If time allows. Their main duty is to answer  
10 the phone calls and get the resolutions for the users  
11 of the system.

12 Q. So on top of this, on top of their current  
13 duties, they are now going to have to field calls  
14 from all 71 driver's license centers?

15 A. That's correct.

16 Q. And these would be --- this would add to the  
17 task of fielding the calls from the 67 counties and  
18 from the general public?

19 A. Correct.

20 Q. So you haven't made any determination of how  
21 many calls the new Department of State ID would  
22 generate to the help desk, have you?

23 A. My understanding is that it's very minimal, but  
24 we have not --- we have not --- we don't know how  
25 many are going to call. That is correct.

1 Q. Because you've not taken --- you haven't  
2 undertaken any systematic study of how many this  
3 might generate or how many calls they might be  
4 fielding?

5 A. Nope.

6 Q. And you haven't made any study about how many  
7 requests might be able to be processed in an hour,  
8 have you?

9 A. At this point we have not.

10 Q. Okay. And you have not measured how long it  
11 takes one of your help desk employees to check a  
12 voter registration, have you?

13 A. No, they're finalizing the system that they're  
14 going to use.

15 Q. Okay. The system at the help desk that they're  
16 going to use now at this time?

17 A. Correct.

18 Q. So the length of time to check a voter  
19 registration might increase if there is a lot of  
20 calls in the call queue; is that right?

21 A. The length of time ---?

22 Q. Right. So in other words if there's a heavy  
23 volume of calls those calls are queued; is that  
24 right?

25 A. Correct, yes.

1 Q. And so there might be a queue of callers waiting  
2 to be helped by the help desk; isn't that true?

3 A. That's correct. We have a secondary queue,  
4 however, so that it would roll over to the SURE team  
5 itself, which is four more individuals.

6 Q. Right. But there would still --- there still  
7 could be a call queue generated from the volume of  
8 calls to the help desk ---

9 A. Sure.

10 Q. --- whether the help desk is answering it or the  
11 SURE team is answering it?

12 A. That's correct.

13 Q. And if there is a backlog of calls in the queue  
14 that could add to the time; isn't that right?

15 A. The overall time, yes.

16 Q. So during the 30 days between --- before a  
17 Presidential election, would you consider that to be  
18 the peak time for the SURE help desk?

19 A. Yes.

20 Q. And so you don't --- you have not measured how  
21 many calls would be taken during that peak time, have  
22 you?

23 A. We have statistics on trends from last  
24 Presidential elections.

25 Q. You have those statistics?

1 A. We can get them, yes.

2 Q. But you haven't looked at them in connection  
3 with the new DOS ID card, have you?

4 A. No, we have not.

5 Q. And you haven't done any analysis to see how the  
6 new DOS ID card would impact those statistics, have  
7 you?

8 A. No, we haven't.

9 Q. So would you characterize this process where the  
10 PennDOT technician, the PennDOT clerks, calls the  
11 Department of State help desk as a manual check on  
12 the voter registration?

13 A. Yes, I would.

14 Q. And so right now that's the only way that  
15 PennDOT can check a voter's registration; right?

16 A. Yes, that's correct.

17 Q. But you're working on a fix for this; isn't that  
18 correct?

19 A. That's correct. We're in the preliminary  
20 stages.

21 Q. The preliminary stages. And the fix that you're  
22 working on is so that PennDOT's computers can connect  
23 directly with the SURE database; is that right?

24 A. That's correct.

25 Q. And so part of that project includes developing

1 IT to allow PennDOT to check the voter registration  
2 electronically?

3 A. That would be correct.

4 Q. And so the development would be software  
5 development from Department of State and software  
6 development from PennDOT; correct?

7 A. Correct.

8 Q. Now, the electronic --- this electronic method  
9 of checking voter's registration status won't be  
10 available until August 2013; is that right?

11 A. We actually don't have a date for when it will  
12 be done, but it won't be for this election.

13 Q. Okay. But you haven't started the process of  
14 determining the timeline for this project; have you?

15 A. No, we haven't.

16 Q. So you haven't discussed with PennDOT what their  
17 schedule would be?

18 A. No, we are setting up meetings at this point.

19 Q. So isn't it true that you have --- when you make  
20 changes to the SURE database --- like this would be a  
21 change to the SURE database; correct?

22 A. Not necessarily, but probably would be.

23 Q. But changes to the SURE database are implemented  
24 twice a year; isn't that right?

25 A. That is correct. That's our hope.



1 Q. Your hope. And you call those changes a build;  
2 is that right?

3 A. Correct.

4 Q. And those builds are numbered sequentially;  
5 correct?

6 A. That is correct.

7 Q. And there's going to be a build this August;  
8 right?

9 A. There's a build --- yes.

10 Q. And what build number is that?

11 A. Build 13.

12 Q. Build 13 is this August. And then build 14  
13 would be when?

14 A. February of 2013 for the primary.

15 Q. I'm sorry?

16 A. For the primary.

17 Q. And then the next build after that would be what  
18 number?

19 A. For November --- it would be build 15 for  
20 November.

21 Q. Right. And so is it --- and so isn't it true  
22 that you would need until the build 15 to build a  
23 stable environment for this kind of electronic  
24 checking; is that right?

25 A. Not necessarily. That would be what we would

1 target. We do have minor builds every so often that  
2 do go in for various reasons if there's, you know, a  
3 need for it. We had a multiple minor --- but  
4 typically we try to do two builds a year for  
5 stability. That is correct.

6 Q. Okay. But the earliest, the earliest that this  
7 could go in would be April of 2013; is that true?

8 A. For the primary, correct.

9 Q. Okay. So as of today you haven't discussed with  
10 PennDOT the scheduling or timeline of the software  
11 development; is that true?

12 A. We have not.

13 Q. So in the meantime before the electronic  
14 verification system is ready you're going to be doing  
15 the manual check through the help desk?

16 A. That's correct, yes.

17 ATTORNEY SCHNEIDER:

18 I have nothing further.

19 JUDGE SIMPSON:

20 Thank you. Go ahead.

21 CROSS EXAMINATION

22 BY ATTORNEY CAWLEY:

23 Q. Mr. Burgess, how many years of your professional  
24 life have you spent working in positions involving  
25 computer science or information technology?

1 A. My entire career.

2 Q. And how many years was that?

3 A. Since 1983. So a few years.

4 Q. Okay. Let's talk about the SURE database. What  
5 kinds of --- or categories of information are  
6 contained in SURE?

7 A. SURE is --- the SURE itself is actually a suite  
8 of applications. The main piece is the voter  
9 registration, which contains all of the registered  
10 electors as well as all of the cancelled records, et  
11 cetera, all the information, all the applications.  
12 Everything that a county would do in voter  
13 registration is kept in that system, signatures,  
14 things like that, so that's the main piece. We also  
15 have the SURE portals which connects the counties to  
16 the agency and the agency and counties to the public.  
17 So you can go to the public or --- to the public web  
18 and you find out your registration, you can find out,  
19 you know, what's going on with your registration or  
20 you could find out where your polling place is, et  
21 cetera.

22 The agency to county information portals, we do  
23 a lot of voter registration --- or voter statistics  
24 and things like that. We also have election night  
25 returns which is part of portals. We then have the

1 election system which is our internal election  
2 system. It's been rewritten and imported into the  
3 portals. We did that because of the connection  
4 between the voter registration and our piece in  
5 elections. We also have a campaign finance, which  
6 was brought into the SURE portals as well because  
7 there's a need for counties and the agency to  
8 interact in that respect as well. HAVA required the  
9 HAVA interface which allows the SURE VR system to  
10 communicate to PennDOT and to Social Security  
11 Administration realtime for each and every  
12 applicant. And I feel like I'm missing something.  
13 But it's a large --- it's basically the entire  
14 elections process for the county, for the agency and  
15 for the public.

16 Q. And in all of those suites, is there any aspect  
17 of the SURE system that would prevent someone --- if  
18 the election were today before the voter ID law goes  
19 into effect, prevent someone from signing a poll book  
20 in the name of another registered voter and casting  
21 that other registered voter's vote?

22 A. No, there's actually nothing in the polling  
23 place of SURE related other than the poll book  
24 itself. So it's the process, it's the people, poll  
25 workers that would do that.

1 Q. Other than the backfill of PennDOT data into the  
2 SURE system, what was the point of the endeavor of  
3 comparing the two databases?

4 A. The major point was that backfill. The major  
5 point was to make sure that we have all the  
6 information that we needed in the database. The  
7 secondary point is the absentee application piece on  
8 the --- in the voter ID law itself has a provision  
9 for the Social Security, and if it's there, it will  
10 help that process. But from there, the rest of it  
11 was --- what happened afterward was just to find out  
12 how we can communicate to the external. That was  
13 sort of tacked onto the backfill project.

14 Q. And at some point it was determined that a  
15 letter would be sent out?

16 A. That's correct.

17 Q. And when that decision was made, what people  
18 were being targeted by the Department of State with  
19 that letter?

20 A. Those that we could not determine have a PennDOT  
21 ID. So it was basically the two --- and again, it's  
22 basically just the two databases could not be  
23 connected, so we could not know whether they do or  
24 don't have PennDOT ID. And that's the letter that  
25 was going to be sent out.

1 Q. And you were shown this set of numbers. When  
2 you were asked about this 130,000 number, why do  
3 those people not fall into the category of people who  
4 do not have a PennDOT ID?

5 A. Because they told us on their application that  
6 they have one. They gave us a number. And so they  
7 made it clear to the application process that I have  
8 a PennDOT ID and they gave it to us.

9 Q. So despite the inability to find a match, was an  
10 assumption made that these people have the ID or can  
11 get the ID that they need?

12 A. Yes, the assumption was made that since they  
13 told us they had one, that they had one.

14 JUDGE SIMPSON:

15 I'm not following the point.

16 ATTORNEY CAWLEY:

17 Okay. Shall I ask the questions again?

18 JUDGE SIMPSON:

19 Ask the question.

20 ATTORNEY CAWLEY:

21 Of course.

22 JUDGE SIMPSON:

23 How do you know they have a PennDOT ID?  
24 I guess I don't quite get that. How do you know they  
25 have a PennDOT ID?

1 A. In voter registration, a lot is on intent of the  
2 individual and the individual basically filled out an  
3 application, and when they filled out that  
4 application, they wrote in an ID number. It was  
5 either an assumption, of course, the fact that they  
6 wrote it told us that they're telling us that they  
7 have an ID. The fact that it was written --- it was  
8 either written wrong or it was typed in wrong. We  
9 don't have the paper.

10 JUDGE SIMPSON:

11 Let me just ask you to stop.

12 A. Yes.

13 JUDGE SIMPSON:

14 So when they applied to vote --- for  
15 vote --- when they registered to vote, they gave you  
16 some voter --- some PennDOT number.

17 A. Yes.

18 JUDGE SIMPSON:

19 So that's how you know they have a  
20 PennDOT card because they told you when they  
21 registered to vote.

22 A. Correct.

23 JUDGE SIMPSON:

24 Now go ahead.

25 ATTORNEY CAWLEY:

1 Sure.

2 BY ATTORNEY CAWLEY:

3 Q. And as far as the reasons why that 130,000  
4 didn't show up as an exact match with the PennDOT  
5 database, I believe you have were just explaining  
6 that to the Judge.

7 A. There's a couple reasons. One would be fat  
8 fingering of the numbers, there's a lot of numbers.

9 Q. You use that term, fat fingering. Could explain  
10 to those of us who are not ---?

11 A. When you're typing, you hit two keys instead of  
12 one or maybe you hit the wrong key instead of the one  
13 that you wanted, so you got the wrong number. In the  
14 data entry process, there is a number of that that  
15 could happen. And out of 8.2 million, 130,000 is  
16 within the realm of possibility, but there's also the  
17 names, the date of births could have been also either  
18 fat fingered, that term again, or they could have  
19 been valid because older systems did not keep the  
20 date of births in the database. So we don't have ---  
21 we might have an invalid date of birth for them.  
22 When you do data imports, there are some birth dates  
23 that the system --- the counties did not have birth  
24 dates, so they got 1/1/1800. That tells us it's an  
25 anomaly obviously and they didn't have a birth date,



1 but we needed to have a date so that date was put in.  
2 That obviously is not on the driver's license. So  
3 that may not have matched for various reasons there.  
4 So there is a number of different reasons, and  
5 without having the paper, we couldn't tell. The  
6 intent of that letter, though, was to send it out to  
7 those that we believed didn't indicate to us and  
8 didn't have a match that they don't have something  
9 and we wanted to say, listen, you might want to ---  
10 everybody else is getting a card or something that  
11 says, you know, please go get your information. With  
12 all the publicity that is out there everybody is  
13 hearing about all these numbers and all different  
14 cases, a lot of people are informed to go do what  
15 they need to do by November.

16 Q. And for the number 889,000, that number of  
17 voters, was that the --- I'm sorry, that's the wrong  
18 number. On the second page, 574,000, that was ---  
19 that number indicated what?

20 A. That their license was expired a year so that  
21 they would not --- basically would not be valid in  
22 --- for voting purposes. You can vote with an  
23 expired license up to a year of the expiration date.  
24 So that was that number, 574,000.

25 Q. And what was the rationale for not including

1 that or adding that on top of, as Petitioners'  
2 Counsel wants to do, the 758,000 number?

3 A. The rationale there is that they have a PennDOT  
4 ID, we can match that they have a PennDOT ID, it is  
5 expired at this point, so they have a couple of  
6 things to do. They either get it renewed or they can  
7 go in and get a PennDOT ID. As long as you're in the  
8 system, you can get an ID. So there's a streamlined  
9 process for those individuals, and that would be the  
10 communication as well as some of the other, you know,  
11 outreaches that are going on throughout the state,  
12 because, you know, people are going out for the  
13 Department saying that if you're in that category,  
14 this is all you have to do.

15 Q. Okay. Switching to the analysis that then  
16 followed ---.

17 JUDGE SIMPSON:

18 Pause for a moment.

19 ATTORNEY CAWLEY:

20 Of course.

21 JUDGE SIMPSON:

22 Thank you.

23 BY ATTORNEY CAWLEY:

24 Q. There was some testimony during Direct  
25 Examination about the distinction between an active

1 voter and an inactive voter. You said there were a  
2 number of reasons why one could be inactive, but I  
3 don't believe you explained those. Would you please  
4 explain what goes in to defining a voter as inactive?

5 A. I can do some of that, as the IT side. I don't  
6 know all the policy, but there's a number of  
7 different voter removal processes. The five-year  
8 notice, which if you haven't voted in five years, you  
9 get an active --- you get a notice. There's national  
10 change of address. If you're moving back and forth  
11 from one county to another, things like that.  
12 There's many different reasons why a record might be  
13 inactivated, and in all those cases a --- something  
14 would be sent out to the individual to respond. And  
15 after you're inactive --- you're inactive for two  
16 federal elections before you can actually be  
17 cancelled. I believe it's two federal elections, so  
18 there's a number of steps to go through. Valid  
19 voters, active and inactive, and both of those can  
20 show up at the poles and vote.

21 Q. Okay. So during the time period that somebody  
22 might be labeled inactive, say, for not voting ---  
23 for not voting for five years or more, is there any  
24 way of telling in the SURE database or anywhere else  
25 in the Department of State whether that voter still

1 lives in the State of Pennsylvania?

2 A. That's the reason you do the NCOA, is the  
3 national change of address. Our records --- the only  
4 records that we have is the voter registration  
5 system. That's why they have the multiple processes  
6 that they have. A number of the inactive probably  
7 have moved. There is no way to know if they've moved  
8 out of state at this point.

9 Q. Okay. And would those people who may possibly  
10 have moved be part of the number that you could not  
11 match with the PennDOT data?

12 A. The 758, yes.

13 Q. I'd like to ask you some questions about the  
14 Department of State voter ID card. You answered some  
15 questions about how PennDOT and the Department of  
16 State will communicate. How long does that phone  
17 call or will that phone call take to determine  
18 whether a voter is registered?

19 A. Currently we don't exactly know. We have a  
20 system where you're going to type in the information  
21 that they give us, hit the submit. It's going to  
22 then check the database. It should be subsecond for  
23 it to come back, and that coming back will tell us  
24 whether or not the person's registered, whether or  
25 not there's --- the person's Social Security number

1 is valid as well, because we're going to do that  
2 check as well.

3 Currently, the Social Security check is  
4 subsecond for the entire Commonwealth, so it's ---  
5 you know, I would assume that the entire thing is  
6 going to take subsecond for us to get the answer to  
7 then get back to PennDOT.

8 Q. Do you expect this to take longer than a couple  
9 of minutes?

10 A. No.

11 Q. Does the SURE system ever go down so that it  
12 can't be accessed?

13 A. The SURE system, that's --- the SURE system is  
14 built as a highly available environment, an  
15 inordinate amount of servers. The only time that it  
16 does go down is usually from the county level when a  
17 single line goes down, or if we have taken the system  
18 down for maintenance. We have not had --- actually  
19 knock on wood, all of us here. The system does not  
20 go down. We have 15 front-end servers, a cluster  
21 database environment. We also have the SURE portals  
22 which is a totally different server farm with another  
23 15 front-end servers, 6 or 7 mid-tier servers,  
24 cluster of database. We have a large environment.  
25 One or two of the systems might go down, you know,

1 but what happens is all the load gets shifted to all  
2 the other servers.

3 The environment that we're in is a tier three  
4 environment. It's the data powerhouse. It's manned  
5 24 by 7. It's got multiple generators. It's got  
6 multiple pathways for power. The server farm  
7 doesn't go down. The server farm doesn't go down,  
8 the system doesn't go down. That doesn't mean that  
9 it can't, because there's always, you know, issues.  
10 The only time that we've ever had a problem was once  
11 when we had a backflow of surge and it shut us down  
12 for 40 minutes. But the environment does not go  
13 down. And we make sure that it stays up for all the  
14 work that needs to be done.

15 Q. Okay. I think you anticipated ---.

16 JUDGE SIMPSON:

17 Can I ask you to pause?

18 ATTORNEY CAWLEY:

19 Yes.

20 JUDGE SIMPSON:

21 Do I need to understand that?

22 ATTORNEY CAWLEY:

23 I'm not sure I understood all of it.

24 BY ATTORNEY CAWLEY:

25 Q. Does that mean it's highly reliable?

1 A. Yes. We spend ---.

2 ATTORNEY CAWLEY:

3 Is that good?

4 A. We spend a lot to make sure that the system ---.

5 JUDGE SIMPSON:

6 Now I understand.

7 BY ATTORNEY CAWLEY:

8 Q. Let me ask just a simple follow-up question,  
9 which I think you answered, I think, which is that if  
10 the SURE system cannot be accessed through the normal  
11 telephone call, through the help desk, does the  
12 portal provide another way of access?

13 A. Yes.

14 Q. Okay. Do you anticipate that your staff of five  
15 will be able to handle the calls that come in?

16 A. Since the card is card of last resort, yes, I  
17 do.

18 ATTORNEY CAWLEY:

19 Those are all the questions I have.

20 ATTORNEY SCHNEIDER:

21 Your Honor, I have a few more  
22 questions. Your Honor, I'd like to mark the next  
23 exhibit.

24 JUDGE SIMPSON:

25 Thirty-eight (38).

1                   (Petitioners' Exhibit 38 marked for  
2                   identification.)

3 REDIRECT EXAMINATION

4 BY ATTORNEY SCHNEIDER:

5 Q. Mr. Burgess, we've marked as Petitioners'  
6 Exhibit 38 an e-mail document dated Thursday, June  
7 21st, 2012 from you. Do you see this document?

8 A. Yes.

9 Q. Do you recognize it?

10 A. Uh-huh (yes).

11 Q. And did you send and receive these e-mails at  
12 the time that they were written?

13 A. Yes.

14 Q. Now, earlier you said you weren't sure of the  
15 exact number. I'd like to direct --- the exact  
16 number of inactive voters. So we had looked at the  
17 press release, and the press release said there were  
18 167,566 inactive voters. And you just testified that  
19 that just meant that there were was a notification  
20 sent to the voter and they didn't respond to it; is  
21 that right?

22 A. I said that there are multiple ways that you can  
23 get on to the inactive list, five-year --- the  
24 five-year inactive, other ways. In each case they  
25 would have been notified.



1 Q. Correct. And the inactive voters can still  
2 appear and can still vote in November; correct?

3 A. That is correct.

4 Q. Okay. So looking down at the middle of the  
5 page, does this refresh your recollection of how many  
6 voters had not voted after January 1st, 2008? Do you  
7 see that?

8 A. Yes, the 94,000.

9 Q. 94,428?

10 A. Correct.

11 Q. So if you subtract that from the 167,000 number,  
12 I'll represent to you that's 73,138. Does that sound  
13 correct?

14 A. Without a calculator, yes.

15 Q. Approximately. But that 73,000, those voters  
16 may have voted after January 1st, 2008; isn't that  
17 true?

18 A. Yes, but they were inactivated after that point  
19 in time.

20 Q. No. Didn't you just say it was the 94,428 that  
21 were ---?

22 A. Right, 94,000 were inactive for more than --- or  
23 for up to five years.

24 Q. They were the ones that ---?

25 A. They had not voted. Right.

1 Q. So these other group of voters could have  
2 voted ---

3 A. Correct.

4 Q. --- after that time?

5 A. Yes.

6 Q. And they could have voted in the last  
7 Presidential election; correct?

8 A. They have been inactivated. If they vote, they  
9 become active; okay? So there are individuals that  
10 have been inactivated every year since that point,  
11 okay, because every five years or every --- for the  
12 various different program removals that go on do get  
13 inactivated, so yes.

14 Q. Right. So they could have been inactivated  
15 after they voted in the Presidential election in  
16 2008; correct?

17 A. Correct.

18 Q. And they could have been inactivated after they  
19 voted in the congressional election in 2010; correct?

20 A. Correct.

21 Q. And they could have been inactivated after the  
22 general election in 2011; correct?

23 A. Correct. And they'll stay inactive for five  
24 years.

25 Q. Right. So that there's a significant --- it's

1 not all 167,000. It's possible that this portion of  
2 the 167,000 are still here in Pennsylvania and may  
3 vote in November 2012?

4 A. Correct. And that's why we sent them a letter.

5 ATTORNEY SCHNEIDER:

6 I have nothing further.

7 ATTORNEY CAWLEY:

8 We have no other questions, Your Honor.

9 JUDGE SIMPSON:

10 You may step down. Thank you.

11 A. Thank you.

12 ATTORNEY SCHNEIDER:

13 Your Honor, we'd like to show another  
14 video. This is a Petitioner, Beatrice Bookler, and  
15 there's fortunately only one exhibit that was marked  
16 during this video. And we'd like to mark that as  
17 Petitioners' Exhibit 39.

18 (Petitioners' Exhibit 39 marked for  
19 identification.)

20 JUDGE SIMPSON:

21 Is this the package of information  
22 type ---?

23 ATTORNEY SCHNEIDER:

24 It's just one document. It's her voter  
25 registration card.

1                   JUDGE SIMPSON:

2                   I have to apologize to you. I don't  
3 have everybody's names yet. What's your ---?

4                   ATTORNEY SCHNEIDER:

5                   I'm sorry. I'm Marian Schneider for  
6 Advancement Project.

7 VIDEO BEGINS

8                   VIDEOGRAPHER:

9                   My name is Anthony Wicks. I'm employed  
10 by Sargent's Court Reporting Services. Today's date  
11 is June 25th, 2012. The time is 4:24. This  
12 deposition is being taken at 445 North Valley Forge  
13 Road in Devon, Pennsylvania. The caption of this  
14 case is In the Commonwealth Court of Pennsylvania,  
15 Applewhite, et al. versus Commonwealth, et al. Case  
16 Number 330 MD 2012. The name of the witness is  
17 Beatrice Bookler. Will the attorneys present please  
18 state their names and the parties they represent?

19                   ATTORNEY SCHNEIDER:

20                   My name is Marian Schneider, and I  
21 represent the Petitioners.

22                   ATTORNEY CAWLEY:

23                   My name is Patrick Cawley. I am joined  
24 by Kevin Schmidt, both of us for the Respondents.

25                   VIDEOGRAPHER:

1                   The court reporter may now swear in the  
2 witness.

3                   COURT REPORTER:

4                   Will you raise your right hand, please?

5 -----

6 BEATRICE BOOKLER, HAVING FIRST BEEN DULY SWORN,

7 TESTIFIED AS FOLLOWS:

8 -----

9                   ATTORNEY SCHNEIDER:

10                   For the record, I would note that Wendy  
11 Bookler, the daughter of the witness, is also present  
12 in the room.

13 DIRECT EXAMINATION

14 BY ATTORNEY SCHNEIDER:

15 Q. Good morning --- I mean good afternoon. Can you  
16 state your full name for the record?

17 A. My full name?

18 Q. Your name. What's your name?

19 A. My name is Bea Bookler. But my full name is ---  
20 on my birth certificate is Theresa Beatrice Bookler.

21 Q. Is it Bookler on your birth certificate?

22 A. No, my maiden name is Solomon.

23 Q. So is --- your name on your birth certificate  
24 then is what?

25 A. Theresa Beatrice Solomon.

1 Q. Okay. And where do you live, Beatrice?

2 A. Presently I'm living in Devon Senior Living.

3 It's at 445 North Valley Forge Road in Devon.

4 Q. And do you live in a single room here?

5 A. Yes.

6 Q. And how often do you leave your room?

7 A. Very seldom. I stay in my room most of the  
8 time. I read and I watch some TV.

9 Q. Where do you take your meals?

10 A. They bring my meals to my room.

11 Q. So what are the occasions that you do leave your  
12 room? Can you tell me like, for example, are there  
13 certain occasions when you go out?

14 A. Out of the building?

15 Q. Yes.

16 A. Occasionally my daughter will come and take me  
17 to a nearby restaurant for lunch.

18 Q. How about for voting, do you leave to go vote?

19 A. I would never not vote.

20 Q. And how do you usually get to your polling  
21 place?

22 A. Well, it's very convenient; however, my daughter  
23 drives me from one driveway to the next driveway and  
24 then I use my walker to get into the building.

25 Q. And how are you able to manage once you get in

1 the building? Do you get some help?

2 A. People are very nice. They help me if I need  
3 it, but mostly I can manage with my walker.

4 Q. Okay. When were you born?

5 A. I was born July 12th, 1918.

6 Q. And where were you born?

7 A. Philadelphia.

8 Q. And where did grow up?

9 A. I grew up in west Philadelphia.

10 Q. And ---?

11 A. It was a very nice neighborhood at that time.

12 Q. Do you have any brothers or sisters?

13 A. Not alive.

14 Q. Or did you have?

15 A. I did have two brothers and a sister.

16 Q. And did you graduate from high school?

17 A. Yes.

18 Q. Where did graduate from high school?

19 A. Overbrook High school.

20 Q. Tell me ---.

21 A. It's my guiding light.

22 Q. Did you have an opportunity to attend college?

23 A. I did. There was a very nice Latin teacher that  
24 I had. She was an alumna of Bryn Mawr College. And  
25 she arranged for me to have a scholarship, but my

1 family --- my mother was supporting four children by  
2 herself ---

3 Q. Uh-huh (yes).

4 A. --- and I felt I really needed to work and help  
5 her more than I needed college.

6 Q. So did you go to work then instead?

7 A. I'm sorry?

8 Q. Did you work then instead of going to college?

9 A. Yes.

10 Q. What did you do?

11 A. I worked as a secretary.

12 Q. Now, were you married?

13 A. I didn't marry until the Second World War.

14 Q. And how did you meet your husband?

15 A. I was introduced to him by friends on the  
16 Boardwalk in Atlantic City.

17 Q. And tell me a little bit about your husband.

18 Was he in the Army?

19 A. Yes, he was one of the first people drafted into  
20 the Army, and he went one, two, three from Fort  
21 Benning, Georgia to California to Australia. And he  
22 was in Australia for four years.

23 Q. This was during World War II?

24 A. I'm sorry?

25 Q. This is during World War II?



1 A. Yes.

2 Q. So approximately when did you get married?

3 A. When he came home from the Army.

4 Q. Do you have any children?

5 A. I have two children, a boy and a girl.

6 Q. And how about, do you have any grandchildren?

7 A. I have two grandchildren, a boy and a girl.

8 Q. And after you got married, where did you live?

9 A. First we lived in Drexel Hill and then we moved  
10 to Wynnewood.

11 Q. And how long did you lived in Wynnewood?

12 A. For 50 years.

13 Q. And so how long have you been here at Devon  
14 Senior Living?

15 A. It's about seven years.

16 Q. And after you got married and when you were  
17 living in Wynnewood, did you work at all?

18 A. First, I did some charitable work, but then a  
19 friend of mine and I decided to go --- we were doing  
20 a lot of cooking. We were having friends over. And  
21 we felt we became very proficient because we used the  
22 cookbooks of all nations and we tried everything and  
23 we decided we could do everything, so I thought that  
24 we should go into business. And three of us started  
25 it, but one dropped out. And the two of us kept that

1 business for about six years.

2 Q. What was the name of the business?

3 A. It was called Happy Cookers.

4 Q. Did you ever have a Pennsylvania driver's  
5 license?

6 A. Yes, I did.

7 Q. Do you have one now?

8 A. No.

9 Q. Is it expired?

10 A. Yes.

11 Q. Did you ever have a pass --- a U.S. passport?

12 A. Yes.

13 Q. Do you have one now?

14 A. (Indicates no.)

15 Q. You have to ---.

16 A. No. I'm sorry.

17 Q. Do you have any other identification with your  
18 photograph on it?

19 A. I have a card that they gave me at the polling  
20 place which said that I was --- it said voter ID and  
21 that I was registered to vote in Chester County.

22 Q. Are you referring to your voter registration  
23 card?

24 A. Pardon me?

25 Q. Are you talking about your voter registration

1 card? Is this what you're talking about?

2 ATTORNEY SCHNEIDER:

3 I'm going to show the witness a copy of  
4 her voter registration card.

5 BY ATTORNEY SCHNEIDER:

6 Q. Is this what you're talking about?

7 A. Yes.

8 Q. Okay. Does this have your photograph on it?

9 A. No.

10 ATTORNEY SCHNEIDER:

11 We'll have to --- we'll identify this  
12 as Bookler Exhibit One, but we'll get a substitute,  
13 another copy with a Bates number later. So we  
14 identify Beatrice Bookler's certificate of voter  
15 registration as Bookler Exhibit One.

16 BY ATTORNEY SCHNEIDER:

17 Q. Do you have a copy of your birth certificate?

18 A. I don't have any papers anymore.

19 Q. What happened to your papers?

20 A. I don't know.

21 Q. Did you bring them here from your home in  
22 Wynnewood?

23 A. No.

24 Q. Okay. Are you registered to vote? Well, we  
25 just ---.

1 A. Yes.

2 Q. When did you first register to vote?

3 A. The first vote that came up when I was here.

4 Q. No, I mean, when you first were eligible to  
5 register to vote, when did you do so? Do you  
6 remember how old you were when you registered to  
7 vote?

8 A. Well, I guess it was 21. From my memory, I  
9 can't tell you, but that was the law at the time.

10 Q. And did you register when you were 21?

11 A. Yes.

12 Q. And do you remember the first election that you  
13 voted in after you registered to vote?

14 A. I think it was when Franklin Roosevelt ran, but  
15 I'm not positive.

16 Q. Okay. Do you vote regularly?

17 A. I vote regularly, compulsively, happily.

18 Q. Why is it important for you to vote?

19 A. Well, in my family we were very patriotic, and I  
20 was taught that voting was a privilege and an  
21 obligation. And not only that, but to me it was a  
22 great pleasure. I loved going to vote and all of my  
23 family felt that way. It was like a great thing that  
24 you did, that we have this wonderful country and we  
25 can participate in it.

1 Q. Do you want to drink some water?

2 A. Thank you.

3 ATTORNEY SCHNEIDER:

4 Can we go off the record?

5 ATTORNEY CAWLEY:

6 Sure.

7 ATTORNEY SCHNEIDER:

8 Can we go off the record?

9 VIDEOGRAPHER:

10 Going off the record at 4:38.

11 OFF VIDEO

12 RECESS TAKEN

13 ON VIDEO

14 VIDEOGRAPHER:

15 Going back on the record at 4:39.

16 BY ATTORNEY SCHNEIDER:

17 Q. Mrs. Bookler, how did you hear about the photo  
18 ID law?

19 A. Didn't I answer that question?

20 Q. Well, you did before, but answer it again for  
21 me.

22 A. I think I read about it first in the newspaper  
23 and then on TV, and then Wendy came home and told me  
24 about it.

25 Q. And what did you think about it when you first

1 heard about it, about the voter ID law?

2 A. I was furious.

3 Q. And tell me why you were furious.

4 A. Considering how I feel about voting and how  
5 proud I am that I live in a country that is a real  
6 democracy, I think that anything that prevents people  
7 from voting is taking away from our democracy. It's  
8 only real if we all participate.

9 Q. After you heard about the photo ID law being  
10 passed, what did you do to try to get a photo ID for  
11 voting?

12 A. Nothing at all. I was too angry and I thought  
13 that --- I don't know what I thought. I thought  
14 there was no way I was going to be able to vote  
15 anymore.

16 Q. Was there a specific reason why you didn't try  
17 to get your ID?

18 A. Well, you can see that I'm not exactly mobile.  
19 I get dizzy and I'm shaky and I can't manage without  
20 my walker, and even with my walker, I'm limited  
21 because I don't have that much energy, but I would do  
22 anything that I could to vote.

23 Q. But ---.

24 A. I just don't know how I could manage it.

25 Q. You mean manage to go get the ID?

1 A. I don't think I could.

2 Q. Does Devon Senior Living issue a photo ID for  
3 its resident?

4 A. No, they have not.

5 Q. Do you know if they have any plans to issue a  
6 photo ID for the residents?

7 A. I have not heard a thing.

8 Q. Why are you participating in the lawsuit?

9 A. I feel very deprived if I cannot vote, and I  
10 would like to do anything I could to help other  
11 people who are in the same situation that I'm in.

12 ATTORNEY SCHNEIDER:

13 Okay. I have no further questions.

14 ATTORNEY CAWLEY:

15 Would you like to take a break at this  
16 point or should we keep going? Do you need to  
17 take a break?

18 ATTORNEY SCHNEIDER:

19 Mr. Cawley has an opportunity to ask  
20 questions now.

21 A. All right.

22 CROSS EXAMINATION

23 BY ATTORNEY CAWLEY:

24 Q. We can take a break if you need to, so you let  
25 me know. Okay?

1 A. I think I'm all right.

2 Q. Okay. I'm going to go in about the same order  
3 and just follow up on the answers that you just gave  
4 to your attorney. Okay? So you were asked about  
5 when you go to vote and you indicated that your  
6 daughter drives you from one driveway to another and  
7 then you use your walker. Is the building where you  
8 vote next door to where you live?

9 A. Yes.

10 Q. And so your daughter drives you from where you  
11 live over to the building where you vote and then you  
12 use your walker from there?

13 A. Yes.

14 Q. Yes? And I would like to ask you some of the  
15 questions about the documents that maybe you had at  
16 one time. At one point in your life you had a birth  
17 certificate; right?

18 A. Sure.

19 Q. But when you --- before you moved here to live,  
20 you sold your old house; right?

21 A. Yes.

22 Q. And when your house was sold, at some point the  
23 papers got lost; right?

24 A. Yes.

25 Q. Okay. And along with the birth certificate, at



1 some point you had a marriage certificate as well?

2 A. Yes.

3 Q. And that's also lost?

4 A. I'm afraid so.

5 Q. And you had a Social Security card as well,  
6 didn't you?

7 A. Yes.

8 Q. And you don't know where the card is anymore;  
9 right?

10 A. (Indicates yes.)

11 Q. Is that a yes?

12 A. Yes. I'm sorry.

13 Q. I know. It's not natural, but bear with us.

14 A. No, I don't know where it is.

15 Q. Okay. And you do know your Social Security  
16 number, though; right?

17 A. Yes.

18 Q. Okay. We heard about your family. And you  
19 mentioned that --- you mentioned the name Wendy, and  
20 Wendy is your daughter, who's here?

21 A. Yes.

22 Q. And you say you have a son as well?

23 A. Yes.

24 Q. And does your son live around here?

25 A. He lives near Harrisburg.

1 Q. Okay. Focusing on your daughter, we had --- I  
2 asked you some questions earlier, and you said that  
3 she occasionally will drive you places where you need  
4 to go; is that right?

5 A. Yes.

6 Q. And you had a driver's license until you came to  
7 live here; right?

8 A. Yes. And for a while while I was living here.

9 Q. Okay. And you came to live here about seven  
10 years ago?

11 A. Yes.

12 Q. Okay. And are you aware of what is necessary to  
13 get a new photo identification from PennDOT?

14 A. I don't know all of the papers, but I know there  
15 are a lot of papers that I don't have.

16 Q. Well, has anyone explained to you that if you  
17 had a driver's license in the last seven years that  
18 your information is still at the PennDOT center?

19 A. No.

20 Q. Have you tried to get a --- I'll start over with  
21 a new question.

22 Has anyone explained to you that you don't need  
23 to get a separate --- a birth certificate in order  
24 to go to PennDOT and that all you have to do is go  
25 to PennDOT?

1 A. That I don't need a birth certificate?

2 Q. Correct.

3 A. To be truthful, I thought it was so impossible  
4 for me to be able to do it that I didn't make any  
5 inquires about what else I needed.

6 Q. Well, you said that --- you said how important  
7 voting is to you and you said that you will do  
8 anything to vote, but you're afraid you can't manage,  
9 and I'd just like to ask you a couple questions about  
10 that. Obviously being mobile is a problem. And one  
11 of the things that you're worried about is getting to  
12 the PennDOT center; correct?

13 A. Yes.

14 Q. And can you explain why you can't get a ride to  
15 the PennDOT center?

16 ATTORNEY SCHNEIDER:

17 Objection. It assumes facts not in  
18 evidence.

19 A. I'd have to explain to you why almost every day  
20 of my life I stay in my pajamas all day, because I  
21 don't have the energy or the get up and go. So the  
22 thought of going to a place I would have to go is  
23 just not --- it's not in my realm of possibility.

24 BY ATTORNEY CAWLEY:

25 Q. And I can understand that. And I guess I'll ask

1 it this way. When --- you do leave this place on  
2 occasion, don't you?

3 A. Very few occasions.

4 Q. Because it's difficult. You leave very seldom  
5 because it's difficult to get the energy and so  
6 forth; right?

7 A. Right.

8 Q. But certainly on election day in November,  
9 you're going to get in a car and drive next door to  
10 vote; right?

11 A. Absolutely.

12 Q. So if getting the photo ID is necessary to go  
13 vote, isn't that something that's important for you  
14 to do?

15 A. I just don't see why I should have to do that.  
16 I'm registered to vote. I have voted in every  
17 election since I was old enough to vote. I don't  
18 want to --- I don't want to have to knock myself out.  
19 It's too hard.

20 Q. As far as other things that you need to do  
21 around town, if you need to go somewhere, your  
22 daughter has given you rides; correct?

23 A. My daughter will do what I need for me. Yeah, I  
24 don't go. She goes.

25 Q. But she takes you places when you need to go

1 places, doesn't she?

2 A. Well, I rarely go anyplace.

3 Q. Okay. But when you do ---?

4 ATTORNEY SCHNEIDER:

5 I'm going to have to cut you off,  
6 because she's really answered this multiple times,  
7 and you can see she's struggling, so ---.

8 ATTORNEY CAWLEY:

9 And I'm entitled to --- I'll ask the  
10 question a different way.

11 ATTORNEY SCHNEIDER:

12 Okay.

13 A. It's all right.

14 BY ATTORNEY CAWLEY:

15 Q. When I asked you questions earlier, didn't you  
16 say that your daughter takes you places where you  
17 need to go, but she has her own life and her own  
18 responsibilities?

19 A. Right.

20 Q. And you don't want to impose on her to make her  
21 drop everything and drive you places?

22 A. Right.

23 ATTORNEY CAWLEY:

24 Those are all the questions I have.

25 ATTORNEY SCHNEIDER:

1 And I have no Redirect.

2 ATTORNEY CAWLEY:

3 We are finished. Thank you.

4 ATTORNEY SCHNEIDER:

5 We are done.

6 VIDEOGRAPHER:

7 The deposition is concluded at 4:52.

8 VIDEO ENDS

9 JUDGE SIMPSON:

10 The disc is 40?

11 ATTORNEY SCHNEIDER:

12 Yes, Your Honor. Your Honor, I'd like  
13 to move into evidence the exhibits that we have just  
14 marked --- actually the Burgess exhibit --- the  
15 exhibits during the examination of Mr. Burgess as  
16 well as Exhibit 40 and Exhibit 39.

17 (Petitioners' Exhibit 40 marked for  
18 identification.)

19 JUDGE SIMPSON:

20 I have 36, 37, 38 and 39 and 40 if  
21 you're counting the disk.

22 ATTORNEY SCHNEIDER:

23 Yes.

24 JUDGE SIMPSON:

25 Do you move those?

1 ATTORNEY SCHNEIDER:

2 Yes, Your Honor.

3 JUDGE SIMPSON:

4 Any objection?

5 ATTORNEY CAWLEY:

6 No objection.

7 JUDGE SIMPSON:

8 They're received. Thirty-seven (37)  
9 was the press release.

10 ATTORNEY SCHNEIDER:

11 Yes, I believe that's correct.

12 JUDGE SIMPSON:

13 I have it here.

14 ATTORNEY SCHNEIDER:

15 And 38 was the e-mail.

16 JUDGE SIMPSON:

17 Thirty-eight (38) is the e-mail.

18 Thirty-nine (39) is the voter registration card.

19 Forty (40) is the video.

20 ATTORNEY SCHNEIDER:

21 Correct.

22 JUDGE SIMPSON:

23 Do you have another one?

24 ATTORNEY CLARKE:

25 Your Honor, at this point we have a

1 very short video to play of House Majority Leader  
2 Mike Turzai preceded by a portion of a stipulation on  
3 authenticity that I would just propose to read into  
4 the record.

5 JUDGE SIMPSON:

6 All right.

7 ATTORNEY CLARKE:

8 The portion of the stipulation on  
9 authenticity is that the video that we're about to  
10 play, quote, is an authentic recording of a statement  
11 by House Majority Leader Representative Mike Turzai  
12 made in Republican State Committee meetings on or  
13 about June 23rd of 2012. Mr. Bellena is handing up  
14 copies of the stipulation, which will be Exhibit 38  
15 --- 41.

16 (Petitioners' Exhibit 41 marked for  
17 identification.)

18 JUDGE SIMPSON:

19 That will be 41.

20 ATTORNEY CLARKE:

21 So at this point we propose to play the  
22 video.

23 ATTORNEY CAWLEY:

24 And Your Honor, subject to the  
25 stipulation of authenticity, I object to the



1 admissibility of this, because as I understand it,  
2 the content of this video is a statement by a  
3 legislator in a private setting to an inherently  
4 political audience. It can't be offered as evidence  
5 of legislative intent. And more importantly, it  
6 ignores the standard here, which is really to get at  
7 any rational purpose that the legislature could have  
8 had for Act 18. So the statements and whatever  
9 political value that the speaker may have thought  
10 that he was getting from them are not relevant to  
11 legislative intent and unhelpful in any respect to  
12 this Court for the reason we're here.

13 JUDGE SIMPSON:

14 Overruled. So 41's the stip, and this  
15 I gather is going to be --- this will be offered as  
16 an exhibit as well?

17 ATTORNEY CLARKE:

18 That's right, Your Honor. The CD, once  
19 we play it, will be offered as an exhibit.

20 VIDEO BEGINS

21 REPRESENTATIVE TURZAI:

22 We are focused on making sure that we  
23 meet our obligations that we've talked about for  
24 years. Pro-Second Amendment, the Castle Doctrine,  
25 done. The first pro-life legislation, abortion

1 facility regulations in 22 years, done. Voter ID,  
2 which is going to allow Governor Romney to win the  
3 State of Pennsylvania, done.

4 VIDEO ENDS

5 ATTORNEY GERSCH:

6 Your Honor, that concludes our evidence  
7 for today. I did want to advise --- the parties want  
8 to advise, Your Honor, we've been talking. We  
9 believe that we can conclude the evidence on  
10 Wednesday for both parties.

11 JUDGE SIMPSON:

12 On Wednesday.

13 ATTORNEY CAWLEY:

14 On Wednesday. And certainly  
15 Petitioners' preference would be then to close on  
16 Thursday morning.

17 JUDGE SIMPSON:

18 Okay. May I ask you what's on tap for  
19 tomorrow? I'm trying to decide whether I need two  
20 law clerks here or whether one can get back to work.

21 ATTORNEY CAWLEY:

22 Certainly. For tomorrow we'll have the  
23 secretary of the Commonwealth, Ms. Carol Aichele in  
24 the morning, and then we'll have five relatively  
25 short witnesses who will be either people who have

1 issues with getting ID or people who've been to the  
2 Department of Transportation and have observed the  
3 conditions there, and then we'll have a  
4 representative of one of the organizational  
5 Petitioners.

6 JUDGE SIMPSON:

7 All right. Is there anything that you  
8 want to bring to my attention?

9 ATTORNEY CAWLEY:

10 Nothing, Your Honor.

11 JUDGE SIMPSON:

12 Anything you want me to address before  
13 we break for the day?

14 ATTORNEY GERSCH:

15 I don't believe so, Your Honor.

16 JUDGE SIMPSON:

17 Okay. Tomorrow we start at 9:00, and  
18 hopefully wrap it up somewhere around 3:00 or so.

19 ATTORNEY GERSCH:

20 Yeah, I would anticipate we'll be able  
21 to do that. The witnesses should all be relatively  
22 compact.

23 JUDGE SIMPSON:

24 All right. Thank you for your help.  
25 We are adjourned until nine o'clock tomorrow morning.

1 Okay. Let me just open this back up. Forty-One (41)  
2 is the stipulation and then 42 is going to be the  
3 movie clip in some form.

4 (Petitioners' Exhibit 42 marked for  
5 identification.)

6 ATTORNEY CLARKE:

7 Okay.

8 JUDGE SIMPSON:

9 All you can do is move it.

10 ATTORNEY CLARKE:

11 All I have to do is move it. I move 40  
12 and 41.

13 JUDGE SIMPSON:

14 You got to move it, move it.

15 ATTORNEY CLARKE:

16 Your Honor, I move Exhibit 41 and 42  
17 into evidence.

18 ATTORNEY CAWLEY:

19 No objection other than already stated.

20 JUDGE SIMPSON:

21 Forty-one (41) is received over  
22 objection. Forty-two (42) is received.

23 ATTORNEY CLARKE:

24 Actually the other way around.

25 JUDGE SIMPSON:

1 I'm sorry. The other way around.  
2 Forty-one (41) is received, 42 is received over  
3 objection. All right. We're adjourned.

4 MR. TURNER:

5 Commonwealth Court now adjourned.

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7 HEARING CONCLUDED AT 3:45 P.M.

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## CERTIFICATE

I hereby certify, as the stenographic reporter,  
that the foregoing proceedings were taken  
stenographically by me, and thereafter reduced to  
typewriting by me or under my direction; and that  
this transcript is a true and accurate record to the  
best of my ability.

*Made Amato*