

Transcript of Proceedings

Date: September 25, 2012

Case: APPLEWHITE, et al. vs. COMMONWEALTH OF PENNSYLVANIA



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1 IN THE COMMONWEALTH COURT OF PENNSYLVANIA

2 - - -

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

**CERTIFIED
TRANSCRIPT**

8 Petitioners, : C.A. No.

9 vs. : 330 M.D. 2012

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

13 Respondents. :
: :
14 :
15 :
16 :
17

Reporter's Transcript of Proceedings before

18 THE HONORABLE ROBERT SIMPSON

19 Harrisburg, Pennsylvania

20 Tuesday, September 25, 2012

21
22 REPORTED BY:

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1 Commonwealth Court to make a present assessment of
2 the actual availability of the alternate
3 identification cards on a developed record in light
4 of the experience since the time the cards became
5 available.

6 In this regard, the Court is to consider
7 whether the procedures being used for deployment of
8 the cards comport with the requirement of liberal
9 access, which the general assembly attached to the
10 issuance of PennDOT identification cards.

11 If they do not, where if the Commonwealth
12 Court is not still convinced in its predictive
13 judgment that there will be no voter
14 disenfranchisement arising out of the Commonwealth
15 implementation of a voter identification requirement
16 for purposes of the upcoming election, that Court is
17 obliged to enter a preliminary injunction."

18 And language a little bit later the
19 Supreme Court majority stated "The Commonwealth Court
20 is to file its supplemental opinion on or about
21 October 2nd, 2012." That would be a week from
22 today, next Tuesday.

23 So I can tell you that I'm not of the
24 mind that I should wait until the very last minute to

1 file something. I think the sooner the better for
2 everybody involved.

3 So I'd like to focus everybody on meeting
4 the -- the Supreme Court's directive to make a record
5 on certain particular issues. That's where I hope to
6 keep us focused.

7 Let me just remind the gallery that the
8 one thing that happens that I find very disconcerting
9 is when I have people moving up and down, so I would
10 ask that you try to keep that to a minimum if you
11 will.

12 We will probably go until about 12:30,
13 1:00. Take a lunch break and then go until about
14 5:00 today. We will reconvene if necessary on
15 Thursday morning at 10:00.

16 Are there any matters that I need to
17 address before we get started?

18 MR. PUTNAM: Yes, Your Honor.

19 THE COURT: All right.

20 MR. GERSCH: Your Honor, we'd like to
21 invoke the rule against witnesses. We'll be starting
22 with Deputy Secretary Myers of PennDOT; and the other
23 witnesses will be called later. Mr. Royer,
24 Mr. Marks, we'd like to have them excused.

1 MR. PUTNAM: Your Honor, if I may, we
2 would like to suggest that the most orderly way to do
3 this, in view of what the Supreme Court has asked
4 Your Honor to do, is those three witnesses are going
5 to be called. They're going to be called by us.
6 They have their story, in order to explain how the
7 DOS card is being administered, which is exactly what
8 Your Honor is supposed to hear.

9 We believe it makes no sense for us to
10 call them, for them to testify first and allow
11 Mr. Gersch to cross-examine them.

12 We'll be putting those three witnesses
13 on; and as to whether Your Honor wishes to have them
14 excused, that's entirely up to the Court.

15 I don't know that it's necessary, but I
16 understood you did in the first hearing; so if you
17 do, you do.

18 The question we would like to raise is to
19 start the hearing with cross-examination, as opposed
20 to hearing from the witnesses as to what's going on
21 and then having cross-examination, seems to us to be
22 likely to take longer and to be much more efficient
23 if we put them in and then see what the cross is.

24 THE COURT: As I understand the problem,

1 Mr. Gersch has asked for sequestration. There's no
2 objection. The sequestration is ordered.

3 There's another suggestion is that we,
4 what, reschedule the witnesses or handle them in some
5 sort of different order?

6 MR. PUTNAM: The suggestion is that
7 inasmuch as they are Commonwealth witnesses and
8 inasmuch as they're being asked what is going on, it
9 makes most sense for them to tell their story first,
10 put forward what, in fact, has gone on, and to permit
11 Mr. Gersch at that point to cross-examine.

12 It's true that he's the Petitioner and
13 we're the Respondents. But I think that the
14 efficient taking of evidence in the case is such that
15 starting out with a series of cross-examination
16 questions before the witness, in fact, explained
17 things is likely to take much longer. That's all.

18 THE COURT: All right. Here's my
19 approach to advocacy. I try to stay out of the
20 lawyers' way. I'm going to let both counsel run
21 their cases the way they want to run their cases. I
22 understand that the Petitioners have the burden of
23 proof here. So I'm going to let them call these
24 witnesses in whatever order they think is most

1 appropriate.

2 The understanding is they still have to
3 explain things to me, and I'm confident that they
4 will tell me something that's useful.

5 So -- so if that's a request that there
6 be some sort of priority in presentation of the
7 witnesses, that's declined.

8 If we have the witnesses here,
9 Mr. Royer...

10 MR. GERSCH: Mr. Myers is who we would
11 call first.

12 THE COURT: You want Mr. Myers to come up
13 and the other witnesses that you named, which
14 were ...

15 MR. GERSCH: Mr. Marks and Mr. Royer.

16 THE COURT: -- Mr. Marks and Mr. Royer
17 may step out.

18 And there's something else?

19 MR. CAWLEY: Yes, Your Honor, on a
20 related note, and this goes to the efficient
21 presentation of witnesses, Respondents wanted to
22 address, under your court's order -- under this
23 Court's order for this hearing, the witness list that
24 we've received from the Petitioners attached to their

1 brief, Your Honor said that we were required to
2 follow Rule 212.2, which requires names and addresses
3 of witnesses.

4 We have a few issues with the witness
5 list. One, there are no addresses. And to compound
6 that problem, we've never seen most of these names
7 before.

8 And while we would like to accommodate
9 affidavits where people are unavailable, I think
10 that's generally something for a special or expedited
11 hearing. We're now four months into this case and
12 we've done extensive discovery and we've never seen
13 most of these names. We don't have addresses, and so
14 we can't defend against any testimony that they may
15 be offering. We can't be helpful to the Court in
16 that regard.

17 The only names that are familiar on here
18 are either Commonwealth employees or Mr. Wolosik, who
19 testified in person and is now listed as offering an
20 affidavit here. So he is both available, as
21 demonstrated by his testimony before, and he also
22 testified about matters unrelated to the department
23 of state voter ID, so that would put him outside the
24 scope.

1 And finally, Your Honor, we received just
2 this morning, obviously beyond the Court's deadline,
3 a supplemental list with an email that said that more
4 names may be forthcoming. Again, we don't recognize
5 these names except for one.

6 So we would ask that the Court strike
7 witnesses who have not been properly identified under
8 the Court's order.

9 THE COURT: Well, I didn't think that --
10 your list was rather expansive, and I did note that
11 there was no way to contact these people or even
12 locate them.

13 But would you like to be heard before I
14 try to sort this one out?

15 MR. GERSCH: Certainly, Your Honor.

16 With respect to the addresses, Mr. Cawley
17 and I spoke at 5:30 last night, between 5:00 and
18 5:30. Had he expressed concern about the addresses,
19 we would have done everything we could to provide
20 them.

21 With respect to the fact that he doesn't
22 know these people, that's because these are people
23 who tried to get the DOS ID since it became
24 available. They would not have surfaced in the case

1 earlier.

2 These are people that have surfaced, as
3 the Supreme Court anticipated, after the cards became
4 available. These are people that tried to get those
5 cards and are having a very hard time getting them.
6 There's no reason they should have seen these names
7 before.

8 With respect to the addresses, we'll
9 obviously try and get them the addresses.

10 The Commonwealth had been opposed to
11 depositions of these people. So it wasn't clear to
12 me that they needed the addresses. Certainly we've
13 been in contact with them. And if that was an issue
14 for them, they could have provided --

15 The reason we were speaking with counsel
16 for the other side last night was Page 21 of their
17 brief, they announced that they were changing their
18 procedures. We've seen no documents about that. I
19 called them up and said, "Where are the documents?"
20 He emailed them over right away.

21 MR. CAWLEY: And, of course, depositions
22 in this case.

23 THE COURT: Hang on. Let me take one
24 problem at a time here. The problem we're talking

1 about now is the witness list.

2 I don't think the witness list that you
3 provided complied with 212. You need to give them
4 more information. I'm really not looking for
5 cumulative evidence here. I don't have -- I know you
6 need to present some people, and I know you can
7 represent to me that you have these other people that
8 will say the same thing.

9 But given the time frame I have, my
10 tolerance for cumulative evidence will be less than
11 usual, if I can give you that broad hint.

12 Is there some way that you can work out
13 this witness list and tell them who you're really
14 going to call?

15 MR. GERSCH: Certainly, Your Honor, when
16 we take a break this morning, we can probably --

17 THE COURT: You can't possibly call all
18 those people and expect me to hear all that and
19 understand it and sort through it.

20 MR. GERSCH: That's correct, Your Honor.
21 Part of it was first we had people approach us and
22 then we had to make a decision as to who we could
23 call, which is essentially what happened last time,
24 only this time we have much less time in which to do

1 it.

2 In any event, we would expect to finish
3 on Thursday no matter what, and we're going to call
4 their witnesses in our case.

5 I think today in light of the
6 Commonwealth's concession today, we'll probably end
7 early. And on Thursday, we'll call those witnesses
8 that we can get on in the time available to Your
9 Honor. But we're not planning to go beyond Thursday,
10 absent some information that we don't know of today.

11 THE COURT: My understanding was the
12 entire thing was finished on Thursday, not just your
13 part of the case.

14 MR. GERSCH: Yes, but we're going to call
15 their witnesses, so they only have three witnesses.
16 I'm going to call them all.

17 THE COURT: That's true. He listed three
18 witnesses.

19 MR. PUTNAM: That was my point, Your
20 Honor.

21 THE COURT: All right. I am going to
22 look forward to some report from you after we've
23 taken a break as to what prognosis you've made as to
24 identities of witnesses who will actually be called.

1 MR. GERSCH: Certainly, Your Honor.

2 THE COURT: I'm sort of putting that on
3 hold for a little bit.

4 Is there some other issue I need to
5 address here?

6 MR. CAWLEY: Nothing from us, Your Honor.

7 THE COURT: I think, Mr. Putnam, you
8 indicated that because you would not be available on
9 Thursday that you wanted to make a closing today
10 or ...

11 MR. PUTNAM: I'd like to be heard at some
12 point today. I think it's probably better after the
13 testimony comes in since my witnesses are going to be
14 called today. If Your Honor would leave some time at
15 the end of the day, I'd just like to be able to make
16 my closing, if it is closing on that.

17 THE COURT: All right. And that's going
18 to be the only closing for the Commonwealth or what?

19 MR. PUTNAM: Presumably, the issue as to
20 what it is Your Honor is actually hearing on Thursday
21 is something that I can't entirely tell from that
22 list. And so, obviously, although I will not be
23 here, either Mr. Cawley or Ms. Hickok, I'm sure will
24 ask at the same time to address whatever is left in

1 front of Your Honor, because the record could change
2 in terms of what they bring in on Thursday. I can't
3 predict that. That's their case.

4 MR. CAWLEY: And technically, Your Honor,
5 the Commonwealth and the other Respondents are
6 separately represented, but we are endeavoring to not
7 present cumulative defenses, and I will not go well
8 beyond what Mr. Putnam has to say if there's no need
9 for it.

10 THE COURT: Okay. Do you want to be
11 heard?

12 MR. GERSCH: Your Honor, obviously, we --
13 I guess we object to the idea of there being two
14 separate closings. I think Your Honor may be
15 disposed to allow it under the circumstances. If it
16 is, we may seek to address the Court very briefly at
17 that time. But I think the better course is simply
18 that the closings be made at the end of the case in
19 normal fashion.

20 THE COURT: That would be the better way,
21 that's for sure. But this has come back to us in
22 sort of an unusual posture, so I'm going to try to be
23 as flexible as I can with that, assuming we have the
24 time to make the record that needs to be made.

1 The closing is to help me, but it's not
2 to give the record that the Supreme Court can
3 ultimately view. So I don't want to spend a lot of
4 time with closings today, but I acknowledge that
5 there may be something else to occur on Thursday
6 which might require further comment from the
7 attorneys.

8 So whatever time you take today, you will
9 get an equal opportunity today to give me sort of a
10 roundup of the day's work.

11 Let me say something else to you. It
12 sounds like you're going to be submitting some
13 affidavits and other things. Sounds like there are a
14 lot of exhibits that are listed. Somewhere along the
15 line, a summary or your view of the contents would be
16 helpful for me; because if you put on as much
17 evidence as you disclosed, I could be reading that
18 well beyond next Tuesday. As an effort to help me
19 focus on what you think the most important part is, I
20 will be inviting your take on the evidence, and your
21 take on the evidence.

22 As far as the affidavits go, have they
23 been changed? Has opposing counsel seen the
24 affidavits yet?

1 MR. WALCZAK: Your Honor, if I may. I
2 hope Your Honor appreciates, we've had very limited
3 time to -- as per Your Honor's instructions and the
4 Pennsylvania Supreme Court's instructions, we've been
5 focused on people who have had problems since
6 August 27th. We have people who have had problems
7 on August 22nd. By Thursday, we may have people
8 who have problems tomorrow. It's has not been hard
9 to find individuals. We are in the process of
10 gathering declarations. I expect that by early this
11 afternoon, we will be able to submit to the Court and
12 to opposing counsel a dozen or maybe even a couple.

13 THE COURT: Don't submit them to me, but
14 give them a fair chance to read them first before I
15 see them. If there's some obvious problem there, you
16 have an opportunity to respond.

17 MR. WALCZAK: We will share them with the
18 Commonwealth before the end of the day. I do not
19 believe we will have all of them today, but we will
20 have a good chunk of those folks today.

21 As of right now, we are planning on
22 calling 13 witnesses on Thursday. We expect all of
23 those to be brief. Probably no more than 15,
24 20 minutes including cross-examination. And they

1 were a mix of voters who have had difficulties
2 getting or have been unable to get the Department of
3 State ID and people who have been helping individuals
4 to acquire ID who have sort of more of a global
5 perspective on what's been going on, who can testify
6 about the lines that people have been encountering,
7 about the types of excuses that people are getting
8 for being rejected for a DOS ID, things like that.

9 But we certainly appreciate that there's
10 limited time, and we will be as efficient as we can.
11 And I see no reason we're not going to be able to put
12 all that evidence on in a relatively short day on
13 Thursday.

14 THE COURT: Mr. Simpson will be happy to
15 hear that.

16 Is there anything else that I need to
17 address before we get going?

18 MR. GERSCH: Just one question with
19 respect to your earlier remarks. We appreciate the
20 opportunity to address the Court, as Mr. Putnam
21 addressed the Court today. I just wasn't sure, will
22 we be permitted to address the Court at the close of
23 the evidence?

24 THE COURT: Yes, absolutely. Because

1 there may be something that isn't addressed today
2 that comes into evidence on Thursday. So I
3 anticipate we're going to have two closings, two
4 rounds of closing.

5 MR. GERSCH: Thank you, Your Honor.

6 THE COURT: Is there anything else that
7 you need me to rule on before we -- or share thoughts
8 with you before we get going here?

9 MR. GERSCH: No.

10 THE COURT: Okay. Please call your first
11 witness.

12 MR. GERSCH: Your Honor, Petitioners call
13 Mr. Kurt Myers.

14 - - -

15 KURT MYERS, having first been duly sworn
16 according to law, was examined and testified as
17 follows:

18 - - -

19 EXAMINATION

20 - - -

21 BY MR. GERSCH:

22 Q Sir, would you please state your name.

23 A Yes. It is Kurt Myers.

24 Q And you are, I take it, still a Deputy

1 Secretary for PennDOT; is that right?

2 A That is correct.

3 Q All right. And --

4 THE COURT: Can I just ask you to pause
5 for a moment. I'm informed that we're having some
6 difficulty projecting this information upon the big
7 screen. Perhaps we're having some difficulty
8 projecting it to the overflow courtroom, although I'm
9 not sure there's anybody up there.

10 I can see it. I think you can see it.
11 The witness can see it, but as far as the -- as far
12 as the big screen, I'm not entirely sure.

13 It will make for a very boring day for
14 those of you in the gallery, but we'll get our work
15 done.

16 MR. GERSCH: If I could, Your Honor, we
17 proposed not to start exhibits again from 1 but to go
18 on from where the exhibits were from the last hearing
19 so that there will be no confusion. And in most
20 cases, our exhibits --

21 THE COURT: But I don't know where that
22 was.

23 MR. GERSCH: Well, we're going to start
24 with 100 --

1 THE COURT: Okay.

2 MR. GERSCH: -- but this exhibit is
3 actually -- we've premarked them in our -- to
4 correspond with the exhibit list we furnished the
5 other side. So we're just going to use the exhibit
6 numbers that were furnished to the other side. This
7 will be Exhibit 220. If I could hand that up.

8 (Petitioners' 220 was marked for
9 identification.)

10 MR. GERSCH: I'm handing a copy to the
11 witness.

12 BY MR. GERSCH:

13 Q Mr. Myers, I've shown you what's been
14 marked Exhibit 220. I call your attention to the
15 writing in the lower right-hand corner of the
16 exhibit, which says "DOS Initial ID Form 8/14/2012."

17 This is the application for the
18 Department of State ID card that you started using on
19 August 27th of this year; is that right?

20 A That is correct. It is the one that was
21 used until last night.

22 Q You've anticipated my next question.
23 Last night you came up with a new ID form; is that
24 right?

1 A The Department of State did, yes.

2 Q All right. And very briefly, and then
3 we'll come back to 220. Have you distributed the new
4 DOS ID that was come up with last night, have you
5 distributed that to all 71 centers at this point?

6 A Just for clarification, it was finalized
7 yesterday. It was worked on before yesterday, but it
8 was finalized yesterday. And yes, we have
9 distributed it to all 71 locations.

10 Q And when did you do that?

11 A That would have been either late last
12 night or this morning.

13 Q How did you distribute the new DOS ID
14 application to the 71 centers?

15 A Electronically.

16 Q So you sent an email?

17 A It would have been an attachment to an
18 email.

19 Q Okay. Let's come back to that.

20 So Exhibit 220 is the form that was being
21 used from August 27th through yesterday; is that
22 right?

23 A That is correct.

24 Q Now, that Exhibit 220, the application

1 you've been using until now for the DOS ID card,
2 that's what you call a card of last resort or a
3 safety net; is that right?

4 A Up until last night, yes.

5 Q Okay. And my questions are all going to
6 be directed through the end of business yesterday.
7 When we leave that temporal period, when we go
8 forward to the new cards, to the new procedures, I'll
9 make that clear in my question. So all these
10 questions are going to have to do with what happened
11 leading up to last night.

12 A Understood.

13 Q And then we'll move on.

14 When a voter came in, up until last
15 night, and wanted an ID card to vote with, what your
16 people at PennDOT were supposed to do was to try and
17 give them a PennDOT ID card; right?

18 A When an individual came in to our
19 location and stated that they needed an ID for voting
20 purposes, they would first be run through the process
21 of attempting to give them a PennDOT ID.

22 Now, obviously there are requirements for
23 a PennDOT ID, as we know from past discussions, such
24 as security card, a birth certificate with a raised

1 seal, as well as two forms of address verification.

2 In those cases where an individual didn't
3 have a birth certificate, we would go through an
4 alternative process for the purposes of validating --
5 if that individual was born in Pennsylvania, that the
6 Department of Health --

7 Q Mr. Myers, my question was simpler. I
8 just wanted to know when a voter came in and asked
9 for a photo ID for voting, the first thing you would
10 try to do is qualify them for a PennDOT ID card?

11 A That is correct.

12 Q And you would not move on to trying to
13 give them a Department of State ID card until you had
14 determined that you couldn't give them a PennDOT ID
15 card?

16 A That is correct.

17 Q All right. And the notion that the
18 PennDOT ID card -- withdrawn.

19 The notion of the DOS ID card was
20 supposed to be the card of last resort, and then you
21 would first exhaust the possibility of giving the
22 voter a PennDOT ID card, that's, in fact, reflected
23 in Exhibit 220, in the very first paragraph on the
24 top of that page; right?

1 A Yes.

2 Q Right. Because that first sentence says,
3 "I am requesting a Pennsylvania Department of State
4 ID for voting purposes because I am unable to obtain
5 a nondriver's license photo identification card
6 issued by Pennsylvania Department of Transportation,
7 PennDOT" -- let me stop there.

8 So the first thing that a person who came
9 in for an ID card had to do if they wanted to get a
10 DOS ID, the first thing they had to do was say I'm
11 unable to get a PennDOT card; right?

12 A We would still take them through the
13 process. And once we took them through the process,
14 if they weren't able to get a PennDOT ID, we would
15 then have to fill out this form.

16 Q Fair enough. Now, I want to walk through
17 that very first language at the top of the card. The
18 first thing that the person -- by the way, the
19 person -- the voter has to sign an affirmation? This
20 form is an affirmation; right?

21 A That is correct.

22 Q And it's made under criminal penalties of
23 if you don't tell the truth?

24 A I think it's unsworn testimony or

1 something of that nature. I think, but I'm not a
2 hundred percent sure.

3 Criminal penalties imposed by law for
4 violation of 18 Pa. C.S. 4904.

5 Q And the first thing that -- on this
6 paper, the first thing that someone is affirming is
7 that they are unable to obtain an identification card
8 issued by PennDOT; right? That's what the first
9 sentence says?

10 A Yes.

11 Q And then the clause after that says,
12 "Because I do not possess all of the documentation
13 required to obtain a PennDOT card and cannot obtain
14 the needed documentation."

15 Let me just stop there. Do you see that
16 language?

17 A Yes.

18 Q And what that means is I can't get the
19 PennDOT ID card because I don't have the
20 documentation for it and I can't get the
21 documentation for it; right? It's pretty
22 straightforward?

23 A That is correct.

24 Q And then the next clause says, "Or cannot

1 obtain the documentation without payment of a fee;"
2 right?

3 A That's correct.

4 Q And that again, also pretty
5 straightforward, means either I couldn't get the
6 documentation -- either I can't get the documentation
7 for a PennDOT card or I would have to pay a fee in
8 order to get it?

9 A That is correct.

10 Q Okay. And that's what you're affirming
11 to when you sign this?

12 A That is correct, yes.

13 Q All right. And just a minute to refresh
14 our recollections from our last hearing, the PennDOT
15 ID is what you call a secure ID; right?

16 A That is correct.

17 Q And that means as a general matter, as
18 you were saying before, you need either a raised
19 birth certificate or an alternate check of the
20 voter's birth date and birth record; you need a
21 Social Security card, and you need two proofs of
22 identity?

23 A That's correct.

24 Q All right. One of the things that has

1 been happening since August 27, when the cards were
2 made available -- withdrawn.

3 For the PennDOT ID -- let's move away
4 from the DOS ID for just a minute. For the PennDOT
5 ID, when a voter came in to get a PennDOT ID, if they
6 didn't have a birth certificate and they were born in
7 Pennsylvania, there was what you call an alimentative
8 procedure for determining whether or not they had a
9 Pennsylvania birth record; right?

10 A That is correct.

11 Q And that procedure was that you would
12 take the paperwork from the voter, and PennDOT would
13 make inquiry with the Department of Health to
14 determine whether they could find a voter record.

15 In the interim, the voter would go home;
16 and if the Department of Health could find a birth
17 record, then the voter would receive a letter from
18 the Department of Health telling them that they'd
19 found the birth record and to come back in?

20 A That is the correct procedure through, I
21 believe, the 20th of September. It was changed
22 after the 20th. I believe it's the 20th.

23 Q I'm going to come to that in just a
24 minute. Just to finish the procedure so far.

1 Until September 20th, what that meant
2 was if you wanted a PennDOT ID and if you were using
3 a procedure where they had to check your birth
4 record, you had to come to PennDOT twice --

5 A That's correct.

6 Q -- is that correct?

7 A Okay. Thank you.

8 Q And the interim between the two visits
9 would presumably be at least on the order of 7 to 10
10 days because that's how long it took the Department
11 of Health to check your birth record?

12 A Our estimate was somewhere between 7 to
13 10 days.

14 Q And, by the way, if they couldn't find
15 your birth record, the voter would not be asked to
16 come back in to get a PennDOT ID?

17 A That's incorrect. If -- after the DOS ID
18 was available, we sent all of those individuals --
19 even before the DOS ID was available, we sent a
20 letter to individuals letting them know that the
21 Department of Health couldn't verify them.

22 A After the DOS ID was introduced, we sent
23 them a letter saying the Department of Health
24 couldn't verify you. However, we do have a product

1 available for you, and that is the DOS ID, so please
2 come back.

3 Q Fair enough. And what you've just
4 described is what -- a process that would have been
5 in place starting August 27th?

6 A That is correct.

7 Q But whether it's before August 27th or
8 after August 27th, using this alternate method --
9 up until September 20th, using this alternate
10 method, the voter would come in, they'd make
11 application, they'd have to go home while there was a
12 check made with the Department of Health, and then
13 they would receive notification: Either come back
14 in, you can get a PennDOT ID; or if it was after
15 August 27th, we can't find your birth record but
16 maybe you can get a Department of State ID, come back
17 in for that?

18 A Yes.

19 Q Let's turn to what you were just
20 describing, Mr. Myers, which is on September 20th,
21 you made another change, and that was to cut down the
22 time it took to check with the Department of Health
23 as to whether a Pennsylvania-born voter had a birth
24 record; right?

1 A Well, we've listened very closely to the
2 concerns of individuals and also groups who have
3 stated various concerns that they've had in the
4 process, and this was one that we reacted to by
5 making this change to reduce the timeline.

6 Q And what is the procedure as of
7 September 20th? A voter comes in, they don't have
8 a raised-seal birth certificate, the person at the
9 window -- let me stop for a second.

10 What's the title of the person at the
11 window at PennDOT who dispenses the ID? What are
12 they called?

13 A Well, in general layman's terms, they're
14 customer service representatives. Their technical
15 title is a Driver License Examiner or a Driver
16 License Examiner Assistant. A DLEA or a DLE.

17 Q What if we call them a customer service
18 representative?

19 A That's fine with me.

20 Q They might prefer that too.

21 A I'm sure they do.

22 Q All right. So the voter comes up --
23 let's talk about what's happening on
24 September 20th.

1 The voter comes up to the customer
2 service representative at PennDOT. The voter does
3 not have a raised-seal birth certificate. They are
4 born in Pennsylvania. And I take it the customer
5 service representative says, not to worry, I can
6 determine whether or not there's a birth record.

7 So far correct?

8 A Yes.

9 Q And now, tell the Court what happens
10 after that. What will the PennDOT customer service
11 representative do then?

12 A The customer service representative will
13 contact the central office here at the Riverfront
14 Office Center. There are individuals that are
15 trained there to be able to access the Department of
16 Health records. They will either verify that the
17 record does exist, or if they can't find it, they'll
18 also let the customer service representative know
19 that.

20 That process may take a few minutes, but
21 at that point in time, the customer simply stays
22 there, either at the counter or is asked to have a
23 seat while we're checking.

24 As soon as we get verification back, that

1 individual then comes back up to the counter or if
2 they're still standing there, they're then told that
3 the record has been verified.

4 Q And the -- when you say the PennDOT
5 customer service representative calls over to the DOH
6 or contacts -- is it a phone call?

7 A No. I think they are checking the
8 electronic system.

9 Q I take it DOH is going to check the
10 electronic system; is that right?

11 A No. We have access to check the
12 electronic system.

13 Q Okay.

14 A That's my understanding of it.

15 Q So your understanding is the customer
16 service representative at PennDOT, they are able, on
17 their own without going through DOH, to go into DOH's
18 records and determine whether or not the voter has a
19 Pennsylvania birth record?

20 A No. Point of clarification: The
21 customer service representative in the field contacts
22 a PennDOT employee here at the Riverfront Office
23 Center. That employee then contacts the Department
24 of Health, which I believe is through an electronic

1 process, if they're able to verify the record.

2 Q The last stage, when the PennDOT employee
3 here in Harrisburg contacts the Department of Health,
4 that's what you're saying is the electronic process?

5 A That's correct.

6 Q By the way, you say you believe it. Who
7 would know the answer to that question?

8 A Well, there are plenty of people who are
9 process-wise within our shop. Obviously, Scott
10 Shenk. There are others within the organization.

11 I'm very, very confident that was, in
12 fact, the process; but I just don't want to make a
13 comment that it's 100 percent because I'm not into
14 the individual aspects of how that actually functions
15 from the standpoint of the contact information.

16 Q All right.

17 A I'm very confident that it's electronic.

18 Q Understood. Let me just ask you about
19 the first part of that process. When the customer
20 service representative contacts the PennDOT facility
21 here in Harrisburg, is that a phone call, or is that
22 also an electronic contact?

23 A That's a phone call, I believe.

24 Q A phone call?

1 A Yes.

2 Q You said that process could take a couple
3 of minutes. Does it take longer? Does it ever take
4 longer?

5 A I can't state specifically how long it
6 takes on each individual case. I suspect that there
7 are some that take more than a few minutes. There
8 are some that take less, depending upon how quick
9 they're able to match up the records and verify.

10 Q You've not had any complaints from your
11 customer service representatives that they can make
12 that connection with -- through PennDOT here in
13 Harrisburg to DOH and get a prompt answer; that's not
14 happened?

15 A Not that I'm aware of.

16 Q Let me turn now to the process of getting
17 a DOS card, at least as it existed through last
18 night.

19 All right. So once it has been
20 determined that the voter can't get a PennDOT ID,
21 they'll be given that Exhibit 220 to fill out; is
22 that correct?

23 A That is correct.

24 Q And in addition to the affirmation, we

1 discussed the things that the voter will have to
2 supply. Their name; correct?

3 A That is correct.

4 Q Their date of birth?

5 A That is correct.

6 Q Their Social Security number, or they
7 will have to say they've never been issued a Social
8 Security number?

9 A That is correct.

10 Q They have to identify their gender?

11 A That is correct.

12 Q They have to give their address?

13 A That is also correct.

14 Q They'll have to give their phone number?

15 A Yes.

16 Q It also asks for their email address.

17 A Yes.

18 Q And when the voter -- well, let me ask
19 you this.

20 Typically, will the voter do this while
21 standing in front of the customer service
22 representative? Or will the customer service
23 representative give them the form and ask them to
24 move on so they can service another person?

1 A That would depend upon the situation at
2 the center and what the customer wanted to do. From
3 the standpoint if the customer wants to fill the form
4 out right then and there, the transaction is in
5 process. Then common sense would say let's, you
6 know, have the form filled out.

7 There's not a tremendous amount of
8 information that's needed on here, so this is
9 probably something that a person could fill out in a
10 minute or so.

11 Q All right. Now, one of the things that
12 the customer service representative is supposed to do
13 when they receive this form is then to initiate a
14 process of checking to see whether the voter is in
15 the SURE database?

16 A That is correct.

17 Q And the way the customer service
18 representative does that is to call the help desk at
19 the Department of State?

20 A That is correct.

21 Q All right. And there are, what, five
22 people on the help desk at the Department of State
23 who take these calls?

24 A I don't know the answer to that question.

1 Q All right. And the theory was that the
2 person -- the customer service representative was
3 supposed to be able to determine whether or not there
4 was -- the voter was listed in the SURE database,
5 that would take on the order of a couple of minutes?

6 A In general, yes.

7 Q But, in fact, it is taking, in many
8 cases, a lot longer than that.

9 A Well, there have been some people who
10 could not be found in the SURE database. So from
11 that standpoint, there certainly have been people who
12 have not been -- their records found.

13 Q But you've received complaints that in
14 some instances, it was taking 10 or 15 minutes for
15 the folks at PennDOT, the customer service
16 representatives, to wait -- they'd be put on hold for
17 10 or 15 minutes while they waited for the SURE help
18 desk to pick up?

19 A That is correct. We've been in
20 conversations with the Department of State since we
21 deployed the new program on August 27th. And I
22 know the Department of State has made changes in the
23 number of people they have staffing, things of that
24 nature.

1 In the early stages we did have some
2 issues where the line wasn't being picked up and/or
3 someone was not available when our individual called
4 in from the center.

5 Q So when the customer service
6 representative called up, sometimes they would just
7 get a busy signal from the SURE help desk; is that
8 right?

9 A I believe that that occurred.
10 Again, these were in the early stages of
11 deployment. And they're back. And as I said, the
12 Department of State is taking corrective action.

13 Q And sometimes the help desk would put
14 your customer service representatives on hold; right?

15 A That is correct.

16 Q And they could wait 10, 15 minutes before
17 they'd be picked up?

18 A There's a possibility of them waiting
19 while they're on hold. Specifically how long, I
20 don't know the specific answer to that. But
21 certainly people are put on hold.

22 MR. GERSCH: Let me hand you what we'll
23 mark Exhibit 131.

24 (Petitioners' 131 was marked for

1 identification.)

2 MR. GERSCH: Your Honor, I apologize,
3 this is the wrong exhibit. Let me hand up what's
4 been marked 130.

5 BY MR. GERSCH:

6 Q All right. Directing your attention to
7 Exhibit 130, that's an email from Scott Shenk; is
8 that right?

9 A That's correct.

10 Q He works for PennDOT?

11 A That's correct.

12 Q He is the director -- division manager
13 for driver's licensing?

14 A Yes, that's correct.

15 Q And he was emailing to several people,
16 Megan Sweeney, who is an assistant to the Secretary;
17 right?

18 A At the Department of State, yes.

19 Q Mr. Marks; correct?

20 A Correct.

21 Q And cc'ing you, among others?

22 A Right.

23 Q All right. And he is writing -- if you
24 look at the second paragraph where he says, "I've

1 also gotten reports of callers being put on hold for
2 up to 10 to 15 minutes. I've also gotten reports of
3 getting busy signals when they contact the SURE help
4 desk."

5 Do you see that?

6 A Yes, I do.

7 Q When Scott says, "I have also gotten
8 reports of callers," you understand what he means is
9 he's getting those reports from PennDOT's customer
10 service people?

11 A Yes.

12 Q Right. These are concerns being
13 expressed by your own people up the chain of command,
14 and then it's being reported over to the Department
15 of State?

16 A That's correct.

17 Q Okay. Now, in some instances when it is
18 that the customer service folks from PennDOT make
19 contact with the SURE help desk, in some instances
20 the SURE help desk will not be available to verify
21 that the voters are registered?

22 A That is correct. And that is certainly
23 some of the reason that people are put on hold while
24 the customer service folks at the Department of State

1 do the verification.

2 As you can see from this email that you
3 presented to me -- and again, this is August 30th,
4 so it's three days after deployment of the Department
5 of State new product, as I testified earlier -- the
6 fact of the matter is we did work through some
7 issues. This was one of them Scott was bringing to
8 the Department of State's attention to work through.
9 So there are certain cases, though, where people
10 can't be verified.

11 Q All right. You made two points that I
12 should follow up on.

13 The first is you said you worked through
14 some of these issues. I take it you would say
15 inherent to going to any new process, there will be
16 bumps along the way, glitches, issues to be worked
17 out, and over time it's your hope that those can all
18 be remedied; is that fair?

19 A I think I've testified, not only in the
20 depositions but as well at the last trial, that by no
21 means is PennDOT perfect. We receive 2.4 million
22 customers face-to-face every year. And clearly,
23 there are going to be instances that need to be
24 addressed. But what I can assure you is that we

1 address them quickly and effectively once we're made
2 aware of a situation.

3 So there's no question about the fact,
4 when anybody deploys an operational program,
5 regardless of what it might be, there are always
6 going to be things you learned in deployment that
7 there was no way of anticipating leading up to that
8 deployment.

9 The key to it is that as you define them
10 and as you discover them, you address them.

11 We have.

12 Q Thank you.

13 Now, going back to the other thing you
14 said was that in some cases the SURE help desk is
15 unable to verify the voter's registration status?

16 A That's correct.

17 Q All right. Now, if the voter's
18 registration status is confirmed and if everything
19 else on the form has been filled out correctly, then
20 I take it the PennDOT customer service representative
21 ought to be able to issue a DOS ID?

22 A That's correct.

23 Q All right. But in the instance in which
24 the SURE help desk says, "We can't verify that the

1 voter is, in fact, registered," then the voter does
2 not get a DOS ID?

3 A Up until last night, as we've said, yes,
4 that's correct.

5 Q And we're still talking up until last
6 night?

7 A Right.

8 Q And in that instance, the matter is for
9 DOS to do follow-up on; is that right?

10 A That's correct.

11 Q Okay. And at that point it's essentially
12 out of your hands unless the person is asked to come
13 back in again.

14 A Correct; because DOS may, after doing
15 further research, may find the registration, may get
16 the individual registered, in which case they would
17 be sent back to receive the DOS ID.

18 Q All right. Another reason why a voter
19 would be turned down under this process that existed
20 until last night for a DOS ID card is if they didn't
21 have two proofs of residence?

22 A That's correct, although there were
23 alternative processes there for some individuals;
24 individuals, for example, who were homeless.

1 Q Sure. But if a person just came in and
2 they didn't know that this was a requirement and the
3 customer service representative says "You need two
4 proofs of address" and the person says "Well, I don't
5 have them" or "I only have one," they'd be told to go
6 home and get the proofs of address and come back in?

7 A That is correct.

8 Q Another thing that would require the
9 voter to go home is if they didn't know their Social
10 Security number?

11 A Yes, that is also correct.

12 Q You wouldn't issue the ID at that point?

13 A If they said they had a Social Security
14 number but they didn't know it, yes, that's correct.

15 Q And another problem that would result in
16 the voter not receiving a DOS ID is if you -- if the
17 voter gives their Social Security number but it links
18 to a different name, such as their maiden name or a
19 birth name if they were adopted, but a name different
20 than the name that is in the SURE database and
21 different than on the application?

22 A Or you're getting into an area that the
23 Department of State handles from the standpoint of
24 the verification, so I would defer to them to answer

1 that question.

2 Q Fair enough.

3 In fact, just to be clear, in actuality
4 there are voters who come for ID who are not
5 qualified to get a PennDOT ID and are turned away
6 when they apply for a DOS ID; that, in fact, happens?

7 A To date, yes, I believe there were
8 approximately 55 individuals who are in an
9 alternative process from the standpoint of getting
10 verification and working with the Department of
11 State. And the Department of State, again, would be
12 in a better position to say where those individuals
13 are.

14 And that's an estimate on my part; but
15 55, I think it's around that number. But again, they
16 could attest to that.

17 Q If I put it to you that initially over
18 100 voters have been turned away without an ID,
19 regardless of whether they later resolve it, does
20 that sound right to you?

21 A That number sounds high to me. But
22 again, it would be the Department of State that would
23 have the number.

24 Q Very good. We'll ask them.

1 Up until last night, up until whenever it
2 was you decided to start the process that led to last
3 night, is there any reason why you didn't have a
4 simple system where a voter could come in, say I
5 don't have ID, I need ID to vote, make out an
6 affidavit to that effect and get an ID?

7 Did anyone ever tell you or did you ever
8 tell anyone, no, we can't do that for the following
9 reasons?

10 A Well, I think I've testified in the past
11 that this has been an evolutionary process from the
12 standpoint of the initial issuance going back to
13 March 15th. The fact of the matter is, we've
14 learned as we've gone along and we've made changes,
15 the alternative processes that we put into place,
16 such as the birth certificate process.

17 We've learned, and that was the reason
18 why we worked and developed the DOS ID. And
19 certainly, since the DOS ID has been put in place,
20 we've made some additional changes, with the most
21 recent ones being the changes that went in last
22 night.

23 So we have learned through the process,
24 and we've learned ways to make it easier for

1 individuals to get?

2 Is it something that I believe somebody
3 should have thought about before? Again, as I said
4 earlier, from an operational standpoint, as an
5 administrator, whenever I deploy a program, while as
6 much as I may want to think that I've thought about
7 everything that needs to happen within the process,
8 the reality is you do learn, through the deployment.
9 And we have, and we've made changes accordingly.

10 Q And I appreciate that answer. My
11 question is really a little bit different; which is,
12 before, say, the last week or so, had you ever
13 participated in a discussion where either you or
14 someone else who was a party to the discussion said,
15 Why can't we just have people -- voters sign a simple
16 affirmation saying something like, "I don't have the
17 ID I need to vote, and I need ID so that I can vote"?
18 Something like that. Were you ever in a discussion
19 like that before the last week, 10 days?

20 A I don't recall there being a conversation
21 like that. But I think the important part is that
22 PennDOT is the conduit for getting these IDs to
23 individuals. If there was a conversation of that
24 nature, it would have most likely been a conversation

1 amongst the folks at the Department of State.

2 Q Moving on to another topic.

3 Am I correct that if you want an ID to
4 vote, you're not supposed to have to pay for it?
5 It's supposed to be free?

6 A Could you repeat the question.

7 Q If a voter comes in and they want an ID
8 for voting, whether it's a PennDOT ID or DOS ID, it's
9 supposed to be free?

10 A If they sign an affirmation stating that
11 they have no other form of acceptable ID for voting
12 purposes.

13 Q Then it's supposed to be free?

14 A That is correct.

15 Q Let me ask you about the following
16 situation:

17 If the voter comes in -- withdrawn.

18 In order to be valid for voting, the ID
19 has to have an expiration date on it, and it has to
20 be -- the expiration date has to not have run
21 already; correct?

22 A Has not what?

23 Q I didn't phrase that well. Let me start
24 over.

1 In most cases -- this is not going to be
2 true of the PennDOT ID; but in most cases, your
3 understanding is that to have a valid ID for voting,
4 the ID has to have an expiration date and the
5 expiration has to have not have run already?

6 A That is correct, excluding the PennDOT
7 ID, driver's license or ID.

8 Q And the way the PennDOT ID works is you
9 can use that ID even if it's expired so long as it
10 hasn't been expired 12 months?

11 A Yes; as prescribed by the law.

12 Q And if the voter comes to you today --
13 not to you personally, Mr. Myers, but to PennDOT to
14 the customer service representative and they say:
15 "I'm in the system. I have a PennDOT ID, maybe I
16 even have it with me"; and says, "It will be
17 expired -- it will be 12 months' expired on October
18 1st and so I'm going to need an ID for voting; I'd
19 like to have that renewed" -- will that individual be
20 charged if they bring that in today?

21 A They would; because legally they would
22 not be allowed to sign the affirmation because the
23 affirmation says they have no form of voter ID that's
24 appropriate. So at that point, when they come in,

1 they do. So they would be violating the law by
2 signing the affirmation.

3 Q I hear you say that. And I've heard that
4 before. But help me with this part. They can't vote
5 today. They can't vote on September 25th. They
6 can't vote today. They've got to wait until November
7 to vote in any case, because there's no election
8 today.

9 Who is it who would determine that the
10 right way to read the law is that you can't give them
11 a free ID today, they have to wait until
12 October 1st?

13 A The Commonwealth's attorneys.

14 Q Is there a particular Commonwealth
15 attorney?

16 A Not one that specifically comes to mind.
17 I know the discussion was between the Department of
18 State and the PennDOT.

19 Q Were you a party to this discussion?

20 A I have been involved in discussions,
21 specifically the attorneys looking at it.

22 In other words, much of those discussions
23 were early on back in March. So I don't recall
24 specifically who was involved.

1 But there was certainly discussion about
2 whether or not somebody could sign the oath before
3 the product had expired. And the determination was
4 made by the parties involved -- and again, there were
5 people from the Department of State as well as the
6 PennDOT, a chart went out that clearly defined the
7 fact that someone would have to pay if it was not a
8 product that had been expired for a year. I think
9 the law is fairly specific about that.

10 Q But in any case, you're not going to
11 testify about what the law requires; right?

12 A I'm not a lawyer.

13 Q That's what we have these folks for.

14 Are there other instances since you last
15 testified in which -- putting aside this particular
16 fact set, in which folks who come in and want a
17 PennDOT or DOS ID for voting are charged when they
18 should receive the ID for free?

19 A I just looked at the records this morning
20 actually, because this subject matter came up at the
21 last trial, and I was asked how many refunds have
22 been issued.

23 I want to preface this response by saying
24 that when a refund is issued, it's not because

1 necessarily somebody made a mistake at the center.

2 It may simply have been that the customer didn't know
3 what their responsibilities were.

4 And again, I have stressed from day one
5 and in my testimony in the past that this is a shared
6 responsibility amongst our customers as well as our
7 customer service representatives. It's a shared
8 responsibility on the part of the customer to bring
9 information, the appropriate information in to the
10 centers when they come in.

11 But there are times, whether either by
12 misunderstanding on the part of the customer or where
13 an employee has made a mistake -- again, I've never
14 claimed that we're perfect -- that we have been made
15 aware of a situation where somebody says, you know, I
16 could have signed that affirmation. And when we are
17 made aware of that, that individual, when that
18 affirmation -- we ask the individual to sign the
19 affirmation. We then refund them.

20 To date, since March, we have refunded 21
21 individuals.

22 Q Mr. Myers, in order to get a refund, the
23 person would have to first figure out that they could
24 have gotten the card for free; right?

1 A Well, again, it goes to the shared
2 responsibility that I spoke about earlier.

3 You say "figure out." There's plenty of
4 information on the Web. They're on the call center
5 and other areas for people to come to our centers
6 well-prepared -- including what times and hours we're
7 open.

8 Q Mr. Myers, I should have asked this
9 first.

10 You're not contending that just because
11 there are 21 refunds that that's the only -- that's
12 the number of people who have been charged for free
13 ID who were entitled to get it for free?

14 A Well, I think we have to look at facts
15 and data.

16 To date, since March, we've issued
17 approximately 9500 voter, free voter IDs across the
18 entire Commonwealth. We've issued, since
19 August 27th, approximately 1300 DOS IDs.

20 So when you ask me are 22 people
21 potentially -- or 21 people potentially the ones who
22 should have gotten a free ID and didn't? I don't
23 know. That number seems pretty consistent with the
24 fact that we've issued less than 10,000 free IDs.

1 Q My question is simpler than that.

2 Are you testifying that because there are
3 21 records of refunds, that only 21 voters who
4 applied for PennDOT or DOS ID were charged when, in
5 fact, they should have or could have gotten it for
6 free?

7 A I am testifying that I believe that right
8 now there are 21 individuals who have asked for a
9 refund. Are there more? I would say probably yes,
10 there are probably some others who would qualify for
11 a refund.

12 But based upon the total number of IDs
13 that we've issued free, the 9500 plus the 1300, logic
14 would dictate, based upon the facts in the data, that
15 while there may be more that are owed a free ID
16 because of some misunderstanding or some mistake on
17 the part of PennDOT, that number is certainly
18 probably not in the hundreds but is well below that
19 100 number. That's based upon the facts and the
20 data.

21 Q Mr. Myers, you said you had checked the
22 total number of refunds?

23 A That's correct.

24 Q When did you do that?

1 A This morning.

2 Q When was the last refund?

3 A I'd have to turn my BlackBerry on.

4 MR. GERSCH: I have no objection if --

5 THE COURT: Any objection?

6 Go ahead.

7 BY MR. GERSCH:

8 Q Go ahead.

9 A I have this by month. And there were
10 five refunds issued in September, but I don't know
11 the specific date. But in September, we issued five.

12 Now, I think it's important to understand
13 that simply because the five refunds were done in
14 September doesn't mean that the original transaction
15 was done in September. It could be somebody as far
16 back as March who said I'm signing the affirmation
17 now.

18 We don't put a time limit on it. If
19 somebody comes back and says, "Back in March I was
20 here and I paid for this and I shouldn't have," we
21 would refund them.

22 Q What's the process for getting the
23 refund?

24 A The process is, first, as you point out,

1 the customer would need to contact us. There is no
2 way for us to know. Contact us and say that they
3 believe they are owed a refund.

4 And that contact may come through a
5 legislator. We've had a number of ways the contacts
6 have come through to us where we researched it and
7 said, Fine, sign the affirmation, and we'll be happy
8 to send you a refund check.

9 Q How do you communicate with a customer
10 voter in that instance?

11 A It may be through email, may be through
12 telephone. It may be with the legislator being the
13 go-between. There's multiple ways that we would end
14 up communicating with the --

15 Q How does the voter end up with the
16 affirmation in that situation? So the voter has
17 already paid. Somebody, an advocate, a legislator,
18 the voter has contacted you and said, Hey, I paid
19 when I shouldn't have paid. You do your research,
20 you determine, Hey, he's right, she's right. How
21 does the voter end up with the affirmation in their
22 hands?

23 A Well, the affirmation is on the Internet.
24 If it's a legislator, we would send them the copy.

1 Most likely we would say, Hey, it's on the Web, go
2 ahead and print it. Have the individual sign it and
3 send it in to us.

4 Q Let's assume we have a voter who doesn't
5 have access to the Internet. How do they get it?

6 A In those cases we will mail them one if
7 they didn't have any other access to it. They're
8 also at our centers.

9 Q Do you ever ask them to come in and fill
10 out the form?

11 A I don't know the specifics of the 21
12 cases and specifically how we had them fill the form
13 out.

14 Q I want to get a sense of why it is that
15 these misunderstandings happen in the first place.

16 So a voter has come. They say they need
17 ID to vote. I am trying to understand what the
18 confusion would be.

19 You have 71 licensing centers; correct?

20 A Driver's licensing centers.

21 Q How many customer service representatives
22 do you have that service people who want any kind of
23 ID for voting?

24 A Well, all the staff is trained on being

1 able to issue IDs.

2 Q Do you have people whose principal job is
3 to be a customer service representative?

4 A The DLEAs, which is the separation --
5 there's a difference between a DLE and a DLEA.

6 A DLE can give the actual driving test.
7 A DLEA can't. That's my separation between the two
8 job responsibilities. But all of them are trained to
9 be able to issue IDs.

10 Q So how many of those people are there?

11 A There's approximately 350 across the
12 state.

13 Q Okay. And other than the DLEs and DLEAs,
14 is there anyone else involved in distributing voter
15 IDs to people who apply for them?

16 A The regional managers, the district
17 managers. Those are all individuals that may at some
18 point in time actually process something.

19 Q So someone comes to the customer service
20 representative. They want an ID for voting. I take
21 it your customer representatives, all 350 of them,
22 and I take it the people more senior who might be
23 manning a window at any particular time, they all
24 know that if the customer wants an ID for voting,

1 they're entitled to it for free? And we're not
2 talking about in that situation we discussed earlier
3 about the person whose ID has been expired 12 months
4 yet. All your folks know this; correct?

5 A That's correct.

6 Q So how is it that people end up getting
7 charged? Do your folks not make clear that they're
8 entitled to it for free?

9 A It goes back to my comment earlier about
10 a shared responsibility. And when customers come in,
11 if there are situations where the customer doesn't
12 inform us that they want a voter ID, some customers
13 come in and they don't tell us they're here for a
14 voter ID. They simply say they're here for an ID.

15 So there are situations where, when the
16 customer comes in, that's where the potential is for
17 a mistake to be made; not intentionally, but simply
18 because of the fact that the customer didn't realize
19 that perhaps they could sign the affirmation.

20 My employees are instructed to let people
21 know, and it's part of their -- our expectation is
22 that they ask the customer if they're getting an ID
23 for voting purposes. And if they are, they certainly
24 go through the affirmation and what needs to happen

1 from the standpoint of them being able to sign the
2 affirmation.

3 To the best of my knowledge, I believe
4 there have also been some cases where individuals
5 have believed that they were owed a free ID when in
6 point of fact they didn't qualify for one.

7 Q What would be a situation if you didn't
8 qualify for a free ID?

9 A They weren't able to sign the
10 affirmation. After reading it, they had other forms
11 of ID that would be useable for voting purposes.

12 Q I see.

13 But the way you would want it to work is
14 the way you were describing. You want your folks,
15 when a voter comes up to a person, you don't know why
16 they're there, you want them to say, why do you want
17 the ID? Do you want it for voting? And if the
18 person says yes, I want it for voting, you want your
19 folks to say, if you can sign this affirmation,
20 you'll get it for free?

21 A Absolutely. As I testified before, we're
22 in the business of issuing IDs, not denying people
23 IDs.

24 Q If you or a voter who applied for PennDOT

1 ID before August 27th and were rejected, has
2 PennDOT send them any communication since then
3 saying, you know, I know we rejected you last time,
4 but we have a new procedure, a DOS card, and please
5 come back so we can give you the DOS card or so that
6 you can apply for a DOS card?

7 A My recollection is yes, we did. We sent
8 a letter out to those individuals who had previously
9 been denied.

10 Q When you say it's your recollection, who
11 would know?

12 A Scott Shenk.

13 Q Anyone else?

14 A I suspect that there would be other
15 people in the organization that would know, but I
16 believe that Scott had responsibility for that
17 communication.

18 Q And it would come from PennDOT, not from
19 DOS?

20 A That would come from PennDOT, yes.

21 Q Just to go over the numbers, we were
22 provided with information through September 19th.

23 A Yes.

24 Q So maybe you have more recent data.

1 The data we received was that through
2 September 19th, since the law had been passed, only
3 8,795 PennDOT IDs for voting had been issued; is that
4 right?

5 A That number sounds right for last week,
6 yes.

7 Q Do you have a more current number for
8 this week?

9 A Yes, I had said earlier I believe that, I
10 think it's somewhere around 9500, 9300, somewhere in
11 that range.

12 Q All right. And the other information we
13 were given is that since August 27th, only 105
14 DOS -- I'm sorry -- only about 1,005 DOS cards had
15 been issued; is that right?

16 A That sounds approximate for last week.
17 As I said earlier, it's now somewhere around 1350
18 that have been issued.

19 Q Is that something you checked this
20 morning?

21 A Yes, it is.

22 Q All right. When we had our last hearing,
23 I had understood you to say that PennDOT issued on
24 the order of 45,000 initial identifications, driver's

1 license, nondriver's license, a month. Do you recall
2 that testimony?

3 A I do. But it also includes learner's
4 permits, which is a part of that whole process.

5 (Petitioners' 136 was marked for
6 identification.)

7 BY MR. GERSCH:

8 Q Let me show you what's been marked
9 Exhibit 136.

10 Are you familiar with Exhibit 136,
11 Mr. Myers?

12 A Yes, I am.

13 Q What is that?

14 A This is the number of initial licenses
15 issued and initial photo IDs issued for 2011 and
16 2012, comparison of March through September.

17 Q So if I'm reading this right, it looks
18 like August is your busiest month?

19 A That is correct.

20 Q And in August, you issued on the order of
21 37,000 total initial licenses and photo IDs?

22 A That is correct.

23 Q And that would be a little bit above what
24 you did last August?

1 A A little, yeah.

2 Q And on the low end, you have months,
3 looks like March was a particularly slow month where
4 you issued on the order of 18,000 IDs.

5 A That's correct. And again, these numbers
6 don't include learner's permits and what we discussed
7 at the last trial.

8 Q And the learner's permits, I take it
9 those will also fluctuate, depending on the month?

10 A They certainly do. August is a big month
11 for learner's permits, as is the entire summer for
12 kids out of school.

13 Q Okay. But in any case, we're talking
14 somewhere in the neighborhood of 35-, 45,000 IDs a
15 month; right?

16 A That's correct.

17 Q A busy month would be 45,000 IDs?

18 A That's a fair statement.

19 Q Most months, it looks like you'll be
20 below that, even with the learner's permits?

21 A That's correct.

22 Q I take it if 30,000 people came in in a
23 month, 30,000 new people came in in a month who
24 needed ID, that would be a substantial burden for

1 your department.

2 A If 30,000 additional people beyond what's
3 here came in --

4 Q Yes.

5 A -- in that hypothetical, certainly that
6 would stretch our abilities.

7 THE COURT: I'm not sure I understood the
8 answer.

9 BY MR. GERSCH:

10 Q You said it was stretch your abilities?

11 A It would stretch our ability to be able
12 to service them.

13 THE COURT: What I didn't understand is,
14 what number are we talking about that would stretch
15 your ability?

16 THE WITNESS: An additional 30,000
17 customers on top of the customers that we currently
18 have, which is somewhere around 35- to 40,000 a
19 month, so essentially doubling our business.

20 THE COURT: So we're talking if 60- to
21 70,000 people, 60- to 70,000 people came in for some
22 sort of initial license or initial photo license,
23 that would be pushing it?

24 THE WITNESS: That would be pushing it.

1 THE COURT: Got it.

2 BY MR. GERSCH:

3 Q And that's because it would be an
4 increase on the order of 100 percent?

5 A Yes.

6 Q Right. Okay. And am I right that
7 there's no document, there's no actual analysis that
8 we could look at where the department has analyzed
9 how it would handle large additional numbers of
10 people seeking ID. When I say "large" for these
11 purposes, I'll use on the order of 30,000; but if
12 you've done it for 10,000, I'd like to know that; if
13 you've done it for 50,000.

14 I take it there's no such analysis at
15 PennDOT.

16 A Well, I believe in my deposition as well
17 as the previous trial, I had made it clear that there
18 was no analysis because the data and facts didn't
19 support doing an analysis. By your own words
20 earlier, you said there was a slight increase from
21 2012 for August in comparison to 2011. I would agree
22 with that statement. There is a slight increase.

23 So we haven't seen huge, huge number of
24 increases. Again, that goes back to my testimony

1 earlier of 93-, 9500 free IDs issued in total and the
2 1300 DOS IDs that have been issued. The data just
3 doesn't support that there are hundreds and hundreds
4 of thousands of individuals out there that don't have
5 IDs.

6 Q That is your opinion, I take it?

7 A It is my personal opinion, based upon the
8 facts that I see.

9 Q When you say "based upon the facts," the
10 first question is, you've done no analysis of how
11 you'd handle a significant increase in the number
12 of --

13 A That's absolutely correct.

14 Q -- of applicants; correct?

15 A That is correct.

16 Q And the second thing -- and I don't want
17 to reiterate what we did last time -- but as long as
18 we're on this topic, since we were last here before
19 Your Honor, since we were last here, you've done no
20 work to estimate the number of people who don't have
21 ID and would need ID to vote?

22 A That is correct.

23 Q Did you happen to read the Supreme
24 Court's opinion in this case?

1 A I breezed through it. I will not say I
2 read it in detail, nor am I an attorney to understand
3 some of the things that are said.

4 Q Sure, sure. And this is not going to be
5 a legal question. If it is, I'm sure I'll draw an
6 objection.

7 Did you see the part of the opinion where
8 the Court expressed concern that this law might
9 impact what they call vulnerable groups, the elderly
10 and disabled, the financially disadvantaged? Do you
11 recall that part of the opinion?

12 A I do recall that comment. I don't
13 remember the exact words. Yes.

14 Q Okay. Have you done any work to
15 determine the number of the people in those groups
16 who don't have ID and need ID to vote?

17 A No.

18 Q Have you done any work to determine
19 whether those groups -- because of their age or
20 because of their disability, because of their
21 financial status, whether they need additional help
22 above and beyond what you're doing already in order
23 to get ID to vote with?

24 A Well, in general, our staff is instructed

1 to help all of our customers. That's nothing new
2 since the voter ID. And when people have individual
3 health issues or some other issue that may restrict
4 them, we do whatever we possibly can, based upon the
5 business environment, to help them.

6 We have a wonderful letter from an
7 individual, a woman who was turning 100 before her
8 election. She sent me a letter. Because our staff
9 person, when the individual drove up with her friend,
10 she was too frail to come into the center, our staff
11 person went out, got all of her paperwork, allowed
12 her to sit in the car, got her paperwork processed,
13 and then they wheeled her in, put her in line, and
14 had her picture taken and then got her back to her
15 car.

16 Our staff has done yeoman's work when it
17 comes to working with various locations. I have one
18 employee who took his day on off on a Monday to go to
19 an assisted-living center to help gather paperwork,
20 bring it back, look at the paperwork, get it done and
21 take that work back to the center.

22 So in answer to your question, "Have we
23 done anything specifically since the Supreme Court
24 ruling has come out?" and the answer to that is no.

1 I would answer that it has historically
2 been standard operating procedures for our folks to
3 take care of our customers to the best of their
4 ability.

5 Q And just so we're clear, I have no doubt
6 that on many occasions PennDOT rises to the occasion,
7 goes above and beyond. But my particular concern is
8 with people here who may not even get to PennDOT;
9 have you done any kind of outreach to try and
10 identify the people who, say, are having difficulty
11 getting to PennDOT in the first place?

12 A We have certainly done outreach from the
13 standpoint of assisted-living centers, nursing homes,
14 things of that nature, where we've sent people to
15 visit those centers and help with paperwork and
16 things of that nature. We've done as much as we
17 possibly can to facilitate the process.

18 Certainly PennDOT has the Shared-Ride
19 program. A couple months ago, a letter went out to
20 all the Shared-Ride Program operators, making sure
21 that they understood that they were to allow people
22 to get on the Shared-Ride and Cross County lines if
23 they needed to, to get people to driver's licensing
24 centers.

1 And, of course, if you're disabled or
2 over the age of 65 -- it's not a program under my
3 responsibility -- but I believe there are significant
4 discounts for people in those categories to -- from
5 the standpoint of the cost associated with getting
6 those rides.

7 Q And I don't doubt that people are being
8 helped with those programs. But I take it, since you
9 don't know the size of the need, you can't actually
10 compare what you've accomplished against what the
11 size of the need is to determine whether you've met
12 all the need, part of the need or a smidgen of the
13 need?

14 A It's interesting you ask that question.
15 Because the fact of the matter is that, no, I can't
16 specifically quantify the need.

17 But what I can tell you is that we've had
18 a number of situations. Just recently, about a week
19 ago, we had an individual who contacted us to come in
20 on a Saturday with a group of people who apparently
21 supposedly didn't have IDs. And as a point of fact,
22 I actually sent one of my employees from Harrisburg
23 down, because this group was a Latino group, and he
24 is fluent in Spanish. And we wanted to make sure

1 that he would be there to help facilitate from a
2 language standpoint, just in case there were any
3 language barriers.

4 He went from Harrisburg to Philadelphia,
5 got to the center at Columbus Boulevard, and
6 unfortunately no one showed up.

7 That has occurred on other occasions as
8 well where we've made arrangements for groups to come
9 and then no one comes.

10 I can only assume -- and it's an
11 assumption on my part -- that the individual,
12 although good-intentioned to bring people in who
13 didn't have IDs, I could only assume they couldn't
14 find anybody who didn't have an ID, so there was no
15 one to bring.

16 Q You're not testifying, Mr. Myers, there's
17 no one out there, no disabled person, no elderly
18 person, no person who is financially disadvantaged,
19 who is having difficulty getting to PennDOT, are you?

20 A I'm not testifying to that at all, no.

21 Q You mentioned the Shared-Ride Program.

22 Is it the case that you've got to show ID
23 in order to be able to avail yourself of the
24 Shared-Ride Program?

1 A Again, as I stated earlier in my
2 testimony, that's not a program that's specifically
3 under my responsibility, and so I don't know the
4 answer to that question.

5 Q Have you heard that? Have you heard that
6 complaint, that when people want to use the
7 Shared-Ride Program so that they could come and get
8 ID, they, in fact, have to show ID in order to avail
9 themselves of it?

10 A I have not heard that complaint. And I
11 would ask only, what is the ID? Are you saying ID
12 and that it has to be a picture ID or are you saying
13 ID simply that someone has to show a bill or
14 something of that nature?

15 Again, I don't know the program, so I
16 don't know what ID is being required.

17 (Petitioners' 192 was marked for
18 identification.)

19 BY MR. GERSCH:

20 Q Fair enough. Let me show you what's been
21 marked Exhibit 192, which is, I want to be clear,
22 does not show you being copied on. It's an email
23 exchange with Megan Sweeney, the assistant to the
24 Secretary. And if you've not seen this before, this

1 reflects someone's complaint about the situation I'm
2 talking about. If you've not seen this before, you
3 can put it aside. So let me know if you've --

4 A I'm sorry. What was the question again?

5 Q The question is, are you aware of this
6 situation that's being documented on Exhibit --

7 A I need to read it real quick here.

8 MR. CAWLEY: Your Honor, objection. I
9 think the question was whether he's seen the document
10 before.

11 BY MR. GERSCH:

12 Q We can start with that. Have you seen
13 this document before?

14 A I don't recall ever seeing this document.

15 Q Regardless of whether you've seen
16 Exhibit 192 before, are you familiar with the
17 situation that is discussed there?

18 A No, I was not aware of the situation.

19 Q All right. You can put that aside.

20 One of the things you mentioned earlier
21 in your testimony was this process by which, when new
22 procedures are implemented, things come up; and over
23 time you work through them and try and address
24 issues.

1 One thing I want to reference is, this
2 new procedure whereby you've streamlined the process
3 by which PennDOT can verify someone's birth record, I
4 just want to ask you about that.

5 The procedure that you've come up with
6 today, is there a reason that couldn't have been
7 implemented before?

8 A The answer to that is no. But, again, as
9 I said earlier, this has been an evolutionary
10 process, as we've learned. And this is something
11 that we listened to our customers. We listened to
12 the concerns that were being expressed, and we made
13 adjustments to our program accordingly.

14 Q All right. Let's turn now to the events
15 of last night and the events that led up to it. And
16 the new DOS ID.

17 All right. So as of last night, I take
18 it, there's a new application for a DOS ID; is that
19 right?

20 A That is correct.

21 Q And some other new documents that pertain
22 to the new DOS ID?

23 A Yes. There are -- there are some updated
24 training documents, things of that nature, yes.

1 Q I'll show you some in a moment. My first
2 question, though, is, is there someone who is in
3 charge or the point person for implementing the new
4 DOS ID program, I'll call it?

5 A Us, certainly.

6 Q "Us" being PennDOT?

7 A Certainly from the standpoint -- were you
8 asking a specific person?

9 Q Yes, a person, a name.

10 A Specifically within PennDOT, that would
11 be Scott Shenk's responsibility.

12 Q Okay. And let me go back -- I should
13 have asked this question first. Is there -- who made
14 the decision that the process for getting a DOS ID
15 should be changed?

16 A The decision, I believe, was made by the
17 Department of State and the Office of General
18 Counsel.

19 Q How did you find out about the decision?

20 A I found out about it, I believe, early
21 last week, if not late the week before, where there
22 were conversations that we started talking about how
23 we might change it. And it was specifically based
24 upon the findings of the Supreme Court.

1 So it was information, then, to look at
2 that and say, Is there a way that we can modify our
3 program? So there were a number of discussions about
4 how the program may or may not change.

5 Q And who did you first hear this from?

6 A I believe it was PennDOT's chief counsel,
7 to the best of my recollection.

8 Q Who is that?

9 A That would be Bill Cressler.

10 Q I'm sorry. Bill?

11 A Bill Cressler.

12 Q And did you have input into how this new
13 DOS program would be either designed, implemented,
14 anything like that?

15 A Yes.

16 Q And are you the person that assigned
17 Scott Shenk to be the coordinator for PennDOT?

18 A Well, in his role and his position,
19 that's his responsibility. Any type of deployment
20 out to the field for driver licensing centers falls
21 under his responsibility.

22 (Petitioners' 226 was marked for
23 identification.)

24 BY MR. GERSCH:

1 Q Let me show you what's been marked as
2 Exhibit 226.

3 What's that document?

4 A This is the form the Department of
5 State -- their form that we utilize at our centers.
6 And it's a change of name for a replacement of a lost
7 or stolen or mutilated Department of State card. So
8 this is not the initial application. This is the
9 replacement of a product that's been lost or stolen
10 or mutilated.

11 Q It's not a seamless machine. I showed
12 you the wrong document.

13 (Petitioners' 225 was marked for
14 identification.)

15 BY MR. GERSCH:

16 Let me hand you Exhibit 225. Here you
17 go, Mr. Myers.

18 A Thank you.

19 Q If you take a look at Exhibit 225, and
20 after you've had a chance to review it, tell us what
21 this is.

22 A This is the form for the initial
23 issuance, the new form for the initial issuance for a
24 Department of State ID.

1 Q In the lower right-hand corner, what's
2 the date?

3 A 9/24/12.

4 Q So this is a document that was at least
5 finalized last night; is that right?

6 A That would be correct.

7 Q Am I right this is the final version?

8 A It appears to be, yes.

9 Q Okay. And this is the version that you
10 say would have gone out either last night or sometime
11 this morning to your driver's license centers?

12 A That is correct.

13 Q Okay. Let me ask you a few questions
14 about this.

15 So one thing that I see is missing is,
16 remember that paragraph we looked at at the very top
17 of the old form?

18 A Yes.

19 Q That paragraph is gone; right?

20 A That is correct.

21 Q So the exhaustion requirement contained
22 in that paragraph, that's been eliminated?

23 A That is correct.

24 Q Okay. And another thing that I don't see

1 anywhere on this form is -- and we'll look at another
2 document in a minute -- there's no requirement for
3 two proofs of residency; is that right?

4 A That is also correct.

5 Q That's been eliminated?

6 A That is correct.

7 (Petitioners' 224 was marked for
8 identification.)

9 BY MR. GERSCH:

10 Q All right. Let me show you -- let me
11 show you what's been marked Exhibit 224.

12 Take a look at that document. And when
13 you've had a chance to review it, tell us what that
14 is.

15 A This was the identified process flow.

16 Q Okay. Does this describe the process for
17 issuing the new DOS card?

18 A I believe so, yes.

19 Q And what's the date in the lower
20 right-hand corner?

21 A Again, 9/24/12.

22 Q So this is another document from
23 yesterday?

24 A That's correct.

1 Q All right. And the caption says, Amended
2 Proposal for the DOS Voter ID Process.

3 Do you know why it's called "proposal"?

4 A I do not. This document was prepared by
5 the Department of State.

6 Q Do you understand that this is a final
7 document?

8 A I don't know that without specifically
9 comparing it against what documents I have that are
10 final. And there's two pages here of detail. I
11 don't know if there's any tweaks in here that
12 something got changed.

13 Q Certainly. Let me ask you this
14 question -- and it won't be a question about the
15 document, although if it's helpful, feel free to look
16 at it.

17 The question I have is, okay, so the
18 exhaustion requirement has been eliminated. The two
19 proofs of residency have been eliminated. Are there
20 any other requirements for the DOS card that have
21 been eliminated as of last night?

22 A Yes; the gender question.

23 Q Anything else besides the gender
24 question?

1 A I don't believe so, other than the
2 primary requirement, which was before it was a safety
3 net product; and now it can be issued the first
4 product when somebody comes in. So we're not going
5 through the process of trying to issue somebody a
6 PennDOT ID. We're now going immediately to the
7 DOS ID.

8 Q I'm curious, why was the gender
9 requirement --

10 A That was a Department of State request
11 that it be removed. And I believe -- here again, I
12 believe that it was a certain constituency group that
13 asked for this. But I don't know the specific
14 details of it, and the Department of State would
15 really be the best to answer that.

16 Q Certainly. We'll hold that question for
17 them.

18 All right. Any other requirements that
19 have been eliminated in the new DOS program?

20 A Again, as far as the process works, I
21 think what's important here, as I said earlier, is
22 that the product has now become the first product
23 that we would issue as far as free ID is concerned.

24 We will still be verifying registration,

1 as we've noted before. And I said it was somewhere
2 around 55; you had a number somewhere of 100.
3 Regardless of what that number is, there were some
4 people who were turned away, if you will.

5 I think the most significant aspect of
6 this new process is the fact that even if we can't
7 verify that somebody is a registered voter, what we
8 will do is still process their work; and we will take
9 their photo. We will produce a card. However, we
10 will hold that card and take the card along with a
11 voter registration form, filled out by the customer.
12 We will send that to the Department of State. The
13 Department of State will take the steps necessary to
14 get the individual registered with the County.

15 Again, I'm not an expert on that process.
16 Department of State would have to refer to that. And
17 at that point in time, once the individual is
18 registered, the card would be sent to the individual.

19 BY MR. GERSCH:

20 Q Okay. Let me just make sure we
21 understand.

22 Mostly I want to make sure I distinguish
23 between what PennDOT does and DOS does because we
24 want to save the DOS questions for DOS.

1 A I understand.

2 Q So on the PennDOT end, do you still --
3 will you still have your customer representative
4 phone over to the SURE help desk?

5 A Yes, we will.

6 Q Okay. And I take it what you're talking
7 about now is if the SURE help desk says to you, "We
8 can't verify that this is a registered voter," then
9 instead of your old process, you will create a card
10 for that person; and you will forward the card and
11 the paperwork to the Department of State, and they'll
12 take it from there?

13 A Correct. And they'll have the
14 registration form. There's two reasons why somebody
15 might not get verified. One might be because they
16 were -- they signed up in the voter registration
17 drive and it hasn't gotten through the process.

18 But there's also a possibility that
19 somebody may walk in and say, "I'm gonna register to
20 vote. I want to register to vote. But I haven't
21 done it yet." So we'll have the form; we do now.
22 Those forms, they've always been there. They can
23 fill the paper form out, get their picture taken.
24 We'll take the card. We'll take the form. We'll

1 send it to the Department of State and get them
2 processed.

3 Q When you say, We have those forms there,
4 are you talking about the "motor voter" registration
5 form?

6 A The application to register to vote, yes.

7 Q So, in other words, so if a person comes
8 in and they say, "I'm not registered, but I want to
9 register," you will now service them -- it will be a
10 one-stop shopping now?

11 A That is correct. And we will also ask
12 customers, even if they say that they've been at a
13 voter registration drive and filled out the paper,
14 we're still going to have them fill them out, just so
15 when we send them in to the Department of State --
16 I'm sorry -- just so when we fill them out to the
17 Department of State. They've gotten that
18 registration application along with the card.

19 So if by chance somehow or another that
20 paperwork doesn't get from the other mechanism that
21 that person filled out, we'll have that fallback of
22 them having the documentation from us.

23 Q At the point where you sent the
24 paperwork, whatever it is, and it's just the

1 application and the photo, maybe it's the
2 application, the photo and the registration, at
3 whatever point that you send it on to the Department
4 of State, is PennDOT now out of the picture?

5 A We would be out of the picture at that
6 point.

7 Q So if the card is going to be -- if the
8 Department of State makes the decision, okay, we have
9 now been able to determine what we could not before;
10 this person is registered; they should get an
11 identification under this new system -- it's up to
12 PennDOT to deal with the voter at that point?

13 A You mean the --

14 Q I'm sorry. It's up to the Department of
15 State to deal with the voter --

16 A Department of State, yes.

17 Q I saw you double take. I realized I must
18 have asked that wrong.

19 Okay. Let me ask you a couple other
20 questions.

21 If -- what happens if the Social
22 Security -- withdrawn. Let me ask this question.

23 Does PennDOT verify whether the voter who
24 is standing in front of the customer service

1 representative, whether their Social Security number
2 matches their name?

3 A For the issuance of a DOS ID?

4 Q Yes.

5 A No. That's the Department of State.

6 Q Okay. And is that something that is
7 supposed to be resolved in the phone call that you
8 place to the SURE help desk?

9 A That's part of the verification process;
10 but DOS or Department of State would be able to refer
11 better to that than I can.

12 Q But in any case, you could get a response
13 from the Department of State: We're not issuing this
14 because we can't verify the Social Security number?

15 A Well, now, under the new system we would
16 issue, because we would issue from the standpoint of
17 getting them through, getting their picture taken;
18 and then we would send all that information to the
19 Department of State.

20 So if they came back and said, "We can't
21 verify because the Social Security number doesn't
22 match," as an example of your scenario, we'd still
23 now go through the entire process, send that to them.

24 So it could be a data-entry error.

1 There's a whole bunch of things that potentially
2 could happen.

3 Q Sure.

4 A But they would work to get that
5 straightened out. Once they did, then they would
6 send the card to the individual.

7 Q Okay. Just so I make sure I understand,
8 if, for whatever reason, the Department of State,
9 when your folks call the Department of State, the
10 SURE help desk, for whatever the reason the
11 Department of State representative says, "We can't
12 give you the go-ahead to issue," you will nonetheless
13 take the picture, assemble the paperwork and send it
14 on to the Department of State; but in that instance,
15 you will not actually issue a card to the voter?

16 A That's correct. We'll produce a card but
17 not issue one.

18 Q Okay. And the question of whether
19 certain things are disqualifying in that as a result
20 of the verification process, that's a question for
21 the Department of State?

22 A That is a Department of State process.
23 Again, we're the conduit.

24 THE COURT: You can't be yawning. You

1 can't be yawning.

2 MR. WALCZAK: I'm sorry. You want me to
3 not yawn. It's as interesting for me as it is for
4 you.

5 MR. GERSCH: We're coming to the end.

6 BY MR. GERSCH:

7 Q You made reference to training materials,
8 I think. Is there a -- is that right?

9 A Training --

10 Q Withdrawn.

11 Is there a training manual for PennDOT
12 for the new DOS program, the new DOS ID program?

13 A There was a training document that was
14 put together for the original deployment of the DOS
15 program; and then there was an updated training
16 program that I believe was either sent last night or
17 this morning. For our staff these changes are minor
18 from a standpoint of a deployment standpoint. There
19 isn't a lot of change for our staff.

20 So there was not a great deal that needed
21 to take place other than a general communication that
22 was this morning -- there was a conference call this
23 morning where all the regional and division managers
24 were brought up-to-date and informed the process of

1 the change and what we were doing.

2 Q Besides getting the new application form
3 for the DOS ID, what other materials should there be
4 there were circulated to your staff?

5 A Again, there was the update to our staff,
6 again was either sent last night or first thing this
7 morning.

8 And that update was the update to the
9 training document, that is, the original training
10 update that went out.

11 There was also a memo that went out to
12 PIBH. If you recall from previous testimony, the
13 last trial, PIBH is our contractor. They're the
14 individuals that actually take the photos at the
15 photo centers.

16 Q Okay. The first document you mentioned
17 was called the update?

18 A Correct.

19 Q And the update, how many pages would that
20 have been?

21 A The entire document, I believe, is around
22 12 pages. But those 12 pages are from the original
23 training. The parts that were actually updated --
24 for example, as I said, they're not required to

1 capture gender anymore. From the standpoint of male
2 or female, we now -- we put a code in there, and they
3 were given the instructions on what the new code is
4 to put in. So -- but other than that, that change,
5 also the fact that they don't have to collect or see
6 or image the documents that somebody uses for
7 verifying address.

8 So that's in there, but most of that is,
9 again, a couple sentences. It's not significant the
10 amount that had to be changed.

11 Q In any case, there was something sent out
12 either last night or this morning?

13 A I believe it was either late last night
14 or early this morning.

15 Q Is there a schedule by which the customer
16 service representatives are supposed to be trained in
17 these new procedures, new forms?

18 A Well, again, as I stated earlier, there's
19 not a lot to train somebody on on this.

20 We're simply telling them that they are
21 no longer required to look at address verification
22 documents. The form itself, as we looked here
23 before, the Exhibit 225, asked for the customer's
24 address, so they're filling that out on this form.

1 Q You're not required to exhaust also --
2 you don't have to exhaust the PennDOT ID?

3 A That's correct. There are some people
4 who want the PennDOT ID because it can be used for
5 more things than just voting.

6 Q Let me go back to my question. Is there
7 a schedule by which their 350-odd people will be
8 trained with respect to the new DOS ID program?

9 A Well, training would suggest that there's
10 a complexity to this process change. That doesn't
11 exist. There is not a complexity to it. This is
12 really straightforward for our folks.

13 Q Are you not going to train them?

14 A What I said was that we informed them
15 this morning and our division manager as well as our
16 regional managers are working with our supervisors in
17 our locations first thing this morning to go out and
18 make them aware of the changes so that their staff is
19 made aware of the changes.

20 But to suggest somehow someone needs to
21 sit in a room like we did for the training on the DOS
22 ID, we spent a number of overtime hours in both the
23 morning and in the afternoon bringing staff in where
24 we sat them down and said, here are all the aspects

1 of the new DOS ID, because that was more detail, more
2 in-depth.

3 These changes are really quite minor.
4 It's just really a matter of saying from here on out,
5 this is how we want you to handle these applications.

6 Q I hear you saying that, but you raise an
7 interesting point. So how did you train your staff
8 when the first iteration of the DOS ID program came
9 out? What did you do in that instance?

10 A Well, again, we sent a training document,
11 which we had. Here again, we updated that training
12 document for this most recent deployment. But in
13 that particular case, as I said, there was more to
14 that than what we're talking about here.

15 So there, we brought people in, we did --
16 I believe we did a Webinar with folks at the centers
17 after hours where we sat them down, and I believe the
18 training sessions were like an hour, hour and a half,
19 something of that nature.

20 Q When you say you brought them in, are you
21 referring to customer service representatives coming
22 in to their own location?

23 A To their own location.

24 Q Not coming here to Harrisburg?

1 A Oh, no, no.

2 Q How about the training for the
3 supervisory personnel? I take it they were trained
4 first before the line people?

5 A If I recall correctly, I believe that
6 there was -- that there was a process by which we did
7 a Webinar with the regional and the division
8 managers, and then we did it with the supervisors.

9 I don't recall the specifics of exactly
10 how it was put together.

11 Q And how are you training the managerial
12 folks in this round?

13 A Well, again, because this is not nearly
14 as detailed as it was on the initial deployment of
15 the product, this is really just nothing more than
16 the ability to reach out and talk to them, see if
17 they have any questions.

18 This is pretty standard stuff for our
19 folks. So training is conference call; training is
20 the updated document they can read over if they have
21 any questions. And then training is the outreach to
22 our employees to talk to them this morning to let
23 them know what needs to be deployed.

24 Q When is the conference call?

1 A It already occurred. It occurred at
2 quarter of 8:00 this morning.

3 Q And who ran the call for PennDOT?

4 A Scott Shenk.

5 Q Scott Shenk. Okay.

6 And then do I understand that they'll
7 be -- you're not going to bring in the customer
8 service representatives the way you did last time;
9 right?

10 A No, again, because there's no need to do
11 that.

12 Q I keep hearing you say there's no need.
13 Did anyone say, you know, it would be a good idea if
14 we did something like we did last time where we
15 brought them all in and sat them down and explained
16 to them this is really important about getting folks'
17 ID for voting and we want to make sure we get it
18 right? Did anyone say that?

19 A No, no one specifically said that.
20 Operationally, my employees understand the importance
21 of making sure that every individual has an ID.

22 Q Just a couple more questions. When you
23 usually process motor voter registrations, is it the
24 case that those are transmitted electronically?

1 A I'm sorry. Could you rephrase or ask the
2 next question again?

3 Q Sure.

4 A I'm sorry.

5 Q You could -- without reference to the DOS
6 ID card program, if someone came in in January of
7 this year and said I want a driver's license and I
8 want to register to vote, you would process them for
9 both of those things?

10 A Absolutely, yes.

11 Q And am I right that in those instances,
12 you would transmit the voter registrations
13 electronically?

14 A That's correct. We take application as
15 part of the process of issuing the photo
16 identification.

17 Q With reference to the new DOS program,
18 are you transmitting the registrations
19 electronically?

20 A No. In those cases where an individual
21 has not been found to be registered and/or is someone
22 who says I'm registered but it's not showing up on
23 the system, it will be in paper form that they'll
24 fill out, and the paper form and the ID will be sent

1 to the Department of State.

2 Q Why is it done on paper in that instance
3 as opposed to electronically, the way you would in
4 the normal course?

5 A Because it's not built into the system
6 for the DOS ID.

7 Q When you say it's not built into the
8 system, could you explain that.

9 A Well, it's not built into the technology
10 for that process for it to be done when somebody is
11 getting their picture taken. So it's not -- the DOS
12 ID and the way that it is designed is separate from,
13 obviously, the PennDOT ID. So although some of the
14 processes may seem similar, like getting your picture
15 taken, the screens that somebody sees -- that
16 somebody has to build all that, and that wasn't built
17 into that part of the process. So that's why it's
18 paper.

19 Q It's something that could be done
20 electronically at some point if someone writes the
21 program for it?

22 A That's correct.

23 Q It just hasn't been written yet?

24 A Absolutely, yes.

1 MR. GERSCH: Your Honor, I have no
2 questions at this time. I'd like to make a request
3 for the document that was described by Mr. Myers, the
4 updated training document. I don't think we've
5 received it.

6 Alternately, if counsel believes that it
7 was provided, I'd like to know that it was provided
8 in the handful of documents we got last night. But
9 subject to that, I have no other questions at this
10 time. I wonder if we could have that handled through
11 a representation, Counsel, just so we --

12 THE COURT: It sounds like a reasonable
13 request. I'm not sure who's going to respond to it.

14 MR. CAWLEY: It is a reasonable request.
15 And to answer the second question, which resolves the
16 first, I don't believe it has been produced because I
17 don't believe that I've seen it. So I will certainly
18 obtain that document and provide it to counsel.

19 THE COURT: Let's talk about when.

20 MR. CAWLEY: I see no reason why it
21 couldn't happen today.

22 MR. GERSCH: Your Honor, we have no
23 further questions at this time. I should say that I
24 doubt we would need to recall the witness even once

1 we see it, but we have to reserve on that just
2 because we haven't seen the document.

3 THE COURT: Which means you are going to
4 question the witness now; right?

5 MR. CAWLEY: Yes, Your Honor.

6 Does Your Honor have a preference as to
7 where I sit or stand to ask questions?

8 THE COURT: No. I try to stay out of
9 your way. I would prefer that you stand.

10 MR. CAWLEY: I will do that.

11 THE COURT: I don't care where you do it.

12 MR. CAWLEY: I might as well just come
13 over here.

14 - - -

15 CROSS EXAMINATION

16 - - -

17 BY MR. CAWLEY:

18 Q Mr. Myers, how many years have you been
19 with PennDOT?

20 A A little over 14 years.

21 Q And how many of those years have you been
22 Deputy Secretary of the department?

23 A Since January of 2007, acting and
24 appointed in June of 2007.

1 Q During that time frame, have new programs
2 or products come into effect at PennDOT?

3 A Absolutely.

4 Q Have you provided training in the course
5 of the implementation of new programs or new products
6 in that time frame?

7 A Based upon what's needed, yes.

8 Q Have you yourself been trained along the
9 line on new programs and products?

10 A In some cases, yes.

11 Q So what role does your experience with
12 the implementation of new programs or products at
13 PennDOT play in how you have decided to train the
14 employees in the driver's license centers as voter ID
15 has been implemented?

16 A It has an extensive amount, based upon
17 the professional opinion of myself and others who
18 have been with the department for many years, knowing
19 what works and what's effective in the field from the
20 standpoint of training, not only in the field but
21 also here at the central office.

22 Q Switching gears a bit, you were asked
23 some questions about Exhibit 136, which has the two
24 charts showing how many driver's licenses and photo

1 IDs were issued in a number of months over the course
2 of two years.

3 A Yes.

4 Q Do you have that exhibit in front of you?

5 A Yes, I do.

6 Q As you can see, August and September are
7 the last two months listed; and the number drops off
8 by about 50 percent from August to September.

9 Since October is not shown, can you
10 explain for the Court, how busy a month is October in
11 comparison to August and September?

12 A Well, there's certainly -- the fact of
13 the matter is that historically, August has been a
14 very busy month for us.

15 That's primarily due to a number of
16 different factors, especially in the Philadelphia
17 region, because we have so many colleges and
18 universities. We have a lot of foreign exchange
19 students coming in; and in those cases, those
20 individuals, one of the things they want is an ID,
21 and, of course, they go through the same process,
22 although obviously they're demonstrating legal
23 presence here in the United States as opposed to
24 being a U.S. citizen. So that puts demands on us in

1 the Philadelphia region in particular, but we also
2 see it in Pittsburgh.

3 Again, as I noted earlier, we have a lot
4 of kids off in the summertime looking for driver's
5 licenses and getting their learner's permits and
6 things of that nature. Their parents want to do it
7 then because they're not in school, so they have an
8 easier time of it.

9 As we go into the fall, historically
10 speaking, the fall begins to drop off. December is
11 normally one of our slower months, but as we go into
12 the fall, the amount of volume that we have in our
13 locations has historically dropped off.

14 Q So as the volume of initial issuances for
15 these two products drops off, what effect does that
16 have on PennDOT's ability to handle the hypothetical
17 wave of 30,000 voters that Mr. Gersch asked you
18 about?

19 A Well, it makes it easier. It does not --
20 and I think this is important to understand. And I'm
21 not sure that it's ever been stated before.

22 But from the standpoint of our locations,
23 if you're in our location when it closes, we don't
24 kick people out. We service all the individuals that

1 are in that location at the time of closing.

2 The fact of the matter is, volume is
3 simply a function of whether or not someone is there
4 for 15 minutes or 30 minutes. Obviously in the
5 example that was given, if you're going to go a
6 hundred percent increase in the number of people
7 coming in, that would have a significant impact on
8 how fast we would be able to service customers.

9 Again, the data, in my opinion, and this
10 is simply my opinion, doesn't show that that 30,000
11 is going to walk through the door anytime soon.

12 This data, this historical data, factual
13 data, suggests that these numbers are running a
14 little higher than what we've seen in the past but
15 not significant from the standpoint of us being able
16 to help customers.

17 Has it impacted some wait times?
18 Absolutely. There's no question about we've seen
19 some areas, in Philadelphia as an example, where
20 we've had wait times that have increased. That's
21 precisely the reason why now, in the five
22 Philadelphia centers, we've extended our hours on
23 Thursday all the way to the Thursday after elections
24 to ensure that people do have the availability of

1 additional hours to be able to come in and to get
2 IDs. We've been responsive. We will continue to be
3 responsive.

4 And I think it's clear, when I was here
5 in July, I testified that we were working on a new
6 ID. And while I was very confident that it would
7 deploy on August 27th, the fact of the matter is
8 that the Department of State and Department of
9 Transportation delivered on that promise. That
10 product was available on the 27th to all
11 individuals.

12 Q You discussed keeping the driver's
13 license centers, especially in Philadelphia where
14 your department is very busy, open later hours. What
15 other support have you been giving to the driver's
16 license centers to ensure that any increased volume
17 will be handled efficiently?

18 A Well, when we originally deployed the DOS
19 ID and we had sent individuals to the centers for a
20 couple days just to oversight from central office,
21 that probably goes back to the training question I
22 was asked earlier. That was something that we made
23 sure that people were in our centers from central
24 office so if there were questions, they could be

1 asked.

2 We've done that again today actually.
3 There are a couple people in some of our key
4 locations who are also from central office or from
5 the management team, if you will, to be able to help
6 do this.

7 I noted earlier that we've done a lot of
8 outreach. We've also dealt with individual concerns.
9 I suspect that -- and clearly, people have seen
10 things in the newspaper, and you probably will -- you
11 know, have heard there will be testimony at some
12 point in time that somebody didn't get an ID and
13 PennDOT asked for some type of information that --
14 and denied them an ID.

15 You know, I've had a lot of those to
16 research with individuals, because we see them in the
17 newspaper. We see them from legislators. Had one
18 legislator last week, he sent an email through our
19 legislative office and said that one of our centers
20 didn't know what they were doing because they were
21 requiring a birth certificate.

22 Well, obviously I'm going to look at
23 that. And we immediately jumped on it and I said,
24 well, that doesn't sound right.

1 And when we actually talked to the
2 customer, in this case, it was one of my staff talked
3 to the customer there, and we said, we understand
4 that you were denied a birth certificate -- or denied
5 an ID because you didn't have a birth certificate,
6 and he said, yeah, I was, and that's not right.

7 And my staff person said, well, when did
8 this happen?

9 He said, well, it was two years ago.

10 So we get a lot of that. And the
11 question isn't -- it's good-intentioned people. I
12 don't question that for a second. There are a lot of
13 folks out there doing their utmost to make sure that
14 everybody gets an ID, and one-on-one, we're doing
15 exactly the same thing.

16 But a lot of times people don't know all
17 the questions to ask. And as you drill down into
18 these cases, what you find is that the real facts
19 behind the particular case are far different than
20 what the perception is of the individual.

21 And in most cases we're able to work
22 through with the customer for them to be able to get
23 an ID. But the fact is that it's important that you
24 ask the probing questions as to why something is

1 occurring, getting all the details behind it.

2 I had another case in that same situation
3 where an individual wanted a DOS ID, came in for a
4 DOS ID, and what happened was the legislator wrote me
5 a letter or an email to one of my staff and said that
6 this person couldn't get an ID because they didn't
7 have a birth certificate.

8 Well, the real facts behind it when we
9 talked to the customer was that the individual went
10 in, said he wanted the DOS ID, but when he found out
11 that he could only use it for voting purposes, he
12 said, well, I really want this for more than that.
13 So I'll go to my representative's office and get my
14 birth certificate.

15 So it wasn't a question of us denying
16 them a DOS ID, but the representative felt that it
17 was because of the limited amount of information they
18 get. We see that over and over again.

19 All that means nothing to us at the end
20 of the day. What's important to us is to ensure that
21 we work with that individual customer to make sure
22 that they get the ID.

23 One other point.

24 THE COURT: Hang on. You have to wait

1 for a question.

2 BY MR. CAWLEY:

3 Q Let me just ask a follow-up question on
4 that. You talked about being contacted by
5 legislators on behalf of constituents.

6 Does PennDOT pay any attention to media
7 reports in particular that indicate that PennDOT
8 centers may be making mistakes?

9 A Absolutely. In fact, we even follow
10 Twitter.

11 And there's -- although one individual
12 who had sent a tweet about his dad, a fairly famous
13 individual, or at least for some may be considered
14 famous, and we were able to solve his problem by
15 reading Twitter and being out -- and going out and
16 answering his questions and getting his dad an ID.

17 So there are other steps that we're
18 taking. In fact, we just announced this morning,
19 separately from the other change, that we plan to
20 keep approximately 40-some of our driver licensing
21 centers -- we're going to open them on the Monday
22 before Election Day, here again, making sure that
23 every opportunity is afforded individuals to be able
24 to get their IDs before they go in to vote.

1 And we'll note too, as well, in
2 Philadelphia on the Thursday following the Election
3 Day, which is part of the provisional window, we'll
4 be staying open late on that day, as well, until
5 7 o'clock.

6 Q Mr. Gersch asked you some questions about
7 outreach in general and about the problem of people
8 who may have difficulty in getting to a driver's
9 license center.

10 Were mobile units that go out into the
11 community ever considered by PennDOT?

12 A At one time we a mobile unit. So the
13 answer is yes, we did. We had a mobile unit I
14 believe in the late '90s all the way up to, I
15 believe, 2008.

16 And in 2008 we made the decision that it
17 was not economically feasible, nor did it have the
18 value to it from the standpoint of the cost
19 associated. We would send it out in the field, and
20 it would do three or four transactions in a day, in
21 some cases. Then perhaps we would have four people
22 committed to that site, quote/unquote, for that
23 period of time.

24 From a cost benefit analysis, it just

1 made absolutely no sense to the taxpayers of the
2 Commonwealth that we'd be spending that kind of money
3 to maintain the system for so few transactions. So
4 it was determined in the last administration that we
5 would discontinue the unit.

6 Q So the mobile unit went away during the
7 Rendell administration?

8 A That's correct.

9 Q Were there any security concerns that you
10 had along with the cost benefit analysis that you
11 just mentioned?

12 A There were always security concerns in
13 reference to the mobile unit, and it was one in which
14 because we not only had product on it, we also had
15 all of our computer systems on it.

16 Obviously when you're going out on an
17 overnight event where there's an event on two days,
18 you've got to park it somewhere. Usually when you go
19 on those things, you're out in more rural areas,
20 although it can sometimes be in the city.

21 So there's always a risk of someone
22 breaking into the unit. Obviously from the
23 standpoint of the security aspect of not only our
24 computers but the products and customer confidential

1 information, that offers a huge risk when you have a
2 mobile unit.

3 Q I'd like to talk about some of the other
4 outreach that PennDOT has done. Has PennDOT taken
5 steps to translate forms necessary for photo IDs into
6 other languages?

7 A Yes, we have. And, in fact, this is a --
8 we have always had many of our key forms in Spanish,
9 of course. But we've translated all of the voter ID
10 forms into now 10 different languages. I don't have
11 the list in front of me, but it is extensive,
12 everything from Chinese, Arabic; and the list goes on
13 through the list of languages that it's been
14 translated into.

15 Q Are those forms or is the translation
16 also available on your Web site?

17 A Yes, they are.

18 Q Has PennDOT made translation services
19 available to groups of voters out in the community?

20 A Well, as I talked about earlier in the
21 case, just a week and a half ago, where we had a
22 situation there, we sent an individual down who was
23 fluent in Spanish to help facilitate the process.

24 Q I'd like to talk about another form of

1 outreach. Has PennDOT offered to any groups in the
2 community something called prescreening for purposes
3 of photo IDs for voting?

4 A Yes, we have.

5 Q Can you explain to the Court what
6 prescreening would entail?

7 A Well, essentially it just avoids the
8 individual having to come to the center and have the
9 documents reviewed. It allows our folks to review
10 the documents, make sure that the people have
11 everything that they need so that when they do come
12 to the center, it's a process which is shorter
13 because now we know that the documents are good, the
14 birth certificate, the Social Security card, whatever
15 it might be.

16 Q And what groups have been involved with
17 these offers of prescreening?

18 A I think they've primarily been involved
19 with nursing homes and assisted living centers, those
20 types of environments.

21 Q Did PennDOT have any conversations with
22 the League of Women Voters about offering
23 prescreening?

24 A We did actually. The League of Women

1 Voters in Philadelphia asked us to be able to set up
2 a table in our center and be able to work with
3 customers that are coming in.

4 And what we said to them and what we
5 would say to any group and what we've said to the
6 media, for that matter, is that we have a job to do
7 in our driver licensing centers regardless of which
8 one it is.

9 Obviously Arch Street in particular is
10 particularly busy, and we have a responsibility to
11 our customers to ensure that whether they're taking a
12 knowledge test or whether they're there with
13 confidential documents, that they have a right and
14 expectation that the environment be kept as
15 reasonable as possible.

16 What we said to the League of Women
17 Voters is that we didn't think that having a table in
18 our operations would work; but because of those
19 concerns, however, we offered to work with them from
20 the standpoint of prescreening and going out and
21 talking to groups.

22 We've been out -- our staff, in fact --
23 we had staff out last night, we'll have staff out
24 again tonight talking to groups across the state

1 about what they need to do from the standpoint of
2 PennDOT IDs. Normally we do those meetings with the
3 Department of State.

4 So it's rather extensive a list of
5 meetings where we've held over the last couple months
6 and continue to have planned, I'm sure, all the way
7 through the election.

8 Q I'd like to switch to a different topic.
9 Mr. Gersch asked you a series of questions about this
10 new process, that some of the paperwork came out
11 yesterday --

12 A Yes.

13 Q -- for issuing the Department of State
14 voter ID.

15 Is that process being implemented across
16 Pennsylvania today?

17 A It was implemented today across
18 Pennsylvania.

19 Q And will that process that you described
20 during the direct examination be implemented through
21 at least mid November?

22 A That is correct, yes.

23 Q Do you have any knowledge or plans that
24 you know of to discontinue that process in the

1 foreseeable future?

2 A None, no.

3 Q You were asked some questions about the
4 delay in getting that current process going and why
5 didn't you start that process before.

6 Can you explain for the Court whether
7 there was any sort of interface with the Department
8 of State, whether from a technological standpoint or
9 otherwise, that had to be established before this
10 process could be up and running?

11 A Well, the primary change here for the new
12 process that went into effect here was primarily
13 related to forms change, communications that we
14 talked about.

15 So certainly from the issuance of the DOS
16 ID, there was definitely technology changes that had
17 to be made there.

18 Moving forward with this change, this was
19 primarily communications as well as forms that had to
20 be updated.

21 MR. CAWLEY: Those are all the questions
22 I have.

23 MR. GERSCH: Your Honor, very brief
24 reexamination.

1 - - -

2 REDIRECT EXAMINATION

3 - - -

4 BY MR. GERSCH:

5 Q You mentioned -- there was mention, it
6 may have been counsel who referenced busy periods at
7 the Philadelphia driver's license centers; is that
8 right?

9 A Yes.

10 Q Am I right that there are waits of
11 several hours at those centers to get DOS IDs and
12 PennDOT IDs?

13 A Well, I think I've said before that the
14 Philadelphia region is our busiest region. We have
15 five locations there, more than any other county in
16 the state.

17 The fact of the matter is that there are
18 busy times. There are specifically -- the specific
19 wait times of one individual, I don't know whether or
20 not it's one hour, two hours.

21 What I do know is that our goal is to
22 service our customers in 30 minutes or less. During
23 the month of October, I believe that somewhere around
24 25 percent of the customers in that location were

1 serviced in that time frame. Which would mean some
2 people were serviced over 30 minutes.

3 As to the specifics, I've not looked at
4 those numbers to say two hours is a reasonable
5 statement.

6 I don't know.

7 Q If someone were to say that, say at Arch
8 Street, they had to wait several hours to be served,
9 would you have a way of verifying that?

10 A It would -- I don't know the specific
11 answer to your question. We have at Arch Street, as
12 an example, we utilize a queuing system which is
13 electronic, there's technology behind it.

14 I don't know well enough to be able to
15 say can I pick out one individual customer from
16 sometime in the past and tell you whether or not --
17 how long -- from the time they got their ticket until
18 the time that they got served, I don't know the
19 answer to that.

20 Q Sure. Have you heard, regardless of
21 whether it's one individual or many individuals, have
22 you heard that at Arch Street and other Philadelphia
23 locations there are -- people are having to wait
24 several hours to be serviced?

1 A I certainly read that in the newspaper.
2 Again, I would encourage everybody to remember,
3 though, that you always need to drill down into the
4 facts to find out what the total story is behind
5 individual statements.

6 Q Shifting topics, you were asked some
7 questions about the mobile unit. Do you recall that?

8 A Yes.

9 Q And you said the mobile unit was
10 discontinued in 2008?

11 A I believe it was November 30th, 2008.

12 Q Okay. And you said it was underutilized,
13 I believe?

14 A That is correct, yes.

15 Q But back in 2008, there was no
16 requirement that voters obtain ID in order to vote;
17 right?

18 A That's absolutely correct, yes.

19 Q And we didn't have the situation then, as
20 we do now, where you're bringing on a new product a
21 month or two before the election.

22 A That is correct, but that does not negate
23 the security concerns that we had for the unit.

24 Q Well, regardless of whether there are

1 security concerns, the fact is you were able to do
2 this in 2008, right?

3 A We did, up until November 30th, I
4 believe, yes.

5 Q Okay. And in other jurisdictions you've
6 heard, such as Georgia, they also manage to have
7 mobile units for their Department of Motor Vehicles;
8 is that right?

9 A There are clearly some other
10 jurisdictions that do have mobile units, yes.

11 Q So whatever the security concerns are --
12 and I don't mean to minimize them -- those can be
13 worked around?

14 A Some have chosen to take that risk.

15 Q Well, my question stands: Those can be
16 worked around, do you agree?

17 A I'm sorry?

18 Q Do you agree that the security concerns
19 can be worked around, as you apparently did in 2008
20 and earlier?

21 A I agree that there is a certain level of
22 risk that some are willing to accept that others are
23 not.

24 MR. GERSCH: I have no further questions

1 of this witness at this time, Your Honor.

2 MR. CAWLEY: No questions, Your Honor.

3 THE COURT: You may step down, and I
4 gather you may be subject to recall, so don't leave
5 the state.

6 MR. GERSCH: And, Your Honor, we'll be in
7 touch with counsel as soon as we get that document.
8 We can look at it, make an assessment, and release
9 the witness if need be.

10 THE COURT: Okay. This would seem to be
11 a good time for a break. Do you want a little bit
12 longer than an hour? Do you want a lunch break
13 that's a little longer than an hour so counsel can
14 confer about the witnesses who are likely to be
15 called?

16 I'm asking if you want a longer lunch
17 break is what I'm asking.

18 MR. GERSCH: I think that would be
19 useful.

20 Mr. Myers, I think, will be our longest
21 witness. So I don't anticipate that the other
22 witnesses will take as long. So I think we can do
23 with an hour and a quarter or something like that.

24 THE COURT: Well, it's about 20 after

1 12:00 now. We'll be in recess and we'll reconvene at
2 1:30.

3 MR. GERSCH: Thank you, Your Honor.
4 (Luncheon recess from 12:15 p.m.
5 to 1:30 p.m.)

6 THE CLERK: Ladies and gentlemen,
7 Commonwealth Court is now in session.

8 You may be seated.

9 THE COURT: All right. Please call your
10 next witness.

11 MR. GERSCH: Thank you, Your Honor.
12 Petitioners now call Shannon Royer.

13 - - -

14 SHANNON ROYER, having first been duly
15 sworn according to law, was examined and testified as
16 follows:

17 - - -

18 EXAMINATION

19 BY MR. GERSCH:

20 Q Good afternoon. Please state your name.

21 A Shannon Royer.

22 Q Mr. Royer, you and I have met before?

23 A Yes.

24 Q Most recently, I think, at the Supreme

1 Court.

2 A Yes.

3 Q What I want to talk to you about, first,
4 is there was testimony this morning regarding new
5 procedures for the Department of State ID that were
6 adopted or at least finalized last night.

7 Are you familiar with those?

8 A Yes.

9 Q There's been testimony regarding what
10 those procedures are. I'm not going to take you
11 through that again.

12 The question I want to ask you,
13 Mr. Royer, is, where did this idea come from, the
14 idea for these new Department of State procedures?

15 A After the Supreme Court issued their
16 decision on this matter, we started discussions
17 immediately with PennDOT, along with our attorneys
18 and other folks.

19 Q And who made the decision that the old
20 procedures should be changed and the new procedures
21 adopted? Whose decision was that?

22 A Well, it's the Department of State's ID
23 card, so it is ultimately the Department of State.

24 Q Was there a person at the Department of

1 State who made that decision?

2 A Ultimately the Secretary of the
3 Commonwealth.

4 Q Was there a meeting where this happened?

5 A There were several discussions and
6 conference calls where we talked about this, yes.

7 Q When was the decision made: Let's not
8 use the old procedures; let's have new procedures?
9 When was that decision made?

10 A We decided, right after the Supreme Court
11 issued their decision, to make changes. The process
12 and the changes incorporated in that followed
13 afterward.

14 Q Okay. I just want to focus on the
15 decision, which I understand would be in the earlier
16 part of this time period; right?

17 A I'm sorry?

18 Q The decision was made in the earlier part
19 of the time period between the Supreme Court's
20 decision and today; right?

21 A Correct.

22 Q Were you in the room when that decision
23 was made?

24 A I was involved in meetings where it was

1 discussed.

2 Q Okay. Who else was in the room when
3 these discussions took place?

4 A It would have been our members of our
5 BCEL staff, Bureau of Commissions, Elections and
6 Legislation; Commissioner; Deputy Commissioner;
7 myself; Department of State counsel. And I reported
8 to the Secretary of the Commonwealth after that.

9 So I think that pretty much covered it on
10 our end.

11 Q And so the Secretary is not actually in
12 the room?

13 A When it was first discussed?

14 Q When the decision was made, was she in
15 the room?

16 A She makes the decision.

17 Q Okay. You've just testified about a
18 meeting with several persons.

19 A Yes.

20 Q Correct me if I'm wrong. The Secretary
21 was not in the room for that discussion?

22 A She was involved in discussions about the
23 new process. She wasn't involved in all the
24 discussions about the new process. And I reported to

1 her.

2 Q I understand. The discussion that you
3 had just testified maybe three answers ago where you
4 said you were in the room with the BCEL staff, you
5 said the commissioner, the deputy commissioner,
6 mentioned some other people, I think counsel; was the
7 Secretary in the room for that discussion?

8 A She participated in discussions about
9 this new process. I'm not sure if she was in the
10 exact one where, that you're referring to.
11 Ultimately, I reported to her and she made the
12 decision.

13 Q And now I want to come to this next part.
14 So when the decision was made, was that a one-on-one
15 conversation between you and the Secretary?

16 A Yes -- well, one-on-one with counsel --
17 her and counsel and myself.

18 Q Are there documents reflecting this
19 decision, or was this all done orally?

20 A There are documents which laid out in
21 varying degrees the process that we were changing for
22 the new DOS ID cards. Which I think offers you a
23 snapshot at any particular time as to the changes we
24 were making.

1 Q Is there an actual document evidencing
2 the decision to make the change?

3 A It was a meeting that took place with the
4 Secretary, myself and counsel. I don't know that we
5 had documents in front of us other than an
6 explanation of the process, the new process that we
7 had discussed.

8 Q Tell me what was discussed in that
9 meeting with the Secretary where the decision was
10 made.

11 A We reviewed the new process.

12 MR. PUTNAM: I just want to record an
13 objection insofar as it requests advice of counsel.

14 THE COURT: I don't know that the
15 question -- yeah, maybe it does.

16 Would you rephrase your question, please.

17 MR. PUTNAM: Let me also, if I may,
18 interpose a general objection.

19 I'm not -- I understand the significance
20 and relevance of the change, and I don't mind any
21 objections about the change. I'm not sure I
22 understand why we have to have extensive questioning
23 about each meeting in the course of the change. It
24 doesn't seem to me to be germane.

1 THE COURT: I think he's trying to do
2 some of the discovery that he didn't do yesterday.
3 So I understand what's going on. I think he's
4 looking for documents or something that may have been
5 generated in meetings that might be available.

6 That's what I understood you to do. But
7 I would ask you to rephrase your question in light of
8 the objection to not seek anything that might have
9 been said to or by counsel in the course of giving
10 advice on a matter in litigation, I guess.

11 MR. GERSCH: Understood, Your Honor. And
12 this may be a short question.

13 BY MR. GERSCH:

14 Q Mr. Royer, can you tell me anything about
15 this meeting at which the decision was made which
16 does not involve advice given by counsel or a request
17 for legal advice from the Secretary, yourself or some
18 other member of the department?

19 A I'm not sure I understand the question.

20 The meetings all took place with our
21 attorneys where we talked about the process, and with
22 the Secretary.

23 Q Right. So I'm not interested in any
24 legal advice the attorneys give.

1 A Okay.

2 Q And I'm not interested in any testimony
3 if you asked the lawyers, Could you give me some
4 legal advice, or the Secretary asked for legal
5 advice. I'm more interested in the policy side of
6 this, if you will.

7 Was there a discussion about policy that
8 you can tell me about that doesn't reveal either the
9 advice from counsel or a request for advice from
10 counsel?

11 A Well, the policy changes that were made
12 for the DOS ID card was guided by our attorneys to
13 keep in the spirit of the Supreme Court decision.

14 So everything that was done was done with
15 our guidance and suggestions and support.

16 MR. PUTNAM: To which I'll stipulate.

17 MR. GERSCH: I don't think I'm going to
18 be able to go further down this line of questioning.

19 THE COURT: Probably not.

20 MR. GERSCH: And I'm not going to attempt
21 it.

22 THE COURT: Thank you.

23 BY MR. GERSCH:

24 Q Before the Supreme Court decision --

1 let's go back before then -- were you ever party to a
2 discussion in which there was consideration given to
3 creating some form of identification in which a voter
4 could obtain identification for voting from the
5 Department of State or PennDOT simply by filling out
6 an affidavit that said, "I don't have photo ID
7 acceptable for voting, and I want photo ID so that I
8 can vote," or some similar simple form? Was that
9 ever considered before the Supreme Court's decision?

10 A Yes. I remember at some point over the
11 summer having discussions about modifications.

12 You're talking about the Department of
13 State card?

14 Q Sir, it could be with respect to -- yes,
15 I would be interested if it was about the Department
16 of State.

17 A Yes. We had sometimes talked about that,
18 yes, after the Department of State cards were a
19 reality.

20 Q And what were those discussions?

21 A Looking, always looking for ways to
22 improve the process. Anything that could be done to
23 make sure that every eligible voter gets the card, if
24 needed.

1 Q With whom did you have these discussions?

2 A Probably at our -- we have biweekly
3 meetings on voter ID. We have many meetings on
4 voter ID in the Department with different folks --
5 our press office, policy office, leg. affairs office,
6 Bureau of Commissions, Elections and Legislation.

7 I'm sure it popped up a couple of times.
8 I vaguely remember discussing it.

9 Q Again, focusing only on the period before
10 the Supreme Court's decision, was there any
11 discussion of why not? Why not just give people a
12 simple affidavit of the kind I asked you about
13 before? Why not give people a simple affidavit that
14 says, "I don't have the ID I need to vote. I need to
15 get the ID I need to vote"?

16 A Well, we tried to model the Department of
17 State ID card somewhat after the legislation for the
18 nondriver's license photo IDs which are specified in
19 Act 18, which require a number of documents: birth
20 certificates, Social Security card, proofs of
21 residence.

22 We wanted to come up with a modified
23 process to make it easier for individual voters to
24 obtain Department of State IDs cards if they didn't

1 have all the documentation they would need, such as a
2 birth certificate.

3 So during all the discussions about the
4 Department of State ID card, there were different
5 things that were suggested. And what we ended up
6 initially with was bringing two proofs of residence,
7 which was the old process.

8 Q Did anyone advocate just the simple
9 affidavit process?

10 A You mean giving a Department of State ID
11 card without any documentation?

12 Q Yes.

13 A It was suggested by advocates,
14 particularly the Committee of Seventy was interested
15 in that. That may have been actually the first time
16 someone mentioned it to me. We had discussions about
17 it.

18 Q How about within the Department; did
19 anyone say, "This is the right course"?

20 A My recollection is everyone was satisfied
21 initially with the process of simply using two proofs
22 of residence, which is a watered-down version of what
23 PennDOT requires for their nondriver's license
24 photo IDs.

1 Q All right. Let's shift topics. I
2 appreciate that information and your testimony on
3 that subject.

4 I want to switch to a different topic,
5 which is educating the public. And I take it you'd
6 agree that it's important to educate the public with
7 respect to what the requirements of Act 18 are and
8 how members of the public can satisfy those
9 requirements.

10 A Act 18 requires the Department of State
11 to conduct a voter education campaign; and I do agree
12 it's important.

13 Q Let's take a look at -- I'm going to move
14 back to this, Mike, just so I can grab some exhibits.

15 When we were at the hearing last time,
16 you testified about having a \$5 million budget for
17 education; is that right?

18 A That is correct.

19 Q And that was going to cover things like
20 radio, TV, robocalls, various forms of print
21 advertising; is that right?

22 A That is correct.

23 Q And who is it who did the TV ads?

24 A Red House Communications.

1 Q Red House Communications.

2 And is it the case that non-TV ads
3 mention the DOS card?

4 A The advertising that we are doing,
5 television included, specifically says you must bring
6 an acceptable photo ID for voting purposes, to vote,
7 and encourages the voters to call or go to our Web
8 site to get additional information.

9 A 30-second TV spot does not allow you to
10 mention all of the different kinds of IDs that you
11 can use.

12 Q And, in fact, the TV spots that you've
13 been describing don't mention the DOS ID?

14 A They do not. And they may not mention
15 other IDs either.

16 (Petitioners' 179 was marked for
17 identification.)

18 MR. GERSCH: Let me hand up Exhibit 179.

19 BY MR. GERSCH:

20 Q I'm showing you what's been marked as
21 Exhibit 179. That's typical of the TV spots that
22 have been designed for the educational campaign that
23 the Department of State is running; correct?

24 A Yes. And there's also a Spanish version.

1 Q As you referenced earlier, this would be
2 a 30-second spot?

3 A That's correct.

4 Q And it's designed by Red House
5 Communications?

6 A Correct.

7 Q And the part where you say they encourage
8 you to contact DOS, where is that on here?

9 A At the bottom where it says "super,"
10 which means superimposed onto the screen, in large
11 letters at the end of the ad, it directs voters to
12 1-877-votesPA and votesPA.com for more information.

13 Q So what you mean by encourage, they'll
14 just be someplace on the ad while the people are
15 speaking that has the phone number for votesPA?

16 A And the Web site, which has detailed
17 information, that is correct.

18 Q Who answers the phone at votesPA?

19 A It is our election office.

20 Q And who is that?

21 A Well, we have 30 people now answering
22 phones. And as of next week, it will be boosted to
23 48 folks at our election office.

24 Q Who runs that office?

1 A John Marks.

2 Q Directly, or is there someone between him
3 and those people?

4 A John Marks is the commissioner. Ann
5 Harlow is the deputy commissioner.

6 Q Thank you. You can put that one aside.
7 Now, there are also radio ads that have
8 been designed by Red House; correct?

9 A That is correct.

10 Q And those also don't mention anything
11 about the DOS card?

12 A Specifically about the DOS card, no.
13 (Petitioners' 178 was marked for
14 identification.)

15 MR. GERSCH: Let me show you what's been
16 marked 178. I'll hand that up.

17 BY MR. GERSCH:

18 Q 178 is typical of the radio ads designed
19 by Red House; correct?

20 A Yes, and there's also a Spanish version.

21 Q I said typical. Is this, in fact, the
22 only radio ad? And I include within that the Spanish
23 counterpart.

24 A There are two television spots and two

1 radio spots. You showed the text for both, and
2 there's also an identical Spanish version.

3 Q Okay. Again, with respect to encouraging
4 people to check in with PA vote, that would be the
5 second-to-the-last line, the document; right?

6 A Yes. It says to learn more, call
7 1-877-votesPA or visit votesPA.com.

8 Q All right. You've also got ads on the
9 buses and mass transit?

10 A Correct.

11 (Petitioners' 172 was marked for
12 identification.)

13 MR. GERSCH: All right. Let me hand up
14 what's been marked Exhibit 172.

15 BY MR. GERSCH:

16 Q Mr. Royer, you're copied on this email --
17 I'm sorry, it's addressed to you?

18 A That is correct.

19 Q And this is an email in which the folks
20 at Red House are sending you the ads that they want
21 to use on mass transit; is that right?

22 A Yes.

23 Q And these are in fact the ads for mass
24 transit?

1 A Yes, they are.

2 Q Okay. And they say, "If you want to
3 vote, Show It."

4 A Yes.

5 Q Is that, in fact, the name of the
6 campaign, "Show It"?

7 A It is.

8 Q And they're English and Spanish versions;
9 right?

10 A Correct.

11 Q And they make no mention of the DOS ID?

12 A No. They direct people to the
13 votesPA.com Web site and the phone number for more
14 information.

15 (Petitioners' 174 was marked for
16 identification.)

17 MR. GERSCH: Let me hand up Exhibit 174.

18 BY MR. GERSCH:

19 Q Mr. Royer, I'm showing you what's been
20 marked as Exhibit 174. This, too, is an email from
21 Red House to you; is that right?

22 A That is correct.

23 Q And this has very similar ads for mass
24 transit?

1 A That is correct.

2 Q And these ads also do not make any
3 mention of the DOS ID card?

4 A Right. They do reference our Web site
5 and phone number for detailed information.

6 Q Department of State has also mentioned
7 billboard ads; is that right?

8 A That is correct.

9 (Petitioners' 173 was marked for
10 identification.)

11 MR. GERSCH: Let me hand up Exhibit 173.

12 THE WITNESS: Thank you.

13 BY MR. GERSCH:

14 Q All right. There's a cover email again
15 to you. Am I right?

16 A Yes.

17 Q And these are the billboard
18 advertisements for the "Show It" campaign that the
19 Department of State is going to be running; is that
20 right?

21 A The ones are toward the bottom, not the
22 first two. Those are sample IDs that were used.

23 Q So Pages 1 and 2 of Exhibit 173, those
24 are not billboard ads?

1 A Correct.

2 Q So the billboard ads are the last three
3 pages?

4 A That's correct.

5 Q And they do not mention the DOS card?

6 A No. But, again, they direct people to
7 votesPA.com and the toll free number where people
8 have been calling and logging on for detailed
9 information.

10 Q The \$5 million allocated for this
11 campaign, that money has been spent?

12 A Almost all of it, yes.

13 Q How much is left?

14 A I don't know exactly. Hardly any. You
15 buy television ads ahead of time, radio spots ahead
16 of time. We did a mailing to almost 6 million
17 households which has been delivered, which does
18 mention the DOS ID card specifically. Every
19 household in the state with a voter. That money is
20 basically gone.

21 Q The \$5 million, that was federal HAVA
22 funding, wasn't it?

23 A Correct.

24 Q And so in 2008, you received a similar

1 \$5 million?

2 A No. The way it worked is that in --
3 Pennsylvania had, I think it was \$120 million
4 originally, perhaps more than that, beginning many
5 years ago, in HAVA money and you're able to draw that
6 down and spend it during federal years only, during
7 even-numbered years.

8 Q And is there a limit on how much you can
9 spend a year of that 120 million?

10 A For a voter education effort? Not that
11 I'm aware of.

12 Q Thank you for that clarification.

13 But in any case, in 2008, there was a
14 different kind of campaign called the "Ready, Set,
15 Vote"?

16 A I have been told that and have seen some
17 samples of it, but I was not working at the
18 Department of State at the time.

19 Q That was a campaign that was aimed at
20 encouraging voter turnout; right?

21 A That's my understanding.

22 Q All right. And in this election cycle,
23 the department chose to use the funds to educate
24 people about Act 18?

1 A Well, it's a dual meaning. We're
2 encouraging people to vote and reminding them that if
3 they want to vote, they need to show it. So if you
4 want to vote, show it. So we're hoping it encourages
5 people to vote and very clearly reminds people now
6 that they must show photo ID before they vote.

7 Q Have you looked at any metrics to see --
8 withdrawn.

9 Are there any metrics showing whether
10 this campaign is effective and, if so, how effective
11 it is?

12 A Metrics in terms of polling on our part
13 or anything like that?

14 Q Could be polling or metrics that
15 advertising agencies use.

16 A Well, there is metrics regarding how many
17 times our votesPA site has been hit, for example. I
18 know that from August 1st until September 20th,
19 just like we had approximately 210,000 unique
20 viewers.

21 So the advertising campaign is drawing
22 traffic to our Web site, which is where all the
23 detailed information is about Act 18.

24 I also think somewhere in the documents

1 you were provided, there was information about
2 click-through rates, viewers on the 175 Web sites,
3 that sort of thing. But above and beyond that, I'm
4 not aware of anything else.

5 Q Do you have any metrics on how well this
6 is reaching the groups the Supreme Court mentioned in
7 its opinion, the elderly, the disabled, the
8 financially disadvantaged? Do you have any metrics
9 on that?

10 A Well, Harmelin Media designed the media
11 campaign and made recommendations specifically with
12 the charge to reach young voters, minority voters,
13 and senior voters. And the entire media effort is
14 geared toward that among all the other voters, but
15 with a specific emphasis on those groups.

16 They described it as a very aggressive
17 campaign and will reach 12 million Pennsylvanians.
18 That's the way they described it to us.

19 Based on the phone calls and emails that
20 we're getting, it does seem to be working.

21 Q It wouldn't be surprising if the people
22 who designed your ads would say that they've got a
23 bang-up campaign and it's going to work really well.
24 That doesn't shock you?

1 A I trust the judgment of the professionals
2 that we hired to do this job, who know a lot about
3 it.

4 Q But, Mr. Royer, every product that is
5 advertised in the world, they've got an ad agency and
6 the ad agency tells the people who make the product,
7 We got a great ad campaign, and we're going to reach
8 all the people you need to reach, and give us some
9 money and we're going to get it done, and here is our
10 stuff and it's going to be terrific.

11 Do you imagine that happens in virtually
12 every case?

13 A I have no idea if that happens in every
14 case. I can tell you that based on what Harmelin
15 designed for us and Red House designed for us, the
16 creative team, it does appear to be reaching voters
17 just based on the feedback we're getting.

18 Q But the mere fact that the ad agency for
19 the entity that is designing the ads and getting paid
20 to run the ads, the mere fact that they say this is
21 going to work, that alone doesn't really tell you a
22 whole lot, does it?

23 A If you're insinuating that they would be
24 lying to us, I think in putting their reputations at

1 risk, I doubt that.

2 Q Not at all. I'm not insinuating
3 anything. I'm really getting at the point that
4 everyone who wants to market and goes to an outside
5 firm, the outside firm, when they've done their work
6 is going to say, we've done a good job and this is
7 going to accomplish what you're paying us to do.

8 That's what you would expect would
9 typically happen, whether you're advertising a Bic
10 pen or a lite beer or -- I know DOS licenses
11 wrestling. I think it markets martial arts. If
12 you're marketing anything like that, once you hire
13 the ad agency, the ad agency is going to say, We've
14 done a bang-up job for you and this is going to get
15 the job done. Isn't that what you would expect?

16 A I would expect them to certainly be proud
17 of the effort that they're doing.

18 Q And in some cases, they'll succeed; and
19 in some cases, they won't succeed.

20 A Well, they're certainly succeeding in
21 this effort.

22 Q Would you agree with me that not all ad
23 campaigns succeed?

24 A Sure.

1 Q When you say "they're succeeding in this
2 effort," you're saying that based simply on the fact
3 that you guys are getting phone calls?

4 A People are seeing our television ads.
5 Six million households received information -- every
6 household with a voter in the state -- about Act 18
7 and all of the IDs that people need to bring Election
8 Day, including the Department of State ID. It is
9 abundantly apparent that this ad campaign is
10 effective.

11 Q Well, with all due respect, sir, when you
12 say it's effective, the mere fact that some people
13 are seeing your ads, do you say that is the sign that
14 it's effective? Some people are seeing your ads? Is
15 that how we should measure effectiveness?

16 A From August 27th until November 6th,
17 there will be over 8,000 ads running across
18 Pennsylvania in every media market, with the
19 exception of three counties. That is described by
20 the professionals as an intense, encompassing media
21 effort. We think it is reaching voters without any
22 question.

23 BY MR. GERSCH:

24 Q I'm sure we can all stipulate it will

1 reach some voters.

2 Since we were last here for the last
3 hearing has the Department of State or any
4 Commonwealth agency to your knowledge done any
5 additional work to determine how many voters lack the
6 ID they need to vote in November?

7 A Not to my knowledge.

8 (Petitioners' 115 was marked for
9 identification.)

10 MR. GERSCH: I'm going to show you what's
11 been marked as Exhibit 115.

12 BY MR. GERSCH:

13 Q You're familiar with this document; is
14 that right?

15 A Yes, I am.

16 Q This is a blown-up version of the
17 postcard that was sent to the 5.9 million households;
18 correct?

19 A Correct.

20 Q The actual postcard is smaller?

21 A It is a little bit smaller, yes.

22 Q And the only mention of the Department of
23 State ID in this document is three bullets from the
24 bottom; is that right?

1 A Correct.

2 Q And this would have been sent in --
3 what? -- in late July/early August?

4 A This mailer started -- was mailed in
5 waves and started, I believe, the 13th of
6 September -- 12th and 13th of September. The
7 last wave of these mailings occurred on Friday, this
8 past Friday. It was sent to every household in the
9 state with a registered voter.

10 MR. GERSCH: Your Honor, I don't know
11 that we need to mark this, but for the benefit of the
12 Court.

13 THE COURT: I have my own.

14 MR. GERSCH: Then Your Honor knows what
15 the actual size looks like.

16 BY MR. GERSCH:

17 Q Mr. Royer, the record won't reflect this,
18 she'll reflect me speaking, but this is what the
19 actual card looks like.

20 A That appears to be it, yes.

21 Q Thank you.

22 There was not a Spanish version of this
23 postcard, was there?

24 A There was not.

1 Q Why was that?

2 A I'm sorry?

3 Q Why was there no Spanish version of the
4 Show It postcard that went to 5.9 million households?

5 A Because we don't know exactly which
6 households are speaking English or Spanish.

7 Again, like everything we're doing, the
8 detailed information is on our Web site, and if you
9 go to votesPA.com, there's -- the entire Web site has
10 a Spanish version to it.

11 Q Just a few more questions, Mr. Royer.
12 Following up on my question about whether there had
13 been more work done to estimate the number of people
14 who need ID.

15 I take it there's no written document,
16 there's no written plan where Department of State
17 sets out: Here are the number of people who don't
18 have ID; this is how we're going to get it to them;
19 these are the number of elderly; these are the number
20 of financially disadvantaged; these are the number of
21 disabled; here's how we're going to get it done.

22 There's no document like that?

23 A Well, the documents that you're talking
24 about will be encompassed in the advertising campaign

1 documents.

2 Our goal was to reach all voters.
3 Certainly this is probably the only law that I know,
4 of any state law, where every single voter receives
5 notification of it in the mail -- television, radio,
6 web advertising, robocalls -- I know of no other
7 state law that has received this much attention or
8 has been the subject of such a multimedia campaign
9 over the course of a year.

10 So to answer your question, are we
11 targeting individual voters, no. There is an
12 emphasis on seniors, minorities and young people, and
13 we wanted to make sure they were included in
14 everything that we're doing, along with the general
15 voting population.

16 Everyone needs to be reminded to bring an
17 ID. And as you can see from this postcard that's
18 still on the screen, we told every single voting
19 household in the state the kinds of IDs that they
20 need to bring on Election Day.

21 Q My question is a little different. Is
22 there any written plan in which you have analyzed the
23 size of the need, that is, these are the numbers of
24 people we've got to get it to, including the numbers

1 of people who are in the vulnerable sectors, the
2 aged, disabled, financially disadvantaged; and you
3 have a plan for how you're going to make sure that
4 all of those people get the ID they need to vote?
5 There's no such document, is there?

6 A Well, again the advertising campaign, if
7 you look at the section on radio advertising, the
8 large percentage of that is targeted for
9 African-American radio stations, Hispanic radio
10 stations and some others, as well.

11 The newspaper advertising focuses almost
12 exclusively on African-American, Latino, Vietnamese,
13 Chinese, Japanese, different newspapers in different
14 languages. We are advertising in those newspapers
15 but not the general population.

16 We are advertising in every college
17 newspaper in the state. Every college or university
18 that has a newspaper, we have a full-page ad that's
19 appearing in October about the voter ID campaign,
20 listing all the IDs that voters can bring to the
21 polls on Election Day.

22 So there are many various components of
23 our advertising campaign that target the populations
24 that you're talking about.

1 In addition, we have done, I think, close
2 to 200 events. The Department of State and with one
3 of our vendors personally appearing at events with
4 minority populations, elderly populations, speaking
5 at these events, tabling these events, reaching out
6 to groups as best we can to make sure that they
7 understand the law and to be available to answer any
8 questions they might have.

9 So we're very proud of the grass-roots
10 effort, as well.

11 Q Okay. But if we can focus, say, first on
12 the ads that you mention. Those ads are the kind of
13 ads I've been showing you; right?

14 A I don't know that you showed the
15 newspaper ads in the Latino or African-American
16 newspapers or specifically the college newspapers. I
17 think I saw that in what you showed me.

18 Q But you'd expect them to be similar to
19 this?

20 A Yes. But a full-page newspaper ad,
21 though, does allow you to have more space than the
22 postcards where you actually list all the IDs that
23 can be used.

24 Q All right. But what you have is you have

1 a plan for where you're going to place advertisement.
2 You don't have any document which says these are the
3 number of people we've got to get ID into the hands
4 of?

5 A We know the populations that we need to
6 target, and we are targeting with our media effort.

7 Q Is there any metric that shows how
8 successful you've been in actually giving them ID?
9 I'm not talking about whether you put an ad in a
10 place where someone says, they'll see it here. I'm
11 asking whether you've been successful in putting the
12 ID in their hands. Any metric for that?

13 A No. And I would imagine that that kind
14 of determination would be made at the end of a
15 campaign, not during a campaign. We still have six
16 weeks to go until Election Day.

17 Q Mr. Royer, to date, since the law --
18 since Act 18 was passed on March 14th, at least as
19 of September 19th, you'd issued a grand total of
20 about 8900 PennDOT IDs; isn't that right?

21 A I think the number is slightly more than
22 that by now. But roughly that, yes.

23 Q And again through September 19th,
24 you've issued only about a thousand DOS IDs; isn't

1 that right?

2 A I think it's closer to 1300 by now.

3 MR. GERSCH: I have no further questions
4 at this time, Your Honor.

5 - - -

6 CROSS EXAMINATION

7 - - -

8 BY MR. PUTNAM:

9 Q Mr. Royer, when was the DOS ID program
10 implemented?

11 A It's been in existence for approximately
12 four weeks.

13 Q And how was it implemented? How was it
14 rolled out?

15 A It was rolled out with an announcement,
16 press release announcement; and PennDOT started
17 issuing the cards immediately.

18 Q What is the -- do you have a hotline?

19 A We do.

20 Q Could you explain what the hotline is for
21 and when it -- how it was implemented?

22 A The 1-877-VotesPA number is -- was an
23 existing number which has been transformed into our
24 voter ID hotline. We receive about 4,000 phone calls

1 a week at that number, almost exclusively on voter ID
2 issues.

3 We are expanding that hotline. And as of
4 next week, we'll have 48 individuals answering phone
5 calls on that hotline to provide the public and any
6 county elections official with information about
7 voter ID. That will enable us to have three times as
8 many calls than we currently have and can process
9 about 100 calls at any given time.

10 Q And what is the BCEL call center?

11 A Well, BCEL is the Bureau of Commissions,
12 Elections and Legislation, and we have implemented a
13 voter ID call center. That's what I just described
14 to you.

15 Q Do you receive reports on how the program
16 is going?

17 A Yes.

18 Q And how do you get those reports?

19 A I get reports from our commissioner, our
20 election commissioner, John Marks. And I also get
21 updates on a weekly, sometimes a biweekly basis from
22 Megan Sweeney, who is our special assistant to the
23 Secretary.

24 (Respondents' 1 was marked for

1 identification.)

2 MR. PUTNAM: Let me show you a document
3 we've marked R-1. Since we're Respondents, we're
4 using that set of numbers.

5 BY MR. PUTNAM:

6 Q Could you tell me what that is.

7 A This is a memo update from Megan Sweeney,
8 who is our special assistant to the secretary, to me.
9 It is our weekly voter ID report for the dates
10 August 13th through August 17th.

11 Q And it provides information about how
12 many IDs have been issued and any changes in
13 staffing?

14 A Yes, correct. This report is issued
15 weekly or biweekly. And typically the numbers are
16 updated, if need be, on IDs that are issued, staff
17 that are added, new policies that are implemented
18 regarding the ways in which we are administering the
19 voter ID law.

20 Q So the Department of State is generating
21 this document in the ordinary course of business in
22 order to keep track of what's going on in the field?

23 A Correct.

24 (Respondents' 2 was marked for

1 identification.)

2 BY MR. PUTNAM:

3 Q So this one covers August 13 through 17.
4 Let me show you one that's been marked R-2, which
5 covers August 20 to 24.

6 Can you identify that document.

7 A Yes. This one is dated August 27th.
8 It is similar to the previous document from our
9 special assistant, Megan Sweeney, to me, covering the
10 period August 20th through the 24th.

11 Q And there would be a similar document for
12 a later date, which might be marked hypothetically
13 R-3? If I can show that.

14 (Respondents' 3 was marked for
15 identification.)

16 THE WITNESS: Thank you.

17 BY MR. PUTNAM:

18 Q I'll ask you to identify R-3. Could you
19 tell us what that is?

20 A It is the voter ID update from
21 Ms. Sweeney to me from August 27th through the
22 31st covering that period. It's dated
23 September 14th.

24 Q Now, on the R-3, August 27 through

1 31st, there's a reference to increasing Bravo's
2 contract to help out 8th and Arch PennDOT. Could
3 you tell me what that is?

4 A What page is that on?

5 Q I think it's on Page 2 at the bottom.

6 A Yes, I see it.

7 PennDOT has told us that Philadelphia is
8 the epicenter of the voter IDs that are being issued.
9 I believe they said it's 40 percent of the IDs
10 statewide are being issued in the City of
11 Philadelphia for voting purposes.

12 The Arch Street office is by far the
13 largest and busiest office in the state, and fully
14 20 percent of all IDs for voting purposes are issued
15 at the Arch Street office.

16 They asked us for assistance in having a
17 presence, as people are coming into their Arch Street
18 building, to make sure people were aware of the voter
19 ID law requirements, the kinds of IDs that can be
20 used, having the proper forms, and any other
21 information they might need before they get in line
22 to help voters through the process of getting an ID
23 at this particularly busy office.

24 Q Do you -- Mr. Royer, do you receive

1 information on a regular basis about voters who were
2 rejected on efforts to get IDs?

3 A No, not on a regular basis, no.

4 (Respondents' 4 was marked for
5 identification.)

6 MR. PUTNAM: Let me give you R-4, which
7 is the August 31 to September 14th.

8 BY MR. PUTNAM:

9 Q And I guess I'll ask you to identify that
10 document, if I could.

11 A It's the same thing, it's a voter ID
12 update for August 31st through September 14th.

13 Q Let me draw your attention on the first
14 page to under BCEL Update, it says, "As of
15 September 13, 145,353 letters sent to possible voters
16 who did not have PennDOT ID numbers were returned by
17 the post office." What's that a reference to?

18 A Over the summer we sent a letter in the
19 month of July to 760,000, approximately, registered
20 voters whom we were not able to match with
21 100-percent certainty between the voter database and
22 the PennDOT database. Out of those roughly 760,000
23 letters, 145,353 were returned as undeliverable by
24 the post office.

1 Q If I can change the subject, what is your
2 understanding of the change that's been effected in
3 the -- with the new -- yesterday or over the last
4 week in response to the Supreme Court? What is the
5 effect of that change?

6 A Well, the effect of that change is
7 keeping with the spirit of the Supreme Court in
8 allowing liberal access for these IDs. Before, the
9 process included a voter saying their name, date of
10 birth, telling the PennDOT customer service
11 representative their Social Security number and
12 providing two proofs of residence.

13 We no longer require two proofs of
14 residence, so the voter need not bring any
15 documentation to get a DOS ID for voting purposes.

16 The process has also changed in that
17 everyone will be able to have a card made that day
18 and either walk out of PennDOT with a card; or if
19 their voter registration, for example, wasn't
20 confirmed, they weren't yet registered to vote and
21 weren't yet in the statewide database, which the
22 counties put the voters -- the counties are the ones
23 that put the voters in that database -- that card
24 would then be sent to the Department of State. And

1 then we would then send it to the voters once they
2 were registered, so it would no longer require a
3 second trip by the voter to pick up a -- an ID for
4 voting purposes.

5 Q You had a couple of questions that you
6 were asked with respect to whether there was
7 discussion to just have a simple affidavit without
8 any other requirements, give an affidavit saying I
9 can't get an ID to vote.

10 You continue to require, as I understand
11 your testimony, that you verify that the applicant is
12 a registered voter; is that right?

13 A That is correct.

14 Q And why do you do that?

15 A Well, that is keeping with the spirit of
16 Act 18. Act 18 specifically mentions PennDOT issuing
17 cards to registered voters and registered voters
18 being entitled to IDs, if they have no other form of
19 acceptable ID, for free.

20 So we're trying to balance what the act
21 requires and the direction the Supreme Court has led
22 us in and finding a compromise to provide these IDs;
23 so you need not bring any documentation, but we still
24 check to make sure that you're registered to vote, as

1 we would for the nondriver's license photo ID. You
2 need to attest that you are -- affirm that you are
3 registered to vote for the nondriver's license ID as
4 well.

5 MR. PUTNAM: One moment.

6 BY MR. PUTNAM:

7 Q You had some testimony about the media
8 campaign. Could you tell me again who Red House is.

9 A Red House Communications is the creative
10 vendor. They're located in Pittsburgh. They're the
11 company that creates the radio spots, the TV spots,
12 the billboards, the WECK ads, the 15-second Web
13 advertising, as well as static banner ads; the
14 transportation ads. Everything that is done -- the
15 postcard. Everything that is done has been created
16 by them.

17 Q Tell me who Harmelin Media is again.

18 A Harmelin Media is a Philadelphia company
19 that is the vendor for purchasing advertising.

20 (Respondents' 7 was marked for
21 identification.)

22 MR. PUTNAM: This is marked R-7, show you
23 a document.

24 BY MR. PUTNAM:

1 Q You testified earlier about specific buys
2 on an African-American and Hispanic radio. What's
3 this document, R-7?

4 A It is the information provided by
5 Harmelin Media which lays out in great detail all of
6 the -- in all of the markets, all of the
7 African-American and Latino radio stations on which
8 we are advertising.

9 Q And you received in the regular course of
10 business copies of the efforts that the media are
11 making to reports on the efforts the media are
12 making?

13 A Absolutely.

14 MR. PUTNAM: I'll give you R-6.

15 (Respondents' 6 was marked for
16 identification.)

17 BY MR. PUTNAM:

18 Q Could you identify that document.

19 A This is a summary from Red House of all
20 of the creative projects they have provided the
21 Department of State and also listed at the end some
22 of the ones that are currently in progress.

23 They list television, radio, online
24 banners, magazine advertising, newspaper advertising,

1 our nearly 6 million postcards, transportation,
2 college newspapers, ethnic newspapers and mobile
3 advertising, which is large banners -- large
4 billboards on wheels for Pittsburgh and Philadelphia
5 in the two weeks before the election.

6 MR. PUTNAM: I'm going to have another
7 document marked R-5.

8 (Respondents' 5 was marked for
9 identification.)

10 BY MR. PUTNAM:

11 Q Again, I'll ask you to identify that
12 document.

13 A This was a recent update from Harmelin
14 Media summarizing at a very high level, not in detail
15 but at a high level, the complete advertising
16 campaign, identifying the objectives, the media
17 target, specifically talking about ethnic voters,
18 voters who are college students, senior voters. All
19 of the television advertising, mentions over a
20 thousand television spots.

21 All the different print advertising, how
22 we're targeting different radio stations based on
23 ethnicity, out-of-home advertising, radio, TV,
24 online. The list goes on and on and on. This is a

1 high-level overview of all of the ways we are getting
2 the message out about voter ID.

3 Q Mr. Royer, how confident are you that
4 registered voters, registered electors, can get
5 photo ID before the election?

6 MR. GERSCH: Objection.

7 MR. PUTNAM: Grounds?

8 THE COURT: I'll take it from here.
9 Why?

10 MR. GERSCH: I think his confidence is
11 irrelevant. He's not an expert. There is no
12 foundation for it. I'll stipulate that he's
13 confident. I don't think it has anything to do with
14 this case. It's not admissible.

15 THE COURT: I certainly can't rely on his
16 confidence going forward. I got that message.
17 But did you have a response?

18 MR. PUTNAM: I think that that is an
19 appropriate first question to ask him, why he
20 believes he's done what needs to be done in order to
21 reach the electors. The other side asked a whole
22 series of questions, actually somewhat argumentative
23 questions, about whether or not he had any idea
24 whether he could reach the electors, so I'm asking

1 the flip side of that.

2 THE COURT: Objection overruled. But
3 ultimately I can't go with this. I can't make a
4 decision on this basis.

5 MR. PUTNAM: I understand.

6 THE COURT: Okay.

7 MR. PUTNAM: Okay. I'll rephrase the
8 question, then.

9 BY MR. PUTNAM:

10 Q Do you think you are able to -- that you
11 have done what you need to do to reach electors so
12 that they will be able to obtain ID prior to the
13 election?

14 MR. GERSCH: Objection; same grounds,
15 Your Honor. I think it's the exact same question,
16 just asked in different words.

17 MR. PUTNAM: I think it was overruled.

18 THE COURT: Probably true.

19 But you may answer the question.

20 THE WITNESS: Could you, please, restate
21 that.

22 THE COURT: I knew that was going to
23 happen.

24 BY MR. PUTNAM:

1 Q Do you think you've done everything you
2 can do in order to make sure that electors,
3 registered electors, will have an opportunity to get
4 a photo ID prior to the election?

5 A Absolutely. And I mentioned earlier that
6 I know of no other state law that has received this
7 much publicity, that has been the subject of such a
8 grassroots effort to get the word out about how it
9 affects the people of this state or has been the
10 subject of such an extensive, encompassing and
11 intense multimedia effort. Every voter will know
12 about this law by Election Day.

13 Q Let me focus in particular on the
14 requirement that in order to get an ID, the applicant
15 must be a registered elector.

16 When does registration close in
17 Pennsylvania?

18 A The close of registration is
19 October 9th.

20 Q So delays inherent in finding out whether
21 a voter has been registered should presumably be
22 resolved after -- at least some of them -- after
23 October 9th?

24 MR. GERSCH: Objection; form.

1 THE WITNESS: Absolutely. The close of
2 registration is October 9th. Sometimes it takes,
3 during that final rush, seven or so days for some
4 counties to make sure that these newly registered
5 voters are in the system. It can take up to a week
6 afterward. And some instances -- which has happened
7 before -- but everyone will be in the system, voter
8 registration database, shortly thereafter.

9 MR. PUTNAM: I have nothing else. Thank
10 you, Your Honor.

11 MR. GERSCH: Thank you, Your Honor, just
12 a brief reexamination.

13 - - -

14 DIRECT EXAMINATION

15 - - -

16 BY MR. GERSCH:

17 Q You were asked about the 145,000 or so
18 returned letters; is that right?

19 A Correct.

20 Q That was out of 760,000 letters that were
21 sent out?

22 A Slightly less than that. But basically,
23 yes.

24 Q So there would be somewhere north of

1 600,000 letters that weren't returned?

2 A Correct.

3 Q You were shown various forms of a report,
4 a sample of which is R-3. Do you have R-3?

5 A Yes.

6 Q And if you take a look at the second
7 bullet -- I'm sorry. The first bullet.

8 It says [reading]: As of
9 September 13th, PennDOT has issued 7,980 PennDOT
10 photo IDs.

11 Do you see that?

12 A I do.

13 Q And each of the reports has a statement
14 like that in it; do you recall that?

15 A Yes, I do.

16 Q Okay. And just to be clear, that's an
17 aggregate number starting with March 14th; right?

18 A Yes, that is correct.

19 Q You wouldn't total up the 7,000
20 referenced here with however many thousand were in an
21 earlier report. The 7,000 is the total?

22 A That is correct. This is the total since
23 March 14th.

24 Q All right. You were shown R-7, if you

1 could take a look at that. That's the email
2 September 19th -- 19th from Melissa Rutz to you
3 and others.

4 Do you have that?

5 A Yes, Melissa Rutz.

6 Q And very quickly, the kind of information
7 that's in this summary is essentially how much is
8 spent at a particular station. And does it also show
9 you how much is spent -- withdrawn. I'll ask you.

10 If you look at the second page -- I'm
11 sorry -- the third page of the document, STNGRCP.

12 Do you see that at the top?

13 A Yes, I do.

14 Q What is that?

15 A That's the gross that is being spent on a
16 particular radio station in that particular market.

17 Q Okay. And there are various forms of
18 that figure throughout this report?

19 A Yes.

20 Q Okay. And there are figures for how much
21 you're spending at which stations; right?

22 A That is correct.

23 Q But nothing in this report tells you how
24 many registered voters are listening to those

1 stations or whether this is an effective means of
2 reaching those effective -- of those registered
3 voters; right? There's nothing in R-7 that tells you
4 that?

5 A There's nothing in here that states how
6 many registered voters this is reaching; correct.

7 Q Okay. And if you take a look at R-5,
8 that is the document that begins with something from
9 Mr. Ronald Ruman. If you need help, I can see if I
10 can find that.

11 Do you have R-5 in front of you?

12 A I do.

13 Q This, again, is a communication -- well,
14 there's a communication from you, but it attaches
15 communication to you from -- I hope I'm not
16 mispronouncing it -- Ms. Rutz? Melissa Rutz?

17 A Yes; Melissa Rutz from Harmelin Media.

18 Q And ultimately there's a memo from her
19 about three or four pages in.

20 Do you see that?

21 A I do.

22 Q There's a lot of specific information in
23 her memo; right?

24 A Yes, there is.

1 Q But none of that information tells you
2 how many registered voters you're reaching in any of
3 those media outlets; right?

4 A No, it does not mention specifically how
5 many registered voters you are hitting with each of
6 these programs. It does mention, though, at the
7 beginning, 12 million households.

8 Q Right. But that doesn't tell you who is
9 doing the reading; right? That doesn't tell you
10 whether the person who is being reached ultimately is
11 a voter or someone who is underage or a citizen of
12 another country? You can't get any of that out of
13 this information; correct?

14 A Only to say that in the television/cable
15 section, the bullet point in here from Ms. Rutz says
16 [reading]: While utilizing this medium, we will
17 reach 12,696,379 PA households.

18 I'm assuming that the vast majority of
19 registered voters are included in that count.

20 Q All right. But, again, this is a TV ad
21 they're talking about; right?

22 A That is referencing our television buy;
23 correct.

24 Q And so if you're watching television,

1 you're watching your show and the ads come on and you
2 decide, all right, this is a perfect time for me to
3 microwave the popcorn, or whatever it is that you
4 might do during that break, there's nothing in this
5 data that tells you whether that's happening or
6 whether -- this is the moment where everyone is
7 getting up to leave or whether people are sitting and
8 watching your ad; right? You can't get that out of
9 this information?

10 A I will agree with you that Ms. Rutz'
11 analysis of this does not tell us when people are
12 microwaving their popcorn.

13 Q Counsel -- and you'd agree with it that
14 you can't get beyond the basic information that you
15 recited, that it's shown in a medium and somehow or
16 other they calculate that there will be 12 million
17 households that are watching during the period that
18 it's shown? That's how you understand it; right?

19 A I'm not sure I understand your question.

20 Q Withdrawn. When they say they're going
21 to reach 12 million, they don't mean that 12 million
22 households are watching your ad. They mean they're
23 showing the ad at a time during which they have
24 estimated that 12 million people happen to watch

1 television?

2 A The ad is -- the ad buy is created so
3 that up to 12 million households will be able to see
4 this advertising campaign on TV.

5 Q Well, let me just drill down a little bit
6 further. When you say "up to 12 million," the ad is
7 shown during a period when 12 million viewers are
8 watching those kinds of outlets, the outlets that
9 she's talking about; is that fair?

10 A Yes.

11 Q Okay. But going back to my earlier
12 question about the popcorn, what it doesn't measure,
13 it doesn't measure whether people are still sitting
14 on the couch watching when the ad comes on. There's
15 nothing like that in there?

16 A No, and I don't even know how that would
17 be possible.

18 Q You've never seen any data or market
19 research information where people actually try and
20 figure out whether persons are watching the ad?
21 You've never seen a survey where they actually try to
22 figure out how effective the ad is, see whether
23 people actually stick around to watch it?

24 A The ads are placed around television

1 shows and on cable networks in order to reach our
2 targeted populations. Then up to 12 million
3 households, which is what Melissa Rutz refers to in
4 her memo.

5 Q Mr. Royer, my question is a little
6 different.

7 My question is, don't you understand that
8 there is research that's done out there where they
9 try and measure how effective ads are, where they try
10 and measure whether people actually watch the ads or
11 whether they get up and leave?

12 A There may very well be research out
13 there.

14 Q But you don't know if there is or isn't?

15 A I do not.

16 Q Certainly, you haven't seen any of that
17 research done on your ads?

18 A No.

19 Q Okay. Shifting topics again, you had a
20 question from counsel. I tried to take it down. I'm
21 not sure I got it entirely. But it was something
22 like, have you done everything you could to make
23 sure -- and I'm not sure whether it was to get
24 everyone an ID or make sure everyone could vote.

1 Do you remember your testimony?

2 A Yes.

3 Q Okay. So it's your position that you've
4 done everything you could, either to get the IDs in
5 people's hands or to make sure they can vote? Is
6 that how I understand your testimony?

7 A To make sure people can vote?

8 Q Yes.

9 A Any eligible voter is able to vote.

10 Q They're only eligible -- they can only
11 vote if they've got the ID; right?

12 A If they don't have an ID, they can vote
13 by provisional ballot.

14 Q Not everyone can vote by provisional
15 ballot, can they?

16 A Anyone can vote by provisional ballot if
17 they ask the judge of elections.

18 Q So they've got to go to a judge; is that
19 your testimony?

20 A The judge of elections works in the
21 polling place.

22 Q They've got to go to the judge of
23 elections and ask them if they can vote?

24 A If a voter shows up on Election Day and

1 they are registered in a different precinct or if
2 they may not have their photo ID -- they left it at
3 home, for example, in the rush to get to the polling
4 place before 8 o'clock -- they are able to use a
5 provisional ballot to vote.

6 Q Is the -- when you made reference to you
7 doing everything you could do, is going to the judge
8 of elections, does that fall in that category of you
9 doing everything you could do?

10 A In the instances where someone may forget
11 their ID on Election Day, you are able to vote at
12 your polling place by provisional ballot. A judge of
13 elections is the polling place worker who works right
14 there in the precinct, who is elected by the voters
15 in their precinct. And a judge of elections will
16 give that voter a provisional ballot to vote.

17 Q By the way, when you were asked the
18 question, "Have you done everything?" I assume that
19 you interpreted that as meaning that the Department
20 of State and not Shannon Royer individually all on
21 his own; is that fair?

22 A That is fair.

23 Q Okay. So in terms of whether the
24 Department of State has done everything to make sure

1 that people have the ID they need to vote, there is
2 something else that could have been done that you
3 haven't done; isn't that right?

4 A We are active in every single area that I
5 could think of to get the word out about this voting
6 requirement, at the grassroots level, at the
7 multimedia level, at the intermediate level.

8 We are engaging voters every way possible
9 on this legislation. So I don't know what other
10 mediums we can tap into to notify voters about this
11 law.

12 Q Mr. Royer, couldn't you have been
13 making -- the liberal access that the Supreme Court
14 says should have been offered to IDs, you could have
15 been offering that since March 14th of 2012,
16 instead of waiting until last night? You could have
17 done that; isn't that right?

18 A That change could have been made earlier,
19 sure.

20 THE COURT: Are you sure you want to ask
21 this next question?

22 MR. GERSCH: I'm thinking, Your Honor.

23 I once had a case with a counsel from
24 New York, and in this setting she would have said,

1 I'm "toining" it over in my "moind."

2 I have no further questions, Your Honor.

3 THE COURT: I've been there. I get it.

4 MR. PUTNAM: Thank you, Your Honor.

5 THE COURT: Anything else for this
6 witness?

7 MR. PUTNAM: No, Your Honor. Thank you.

8 THE COURT: Are you finished with this
9 witness now? May I excuse him?

10 MR. GERSCH: Yes, we are. Yes, Your
11 Honor.

12 THE COURT: All right. You may step
13 down. You're free to go. There's been a point that
14 I probably didn't discuss with anybody yet, which is
15 how you would like to handle the exhibits. So don't
16 take any exhibits with you. Just leave all the
17 exhibits there.

18 MR. GERSCH: Your Honor, before we go
19 further, if I could just make an announcement for the
20 benefit of Mr. Steve Turner, who I understand has
21 been in contact with the Secretary, who is on our
22 witness list, and advised him that they will not need
23 the Secretary.

24 THE COURT: Thank you. Mr. Turner, thank

1 you.

2 What we did at the last hearing was that
3 I kept the exhibits, just because the -- I don't
4 really know the court reporter. We don't have an
5 ongoing relationship with the court reporter. It's
6 not a Commonwealth Court court reporter.

7 So I don't know what happened with the
8 exhibits that were identified during the morning. I
9 don't know whether the -- I have a copy of all the
10 exhibits here on the bench. It would be my intention
11 that my copies would be entered into the original
12 record.

13 So I just want to make sure that the
14 court reporter knows that, unlike most trials I've
15 been involved with, the Court will take
16 responsibility for the exhibits. And I would like to
17 deal with that right now before I start losing track
18 of these exhibits, if you don't mind.

19 I'm assuming that Petitioners are moving
20 all the exhibits that you have identified with the
21 exception of one that was not -- I guess the witness
22 has never seen it before and didn't know anything
23 about it.

24 MR. GERSCH: Correct, Your Honor. And I

1 have a list if that would be helpful.

2 THE COURT: I have the list.

3 Were there -- are there any objections to
4 the exhibits? Let me read them off as they were
5 identified.

6 (Petitioners' 115, 130, 136, 172,
7 173, 174, 178, 179, 220, 224, 225
8 and 226 were received into
9 evidence.)

10 THE COURT: 179 is received. 178 is
11 received. 172 is received. 174 is received. 173 is
12 received. 115 is received. 136 is received. 225 is
13 received. 226 is received. 224 is received. 220 is
14 received. 130 is received.

15 Respondent, when we get to your side of
16 the case, we'll deal with your exhibits, but right
17 now I have Exhibits R-1 through -7.

18 MR. PUTNAM: Correct.

19 THE COURT: So I have all those exhibits
20 up here.

21 Mr. Mazin, they will be your
22 responsibility. Guard them with your life.

23 All right. Do you have another witness
24 for today?

1 MR. GERSCH: We do. It's Mr. Jonathan
2 Marks. We can go ahead, Your Honor, if possible, to
3 take a very short break. I think I can condense his
4 examination in light of everything we've heard. But
5 if Your Honor prefers, I can get started now.

6 THE COURT: How much time do you want?

7 MR. GERSCH: 10 minutes.

8 THE COURT: We'll take a 10-minute
9 recess.

10 THE CLERK: Commonwealth Court is now in
11 recess.

12 (Recess taken.)

13 THE CLERK: Come to order. Court is now
14 in session. Be seated.

15 MR. GERSCH: Your Honor, Petitioners call
16 Mr. Jonathan Marks.

17 - - -

18 JONATHAN MARKS, having first been duly
19 sworn according to law, was examined and testified as
20 follows:

21 - - -

22 EXAMINATION

23 BY MR. GERSCH:

24 Q Sir, please state your name.

1 A Jonathan Marks.

2 Q And, Mr. Marks, are you still the
3 commissioner of the Bureau of Elections?

4 A I am.

5 Q Mr. Marks, I'm going to apologize in
6 advance. The questioning will be a little
7 disjointed, but it's to your advantage. Almost all
8 the questions have been answered by the preceding
9 witnesses, so you'll derive the benefit of that.

10 There has been testimony about a change
11 to the Department of State ID program that went into
12 effect either last night and/or this morning.

13 I take it you're familiar with those
14 changes?

15 A I am, yes.

16 Q Okay. And we heard testimony this
17 morning from Mr. Myers about how that change has
18 affected the folks at PennDOT in terms of what they
19 have to do.

20 I'm not going to run through those
21 questions with you. I want to focus on how those
22 changes are going to affect the Department of State
23 on its end when it receives a call from the folks at
24 PennDOT and they want to verify that they can issue a

1 PennDOT -- I'm sorry -- a DOS ID to the voter.

2 Are you with me so far?

3 A I am.

4 Q All right. So, as we understand it, and
5 we've seen the new application form that gets filled
6 out by the voter and presented to PennDOT, is --
7 assuming PennDOT is able to get all the information
8 that's required on the form, we understand that at
9 some point in the process the customer representative
10 at PennDOT is going to call the SURE help desk; is
11 that right?

12 A That is correct, yes.

13 Q All right. What happens at that point
14 from PennDOT's -- I'm sorry, from the Department of
15 State's point of view?

16 A From that point, when a call is received,
17 it comes in to the help desk, which I'll call Tier 1.
18 Tier 1 is the initial point of contact. The help
19 desk, we use the name, date of birth, Social Security
20 number information provided by the PennDOT customer
21 service representative to do a search. And there's a
22 specific application designed to do that search.
23 First, verify that the individual is registered to
24 vote and do the SSN verification.

1 If the help desk is unable to find a
2 match in the voter registration record or the SSN
3 does not match, that will be -- the call will then be
4 transferred to Bureau of Commissions, Elections, and
5 Legislation staff, which I'll call Tier 2.

6 We have a little more discretion. We can
7 search the database on items, such as just street
8 address, for example, to find out if maybe the
9 individual is in there under a slightly different
10 name.

11 So we have a little more capability that
12 the help desk doesn't have. We also have the luxury
13 of a little more time that the help desk doesn't
14 have.

15 So that call was immediately transferred
16 up to Tier 2. If we're able to resolve the issue,
17 find a match, then we would provide the PennDOT
18 customer service representative with the voter ID
19 number, the verification number, and the client will
20 be able to get their identification.

21 Q Let me stop you there and ask this
22 question: What is it that you need to find in order
23 for you to tell PennDOT: Go ahead and issue the ID
24 card. You need to find -- stop me if I'm wrong. You

1 need to find the voter in the SURE database; is that
2 right?

3 A That's correct, yes.

4 Q If you find the voter in the SURE
5 database, is that the end, or do you have to do
6 something else?

7 A In the overwhelming majority of cases,
8 that's the end. What we've found in our earlier
9 experience with this, that the majority of issues are
10 due to data entry errors, for example, or slight
11 differences in the name.

12 To give an example, I spoke to an
13 individual on Saturday who most likely the county
14 tacked their middle name on to their last name,
15 believing that it was a hyphenated name. So once I
16 was able to go in and do an additional search, we
17 made that determination.

18 We've also had an issue where the -- a
19 digit in the date of birth was entered incorrectly or
20 two digits were transposed. The Tier 1 help desk
21 process is not going to catch that. We are at
22 Tier 2.

23 Q And when you say -- withdrawn.

24 Let me ask a couple questions. First of

1 all, you said you did this on Saturday.

2 So that's before this new process went
3 into effect; correct?

4 A That's correct, yes.

5 Q So the part in which -- the part of the
6 process in which PennDOT calls the SURE help desk,
7 the SURE help desk attempts to locate the voter in
8 the SURE database, that's the same both in the old
9 system and in the new system; right?

10 A Correct. That process will continue.
11 The only thing that will be different is whether the
12 individual walks out the door with the card or
13 whether that card is turned over to the Department of
14 State for safekeeping until we can determine that the
15 individual is, in fact, qualified and registered to
16 vote. That's the difference.

17 Q Okay.

18 A In a nutshell.

19 Q And I may have questions on that too.

20 I'm not up to that part yet.

21 A Sorry, didn't mean to get ahead of you.

22 Q That's all right.

23 The part where the voter is not verified
24 at Tier 1, that is, the SURE help desk can't verify

1 and then they kick that over to the Bureau of
2 Elections line, what you call Tier 2?

3 A Correct.

4 Q That's been going on before, and it will
5 continue to go on; is that right?

6 A That is correct, yes.

7 Q And did I understand you to say that one
8 of the reasons that the people at the SURE help desk
9 might not be able to find the voter is because they
10 don't have access to all the tools for searching the
11 SURE database that the Tier 2 folks will have?

12 A Right. It's partly access and also
13 partly time.

14 Tier 1 help desk is fielding calls as
15 they come in. They're going to take the majority of
16 calls. The majority of those calls are going to
17 check out fine.

18 So they have an interest in keeping the
19 calls moving so that people do not sit on hold.
20 There are 71 centers, I believe, throughout the
21 Commonwealth that our help desk is serving, so it's
22 in their interest to keep the calls moving. So they
23 are looking under a very narrow set of criteria. And
24 they're essentially looking for exact match on name,

1 date of birth, et cetera.

2 If discretion needs to be added, if
3 they're unable to find it, that's what Tier 2 is for.
4 As I said, we have the luxury of time. We can use
5 the additional tools, and we have the time to do
6 that.

7 Q And when you made reference to data entry
8 problems, so -- so the Tier 1 folks might not be able
9 to find the registration because of data entry
10 problems?

11 A Correct, yes.

12 Q So are these -- is this a problem in the
13 sense of someone who entered the information into the
14 SURE database has made a typo; is that what we're
15 talking about?

16 A Correct, yes.

17 Q All right. And that would mean that the
18 Tier 1 folks can't find it for an exact match?

19 A Right, yeah. If there's a superfluous
20 space in the middle of the name, for example, or the
21 county accidentally added a special character in the
22 name, Tier 1 is not going to find that. They're
23 going to type in the name as it's given to them over
24 the phone.

1 We can use additional tools such as
2 searching just on the address to find a list of
3 voters who reside at that address and sort through
4 them to determine if we -- if we see a similar name
5 in the database. And that's how we find these
6 anomalies.

7 Q How many people do you have on the SURE
8 help desk?

9 A On the SURE help desk we have four
10 people, I believe, now committed to voter ID. We
11 also have the ability to add three more. Essentially
12 our division of SURE office is kind of the overflow
13 for that traffic.

14 Q Have you had complaints that the SURE
15 desk is not getting to calls fast enough and that the
16 PennDOT people have been on hold for as long as 10
17 and 15 minutes, or sometimes they just get busy
18 signals?

19 A We have had complaints. As I recollect,
20 initially within the first week and a half to two
21 weeks, the majority of those complaints came in. We
22 had one complaint from one facility this past
23 Saturday regarding a lengthy wait time. We have had
24 periodic issues with the phone system. They're

1 usually temporary, resolved within minutes.

2 As I recall, an overwhelming majority of
3 the complaints -- which weren't that many to begin
4 with, but those came within the first couple weeks.

5 Q The card has only been available since
6 August 27th; is that right?

7 A Right.

8 Q So the first couple weeks would be most
9 of the time the card has been available?

10 A Yes. And as I recall, those were
11 Saturdays, the first couple of Saturdays. I don't
12 recall complaints coming in during the week. They
13 now have three people committed to being there on
14 Saturdays at the Tier 1 help desk.

15 Q All right. Sticking with the new
16 process, so -- withdrawn. Let me put it differently.

17 If you're unable to find the voter in the
18 database at Tier 2, then what happens? What happens
19 today?

20 A Well, we determine that the individual --
21 does not appear that the individual is registered,
22 what we'll do is follow up whatever finding based on
23 the calls; and not always is the PennDOT
24 representative there with the client; but in many

1 cases they are.

2 We're finding out that individuals are
3 registering to vote via a voter registration drive,
4 for example. They hand over their forms to a
5 volunteer and then a couple of days later show up to
6 the PennDOT center to obtain their ID.

7 In that circumstance, it's unlikely that
8 within those two days the county will have received
9 the form and had the opportunity to process it.

10 So that's going to require us to do
11 follow-up, check the voter registration rolls
12 frequently. As these people -- as we determine that
13 these people are registered, then they'll receive an
14 exceptions letter which is essentially a letter
15 informing them that they may obtain the ID.

16 We'll also follow up via phone if a phone
17 number was provided.

18 Q All right. And here I want to make a
19 distinction between the way the program used to work
20 and the way the program will work going forward.

21 In terms of the way the program worked up
22 through last night, if it was the case that the
23 Department of State could not verify that the voter
24 was registered while the voter was standing there at

1 the PennDOT desk with a customer representative, at
2 that point the voter was sent home; is that right?

3 A That's correct, yes.

4 Q Okay. And will that be different under
5 the new system?

6 A It will. What will happen under the new
7 system, the -- PennDOT will take the photo of the
8 voter, generate the card, and provide the card to us.
9 They will also offer the individual a voter
10 registration application form. It's kind of a safety
11 net.

12 If the individual isn't sure whether
13 they're registered or can't remember whether they're
14 registered, or even if the individual did register
15 through a voter registration drive but now wonders if
16 that form is -- it's been several weeks, if that form
17 is ever going to make it to the county, they'll be
18 offered the voter registration form as well.

19 We will either receive from PennDOT via
20 UPS a card for that individual and the voter
21 registration application form that we can send to the
22 county, or we will receive just a card if they refuse
23 to fill out the voter registration form.

24 That's how the process has changed.

1 As I understand it, PennDOT is also going
2 to be scanning, as part of the exceptions packet, a
3 copy of the voter registration application that's
4 been completed so that we have a soft copy of the
5 paperwork, as well.

6 Q So you're going to be receiving from
7 PennDOT in hard copy -- I'm sorry, did you say
8 through UPS?

9 A Yes.

10 Q Through UPS you're going to get a card,
11 you may be getting a voter registration application?

12 A That's correct.

13 Q And you're going to get -- by some means
14 you're going to get the exceptions document?

15 A That's correct.

16 Q And how are you going to get that?

17 A That will still be delivered through the
18 shared drive.

19 Q Electronically?

20 A Electronically, yes. There's a secure
21 drive onto which those documents are loaded.

22 Q Who gets those materials on your end?

23 A Who gets them? We have three people that
24 have access to that folder. It's basically our three

1 points of contact for voter ID. They're kind of the
2 coordinators for this entire project.

3 Q And are they the same people who also get
4 the card and the registration form?

5 A No. We're actually going to have another
6 point of contact, a single person that's going to
7 coordinate the receipt, organization and distribution
8 of the cards.

9 Q Okay. And when you say "we're going to,"
10 you say that because this program is just being
11 rolled out now?

12 A Yes, it's fairly new. And at last check,
13 I believe that person will be ready to go next week.

14 Q And when you say "that person will be
15 ready to go," do you mean the person who is going to
16 receive the cards --

17 A Right, I --

18 Q Let me just finish my question --

19 A Right.

20 Q -- just so we have a clear record.

21 The person who will be ready to go next
22 week will be the person who is on the receiving end
23 of the card and the registration coming from PennDOT?

24 A That's correct. Yes.

1 Q And how about the people -- the three
2 people who are going to be receiving electronically
3 the exceptions document from PennDOT? When are those
4 people going to be ready to go?

5 A The three people, they're already ready
6 to go. They've been doing it.

7 Q And when we say "exceptions document," I
8 think we talked about this at the last hearing, what
9 you mean is a document which describes why PennDOT is
10 unable to issue them -- issue the voter a card while
11 they're standing there?

12 A That's correct.

13 Q Okay. All right. If it is the case
14 that -- withdrawn.

15 All right. Let's go back to the
16 situation where you haven't found someone's
17 registration. That's someone's job at the Bureau of
18 Elections to follow up on; right?

19 A That's correct, yes.

20 Q And if you can't find it in any of the
21 databases, then what's going to happen?

22 A Well, we'll continue to look for it.
23 We're in the process now of trying to find a more
24 systematic, programmatic way to search the database

1 automatically. But for now it's manual. We continue
2 to search the database until that individual is
3 registered.

4 Q How many people perform that function?

5 A The same three people primarily. We do
6 have additional staff, temp staff that have been
7 trained on doing voter lookups. We're shifting the
8 office furniture around as necessary.

9 Q And am I right that what's going on now
10 is that -- am I right that what's going on now is the
11 way you do this is you wait until -- the
12 presumption -- withdrawn. I'm not saying this well.

13 Let me try it this way. From your
14 description, I'm getting the impression that the
15 presumption is that the person has registered
16 recently, and you're waiting until it shows up in the
17 SURE database; is that right?

18 A That's correct. The presumption is this
19 person is qualified and that they'd done the steps
20 necessary to register. We just can't confirm it at
21 that point.

22 Q But I also take it that the presumption
23 is that what is going on is a delay occasioned by a
24 recent registration, and then eventually they'll work

1 their way into the system.

2 A Correct.

3 Q I want to focus on the issue of whether
4 the person is already in the system and you just
5 haven't found them. What's supposed to happen in
6 that case?

7 A If they're already in the system and we
8 haven't found them, I'm not aware of a circumstance
9 where that's occurred, and I'm not aware of a
10 circumstance where anyone has actually alleged that
11 that's occurred.

12 As I said, we can look at the address an
13 individual has provided. If they are registered to
14 vote under a different name and a different address
15 on a different date of birth, there's probably no
16 circumstance under which we will find them.

17 But our search capabilities at Tier 2 are
18 pretty broad. So I don't expect that it would
19 happen.

20 If an individual provides us with some
21 proof positive that they are registered -- for
22 example, a recent voter registration card, one that
23 would have been sent by the county recently -- we
24 could contact the county at that point to verify

1 whether there's a voter registration record, if they
2 have a paper record of the registration.

3 So there are -- and this is where the
4 case-by-case discretionary actions come into play
5 under a unique circumstance like that. But again,
6 I'm not aware of a situation under which that's
7 occurred.

8 THE COURT: May I ask a question.

9 MR. GERSCH: Of course.

10 THE COURT: The Level 2 searching, would
11 that be equivalent to what occurs here when we're
12 given a line challenge?

13 THE WITNESS: It's equivalent -- you're
14 looking at a slightly different view. It doesn't
15 have the Changes tab, for example, some other things
16 with personally identifying information on it. We
17 have a more direct view of it. But it is similar in
18 that respect.

19 I know the Court has used that capability
20 for looking by address, et cetera.

21 THE COURT: All right. Thank you. That
22 just sort of focuses it for me because that's what we
23 do around -- in the spring. We do it in the spring.
24 We have some people doing it right now too.

1 THE WITNESS: It's like baseball. It's
2 an annual rite of spring.

3 BY MR. GERSCH:

4 Q I want to walk you through a case of
5 someone who was initially rejected for ID and ask if
6 you can explain how -- what happened there. Okay?

7 A Okay.

8 Q

9 MR. GERSCH: I'm going to hand up
10 Exhibit 229, 229.

11 (Petitioners' Exhibit 229 was
12 marked for identification.)

13 BY MR. GERSCH:

14 Q Mr. Marks, I've handed you Exhibit 229,
15 which is a several-page document. I want you to take
16 your time with it. This is a document produced to us
17 by counsel for Respondents. And it starts on the
18 first page, it says Eric Carney, not verified,
19 August 29, 2012. Take a look at and let me know when
20 you're ready.

21 A You want me to review the entire
22 document?

23 Q Well, we can go page by page in a sense.
24 Let me ask you this. The first page where it says

1 "Eric Carney, not verified, August 29, 2012," does
2 that mean that that's the date he presented at
3 PennDOT and that's the date that Department of State
4 was unable to say he was a registered voter?

5 A That is correct, yes.

6 Q And then the second page in is his
7 application. And this, of course, is under the
8 original Department of State system. It's not under
9 the new one that's going into effect tomorrow?

10 A Excuse me. It actually -- it appears
11 that he was added on the 28th. The document may
12 not have been loaded until the 29th.

13 Q And let me just say for the record, we
14 have blotted out the Social Security number for the
15 benefit of the voter.

16 But if you had the -- there was an
17 unredacted copy that the Department of State has.

18 And if you go in, the page after the
19 application, what's that document?

20 A The page after the application?

21 Q Yes.

22 A Appears to be a voter registration card
23 issued by the City of Philadelphia in 2003.

24 Q Right. So this is a fellow who came in

1 to PennDOT; and among the documents he brought to
2 identify himself, he brought a voter registration
3 card. He also brought his probation and parole
4 paperwork; is that right?

5 A Yes, that appears to be the case.

6 Q Okay. Given that this fellow brought his
7 voter registration card from 2003 -- see it says
8 "enrollment date"?

9 A That's when he was enrolled.

10 Q Right. So that's when he would have
11 registered to vote?

12 A That's when he initially registered. It
13 appears the card was issued in 2012, valid 10 days
14 after if you look below the signature area.

15 Q I see.

16 A I noticed he hasn't signed this.

17 Q How does that work that he's initially
18 enrolled in 2003, and then it says valid 10 days
19 after June 7th, 2012?

20 A It would be the -- valid 10 days after is
21 when the County issues the card. This may have been
22 a transfer, for example. If he moved from another
23 county, the enrollment date would stay the same. He
24 may receive a new card from the new County.

1 Or this County may have issued a
2 duplicate voter registration card. Like any other
3 document, you can request a duplicate if you've lost
4 your card.

5 Q Okay. But does this mean he was
6 originally registered in 2003?

7 A Yes. The enrollment date indicates that
8 he was registered to vote initially in 2003.

9 Q So here we have a guy who was originally
10 enrolled, originally registered in 2003; and through
11 moving or through getting a duplicate card, he gets
12 another card that's valid by June 17th, 2012.

13 A Am I right so far?

14 A Correct, yes.

15 Q Okay. Are you able to tell why this guy
16 wasn't given a voter ID?

17 A I'm not able to tell the exact reason.
18 The exception page, the exception worksheet page is
19 not attached. But it appears, based on what was
20 written here by the PennDOT technician, they were
21 unable to verify with our SURE help desk.

22 Q Okay.

23 A Either the individual's voter
24 registration or Social Security number.

1 Q Okay. Let's talk about the Social
2 Security number for a moment.

3 When you say -- how do you verify the
4 Social Security number?

5 A Without getting too far down in the
6 weeds, technically, the process involves essentially
7 bouncing the last four digits of the Social Security
8 number, the first name, last name, date of birth
9 against the Social Security Administration's
10 database. That happens within a matter of seconds.

11 So basically it will return a result, a
12 single match or a single match deceased or multiple
13 match, for example. If you have -- if you have, for
14 whatever reason, the last four, same name, same date
15 of birth --

16 Q And that's done by the SURE help desk?

17 A It's done by the SURE. It's actually
18 programmatic. It's built in. They just enter the
19 information, and it happens automatically.

20 Q All right. Let me move to a different --
21 related but different topic, which is the number of
22 persons for whom PennDOT -- I'm sorry -- Department
23 of State has not at least initially been able to
24 verify their voter registration status.

1 So it's our understanding that, at least
2 through the discovery we got, there were 113 initial
3 rejections on which the Department of State rejected
4 someone for the Department of State ID because they
5 couldn't find them in the SURE database.

6 Does that sound right to you?

7 A There were 113 exceptions. I don't know
8 that I said they're rejected until I've made a final
9 determination.

10 Q That's where I was going to go next.

11 And our understanding is, and we received
12 this information from counsel, that in 70 of those
13 cases -- in 43 of those cases, Department of State
14 was able to resolve the initial exception.

15 A Right.

16 Q Does that sound like the right number to
17 you?

18 A That does, yes.

19 MR. GERSCH: Your Honor, I'm going to
20 hand up a binder given to us from materials received
21 from counsel of the 43 cases resolved by the
22 Department of State. And that's marked Exhibit 217.

23 (Petitioners' Exhibit 217 was
24 marked for identification.)

1 BY MR. GERSCH:

2 Q I showed these to counsel before, during
3 the break. And I don't expect you to verify the
4 contents of each one. But could you take a look --

5 A That's all you have?

6 Q Just leaf through it and see if those
7 appear to you to be the files of the persons whose
8 exceptions the Department of State was able to
9 resolve.

10 A It does. I won't concede that every one
11 is correct, but it does appear to be.

12 Q And we're doing this based on the
13 representation of counsel.

14 MR. GERSCH: And for the benefit of the
15 Court, we'll be talking further with counsel. If
16 they have any concerns, I'm sure they'll raise it
17 with us.

18 BY MR. GERSCH:

19 Q The next exhibit that I'm going to hand
20 up are what I understand to be the 70 cases that the
21 Department of State hasn't been able to resolve. And
22 these are Exhibit 218.

23 (Petitioners' 218 was marked for
24 identification.)

1 BY MR. GERSCH:

2 Q Mr. Marks, again, just as a confirmation,
3 do those appear to you to be the files of the
4 persons, the applicants whose exceptions have not
5 been resolved?

6 A Yes, this appears to be representative of
7 that.

8 Q And there should be 70 files in there.
9 And my question to you is, does that sound like about
10 the right number to you?

11 A It does. The number's a little bit fluid
12 as each day goes by, so --

13 Q I'll represent that the oldest
14 application in that binder that is not resolved is an
15 application dated August 29th, 2012, which would be
16 two days after the original DOS ID became available.

17 We're now, I think, September 24 --
18 25th. We're now September 25th, and I guess the
19 question I have for you is, if someone hasn't
20 received any -- withdrawn.

21 Do you consider that file under active
22 investigations? Or have you decided that for some
23 portion of these proceedings --

24 A It's active investigation. If we, as we

1 search the database, we reach a point within the
2 next, I would say about 10 days before the close of
3 registration, so one of the next few days, where they
4 have not shown up in the system yet.

5 I'm not aware of too many voter
6 registration drives that are that irresponsible that
7 they hang onto a voter registration application for a
8 month, but I guess anything is possible.

9 If necessary, we would have the
10 individual fill out another voter registration
11 application if the issue is simply having them get
12 registered to vote. So it is under active
13 investigation, yeah.

14 Q When you say, if necessary, you'll have
15 them fill out another registration application, how
16 are you going to do that physically?

17 A We mail them a voter registration
18 application.

19 Q And how long does it take the mail to go
20 through this time of year?

21 A For them to receive it?

22 Q Yes.

23 A Usually takes a few days.

24 Q And then I presume it would have to take

1 a few days to get back to you?

2 A Well, they can mail it directly to the
3 County Board of Elections. Or they could mail it to
4 us. As long as it's postmarked before the
5 October 9th deadline to register to vote, it will
6 be accepted.

7 Q What's the last date on which you'll send
8 these people applications?

9 A The last date on which we will send
10 people applications?

11 Q Yes.

12 A We'll send them applications up to the
13 point that we need to. For example, if somebody two
14 days before the voter registration deadline comes in
15 and we can't verify that they're registered, under
16 this new process, they will be given the opportunity
17 to fill out a voter registration application on the
18 spot. That's the improvement about this process.

19 That safety net will be in place on the
20 front end. We won't have to address it on the back
21 end.

22 Q Sure. I guess I'm thinking of this
23 fellow from August 29th whose file still hasn't
24 been resolved. At what point will you send that

1 person an application to register?

2 A As I said, within the next few days. I
3 want to make sure that we get it out there so that it
4 arrives several days before the close of
5 registration.

6 And, again, if we have phone numbers for
7 individuals, we'll contact them by phone and explain
8 to them that we have not been able to verify their
9 record as of yet and they may wish to register again
10 or complete another registration application.

11 MR. GERSCH: Shifting topics, I'm going
12 to show you another exhibit marked 149.

13 (Petitioners' 149 was marked for
14 identification.)

15 BY MR. GERSCH:

16 Q This one will be a little shorter.

17 A They're usually not this succinct,
18 though. I'll tell you that.

19 Q This is, I take it, some kind of either
20 calendar entry or invite to a meeting hosted by you?

21 A That's correct, yes.

22 Q Would you have caused this to be created?

23 A I was, yes. I did.

24 Q And the first line of the substantive

1 text says [reading]: Though it appears that the
2 majority of applicants are obtaining their IDs
3 without issue, 75 percent...

4 And then you go on to discuss options for
5 streamlining the process.

6 Do you see that?

7 A I do, yes.

8 Q All right. When you say that the
9 majority of applicants are obtaining their IDs
10 without issue, 75 percent, do I read that correctly
11 to mean that 25 percent of the applicants are not
12 obtaining their IDs without issue?

13 A At this point in time, on the 4th, I was
14 probably ballparking it. So it could have been
15 anywhere between 70 and 80 percent.

16 So that's -- if that's what I put in
17 there, that's probably what I saw based on the
18 experience at that moment in time.

19 Q Sure. And I'm asking you less about the
20 exact precision of the number and more in terms of,
21 so does this mean that 25 percent of the applicants
22 are having issues obtaining their ID?

23 A Roughly.

24 Q Are those all issues about registration,

1 or are there different kinds of issues?

2 A Those were primarily issues about the
3 search process and the Tier 1 help desk. This is
4 dated 9/4, which was Tuesday after -- about a week
5 after this process went into place. And what we were
6 finding at that point in time is that we had an
7 inordinate amount of exceptions that would be
8 generated because of narrow research criteria being
9 used by the SURE help desk.

10 So we discussed options to streamline
11 that. Our goal was to either address more of these
12 at the Tier 1 help desk or come up with a better
13 process to address them, at least while the
14 individual was at the PennDOT driver's license
15 center.

16 Q Sure. And I take it this is sort of the
17 normal process of you roll out something new and you
18 implement it; and as you implement it, you learn
19 about adjustments you need to make?

20 A Yes, and you always learn lessons.

21 (Petitioners' 131 was marked for
22 identification.)

23 BY MR. GERSCH:

24 Q Let's take a look at Exhibit 131.

1 All right. You have Exhibit 131 in front
2 of you. At least the first email is from a Courtney
3 Wolpert to you and a number of other people; is that
4 right?

5 A That is right, yes.

6 Q And I'm going to be focusing principally
7 on that first email.

8 Courtney Wolpert, I take it, is with the
9 SURE help desk?

10 A She is. She's basically the supervisor
11 of the SURE help desk.

12 Q And she's -- does she report to you?

13 A She's does not report directly to me.
14 She reports to our division chief, the division of
15 SURE, who reports to my deputy, who reports to me.

16 Q Okay. And she says -- well, withdrawn.

17 Let's go one item down to, you have an
18 email to her that's immediately before that. Do you
19 see that?

20 A The one that begins "for now"?

21 Q No. The one that's on the first page.

22 "Yes, I notified BCEL" --

23 A Yes.

24 Q All right. So if you look at that email,

1 it says -- this is your email.

2 [Reading]: I notified BCEL staff this
3 morning that if they receive a call from the
4 SURE help desk regarding the DOS ID, they should
5 track down any one of the BCEL staff members.

6 Do you see that?

7 A Yes. Any one of five BCEL staff members.

8 Q I'm sorry. You're right.

9 And then she responds by saying,
10 essentially -- and tell me if I've got this right --
11 that they're just going to transfer the calls to
12 BCEL; they don't have time to get on the phone with
13 you because of the call volume that they're getting.

14 A That's correct. And that was rectified
15 that same day.

16 Q This is August 28th; right?

17 A That's correct, yes.

18 Q So this is right after you rolled out the
19 DOS program?

20 A Yes.

21 Q And this would be another example of
22 something, I take it, where I guess you would say:
23 We rolled out a new program; we learned some things;
24 we made some changes?

1 A Right.

2 Q Let me go back to the situation where
3 we're talking about the exceptions process that will
4 work on the new DOS card going forward. Okay?

5 So when there's an exception or problem
6 at the PennDOT desk and they send it along to the
7 Department of State, that's going to go
8 electronically to the three people that you discussed
9 before?

10 A Right.

11 Q And what's their job? How will they
12 investigate the process?

13 A Their job initially is to check -- and
14 they'll do the broader search to the extent that it
15 hasn't already been done.

16 Again, these three individuals are kind
17 of the professionals, I guess, for lack of a better
18 term. And that's why they've been assigned to this
19 task. So they'll verify that the person is, in fact,
20 not registered and that we cannot find them, that the
21 initial determination was accurate.

22 And I expect that they will find in every
23 case that that is true. The card and the voter
24 registration application will come to a specific

1 PO box that we've set up, a specific address that
2 we've set up, specific account.

3 And the individual who is coordinating
4 that effort will receive the card, the ID card, the
5 voter registration application. That person
6 coordinating the process will work with the other
7 three to determine the eligibility of the individuals
8 who are in the exceptions file.

9 As I mentioned earlier, we're going to
10 try to deal with this programmatically moving
11 forward. But in the short term, it's going to
12 require those three people or other staff that they
13 assigned looking up frequently the names, addresses,
14 dates of birth to determine if individuals are
15 registered.

16 Q I want to pursue the exceptions process
17 more, but I wanted to do that in the context of a
18 document. I want to show you what's already been
19 marked Exhibit 224.

20 (Petitioners' 224 was marked for
21 identification.)

22 BY MR. GERSCH:

23 Q All right. Exhibit 224 says "Amended
24 Proposal for the DOS Voter ID Process."

1 Are you familiar with this document?

2 A I am, yes.

3 Q And is this a Department of State
4 document?

5 A It is. This appears to be a version of
6 the -- essentially our synopsis version of our
7 exception process.

8 Q It's dated revised September 24th,
9 2012. Do you see that in the lower right?

10 A I do, yes.

11 Q That would have been yesterday?

12 A That's correct, yes.

13 Q It says "Amended Proposal for the DOS
14 Voter ID Process." Is this a final document? Is it
15 a proposal? What is it?

16 A This is a description of the process.
17 The process is final. This discussion -- I'm not
18 sure why the word "amended" is tacked on there. I
19 wasn't the author of the document. I did see the
20 document, though -- counsel actually prepared the
21 document.

22 Q Just to be clear, you did see the
23 document?

24 A I did, yes.

1 Q Okay. If you can turn to the second page
2 of the document, there are a number of -- there's a
3 discussion of a number of issues that may arise where
4 the voter -- I don't know if you call it exceptions,
5 but where the voter fills out the form in such a way
6 and it generates something -- what I'll call "other
7 than a standard process."

8 If you take a look at the first bullet on
9 the second page, it says that "The applicant's record
10 with the DOS does not contain the last four digits of
11 the Social Security number, then the Department of
12 State verifies the applicant's information through
13 the American Association of Motor Vehicle
14 Administrators' online Social Security verification
15 system.

16 What happens if you don't succeed in
17 making that verification?

18 A If we don't succeed in making that, the
19 Social Security number verification -- I don't
20 believe it's happened. If that occurred, it would
21 come over as an exception to us. Everyone is treated
22 the same, and you'll be given the opportunity to
23 register to vote if they're not already registered to
24 vote.

1 We would use other pieces of information
2 to make a determination.

3 For example, we know there is an error
4 rate in Social Security Administration. Miniscule as
5 it may be, there is an error rate so that the
6 possibility exists that an error could have been made
7 at the Social Security Administration.

8 If they have their Social Security card
9 with them and probably have that as evidence that
10 their Social Security number is, in fact, what
11 they've represented it on the form.

12 And if they've presented that and we have
13 a copy of that, we would use that information.

14 If they have a Medicare card, for
15 example, that has a Social Security number printed on
16 it, if they have obtained a Medicare card, or some
17 other document like that.

18 Ultimately we're going to use our
19 discrepancy, as the counties do, in determining
20 whether someone is registered to vote. If the
21 counties have made a determination that an individual
22 is qualified to be registered, post the Help America
23 Vote Act, they've made a determination on the Social
24 Security number verification or the driver's license

1 verification, as the case may be.

2 Q In this situation we're describing where
3 you get some other form of identification, like the
4 health insurance card, how are you going to get that
5 and when are you going to get that from the voter?

6 A We would get that in any way possible.
7 The voter could fax a copy to us, the voter could
8 email a copy to us, mail a copy to us. Pretty much
9 your traditional methods.

10 If it's necessary for us to work with the
11 County Board of Elections and the voter concurrently,
12 we'd do that. I would expect that we will not see
13 any of these at all, so it will happen so
14 infrequently that we'll be able to dedicate the
15 necessary time to get that done.

16 MR. GERSCH: If I could just have a
17 moment, Your Honor.

18 I'm going to hand him Exhibit 107.

19 (Petitioners' P-107 was marked for
20 identification.)

21 BY MR. GERSCH:

22 Q Mr. Marks, I'm showing you what's been
23 marked as Exhibit 107. Are you familiar with this
24 document?

1 A I am, yes.

2 Q What is it?

3 A This is basically our training document,
4 for lack of a better term. This is provided by our
5 three -- I'm sorry. This is PennDOT's training
6 document. I imagine this is a binder similar to
7 ours.

8 Q And this is a document used to train
9 people for the -- what I'll call the old DOS ID
10 system, the one before last night and this morning?

11 A It appears to be, yes.

12 Q Okay. And you have a similar document
13 for the Department of State?

14 A Yes. We have training materials, which
15 basically include those documents that are posted on
16 our Web site, in a binder.

17 Q Have you generated the training materials
18 for the new DOS program, the one from last night and
19 this morning?

20 A We're in the process of doing that. I
21 don't know that we have the actual training document.
22 Part of it is the document that we just reviewed and
23 the updated exceptions process.

24 There's also frequently asked questions

1 that are being updated. Those will -- the old ones
2 will be taken out and the new ones will be inserted
3 and replaced in the training binder.

4 Q And when do you expect to complete that
5 process?

6 A It may already be complete. I've been
7 here today. I don't know if it's complete or not.

8 Q Is there any additional training that
9 you're going to do for the Department of State people
10 on the new DOS procedures?

11 A Yes. In fact, we had training just this
12 morning, but we didn't have updated training
13 materials. We did cover that process. That training
14 was done with our three new temporary staff.

15 Our other staff will go through a
16 refresher training as well. That will occur I
17 believe either Thursday or Friday, and then we will
18 have additional staff being trained on Monday.

19 MR. GERSCH: No further questions at this
20 time.

21 - - -

22 DIRECT EXAMINATION

23 - - -

24 BY MS. HICKOK:

1 Q Good afternoon, Mr. Marks.

2 A Good afternoon.

3 Q I want to follow up on a few points that
4 were made with you.

5 First of all, this Exhibit 229 that was
6 given to you, is that exhibit also a part of the
7 binders that you have? Is it actually an excerpt
8 from those binders?

9 A 229?

10 Q It's the one about Eric Carney.

11 A You're asking if it's part of the
12 training materials?

13 Q No. The two binders that they gave you,
14 that are the resolved and unresolved cases, is this
15 actually an excerpt from that larger collection of
16 documents?

17 A I would have to check.

18 THE COURT: I'm going assume counsel put
19 these in alphabetical order.

20 MR. GERSCH: Can I make a representation
21 that -- that's an excerpt from the binders that were
22 ultimately resolved.

23 THE WITNESS: All right. I will take his
24 word for it.

1 BY MS. HICKOK:

2 Q In those same files, do you also keep a
3 collection of letters that you have sent out to
4 people when you have resolved their matters?

5 A We do, yes.

6 (Respondents' Exhibit 8 was marked
7 for identification.)

8 MS. HICKOK: I would like to offer R-8.
9 And I actually did make it in alphabetical order.

10 BY MS. HICKOK:

11 Q Is that a collection of the letters that
12 you maintained with these documents, the resolved and
13 unresolved cases?

14 A It is, yes.

15 Q And is there a letter from Mr. Carney?

16 A There is a letter to Mr. Carney, yes.

17 Q When was that letter sent?

18 A It's dated September 4th, 2012, there.

19 Q And does that letter say that he is free
20 to get his DOS ID?

21 A It does, and it provides the ID
22 authorization number that he would present to the
23 PennDOT technician.

24 Q And with that authorization number, how

1 long would you expect it to take? Is it more than
2 just getting a picture taken?

3 A It's not much more than getting a picture
4 taken. But with this authorization letter,
5 essentially this is proof positive that PennDOT
6 already has access to the initial form that was
7 filled out, so you would expect the process would not
8 take very long.

9 Q Okay. And are each of the letters that
10 you have in that collection also people who have been
11 given authorization numbers because the matters have
12 been resolved?

13 A That is correct, yes.

14 Q And in that same set of documents, I'm
15 going to offer you what's R-9.

16 (Respondents' 9 was marked for
17 identification.)

18 BY MS. HICKOK:

19 Q Do you recognize this document?

20 A I do, yes.

21 Q And is it a document that's maintained
22 within your department in the ordinary course of
23 business?

24 A It is, yes.

1 Q Is it generated with your participation?

2 A It is, yes.

3 Q And can you tell the Court what this
4 document explains?

5 A This document is essentially a tracking
6 document for the exceptions letters that are sent
7 out. As we research and resolve these exceptions,
8 they are tracked in this spreadsheet.

9 Q Why would you go to the trouble of
10 tracking exceptions?

11 A Well, aside from my proclivity to be
12 anal-retentive and track everything, we do it because
13 we want to keep an accurate accounting of who has
14 been verified, who has -- who we provided a letter to
15 so they can get their ID and we have it. It's really
16 just our way of -- I think the word that was used,
17 "active investigations," this is how we track our
18 progress.

19 Q To restate that, is that a way of
20 ensuring that nobody falls through the crack?

21 A Yes. That's the more succinct way of
22 saying it, yes, Counsel.

23 Q Is Mr. Carney on that spreadsheet?

24 A Yes, sir.

1 Q What does it say about when he was
2 resolved?

3 A The date completed, 9/4 of 2012, and
4 indicates his voter ID number and the date that the
5 letter was mailed, which is also 9/4/2012.

6 Q And the Exhibit 229 that you have, what
7 date did it show that he made the original
8 application?

9 A His date of signing was August 28th.

10 Q But it was entered August 29th, I think
11 you said?

12 A It appears that it may have been uploaded
13 to the shared folder on August 29th, yes.

14 Q So you were able to resolve and get him a
15 letter within less than a week?

16 A That's correct, yes.

17 Q And how close to the beginning of the
18 issuance of the ID cards was that, of the DOS ID
19 cards?

20 A That was within, roughly, a week of the
21 beginning of the issuance.

22 Q And did you find that there was a
23 difference in the number of problems that you were
24 seeing at the beginning of the process and as the

1 process went on?

2 A Yes, the numbers seemed to decrease
3 overall, and that's partly -- I believe we reviewed
4 some email threads here earlier about the initial
5 days of this process.

6 And some of the bumps in the road,
7 improvements were made, progress was made even within
8 that first week. The Tier 1/Tier 2 process was
9 streamlined so that we can ensure that when the help
10 desk called up, they would get somebody on the phone.

11 Q Now, was there a Tier 2 process the very
12 first day?

13 A There wasn't a formal Tier 2 process on
14 the first day. It was an ad hoc process of
15 transferring phone calls.

16 Q When did the Tier 2 process become
17 formalized?

18 A I believe it became formalized on the
19 following Monday, which would have been either the
20 3rd or the 4th.

21 Q And does that correlate to the times when
22 you saw the dropoff in --

23 A It does seem to correlate to that. What
24 we were able to do with that streamlined process is

1 reduce the number of people who had to be turned
2 away, asked to come back.

3 Our goal from the very beginning was to
4 get IDs in the hands of clients as quickly and
5 efficiently as possible.

6 Our early experiences showed us -- and I
7 believe we reviewed an email where I called a meeting
8 on the topic. And one of the things that came out of
9 that was this formal Tier 2 process, and we created a
10 phone queue and dedicated staff to that phone queue
11 to ensure that the calls were getting through.

12 Q Now, you said something just a moment
13 ago. You said that you're trying to make sure that
14 people are not getting turned away.

15 You had said earlier that you were
16 spending more time than Tier 1 could spend.

17 Is the time that you're spending still
18 while the person is at PennDOT so they get it that
19 day?

20 A Yes. When I'm saying "more time," I'm
21 saying a few minutes. The Tier 1 help desk is
22 obviously trying to process calls as quickly as
23 possible; that coupled with the fact that they are
24 searching a very narrow set of criteria and they're a

1 help desk.

2 That's not to diminish their role.

3 They're obviously a critical part of this, but they
4 can't exercise discretion that our trained staff
5 can -- our trained and experienced staff can.

6 But that is all done with one telephone
7 call, the experiences that -- PennDOT technician
8 calls the Tier 1 help desk. If they can't verify the
9 individual that calls, it's automatically transferred
10 up to Tier 2.

11 The PennDOT technician then is talking to
12 somebody in the bureau's staff -- on the bureau's
13 staff, and we're spending a little bit of additional
14 time, the three or four or five minutes, whatever it
15 may take, to exhaust our search capabilities.

16 Q Now, did you make a judgment at some
17 point whether it would be better to send them away
18 and research on your own or to keep them there so
19 that they can get the product that day?

20 A Absolutely. We determined that keeping
21 them there so that they could get the product that
22 day was a much better resolution.

23 Q Thank you. I'm going to hand you what's
24 been marked as R-10.

1 (Respondents' 10 was marked for
2 identification.)

3 BY MS. HICKOK:

4 Q Are you familiar with this document?

5 A I am, yes.

6 Q And can you tell me what it is?

7 A This is a schedule of basically the
8 after-hours Tier 2 help desk schedule, and it's
9 essentially managers who are assigned to be manning
10 the phones or coordinating the manning of the phones
11 specific dates and specific times.

12 Q Now, are you on this list?

13 A I am, yes.

14 Q And why -- aren't you the supervisor?
15 Couldn't you get out of that duty?

16 A Well, I work late -- I could, I guess.

17 I'm actually -- I'm hands on. And one of
18 the ways I learn a lesson is to actually get involved
19 in the process so I can understand the process. So I
20 essentially told my deputy to assign me to this task.

21 So...

22 Q Okay. And are you intending to continue
23 working these overtime hours through the election?

24 A I am, yes.

1 Q Thank you.

2 You were asked about the number of people
3 that were initially rejected that have created those
4 binders. Have you made any assessment as to what
5 proportion of those were done within the first couple
6 of days?

7 A I believe, as I recall, over half of them
8 were actually done the first couple of days. I
9 believe the number was over 50 within that first
10 week.

11 Q Okay. You also had talked about people
12 who had voter registration -- had not gotten voter
13 registration cards and, therefore, they can't verify
14 that they are registered in the system.

15 Have you also encountered anything on the
16 other end where maybe pre-HAVA somebody had had a
17 voter registration card that had been purged from the
18 rolls but they still had the card?

19 A I believe -- I cannot recall a specific
20 voter, but I believe we have seen, on a couple
21 occasions, canceled records; and that's another that
22 I may have failed to mention.

23 There's a flag that we can check -- when
24 we're searching, we can check both active and

1 inactive; or valid records and we can also check
2 nonvalid records, which would be canceled records.

3 So we would know if an individual was
4 registered 10 years ago and has been canceled since
5 then as a result of a list maintenance program. We'd
6 be able to find that canceled record.

7 Q So a person conceivably could have a card
8 and believe that they were eligible to vote but
9 actually not be a registered voter?

10 A That's correct. We have at least one
11 voter who right now has been mailed a notice called
12 the Five-Year Notice because they haven't appeared to
13 vote in the last five years. They're still valid and
14 they can still vote, but they were on the path to
15 being canceled as a result of that as maintenance.

16 Q Thank you.

17 Now, you were asked questions about the
18 implementation, and much of those questions went to
19 the seamlessness of the process and how things are
20 going. When you undertook the process of the initial
21 implementation and then the steps that you've taken
22 since then, did you look at the experience of other
23 jurisdictions at all?

24 A We did look at the experience of other

1 jurisdictions. We reviewed several states. Our
2 policy office put together a packet of information
3 that I reviewed, as well as other individuals in the
4 department reviewed, to kind of get an idea of what
5 we could expect in terms of the number of IDs that we
6 would need to generate, et cetera.

7 Q And have those predictions been borne
8 out, or have they been -- did you find that they were
9 way off base?

10 A For the most part, the predictions have
11 been borne out. There are obviously slight
12 differences between the different jurisdictions, even
13 between the laws. But those states that are most
14 similar to us, the experience overall has been
15 similar.

16 Q And from the experiences that those
17 states have had, would you expect to see like a --
18 something that would be a spike in numbers that would
19 come right before the election that could not be
20 dealt with?

21 MR. GERSCH: Objection, foundation.
22 Calls for expert testimony. I don't think he's
23 competent to testify to this.

24 MR. CAWLEY: Well, it's his prediction.

1 It's what he's acting on. It's the research that he
2 did before, or that the Department did.

3 THE COURT: I didn't quite get that was
4 his research. My recollection was that it is a
5 different witness that talked about this last time.
6 Maybe it was this witness.

7 MS. HICKOK: Maybe I can lay some
8 foundation.

9 THE COURT: Foundation would be good.

10 BY MS. HICKOK:

11 Q Did you participate in the evaluation of
12 what other states did?

13 A I reviewed and participated in the
14 discussions and the evaluation, yes. I believe our
15 policy office actually put the information together,
16 did the initial research, but I reviewed it.

17 Q And are your predictions about how many
18 people are going to be needing IDs between now and
19 the election related to your review of that search?

20 A It is partly related to that. It's also
21 related to the research we've done at PennDOT's
22 database and our database. A lot of things play a
23 role in my prediction of what I believe is going to
24 happen.

1 And I guess maybe the best way I can
2 answer it is I'm not alarmed. I don't expect to be
3 inundated --

4 MR. GERSCH: Your Honor, I object, and I
5 move to strike. I think this -- this is the
6 prediction. And for the reasons we talked about
7 earlier, which is I don't think we're supposed to be
8 basing the record on predictions. And I don't think
9 his review of someone else's research is a foundation
10 for him offering that opinion. And he's not been
11 offered as an expert.

12 THE COURT: Motion to strike is
13 overruled. This is the type of retrospective
14 evaluation that seems to be different than what the
15 Supreme Court raised concerns about.

16 Please proceed.

17 MS. HICKOK: Thank you, Your Honor.

18 BY MS. HICKOK:

19 Q Had you finished your answer? I think he
20 interrupted you in the middle.

21 A I did.

22 THE COURT: You should ask him the
23 question.

24 BY MS. HICKOK:

1 Q Okay. From what you can recall -- and if
2 you can't recall, please tell us.

3 But from what you can recall, what had
4 other states seen between the months, that would be
5 like August and September, which we're now almost
6 through September, and then what happened in October
7 and the first days of November? Did you see a
8 pattern that you would -- did you see a pattern in
9 the other states?

10 A As I recall it, there was a spike. It
11 was not an unmanageable spike. But for the most
12 part, it was pretty static, as I recall, in the
13 numbers.

14 The one number that sticks out to me is
15 Georgia. I believe they issued 30 some thousand in
16 six years, free IDs. So I don't -- there's not an
17 overwhelming experience in other states, seems to be
18 there's not an overwhelming number that occurred all
19 at one time, if that answers your questions
20 accurately.

21 MS. HICKOK: It does, thank you.

22 MR. GERSCH: I renew my objection. Move
23 to strike and have a continuing objection on this
24 line of questioning. I think Your Honor is prepared

1 to overrule me.

2 THE COURT: I am going to overrule you.
3 I already received this evidence in the first
4 hearing. I've heard this already. I'm not sure I
5 heard the exact same word, but I've already heard
6 this without objection. So I think it's a
7 clarification of information that was previously
8 covered.

9 MR. GERSCH: I'm not trying to debate
10 with the Court at this point. I just wondered if I
11 could have a continuing objection on this line of
12 questioning. I understand Your Honor is --

13 THE COURT: I think she's finished.

14 MS. HICKOK: I am, Your Honor.

15 And actually, I think I'm finished.

16 Thank you.

17 - - -

18 REDIRECT EXAMINATION

19 - - -

20 MR. GERSCH: Thank you, Your Honor.

21 BY MR. GERSCH:

22 Q Mr. Marks, you were just asked some
23 questions about experiences of other states that you
24 had reviewed. Do you have that testimony in mind?

1 A I do, yes.

2 Q And that the single state you mentioned,
3 specific state you mentioned was Georgia. Is that
4 right?

5 A I did, yes.

6 Q Georgia is very different than
7 Pennsylvania in that in Georgia, every voter can vote
8 absentee; isn't that right?

9 A I believe Georgia may be a vote-by-mail
10 state or no-excuse absentee balloting, whatever you
11 want to refer to it as.

12 Q And what that means is that you can vote
13 absentee at will. You don't need to make an
14 affirmation that you're missing from the polling
15 place or that you're disabled or that you're going to
16 be out of town. You can just vote absentee anytime
17 you want; right?

18 A That's correct.

19 Q So if a person doesn't have the photo ID
20 they need to vote, in Georgia they can just vote
21 absentee?

22 A I believe their law is similar in that
23 you have to provide identifying information -- I
24 believe, as I recall, I could be wrong about this,

1 their law may be similar in that you have to provide
2 identifying information to qualify for an absentee
3 ballot. I could be wrong.

4 Q But you don't have to provide a photo ID
5 to vote --

6 A No.

7 Q -- in Georgia?

8 You do not?

9 A That's correct.

10 Q All right. So I'm right that there's a
11 difference in the sense that in Georgia, if you never
12 get ID to vote, you can always vote absentee?

13 A Right. Without an excuse, yes.

14 Q All right. And you were also asked some
15 questions about sort of the flow of people and the
16 flow of exceptions. Do you recall those questions?

17 A I do, yes.

18 Q Mr. Marks, isn't it true that the big
19 dollars that are going to be spent by the Department
20 of State on the media buy, that those television,
21 radio spots, they are being shown now going forward.
22 They weren't being shown when the DOS ID was rolled
23 out on August 29th?

24 A I don't recall when the first TV ads -- I

1 believe in some markets they may have already -- the
2 TV ads may have already appeared at the end of
3 August. I know it's been a couple weeks. But the
4 majority of that push is occurring now and will occur
5 into the future; that's correct.

6 MS. HICKOK: Let me show you what's been
7 marked Exhibit 145. I'll hand that up first.

8 (Petitioners' 145 was marked for
9 identification.)

10 BY MR. GERSCH:

11 Q Take a look at Exhibit 145. Doesn't that
12 indicate that the television -- TV and cable ads
13 started the week of September 10th?

14 A I believe this -- I don't know if this is
15 an actual -- I don't know if this actually tracks
16 when the TV ads occurred.

17 MS. HICKOK: Your Honor --

18 MR. GERSCH: It may have been part of the
19 initial proposal.

20 MS. HICKOK: Your Honor, I'm not sure
21 that he is familiar with this document. That hasn't
22 been established. And I think that it's beyond the
23 scope of what the examination earlier was.

24 THE COURT: Well, you raise two

1 objections. One is to foundation, and the other is
2 beyond the scope.

3 MS. HICKOK: Yes, Your Honor.

4 THE COURT: I can cure beyond the scope
5 by having him come back some other day and answer the
6 question later. I'm not sure that's really what
7 anybody wants.

8 MS. HICKOK: But if he hasn't seen the
9 document, then he wouldn't -- I mean, he wouldn't
10 need to get there because there would be no
11 foundation for -- in court.

12 THE COURT: So that's why I'm not sure
13 I'm going to sustain the beyond the scope objection.
14 Will you set a foundation.

15 MR. GERSCH: Certainly, Your Honor.

16 BY MR. GERSCH:

17 Q Is this a document you've seen before?

18 A I don't know if it is. This is similar
19 to a document that was submitted as part of one of
20 the proposals, a general timeline. Whether this was
21 indicative of the actual timeline, I can't confirm.

22 Q Notwithstanding that you don't know
23 whether you've seen this document, and irrespective
24 of the document, am I right that what I understand

1 you to say is that the TV ads may have started
2 already but that in any event, the bulk of those ads
3 are going to be running between now and the election?

4 MS. HICKOK: Your Honor, to the extent
5 that he knows.

6 THE COURT: Counsel, would you stand when
7 you speak.

8 MS. HICKOK: I'm sorry, Your Honor.

9 THE COURT: Thank you. What's your
10 objection?

11 MS. HICKOK: I'm only saying that he has
12 not asked him whether he has personal knowledge of
13 when the ads are running or whether that's within his
14 scope --

15 THE COURT: That is a foundation
16 objection again.

17 MS. HICKOK: Yes, it is, Your Honor.

18 THE COURT: The objection is overruled.

19 Please continue.

20 BY MR. GERSCH:

21 Q Thank you. I think I got my answer.

22 And with respect to the radio ads, those
23 ads are also going to be running predominantly
24 between now and the time of the election; right?

1 A That's correct, yes.

2 Q If there were any radio ads running
3 before now, they would be in the minority of the ad
4 buy?

5 A Yes, I believe the majority of the ad buy
6 is occurring -- is ramping up now and will continue
7 over the next several weeks.

8 Q And that's entirely intentional on the
9 part of the Department of State; right?

10 A Right.

11 Q You want the heaviest efforts put forth
12 as you get closer to the election?

13 A That's correct, yes.

14 Q One other question that you got was about
15 when a person who is initially rejected for ID gets a
16 letter saying they're now confirmed for ID, I think
17 you had a question about whether or not that was
18 simply a matter of getting a picture taken; do you
19 recall that?

20 A Right. Taking a copy of a letter and
21 getting a picture taken.

22 Q Okay. But before you could have your
23 picture taken, before you show up at PennDOT, first
24 you've got to get to PennDOT; right?

1 A That's correct, yes.

2 Q Now, if you happen to be in a place of
3 mass transit, that may not be difficult; right?

4 A That's correct, yes.

5 Q Although you may have to take off from
6 work or make other arrangements?

7 A I know PennDOTs, in many locations, is
8 open Saturday. But it's possible you might have to
9 take some time off work.

10 Q There's a cost involved in getting to
11 PennDOT?

12 A I don't know whether there always is, but
13 if you're taking mass transit, I suppose that would
14 be the case. Or if you're taking a cab, it would
15 certainly cost you.

16 Q If you're a voter in a county that has no
17 PennDOT locations, that could be a more severe
18 burden?

19 A You may have to drive several miles or --
20 and I can't recall the numbers of PennDOTs. They're
21 the experts on that, but in some locations you may
22 have to drive to get to PennDOT.

23 Q And you're not going to drive yourself
24 because by definition, you don't hold a license?

1 A Correct, yes.

2 Q You're going to have to get someone else
3 to drive?

4 A Use the Shared-Ride Program, or a
5 neighbor or someone else would have to drive you,
6 yes.

7 Q If you're in a county where the driver's
8 license center is open only one day a week, as of
9 next week there will only be five days left that you
10 can get to PennDOT before the election; right?

11 A If that's the case, if there's a location
12 where the PennDOT exam center is only open one day a
13 week, then that would be true, yes.

14 Q And if you're a disabled or elderly
15 person, you may face other difficulties getting to
16 PennDOT; is that right?

17 A That's correct, yes.

18 MR. GERSCH: Nothing further, Your Honor.

19 MS. HICKOK: Your Honor, just two quick
20 points of clarification.

21 - - -

22 RE CROSS-EXAMINATION

23 - - -

24 RE CROSS EXAMINATION

1 BY MS. HICKOK:

2 Q You were just asked about the
3 difficulties of getting back to PennDOT a second
4 time. Given the new procedures that are in place,
5 that second trip could only apply to those 50 some
6 people who are still outstanding; is that correct?

7 A That is correct, yes.

8 Q One other point of clarification. He
9 asked you about Georgia and whether there might be
10 some differences in the laws. Was Georgia the only
11 state that you looked at?

12 A No. I believe I looked at Indiana. And
13 I don't recall this long after the fact all the
14 specifics, but we looked at several states. And
15 there's nothing about our experience to date that
16 makes me feel nervous or alarmed that we're going to
17 have a wildly different experience here in
18 Pennsylvania.

19 MS. HICKOK: Thank you very much.

20 THE COURT: Anything else for this
21 witness?

22 MR. GERSCH: No, Your Honor.

23 THE COURT: Do you need him back?

24 MR. GERSCH: I don't believe so, Your

1 Honor.

2 THE COURT: All right. Thank you. You
3 may step down. You're free to go.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: Is that it for the evidence
6 today?

7 MR. GERSCH: Your Honor, we'd like to
8 read the affidavit of Nadine Marsh. It's four or
9 five pages. She's the Petitioner that couldn't
10 appear in person. That should take a few minutes.

11 THE COURT: Please proceed.

12 MR. CAWLEY: May I consult briefly that
13 they consulted me at the break about this, this
14 affidavit, to see if we could come to an agreement
15 about it.

16 THE COURT: All right.

17 (Discussion off the record.)

18 MR. CAWLEY: Thank you, Your Honor.

19 MR. WALCZAK: Your Honor, we will --

20 THE COURT: By the way, I saw another
21 Petitioners' counsel stifling a yawn back there.

22 MR. WALCZAK: Your Honor, I'm going to
23 read the declaration of Petitioner Nadine Marsh, and
24 we will submit -- we have a batch of 24 declarations,

1 which includes Ms. Marsh's, which we will submit to
2 the Court probably tomorrow morning. We've shared
3 those with counsel this afternoon.

4 THE COURT: Thursday morning?

5 MR. WALCZAK: Thursday morning. Or we
6 could make them -- I don't know if Your Honor wants
7 to use tomorrow to familiarize yourself with some of
8 these declarations. These are not individuals that
9 we will be putting on the stand on Thursday. We can
10 deliver them to your chambers.

11 THE COURT: I wasn't sure that we will be
12 in session tomorrow.

13 MR. WALCZAK: I guess we could file them.

14 THE COURT: I'll be in the office, but I
15 expect to be in the office in Nazareth and not in
16 Harrisburg.

17 MR. WALCZAK: We could fax them up or we
18 could send them by .pdf. We have unusual
19 circumstances here. And to facilitate the
20 decision-making process -- whatever Your Honor's
21 pleasure; we can introduce them on Thursday morning.

22 THE COURT: If you file them, they are
23 scanned rather quickly; and then they're available to
24 me very quickly.

1 So -- but I would ask you not to file
2 them until opposing counsel has read them.

3 MR. WALCZAK: Yes.

4 THE COURT: If you know what I'm saying.

5 MR. WALCZAK: Yes. Opposing counsel has
6 told us they'd get back to us tonight with objections
7 to those. And if there's objections, we won't file
8 any to which there are objections. And then we'll
9 just resolve those on Thursday. So we'll file any
10 that there aren't objections to.

11 THE COURT: Once they're filed, I'll see
12 them probably within the hour. I'll have access to
13 them within the hour.

14 MR. WALCZAK: Okay.

15 THE COURT: So do we have tomorrow's
16 procedure understood?

17 MR. CAWLEY: I believe so, yes. We will
18 get in touch with counsel about the declarations as
19 soon as possible and hash out any agreements or
20 disagreements.

21 THE COURT: To put this affidavit in
22 perspective, Ms. Marsh -- she's a Petitioner?

23 MR. WALCZAK: She is a Petitioner.

24 Your Honor may recall she testified by video -- the

1 screen was on this side. It's very confusing,
2 changing courtrooms here. She's the woman from
3 Beaver County, gray hair. That doesn't really narrow
4 it down.

5 THE COURT: I went back and looked at my
6 notes, so I'm oriented to her testimony.

7 MR. WALCZAK: I have actually included
8 the trial transcript pages in the declaration here,
9 so it's all there.

10 THE COURT: Actually thought she was a
11 credible witness when I saw her the first time. I
12 saw that back in my notes.

13 So -- and the reason she can't be here is
14 a health reason.

15 MR. WALCZAK: She's 84. She actually
16 just -- and she does not travel this far ever. So
17 she's well over 100 miles. She's in Beaver. So
18 she's out past the Pittsburgh International Airport.
19 So you're looking at a four-plus-hour drive to get
20 here. She does not go that far.

21 And beyond that, she's just coming off an
22 illness where she was down and out for a couple
23 weeks. So she didn't come the first time. She
24 couldn't come this time, which is not possible, which

1 is why we had suggested the video.

2 THE COURT: There was a suggestion that a
3 videotaped deposition be taken to preserve her
4 testimony. The problem was the scheduling and
5 requiring of Respondents' counsel to travel on short
6 notice. So this other procedure was suggested as a
7 way to sort of move through this.

8 MR. WALCZAK: Right. We now know counsel
9 was busy with something else yesterday and Sunday.

10 All right. Declaration of Petitioner
11 Nadine Marsh. I, Nadine Marsh, hereby declare as
12 follows:

13 I am over the age of 18 and otherwise
14 competent to testify.

15 2: I am registered to vote in
16 Pennsylvania and otherwise meet the qualifications
17 for voting; namely, I am over the age of 18, a U.S.
18 citizen and have lived in Pennsylvania for more than
19 30 days.

20 3: I am a petitioner in this action, and
21 I testified via videotape deposition on the first day
22 of the trial, trial transcript July 25, 2012, at 179
23 to 198.

24 4: I was born on March 8th, 1928, in

1 Sewickley, which in Allegheny County, Pennsylvania.

2 5: I have no photo ID that will allow me
3 to vote on November 6.

4 6: I have never driven or had a PennDOT
5 photo ID, so I needed a raised, sealed birth
6 certificate, Social Security card and two proofs of
7 residence to get a nondriver PennDOT ID in order to
8 vote.

9 7: I have been unable to obtain a
10 PennDOT ID because I do not have a birth certificate.
11 And the Department of Health notified me in May by a
12 document dated May 16th, 2012, that they have no
13 record of my birth. Exhibit 12, Page 3, from the
14 first trial.

15 8: I want to vote, so I have continued
16 to try to get an ID that will allow me to do so in
17 November.

18 9: In August, I learned that the
19 Commonwealth would be issuing a new form of ID known
20 as the Department of State, DOS, voter ID and that I
21 could get it without a birth certificate.

22 10: My granddaughter, Suzanne Smith,
23 knows how to use the Internet, and she researched
24 what documents I needed to get the DOS ID.

1 11: Based on her research, she learned
2 that I would need to present two -- need to present
3 acceptable proofs of residency.

4 12: Since I live with my daughter, Barb
5 Smith, I do not get any bills that show my address.

6 13: Neither Suzanne nor I could tell if
7 I had the necessary documents to get a DOS ID. So on
8 August 25th, Suzanne sent an email to the
9 Department of State help line.

10 And we have the Internet address for
11 that.

12 A copy of the August 25 email is attached
13 as Exhibit 1.

14 And I'm just going to characterize here
15 Exhibit 1. It's an email to the help desk where she
16 says that the Web site says that you are asked to
17 present two proofs of residence, such as a utility
18 bill, along with their date of birth and Social
19 Security number. And the question is being asked:
20 What do you mean by "such as"? What is a full list
21 of the kinds of proof of residence documents that we
22 can present? I don't know what "such as" is. That's
23 too vague.

24 And then our DMV is over 20 miles from

1 home, and making numerous trips due to lack of
2 clarity about acceptable proof is burdensome, to say
3 the least.

4 So this is dated August 25.

5 14: Suzanne stated in the email that she
6 could not find a complete list of acceptable proofs
7 of residency. The closest thing she found was the
8 following: When requesting these IDs, voters will
9 need to affirm that they do not possess any other
10 approved identification for voting purposes. They
11 will be asked to provide two proofs of residence,
12 such as a utility bill, along with their date of
13 birth and Social Security number if the customer has
14 an assigned number.

15 PennDOT will validate the voter
16 registration status with the Department of State
17 while the voter is in the PennDOT office. Upon
18 confirmation of this information, the voter will be
19 issued a voter card before leaving the PennDOT
20 facility.

21 She then asked for a, quote, full list of
22 acceptable types of proof of residency, because
23 the -- "such as" in the above-referenced paragraph
24 was "too vague."

1 15: After three days, Suzanne still had
2 not received a reply from DOS. On August 28th,
3 Suzanne sent a second email asking DOS to respond and
4 adding a question about whether I would have to take
5 two trips to DMV. A copy of the August 28th email
6 is attached as Exhibit 2.

7 Two more days passed, and Suzanne still
8 had not gotten a response from DOS. On
9 August 30th, Suzanne sent a third email, forwarding
10 her earlier ones asking for a response. A copy of
11 the August 30 email is attached as Exhibit 3.

12 Later that day on August 30, Suzanne
13 received a response saying that I can fulfill the
14 requirements if I bring a, quote, verification of
15 residence affirmation, end quote, form which was
16 attached, filled out by someone who can say where I
17 live, along with a bank statement.

18 A copy of the August 30 DOS response is
19 attached as Exhibit 4.

20 I got very sick right after Suzanne
21 received the response, and I was unable to leave the
22 house for a couple of weeks.

23 I felt better -- I'm sorry.

24 21. I felt better by the weekend of

1 September 15th, so I decided it was time to try
2 again to get my ID.

3 22: The closest licensing bureau is in
4 Rochester, which is more than 20 miles away from my
5 home and takes about 40 minutes to drive there.

6 See Exhibit 5, MapQuest printout of
7 directions.

8 23: Because such a trip is difficult for
9 me, we wanted to be sure we went to the bureau on a
10 day that I could get my ID. My granddaughter
11 searched the PennDOT Web site and found that the
12 Rochester office is opened from 8:15 to 4:30 on
13 Mondays. See Exhibit 6, which is a Web site printout
14 of East Rochester PennDOT driver license center.

15 24: Based on the information, on Monday,
16 September 17th, my daughter Barb, who had a day off
17 from work, drove me the 40 minutes to the
18 East Rochester licensing center. I had all the
19 papers I thought I would need to get the ID.

20 25: Even though the PennDOT office was
21 open, they told me that the licensing desk is not
22 open on Mondays, so I was unable to obtain a DOS ID.
23 We made the 40-minute drive home without getting an
24 ID.

1 26: Since Barb was again off from work
2 the next day, Tuesday, September 20th, she and I
3 made a second trip, yet again driving the 40 minutes
4 to the Rochester DMV.

5 27: After waiting in line for about
6 20 minutes, Barb and I worked with a PennDOT clerk,
7 who did not seem to understand about the DOS ID and
8 who had to ask her supervisor many questions.

9 28: Even though I had the two proof of
10 residency forms the DOS help desk had told Suzanne I
11 needed in their August 30 email, the completed
12 verification of residence affirmation form and my
13 bank statement with the home address on it, PennDOT
14 refused to issue me a DOS ID.

15 29: I was told that PennDOT needed to,
16 quote, process the application and that I should go
17 home and "Harrisburg" would notify me when I could
18 come back to get my DOS ID. I was not given a
19 receipt or any other document verifying my
20 application.

21 In addition to the 20-minute wait, I
22 spent an hour working with this lady, and I still did
23 not get a voter ID.

24 The clerk could not tell me what document

1 I would be getting in the mail from Harrisburg or
2 when I would receive it. When I expressed concern
3 about how long it would take, the clerk alerted me to
4 the fact that I needed to return with the document
5 before October 9, which she said was the deadline to
6 get voter ID.

7 32: The drive home took another
8 40 minutes.

9 33: As of this date, September 23, I
10 still have not heard anything from either PennDOT or
11 DOS about getting my ID. As of this date, I have no
12 ID to vote, despite taking two trips to a DMV, and
13 have no idea how or if I will be able to get an ID to
14 vote in November.

15 34: I declare that the facts set forth
16 above are true and correct to the best of my
17 knowledge, information and belief and are made
18 subject to the penalties of 18 PS, Section 4904,
19 relating to unsworn falsification to authorities
20 dated September 23rd, 2012. Nadine M. Marsh.

21 That's the end of the declaration. I
22 will note that Mr. Cawley asked me to include in the
23 packet we have here what he showed me and represented
24 was a letter dated yesterday to Ms. Marsh from Janet

1 Dolan, and apparently indicating that she can now
2 come and pick up her ID card.

3 But since I have not identified that
4 Ms. Marsh has, in fact, received that letter, we
5 could not stipulate to that.

6 So that's it.

7 MR. CAWLEY: Your Honor, on that point, I
8 would just ask that when we on Thursday discuss these
9 declarations, that perhaps counsel by that time will
10 be able to confirm with their client that this letter
11 was received and perhaps we can discuss a stipulation
12 at that time.

13 MR. WALCZAK: If she gets it, we'll
14 stipulate to the day that she received that letter,
15 of course.

16 THE COURT: All right.

17 MR. GERSCH: Your Honor, could we move
18 the exhibits that we introduced.

19 THE COURT: Yes. After the break you
20 offered 229 -- are there any objections to the
21 Petitioners' exhibits?

22 MS. HICKOK: Your Honor, only to the
23 exhibit that the witness did not recognize.

24 THE COURT: 145, and that objection would

1 be sustained.

2 MS. HICKOK: Thank you, Your Honor.

3 THE COURT: 229 is received. 217 is
4 received. 218 is received. 149 is received. 131 is
5 received.

6 Is the Marsh affidavit going to be marked
7 as an exhibit?

8 MR. GERSCH: Would Your Honor like them
9 as exhibits, or we'll we want it in the record.

10 THE COURT: It's in the record. It may
11 just be easier to have it written up already. But
12 you have it in the record now.

13 MR. WALCZAK: Your Honor, I think the
14 only reason we would like to at least introduce it,
15 if not file it, is because there are the --

16 THE COURT: The attachments.

17 MR. WALCZAK: -- exhibits. Right, the
18 attachments.

19 THE COURT: So --

20 MR. GERSCH: You should mark it.

21 It will be 232, Your Honor.

22 (Petitioners' 232 was marked for
23 identification.)

24 THE COURT: 232 is received.

1 Is there any objection to my dealing with
2 the Respondents' exhibits? Normally when we get on
3 the Respondents' side of the case, but it sounds like
4 we have the Respondents' side of the case to a
5 certain extent.

6 MR. GERSCH: I just wanted to make sure
7 that Your Honor admitted Exhibit 107, which was the
8 training material.

9 THE COURT: I'm sorry. You're right.
10 Petitioners' 107.

11 MR. GERSCH: We have no objection to
12 Respondents' exhibits.

13 THE COURT: Respondents' Exhibits 1, 2,
14 3, 4, 7, 6, 5, 8, 9, and 10 are received.

15 (Respondents' 1, 2, 3, 4, 7, 6, 5,
16 8, 9, and 10 were received into
17 evidence.)

18 THE COURT: I think those are all the
19 exhibits that have been offered by anybody today.

20 Now, there was a request for some brief
21 argument at this point?

22 MR. PUTNAM: To be very brief, Your
23 Honor, if I could. I thought it made sense to do it
24 at the end of the day, but it could almost have

1 easily have been an opening. So you could treat it
2 any way you want. I just wanted an opportunity to
3 address the Court.

4 We spent a lot of time today listening to
5 different kinds of questions about different kind of
6 issues. And all I wanted to do is to point to what I
7 think the Supreme Court has asked this Court to do.

8 I think Your Honor already understands
9 that, but there was plainly a lot of testimony today
10 that may or may not be interesting but really isn't
11 going to be germane to any judgment Your Honor makes.

12 For instance, if you live in a county
13 that doesn't have a DMV in it, if that is
14 unconstitutional, if that were a problem, there's no
15 reason to have had a remand on this case. There are
16 people living in such counties: They were before the
17 last hearing; there will be people after the last
18 hearing. That's not what the Supreme Court focused
19 on.

20 So I want to suggest that what the right
21 thing to do is to say, what did the Supreme Court
22 say?

23 Now, one of the facts that's evidence in
24 this case is that the Department of State has changed

1 the method, the rules, done that along with PennDOT
2 as to what you need to do in order to get a DOS
3 identification. Plainly made that change, plainly
4 made it, as they said from the stand, in response to
5 the holding of the Supreme Court on that subject.

6 And that's -- it seems to me -- we might
7 for a moment pretend that we were all lawyers --
8 maybe we all are -- and say, what do you do when the
9 Supreme Court comes down and they said -- I don't
10 know that it was anticipated in the briefs. It
11 wasn't something that was argued at least in those
12 terms here before. Wasn't argued to the Supreme
13 Court.

14 But they said that Section 206(b) had a
15 liberal access requirement. And they said in the
16 liberal access requirement that, in fact, any effort
17 to set up, first, to go through the PennDOT
18 procedures and then to fall back on the DOS procedure
19 if you couldn't go through the PennDOT procedure,
20 that whether or not that was a good or a bad thing,
21 whether or not the interpretation as to what it meant
22 to make -- be an applicant and have to go through an
23 application first to get to PennDOT, because it was
24 supposed to be PennDOT ID, we could argue all we

1 wanted to argue about whether or not that was a good
2 rule to start with.

3 But we read the Supreme Court's opinion
4 and I believe Your Honor probably read the Supreme
5 Court's opinion as saying actually that doesn't align
6 with what we think the General Assembly intended when
7 it passed the statute.

8 Now, if that's right, we presumably could
9 have come here, we could have said whatever we wanted
10 to say with respect to why they think that the
11 Supreme Court's conclusion on that was perhaps --
12 could be interpreted differently. Doesn't matter.
13 Supreme Court's already said what the Supreme Court
14 already said.

15 And Your Honor might well have concluded
16 that, oh, well, I really have to issue an injunction;
17 they just told me that I have to issue an injunction.
18 And we'd be arguing about what that injunction should
19 say.

20 And what our argument would have been
21 under those circumstances is, well, if you think that
22 the system we're using, the procedure we're using
23 isn't liberal enough in its access, then you tailor
24 your injunction to make sure that we no longer do

1 that and we do something else that is more liberal
2 and allows a better access so it's not just a
3 fail-safe system but rather that it's a more robust
4 system you can go to directly.

5 Such an injunction Your Honor could have
6 issued. We would have, obviously, complied with the
7 injunction, but we read the Supreme Court's opinion
8 too.

9 Having read the Supreme Court's opinion,
10 there's simply no point in not immediately going and
11 complying with the way we read it, which is to say we
12 better do that.

13 Now, what did the Supreme Court not say?

14 The Supreme Court did not say, oh, and,
15 by the way, it doesn't matter whether or not the
16 applicant is registered. The Supreme Court did not
17 say you shouldn't worry about that, you should issue
18 it even if you haven't proven that they're
19 registered.

20 And I think there's a reason the Supreme
21 Court didn't say that. Because the very section of
22 the statute that they've cited is very clearly that
23 it applies to registered electors.

24 So DOS, Department of State, still takes

1 the position that it has to go and confirm
2 registration. Your Honor heard testimony about what
3 they do and how they tried to speed that up and how
4 they tried to ease registration, all those kinds of
5 things, but they're not supposed to issue one of
6 these cards to somebody who is not registered. They
7 have to check that. That's what the statute says.

8 So inasmuch as you had -- may have had
9 people who had difficulty getting cards because it
10 was hard to go through the Department of
11 Transportation procedures and then come back and only
12 get the DOS procedure if you couldn't get a
13 Department of Transportation procedure, the Supreme
14 Court said, "Too tight." So we're done with that.
15 And that's been loosened. The Supreme Court hasn't
16 said "ignore registration." And I don't think they
17 could, using the terms of that statute.

18 Now, last point: A lot of the argument
19 in this case -- and I mean the argument in the case
20 even before I came into it -- argument to the Supreme
21 Court, even the argument today -- well, actually, not
22 so much the argument today -- focuses on this word
23 "disenfranchised." When did you get
24 "disenfranchised"?

1 And what I wish to suggest to the Court
2 is that the Supreme Court did not say, indeed, I
3 think they were careful not to say that you don't get
4 disenfranchised just because you are not able, for
5 one reason or another, to demonstrate who you are
6 and/or to vote. And I'll get to that in a minute.

7 That's not disenfranchisement. It is
8 long settled in Pennsylvania that asking someone for
9 identification in order to permit the person to vote
10 is not disenfranchisement.

11 We do that now. We've done it for years.
12 You have to do it when you register, but we do it
13 now, since 2002, if you come from one town to
14 another -- if you move from Bethlehem to Nazareth is
15 an example I always like to use -- if you move from
16 Bethlehem to Nazareth, you're not only on the rolls
17 in Bethlehem. That's how it was under Augustus.

18 It's different now. You move, but you
19 have to show new -- as a new resident, in order to
20 get established, you have to go present on the first
21 time you vote there. Otherwise you've got to go back
22 to your old one and you're only allowed to go back
23 once. That's the existing law, which it is not
24 disenfranchisement, to ask someone to demonstrate, to

1 prove who they are.

2 The only question is, what is it you're
3 allowed to do, what degree you're allowed to do? You
4 can challenge someone when they come to vote if you
5 don't like the way they signed it. Judges of
6 election do this all the time.

7 So the proposition that someone who finds
8 himself or herself unable to vote for some reason, or
9 challenged in the vote for some reason, and if the
10 reason is based on not being able to prove
11 identification, going back for years, that is not
12 disenfranchisement and, indeed, in the Supreme Court,
13 I believe all the justices agreed there's nothing
14 facially per se unconstitutional under Pennsylvania
15 law to go to a photo ID.

16 The question they raised was, is it too
17 hard to get? And as to that, I believe the testimony
18 that we've submitted today is that it's not too hard
19 to get.

20 There is a difference of agreement --
21 difference of opinion, I should say, about fact in
22 this case. Mr. Justice Baer raised this; there's a
23 question about fact. My colleagues on the other side
24 believe that there are either 1.4 million or 700,000,

1 or whatever there is, massive numbers of people who
2 don't have photo ID and will not be able to vote.
3 That is not the experience the people have had in
4 other states and it's not that we think the truth to
5 be.

6 In point of fact, to the extent that
7 there are a lot of people on the registration rolls
8 that allegedly don't have photo ID, one of the
9 reasons is that those rolls have been beefed up over
10 time because they don't purge them anymore.

11 My daughter is on the registration in
12 Lower Merion Township, but she's lives in Washington,
13 D.C. She doesn't -- she hasn't been purged off those
14 rolls. She's not supposed to vote in Lower Merion
15 with her photo ID from -- but she'd be listed as one
16 of those people who hasn't voted in a number of years
17 because she doesn't come off the rolls.

18 The actual number of people who need to
19 get a photo ID who plan to vote, who could vote, we
20 believe is relatively small. And we think that the
21 numbers that Your Honor is seeing show that they're
22 relatively small, and that they're having success in
23 getting them, and that we're being able to resolve.

24 As things come up, we can look at them,

1 resolve them, got to prove they're registered, and we
2 get that done and these things are issued. And there
3 are not a significant number of people. There is an
4 access problem.

5 Last point. Access to the card.

6 Is it possible that someone will not be
7 able to vote come Election Day because they don't
8 have a card? And the answer to that, of course it is
9 possible. That may well happen. Because a voter --
10 we had testimony today, or questions today, about
11 "We're doing everything we can to advertise. We're
12 doing everything we can to alert people to this
13 situation, but maybe someone went out for popcorn."

14 Now, that's not a constitutional
15 question. If a voter doesn't do what he or she needs
16 to do to comply with the law, they're not
17 disenfranchised in the sense that this is a
18 constitutional, legal thing to do, to ask them. They
19 must participate, too, in the process. That's what
20 registration is.

21 You have to register. You have to have
22 an ID card. So if, in fact, someone is out of the
23 loop and doesn't do it, that is not a
24 disenfranchisement that is worked by this law.

1 The only way that would work is in point
2 of fact if you're not able to get the requisite card
3 in the way that the general assembly contemplated.
4 That's what the Supreme Court asks, Your Honor, to
5 look at.

6 And our belief is, insofar as they told
7 us how we had erred, in their view, we corrected
8 that. If Your Honor wants to issue an order to make
9 sure that we've corrected that, Your Honor is
10 certainly welcome to do that, but we have corrected
11 that.

12 And I think the people that testified to
13 Your Honor today are all saying essentially the same
14 thing, which is, for each and every individual who is
15 trying to get a card who has a right to get a card
16 who is a registered elector, yes, we're going to try
17 to make sure that they get a card. And we think they
18 will be able to get a card in time.

19 There are not 700,000 people out there.
20 We are not about to be overwhelmed. This has been
21 done in other states and it can be done here. And
22 there's no -- the predictions -- the prediction that
23 Your Honor made in your last opinion when you
24 looked -- that prediction is still true.

1 It was right then. It's right now. The
2 correction that was necessary that the Supreme Court
3 pointed out had to do with a reading of the intention
4 of the general assembly and whether or not we were
5 making DOS cards. We've corrected that.

6 Getting the card, the fact that people
7 will still be able to vote and to vote by all the
8 protections that are in there is still true.

9 And we believe Your Honor, upon hearing
10 the record, should be able to come to the same
11 conclusion of prediction that Your Honor came to last
12 time.

13 Thank you for hearing me.

14 THE COURT: You wish to be heard?

15 MR. GERSCH: Very briefly, Your Honor.
16 We'll be putting on evidence from persons who will
17 describe their difficulty in getting ID on Thursday;
18 and most of our comments are going -- and our
19 traditional closing will be at that time.

20 I really want to respond to the reading
21 of the Supreme Court's opinion because it's almost as
22 though they're reading a different opinion than we
23 are.

24 The Supreme Court identified what I

1 think -- in itself identified sort of a difficult
2 tension in terms of a facial challenge with respect
3 to a short-term problem.

4 But they didn't find that an obstacle to
5 the lawsuit, and I think the fair characterization of
6 what Supreme Court found is a facial problem -- that
7 is, the law on its face requires that you get photo
8 ID to vote, but there's a problem in the law.

9 The law was intended to allow liberal
10 access so people could get that ID so they wouldn't
11 be disenfranchised. But it turns out kind of like
12 contracts, you have a probably with impossibility.
13 The legislature's chosen method of making that work
14 doesn't work.

15 And what happened at argument -- there's
16 no official transcript. It's on video. I've
17 transcribed it for the Court if the Court would find
18 it useful. Justice Saylor asked counsel for the
19 Commonwealth, "Are you ever going to be able to make
20 PennDOT ID available to everyone?"

21 And Mr. Knorr for the Commonwealth said,
22 "No, it's not possible. We're not going to be able
23 to do it."

24 I should add that Justice Saylor also put

1 forth his interpretation of the statute, the same one
2 that the Court finds in the Supreme Court's opinion;
3 and neither the Commonwealth's attorney nor the
4 governor's attorney took any issue with the
5 interpretation of the statute offered by Justice
6 Saylor.

7 So the Court identified a facial problem.
8 The problem is that there's now a requirement that
9 you show ID; and if you don't show the ID, you'll be
10 disenfranchised. And there is no method on the face
11 of the statute where a citizen is guaranteed the
12 right to get ID.

13 Against that background, what did the
14 Supreme Court do? It did what was entirely logical.
15 They said come back here and let's understand --
16 because, of course, the record was made at a time
17 before the DOS ID -- they said let's find out two
18 things.

19 First, let's find out, has the
20 Commonwealth figured out a way to deploy ID in a
21 manner consistent with the liberal access
22 requirements that were contemplated by the general
23 assembly?

24 And the answer to that, we now know it

1 hasn't. It may start tomorrow, but in the time that
2 the Supreme Court asked the Court to do its
3 examination, which is from the time the cards are
4 available, basis of actual experience, it's
5 undisputed that the Commonwealth was doing exactly
6 what the Supreme Court has already concluded was
7 improper.

8 So that issue is solved. But even if
9 they could overcome that hurdle, they said something
10 else, which also makes a lot of sense: The Supreme
11 Court is saying, we don't just want to know whether
12 there is a card in theory that comports with liberal
13 access, given that we are now roughly 6 1/2 months
14 down the road from when this act was passed; and the
15 Commonwealth has not been complying with the act for
16 the -- since March 14th, given that they missed out
17 on the chance to sign all these people up in that
18 long period of time, as the Legislature intended; is
19 it really the case that no one will be
20 disenfranchised. And they say no disenfranchisement.

21 They don't use those softer words that
22 are in their brief. They say "No disenfranchisement
23 elsewhere." They talk about the possibility of
24 forestalling the possibility of disenfranchisement.

1 These are very strong words. And what the Supreme
2 Court did makes absolute sense, given their reading
3 of the statute and given the Court's finding, that
4 there's this facial problem.

5 So they have an enormous hurdle. They
6 have a problem on both prongs. First, it's clearly
7 the case, they've already admitted it, that they have
8 been running their DOS ID program in a manner that
9 the Supreme Court says is affirmed; and the Supreme
10 Court, as we've commented, Your Honor, also says we
11 don't want to rely on their going-forward
12 predictions. We don't want any part of that. We
13 want to know based on actual experience. We know the
14 actual experience.

15 And the second problem is, how are we
16 going to find out that, in fact, no one will be
17 disenfranchised? And notwithstanding the vigorous
18 investigation, it's quite clear that people will be
19 disenfranchised. There will be people who don't even
20 know about this law. There will be people that can't
21 get to PennDOT. And I can't stress enough, this was
22 not the general assembly's will. We're not talking
23 about deferring to the general assembly anymore.

24 The general assembly wanted this in place

1 for seven and a half months.

2 And I call Your Honor's attention in that
3 regard to the amicus brief filed for them by the
4 Republicans, in that they say that one of the great
5 features of the act was that it was supposed to be in
6 effect for -- there's supposed to be a 237-day period
7 when people could get ID before the election.

8 That's been frustrated. And I don't say
9 that the Commonwealth intended to frustrate it;
10 that's the way it worked out. It's not about good
11 intentions, bad intentions. It didn't work out that
12 way.

13 Here we are, as of next week will be five
14 weeks before the election. The general assembly
15 never intended that that be the period for getting
16 ID; and there's no contemplation that the general
17 assembly thought constitutionally that would be a
18 short enough -- that would be a long enough period of
19 time to allow everyone to, A, become educated, B,
20 actually get the ID.

21 And we'll present tomorrow, Your Honor --
22 I'm sorry, Thursday, Your Honor, evidence of the kind
23 of real-world problems that people are having.

24 THE COURT: Well, ultimately, and I'm

1 really making this comment to both sides now --
2 ultimately, there's a possibility that I'm going to
3 enter an injunction. And I'm going to ask both
4 sides, when we speak on Thursday, what should the
5 injunction look like?

6 I kind of think I know what you're --
7 what you're going to say. But I do have a
8 responsibility to consider tailoring an injunction to
9 what is the offending conduct.

10 And I think there was an argument to this
11 effect in Respondents' pre-hearing brief.

12 So this will be part of my back and
13 forth. I'm giving you a heads-up so that you can
14 think about it today, be ready to think about it a
15 little bit more out loud on Thursday.

16 But I think it's possible that there
17 could be an injunction entered here, and I need input
18 from people who apparently have thought about this
19 longer than I have. You've obviously put months into
20 this. And I'll need some reasoned argument on that.

21 All right? Is there anything else that
22 you want me to look at today?

23 MR. GERSCH: No, thank you.

24 THE COURT: All right. Then we are --

1 in -- we're adjourned until Thursday morning at
2 10:00 a.m.

3 THE CLERK: Commonwealth Court is now
4 adjourned.

5 (Proceedings adjourned: 5:03 p.m.)

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CERTIFICATE OF SHORTHAND REPORTER

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I, Gail Inghram Verbano, Registered
Diplomate Reporter, Certified Realtime Reporter,
Certified Shorthand Reporter (CA), and Notary Public,
the officer before whom the foregoing proceedings
were taken, do hereby certify that the foregoing
transcript is a true and correct record of the
proceedings; that said proceedings were taken by me
stenographically and thereafter reduced to
typewriting under my supervision; and that I am
neither counsel for, related to, nor employed by any
of the parties to this case and have no interest,
financial or otherwise, in its outcome.



Gail Inghram Verbano, RDR, CRR, CSR
CA-CSR No. 8635

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