

Transcript of Proceedings

Date: September 27, 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 :
 4 SHINHOLSTER LEE; GROVER FREELAND; :
 5 GLORIA CUTTINO; NADINE MARSH; DOROTHY :
 6 BARKSDALE; BEA BOOKLER; JOYCE BLOCK; :
 7 HENRIETTA KAY DICKERSON; DEVRA MIREL :
 8 ("ASHER") SCHOR; THE LEAGUE OF WOMEN :
 9 VOTERS OF PENNSYLVANIA; NATIONAL :
 10 ASSOCIATION FOR THE ADVANCEMENT OF :
 11 COLORED PEOPLE, PENNSYLVANIA STATE :
 12 CONFERENCE; HOMELESS ADVOCACY PROJECT, :

Petitioners,

vs.

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

Respondents.

**CERTIFIED
TRANSCRIPT**

: C.A. No.

: 330 M.D. 2012

16 Reporter's Transcript of Proceedings before

17 THE HONORABLE ROBERT SIMPSON

18 Harrisburg, Pennsylvania

19 Thursday, September 27, 2012

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1 Harrisburg, Pennsylvania
2 Thursday, September , 2012; 10:00 a.m.
3 - - -
4 THE CLERK: All rise.
5 Commonwealth Court is now in session.
6 The Honorable Robert Simpson presiding.
7 THE COURT: Thank you.
8 Good morning. It's Thursday,
9 September 27th. We are in the last day of
10 hearings, I believe, for this case.
11 I'm trying to be lighthearted about this,
12 but when I see the attorneys yawning, it just makes
13 it a lot more difficult for me, so if you could
14 refrain from that, that's a big plus.
15 We've had a flurry of filings and things
16 being exchanged. And it seems like everybody got a
17 good night's sleep and is ready to go here. So I'm
18 ready to proceed.
19 I have -- who wants to be heard first?
20 This is the last day, and we're going to
21 finish today at 4:30. The record will close today at
22 4:30. And that means that any post-hearing
23 submissions must be received by tomorrow at 4:30.
24 You have 24 hours. So that's the purpose behind the

1 timing is to comply with the scheduling order.

2 I am not going to issue a decision today
3 from the bench, because there are going to be
4 submissions that are received tomorrow, probably at
5 the end of the day. And in all fairness to the
6 attorneys and parties, I need to give that careful
7 consideration before I make a final decision.

8 So don't expect to hear a decision today
9 while I'm sitting here.

10 I've done it in the past but not on this
11 case. I'm not going to do it here.

12 MR. WALCZAK: Your Honor, on that
13 particular issue in terms of the deadline, one of the
14 things we found is that it takes a significant amount
15 of time for the binding of the briefs and all of
16 that. So it really pushes that deadline up several
17 hours. And we're wondering if there's some way that
18 we can just send the materials to you, get the
19 materials to you by 4:30 and then worry about the
20 formal filing or do some electronic filing or
21 something like that at 4:30. Because if we got to do
22 the binding and get everything printed and get it to
23 the clerk's office --

24 THE COURT: Send it to me electronically?

1 Is that what you're --

2 MR. WALCZAK: Whatever way, by fax, by
3 electronically. If the deadline would be for us to
4 get the briefs to you and to the opposing parties,
5 and then we can take care of the formal filing,
6 perhaps, on Monday, that would save some time.

7 THE COURT: Which I think would require
8 somebody from my staff to stay afterwards and
9 assemble them.

10 No, you need to file it by 4:30, just
11 like I said last week.

12 MR. WALCZAK: Okay.

13 MR. CAWLEY: Your Honor, I had three very
14 brief issues that I'll go through the first two that
15 should be very quick right off the bat.

16 I just wanted to make sure that as Your
17 Honor went through the exhibits that were received
18 yesterday, that Exhibit R-10 was received.

19 THE COURT: Yes.

20 MR. CAWLEY: Okay. The second issue is
21 the sequestration order with regard to witnesses. We
22 are anticipating that there may be some need to offer
23 testimony in rebuttal to the remaining witnesses for
24 the Petitioners by putting our own witnesses on this

1 afternoon.

2 They were sequestered when each of them
3 testified before. And they can be sequestered during
4 each of their testimony this afternoon, but I would
5 ask that they be allowed to stay in the courtroom to
6 listen to what the other witnesses have to say about
7 their work. Okay?

8 THE COURT: Yes.

9 MR. CAWLEY: And the final issue is, of
10 course, I raised an objection to declarations and
11 live witness testimony that was proposed by the
12 Petitioners. Very briefly, I have three grounds that
13 I stated for the objections. The first is timeliness
14 of disclosure. Many witnesses were timely disclosed
15 by the Petitioners. They cured the minor defect of
16 addresses, which the Court already addressed.

17 But there were at least a few that we
18 received after the Court's deadline that noted live
19 testimony and declarants in a supplemental list. And
20 then even yesterday when they filed a number of
21 declarations, there were two of them that we had
22 never seen before, Ginensky and Hartle. And Hartle
23 does not appear on the witness list at all.

24 We're just trying to avoid litigation by

1 surprise here. We're trying to have a shot at
2 knowing who these people are so that we can be
3 helpful to the Court.

4 The second basis is lack of personal
5 knowledge and the fact that they're cumulative. Some
6 of these witnesses are simply talking about bringing
7 other people to a PennDOT center who submitted their
8 own declaration. And some of the declarations are
9 simply saying: I've attached a newspaper article; I
10 adopt that as true. And that's obviously not what
11 we're supposed to be doing when presenting personal
12 knowledge of witnesses to the Court.

13 And finally, the reliance on affidavits
14 itself, of course. Rule 1531 of the Pennsylvania
15 Rules of Civil Procedure anticipate that in special
16 or preliminary injunctions, affidavits can be
17 submitted. I think the thought there, the idea
18 behind the rule is that we are typically, in these
19 proceedings, hurrying up right at the beginning of a
20 case.

21 We are now at a point where we've already
22 had six days of a hearing. We're now in the second
23 day of this hearing; and extensive discovery has been
24 done. I would simply suggest that to submit 21

1 affidavits at this point, it seems improper even
2 under Rule 1531.

3 So those are my objections to the live
4 testimony, especially to the extent that they were
5 not submitted by the deadline, and to the
6 declarations that were submitted.

7 THE COURT: Do you want to be heard?

8 MR. RUBIN: We do, Your Honor. I'm going
9 to take your suggestion, and your body language, and
10 not address the litigation by surprise argument,
11 other than to say the preliminary injunction like
12 this, we're all working under very intense deadlines
13 and very tight deadlines. We have been working very
14 well with the other side to exchange information as
15 soon as we get it. We're not holding anything back.

16 It's well established in the case law
17 that procedures are usually relaxed in a setting like
18 this on a time-sensitive motion, when who could come
19 live, who can't come life is unclear. When events
20 are changing on the ground, we're responding to them.

21 Obviously at 5:00 p.m. before the trial
22 began on Tuesday, the entire world of Pennsylvania
23 changed, and so events started changing on the ground
24 again after the Court's deadline for disclosing

1 affidavits and declarants. So people are being
2 discovered that have valuable information to be told
3 to this Court.

4 On the issue of cumulativeness, lack of
5 personal knowledge, again, case law is very clear.
6 We submitted a bench memo this morning -- we've
7 handed out, if the Court would like it now, that
8 discusses cases where hearsay within hearsay, lack of
9 personal knowledge, all are okay in a preliminary
10 injunction setting; even though on a trial on the
11 merits, that would not likely be accepted by the
12 Court.

13 Pennsylvania Supreme Court has held -- so
14 held. So has the Third Circuit and Federal Courts
15 applying similar rules.

16 On the issue of cumulativeness, the
17 purpose of submitting declarations in lieu of calling
18 all of them in is to cure that issue. It's also to
19 cure or avoid any argument that, Oh, that's a one-off
20 situation. It's unique to that one person. There's
21 story after story after story, and we could have
22 brought in more than 21. We could have brought in a
23 lot more if we had more time and more patience from
24 the Court, of course.

1 And in terms of newspaper articles, if
2 you want to read the affidavits, again, those were
3 designed to facilitate the process. There are
4 articles that are written. We had the person say
5 what was said in that article is accurate, and adopt
6 the -- what was said in the affidavit about the
7 declarant, specifically so that we're not just
8 submitting a pure article that maybe the reporter got
9 wrong, maybe they didn't. We have the words, sworn
10 testimony of the declarant.

11 THE COURT: Let me address the affidavit
12 part of this first.

13 Before I do, let me just say that it's
14 time for a pep talk to counsel. At the very
15 beginning of this case, I said to you, this was a
16 high-profile case. There's a lot of pressure
17 involved with it, emotions are high. Those of us in
18 this courtroom need to stand a little taller and
19 remain more calm.

20 And I'm concerned by the conduct of
21 counsel on both sides that we may not be meeting that
22 goal.

23 You need to take it easy here. I have
24 other tools in the toolbox that you haven't seen yet,

1 and I don't really want to use them.

2 I've tried to stay out of your way and be
3 collaborative, but I can handle this a different way.
4 So let's keep that in mind. I need you to stay calm
5 and stand tall.

6 The affidavits, the problem with the
7 affidavits in this hard-fought, important case is
8 that they deny the Commonwealth the opportunity to
9 really cross examine; or as one witness put it, drill
10 down. But I gather that you are prepared -- and I'm
11 talking to Mr. Cawley, that you're prepared to
12 present some sort of rebuttal testimony this
13 afternoon?

14 MR. CAWLEY: Time permitting, yes, Your
15 Honor.

16 THE COURT: Let's talk about time. How
17 much time do you want for rebuttal?

18 MR. CAWLEY: I think we can be brief with
19 the witnesses. It really depends on how much time is
20 left from the other side. It depends on the content
21 of the testimony. Certain things we can't rebut
22 because there's no way to know who the declarants
23 are.

24 If Your Honor wants to end by 4:30, that

1 means that we need to leave time for whatever closing
2 remarks Your Honor will take. So I really think that
3 we need whatever time in the afternoon that we have.

4 THE COURT: All right. I'm going to
5 receive the affidavits. I'm going to look at them
6 carefully. I'm going to look for certain things like
7 is there an address attached to this person. I saw
8 some of the -- where I couldn't find an address
9 immediately.

10 I'm going to look to see whether there's
11 some reasonable explanation for why the person
12 couldn't come in. I understand the time crunch, but
13 it's more useful to have somebody here who could be
14 subject to cross-examination.

15 A number of these affidavits look like
16 they were from people who have physical problems, and
17 if there's any kind of mention of a physical problem
18 in the affidavits, I will take that into
19 consideration. If it's just somebody who's too busy
20 doing something else to come, you know, I'm busy too,
21 but I have to be here and I have to take time to
22 carefully look and think and see.

23 So I will probably give much less weight
24 to people who don't have an address. There doesn't

1 seem to be any reason why they're not here, and go
2 from there.

3 So I will -- the affidavits will be
4 received. They will be in evidence. Matters of
5 whether I consider them or the extent that I give
6 them any weight will be based on the contents. So
7 that means I will end up reading them all anyway, I
8 guess. I guess that's what I'll do tomorrow.

9 The way I cure the problem is to limit
10 Petitioner's presentation today. So you need to be
11 finished by 1:00. That's about three hours. So give
12 me whatever you can in three hours, and that's what
13 it will be. And I think there does need to be time
14 for Mr. Cawley and the Respondents to respond in
15 whatever way they can as to affidavits and whatever
16 else there is this morning.

17 I think I have sort of clarified my
18 expectations as well as the procedural questions that
19 we have. Is there anything else we need to address?

20 MR. WALCZAK: Your Honor, on the
21 affidavits, just want to make a point that I know for
22 a fact that many of those declarations do not have
23 addresses attached to them, and our thinking has
24 always been that we don't want to put those in the

1 record, phone numbers, contact information.

2 One of our witnesses, in fact, got a -- I
3 notified Mr. Cawley on Tuesday, was called by
4 somebody and told that they don't need to show up
5 today. So we got that kind of misdirection.

6 The addresses were, on the day Mr. Cawley
7 raised them, within a few hours, provided to them.
8 So the fact that there's no addresses in the
9 declarations themselves doesn't mean there aren't
10 addresses, so there are addresses attached to all
11 those individuals.

12 The second thing is that when we read the
13 rule that says affidavits are okay, I don't think any
14 of us expected to be here. It's not like we could
15 have started a month ago. I certainly did not expect
16 to be in trial after the Supreme Court.

17 THE COURT: Why are you telling me this?

18 MR. WALCZAK: I'm telling you this, Your
19 Honor, because most of those declarations are not
20 going to give reasons why those folks could not be
21 here.

22 THE COURT: Let me just ask you to pause.
23 I've made my ruling. I'm not going to keep going
24 back over it.

1 MR. WALCZAK: Yes, Your Honor.

2 THE COURT: Now, if there's a witness who
3 was not disclosed in the pretrial or the prehearing
4 memorandum, I will not hear from that witness.

5 So that's not going to happen. If
6 there's somebody that was not identified in the
7 prehearing memorandum that was received, filed,
8 around noon on Monday, that person will not be heard.

9 MR. WALCZAK: I appreciate that, Your
10 Honor. But to some extent it's a double standard
11 because none of the information about this new
12 process that the Commonwealth unveiled was in their
13 pretrial statement, other than a cryptic comment that
14 they have eliminated the exhaustion. We had a whole
15 day of testimony on that.

16 THE COURT: I understand that the conduct
17 of counsel for the Commonwealth invited a certain
18 amount of tension. I understand that.

19 I can't fix that today. It's going both
20 ways now, though.

21 So I need you to calm down. I need you
22 to stand tall. Let's close this record and move on.

23 Anything else?

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

1 MR. WALCZAK: No, Your Honor.

2 THE COURT: Please call your first
3 witness.

4 MR. WALCZAK: Your Honor, before we call
5 our first witness, I want to make reference for the
6 Court to one declaration that was submitted yesterday
7 and -- but was not described because it's not from a
8 voter, and it's from Allegheny County Elections
9 Division Manager, Mark Wolosik.

10 And it is important for the point that it
11 explains how the new registrations get into the SURE
12 database and talks about how, in fact, that the
13 elections folks are taking two, maybe more weeks to
14 enter them from when they get the registrations.

15 But what happens on the ground is that
16 late in the campaign, there are large numbers of
17 registrations submitted by third-party registration
18 groups. And Mr. Wolosik testified that there are,
19 every few days, several thousands brought in. Some
20 of those registration applications may already be two
21 weeks old or older than that. Which means that from
22 the date that the person signs it, it could be a
23 month or more before they actually show up in the
24 SURE system, and given the testimony under both the

1 old and the new system, that they can't issue the
2 card until somebody shows up in the SURE system, I
3 think it's important for the Court to understand the
4 dynamics of how new registrations get entered into
5 the SURE system and how long that can take from the
6 time the voter fills it out. So that's all -- that's
7 in the declaration.

8 THE COURT: Well, he testified before; he
9 was subject to cross-examination for. That's the
10 type of testimony that's actually useful to me. So I
11 was surprised that wasn't in the summary, quite
12 frankly. And I haven't read through all the
13 affidavits yet to find where his is at, his is in
14 there. But that's something I will carefully review.

15 MR. WALCZAK: Thank you, Your Honor. And
16 Plaintiffs will call the first witness, Doris Clark.

17 Your Honor, just to make sure that we're
18 all on the same page. We've got a number of folks
19 here today. They're very interested in what's going
20 on.

21 We've told them that before they testify,
22 they can't be in the courtroom. We've told them that
23 after they testify, it's okay for them to sit in the
24 courtroom. I just want to confirm that that's okay.

1 MR. CAWLEY: That's fine with us.

2 THE COURT: So you're self-sequestering?

3 - - -

4 DORIS CLARK, having first been duly sworn
5 according to law, was examined and testified as
6 follows:

7 - - -

8 DIRECT EXAMINATION

9 - - -

10 BY MR. WALCZAK:

11 Q Good morning.

12 A Good morning.

13 Q Could you please state your name?

14 A My name is Doris Clark.

15 Q Where do you live?

16 A I live at 433 West Coulter Street.

17 Q Where is that?

18 A Philadelphia, Pennsylvania.

19 Q How old are you?

20 A I'm 68.

21 THE COURT: That's an easy question now.

22 THE WITNESS: I can't say it backwards.

23 BY MR. WALCZAK:

24 Q Are you a registered voter?

1 A Absolutely.

2 Q How long have you been voting?

3 A Since 21.

4 Q Since age 21?

5 A Yes.

6 Q Do you remember the first presidential
7 election you voted in?

8 A It was probably Kennedy. We loved him.

9 Q And have you voted regularly since then?

10 A Absolutely.

11 Q Do you have a -- strike that.

12 Prior to September, did you have any kind
13 of photo ID?

14 A No.

15 Q Have you ever driven a car?

16 A No.

17 Q Have you ever had any kind of PennDOT ID?

18 A No.

19 Q At some point over the summer, did you
20 learn that Pennsylvania had passed a new law
21 requiring voters to show photo ID?

22 A Absolutely.

23 Q Do you recall when you learned that?

24 A Sometime in June.

1 Q Did you take steps to try to secure a
2 photo ID?

3 A Yes.

4 Q And what's the first step you took to try
5 to get a photo ID?

6 A I went to PennDOT, where they gave me
7 what I had to do to get an ID.

8 I had to get a birth certificate and
9 another Social Security card because I had lost all
10 my ID. So --

11 Q Let me stop you.
12 When was this first attempt?

13 A This was in June.

14 Q So this was before August 27th?

15 A Yes.

16 Q And were you successful in getting an ID
17 in June?

18 A No.

19 Q And which PennDOT did you go to?

20 A Ogontz.

21 Q Is that in Philadelphia?

22 A Yes.

23 Q So as I understand your testimony, they
24 asked you for documents that you didn't have?

1 A Yes.

2 Q Which documents did you not have?

3 A Well, I didn't have a Social Security
4 card. I lost it.

5 Q Did you have a birth certificate?

6 A No.

7 Q Was that lost as well?

8 A Yes.

9 Q And did they tell you that you had to get
10 these documents in order to get a PennDOT ID?

11 A Absolutely.

12 Q Did you take steps to try to get those
13 documents?

14 A Yes.

15 Q What steps did you take? Just briefly.

16 A Well, we started in June and all the way
17 until August, you know. That's the steps I was
18 taking to get the ID, because when I went back to
19 PennDOT, each time it was something that I didn't
20 have.

21 Q So did you go to the Department of Vital
22 Records in Philadelphia to try to get a birth
23 certificate?

24 A Yes, I did.

1 Q And did you manage to eventually get one?

2 A Absolutely.

3 Q And did you have to go to Social Security
4 Administration to get a Social Security card?

5 A Yes, I did.

6 Q And you got that?

7 A I got -- not the card but an indication
8 where I would be able to get a card. So it's like a
9 receipt that I did require -- you know, and get my
10 Social Security card.

11 Q So you had a letter from Social Security
12 Administration saying that you had a card and this is
13 your number?

14 A Yes.

15 Q Now, at some point did you take these
16 documents back to PennDOT?

17 A Yes.

18 Q When was that?

19 A When I started, like I said, in June.

20 Q I want to focus you here. So was your
21 second trip to PennDOT on or about August 29th?

22 A That was my third trip.

23 Q That's your third trip?

24 A Yes.

1 Q When was the second trip?

2 A Well, I went and -- I needed -- since my
3 name was Doris Clark and my birth certificate said
4 "Doris Bailey," that I needed some more ID. I needed
5 my marriage license or, my husband had passed away,
6 or death certificate.

7 Q So this was the second visit before
8 August 27th?

9 A Yes.

10 Q And so in response -- so you didn't get
11 an ID on that second visit?

12 A No.

13 Q Okay. And did you have a marriage
14 certificate?

15 A No.

16 Q Did you have a death certificate?

17 A Yes.

18 Q Did you have to go get that?

19 A Yes, I had to get that.

20 Q And did you have to pay for that?

21 A Yes. Each item I had to pay for.

22 Q So did you take a third trip to PennDOT
23 in late August?

24 A Yes.

1 Q Was that on or about August 29th?

2 A Yes.

3 Q And what happened when you went to
4 PennDOT? I'm sorry. Was that Ogontz Avenue, again?

5 A Yes.

6 Q And what happened on this third trip?

7 A Well, they told me that the Social
8 Security -- the paper that the Social Security man
9 gave me, it was out of date.

10 Q What was the date on that?

11 A 6-something.

12 Q June? It was a June date?

13 A Yes.

14 Q So they wouldn't issue you an ID
15 because --

16 A The thing was expired.

17 Q They had your Social Security number?

18 A Well, on the letter, I think the Social
19 Security was on there. But I had a printout of my
20 Social Security number, but that was no good at all.

21 Q And you had a birth certificate?

22 A Yes.

23 Q And did you have two proofs of residency?

24 A Yes.

1 Q And you had your Social Security number?

2 A Yes.

3 Q And they wouldn't give you an ID?

4 A No. This is like the fourth time.

5 Q And what did they tell you you had to do?

6 A Well, they circled that they --

7 Q On the letter, on the Social Security
8 letter they circled the date?

9 A Yes. Yes. And they told me that it had
10 expired and I had to go back and get another -- go do
11 it again.

12 Q So --

13 THE COURT: I didn't get that. What
14 expired?

15 MR. WALCZAK: Your Honor, actually, I
16 have a copy.

17 THE WITNESS: I had to go back to Social
18 Security.

19 THE COURT: It's all right to lead her.

20 MR. WALCZAK: Okay.

21 THE COURT: It's all right to lead her,
22 because I'm not getting some of the details here.

23 BY MR. WALCZAK:

24 Q So --

1 MR. WALCZAK: Your Honor, there is a --
2 she received a letter from Social Security
3 Administration. I have a copy here. But I don't see
4 our records person to get the exhibit, and I don't
5 know what exhibit number it is. But it has a
6 June 7th, 2012 date on it. This is something that
7 has been turned over to -- Your Honor, I'm sorry.

8 Do we have the last exhibit number? I'm
9 just going to re-mark it.

10 THE COURT: Well, you're jumping around
11 with the numbers now.

12 The highest number I've seen is 232,
13 which was the last one, which was the Nadine Marsh
14 affidavit. So I'm guessing that 233 would be the
15 next number.

16 MR. WALCZAK: Right. So we'll do 233 and
17 234.

18 (Petitioners' 233 and 234 were
19 marked for identification.)

20 MR. WALCZAK: The one that's got the
21 circled date is 233, and the other one will be 234.

22 BY MR. WALCZAK:

23 Q Ms. Clark, I show you what's been marked
24 as Plaintiffs' Exhibit 233. Is that the document

1 that you received the first time you went to Social
2 Security Administration to get a card?

3 A Yes, it is.

4 Q And the date on that is what?

5 A 6/7/2012.

6 Q And does this document contain your
7 Social Security number on there? And you can't see
8 it because we've actually redacted it. But on the
9 original where it says "SS number," did it list your
10 number there?

11 A I can't see it.

12 THE COURT: I get it. It used to be
13 there. I understand.

14 MR. WALCZAK: It's actually -- it's in
15 two places there.

16 BY MR. WALCZAK:

17 Q All right. So, Miss Clark, when you went
18 on your third trip to PennDOT on August 29th, was
19 it crowded at Ogontz?

20 A Yes.

21 Q And how long did you wait to get to the
22 counter?

23 A Maybe about an hour, hour and a half.

24 Q And when you got to the front, they would

1 not give you your ID because they said that this
2 letter was more than 30 days old?

3 A Yes.

4 Q But you had your birth certificate, two
5 proofs of residency and your Social Security number;
6 correct?

7 A Yes.

8 Q They just said that this letter was too
9 old?

10 A Yes. They said it was too old, and --

11 Q So you left that -- you left that morning
12 without having an ID, and this was your third trip?

13 A Yes.

14 Q Did you persist in trying to get an ID?

15 A Absolutely. I went back down to the
16 Social Security office.

17 Q You went that day?

18 A Yes.

19 Q And did you get another letter?

20 A I did get another letter.

21 Q Did you then take that letter back to the
22 Ogontz PennDOT?

23 A Yes, I did.

24 Q And I'm sorry. Was this the same day?

1 A Yes.

2 Q And did you have to wait in line when you
3 came back?

4 A Yes, I did. And when I was picked, they
5 said: Well, your last name and your birth
6 certificate is two different names, so we can't help
7 you again.

8 So I just says, "Well, I'm just not going
9 to vote, then. I'm tired. I've been through it."

10 And the lady --

11 Q What time of day was this?

12 A This was before closing.

13 Q Right before closing?

14 A Just before closing I got it in there,
15 yeah.

16 Q And what time did you start that morning?
17 Were you there early in the morning?

18 A Yes.

19 Q So you spent all day going to PennDOT,
20 going to SSA and then back to PennDOT?

21 A Yes.

22 Q And now this fourth try, they again told
23 you that you didn't have the right paperwork to get
24 the ID?

1 A Yes.

2 Q And were you upset?

3 A Very much so.

4 Q And did you show your "upsettedness"?

5 A Yes, I did.

6 Q And how did you do that?

7 A Well, I hollered out, "I'm handicapped,
8 and I've done all I could do and I'm not going to
9 vote."

10 So everybody was looking at me, like --
11 so the lady says -- I says, "I'm going out here and
12 I'm going to tell these people how you're treating us
13 in here."

14 And at that moment, I got my sit-down and
15 they gave me my ID and everything.

16 Q So after four trips to PennDOT and having
17 been rejected and then you throw a fit, they give you
18 an ID?

19 A Just like that.

20 Q And this is the Department of State
21 voting-only identification that you got?

22 A Yes.

23 MR. WALCZAK: No further questions.

24 THE COURT: You may inquire.

1 - - -

2 CROSS EXAMINATION

3 - - -

4 BY MS. HICKOK:

5 Q Good morning, Ms. Clark. I just have a
6 couple of questions for you.

7 A Certainly.

8 Q You showed us this letter from the Social
9 Security Administration. Did the Social Security
10 Administration tell you that you could use this
11 letter instead of your Social Security card?

12 A No.

13 Q Did you ask them for a replacement Social
14 Security card?

15 A Yes.

16 Q What did they tell you?

17 A They gave me this paper.

18 Q And did you say to them, "This is not a
19 Social Security card. May I have one? How do I go
20 about getting one?"

21 A They said to me, "Well, this will show
22 that you are going to get your Social Security card,
23 and this is just to show that we're going to do this,
24 a receipt like."

1 Q And so did you subsequently get your
2 Social Security card? Was it mailed to you?

3 A No, I didn't get it yet.

4 Q Okay. And have you contacted the Social
5 Security Administration to tell them that you did not
6 get your card?

7 A No. Since I got my voter's card, I was
8 half satisfied.

9 Q I understand.

10 Now, is the Ogontz Avenue PennDOT also
11 called West Oak Lane?

12 A I think so. I'm not sure.

13 Q And when you went there in June, you went
14 to apply for a nondriver's license photo ID; is that
15 correct?

16 A Yes.

17 Q Okay. And so they told you the kinds of
18 identification you would need for that?

19 A Yes.

20 Q And when you went back on August 29th,
21 you were first asking them to give you that kind of
22 identification based upon the paperwork that you had
23 assembled; is that correct?

24 A Well, it was in between both because I

1 found out that you needed voter's ID too. So --

2 Q Can you explain what you mean by that.

3 A Yes. I went to -- in the first place, I
4 went to get like ID, because I had lost my ID.

5 But in the middle, it's two things now
6 I'm working on. I'm either going to get both or one.
7 But I was really contemplating on getting my
8 voter's ID after I found out that I went through
9 Froot Loops.

10 Q So you had tried to get the normal
11 PennDOT ID; and when you couldn't do that, they sent
12 you over to get the Department of State voter ID.
13 That's the voter-only ID, and that's the ID that they
14 issued to you on August 29th; is that correct?

15 A Yes.

16 MS. HICKOK: Thank you very much. I have
17 no further questions.

18 MR. WALCZAK: Nothing further,
19 Your Honor.

20 THE COURT: Are we finished with this
21 lady?

22 MR. WALCZAK: We are.

23 THE COURT: You may step down. You're
24 free to leave if you wish.

1 Please call your next witness.

2 MR. WALCZAK: Your Honor, we would like
3 to call Ana Sostra. She was not on the witness list
4 that was produced at noon on Monday. Her name was
5 transmitted to the Department of State lawyers,
6 Commonwealth lawyers, at 8:35 on Tuesday morning.

7 She has important information, and the
8 lapse in time in turning over her name and identity
9 matches the lapse in time in terms of them turning
10 over information to us about the details of the new
11 ID process. So we would ask for a little bit of
12 latitude in allowing us to call Miss Sostra.

13 THE COURT: Do you wish to be heard?

14 MR. PUTNAM: We've made our objection to
15 timeliness. This was not on the original list.

16 THE COURT: Objection sustained.

17 Please make an offer of proof.

18 MR. WALCZAK: We will make an offer --
19 Mr. Geffen will make an offer of proof.

20 MR. GEFFEN: Ms. Sostra, if she were to
21 testify, is prepared to testify about having traveled
22 from -- about having taken -- she is herself a
23 registered voter with a registered voter ID. But
24 she -- and she is a bilingual,

1 Spanish/English-speaking individual in the City of
2 Philadelphia, who is the president of a nonprofit
3 organization that has worked since the mid '90s to
4 register voters.

5 She would testify that she took a group
6 of 50 voters to a PennDOT location in Philadelphia on
7 September the 15th of this year to help them get
8 photo ID. 15 of them successfully got photo ID that
9 day; 35 did not.

10 She would also testify that in her --
11 because of her activities to help voters get photo
12 ID, she has not been able to expend the time that she
13 would otherwise have expended to register voters.
14 And as a result, as compared with 2008 when she
15 individually registered approximately 1,000
16 Spanish-speaking voters in the City of Philadelphia
17 to vote, this year she's been able to register only
18 300, given -- even though she's devoted the same
19 amount of time to working on election matters in this
20 election cycle.

21 And she would further testify that the
22 population that she's assisting consists of
23 individuals who do not speak English. Most of them
24 are from Puerto Rico, so they are native-born

1 US citizens.

2 They are typically very poor,
3 minimum-wage workers who cannot take time off work
4 during the week who could go to PennDOT offices only
5 on Saturdays, which is the day when she took them.

6 And she will also testify that at the
7 PennDOT office, there were no Spanish-speaking
8 personnel available. So she and the small number of
9 other volunteers who accompanied her spent several
10 hours running around, helping interpret and translate
11 for the 50 applicants she brought with them.

12 She would further testify that there were
13 no Spanish language application forms available at
14 the facility; that she brought her own forms; and, in
15 fact, that a PennDOT clerk asked her if she could
16 borrow some of her forms because it would be nice to
17 have them.

18 She would also testify that some of the
19 applicants, some of the 35 applicants who were unable
20 to obtain IDs that day arrived at 10:00 a.m. and left
21 without an ID at 4:00 p.m., having become frustrated
22 with the long wait and not being able to wait any
23 longer, given the demands of their jobs and their
24 family obligations.

1 THE COURT: Please call your next
2 witness.

3 - - -

4 LAKEISHA PANNELL, having first been duly
5 sworn according to law, was examined and testified as
6 follows:

7 - - -

8 DIRECT EXAMINATION

9 - - -

10 BY MS. SCHNEIDER:

11 Q You can sit down.

12 Can you please state and spell your name
13 for the record.

14 A Lakeisha, L-A-K-E-I-S-H-A, Pannell,
15 P-A-N-N-E-L-L.

16 Q Thank you.

17 Where do you live?

18 A Philadelphia, PA.

19 Q Who lives with you?

20 A My son and I, my brother.

21 Q How old is your son?

22 A Two --

23 Q And I think you need to pull the
24 microphone closer.

1 A Two and a half.

2 Q Where were you born?

3 A In the state of Pennsylvania.

4 Q How old are you?

5 A I'm 35.

6 Q And do you have your birth certificate?

7 A No.

8 Q Do you have a copy of it?

9 A Yes.

10 Q But it's not the official one; correct?

11 A Correct.

12 Q Did you grow up in Pennsylvania?

13 A Well, no, I grew up in Detroit.

14 Q Is that where you went to high school?

15 A Yes.

16 Q When did you move back to Philadelphia?

17 A 1995.

18 Q Do you have a Pennsylvania driver's

19 license?

20 A No.

21 Q Do you know how to drive?

22 A Yes.

23 Q You just don't have a license; correct?

24 A Right.

1 Q Before August of this year, did you have
2 any other ID with your photograph on it?

3 A No.

4 Q Do you have your Social Security card?

5 A No.

6 Q But do you know your Social Security
7 number?

8 A Yes.

9 Q Before August of this year, had you ever
10 tried to get a PennDOT nondriver photo ID?

11 A Yes.

12 Q How many times?

13 A A lot of times.

14 Q What happened when you tried to get a
15 PennDOT ID?

16 A They tell you you need ID -- you need the
17 Social Security card, a Social Security card to
18 obtain ID, and you need ID to obtain a Social
19 Security card.

20 Q And what about your birth certificate?
21 Would they take that too?

22 A No.

23 Q Did they tell you why they wouldn't take
24 your birth certificate?

1 A Because it wasn't a sealed -- sealed --

2 Q Did it have a raised seal?

3 A It has a raised seal, but it was a copy.

4 Q It was a copy of the official?

5 A Yes.

6 Q We're going to talk about voting.

7 Are you registered to vote?

8 A Yes.

9 Q When did you first register to vote?

10 A 2003.

11 Q And have you worked on any political
12 campaigns?

13 A Yes, I have.

14 Q Do you know where you will vote, if you
15 were to, in November?

16 A Yes.

17 Q Where would you vote?

18 A Kingessing Avenue, 49.

19 Q Are you planning to vote this November?

20 A Yes.

21 Q Why is voting important to you?

22 A I want to get my voice -- my voice and
23 it's maybe the last chance for me to vote for Obama.

24 Q Now, we're going to talk about the voter

1 ID law.

2 When did you first hear that you would
3 need a photo ID for voting?

4 A August.

5 Q How did you hear about it?

6 A Was advertised on the radio, Power 99FM.

7 Q That's -- is that a radio station in
8 Philadelphia?

9 A Yes, it's a radio station.

10 Q That's a commercial radio station; right?

11 A Yes.

12 Q And after you heard about that on the
13 radio, what did you decide to do?

14 A I got on the phone and contacted PennDOT
15 to see what type of information I needed to bring to
16 obtain an ID.

17 Q What did they tell you?

18 A They told me on the phone you need two
19 proofs of address and Social Security card.

20 Q What did you think after you heard that?

21 A I was like, Wow, I don't have none of
22 them items. Would I be able to obtain the ID if I
23 went down there? So --

24 Q Did you decide to do anything after that,

1 after you talked to PennDOT?

2 A Yes, I have.

3 Q What did you decide to do?

4 A I got up and went straight down to obtain
5 proof of address.

6 Q Let me just stop you.

7 So you decided that you were going to go
8 anyway to try to get ID?

9 A Yes.

10 Q So when was the first day that you
11 decided to go to PennDOT to try to get ID?

12 A August 29th, 2012.

13 Q Okay. And so that day, August 29th,
14 what did you decide to do? Tell me what you did that
15 day.

16 A That day I got up. I went down to the
17 gas company to obtain a printout for my proof of
18 address, because I was receiving no bill. It wasn't
19 coming to my address so that I can get a printout
20 from my bills. I went to the gas company. When I
21 went to the electric company, I got a printout of my
22 address.

23 Q So this is -- just let me stop you.

24 So you went to the gas company but you

1 could not get a copy of your bill with your address,
2 is that right, at the gas company?

3 A Right. I went to the wrong company.

4 Q So then when you went to the electric
5 company, you were able to get a printout of your bill
6 with your name and address on it?

7 A Yes.

8 Q Okay. Keep going, tell us what happened.

9 A After I obtained a copy of my residency
10 proof, I took it to PennDOT. When --

11 Q First of all, where is the gas company
12 located?

13 A The gas company is on 52nd and
14 Chestnut.

15 Q And the electric company?

16 A The electric company is on 3801 Market
17 Street.

18 Q And these are all addresses in
19 Philadelphia; right?

20 A Yes.

21 Q And where is PennDOT?

22 A 801 Arch.

23 Q How did you get to all these places?

24 A The train -- no, the trolley, the train,

1 and the bus.

2 Q And how much did it cost for you to take
3 all that public transportation?

4 A \$7 for a day pass. I took a day pass.

5 Q So you finally -- you get down to
6 PennDOT. What time did you arrive at PennDOT?

7 A 1:32.

8 Q And what happened when you got there?

9 A I was given a number -- I received a
10 piece of paper -- an application stating that you
11 have no Social Security card or birth certificate
12 application. I filled that out. After I filled that
13 out, I was given a number. After I was given a
14 number, I had to wait for about -- a couple of hours
15 until they call your name.

16 After they call your name, you go up
17 there in another line, and they look over the
18 application and you get another number and just wait.

19 Q So how long were you waiting before you
20 finally got up to a clerk that could help you?

21 A Three and a half, four hours.

22 Q Okay. So when you finally got to talk to
23 a clerk that could help you, what happened? Tell us
24 what happened then.

1 A I had my voter's registration. I took it
2 up there with --

3 Q You had a voter registration card with
4 you?

5 A Yes, I have.

6 Q When was that got?

7 A That was from back in 2003 when I first
8 applied.

9 Q Go ahead. Tell us what happened next.

10 A I had that with me with the two proofs of
11 address. I took that up to the front desk. She took
12 that information down. Whatever she did when with --
13 whatever she looked at on the paper, she made a phone
14 call. And she was talking and she came back to me,
15 she said my information that she's looking at and
16 talking to the person on the phone did not match so I
17 wouldn't able to obtain the ID.

18 But the people that was in the PennDOT --

19 Q Before you go on, did she give you
20 anything, a paper?

21 A Oh, yes. She give me a paper with a
22 number, told me to call this number, they'd be able
23 to help me out with the number. When I called that
24 number, they gave me another number to call.

1 I asked the lady: Why are they
2 advertising on this piece of paper to call this
3 number and telling me it's correct, and the number is
4 telling me to call somebody else?

5 Q So was anybody helping you at this point?

6 A Yes.

7 Q Who was helping you?

8 A The people that was in there -- they had
9 the shirts on that says "You need helping getting
10 ID," those are the people that was helping me.

11 Q Do you remember the name of anybody who
12 was helping you?

13 A Yes. LaRell and Jordan.

14 Q Now, so you get this piece of paper to
15 call a phone number. Did you personally call that
16 number or did you have help with that?

17 A I had help.

18 Q So tell us what happened. Who called the
19 number?

20 A LaRell -- I stayed there after I got out
21 my piece of paper information and go through to
22 obtain the ID; I had one of the workers helped me
23 out. She was making all these phone calls. And
24 whoever she was making the phone calls to told her

1 that I was -- I was -- I was in the computer, but
2 when I went back to the front desk, my identity was
3 not correct.

4 Q So how many times did you try to get the
5 PennDOT clerk to verify your name in their computer?

6 A On one day?

7 Q No, that day, the first time. That was
8 the first day?

9 A That was the first time. It was all day
10 too.

11 Q What happened then after you tried
12 several times to find it and then that happened?

13 A They were able to pull me up on their
14 records, whatever they was calling.

15 Q So did you leave then?

16 A About the end of the -- end of the day
17 when everything was closing down, I wasn't being
18 successful with getting the ID, then I gave up.

19 Q So that was -- so that day you left.

20 And did you have your two-year-old son
21 with you this whole time?

22 A Yes, I did.

23 Q So now I want to talk about your second
24 trip to PennDOT.

1 Tell us -- when did you go to PennDOT
2 again? Tell us what happened after that first day.

3 A After that first day I went, I wasn't
4 able to successfully get an ID. So I figured I would
5 try again the next day. So I woke up that morning.
6 The next day, the 30th.

7 Q What did you do first?

8 A I went down to -- I called the 520
9 Delaware Avenue to find out what was going on with my
10 registration card.

11 Q What's 520 Delaware Avenue?

12 A That's the Board of Voters Registration.

13 Q For the City of Philadelphia?

14 A Yes.

15 Q So you called down there. And then what
16 happened?

17 A They told me -- I asked them if I filled
18 out an application, being as though my name wasn't
19 coming up or something, if I fill out an application
20 and bring it to them, would I be able to get a
21 voter's registration that day. He told me yes, I can
22 come in, fill out the application and get one
23 on-site.

24 Q So he told you if you went down to

1 Philadelphia Voter Registration, you can register and
2 he would give you a card that day? Is that what you
3 said?

4 A Yes.

5 Q So did you do that?

6 A Yes, I did.

7 Q And what time -- how did you get down to
8 520 Delaware Avenue?

9 A I did the same thing. I got another day
10 pass and took the same trolley, train, and bus again.

11 Q And how much did that cost?

12 A \$7.

13 Q Okay. Tell us what happened when you got
14 down to voter registration.

15 A I went to the voter registration. I
16 filled out the application, and they gave me my card
17 on-site. This is what they gave me on-site.

18 I asked them was there going to be any
19 problems when I went down to PennDOT to obtain my
20 voters registration ID. They said there wouldn't be
21 any problem. I said okay. So I got back on the bus
22 and went back to -- I got down to PennDOT at
23 12 o'clock.

24 Q Slow down. Just slow down a little bit

1 so the court reporter can record your testimony.

2 So you got back to PennDOT at 11 o'clock?

3 A 12 o'clock.

4 Q 12 o'clock.

5 A Yes.

6 Q What happened when you got to PennDOT?

7 A Well, the day before the lady told me I
8 just come in, fill out the application and just go
9 right up. Don't take no number, just go right up.

10 So I did that, I take this -- this was
11 August. I went in, filled out the application again,
12 took it up there with this card and she looked it
13 over, made her phone calls, it didn't come up. I
14 was, like, What's going on? Then I -- Jordan, in the
15 license, PennDOT, and --

16 Q And Jordan was -- is he someone who was
17 helping you?

18 A Yes.

19 Q And so then what happened?

20 A He was making some phone calls with the
21 other people that he was working with, and made some
22 phone calls, did the same thing.

23 Q I'm sorry. Let me stop you.

24 Do you know if he was calling the

1 Department of State about your voter registration?

2 A Yes.

3 Q He was calling?

4 A Yes.

5 Q What were they telling Jordan?

6 A He told them he was looking at my name on
7 their screen; but at PennDOT, they couldn't see my
8 name.

9 Q So then while Jordan was on the phone
10 with the Department of State, what was the Department
11 of State telling him to do?

12 A They tell him to find a supervisor so
13 they can contact -- so they can talk to the people on
14 the phone.

15 Q And so did the supervisor take the phone
16 and talk to them?

17 A Oh, no. This is --

18 Q Why not?

19 A Because another lady intervened. I was
20 there for two days. This is my second day, my second
21 day having my son running around all day. Telling
22 him to "stop," "don't," "sit," all day.

23 So the second day when I was there, I
24 talked to the supervisor, she's in booth 11. There's

1 another lady sitting right here. She was not doing
2 none of these voter registration ID. She was working
3 on the license ID.

4 So when we was going on the other side of
5 the desk, she has nothing to do with this. The lady
6 I was talking on the phone from the Board of --

7 Q Department of State?

8 A Yes. She was on the phone, so I was
9 asking the supervisor, "Can the lady talk to you and
10 give you a number, maybe it will come up. Try that."

11 So the lady sitting over there, she said
12 she's not allowed to talk to nobody on the phone.
13 "We're not allowed."

14 "Excuse me, you didn't want to help me
15 out yesterday so I've been here for two days. This
16 is frustrating going back and forth and doing all
17 that. Trying to get this information, to come here
18 to obtain the ID.

19 So she'd been quiet. She showed up, and
20 the lady kept saying -- well, I had her on the
21 speaker.

22 Q You put her on the speaker?

23 A Yes, I did.

24 Q While she was on the speaker, did she

1 give the PennDOT employee your voter ID?

2 A She had no choice.

3 Q So she wrote down the number.

4 A Yes.

5 Q And after she wrote down the number after
6 PennDOT -- the Department of State was on the
7 speakerphone, then what happened?

8 A She typed the number in her computer, she
9 looked at my application, got back on the phone and
10 said everything was lovely.

11 Q And then did you get your ID?

12 A Yes.

13 Q Okay. And how long did this whole thing
14 take on the second day?

15 A This took until 4:30, 5 o'clock that day.

16 Q Okay. Now, did you ever find out what
17 the problem was and why they couldn't find you?

18 A Yes.

19 Q What was the problem?

20 A My name is L-A-K-E-I-S. The problem was
21 I had a space in between the A and the K. They had
22 it as L-A, space, K-E-I.

23 Q So do you think it's easy to get a free
24 photo ID for voting?

1 A No, it's not. Not Penn ID and not voting
2 purposes ID.

3 MS. SCHNEIDER: I have no further
4 questions.

5 THE COURT: You may inquire.

6 THE WITNESS: Thank you.

7 THE COURT: Hang on. Can you sit down
8 there just a moment, please. Somebody else is going
9 to ask you some questions now.

10 - - -

11 CROSS EXAMINATION

12 - - -

13 BY MS. HICKOK:

14 Q Good morning. You mentioned the fact
15 that your name is Lakeisha and you spell it all as
16 one name, without a space; is that correct?

17 A Yes, ma'am.

18 Q Do you spell your name with a space or
19 without a space?

20 A I just spelled it without the space.

21 Q And on the voter ID that you -- the voter
22 registration card that you had from 2003, was that
23 voter registration card with a space or without a
24 space?

1 A It was -- I didn't really look at my
2 name, how it was spelled on that.

3 Q Later on, did you make an application in
4 2008 or so to have your name changed on your voter
5 registration card?

6 A No.

7 Q And during that time, from 2003 until
8 now, have you moved?

9 A Yes, I have.

10 Q So the voter registration card had an
11 address that was different from your current address;
12 is that correct?

13 A Say the question again.

14 Q You said that you brought your 2003 voter
15 registration card.

16 A Uh-huh.

17 Q Which was registered to a different
18 address than the address that you're currently living
19 at; is that correct?

20 A Yes.

21 Q And after they called the Department of
22 State and the Department of State was able to find
23 the problems that occurred because the data were
24 different from -- over time, when changes had been

1 made, you were then given the Department of State
2 card; is that right?

3 A Yes.

4 MS. HICKOK: Thank you very much.

5 MS. SCHNEIDER: No further questions,
6 Your Honor.

7 THE WITNESS: That was a trick question.

8 MS. SCHNEIDER: No, that's okay. You're
9 done.

10 THE COURT: You may step down. You're
11 free to leave if you wish.

12 THE WITNESS: You got me on that one.

13 MR. WALCZAK: We are trading our next
14 witness, Your Honor.

15 THE COURT: Mr. Mazin, the two exhibits
16 that were identified today, I think they've got tags
17 on them. Could you retrieve them from the witness
18 box, please.

19 - - -

20 LaRELL PURDIE, having first been duly
21 sworn according to law, was examined and testified as
22 follows:

23 - - -

24 DIRECT EXAMINATION

1 - - -

2 BY MR. WALCZAK:

3 Q Good morning.

4 A Good morning.

5 Q Please state your name.

6 A LaRell Purdie.

7 Q Can you spell that for me.

8 A L-A-capital-R-E-L-L, last name
9 P-U-R-D-I-E.

10 Q And are you a lawyer?

11 A Yes.

12 Q Are you Barred?

13 A New York.

14 Q In New York?

15 A Yes.

16 Q Can you pull the microphone up a little
17 closer.

18 A Sure.

19 Q Who do you work for?

20 A Service Employees International Union.

21 Q Is that SEIU for short?

22 A Yes.

23 Q And where -- what is your current
24 assessment with SEIU?

1 A Currently I'm a law fellow in the
2 property services division, and I've also been
3 helping with SEIU's voter protection work in
4 Pennsylvania.

5 Q And as part of your responsibilities, are
6 you trying to help individuals get photo ID in
7 Pennsylvania?

8 A Yes.

9 Q Have you had an opportunity in the past
10 month to spend time at any driver's licensing
11 location in Philadelphia?

12 A Yes.

13 Q Which location?

14 A The Arch Street location and Oxford,
15 Levick's.

16 Q So those are two different locations?

17 A Yes.

18 Q Which one was first?

19 A The Arch Street location.

20 Q What date was that?

21 A August 28th and August 29th.

22 Q So you were there for two days?

23 A Yes.

24 Q And what was the reason for you going

1 there?

2 A We wanted to see how the voter ID process
3 was being implemented in the PennDOT location.

4 Q And were you there also to help people
5 who might need help getting the ID?

6 A Yes.

7 Q How long were you there on that --
8 August 28th?

9 A August 28th, I was probably there for
10 five or six hours.

11 Q During that time, were you able to make
12 some observations about how the system was working?

13 A Yes.

14 Q First of all, was there anything that
15 they were doing that you thought was a good thing?

16 A One thing that I noticed was that they
17 were dividing individuals into two separate lines,
18 and anyone that was there for an ID would be put into
19 one line. Anybody who was there for anything else
20 was put in a separate line to kind of speed up the
21 process.

22 Q When you say there for ID, do you mean
23 voter ID?

24 A If they said they wanted ID, they were

1 put in one line.

2 Q And so was there a -- I'm trying to
3 understand. So you're saying there's a separate line
4 for people who said they wanted voter ID?

5 A Voter ID, or they just said ID.

6 Q Okay. Were there some things that you
7 found to be problematic?

8 A Yes.

9 Q Was one of those the wait times?

10 A Yes.

11 Q Did you have a chance, over the course of
12 the five or six hours you were there, to see how long
13 people had to wait to get service?

14 A Yes.

15 Q And what was your observation?

16 A I would estimate that people waited at
17 least two hours to finally get their ID.

18 Q And what's the basis for you saying it
19 was two hours? How do you know that?

20 A I saw people when they came in, and I saw
21 people as they left.

22 Q And you noted the time?

23 A Yes.

24 Q So the wait time was about two hours on

1 that day?

2 A Yes.

3 Q Did you make any observations about the
4 type of ID that the PennDOT officials were routing
5 people to?

6 A Yes.

7 Q Can you explain that, please.

8 A When you walk into the PennDOT location,
9 there's a check-in counter. And there was a woman
10 there who would ask individuals what type of
11 documents they had with them.

12 They also had a packet for the Department
13 of State ID. And on the cover of the packet it says
14 No Social Security required, no birth certificate, no
15 proof of residency equals Department of State ID.

16 So she would ask individuals: What do
17 you have for ID? And if they were lacking any of the
18 documents to get a PennDOT driver's license, she
19 would give them the Department of State application.

20 Q And why is that a problem?

21 A Can you ask the question again. I'm
22 sorry. Why is what a problem?

23 Q Well, so how were they routing people
24 into lines? Were they -- because there was a line to

1 get the Department of State ID, and then there was a
2 line to get a PennDOT ID?

3 A Those two lines were one line.

4 Q One line. If somebody said that they
5 wanted an ID for purposes of voting and to use for
6 other reasons, what were they doing?

7 A So if someone explained that they wanted
8 ID for voting and for everything, the PennDOT
9 employees told the individual that they had to pay
10 13.50 to get the ID.

11 Q So even though people came in and would
12 say, "I want a free ID for voting," if they were
13 asked and responded, "You want it for anything else?"
14 if they said yes, they were being told they have to
15 pay?

16 A Correct.

17 Q Now, you said there was a woman there
18 from Harrisburg?

19 A There was a woman who identified herself
20 as being from Harrisburg and not normally assigned to
21 a PennDOT location.

22 Q And did she say anything that made you
23 think she was in a maybe supervisory capacity?

24 A She specifically said that she was here

1 to make sure the process was going okay and to help
2 out the employees at that PennDOT.

3 Q And were there times when she left the
4 area?

5 A Yes.

6 Q And what happened when she left the area
7 with the other clerks?

8 A The other clerks generally seemed
9 confused about the process or the type of ID that
10 someone could get. So when she left, there was a
11 little bit of confusion.

12 Q Did you work with any particular person
13 who came to apply for an ID that day?

14 A On the 28th, no.

15 Q So you came back the next day?

16 A Yes.

17 Q And was the purpose the same, to observe
18 how things were going?

19 A Yes.

20 Q And what were your observations in terms
21 of the wait time on the second day?

22 A Generally they were about the same.
23 About two hours, at least.

24 Q And on the second day, did you work with

1 a particular young lady who had applied to get an ID?

2 A Yes.

3 Q Who is that?

4 A Lakeisha Pannell.

5 Q And tell us about your work with
6 Ms. Pannell.

7 A I first saw her around -- I think around
8 11:30. And I was walking out. And when I came back,
9 she was still there, probably came back maybe
10 45 minutes.

11 And she had a paper that said Notice of
12 Exception at the top. She said that she tried to get
13 an ID, but they couldn't confirm her voter
14 registration, but she had her voter registration card
15 with her.

16 So she said that they gave her this
17 number to call. I asked her if she called. She said
18 she didn't have a phone at the time, so I called.

19 So I called the number, and I pressed
20 Option 2.

21 Q And do you know who that number was
22 calling?

23 A It's in the Department of State on
24 the --on the Notice of Exception.

1 Q It was an 800 number?

2 A Yeah.

3 Q Or 888 or some toll-free number?

4 A Yes.

5 Q So you called that. And what happened
6 when you called that number?

7 A When I called, I spoke with Carlos
8 Martinez, and he wasn't sure why I was calling. And
9 I explained, I said, I'm at PennDOT. I'm trying to
10 help someone get an ID. And we can't verify the
11 registration, so they gave us this number to call.

12 And he said that he wasn't sure why we
13 were calling, and I told him that I didn't know
14 either but just that they gave us this number.

15 And he said, well, I'm going to forward
16 you. I didn't want him to forward me. So I just
17 asked, could you verify -- could you check a person's
18 registration. And he said okay. So I gave him the
19 name.

20 Q This is for Lakeisha Pannell?

21 A For Lakeisha Pannell's name, yes. And he
22 found an old registration for her, and he also found
23 another registration for her. And he said that her
24 name was spelled with a space between the A and the

1 K, and that if there were any -- if they didn't look
2 it up like that, that they would not be able to find
3 her voter registration, so to ask the PennDOT
4 employee to look her name up with the space in her
5 name.

6 Q Did you do anything else with Ms. Pannell
7 that day?

8 A We went back to the PennDOT counter.

9 Q And did you have to wait for that?

10 A No, not that time, because the woman at
11 the counter said that after she called the number,
12 she could just come back up immediately after she
13 called.

14 Q So what happened when you went up to the
15 counter this time?

16 A So when we went back to the counter -- I
17 believe the woman's name was Linda -- she called
18 whatever number she had to call to verify Lakeisha's
19 registration. And she was speaking to someone, and
20 she asked them to look up this person's registration.
21 And she gave them the name, date of birth, and they
22 said they couldn't find it.

23 And I asked her to ask whoever she was
24 speaking with to look it up with a space between the

1 A and the K, and they still couldn't find it that
2 way.

3 When she got off the phone, she said,
4 this is the third time this has happened today, that
5 someone has come in with their voter registration
6 card and we were unable to confirm their
7 registration.

8 Q And so what happened after that?

9 A Well, after that I told Lakeisha that I
10 would -- well, let me back up.

11 The woman at the counter said that we
12 should call the Philadelphia Board of Elections. So
13 I knew that Lakeisha didn't have a phone at that
14 time. And I told her that I would call the
15 Philadelphia Board of Elections for her, and I would
16 get back in touch with her the next day.

17 So on the 30th, I called the
18 Philadelphia Board of Elections. They were able to
19 find her registration without a problem. They said
20 that if she had a problem again when they got back to
21 PennDOT, that PennDOT should call the Philadelphia
22 Board of Elections.

23 Q Did you accompany Lakeisha on the second
24 day that she went back to PennDOT?

1 A The third day?

2 Q Was that her third day or second day?

3 A I'm sorry. The 29th was her first day.
4 So the 30th would have been the second day. I
5 apologize.

6 Q Were you there on the 30th?

7 A I was not there on the 30th. I
8 spoke -- I briefly spoke with someone who was there
9 on the phone.

10 Q And you know that Ms. Pannell eventually
11 did get her ID on that second day that she tried?

12 A Yes, she did. After -- so when I spoke
13 to Carlos Martinez, I asked him for his name on the
14 29th; and then on the 30th when the person was
15 with Lakeisha and PennDOT, they called me from
16 PennDOT and said that they were having the same
17 problem.

18 So I said, let me see if I can call
19 Carlos again so that we can get this resolved. And
20 Carlos got his boss on the phone, Jessica Mathis, the
21 Chief of Elections. I don't know her title, but I
22 remember her name. And eventually they worked it out
23 at PennDOT with Jessica and everyone there.

24 Q Did -- and you mentioned you had occasion

1 to visit another PennDOT location. What one was
2 that?

3 A The Oxford-Levick PennDOT.

4 Q Is that also in Philadelphia?

5 A That's in Philadelphia, yes.

6 Q And what date was that?

7 A The 23rd of September. It was a
8 Saturday.

9 Q Was it just this past Saturday?

10 A Yes.

11 Q So would September 22nd sound right?

12 A I think so, yes.

13 Q And were you going for the same purposes
14 of observing what was going on?

15 A Yes.

16 Q What time did you get there?

17 A Around 8 o'clock. 8:00 a.m.

18 Q And how long did you stay there?

19 A Until 4:15 p.m.

20 Q And during the time you were there, were
21 you keeping track of how long people were waiting?

22 A Yes.

23 Q And do you know what the average wait
24 time was for people?

1 A About an hour and a half.

2 Q While you were there, did you have an
3 opportunity to look at what kind of literature and
4 information they had in the location?

5 A I did. I went inside. I noticed they
6 didn't have any forms on the wall for people to grab
7 under -- they have shelves, and they label them like
8 Voter ID, but there were no forms there.

9 Q And what time was this?

10 A This was around 9:45.

11 Q So it was early in the workday?

12 A Yes.

13 Q And so you said they had shelves on the
14 wall, and there was a label that said Voter ID?

15 A Voter -- voting ID or -- yes, something
16 along that line.

17 Q And you're saying there weren't any
18 documents in there?

19 A No.

20 Q It was empty?

21 A It was empty.

22 Q And so what documents did you expect to
23 be there?

24 A I expected there to be the Department of

1 State voting ID application, the affirmation, the
2 proof of residence verification form, and the PennDOT
3 nondriver's license form, application.

4 Q So those were all the applications that
5 you need in order to apply for the ID?

6 A Yes.

7 Q Did you take any action when you saw that
8 there were no forms there?

9 A I waited in line -- again, this is a
10 location that has like a check-in desk, and I -- when
11 I got to the front of the line, I asked the gentleman
12 behind the desk if they had the Department of State
13 application, the Department of State ID application.

14 And he handed me the PennDOT nondriver's
15 license application. And I said no, that's not what
16 I want, I want the Department of State application.
17 Then he handed me the affirmation. And I said that's
18 not what I want either.

19 Q The document you wanted was the most
20 basic document, the one where you actually applied
21 for the Department of State ID?

22 A Correct.

23 Q And he didn't have it?

24 A He didn't have that. He didn't -- he

1 didn't have it, and I asked him when he would get
2 some. He said he wasn't sure, and he didn't have
3 time to get any more.

4 Q So not only did they not have the
5 applications on the wall, they didn't have it behind
6 the counter?

7 A No.

8 Q And this was five days ago?

9 A Yes.

10 MR. WALCZAK: No further questions.

11 THE COURT: You may inquire.

12 - - -

13 CROSS EXAMINATION

14 - - -

15 BY MS. HICKOK:

16 Q Good morning.

17 A Good morning.

18 Q How are you doing this morning?

19 A I'm good. Thank you.

20 Q I'm glad.

21 Now, you said that on the dates when you
22 went to the different centers, that you were keeping
23 track of people and how long they were there?

24 A Yes.

1 Q How did you record that information?

2 A What was the question? I'm sorry, how
3 did I record it?

4 Q Yes. How did you record that
5 information?

6 A I just wrote notes in my notepad.

7 Q And did you write notes about everyone
8 who came in and everyone who left?

9 A Not everyone.

10 Q Okay. Do you have notes that would tell
11 you how many people came through the PennDOT office
12 that day -- or any of those three days?

13 A Of everybody that came in to PennDOT?

14 Q Yes.

15 A No.

16 Q Or everyone who applied for voter ID on
17 those days?

18 A No.

19 Q You also said that you were there on
20 August 28th and that there appeared to be a
21 supervisor who was there to make sure that everything
22 went smoothly but who left at occasional times; and
23 it appeared that there was a little bit of confusion
24 but that they had created a different line for the

1 ID. Is that correct? Is that a fair summary of your
2 testimony?

3 A Yes.

4 Q And are you aware that that was only the
5 second day that the Department of State ID had been
6 available in Pennsylvania?

7 A I believe that was the first day.

8 Q It may have even been the first day. I
9 was talking about the 29th. But on the 28th,
10 that those are the first days that the Department of
11 State ID had been available?

12 A To my knowledge, yes.

13 Q Okay. When you went up in the
14 Oxford-Levick's location to ask for a form, did you
15 explain to the gentleman that you were speaking to
16 why it was that you wanted the form?

17 A No.

18 Q So you simply said that you wanted a
19 Department of State application, and he gave you the
20 PennDOT nonphoto voter ID application; is that
21 correct?

22 A Yes.

23 Q And are you aware that at that time there
24 was a policy to try to give people the identification

1 that is more broadly applicable; and if they can't
2 get that identification, then to give them the
3 secondary Department of State application --
4 identification?

5 A Yes.

6 Q And so when he gave you that form, that
7 was consistent with that policy; is that correct?

8 A No.

9 Q If you had gone up and not identified why
10 you wanted a form and said, I want to apply for a
11 voter ID, if he gave you the PennDOT form, wouldn't
12 that be consistent with the policy that said I'm
13 going to try to get you the broader application
14 first; and if you can't do it, I'll give you the
15 narrower one?

16 A That's not what I asked him, though.

17 Q You said you asked for the voter ID
18 application.

19 A I asked for the Department of State ID
20 application.

21 Q And if the policy was to give the
22 Department of State application only if you failed
23 the Department of Transportation application, would
24 he have been obligated to give you the second one

1 first?

2 A I don't know PennDOT's policies, so I
3 don't know.

4 MS. HICKOK: Okay. Thank you very much.
5 I have no further questions.

6 MR. WALCZAK: Nothing further for this
7 witness.

8 THE COURT: Thank you. You may step
9 down. You're free to leave if you wish.

10 THE WITNESS: Thank you.

11 MR. WALCZAK: Petitioners call Preston
12 Cobb.

13 - - -

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

17 - - -

18 DIRECT EXAMINATION

19 - - -

20 BY MS. SCHNEIDER:

21 Q Good morning, Mr. Cobb. Could you please
22 state your name for the record.

23 A My name is Preston Cobb.

24 Q Thank you. Where do you live?

1 A Chester, Pennsylvania.

2 Q How long have you lived -- where exactly
3 in Chester do you live?

4 A Chester, Pennsylvania, at the Stinson
5 Towers in -- for the independent living.

6 Q Okay. That's what I was going to ask
7 you, what Stinson Towers is.

8 A It's an independent living complex.

9 Q And for what kind of people? Is it for
10 seniors?

11 A Seniors, disability, handicapped, mind.

12 Q Okay. And how old are you, Mr. Cobb?

13 A I just turned 52 the 24th of September.

14 Q Well, happy birthday.

15 THE COURT: He's also in a wheelchair.

16 MS. SCHNEIDER: We're getting there.

17 THE COURT: Okay.

18 BY MS. SCHNEIDER:

19 Q The Court is anticipating my next
20 questions.

21 Mr. Cobb, are you disabled?

22 A Yes.

23 Q What's your disability?

24 A My disability is cerebral palsy, and I

1 had that since I've been born.

2 Q And how do you get around?

3 A At this present time, in a manual
4 wheelchair.

5 Q Okay. And do you also sometimes use a
6 motorized wheelchair?

7 A Yes.

8 Q Where is your motorized wheelchair today?

9 A The motorized wheelchair that I was using
10 was in the shop. It's being repaired, and I'm
11 supposed to be getting a new one at the 1st of the
12 month.

13 Q You mean October 1st?

14 A Yes.

15 Q Do you know if you'll have your motorized
16 wheelchair back in time for the election?

17 A Yes, I will.

18 Q Okay. Let's talk about voting. Are you
19 registered to vote?

20 A Yes, ma'am.

21 Q When did you first register?

22 A Back in '78.

23 Q Okay. And how often do you vote?

24 A Practically every election.

1 Q And I forgot to ask you. How many years
2 have you lived at Stinson Towers?

3 A Be seven years in November.

4 Q Where is your polling place where you
5 vote?

6 A Chester firehouse.

7 Q Is that nearby Stinson Towers?

8 A Yes.

9 Q How do you usually get there?

10 A We have a van. And we also, I can use my
11 wheelchair.

12 Q So you use your motorized wheelchair to
13 get there?

14 A Yes, motorized wheelchair.

15 Q So generally when you vote in the
16 elections, you vote in person; is that correct?

17 A Yes.

18 Q Do you intend to vote this November?

19 A Yes, I do.

20 Q Why is voting important to you?

21 A It's very important, because to me it's
22 an opportunity for me to get out and meet some of the
23 people and actually vote and let my voice be heard.

24 Q So now we're going to talk about the

1 photo ID.

2 Do you have a photo ID, an ID with your
3 photograph on it?

4 A At this moment, yes.

5 Q And what ID is that?

6 A The Pennsylvania ID; not the voter ID,
7 but I have the Pennsylvania ID because they would not
8 give me -- the guy did not offer me the ID.

9 Q We'll get to that.

10 But before Tuesday of this week was
11 your -- you call that the state ID; right? Is that
12 what you call it?

13 A Yes.

14 Q Was your state ID current before Tuesday?

15 A No. It was --

16 Q Had it expired?

17 A It had expired.

18 Q Do you remember when it had expired?

19 A October 2011.

20 Q Okay. So do you know, was that old
21 state ID, the one that was expired, was that going to
22 be good for you to vote in November?

23 A The guy told me it was, but I --

24 actually, he said I only had a couple days on that

1 one.

2 Q So it expired October 2011, though;
3 correct?

4 A Yes.

5 Q Do you know what you would have had to
6 do -- what do you have to do to renew your state ID?

7 A Well, at the moment they told me I had to
8 bring the old one out there, and I had to actually
9 pay 13.50 to get the new ID.

10 Q Okay. So when you say "out there," do
11 you mean -- where do you mean?

12 A PennDOT.

13 Q Where is the PennDOT location near you?

14 A It's at the Granite Run Mall.

15 Q And that's in what town?

16 A Media.

17 Q That's in Media, Pennsylvania?

18 A Media, Pennsylvania.

19 Q And ordinarily, how would you get to the
20 Granite Run Mall in Media?

21 A Ordinarily, I would catch the SEPTA bus.

22 Q Do you usually use your motorized
23 wheelchair when you take SEPTA?

24 A Yes.

1 Q How much does it cost to get there on the
2 SEPTA bus?

3 A \$2.

4 Q Do you prefer using your motorized
5 wheelchair versus the manual wheelchair?

6 A Yes.

7 Q So I want to talk to you about a trip to
8 PennDOT that you made this week. Did you go to
9 PennDOT on Tuesday of this week?

10 A Yes, ma'am.

11 Q And why did you go there?

12 A To get my ID and plus I wanted to be in
13 the election to vote.

14 Q Was that the state ID that you were
15 talking about before that was expired?

16 A Yes.

17 Q You did you go there to renew it?

18 A Yes, I did.

19 Q Okay. And how did you get there?

20 A A young lady came and picked me up. We
21 arrived there at 11:20, and we were done about 2:45.

22 Q So you were there a long time?

23 A Yes.

24 Q What -- let's talk about what happened

1 when you first got there. You went inside and what
2 happened? Did you have to take a number?

3 A We had to take a number. My number was
4 164.

5 Q And you waited -- how long did you wait
6 until you -- finally your number was called?

7 A When my number was called, it was
8 about -- I'd say about two hours.

9 Q Okay. So what happened when you --
10 finally, your number was called and you went up to
11 the PennDOT clerk. Then what happened?

12 A I went to the clerk, presented my old ID
13 and stuff like that. He took it down.

14 Q What did you tell him you wanted?

15 A I told him I wanted the voter's ID. And
16 he did not present it to me. He just gave me the
17 Pennsylvania ID.

18 Q What -- you told him -- did you tell him
19 you needed the ID for voting?

20 A I needed the ID for voting.

21 Q Did the clerk tell you that you could get
22 a free ID?

23 A No.

24 Q What did he tell you?

1 A He told me I would have to pay for it,
2 the 13 -- he told me I would have to pay 13.50 still.

3 Q Did you tell him that you wouldn't be
4 able to use your ID for voting in November?

5 A Yes.

6 Q Okay. And what did he say?

7 A He said it wasn't -- it had a couple days
8 left on it. It's still valid for those couple days
9 that it would be in the election.

10 Q So he told you that you could still use
11 it in the election even though it expired
12 October 31st, 2011?

13 A Yes, he did.

14 Q Okay. So what happened then? Did you
15 pay the 13.50?

16 A Yes. I wrote out a check for 13.50 and
17 presented it to him.

18 Q How did you feel about having to pay the
19 13.50?

20 A I didn't feel too good about it because
21 of the fact that if I was going to vote in the
22 election, why couldn't I get the voter's ID? But he
23 did not present me with the voter's ID. So I feel
24 that, why should I have to pay the 13.50?

1 Should have went on and gave me my legal
2 ID, then tell me I could have voted anyway, but he
3 didn't. He made me pay the 13.50 anyhow.

4 Q Did you go to renew your ID just for the
5 purpose of voting this November?

6 A Yes; and then again, no. I need it for
7 like my banking and stuff like that too.

8 MS. SCHNEIDER: Nothing further.

9 THE COURT: You may inquire.

10 - - -

11 CROSS EXAMINATION

12 - - -

13 BY MR. CAWLEY:

14 Q Good morning, Mr. Cobb.

15 A Good morning.

16 Q I just wanted to confirm a few of the
17 details that I think you mentioned.

18 First of all, at the Stinson Towers where
19 you live, you mentioned that there's a van. Is that
20 a van owned by the facility where you live?

21 A Yes.

22 Q And in that van, residents of the
23 building get rides to various places?

24 A Yes.

1 Q You said you use SEPTA transportation?

2 A Yes, sir.

3 Q And that's something you're fairly
4 familiar with?

5 What was the exact date of your visit to
6 PennDOT that you just described?

7 A I went there on Tuesday at 11:20.

8 Q Of this week?

9 A Yes.

10 Q Tuesday this week? Okay.

11 MR. PUTNAM: Those are all the questions
12 I had. Thank you.

13 THE WITNESS: Thank you.

14 THE COURT: Anything else?

15 MS. SCHNEIDER: Yes, Your Honor, one
16 question.

17 - - -

18 REDIRECT EXAMINATION

19 - - -

20 BY MS. SCHNEIDER:

21 Q Mr. Cobb, I just want to clarify, your
22 state ID, the one that you went to renew, that
23 originally expired October 31st, 2011; is that
24 right?

1 A Yes.

2 MS. SCHNEIDER: Thank you, Your Honor.

3 THE COURT: That's it? Thank you.

4 You may call your next witness.

5 MR. WALCZAK: Your Honor, we have another
6 witness who is on the supplemental list that was
7 transmitted to the defendant's counsel at 8:35 on
8 Tuesday morning, Stephanie Singer. We would propose
9 to call her.

10 THE COURT: Do you wish to be heard?

11 MR. PUTNAM: Same objection, Your Honor,
12 to timeliness.

13 THE COURT: Sustained. Make your record.

14 MR. WALCZAK: We'll make an offer of
15 proof. Ms. Clarke will do that, Your Honor.

16 MS. CLARKE: Your Honor, Stephanie Singer
17 is the chair of the Philadelphia Commission. She has
18 a Ph.D. in mathematics, and her job immediately
19 preceding this one was in a research company. She is
20 prepared to testify about five subjects.

21 First, her efforts beginning in April and
22 up and through September to get the data from the
23 Department of Transportation so we can determine
24 exactly how many people do not have PennDOT IDs, how

1 many registered voters do not have PennDOT IDs.

2 Ms. Singer has suggested to PennDOT how
3 to do the analysis correctly. She has asked for the
4 data herself on a number of occasions. And from
5 April until today, those efforts have been rebuffed.

6 The second -- and, therefore, we still
7 today, even though she has made suggestions to find
8 out exactly how many people do not have Department of
9 Transportation IDs, we still do not have an accurate
10 number.

11 The second subject she is prepared to
12 testify are her communications with Department of
13 State about whether the Department of State intends
14 to measure the effectiveness of the education
15 campaign.

16 She will describe the difference between
17 an education campaign and measuring whether people
18 are actually receiving the information. And she is
19 prepared to testify that the Department of State has
20 confirmed with her that they will not be measuring
21 the effectiveness of their campaign.

22 The next subject she is prepared to
23 testify is her visit to the Department of
24 Transportation at 8th and Arch last Tuesday; and

1 the fact that even as of last Tuesday, there are
2 posters and there are materials that are in English
3 but not in Spanish.

4 And, finally, she is prepared to
5 authenticate the document that was received by her
6 yesterday from the Department of State. It is a
7 document that describes the SURE help desk and the
8 fact that the SURE help desk now has fewer hours than
9 it did in the past, explaining that the SURE help
10 desk has a significant increase in volume because of
11 its new responsibilities to check voter registration
12 and, therefore, that -- cautioning county elections
13 boards that there will be longer waits because of
14 this increased responsibility and fewer hours by the
15 SURE help desk.

16 THE COURT: All right. You may call
17 another witness.

18 MR. WALCZAK: Your Honor. We have two
19 individuals who were on our witness list who have
20 been unable to come. These are folks we were hoping
21 would be able to testify. They have not been able to
22 come. So we would propose to submit as exhibits
23 their declarations, which we have here.

24 THE COURT: Has opposing counsel seen

1 them?

2 MR. WALCZAK: Opposing counsel has not
3 seen them yet because we thought these folks were
4 going to testify; so we are submitting them right
5 now.

6 THE COURT: All right. Well, I'm going
7 to give him a chance to look at them first, just so
8 that he can --

9 MR. WALCZAK: So --

10 THE COURT: -- say whatever he needs to
11 say about them.

12 MR. WALCZAK: I'm sorry?

13 THE COURT: I would like him to have an
14 opportunity to read them before I receive them in
15 evidence.

16 MR. WALCZAK: I will, Your Honor, give
17 him a copy of both of these declarations and just
18 note that one of the declarations is from Benny
19 Scott, who we hoped would testify today.

20 And the next witness, Dylan Bellisle, is
21 an organizer with SEIU who has testimony about some
22 of Mr. Scott's endeavors. So it relates to
23 Mr. Scott. He was a witness to some of what was
24 going on.

1 THE COURT: I see. So this is sort of
2 prelude to the next witness?

3 MR. WALCZAK: It is, Your Honor.

4 THE COURT: All right.

5 MR. PUTNAM: Okay. Your Honor, I have no
6 additional objections apart from what was stated
7 earlier as to these declarations. Now that we have
8 copies, I can at least try to prepare my witnesses to
9 address the content. But we've stated all of our
10 points on the declarations.

11 THE COURT: All right. Like the other
12 declarations, these will be received. There are
13 things I'll be looking at.

14 May I have the names of the witnesses,
15 please.

16 MR. WALCZAK: Yes, Your Honor. The one
17 is Benny Scott. And I don't know -- would it be
18 appropriate to mark it now, or are we waiting for an
19 objection, Your Honor?

20 THE COURT: Well, I don't know that he's
21 made an objection. I've overruled his global
22 objections the receiving affidavits, and I've tried
23 to give counsel some guidance as to the types of
24 things I'm going to be considering when I evaluate

1 the affidavits for weight.

2 So if there's an objection to receiving
3 the declarations -- the global objection is overruled
4 and they will be received.

5 None of these affidavits have been given
6 an exhibit number with the exception of that Nadine
7 Marsh's.

8 MR. WALCZAK: Right.

9 THE COURT: I don't know that I need a
10 separate exhibit number for the affidavit.

11 You can hand them up now.

12 MR. WALCZAK: I think since these two
13 were not part of the submission made to the Court
14 yesterday, it's probably easier to just put them in
15 as exhibits.

16 THE COURT: Well, before you mark them,
17 you referenced two exhibits earlier today when Doris
18 Clark was testifying, 233 and 234.

19 MR. WALCZAK: Yes, Your Honor.

20 THE COURT: I only have 233. If there's
21 one -- and I have a document that I think you meant
22 to mark 234, but I don't have one that's marked. I
23 can't find one.

24 MR. WALCZAK: I don't believe we actually

1 showed the witness that exhibit.

2 THE COURT: Okay. So we're not worried
3 about 234, then --

4 MR. WALCZAK: I don't think so.

5 THE COURT: -- which is the second letter
6 from the Social Security?

7 MR. WALCZAK: Correct.

8 THE COURT: Okay.

9 MR. PUTNAM: Your Honor, if I may make
10 one point about the declarations we were just handed,
11 again, Your Honor has already ruled on objections.

12 But I just wanted to note for the record
13 that one of the witnesses is Roland Hartle,
14 H-A-R-T-L-E. And he was not on the witness list at
15 all. So I'd ask that Your Honor take that into
16 consideration when reviewing that declaration.

17 THE COURT: What's the name? Hartle.

18 MR. PUTNAM: Roland Hartle, H-A-R-T-L-E.

19 (Petitioners' 235 and 236 were
20 marked for identification.)

21 MR. WALCZAK: Your Honor, I believe he
22 was at least on the supplemental list, if not on the
23 original, but we will check that.

24 Benny Scott, who would be Exhibit 235,

1 was definitely on the original list. And I've got
2 Mr. Hartle as 236.

3 MR. PUTNAM: Actually, I will correct my
4 statement. On a revised list dated 9/25/12,
5 Mr. Hartle does appear on that list.

6 THE COURT: Are you objecting to it?

7 MR. PUTNAM: No. I just wanted to note
8 when we received this, if at all. And it appears he
9 did appear on a revised list that we received.

10 MR. WALCZAK: Plaintiffs will call Dylan
11 Bellisle.

12 MR. CAWLEY: Let me just apologize for
13 Your Honor had mentioned that we need to try to keep
14 the traffic down going in and out. We are trying to
15 get these witnesses and get them in here.

16 THE COURT: I'm getting numb to it.

17 MR. WALCZAK: Is that a good thing or a
18 bad thing?

19 MR. JONES: Good morning, Your Honor, I'm
20 Stanton Jones for the Petitioners. I was not present
21 for the first trial, so I wanted to introduce myself.

22 - - -

23 DYLAN BELLISLE, having first been duly
24 sworn according to law, was examined and testified as

1 follows:

2 - - -

3 DIRECT EXAMINATION

4 - - -

5 BY MR. JONES:

6 Q Good morning.

7 A Good morning.

8 Q Would you state your name.

9 A My name is Dylan John Franklin Bellisle.

10 Q Where do you live?

11 A I live in Chicago -- actually, I live in
12 Forest Park, Illinois.

13 Q And how old are you?

14 A I'm 28 years old.

15 Q And where do you work?

16 A I work with the Service Employees
17 International Union.

18 Q And how long have you been with them?

19 A I started on June 18th of this year.

20 Q And where were you before that?

21 A Before that I was working for the
22 Archdiocese of Chicago with the Office for Immigrant
23 Affairs.

24 Q And have you been in Pennsylvania this

1 month doing work related to voter IDs?

2 A Yeah, I have.

3 Q Where has that been?

4 A The majority of it has been in
5 Philadelphia. But I've also driven across the state
6 of Pennsylvania visiting different PennDOTs through
7 the state. In terms of the actual locations, I'm not
8 familiar with the state of Pennsylvania.

9 Q And all of this has been in September; is
10 that correct?

11 A I'm not sure when I actually arrived.

12 Q Can you describe generally the types of
13 things that you've done when you traveled to PennDOT
14 locations?

15 A Yes. When I first arrived, I was seeing
16 how the process worked, talking with folks, seeing
17 what they were there for. I've also assisted people
18 in getting identification, their ID cards. That's
19 the majority of what I've been doing.

20 Q How many different PennDOT locations have
21 you visited?

22 A I would say seven or eight.

23 Q Do you recall visiting the Columbus
24 Avenue PennDOT on September 5th?

1 A I visited Columbus Avenue. I'm fuzzy on
2 the date, but I've been there a few times.

3 Q Where is that located?

4 A Columbus Avenue. It's by a river of some
5 sort.

6 Q It's in Philadelphia?

7 A Yes, it's in Philadelphia.

8 Q When you were at the Columbus Avenue
9 PennDOT, did you meet with people who were there
10 trying to obtain IDs to vote?

11 A Yes.

12 Q How many people did you meet?

13 A I've talked with many people. I couldn't
14 give you an actual number in terms of how many at
15 that location that I met.

16 Q Were all of the people that you met with
17 at Columbus Avenue that day able to obtain an ID to
18 vote?

19 A As I said, I don't remember the specific
20 day, but I've met people from Columbus Avenue who did
21 not receive their ID.

22 Q And why weren't they able to obtain an
23 ID?

24 A One person, her name was Lula Wilson.

1 She came in with her two sisters and she had expired
2 ID from 1984, and she had one proof of residence.

3 I had on hand one of the documents that
4 PennDOT has been issuing for folks to have them sign
5 and someone that lives with them sign to verify that
6 they live at the address, because I was concerned
7 that she might not be able to get the ID.

8 When she came up to the counter, the
9 PennDOT employees said that that wasn't going to be
10 good enough, that she'd have to get another piece of
11 ID.

12 There was another individual in a similar
13 circumstance in terms of -- his name was Victor, he
14 had Asperger's, and he was accompanied by someone
15 that was part of the Big Brothers or Big Sisters
16 Program. And he had a similar issue where he had
17 only one piece of mail, so he was unable to obtain an
18 ID as well.

19 And I think those are the two that come
20 to mind at the Columbus Boulevard location.

21 Q And had those two people, Lula and
22 Victor, had they brought the other paperwork, other
23 than the two proofs of address, the other paperwork
24 needed to get an ID?

1 A Lula, she only brought the -- her
2 previous ID that expired in 1984; and one piece of
3 mail. Victor had brought a birth certificate and an
4 Social Security card.

5 Q And what were they told -- start with
6 Lula. What was she told by the people at PennDOT?

7 A She was just told that she'd have to come
8 back with another piece of mail.

9 Q And how about Victor?

10 A Victor, the same thing.

11 Q Do you recall visiting later that week
12 the PennDOT located in the Oxford Levick Shopping
13 Center?

14 A Yes.

15 Q And did you meet with voters there,
16 potential voters who were trying to obtain ID to
17 vote?

18 A Yes.

19 Q And were all of them able to obtain ID to
20 vote that day?

21 A No. I met a gentleman, his name was
22 George James, I believe; and he had just recently got
23 out of jail or prison. I couldn't get the full story
24 from him, obviously, because I just met him, so maybe

1 he didn't want to share everything.

2 And he was a registered voter, and he had
3 brought proof of residence. He had two different
4 documents, and he went to get an ID specifically for
5 voting because he had no other documents whatsoever
6 because he had been incarcerated.

7 And he was unable to obtain it. They
8 told him that he was not registered.

9 I asked him if he voted in the past and
10 he said, "Yes, I voted in the past."

11 Q And did he believe he was registered?

12 A Yeah, he believed because he voted in the
13 last election. He wasn't sure why they told him he
14 was not registered to vote.

15 Q Do you recall meeting with a man named
16 Benny Scott?

17 A Yes. Benny Scott I met at the -- I
18 forget the location. But Benny I met -- he actually
19 had a little piece of paper that had a number for him
20 to call. I guess there was something wrong with his
21 registration. And I actually called the number with
22 him. We waited for about six minutes. We didn't get
23 anything --

24 Q Do you know who you were calling?

1 A I don't really know, no.

2 Q Where had you gotten the phone number?

3 A He got the phone number from inside of
4 PennDOT. They told him to call in terms of verifying
5 his voter registration.

6 Q And were you able to reach someone?

7 A I was not, no.

8 Q So what happened then?

9 A We basically just kept in touch with him
10 and called him back. He said he had called. It took
11 him a number of times to get through to someone. He
12 went back again and they gave him some other form.

13 Like, they gave him, like, the address
14 verification form; and they had told him, with the
15 address verification form, that he needed to have
16 someone at his residence sign it and bring in two
17 pieces of their mail.

18 He told them that "I live alone."

19 And they just said, "Well, that's what
20 you need to do."

21 That is what he told me. So that's been
22 part of the process in terms of Benny.

23 Q And did you meet with Benny a second
24 time?

1 A Yes. I actually picked him up and
2 dropped him off at the PennDOT because we thought if
3 we tried again --

4 He brought in the same documents, two
5 proofs of residence. And he called me an hour later
6 saying that they told him to come back in two weeks.

7 I asked him, "What do you mean two weeks?
8 Like, why?"

9 He just said they just said come back in
10 two weeks.

11 So I brought him home. And then not
12 satisfied, brought him back to the same location.
13 And when we brought him back, I accompanied him to
14 the table or to the clerk and he was able to get the
15 ID.

16 He was a little frustrated because the
17 PennDOT employee had asked him, "Why do you have
18 these documents?"

19 And he said, "Well, you were the one that
20 gave me these documents." So he quickly processed
21 his application and he was able to get an ID that
22 day.

23 Q Do you know how many different trips
24 Mr. Scott had to take to PennDOT before he was able

1 to obtain an ID?

2 A It was at least four.

3 Q When you were visiting PennDOT locations
4 this month, did you observe how long people were
5 having to wait before they were served?

6 A It really depended on the location.
7 While I was at the Columbus Boulevard, I can say one
8 day it was packed from wall to wall. There was --
9 someone had a ticket that said their wait was going
10 to be at least an hour and 22 minutes. When I had
11 talked to them, it had already been over an hour and
12 22 minutes.

13 I actually was at another one in Venango
14 County -- I believe that's what it is, and I -- no,
15 that's not the one. It was Crawford County. And
16 I -- for me to talk to the employee, I had to wait
17 two hours and a half. And other folks were there
18 waiting the same amount of time; and there was folks
19 getting frustrated, leaving.

20 So it's been a mix of different
21 locations. And I've been in other locations, when I
22 walked in, I basically just waited a couple minutes.
23 So it really depends.

24 Q Did all of the people you observed who

1 were at PennDOT to get an ID to vote, did all of them
2 wait until their number was called in order to be
3 served?

4 A People left. I observed that, that
5 people left because it was too long.

6 Q When you visited the PennDOT locations,
7 did you also talk to employees and managers at those
8 locations?

9 A I had some conversations with employees
10 and managers, more that it was more recently helping
11 someone get their ID.

12 But, obviously, they are working, so I'm
13 not going to be trying to distract them from their
14 work.

15 Q Were the PennDOT clerks who you did talk
16 to generally knowledgeable about the documentation
17 people would need and the requirements for obtaining
18 an ID to vote?

19 A It really depended. I spoke to one man
20 who told me lots of things that I didn't even know.
21 I sat with him for a good 25 minutes and talked to
22 him, and he told me a lot of different things.

23 Just recently, this past Tuesday, I
24 brought someone, and she was having difficulties

1 getting an ID. She had brought in her record of
2 birth, but it was issued from the hospital. And they
3 said that that wasn't going to be good enough, that
4 it needed to be from the state. And she brought a
5 Social Security card, and she had two proof of
6 residence.

7 The employee told her -- asked her if she
8 was registered to vote and she said no. She said,
9 "Well, we can only issue the DOS ID, the DOS ID if
10 you're registered to vote.

11 So I was with her and accompanied her and
12 I asked, "Don't you have a process that you can look
13 up the birth certificate?"

14 And she said, like, "Oh, yeah, I know of
15 something like that."

16 And so there's a whole exchange with the
17 employee next. She says, "Yeah, I'm just following
18 this because I hadn't look at the rules. I don't
19 know really how to do this either."

20 At one point when she had done all of her
21 paperwork, she said, "Okay, now I don't know which ID
22 I'm supposed to issue you."

23 So I asked, "Is it okay if I share what
24 my experience has been?" She said that's fine.

1 I said, "Well, from my understanding,
2 folks are supposed to be issued the ID that they will
3 get as if they actually brought in a birth
4 certificate."

5 There was still confusion. I just said
6 folks that I've known, they've gotten the regular
7 PennDOT ID. I thought that it was kind of weird that
8 even up to the point of issuing the ID, they weren't
9 quite sure which one they were supposed to issue.

10 Q Did you talk to any employees at PennDOT
11 about the training that they had received in terms of
12 how to issue IDs to voters?

13 A The one man I had mentioned earlier that
14 I spoke to for a while, he had said that his
15 supervisor was out of town, so he had to do a
16 one-hour training. And he also had to train his
17 coworkers, his other employees, that were -- I guess
18 it was the assistant supervisor.

19 He was a little frustrated about that,
20 because he was still -- he said that the first time
21 you do it, it takes a really, really long time, but
22 then you start learning the process. But he didn't
23 think that an hour-long training was enough in terms
24 of understanding how to do it.

1 Q Did the PennDOT locations that you
2 visited generally have posters displayed inside
3 describing the type of IDs available to voters?

4 A It really depended on the location. I
5 know that there was one location in Venango -- that
6 was the Venango County where they had the poster that
7 talked about that you needed ID, but it didn't
8 mention anything about you can get a free voter ID or
9 an ID if you need one to vote. It just had the
10 poster that said these are the IDs that you need to
11 vote.

12 So it kind of depended on the location.

13 But there's usually some sort of poster
14 that said something about ID for voting -- which IDs
15 you need or you can get an ID here free for voting.

16 Q And did the posters always mention the
17 Department of State ID?

18 A No.

19 Q Did the PennDOT locations that you
20 visited always have current information about the
21 Department of State ID?

22 A No.

23 Q Can you tell me about that.

24 A It was very inconsistent in terms of what

1 was made available. Some would have it, some would
2 not.

3 I visited one location -- the same one
4 that I was telling you about previously, the Venango
5 County One -- where I didn't see anything. So I
6 asked an employee, "What can someone do if they don't
7 have these documents?"

8 And he said, "Well, just depends. Just
9 depends on when they came in."

10 "So what if they don't have a birth
11 certificate or Social Security card?"

12 And again, it was "just depends on the
13 situation when they come in."

14 So that wasn't made available.

15 I've been in other locations where there
16 was very little documentation available.

17 So it -- like I said, too, it just
18 depends on the location.

19 MR. JONES: No further questions.

20 (Simultaneous cross-talk.)

21 THE COURT: You may proceed.

22 - - -

23

24 CROSS EXAMINATION

1 - - -

2 BY MS. HICKOK:

3 Q Good morning.

4 A Good morning.

5 Q You said that you normally live in
6 Illinois; is that correct?

7 A Yes.

8 Q And that you have been out in
9 Pennsylvania for about a month?

10 A Correct.

11 Q And who was paying you to be in
12 Pennsylvania?

13 A Service Employees International Union.

14 Q And what are they paying you to do?

15 A What are they paying me to do?
16 Basically, from my understanding, I've been paid to
17 see how this process is working. That's basically
18 it, to see how this process is working and to
19 document if it is working or not.

20 Q And have you been a part of other
21 organizations in Illinois that have been politically
22 active?

23 A Yes, I have.

24 Q And can you tell me what those

1 organizations are.

2 A In terms of politically active, do you
3 mean like part of politics, like Republican,
4 Democrat?

5 Q No. Have you been part of MoveOn.Org?

6 A Yes.

7 Q And are there other organizations you've
8 been a part of?

9 A I did an internship at the Illinois
10 Coalition for Immigrant Refugee Rights, yeah.

11 Q And what did you do with those
12 organizations?

13 A For the Coalition for Immigrant Rights,
14 basically it was an internship to research policy,
15 help folks get out the vote in their local
16 communities.

17 In terms of MoveOn.Org, basically
18 organizing a local council in my area to educate
19 ourselves as well as local people about issues that
20 we thought were important.

21 Q And some of those issues are what?

22 A I would say currently right now the
23 things that we're focusing on are things like money
24 in politics. That's been the majority of what we've

1 been focusing on in terms of MoveOn, yeah.

2 Q And has the SEIU given you any guidelines
3 as to how you're supposed to document what you
4 observe?

5 A Yes. We had a questionnaire and things
6 that we had to fill out in terms of what we observed,
7 who we interacted with, if someone didn't get an ID
8 of some sort, obviously get their phone number, name
9 so we can follow up with them.

10 Q Have you done that documentation at each
11 place that you visited?

12 A No.

13 Q And did you review that documentation for
14 your testimony today?

15 A I haven't reviewed all the documentation
16 for the testimony today.

17 Q And I'm asking because there was a lot of
18 nonspecific information that you gave. And I'm
19 wondering if you had documentation that might have
20 refreshed your recollection more accurately.

21 You mentioned, for example, that there
22 was a person who was trying to get an ID and was not
23 registered to vote.

24 Do you have any idea about that person's

1 name?

2 A Yeah, her name was Cheryl.

3 Q Cheryl what?

4 A I don't remember her last name.

5 Q And what driver's license center was that
6 at?

7 A That was at the Columbus Boulevard.

8 Q What date was that?

9 A That was on Tuesday.

10 Q And if someone came in and was not
11 registered to vote but was asking for voter
12 identification, would that create confusion?

13 A I don't understand your question.

14 Q Well, there is an identification that is
15 specifically for a person who is going to vote.

16 A Uh-huh.

17 Q If a person is not registered to vote,
18 they can't use that identification.

19 A Okay.

20 Q So is it not understandable that a clerk
21 might be confused if someone said I'm not registered
22 to vote but I want voter identification?

23 A I don't know. I can't answer for someone
24 else's judgment.

1 Q You mentioned that Lula Wilson had come
2 in and someone named Victor, but you didn't give the
3 last name of Victor, was coming in seeking
4 identification.

5 Do you know specifically what types of
6 identification they were seeking?

7 A Lula was specifically seeking the voter
8 ID because she didn't have the other documents.

9 In terms of Victor, I think he was
10 seeking the regular PennDOT ID.

11 Q But you don't know?

12 A I'm not 100 percent sure. But I'm quite
13 sure that that's what he was -- because he had
14 brought all of his documents, his birth certificate,
15 Social Security card.

16 Q And you mentioned that George Jones had
17 just been released from incarceration.

18 A Yeah.

19 Q And that he had been registered to
20 vote -- was he registered before he went to prison?

21 A I don't know. I never asked him that
22 question. But his name was George James.

23 Q George James. Okay, thank you.

24 And do you know whether he was living at

1 a different address than he had lived when he was
2 incarcerated?

3 A Yes.

4 Q Do you know how long he had been out of
5 prison?

6 A No.

7 MS. HICKOK: I have no further questions.

8 - - -

9 REDIRECT EXAMINATION

10 - - -

11 THE COURT: Go ahead.

12 BY MR. JONES:

13 Q Okay. You were asked some questions
14 about what types of IDs different people were
15 seeking. Do you know what type of identification
16 Lula was seeking in?

17 A Yes, I said it was a voter ID.

18 Q Do you know whether or not it was the
19 PennDOT ID or the Department of State ID?

20 A Was the Department of State ID.

21 MR. JONES: Thank you.

22 THE COURT: Anything else for this
23 witness?

24 Thank you. You may step down. You're

1 free to leave.

2 MR. WALCZAK: Plaintiffs would call
3 Jessica Hockenbury.

4 - - -

5 JESSICA HOCKENBURY, having first been
6 duly sworn according to law, was examined and
7 testified as follows:

8 - - -

9 DIRECT EXAMINATION

10 - - -

11 BY MR. WALCZAK:

12 Q Good morning.

13 A Good morning.

14 Q Okay. I guess I can say good afternoon
15 now. Getting into our witching hour.

16 Can you please state and spell your name.

17 A My name is Jessica Hockenbury.

18 J-E-S-S-I-C-A, H-O-C-K-E-N-B-U-R-Y.

19 Q How old are you?

20 A I'm 19 years old.

21 Q Where do you live?

22 A I live in Pittsburgh, Pennsylvania.

23 Q And are you a high school graduate?

24 A Yes, I am.

1 Q And did you go to college?

2 A No, not yet.

3 Q Do you work?

4 A I work full-time at Dunkin' Donuts.

5 Q Is that in downtown Pittsburgh?

6 A Yes.

7 Q Did you, earlier this year, move out of
8 your parents' home?

9 A Yes, at the beginning of this year.

10 Q Where did you move?

11 A I moved in with a friend and her parents.

12 Q Where do you live?

13 A I live with my boyfriend and a roommate
14 in Wilkinsburg, Pennsylvania.

15 Q Do you have mail that you get delivered
16 to you at that address?

17 A No.

18 Q Are you a registered voter?

19 A Yeah.

20 Q When did you register to vote?

21 A Around the end of August, maybe the
22 beginning of September.

23 Q Do you plan to vote in November?

24 A Yes.

1 Q Prior to this month, did you have any
2 kind of photo ID?

3 A No.

4 Q Do you drive?

5 A No.

6 Q You've never had a PennDOT ID?

7 A No.

8 Q You're not in college?

9 A No.

10 Q At some point earlier this month did you
11 attempt to go to get a photo ID?

12 A Yes, I did.

13 Q Okay. What day was that?

14 A That was Tuesday, September 18th.

15 Q And which DMV did you go to?

16 A I went to the downtown Pittsburgh DMV.

17 Q Did you bring any documents with you?

18 A I brought my original copy of the birth
19 certificate, Social Security card, and one paystub I
20 got from work.

21 Q And is that the only proof of residency
22 you have?

23 A It is.

24 Q And did you go by yourself?

1 A Yes.

2 Q What time of day did you go?

3 A I went around 1:30 in the afternoon.

4 Q Tell us what happened when you got there.

5 A When I got there, I met Alice Thompson,
6 who was with One Pittsburgh, helping people get their
7 voters ID. I went up to her to ask her where I
8 should go, what I should do. And she brought me into
9 the DMV to try and help me get my voters ID.

10 Q What happened when you first went inside?

11 A When we went inside, I went with Alice up
12 to the front, straight ahead where you pick tickets
13 to wait in line. And there was a security guard and
14 a PennDOT employee, woman.

15 Q How did you know it was a PennDOT
16 employee?

17 A She was wearing the blue like button-down
18 uniform.

19 Alice had told them that I don't have
20 proof of residency; and if I --

21 Q Did she tell them you didn't have any or
22 just that you only had one?

23 A That I only had the one paystub.

24 So she asked them if I could have the

1 affidavit form. She had not mentioned the Department
2 of State voters ID yet.

3 Q Did you mention that you were trying to
4 get ID to vote?

5 A Yes, Alice did.

6 Q And so you were asking for the
7 verification of residency form?

8 A Yes.

9 Q And what was the response?

10 A They told me that I needed two proofs of
11 residency. They said I just need two proofs of
12 residency, nothing handwritten, business mail.

13 Q So they would not accept a verification
14 of residency?

15 A Yes.

16 Q Anything else happen in that exchange?

17 A Alice asked, well, what about the voters
18 ID affidavit for that; and the woman said: No, we're
19 not doing that anymore. We're not handing out free
20 voters IDs anymore.

21 Q This is the PennDOT clerk wearing the
22 uniform?

23 A Yes.

24 Q And she said: We're not giving out free

1 voter IDs anymore?

2 A Yes.

3 Q And did either you or Alice respond?

4 A We were pretty much just confused; and
5 Alice seemed busy, so she needed to leave.

6 Q Did the clerk say why they weren't giving
7 out the free IDs anymore?

8 A No. All she said is that a man had
9 walked in and told her that they weren't doing that
10 anymore.

11 Q And so what did you do at that point?

12 A I just asked for a regular form for a
13 regular state ID, and left.

14 Q So you went on September 18th. This is
15 last week?

16 A Yes.

17 Q And you left without an ID, and they told
18 you that they were not issuing free voter IDs
19 anymore?

20 A Yes.

21 Q Besides that, did you try again?

22 A Yes.

23 Q When did you try again?

24 A On September 20th, on a Thursday.

1 Q So that was a week ago today?

2 A Yes.

3 Q And where were you going? Same office?

4 A Same DMV.

5 Q Smithfield Street in Pittsburgh?

6 A Yes.

7 Q And what happened when you went this
8 time? Did you go by yourself?

9 A No. I met with Alice Thompson. We had
10 planned to meet and go to the DMV.

11 Q What documents did you have with you this
12 time?

13 A The same documents. My Social Security
14 card, birth certificate and the paystub.

15 Q And is your Social Security card -- I'm
16 sorry, the birth certificate an original?

17 A Yes.

18 Q Raised seal?

19 A Yes.

20 Q So did you go in by yourself first?

21 A Yes. The first visit that day I went in
22 by myself.

23 Q And what happened when you went inside?

24 A I walked up to the security guard who was

1 standing there who would hand out tickets. I asked
2 him if I could have an affidavit form.

3 He told me that he didn't -- wasn't
4 familiar with that form, he didn't know what it was,
5 and asked me what it was for.

6 I told him that it was for another person
7 to vouch for me that I live at the residence I would
8 write down on the form.

9 So he then walked away to a man at the
10 desk where people do their documents or whatever.

11 And he was a couple minutes, and he came
12 back with a very plain-looking, not-official form.

13 (Petitioners' 237 was marked for
14 identification.)

15 MR. WALCZAK: Your Honor, I'm going to
16 hand you what we've marked as Plaintiffs'
17 Exhibit 237.

18 BY MR. WALCZAK:

19 Q Ms. Hockenbury, I show you what's been
20 marked as Plaintiffs' Exhibit 237. Do you recognize
21 this?

22 A Yes, I do.

23 Q Is this, in fact, three pages in this
24 exhibit?

1 A Yes.

2 Q I want you just at this point to focus on
3 the first page.

4 Is this first page, is this the form that
5 the security guard gave you at the Smithfield
6 PennDOT?

7 A Yes, it is.

8 Q So when you asked for an affirmation
9 of -- or a verification of residency because you
10 didn't have two proof of ID, he, at first, didn't
11 know what you were talking about?

12 A Yes.

13 Q And then he went and talked to somebody?

14 A Uh-huh.

15 Q Do you know who he went and spoke with?

16 A Just like another PennDOT employee
17 sitting at a desk.

18 Q And when he came back, he handed you this
19 form?

20 A Yes.

21 Q Now, when he handed you this form, did it
22 have the handwriting on it?

23 A No. It was blank.

24 Q It was just blank. And he told you this

1 was the form you needed to fill out in order to have
2 somebody else vouch for where you live?

3 A Yes.

4 Q So what did you do after you got this
5 form?

6 A I left the building and brought it to
7 Alice, who then told me this wasn't the form I was
8 looking for.

9 Q What happened next?

10 A We spent some time talking about what
11 just happened, at a coffee shop. And then we left
12 for her office at One Pittsburgh to go get the actual
13 affidavit form we needed, which --

14 Q Let me stop you.

15 Turn to Page 2 of Exhibit 237. Is this
16 the form that Alice retrieved?

17 A Yes.

18 Q And this is the form Alice said you were
19 supposed to fill out if you didn't have two proofs of
20 residency?

21 A Yes.

22 Q So now you have both forms. What happens
23 next?

24 A After we got both forms, we went to

1 Dunkin' Donuts, where my boyfriend also works, and
2 had him sign both forms as a precaution. After he
3 signed both forms, we then went back to the DMV.

4 Q What happened when you went to the DMV?

5 A It was nearing the end of the DMV's
6 workday so the building was pretty much empty, and we
7 got our ticket.

8 The security guard, he saw us and he's
9 like, oh, you're back. Did you get the form you
10 needed? And we're like yes, we did, and we showed
11 him the form. He's like, I've never seen that
12 before.

13 Q And which is it, the second page of
14 Exhibit 237, that you showed him?

15 A Yes, the second page.

16 Q And he said he'd never seen that form
17 before?

18 A Yes. He's like, I've never seen this
19 form before. I'm just here to hand out the tickets.

20 Q Now, this is September 20th, a week
21 ago?

22 A Yes.

23 Q So what happens next?

24 A After we got our ticket, it wasn't really

1 a wait, no one was there, so we went up to the desk,
2 where we were served by a man named Tom.

3 Q What happened there?

4 A Alice told Tom that I was there for the
5 Department of State voters ID and that I did not have
6 two proofs of residency and that I had the affidavit
7 form.

8 So we gave him both forms --

9 Q So that's the first two pages of
10 Exhibit 237?

11 A Yes.

12 He handed back the first form, the one I
13 had got previously the first visit on
14 September 20th, and told me I didn't need it. That
15 wasn't the form that I needed.

16 He asked me if I had my birth certificate
17 and my Social Security card. I told him, yes. He
18 never requested to see them.

19 After -- and then he handed me the actual
20 form to fill out for the free voters ID.

21 Q Is that for the Department of State ID?

22 A Yes.

23 Q So he didn't offer you the PennDOT
24 nondriver ID?

1 A No.

2 Q Even though you had a birth certificate
3 and Social Security card and now two proofs of
4 residency?

5 A Yes.

6 Q And so what happened when you got the DOS
7 ID application?

8 A I filled out the application. And once
9 it was done being filled out, he then called someone
10 to affirm that I was registered to vote, which I was.

11 And he even -- Alice was asking, can I
12 take copies of the affidavit form, the second page,
13 and put them in with the other papers that are on the
14 wall? And he said no.

15 And she asked if she could talk to a
16 supervisor or whatever; and he admitted, he's like,
17 to be honest, I've -- I have no idea about these
18 forms. They just handed them out recently, like a
19 few hours ago, to everyone's desk.

20 Q And the form he was referring to is the
21 second page of Plaintiffs' Exhibit 237?

22 A Yes.

23 Q That's the one Alice got off the Web
24 site?

1 A Yes.

2 Q So this is September 20th, and he
3 had -- he didn't know about these forms?

4 A Yes. He had just received them at his
5 desk and he didn't know anything about them.

6 Q Did you get your ID?

7 A I did.

8 Q And so is your ID the third page of
9 Exhibit 237?

10 A Yes, it is.

11 Q Now, does -- and this is an ID that you
12 can use to vote?

13 A Yes.

14 Q Does this ID have your birthday on it?

15 A Yes.

16 Q I'm sorry. Does it have your address on
17 it?

18 A No.

19 Q So all this effort to prove your address
20 and then they don't put the address on the card?

21 A No.

22 MR. WALCZAK: I have no further
23 questions.

24 THE COURT: You may inquire.

1 - - -

2 CROSS EXAMINATION

3 - - -

4 BY MR. CAWLEY:

5 Q Hello, Ms. Hockenbury. I just have a few
6 follow-up questions for you.

7 First of all, the date when you
8 registered to vote, do you remember the exact date?

9 A I don't.

10 Q My records indicate that your
11 registration was approved on September 8th, 2012.
12 Could it have been that day or a few days before
13 that?

14 A Yes.

15 Q It sounds from your testimony that on
16 your first visit on the 18th to the PennDOT center,
17 that Alice Thompson was doing much of the speaking
18 for you; is that correct?

19 A Yes.

20 Q And Alice Thompson ahead of time had
21 looked online or somewhere else to look at forms; is
22 that correct?

23 A I'm not sure.

24 Q Did you yourself do any investigation

1 ahead of time about forms or what kind of documents
2 you would need?

3 A No.

4 Q Either before or after your trip on
5 September 18th, did you call PennDOT, a 1-800
6 number or some other number, to find out what you
7 would need?

8 A I looked online, but I never called any
9 number.

10 Q How about the Department of State; did
11 you call them and ask what you needed?

12 A No.

13 Q Was your objective on both days to get an
14 ID that you would be able to use to vote?

15 A Yes.

16 Q And it sounds like, especially on your
17 second trip on the 20th, you had some conversations
18 with a security guard; right?

19 A Yes.

20 Q And that security guard told you, "I'm
21 just the person handing out the tickets." Right?

22 A Yes.

23 Q Did you expect that that person was going
24 to be the one giving you your photo ID?

1 A No.

2 Q Were there other people who were
3 uniformed or PennDOT employees who were in charge of
4 forms and that sort of thing?

5 A Just the ones at the desks.

6 Q Just some quick questions about this
7 Exhibit 237. Do you have that in front of you?

8 A Yes, I do.

9 Q You said that when you went and
10 eventually got a signature from someone vouching for
11 the fact that you live where you live, is that
12 signature the one right here in the middle? Or is
13 there a signature that was below the text?

14 A The first signature?

15 Q On the very first page; yes.

16 A On the very first page, the first
17 signature is the person who vouched for me.

18 Q And that name is Bradley Kubecka?

19 A Yes.

20 Q And that's the signature you were
21 referring to --

22 A Yes.

23 Q -- in the middle of the page?

24 A Yes.

1 Q And my question is -- it's not a trick
2 question. I'm trying to keep it straightforward.

3 Is there anything that was below this
4 text on the form that you were given?

5 A No. This is how the form was handed to
6 me.

7 Q And the form as it was handed to you had
8 this large space at the top?

9 A Yes.

10 Q Okay. And on September 20th you
11 weren't asked for or you weren't required to show
12 documents about proof of residency or your Social
13 Security card before you receive the Department of
14 State ID; right?

15 A Right.

16 Q And that's the ID that you received?

17 A Yes.

18 Q And on the third page of the same
19 exhibit -- sorry. I'll ask you to pull that out
20 again -- it has both the front and back of that ID;
21 correct?

22 A Yes.

23 Q And it may not be clear from the
24 photocopied version, but there's a magnetic strip on

1 the top of the backside of the card; is that right?

2 A Yes.

3 Q Do you know what information is contained
4 on that magnetic strip?

5 A No.

6 Q When you registered to vote, did they ask
7 what your address was?

8 A Yes.

9 Q Do you understand that where you go to
10 vote depends on where you live?

11 A Yes.

12 Q Do you intend to take the ID that's on
13 the third page of Exhibit 237 with you in November
14 when you go to vote?

15 A Yes.

16 MR. CAWLEY: Thank you. Those are all
17 the questions I have.

18 MR. WALCZAK: Just a couple clarifying
19 questions, Your Honor.

20 - - -

21 REDIRECT EXAMINATION

22 - - -

23 BY MR. WALCZAK:

24 Q Mr. Cawley asked you whether you were

1 talking to a security guard when you went there.

2 Just to clarify on that, on your first visit on
3 September the 18th, there was a security guard
4 there; that's correct?

5 A Yes.

6 Q But you were interacting with the PennDOT
7 person that you described wearing a blue uniform with
8 a logo?

9 A Yes. The 20th it was just the security
10 guard.

11 Q The second day you visited -- the first
12 time you went in, there was just a security guard
13 there?

14 A Yes.

15 Q And that's the person who said he didn't
16 know anything about these forms; correct?

17 A Yes.

18 Q But then you observed him go and speak
19 with a PennDOT employee who was wearing a uniform?

20 A Yes.

21 Q And then he came back and gave you the
22 form that's Page 1 of Exhibit 237?

23 A Yes.

24 Q And then when you came back a third time,

1 for your third visit, in fact, that was all
2 interactions with somebody who was wearing a PennDOT
3 uniform?

4 A Yes.

5 MR. WALCZAK: No further questions.

6 THE COURT: Anything else for this
7 witness?

8 MR. CAWLEY: Nothing else from us,
9 Your Honor.

10 THE COURT: You may step down. You're
11 released. Thank you.

12 MR. WALCZAK: Plaintiffs call Alice
13 Thompson.

14 - - -

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

18 - - -

19 DIRECT EXAMINATION

20 - - -

21 BY MR. WALCZAK:

22 Q Good afternoon.

23 A Good afternoon.

24 Q Can you please state and spell your name.

1 A Alice Thompson. A-L-I-C-E,
2 T-H-O-M-P-S-O-N.

3 Q How old are you, Alice?

4 A 23.

5 Q Are you a college graduate?

6 A Yes.

7 Q When did you graduate?

8 A 2010.

9 Q From?

10 A Gates College.

11 Q Are you employed?

12 A I am.

13 Q Who do you work for now?

14 A One Pittsburgh.

15 Q What is One Pittsburgh?

16 A It's an organization that does community
17 organizing around political issues.

18 Q And are your current responsibilities to
19 help people get voter IDs so they can vote in
20 November?

21 A Yes.

22 Q And what do you do as part of those
23 responsibilities?

24 A We locate people that have said that they

1 need to get ID because they don't have valid ID to
2 vote on November 6th, and we get them to the DMV
3 and help them through the process.

4 BY MR. WALCZAK:

5 Q On September the 18th, were you helping
6 voters get ID?

7 A Yes.

8 Q Where were you doing this?

9 A We were outside the DMV on Smithfield in
10 downtown Pittsburgh.

11 Q And was this like a bigger organized
12 event or was it just you alone?

13 A No. It was an organized event.
14 One Pittsburgh AFLCIO had gotten together and were
15 working to get as many people that needed their voter
16 ID out to the DMV that day.

17 Q And so what was your specific assignment
18 on that day?

19 A I was doing everything. I was training
20 people to do voter registration. I was walking
21 people through the process of the DMV. I was
22 generally just getting things together.

23 Q Did you at some point during that day --
24 strike that.

1 Were you inside doing any observation of
2 how things were going?

3 A No.

4 Q So you were outside the location?

5 A Yes.

6 Q At some point did you encounter a woman
7 named Jessica Hockenbury?

8 A Yes.

9 Q Now, have you taken the time to
10 familiarize yourself with the voter ID process?

11 A Yes.

12 Q And you're familiar with the different
13 types of ID that you can get?

14 A Yes.

15 Q And you're familiar with the
16 documentation required for each of those IDs?

17 A Up until Tuesday, I definitely knew.

18 Q Tell me what happened with Jessica
19 Hockenbury. About what time was this?

20 A This was around -- it was around -- it
21 was after 2:00 p.m. in the afternoon; it was the
22 18th. Jessica approached me and --

23 Q Do you know how she knew to approach you?

24 A Because I was helping people throughout

1 the entire day, so people were coming up and talking
2 to me. I was behind a table doing voter
3 registration.

4 So she came up to me and she asked me
5 if -- she said that she had been told to come to the
6 DMV, that we would be there and that we would help
7 her get her ID in order to be able to vote.

8 And she said that she had her original
9 birth certificate and her original Social Security
10 card, but she did not have two proofs of residence;
11 she just had one.

12 Q And so what did you do next?

13 A So I took Jessica inside. And we
14 approached a woman who was a PennDOT worker. She was
15 wearing a PennDOT uniform, and she was distributing
16 numbers to people as they came in.

17 And I said -- I asked her whether -- in
18 order to get the State ID, not the Department of
19 State ID, but the actual PA State ID for free --

20 Q So you were asking about the PennDOT ID?

21 A The PennDOT ID, yes.

22 I said, "Does Jessica need two proofs of
23 residency, or can she use the proof of residency
24 affidavit?"

1 And she said -- the woman that was
2 sitting there and the security guard was also there.
3 And they said, "You need two proofs of residency.
4 You need two proofs of residency."

5 That was the end of that conversation.

6 Q So they said you're not allowed to
7 substitute a verification or an affirmation from
8 somebody else for one of the two proofs of residency?

9 A Right.

10 Q Is there any doubt in your mind that
11 that's what they were saying?

12 A No.

13 Q What happened next?

14 A Then I said, "Well, okay. So what about
15 for the Department of State ID?"

16 Q Is that the language you used?

17 A Yes.

18 Q So you know your IDs here?

19 A Yeah. I was very clear. And they said,
20 "Oh, we're not doing that anymore."

21 Q We're not doing what?

22 A The implication was that they were no
23 longer issuing the Department of State free voter ID.

24 Q And which person said this that you were

1 talking to?

2 A The PennDOT worker that was sitting in
3 the chair by the numbers, distributing them.

4 Q So -- and this is September 18th?

5 A September 18th.

6 Q And did you question her about why she
7 said that or why they're not issuing free IDs?

8 A Yeah. I said, "Where did you hear that
9 you're no longer issuing these?"

10 And she said, "Oh, a guy just came in and
11 told us."

12 Q Did she say who the guy was?

13 A Just a guy.

14 Q Did you ask?

15 A I said, "What guy?"

16 She said, "A guy."

17 Q So you were not able to get an
18 application for a Department of State ID?

19 A No.

20 Q And what did you do next?

21 A I said -- I left Jessica. I said,
22 "Jessica, are you okay here? I need to go out and
23 figure out what's going on."

24 Q You had other responsibilities?

1 A Yeah. I was outside. Yeah.

2 Q So you left Jessica alone. Do you know
3 what happened with Jessica?

4 A She left. I know that she asked for a
5 State -- a form for the PennDOT ID and then left.

6 Q Did you meet up with Jessica again at
7 some point in the next two days?

8 A Yes, I met up with Jessica again on the
9 20th.

10 Q So that's a week ago today?

11 A Yes.

12 Q And where did you meet her?

13 A We met at her work at Dunkin' Donuts.

14 Q Is that close to the Smithfield Street
15 DMV?

16 A Yeah. It's like a 10-minute walk.

17 Q And did you then walk over to the DMV?

18 A Uh-huh.

19 Q And what was the purpose of that visit?

20 A To get her ID, to get a free voter ID.

21 Q So she wanted this ID to vote?

22 A Yes.

23 Q What documents did she have with her this
24 time?

1 A She had her original birth certificate
2 and her original Social Security card, and she had
3 one piece of mail.

4 Q So she had the same IDs she had two days
5 before?

6 A Yes.

7 Q And when you got to the DMV, what
8 happened?

9 A Jessica went in by herself because we had
10 determined that she needed to get a proof of
11 residency verification form. And so she went in and
12 asked for it. And they gave her a form that is not
13 the form that, in my experience, is what could be
14 used for the free voter -- Department of State ID.

15 Q If you could take a look at what's been
16 marked as Plaintiffs' Exhibit 237. The first page of
17 that, is that the form Jessica came out with?

18 A Yeah.

19 Q When Jessica came out, was there any
20 handwriting on it?

21 A No. This was -- we filled this out later
22 when we got her boyfriend to fill out both forms.

23 Q Now, I note that it looks like the text
24 starts two-thirds of the way down the page. Is that

1 because it was poorly photocopied, or is this the way
2 she got the form?

3 A Sorry. Do you mean like -- this is what
4 it looked like. It was copied as such.

5 Q Was there something below that --

6 A No.

7 Q -- that must be cut?

8 A No.

9 Q That's the bottom of the form?

10 A Yes. It looked exactly like this.

11 Q It doesn't look professional.

12 A It looks like I made it at my computer at
13 home.

14 Q And this isn't a form you'd ever seen?

15 A No.

16 Q Now, if you could turn to the second page
17 of Plaintiffs' Exhibit 237, do you recognize that
18 document?

19 A Yes.

20 Q And what is that document?

21 A This is the proof of residence
22 verification that Jessica needed in order to get her
23 free Department of State voter ID.

24 Q And, to your knowledge, is this the form

1 that she should have been given?

2 A Yes.

3 Q And is this the form that's available on
4 the Department of State Web site?

5 A Yes.

6 Q So after Jessica came out with the form
7 that's the first page of Exhibit 237, what did you
8 do?

9 A We went and got coffee and wrote down
10 everything that had happened, and then we both went
11 back to the DMV. She waited outside, and I went in
12 to get this form.

13 Q "This form" being the second page of
14 Exhibit 237?

15 A The second page of Exhibit 237.

16 Q You wanted to get the form that, to your
17 knowledge, is necessary to provide the alternative
18 proof of residency?

19 A Yes.

20 Q And did you go in by yourself?

21 A Yes.

22 Q And what happened when you went inside?

23 A There was a gentleman that was
24 distributing numbers. He also was wearing a PennDOT

1 uniform.

2 And I said, "I need the proof of
3 residence verification form for the Department of
4 State voter ID."

5 And he said, Well -- and the reason that
6 I said -- I said because my friend Jessica doesn't
7 have two proofs of residence, and so we need to get
8 it for her.

9 He said, "She doesn't need that."

10 Q She doesn't need what?

11 A She doesn't need the proof of residence
12 in order to get the Department of State ID, because
13 he said that they don't put your address on the
14 Department of State ID.

15 Q And did you dispute that with him?

16 A Yeah. I said, "I mean no disrespect, but
17 I know that she needs this form." It looks -- I
18 said, "There's one section on top where she signs and
19 puts down her address, and there's another section on
20 the bottom. And the person that she lives with signs
21 there and puts the address down."

22 He said, "Well, you can talk with
23 somebody else, even though I should be the person
24 that you're talking to."

1 And he handed me a number.

2 Q And did you wait in line?

3 A No.

4 Q And do you know how long the line was?

5 A Like half an hour.

6 Q But you didn't wait?

7 A No.

8 Q So he didn't give you the proof of
9 residence verification form?

10 A No.

11 Q Because he said that your friend didn't
12 need it.

13 So what did you do next?

14 A We went back to the One Pittsburgh
15 office, my office. We drove there, took about half
16 an hour.

17 And we picked up this form, because I
18 knew that she needed it.

19 Q "This form" being the second page of 237?

20 A Sorry. Second page of Exhibit 237.

21 And then we went to her -- we met up with
22 her boyfriend, and he filled out both the first page
23 of Exhibit 237 and the second page of Exhibit 237.

24 And then we went back to the DMV.

1 Q About what time was this when you got
2 back to the DMV?

3 A This was around 3:30, 3:45.

4 Q Did you now both go inside this time?

5 A Yes.

6 Q What happened when you went inside?

7 A Jessica approached -- there was just a
8 security guard standing and distributing numbers this
9 time.

10 And Jessica said, "I'm here to get the
11 free Department of State voter ID."

12 And he said, "Did you get that form you
13 needed?"

14 And we said, "Yeah." Like took us a
15 while.

16 He was like, "I don't know what that is.
17 I just give out the numbers."

18 Q So did she show him the form?

19 A Yeah.

20 Q And which form did she show him?

21 A The Department -- Page 2 of Exhibit 237.

22 Q So she didn't show him the first page of
23 237 --

24 A No.

1 Q -- the one that his office had given
2 them?

3 A Correct.

4 Q She showed him the second form that's
5 supposed to be used?

6 A Right.

7 Q And I'm sorry. He said what?

8 A And he said, "I don't know what that is.
9 I just give out the numbers."

10 Q And so what happened next?

11 A Then we got a number, and we went
12 straight up to the desk. There was really no line.

13 Q This is close to the end of the day?

14 A Yes. It was about to close. And we went
15 up to the desk. And there's a gentleman named Tom,
16 and he was sitting there.

17 And he -- I said, "Jessica is here to get
18 her Department of State free voter ID."

19 And he said, "Well, what documentation
20 does she have? And does she have a copy of her
21 Social Security card and birth certificate?"

22 She said, "No. I have the original of my
23 birth certificate and a Social Security card."

24 And he said, "Do you have two proofs of

1 residence?"

2 She said, "I have one piece of mail."

3 And then she handed him both the first page of
4 Exhibit 237 and the second page of Exhibit 237 which
5 had been filled out by her boyfriend, who she lives
6 with.

7 Q And what was Tom's response?

8 A Tom handed back the first page of
9 Exhibit 237 and said, "You don't need this."

10 Q That was the form that this office had,
11 in fact, given her two days earlier -- or earlier
12 that day?

13 A Earlier that day.

14 Q And he said, "You don't need this." And
15 then what happened?

16 A And then he said, "Well, you're eligible
17 for the Department of State voter ID." And he got
18 out a form for her to fill out with all of her
19 address, Social Security number and then sign it.

20 And then he called whoever he calls and
21 verified that she was registered to vote, and she
22 was. And so he gave her the form -- or something.
23 He gave her like a number or something to go over to
24 the photo section of the DMV.

1 Q Now, did, to your knowledge, as you know
2 the process, did Jessica not have the documents that
3 would be required from secure nondriver PennDOT ID?

4 A To my knowledge, this is really why I
5 went in on the first day. I didn't know if she could
6 use the proof of residence verification form to get
7 the free PennDOT ID. And so that was really my
8 question; and nobody really could answer that.

9 And now I still am unclear about it --
10 well, now I know, since this Tuesday, that you don't
11 even need any proof of residency.

12 Q Did anything else happen -- did you have
13 any further interaction with Tom or anybody else at
14 the DMV on the afternoon of September 20th?

15 A Yes. I asked Tom if I could put a few
16 copies of the proof of residence verification form --

17 Q So that's the Page 2 of 237?

18 A Page 2 of Exhibit 237.

19 Q Why did you do that?

20 A Because I had previously looked through
21 the rack of all the forms that they had available in
22 the main seating area and this form wasn't there at
23 all.

24 Q So the form wasn't available anywhere in

1 that office to the public?

2 A And nobody knew about it.

3 Q Were there other forms available on voter
4 ID?

5 A There was -- the -- there were other
6 forms available. I don't know which ones.

7 Q Do you remember if they had a two-page
8 Department of State ID FAQ out there?

9 A I don't remember.

10 Q And so when you asked Tom if you can put
11 some of these forms out, what did he say?

12 A He said, "You can't put those forms out."

13 And I said, "Well, can I request that
14 somebody else does?"

15 And he said, "Well, that's the right
16 question and you have to talk to my supervisor.

17 Q Did you do that?

18 A I did. I approached the supervisor in
19 his office and said, "I'm concerned because this
20 proof of residence verification form isn't out where
21 all the other forms are. And when I came in earlier
22 and asked about it, nobody knew what I was talking
23 about."

24 And he said, "Well, they know about this

1 form because I just handed it out today.

2 Q And this being Page 2 of the 237?

3 A Yeah.

4 Q And what happened next?

5 A And then I said, "I came in and asked for
6 it and they didn't know about it. And Jessica
7 actually was here before me and they didn't know
8 about it either. They gave her the wrong form. So I
9 just want to make sure that people know this is
10 available and that this is something that they can
11 use."

12 And he said, "Well, it's not really your
13 job to tell me what is and isn't available." And he
14 said, "You know what, you're right, I'll just make
15 100 copies of these right now and put them out in
16 the -- where the other forms are."

17 Q So this was a week ago?

18 A This was a week ago.

19 Q Now, prior to September 18th, did you
20 have occasion to visit a different driver licensing
21 center?

22 A Yeah, I went to the DMV in Bridgeville on
23 September 18.

24 Q Where is Bridgeville?

1 A It's south of Pittsburgh about
2 20 minutes.

3 Q I think we're all realizing what a big
4 state it is, because people aren't familiar with
5 areas outside of where they happen to live.

6 This is just south of Pittsburgh. And
7 why did you go there?

8 A It was part of a study that Pittsburgh
9 was doing. A few of us went to different DMVs and
10 went in to ask about the voter ID.

11 Q And what did you observe when you went to
12 the Bridgeville DMV on September 14th?

13 A When I asked what it would cost somebody
14 to get their -- an ID --

15 Q I'm sorry. Who are you asking?

16 A So I go in, and there's -- you know, the
17 number machine that you -- that they dispense --
18 there's no one sitting there. And there's a guy
19 behind the desk, and I said --

20 Q I'm sorry. Is that a PennDOT employee?

21 A That is a PennDOT employee, yes.

22 Q How do you know?

23 A Because he's wearing a uniform.

24 And he says, "Well, do you have your

1 Pennsylvania driver's license?" and I said "Yeah."

2 He said, "You're fine."

3 And I said, "Well, okay, but I'm here
4 actually because I want to learn about the ID for
5 some friend of mine, because I know a ton of people
6 that are having trouble getting their IDs, and
7 they're either at work or they have other things that
8 they need to be doing. And I can be there and ask
9 these questions."

10 And so he said, "Okay. So what do you
11 need to know?"

12 And I said, "Well, my friend doesn't have
13 a birth certificate or a Social Security card, and
14 he's from Colorado originally, and he had an Indiana
15 driver's license, but I don't know if he has it now."

16 And they said, "He has to transfer his
17 out-of-state license and it's going to cost 13.50,
18 and he has to have his birth certificate and Social
19 Security card."

20 Q And were you asking whether he can get a
21 voting card?

22 A Yes.

23 Q And they told you that they couldn't, he
24 had to pay 13.50?

1 A Yes.

2 Then I asked him multiple times if they
3 were absolutely going to charge for the PennDOT ID in
4 order to be able to vote.

5 And he said, "Yes, yes, it's 13.50. It's
6 13.50." And then the last time I asked, he said,
7 "We'll see."

8 Q While you were there, did somebody come
9 in asking about getting a ID?

10 A Yeah.

11 Q Tell us about that.

12 A Yeah. A gentleman came in and said that
13 he was there to ask about getting voter ID for his
14 son, who is autistic, and said that he wanted to see
15 what the process was.

16 And he asked a woman behind the desk,
17 like, "What do I need to get my son his ID?"

18 And she said, "He needs his birth
19 certificate, his Social Security card."

20 And the guy said, "What is it going to
21 cost me?"

22 And she said, "13.50." And then he left.

23 Q Anything else notable happen during that
24 visit to Bridgeville?

1 A No.

2 MR. WALCZAK: Thank you, I have no
3 further questions.

4 - - -

5 CROSS EXAMINATION

6 - - -

7 BY MR. CAWLEY:

8 Q Ms. Thomas, very briefly, on
9 September 18th, could you give me the name of the
10 woman you spoke to -- well, the main PennDOT person
11 you spoke to on that date?

12 A I can't give you her name. I know
13 exactly what she looks like, though.

14 Q Unless you're very good at descriptions,
15 for the record, that may not help us.

16 A I'm pretty --

17 Q Did you have a name of anybody from that
18 day to whom you spoke at PennDOT?

19 A From the 18th?

20 Q From the 18th.

21 A No names.

22 Q You said you spoke to a supervisor at
23 PennDOT. This is the Smithfield location --

24 A Yes.

1 Q -- on the 20th.

2 Do you have the supervisor's name?

3 A Dana -- I don't remember his last name.

4 Q It was a man?

5 A It was a man, middle-aged African
6 American.

7 Q Finally, do you have the name of the
8 person to whom you spoke at Bridgeville?

9 A I do not.

10 Q Okay. And ultimately, Jessica Hockenbury
11 got the DOS ID voter ID?

12 A Yes, after three trips to the DMV.

13 Q And they ended up not requiring all of
14 the documents that they initially said that they were
15 going to require?

16 A I'm sorry. Can you repeat the question.

17 Q Yes. When she came back with documents
18 that she thought were going to be required, you're
19 saying that they didn't actually require the
20 documents they initially said they would?

21 A They required documents that they did not
22 give her.

23 MR. CAWLEY: Okay. Those are all the
24 questions I have. Thanks.

1 MR. WALCZAK: We have nothing further,
2 Your Honor.

3 THE COURT: You may step down.

4 MR. GEFFEN: Petitioners would now like
5 to call Slava Lipowicz.

6 - - -

7 SLAVA LIPOWICZ, having first been duly
8 sworn according to law, was examined and testified as
9 follows:

10 - - -

11 DIRECT EXAMINATION

12 - - -

13 BY MR. GEFFEN:

14 Q Would you please state your name.

15 A Slava Lipowicz.

16 Q I've already spelled it for the court
17 reporter. Where do you live?

18 A Philadelphia.

19 Q You recently helped someone get a voter
20 ID; is that right?

21 A Yes.

22 Q Who is that?

23 A My mother.

24 Q And what is your mother's name?

1 A Eugenia Zwier.

2 Q Why didn't your mother do it on her own?

3 A My mother is 87 years old, in a
4 wheelchair, and her English is limited.

5 Q What's her native language?

6 A Ukranian.

7 Q Are you bilingual in Ukranian and
8 English?

9 A Yes.

10 Q Did those limitations that you just
11 described also restrict your mother from coming here
12 today to testify?

13 A Yes.

14 Q How long has your mother been voting?

15 A Since she became a citizen in the early
16 '60s.

17 Q Is she currently registered to vote?

18 A Yes.

19 Q Does your mother vote absentee or does
20 she do it in person?

21 A In person.

22 Q And do you know how she gets to her
23 polling place?

24 A I take her.

1 Q It is a wheelchair accessible location?

2 A It is.

3 Q If your mother were asked to sign a
4 affidavit to vote absentee, swearing that she's
5 unable physically to get to her polling place, would
6 she be able to sign an affidavit like that?

7 A She can read and write English.

8 Q But would she be able to swear that she's
9 physically unable to get to the polling place?

10 A Yes.

11 Q Even with your help?

12 A With my --

13 THE COURT: I got the picture.

14 MR. GEFFEN: Okay.

15 THE COURT: I think she's a little
16 confused there.

17 MR. GEFFEN: My apologies.

18 BY MR. GEFFEN:

19 Q Do you know how your mother learned that
20 she would need a photo ID to vote?

21 A I told her.

22 Q And did she have any photo ID at that
23 time?

24 A No.

1 Q So what did you do to try to help her get
2 a photo ID?

3 A I took her to what I thought was the DMV,
4 and I went inside. I got an application for what I
5 thought was a photo ID voter registration form.

6 Q If I can stop you for a moment.
7 Where is this place that you went?

8 A It's in northeast Philadelphia on
9 Bustleton Avenue.

10 Q Is it a PennDOT center?

11 A Yes.

12 Q There's a sign on it that says PennDOT?

13 A Yes.

14 Q What specifically did you ask the person
15 for when you went in?

16 A I was in line and the guard came over to
17 ask me what I wanted, to help me. I told him I
18 wanted a voter ID registration form and he mistook
19 that for a photo registration form; and that's what
20 they gave me.

21 Q Do you remember what date that was?

22 A It's a little after Labor Day,
23 September 4th.

24 Q Okay. Did the guard tell you that you

1 couldn't get a voter ID at that location?

2 A No, they just gave me the form.

3 Q So did you come back to that facility?

4 A I decided that I would abandon the idea
5 for that day and come back next week. So I came back
6 on 9/11 and I had downloaded the forms by that time.

7 Q Did you take your mother there?

8 A I did.

9 Q And did you go to your mother's house
10 first to help her prepare?

11 A I first had to drive there so we could
12 fill out the forms and get all the documentation.

13 Q And what sort of documentation did you
14 collect?

15 A Naturalization papers, a Social Security
16 card, we needed that, and your two forms of proof of
17 residence.

18 Q And then you went back to the Bustleton
19 Avenue PennDOT location?

20 A We filled out the form and went back to
21 Bustleton Avenue.

22 Q And were you able to get an ID at that
23 location?

24 A They came over to tell me that I had to

1 go to a full-service voter ID place.

2 Q Where did you go next?

3 A Huntington Valley. It's a bigger office.

4 Q How long did it take you to get there?

5 A It's about a half-hour ride from the
6 Bustleton Avenue location.

7 Q When you arrived there, first, I guess,
8 you had to -- did you have to help your mother get
9 into the building?

10 A Well, I usually avoid too much moving or
11 back and forth. I went first by myself, waited in
12 line to ask my questions about that was the right
13 place or whether the documentation I had was enough,
14 and then when they told me yes, then I went to get
15 her.

16 Q So she was waiting in the car?

17 A She was waiting in the car.

18 Q Did you have to help her into the
19 wheelchair?

20 A Put her in the wheelchair, brought her
21 in. They don't have the doors that slide open by
22 themselves and nobody helped us, so we have to, like,
23 maneuver ourselves in.

24 Q How long did you end up spending in the

1 Huntington Valley PennDOT center?

2 A Well, it took about another 20 minutes to
3 go back to that man who helped me in the first place,
4 and then he went through the documentation. That
5 took about 10, 15 minutes. And then he said
6 everything was in order, and we would be coming up
7 for a picture. But that didn't happen for at least
8 45 minutes. So we waited for her picture to be
9 taken.

10 Q Did she eventually receive a photo ID?

11 A She had a temporary, but they mailed her
12 a permanent one within 10 days.

13 Q At that Huntington PennDOT center, were
14 there any applications or forms available in the
15 Ukranian language?

16 A No.

17 Q How long all together did you and your
18 mother spend working to get a photo ID for voting?

19 A Well, that day I talked to my mother and
20 she said that I made a special trip that day because
21 I usually take her the day before to do all her
22 shopping. Because I thought it would take a while.
23 We spent from -- I left the house at 10:00, and I
24 brought her back at 4:00.

1 Q Okay. Would your mother have been able
2 to go through all those steps on her own?

3 A No.

4 Q Is voting important to your mother?

5 A Very important to my mother.

6 Q How do you know that?

7 A My mother was born in Ukraine under the
8 Communists, so she had no -- she was too young
9 anyway -- but she doesn't know freedom from there.
10 Then she was taken to Germany by the Nazis, and she
11 had no freedom there.

12 So when she came to this country, she all
13 of a sudden had a voice and a chance to vote and to
14 become a citizen.

15 And every Thanksgiving, when we go around
16 the table for what we're grateful for, she'll sing
17 God bless America and say it's the best country on
18 Earth. So she always votes.

19 MR. GEFFEN: Thank you. I have no more
20 questions.

21 THE COURT: You may respond.

22 MR. CAWLEY: We have no questions of this
23 witness.

24 THE COURT: Thank you. You may step

1 down.

2 MS. CLARKE: Petitioners call Dan Curry.

3 THE COURT: This will probably be the
4 last witness.

5 MR. RUBIN: One housekeeping matter while
6 the witness is being retrieved. After court on
7 Tuesday, Mr. Cawley produced to us as requested a
8 copy of the training materials that were sent out and
9 were referenced during testimony on Tuesday.

10 And I'd like to offer those into
11 evidence, and we have a copy for Mr. Cawley.

12 MR. CAWLEY: No objection.

13 MR. RUBIN: What's the next --

14 THE COURT: 237 was the last document?

15 MR. RUBIN: 238.

16 (Petitioners' 238 was marked for
17 identification.)

18 MR. GEFFEN: Your Honor, if I may.
19 Following this witness, there's another individual
20 that the Petitioners would like to call as a witness.
21 I understand we're under time constraint. But would
22 Your Honor accept a offer of proof for that witness?

23 THE COURT: I will. Let's see how -- I
24 hate to have somebody hang around, but I need to give

1 the Respondents some opportunity to make a record as
2 well. I don't know how much time they're going to
3 need. So we may have time at the end of the day. I
4 don't know.

5 - - -

6 DANIEL CURRY, having first been duly
7 sworn according to law, was examined and testified as
8 follows:

9 - - -

10 DIRECT EXAMINATION

11 - - -

12 BY MS. SCHNEIDER:

13 Q Good afternoon. Can you please state
14 your name for the record.

15 A Daniel Curry.

16 Q Spell your last name.

17 A Curry, C-U-R-R-Y.

18 Q Where do you live?

19 A I live in Washington, D.C.

20 Q Where do you work?

21 A I work at the Service Employees
22 International Union.

23 Q Is that also known as SEIU?

24 A Yes.

1 Q What do you do there?

2 A I'm a law clerk.

3 Q Are you in law school?

4 A Yes, I am.

5 Q Where do you go to law school?

6 A Georgetown Law School.

7 Q And when are you going to graduate?

8 A I'm graduating this May.

9 Q Have you had an opportunity to work at
10 voters ID centers at SEIU?

11 A Yes, I have.

12 Q Have you worked on the voter ID issues in
13 Pennsylvania?

14 A Yes.

15 Q What activities have you been involved in
16 regarding voter ID in Pennsylvania?

17 A This past Saturday, September 22nd, I
18 was at the Oxford Levick PennDOT in Philadelphia.

19 Q What were you doing at that PennDOT
20 location?

21 A I was assisting voters get voter ID and
22 photo ID.

23 Q Is that the location in the northeast
24 section of Philadelphia, as far as you know?

1 A Yes.

2 Q Were there other people from SEIU at that
3 location, too, at the same time you were there?

4 A Yes, there were.

5 Q Were any other organizations helping
6 voters at that location on September 22nd?

7 A Yes, the AFLCIO was there too.

8 Q Okay. So let's talk about your
9 experience there. Were you there all day?

10 A Yes, I was.

11 Q So what time did you get there?

12 A 8:00 a.m.

13 Q And what time did you leave?

14 A About 4:37.

15 Q During the time that you were there, did
16 you meet a voter named Brenda Andrews?

17 A Yes, I did.

18 Q Tell me about Brenda. Why was Brenda at
19 PennDOT that day?

20 A She was there to renew an expired license
21 because she needed it to vote.

22 Q Was it a driver's license?

23 A No, it was not a license. I apologize.
24 It was a nondriver identification card.

1 Q What date had her nondriver ID expired;
2 do you remember?

3 A It expired September 30th, 2011.

4 Q And why did she want to renew her
5 nondriver photo ID?

6 A Because she wanted to be able to vote in
7 this election.

8 Q Okay. So what happened when you first
9 met Brenda?

10 A She was upset because she had to pay to
11 get the new ID even though it was for voting.

12 Q Had she already gone inside?

13 A Yes, she had already gone inside and
14 gotten a new ID. And then she came outside and saw
15 me and approached me and told me that she was upset,
16 that she didn't believe she should have had to pay
17 for the ID.

18 Q So what did you do next after you found
19 out that she had to pay 13.50 for her ID?

20 A We went back inside to PennDOT to speak
21 with the person who had handled her new ID.

22 Q Both you and Brenda went back inside?

23 A That's correct.

24 Q And so what happened in that interaction?

1 Tell us what happened.

2 A We asked the man why she had to pay 13.50
3 even though she was getting the identification for
4 voting purposes.

5 Q What did he say?

6 A He said that the identification had to be
7 expired for over a year for it to be free, and hers
8 didn't -- wouldn't -- wasn't over a year until
9 September 30th. So he said to -- she should come
10 back in a week.

11 Q How many times did he tell her to come
12 back in a week?

13 A He kept repeating that. Come back in a
14 week. Come back in a week.

15 Q And if she came back in a week, what
16 would be different?

17 A I guess it would have -- the license --
18 the identification would have been expired for over a
19 year by then.

20 Q And would he have charged her the 13.50
21 at that time?

22 A He said he would not.

23 Q And do you remember the name of the clerk
24 that you discussed this with?

1 A No. He was a white man with a mustache
2 is what I recall.

3 Q When you were discussing this with the
4 clerk at PennDOT, did Brenda tell him specifically
5 that she needed the ID for voting?

6 A Yes.

7 Q What did he say to that?

8 A He pulled out guidelines and said that
9 this was proof that you had to -- the ID had to be
10 expired for over a year unless -- for it to be free.

11 Q What kind of guidelines were they; do you
12 know?

13 A He just flashed it in front of me. I
14 didn't really get a good look. They seemed to be
15 guidelines for when an ID would be issued for free.

16 MS. SCHNEIDER: Okay. Actually, I think
17 I have no more questions for this witness.

18 - - -

19 CROSS EXAMINATION

20 - - -

21 BY MS. HICKOK:

22 Q You said that you have been working with
23 SEIU on voters ID matters here in Pennsylvania?

24 A Yes.

1 Q And you said that you assisted Brenda
2 Andrews; is that correct?

3 A Yes.

4 Q And this is a story on the Web site that
5 you -- if I may offer this, Your Honor.

6 On the second page you'll find a synopsis
7 of the story of Brenda Andrews.

8 Is that a story that you submitted?

9 A I haven't seen this particular story, but
10 I was the first one to relay the information about
11 Brenda Andrews.

12 Q So it came from your information; is that
13 correct?

14 A I'd have to read this to --

15 Q That's fine. It's a paragraph.

16 A What was the question?

17 Q Is that a story that is consistent with
18 what you submitted to the SEIU?

19 A Yes. For the most part, yes.

20 Q Did they ask you to verify the facts
21 afterwards, after they wrote the information?

22 A Yes. This is a summary of --

23 Q And did you give her permission to post
24 it?

1 A She gave us permission to tell her story,
2 yes.

3 Q Okay. And are any of the other people on
4 here people that you also solicited stories from?

5 A You want me to --

6 Q Just scan it, yeah.

7 A Sure.

8 None of the names stick out to me.

9 Q Okay.

10 A I was -- I wasn't always there. I'm
11 sorry.

12 Q You said that you had questioned whether
13 Ms. Andrews should have paid for her ID. Did you
14 advise her to ask for a refund?

15 A No, I did not.

16 Q Did you -- do you know whether she has
17 requested a refund?

18 A I do not.

19 Q And to your understanding, the reason
20 that she did not -- that she was charged in the first
21 place is because she was not yet eligible to receive
22 a free ID and was told that she could have gotten a
23 free ID if she had come back a week later; is that
24 correct?

1 A Yes.

2 MS. HICKOK: Thank you. I have no
3 further questions.

4 MS. SCHNEIDER: We have nothing further,
5 Your Honor.

6 THE COURT: Thank you.
7 Good luck in law school.

8 THE WITNESS: Thank you.

9 THE COURT: Anything else? Before lunch,
10 I should say.

11 MR. GEFFEN: Petitioners have one further
12 witness.

13 THE COURT: It's about 5 after 1:00 at
14 this point. I'd like to take a lunch break. If you
15 don't want your witness -- I gather there's another,
16 one more available witness.

17 MR. GEFFEN: That's right.

18 THE COURT: If you don't want the witness
19 to wait around, you can make an offer of proof. I'm
20 not sure if we can get the witness' testimony in or
21 not.

22 But my plan would be to have the -- to
23 take a lunch break and then to give the
24 Commonwealth -- give the Respondents an opportunity

1 to put in rebuttal evidence. And if there's more
2 time, then I can receive the evidence. So it's
3 really your call and sort of the witness'
4 convenience.

5 MR. GEFFEN: If I may inquire of the
6 Commonwealth how -- if they have an estimate of how
7 long their case will take to present this afternoon.

8 THE COURT: I asked that earlier, and I
9 didn't get a very good -- I didn't get a very
10 specific answer, and I understand why. But do you
11 have any more information you could share with us
12 about the length of time?

13 I think they're trying to figure out
14 whether the witness should wait around or not.

15 MR. CAWLEY: Your Honor, I would estimate
16 we may have three witnesses; and each witness we
17 could probably cover in 30 minutes or less.

18 Well, with cross-examination perhaps a
19 bit longer, so if that takes us to 90 minutes, I
20 guess then it would depend on how much time the
21 parties need for closing remarks to Your Honor before
22 we ended at --

23 THE COURT: We can do the closings after
24 4:30. I want to close evidence at 4:30.

1 MR. CAWLEY: Oh, I see. Okay.

2 I think if we allowed two hours for
3 testimony.

4 THE COURT: It sounds like there's a
5 possibility that the witness could testify live today
6 if you want the witness to wait. I don't know what
7 the situation is with your witness.

8 MR. GEFFEN: The witness doesn't have any
9 urgent need to leave right now.

10 THE COURT: Then it may be possible for
11 us to hear from that person as long as I give -- but
12 I need to give the Commonwealth some opportunity to
13 put on some rebuttal.

14 Housekeeping matter: Can I deal with the
15 exhibits that were received today?

16 I'm assuming that the Petitioners are
17 moving all the exhibits that were identified in
18 today.

19 MR. RUBIN: We do, Your Honor.

20 THE COURT: Are there any objections to
21 them?

22 MS. HICKOK: There are not, Your Honor.

23 THE COURT: So I'm talking about 233, 235
24 and 236, which are affidavits; 237, which are the

1 documents for Ms. Hockenbury; and most recently 238,
2 which is a -- training material; and I have
3 Respondents' Exhibit 4, which was -- I'm sorry.
4 Respondents' Exhibit 11.

5 Do you move that -- it's used as
6 cross-examination of the last witness.

7 MR. CAWLEY: No, Your Honor.

8 THE COURT: Okay. And it's in the round
9 file.

10 (Petitioners' 233, 235, 236, 237
11 and 238 were received into
12 evidence.)

13 THE COURT: Is there anything else that
14 we need to do here?

15 MS. SCHNEIDER: No, Your Honor.

16 THE COURT: We'll reconvene at -- is
17 2 o'clock enough time for you? It's 50 minutes
18 rather than the full hour.

19 MR. CAWLEY: Yes, Your Honor.

20 THE COURT: We'll reconvene at 2 o'clock.

21 THE CLERK: Commonwealth Court is now
22 adjourned.

23 (Luncheon recess from 1:10 p.m. to
24 2:00 p.m.)

1 THE CLERK: Ladies and gentlemen,
2 Commonwealth Court is now in session. You may be
3 seated.

4 THE COURT: All right. Please proceed.

5 MR. CAWLEY: Your Honor, I've conferred
6 with Petitioners' counsel because we are only going
7 to use two of our witnesses. We believe that does
8 open up some time for the one additional witness that
9 they had contemplated before the break. So we've
10 agreed that they'll go forward with that witness, and
11 then we'll put on our witnesses.

12 THE COURT: Very well. Please call your
13 next witness.

14 MR. GEFFEN: Petitioners' next witness
15 would be Ashindi Maxton?

16 THE COURT: What's the name?

17 MR. GEFFEN: Ashindi. First name,
18 A-S-H-I-N-D-I. Last name is M-A-X-T-O-N.

19 (Pause.)

20 MR. GEFFEN: I apologize for the delay,
21 Your Honor. The witness is now entering the
22 courtroom.

23 - - -

24 ASHINDI MAXTON, having first been duly

1 sworn according to law, was examined and testified as
2 follows:

3 - - -
4 DIRECT EXAMINATION
5 - - -

6 BY MR. GEFFEN:

7 Q Hi, how are you?

8 A Hi. Good.

9 Q Would you please state your name for the
10 record.

11 A Ashindi Maxton.

12 Q Where do you live, Ms. Maxton?

13 A Washington, D.C.

14 Q Is that where you vote?

15 A Yes.

16 Q How are you employed?

17 A I work for Service Employees
18 International Union.

19 Q And what's your title?

20 A Director of Partner Capacity Programs.

21 Q How long have you held that position?

22 A Since January of 2012.

23 Q And I understand you've been spending
24 time in Pennsylvania lately.

1 A That's right.

2 Q How long have you been in Pennsylvania?

3 A Since August 27th, two to four days a
4 week.

5 Q And what sort of work have you been doing
6 here?

7 A We've been helping people learn how to
8 get the PennDOT ID and the PennDOT's employment
9 folks.

10 (Interruption by the court
11 reporter.)

12 THE COURT: Ms. Maxton, could you please
13 move the microphone a little farther away from your
14 mouth.

15 BY MR. WALCZAK:

16 Q And which PennDOT centers have you
17 visited as part of your work?

18 A I went to three in Philadelphia: Ogontz,
19 8th and Arch, and Island. And several of the rural
20 areas, Selinsgrove, Schuylkill Haven.

21 THE COURT: "Schuylkill." You're not
22 from around here.

23 THE WITNESS: I'm not from around here,
24 and I wasn't there long.

1 Williamsport, Lewistown, and
2 Elizabethville.

3 BY MR. WALCZAK:

4 Q How would you interview PennDOT employees
5 at these centers?

6 A Every place we went, we ask the same
7 questions, tell them we were from a group that wanted
8 to help them get the PennDOT ID, ID to vote, and we
9 asked them what should we tell people about what
10 documents they're going to need. If they don't have
11 those documents, what should they do, and will it
12 cost anything.

13 Q Were you asking about both PennDOT IDs
14 and the Department of State ID?

15 A We don't distinguish. We sort of wanted
16 to know open-ended what folks would have say.

17 Q Did you ask the PennDOT personnel you
18 spoke with about voter registration?

19 A We did. Or I did.

20 Q And what did they tell you about the
21 possibility of registering to vote at PennDOT
22 facilities?

23 A Everywhere that I asked, with the
24 exception of one place, they told me that you could

1 not register at PennDOT.

2 Q And where was the one exception?

3 A The one exception was Williamsport, where
4 I was told that people -- people like you and me can
5 register here at the photo center if you've already
6 got ID, but people who don't have ID can't register
7 here. They would have to be applying for -- they
8 would have to be getting their ID in order to
9 register at a photo center.

10 Q But no one at any of the other PennDOT
11 facilities made that distinction?

12 A No.

13 Q Did you meet any voters who were having
14 trouble getting ID to vote?

15 A Yes, a number of them.

16 Q Okay. Would you tell me about a man
17 named James Sharp?

18 A James was the first person that I met on
19 my first day at the PennDOT, August 28th. And he
20 was -- actually he told me right off he was a
21 registered Republican truck driver, and he had spent
22 a couple of weeks in the process of trying to get the
23 full PennDOT ID.

24 So he had taken a trip all the way back

1 to New Jersey to get his birth certificate and was
2 under the impression that he needed all the
3 documentation that you need for a full PennDOT ID.

4 So he had taken public transportation to
5 New Jersey, a train and three buses, and spent money
6 and got the -- he got the birth certificate from the
7 State of New Jersey. He took a train and three buses
8 to get to where he was born in New Jersey and was
9 told that he needed a birth certificate with the
10 raised seal. So he had spent some time before I met
11 him.

12 He was on his second trip that week in
13 the first visit to PennDOT, which was two days before
14 I was -- I must have actually met him on
15 August 30th, I'm sorry. So on August 28th was
16 his first visit. And he's waited for four hours and
17 then went home because PennDOT closed.

18 On the day that I met him, he waited
19 another five hours, didn't get an explanation for why
20 it took so long, but he did get his ID. So after a
21 total of nine hours, a trip to New Jersey and two
22 trips to PennDOT.

23 Q And I'll ask you just to speak a little
24 slower. I notice the court reporter is doing a

1 valiant job to keep up.

2 And can you tell me about someone named
3 Harry Rickets, Jr.

4 A Harry Rickets, Jr. was a veteran I met at
5 the 8th and Arch PennDOT on August 31st. And he
6 was having a hard time because he had gone first to
7 the Ogontz location and was told that he needed to
8 come to 8th and Arch. I asked him why he needed to
9 go to 8th and Arch, and he wasn't sure.

10 So he had come an hour across town using
11 his cane. Showed me his veterans ID and didn't
12 understand why it was he couldn't use his veterans ID
13 to vote and why he had to come an hour across town;
14 and he was disabled.

15 Q Do you know why he couldn't use his
16 veterans ID to vote?

17 A There's no expiration date on the
18 veterans ID.

19 Q Do you know whether he got an ID that
20 day?

21 A We don't. We had to leave that day. We
22 waited with him -- or I waited with him about
23 45 minutes; but it was right at the end of the day,
24 so I didn't see him and we weren't able to reach him

1 again.

2 Q Then in any of your PennDOT site visits,
3 did you see any applicants leave the center without
4 an ID?

5 A One, Joyce Early. And actually, I have
6 to say this. It's a small amount of speculation on
7 my part. She came in, we talked and she waited. She
8 said she had to go to work.

9 I was talking to somebody, was noticing
10 that the line was too long. I turned and talked to
11 somebody else for maybe two minutes. When I turned
12 back, she was gone. So I made the assumption that
13 she left without getting it.

14 Q Because of the length of the wait time?

15 A Because of the length of the wait. She
16 had to get to work.

17 Q Did any of the PennDOT centers you
18 visited have signs in Spanish about the Department of
19 State ID?

20 A Yes.

21 Q Which location or locations?

22 A Eighth and Arch had signs in Spanish. I
23 believe that was the only one. There was one place
24 where I was given materials in Spanish.

1 Q Do you remember where that location was?

2 A I'm not sure.

3 Q Did any of the centers have no signs at
4 all about the Department of State IDs in English
5 even?

6 A There was one rural location -- I believe
7 it was Lewisville -- Lewistown.

8 Q Lewistown had no signs in any language,
9 even English?

10 A That's right.

11 Q And Williamsport was another location you
12 mentioned. When you went there, did you notice
13 anything happen after you arrived?

14 A Yes. In Williamsport, where the staff
15 were very helpful, they recognized that they didn't
16 have any materials out when I arrived. And they --
17 they had one thing. It was the full sort of 10-page
18 document about getting the PennDOT ID that is really
19 unclear and very difficult to read, and they realized
20 they had all these other materials they had to put
21 out for the people.

22 I watched them unwrap them from the
23 cellophane while I was there. And literally as I
24 walked out, they put them in the aisles. They also

1 put up a poster while I was there.

2 MR. GEFFEN: Okay. I have no more
3 questions. Thank you.

4 THE COURT: You may inquire.

5 - - -

6 CROSS EXAMINATION

7 - - -

8 BY MR. CAWLEY:

9 Q Good afternoon, Ms. Maxton.

10 A Good afternoon.

11 Q I just have a few brief questions for
12 you.

13 First, you spoke about asking about voter
14 registration at PennDOT centers. Are you familiar
15 with the voter registration process in Pennsylvania?

16 A No, not in any way that it's different
17 than it is nationally.

18 Q Are you aware that voter registration
19 happens at the county level in Pennsylvania?

20 A No.

21 Q When you asked PennDOT about the ability
22 to register there in the PennDOT center, did you ask
23 them for registration forms? Or did you ask them
24 simply to register?

1 A I said, Can people register here?

2 Q And you said at least at one place
3 somebody told you that they can register when they
4 are renewing their ID?

5 A Yes.

6 Q Did I get that right?

7 A Yes.

8 Q At any time did you ask them for forms
9 that you can take away or to hand out to people to
10 register to vote?

11 A No, I did not ask for forms. If people
12 told me no, I didn't ask any additional questions
13 about forms.

14 Q And just very briefly about James Sharp,
15 who you told us about, the gentleman who went to get
16 his New Jersey birth certificate. Did you testify
17 that he needed a PennDOT ID as opposed to a
18 Department of State ID?

19 A He believed that he needed a PennDOT ID,
20 so he was looking for -- he was told that he needed
21 all of the documentation for the full PennDOT ID. I
22 don't know if he knew about the DOS ID when he went
23 to get the birth certificate.

24 MR. CAWLEY: Okay. Thank you. Those are

1 all the questions I have.

2 THE COURT: Anything else for this
3 witness?

4 MR. GEFFEN: I have no further questions
5 for this witness.

6 And I may approach? I have a declaration
7 to hand up. This is simply a declaration of averring
8 that the attachment is a list of addresses of the
9 declarant and affiants that was submitted to opposing
10 counsel two days ago. This was a bit of --

11 THE COURT: Can I dismiss this witness?

12 MR. GEFFEN: Oh, absolutely.

13 THE COURT: Thank you. You may step
14 down. You're free to leave if you wish.

15 THE WITNESS: Thank you. I'm going to
16 stay.

17 THE COURT: All right. We're now moving
18 to the Respondents' side of the case.

19 MS. CLARKE: First, Your Honor, I wanted
20 to inquire whether Your Honor would prefer that we
21 mark this as an exhibit or file it with the Clerk's
22 Office.

23 THE COURT: You should file it in the
24 Clerk's Office. It's your declaration.

1 MR. GEFFEN: Very well. Thank you, sir.

2 THE COURT: It's in the nature of a proof
3 of service, if I understand it.

4 MR. GEFFEN: Thank you.

5 MS. HICKOK: Your Honor, the Commonwealth
6 recalls Jonathan Marks.

7 THE COURT: Mr. Marks, you're still under
8 oath. You understand that?

9 THE WITNESS: I do.

10 - - -

11 JONATHAN MARKS, having first been
12 previously duly sworn according to law, was examined
13 and testified as follows:

14 - - -

15 DIRECT EXAMINATION

16 - - -

17 BY MS. HICKOK:

18 Q Good afternoon, Mr. Marks.

19 A Good afternoon.

20 Q There were some questions this morning
21 about the SURE system. Can you tell us what the SURE
22 system is.

23 A Sure. The SURE system is an acronym for
24 the Statewide Uniform Registry of Electors. It's

1 essentially the Commonwealth's statewide voter
2 registration database into which various county voter
3 registration offices enter their voter registration
4 data.

5 Q And once the data are entered by the
6 counties, who can view those data?

7 A Directly through the system, the counties
8 as well as the Department of State. The data that's
9 housed in the system can also be viewed by the public
10 in some cases, other individuals, through our SURE
11 portals, which is effectively a copy of the data that
12 we use to provide a variety of services, like a
13 polling place locator, you can look up your voter
14 registration, et cetera.

15 Q And are all data viewable by all people?

16 A No, not all data is viewable by all
17 people. But everyone who has access to SURE -- I
18 call it SURE proper -- which is the database itself,
19 would be able to see everything that's housed there.

20 Q And can everyone search in the same
21 capacity?

22 A Everyone can search -- a voter who is
23 checking their voter registration online does not
24 have the variety of tools that we have.

1 But the counties, as well as the
2 Department of State, have all the tools, including
3 searching by address, searching by birth date only,
4 searching by birth date and county. We have those
5 options available to us, whereas a voter looking
6 online would have to put their name and date of birth
7 in as it appears on their record.

8 Q And have you worked with the SURE
9 database in past years?

10 A I have, yes.

11 Q And how long have you been working with
12 the SURE database?

13 A I've been working with the SURE
14 database -- I was chief of the division of SURE from
15 2008 until October of 2011. And I still work with it
16 on occasion as commissioner.

17 Q And during that period in 2008 during
18 that last presidential election, how long did it take
19 the counties to enter their most recent data?

20 A I think it -- it varied by county. I
21 believe we had two counties that were still entering
22 in two and a half to three weeks after the close of
23 registration. The majority of counties, even in a
24 presidential election year, are done within a week to

1 10 days after the close of registration.

2 Q And so far, has the number of voter
3 registrations been the same, less or greater than it
4 was in 2008?

5 A Today it's been less than it was in
6 2008 -- 2008 was a unique presidential election.
7 This is more in keeping with previous presidential
8 election cycles.

9 Q Okay. And what is the SURE help desk?

10 A The SURE help desk is effective -- is
11 essentially a phone bank of SURE operators who are
12 there to provide help desk support to county election
13 officials. I know also as part of the voter ID
14 process to driver's license technicians at PennDOT,
15 they have some technical training.

16 But they're -- they're your typical help
17 desk support. They'll be able to answer questions.
18 They'll be able to show a county how to run a report
19 or do a specific task within the system.

20 If they can't answer the question or
21 resolve the issue there, we have Tier 2 support as
22 well. But SURE help desk is basically our first line
23 of defense, for lack of a better term, in terms of
24 providing support to the folks who use the SURE

1 system.

2 Q What are the standard hours of the SURE
3 help desk?

4 A The standard hours of the SURE help desk
5 are 8:30 to 5:00.

6 Q Was that true in prior electoral cycles?

7 A It was -- there was -- it was. There was
8 election support around election time, additional
9 support after hours, on-call support, for example, in
10 2008 that is not present in this election cycle.

11 Q Do you believe that it's necessary in
12 this election cycle?

13 A Well, I don't believe it's as necessary
14 as it was in 2008. Certainly we want to give the
15 highest level of service possible. There are budget
16 constraints that we didn't have in 2008. So we redid
17 the contract.

18 We actually used a vendor to provide help
19 desk support. We pay a vendor. This is now done
20 in-house through staff augmentation. But we have
21 brought on staff for after-hours support to
22 accommodate voter ID specifically.

23 But in terms of the normal assistance
24 provided to the county boards of elections, our

1 standard hours will continue through this election
2 cycle.

3 Q And when did you become aware that you
4 needed -- retract that.

5 How did you become aware that you needed
6 extra hours for voter ID support?

7 A Those -- I became aware of that during
8 discussions with Pennsylvania Department of
9 Transportation. We have regular calls with the folks
10 over there as we move forward in implementing
11 voter ID. And we determined what the hours of the
12 driver's license centers were and how much -- how
13 much past closing hour we'd have to provide help desk
14 support.

15 As has been demonstrated with testimony
16 even here today, PennDOT will take whoever is waiting
17 on line and will finish processing them. So whoever
18 is waiting on line at 4:15, for example, when the
19 PennDOT driver's license center closes, PennDOT staff
20 will continue working until they've worked through
21 that line.

22 Q So it's possible that in the first couple
23 of days of the new IDs that there were times when the
24 PennDOT center was still servicing customers but the

1 help desk had already closed?

2 A Yes. The first, I believe, three days,
3 that was the experience. The help desk was closed at
4 5:00. We determined very quickly that in some cases
5 the line might take an hour or longer to -- for
6 PennDOT to work through that.

7 So we immediately altered our help desk
8 hours and we staggered the help desk folks and
9 brought on additional staff as necessary.

10 Q Thank you.

11 Now, is it important that the SURE
12 database have uniformity?

13 A It is. Yes, it is.

14 Q And have you given the counties
15 instructions in that regard?

16 A We have policy documentation posted on --
17 the term of art I use is our "SURE pick site." But
18 it's basically our county official site that provides
19 all the training manuals, job dates, as well as
20 policy documents related to SURE.

21 (Respondents' 13 was marked for
22 identification.)

23 BY MS. HICKOK:

24 Q I'm going to show you what's been marked

1 as R-13. Is this one of the documents that you were
2 referring to that tells the counties how they're
3 supposed to proceed?

4 A It is, yes.

5 Q And have you found in your experience
6 that some of the counties are not following the
7 procedures here?

8 A Based on an analysis of the data, yes.
9 To be fair, some of that data may have been in their
10 previous system and carried over. But recent data
11 since the end of 2005 certainly would have been
12 entered in the SURE system. It is inconsistent in
13 some cases, implementation.

14 Q And from the testimony that you heard
15 this morning, are there any people that you think
16 might have gotten caught up in the inconsistencies
17 between the way that the County entered its data?

18 A I do, yes.

19 Q Do you recall the name of those people?

20 A Lakeisha Pannell comes to mind.

21 Q And in what way do you think that there
22 might have been an inconsistency?

23 A In the case of Lakeisha, there's a space
24 between the A and the K in her first name.

1 Q And how does that cause trouble when
2 searching the database?

3 A Well, what we've instructed the counties
4 to do -- and this is the things you should know
5 about -- we acknowledge there in, I believe it's
6 Paragraph 5 on the first page, that PennDOT accepts
7 applicant's name as the applicant spells it.

8 So there was even consideration given to
9 how PennDOT's database works in conjunction with ours
10 for Motor Voter. So we instructed the counties to --
11 as we stated, there are also practical reasons for
12 accepting the elector's name as he provides it. And
13 that's the practical reason.

14 No. 1, that's how it was presented on the
15 document presented by the voter.

16 No. 2, PennDOT also enters the name as it
17 appears.

18 Q Thank you.

19 And you heard some testimony this morning
20 about somebody who spoke with a Carlos Martinez and a
21 Jessica Mathis. Are you familiar with those people?

22 A Carlos Martinez and Jessica Mathis both
23 for the Bureau of Commissions, Elections and
24 Legislation.

1 Q And are you familiar with those people?

2 A I am, yes.

3 Q And what is their relative relationship?

4 A Carlos Martinez is a clerk in our
5 division of campaign finance and lobbying disclosure.
6 And he's also one of the individuals that answers
7 phones for the Bureau. Essentially everyone answers
8 phones for the Bureau in a presidential election
9 year.

10 So he would be taking down calls related
11 to elections, campaign finance and voter ID.

12 Q And why would he transfer a call to
13 Jessica Mathis?

14 A He would -- well, he would transfer a
15 call because we instructed our staff specifically in
16 regard to voter ID that there were three point people
17 for voter ID, three managers within the bureau. If
18 you had any questions or needed any assistance
19 relative to voter ID, you would go to one of these
20 three people. Jessica Mathis is one of those three
21 individuals.

22 Q Thank you.

23 Now, you have heard that there are some
24 people who did not show up in the voter registration

1 system, who had registered to vote but that
2 application had not yet been processed.

3 A Correct.

4 Q When that is the case and yet they have
5 made application for a voter ID, what is the protocol
6 to address those people?

7 A The protocol is to actively check and
8 recheck the voter registration database.

9 Q And how frequently do you do that?

10 A Daily. Several times a day.

11 MS. HICKOK: Okay. Your Honor, I have
12 nothing further.

13 THE COURT: You may inquire.

14 - - -

15 CROSS EXAMINATION

16 - - -

17 BY MR. WALCZAK:

18 Q Hello, Mr. Marks.

19 A Hello.

20 Q We've met before, haven't we?

21 A We have.

22 Q So let's talk a little bit about the SURE
23 database system.

24 So as I understand it, the SURE database,

1 the -- I'm sorry. Strike that.

2 It is the counties that have the primary
3 responsibility to enter new registrations into the
4 database; correct?

5 A That is correct, yes.

6 Q So some registrations come in by somebody
7 dropping them off at the county?

8 A Yes.

9 Q Drop it off at the desk; I want to
10 register, and County has to enter that?

11 A Right.

12 Q Some people mail them in to the County;
13 correct?

14 A Correct.

15 Q Do they ever mail them in to the
16 Department of State?

17 A They do.

18 Q What does the Department of State do with
19 those?

20 A The Department of State opens them.
21 We'll make them and explain to the national
22 association and county --

23 Q Excuse me. What?

24 A We may have to in cases identify which

1 county to distribute that to. But ultimately we're a
2 pass-through. So if the voter registration drive,
3 for example, puts the Secretary of the Commonwealth's
4 address on their mailer, their voter registration
5 mailer, it comes in to us. We will sort them by
6 county and distribute them to the appropriate
7 counties for data entry and processing.

8 Q So, again, even if the registrations come
9 into the Department of State, you funnel them or
10 forward them to the appropriate counties?

11 A Correct. We then send them out by UPS
12 three times a week.

13 Q And the -- so the counties are the
14 primary -- have primary responsibility for entering
15 all those; correct?

16 A That's true, yes.

17 Q Now, there are registrations that also
18 come through PennDOT; is that correct?

19 A There are, yes.

20 Q And those are registrations that are
21 transmitted electronically; is that right?

22 A That's correct, yes.

23 Q So people don't come in and fill out a
24 voter registration mail application, do they?

1 A They can obtain a voter registration mail
2 application at a PennDOT facility.

3 Q They can today?

4 A If they are renewing a driver's license
5 or renewing registration, I believe they can do that
6 electronically through a kiosk with the assistance of
7 a driver's license technician.

8 Q So -- I'm sorry. And I'm sorry for
9 interrupting you before.

10 But this is done electronically through a
11 computer?

12 A Correct, yes.

13 Q And those registrations also go to the
14 county; correct?

15 A Correct. They go to the county. They
16 just go in a different manner.

17 Q And you just testified about Respondents'
18 Exhibit 13. You still have that in front of you?

19 A Yes.

20 Q I don't know that this was identified
21 before. I have not had a chance to look at it yet.

22 When was this document sent out?

23 A This document is posted on our Web site
24 under the things you should know on our SURE page.

1 Q How long has it been there?

2 A It's been there several years.

3 Q I believe you testified that there have
4 been problems, that there's variation in how the
5 counties enter the data; correct?

6 A That's correct.

7 Q So some of the problems are that they --
8 and I'm trying to recall your testimony from a couple
9 days ago. They may put a space where one shouldn't
10 be?

11 A Right. Or a special character or
12 something along those lines.

13 Q Or it's another problem where they may
14 transpose the first and last name?

15 A Correct.

16 Q Or they add a middle name and put it
17 right next to the last name without putting a space?

18 A Yes. Typical data-entry errors, yes.

19 Q And whenever that kind of error occurs,
20 that could prevent the verification of a voter's
21 registration; correct?

22 A It could. That's what we have the Tier 2
23 process for.

24 Q Is now when PennDOT -- let's come in now

1 to the verification that's being done at PennDOT.

2 When a voter comes, let's say Lakeisha
3 Pannell, comes to the PennDOT desk, has whatever
4 documents she needs, they determine that she's got
5 what she needs and they go to verify that
6 registration, they call the Department of State;
7 correct?

8 A They call the SURE help desk, yes.

9 Q And that's the Tier 1 review; correct?

10 A That's correct; yes.

11 Q When they call, they say, "Is Lakeisha
12 Pannell registered?" The fact that she had a space
13 in there meant that they didn't find that
14 registration; correct?

15 A Correct, yes.

16 Q So when they -- when the help desk then
17 tells PennDOT, "Sorry; we couldn't confirm her
18 registration," and at least until Tuesday of this
19 week, I believe, that would prevent the individual
20 from actually getting a registration card; correct?

21 A Well, that -- you skipped over the Tier 2
22 process that would be a backstop to that.

23 Q When is that done?

24 A Tier 1 -- and I believe this is my

1 testimony the other day. Tier 1 does a very narrow
2 search, based on -- they're looking at exact match on
3 the first name, last name, date of birth.

4 The Tier 2 process, which early on was a
5 transferred phone call up to some individual in BCEL.
6 Now it's more tightly defined. There's a specific
7 cue for it.

8 Tier 2 will look at the information using
9 perhaps just a date of birth or the residential
10 house, house number and street name. So we have
11 additional tools that Tier 1 is not using, and
12 they're making a little more of a subjective search
13 of the system.

14 Q Right. And my recollection of your
15 testimony from the other day was that those persons
16 who were not cleared at Tier 1 were given that
17 exceptions form and told to contact Department of
18 State; and it's at that point that the Department of
19 State would do the Tier 2 check and then be able to
20 verify, because they can match based on address or
21 date of birth or something like that; is that
22 correct?

23 A Well, the Tier 2 process is actually
24 handled via phone. So if we can resolve it at Tier 2

1 while the driver's license technician is on the
2 phone, that individual will get their card that day.

3 Q Are you saying that that Tier 2 process
4 happens every time a PennDOT clerk calls Department
5 of State to verify an ID?

6 A Yes. If Tier 1 is unavailable to verify,
7 a call is placed to the Tier 2 cue.

8 Q Mr. Marks, you testified earlier that
9 there's been some cutback in the staff that staff the
10 SURE help desk?

11 A There's been a cutback in the amount of
12 money spent on the help desk. Without getting into a
13 complex description of it, we brought it in-house,
14 which saved some money. Previously it was a vendor
15 contract. As I recall, we may have trimmed off from
16 previous years one or two technicians from the level
17 that there was a few years ago.

18 MR. WALCZAK: Your Honor, I'm marking
19 Plaintiffs' Exhibit 240.

20 THE COURT: 239?

21 MR. WALCZAK: I'm marking Plaintiffs'
22 Exhibit 239. That's exactly what I meant to say,
23 Your Honor.

24 (Petitioners' 239 was marked for

1 identification.)

2 BY MR. WALCZAK:

3 Q I show you what's been marked as
4 Plaintiffs' Exhibit 239. Do you recognize this
5 document?

6 A I do, yes.

7 Q And this is dated September 26th, 2012?

8 A That's correct, yes.

9 Q And the subject is SURE help desk?

10 A Yes.

11 Q And it's to all counties?

12 A Right.

13 Q So that would be sent to all heads of the
14 county elections boards?

15 A Yes. Everyone on the distribution,
16 county elections as well as voter registration
17 officials.

18 Q It says "From Division of SURE."

19 A Yes.

20 Q Who authored this document?

21 A This was drafted by the chief of our
22 division at SURE, as I recall, or one of her staff.

23 Q Who is that?

24 A Toni Goril, G-O-R-I-L.

1 Q And it says in the first paragraph
2 [reading]: As you are aware, on January 3rd the
3 contract with the J group was complete and all help
4 desk support is currently being managed through an
5 internal SURE help desk at the Department of State.

6 Did I read that correctly?

7 A You did, yes.

8 Q And the next sentence [reading]: With
9 this change, the SURE help desk hours of operation
10 were modified to assist customers during the normal
11 business hours of Monday through Friday between the
12 hours of 8:00 and 5:00.

13 Is that correct?

14 A That's correct.

15 Q It says [reading]: Due to budgetary
16 constraints, the current contract does not provide
17 for agents to be available for after-hours or on-call
18 services as was the case in previous elections.

19 Did I read that correctly?

20 A That's correct, yes.

21 Q Let me skip down to the third paragraph
22 where it says "additionally." Let me read that.

23 [Reading]: Additionally, with the
24 implementation of voter ID, the SURE help desk is now

1 responsible for accepting calls from PennDOT to
2 verify registration status for DOS ID card
3 applicants.

4 Did I read that correctly?

5 A You did, yes.

6 Q Next sentence says [reading]: With this
7 change, the call volume has increased significantly,
8 which may result in a longer response time to provide
9 assistance and/or update County officials with
10 requested information.

11 Did I read that correctly?

12 A You did, yes.

13 Q And the date on this is September 26th;
14 is that right?

15 A That's right; yes.

16 Q And that was yesterday?

17 A It was.

18 Q So your office sent out this notice to
19 all of the counties, alerting them that the response
20 times may be longer when they are seeking assistance;
21 is that right?

22 A Yeah. It was sent out as a reminder of
23 the change to the contract that occurred back in
24 January, ostensibly.

1 Q Let's come back to SURE and how that
2 works. And I believe you testified that all of the
3 registrations are handled through the counties;
4 correct?

5 A That's correct. Yes.

6 Q And I believe your testimony was that the
7 counties typically take between two and three weeks
8 to get the registrations entered; is that right?

9 A That's right, yes.

10 Q And they can't begin that process until
11 they actually receive the registration; correct?

12 A That's correct, yes.

13 Q Now, in presidential election years in
14 particular, there's something known as third-party
15 registration drives; is that correct?

16 A That is correct, yes.

17 Q And third-party registration drives are
18 conducted by groups like the League of Women Voters
19 who help people register to vote. They go out and
20 encourage people to register, and they gather a batch
21 of these; correct?

22 A That's correct, yes.

23 Q And then they will bring in to whatever
24 the county is a batch of these registrations;

1 correct?

2 A Correct.

3 Q And sometimes these batches of
4 registrations that are brought in by these
5 third-party registration groups number in the
6 thousands; is that right?

7 A That's correct, yes.

8 Q So they will literally come to the desk
9 and have a box or a bag of thousands of registration
10 applications; correct?

11 A Yes. The responsible ones bring them in
12 smaller packets, but there are those that will bring
13 them in thousands at a time.

14 Q Not everyone is responsible?

15 A That is true.

16 Q Sometimes you get a lot of those.

17 And, obviously, the county has no control
18 over how long it takes those third-party registration
19 groups to bring those batches in; correct?

20 A They do not, no.

21 Q So if a batch comes in on day 1, that
22 could contain registrations that were filled out by
23 the voter two weeks earlier?

24 A They could, yes.

1 Q Three weeks earlier?

2 A Yes.

3 Q A day earlier?

4 A Right.

5 Q It could vary?

6 A Yes.

7 Q But it could -- it could certainly be two
8 weeks because the voter registration groups want to
9 have a core number before they take the trip in to
10 the county; correct?

11 A That's correct.

12 Q So the day that the county gets that
13 registration, the application may already be two or
14 more weeks old; correct?

15 A It's possible, yes.

16 Q And so if it then takes them two to three
17 weeks to process that registration -- so by the time
18 that registration is entered into the SURE system
19 could be four or five weeks after the voter actually
20 filled out that registration; is that right?

21 A Correct, yes.

22 Q And the voter has no control over that?

23 A No, the voter doesn't have any control
24 over that.

1 Q And I believe you said -- well, let me
2 ask you this:

3 So in these quadrennial presidential
4 election years, there tends to be or history has
5 shown in 2000, 2004, 2008, that there are an extra
6 large number of registrations that come in right
7 before the deadline, the registration deadline?

8 A There is a spike right before the
9 registration deadline.

10 Q And the registration deadline this year
11 is October the 9th?

12 A That is correct, yes.

13 Q So it is likely that, at least in some of
14 the more populous counties, that you are going to
15 have thousands of registrations dropped off right
16 before October the 9th; is that right?

17 A It is possible.

18 Q And it's more than possible --

19 A It's probably likely in some of your more
20 populous counties, yes.

21 Q And, in fact, that's what happened in
22 2004?

23 A In 2004 -- you're going back a little
24 ways. I know it happened in 2008 for sure. In 2004,

1 I believe it also occurred.

2 Q And you were head of the SURE system in
3 2004, were you not?

4 A No, 2008.

5 Q 2008. You were familiar with the SURE
6 system in 2004?

7 A I was familiar with the SURE system.

8 Q So there was a spike in 2004, 2008, so
9 you say it's likely there's going a spike in 2012?

10 A I want to be clear, not every county was
11 on the SURE system in 2004. Some counties were still
12 using their Legacy system.

13 Q And I believe you said that all counties
14 attempt to have the registrations entered into the
15 SURE system within 10 days, is that correct, of the
16 registration deadline?

17 A I was giving an average. We have some
18 counties in your more populous -- counties that have
19 a large population that may go two, up to three weeks
20 afterwards. That was an experience in 2008. The
21 majority of them, it will be within a week to 10
22 days.

23 Q But there are some counties, and you said
24 the more populous counties that may go longer than 10

1 days, may go two or three weeks; is that right?

2 A Yes, that has occurred in the past.

3 Q So until those registrations are actually
4 entered into the SURE database by the counties -- the
5 state has no control over this -- entered into the
6 SURE database by the counties, that person will not
7 show up when there is a search of that individual's
8 registration; is that correct?

9 A That's correct, yes.

10 Q So if you have somebody who registers
11 through a voter registration drive, let's say today,
12 they're coming home from work, somebody is doing a
13 drive, saying "Are you registered?"

14 "No, I'm not."

15 "Do you want to vote?"

16 "Yeah, I think this is an important
17 election."

18 "Fill out this form and we'll turn it
19 in."

20 And they fill out this form, and that
21 group turns 3,000 registrations in on October 9th;
22 correct? Follow me?

23 A I'm following.

24 Q That registration may not actually be

1 entered in the SURE database, especially in the
2 populous counties, for two or three weeks after that;
3 is that right?

4 A That's correct, yes.

5 Q And we all know my math isn't better than
6 Ms. Clarke's, so if I add three weeks to
7 October 9th, then that would put it at
8 November 1st; correct?

9 A Yeah, end of October, November 1st.
10 Probably right about then.

11 Q So if this voter who registered today
12 tries to go and get an ID between now and November
13 the 1st, they're not going to be able to get that ID
14 because their registration is not showing up in
15 there; correct?

16 A Well, as it stands now, they will be
17 issued an ID. It will be held and sent to the
18 Department of State. They'll also be given a voter
19 registration application. So there's a fail-safe
20 that's been put in place.

21 Q But you can't actually send that
22 identification until whatever date you ascertain that
23 that person is actually registered?

24 A That's correct, yes.

1 Q So if you ascertain on November the 1st
2 that that person is actually registered, you're going
3 to mail it by regular mail?

4 A No. We're going to send it via UPS.

5 Q Send it overnight?

6 A It will be UPS ground. And I believe
7 everywhere of the Commonwealth it's overnight, two
8 days at the most.

9 Q So you're going to send all of these IDs
10 to people at the last minute by UPS ground?

11 A Yes. We're going to send -- whether it's
12 last minute or not, we're going to send it by UPS
13 ground for tracking purposes and a couple other
14 practical reasons.

15 Q But do you have a budget for this
16 mailing?

17 A We do have a budget. I'm probably not
18 the best person to talk about it in great detail.

19 Q What's your knowledge of how long that's
20 going to take? I'm sorry. What's that going to
21 cost?

22 A What's that going to cost? I believe on
23 average, it's around \$3 a package. And the last time
24 I checked, somewhere between 3 and \$4 a package.

1 Q So for every ID that you mail, it's going
2 to cost \$3 just for the postage?

3 A That's my understanding, yeah. Again,
4 that's a ballpark figure.

5 Q Now, I believe you talked about people at
6 the SURE help desk being able to help folks actually
7 who call with problems with their voter registration?
8 Is that how it's supposed to work?

9 A Well, the SURE help desk is for counties
10 support, county voter registration office support
11 primarily, voter ID now as well. There's actually
12 staff committed to answering phone calls from
13 driver's license centers.

14 It's almost like a bifurcated help desk
15 at this point, even though there's cross training,
16 obviously.

17 Q And so does Carlos Martinez sit at the
18 help desk or not?

19 A No, he does not. He's up in the bureau
20 in room 210. The help desk is down in the basement.

21 Q Help me understand, when Lakeisha Pannell
22 or LaRell Purdie, the organizer, called the line that
23 was given on the exceptions form to them, why did
24 Carlos Martinez answer?

1 A Why did Carlos Martinez answer? I'm not
2 sure exactly who transferred the call to him.

3 Q Well, that's -- the testimony was that
4 they called the number that they were given at
5 PennDOT and a Carlos Martinez answered.

6 A They were given the 1-877-VotesPA number
7 that's on the exception notice. And Carlos would be
8 one of the many people who answer that line.

9 Q But he told them that he couldn't help
10 them find the registration?

11 A That's not my recollection of the
12 testimony.

13 Q What's your recollection?

14 A My recollection of the testimony is
15 initially he was confused. He wasn't sure exactly
16 what she was asking for, so he got a manager, Jessica
17 Mathis. And my recollection is she -- and this all
18 happened within a few minutes -- was able to resolve
19 the issue.

20 Q So the person who answers the phone on
21 the number that is given out by PennDOT for people to
22 call for help was confused and couldn't answer the
23 question?

24 A Yeah, and I can't answer as to why.

1 Perhaps he didn't understand exactly what she was
2 asking. And that's why we have our managers as
3 backstops.

4 MR. WALCZAK: Just one moment, Your
5 Honor.

6 THE COURT: I'm not sure he's finished
7 yet.

8 MS. HICKOK: Sorry.

9 BY MR. WALCZAK:

10 Q Mr. Marks, I believe the testimony this
11 morning from Ms. Pannell and Ms. LaRell was that when
12 they talked to Jessica Mathis, that she said that
13 Lakeisha's registration status was inactive. Do you
14 recall that?

15 A Yeah, it may be.

16 Q Right. And inactive doesn't mean that
17 she can't vote; is that right?

18 A That was probably given to her for
19 informational purposes. She can vote as an inactive
20 voter.

21 Q Whether she's inactive or not, if she
22 showed up on --

23 A There are basic groups, valid and
24 invalid. Valid voters are active voters and inactive

1 voters. Invalid are canceled voters.

2 Q So the fact that you're labeled
3 "inactive" still means you can vote?

4 A That's correct, yes.

5 Q You're eligible? There's no problem when
6 you show up at the polls?

7 A That's correct.

8 Q And my recollection of the testimony is
9 that Ms. Mathis said that she's not able to look up
10 voters who are inactive?

11 A That wasn't my recollection of the
12 testimony. My recollection of the testimony is she
13 was able to find Lakeisha Pannell's record. And she
14 provided the SURE ID number to the driver's license
15 technician, and that individual was able to issue the
16 ID.

17 Perhaps I missed something in the middle
18 there, but --

19 Q We don't have the transcript yet, so
20 we'll take a look at it.

21 THE COURT: Were you present in the
22 courtroom today?

23 THE WITNESS: I was, yes.

24 BY MR. WALCZAK:

1 Q Mr. Marks, where do you tell voters that
2 after they go to get their ID, it takes a month for
3 that registration to be processed?

4 A Where do we tell voters that it takes a
5 month for that registration to be processed?

6 What we instruct voters on the voter
7 registration mail application, if they haven't
8 received a voter registration card from their county
9 within 14 days to contact the county voter
10 registration office.

11 Q Do you tell them anywhere that it may
12 take a month or more for their registration to show
13 up?

14 A We don't.

15 Q Do you know whether their PennDOT gives
16 any instructions to people --

17 A I'm not aware whether they give
18 instructions like that.

19 Q You're not aware that they are?

20 A Correct.

21 MR. WALCZAK: Okay. Thank you.

22 - - -

23 REDIRECT EXAMINATION

24 - - -

1 BY MS. HICKOK:

2 Q Mr. Marks, why do the counties handle
3 volunteer voter registration?

4 A The state law provides for it in the
5 Voter Registration Act.

6 Q You were asked about Tier 2. Was there
7 always Tier 2 during the time that the DOS ID was in
8 effect?

9 A Yes. Initially Tier 2 support was a
10 transferred phone call. That -- that's problematic
11 because our help desk could not tell who was
12 available.

13 And again, I don't want to bore the Court
14 with all the detailed technical description. But we
15 have a phone system. It's very transparent. We can
16 run a lot of reports, statistics. But we can't tie
17 the help desk phone system together with our phone
18 system.

19 So the help desk was not sure who was
20 available so they were transferring to two numbers.
21 We put a process in place where they would transfer
22 to a specific call queue manned by several
23 individuals, and that happened within a few days of
24 the initial issuance of these cards.

1 Q And to clarify something, because it
2 seemed there was some confusion. Is the policy that
3 if there is a Tier 2 call, a call that's escalated to
4 Tier 2, that if at all possible the person is helped
5 while on the phone rather than having it referred and
6 investigated later?

7 A That's correct, yes.

8 Q You were given a letter that was
9 exhibit -- I believe it's Exhibit 237?

10 MR. WALCZAK: 9.

11 MS. HICKOK: 239. Sorry.

12 THE WITNESS: Yes.

13 BY MS. HICKOK:

14 Q And you were read parts of the letter.

15 A That's correct, yes.

16 Q What is the message that was in the
17 balance of the letter that you were not asked to
18 read?

19 A The balance of the letter that I was --

20 Q Well, for example --

21 THE COURT: Please be aware, I read it.
22 It's only four paragraphs long. I read it while we
23 were doing this.

24 BY MS. HICKOK:

1 Q All right. Is the thrust of the letter
2 to say that there are problems or is the thrust of
3 the letter to say that you are committed to help?

4 A The thrust of the letter is to say that
5 we're committed to help.

6 It served two purposes. First, a
7 reminder of the changes to the help desk and how it
8 would impact this year's email cycle.

9 And that's where -- as you are aware
10 since the very beginning. Calling to their
11 attention, reminding them that, in January, what was
12 in place previously has changed.

13 And we reiterate in the third paragraph
14 that the help desk staff will continue to work as
15 quickly as possible to provide quality service.

16 That is a verbose way of saying we're
17 still going to provide support and assistance. If
18 you have to leave a voicemail, you need to call back
19 five or 10 minutes later, if it comes to that.

20 Really, this decision is made for
21 budgetary reasons primarily, is a level of service
22 that previously, when we had lots of money to spend
23 on it, we do a certain threshold. That's changed a
24 little bit, but we're still providing quality service

1 and we're doing it within minutes of a call.

2 Q Within minutes?

3 A Yes.

4 MS. HICKOK: Thank you very much. I have
5 nothing further.

6 THE COURT: Anything else, Mr. Walczak?

7 MR. WALCZAK: Just a couple questions on
8 the letter, Your Honor.

9 - - -

10 RECROSS EXAMINATION

11 - - -

12 BY MR. WALCZAK:

13 Q Mr. Marks, you're not going to deny that
14 you have fewer resources now to staff the help desk
15 than you did before this contract was terminated in
16 January of 2012?

17 A I'm not going to deny that, no.

18 Q So you have fewer resources now?

19 A Right. It's actually been an iterative
20 process. We had even in 2009 fewer resources than we
21 did in 2008. For budgetary reasons, we had to
22 revisit even the contract with the outside vendor at
23 one point.

24 Q So it sounds like this was not the first

1 cut in resources to what you had in 2008; correct?

2 A It's not; correct.

3 Q So resources are down substantially since
4 2008 in terms of your budgetary --

5 A It depends what you define as
6 substantially. But help desk support, I believe, as
7 I said, I believe that two positions were eliminated
8 ultimately over those two or three years.

9 Q Two positions out of how many at the help
10 desk?

11 A And I think -- I want to point out too --
12 I want to go back to my testimony a couple days ago,
13 we also have our division of SURE backstopping the
14 SURE help desk. So we're handling it the way a lot
15 of state agencies are. We have people doing double
16 duty. We have people that are cross-trained to serve
17 several functions. So there's always support there.

18 Q So you have fewer people and the people
19 that you have are working harder and working
20 overtime?

21 A We are working overtime. That's not
22 unusual for a presidential election cycle, though.

23 Q Sure. And the demands on the Department
24 of State and on the county elections board is greater

1 in presidential election years than it is during
2 other election cycles?

3 A That's true.

4 Q Yes, it is substantially greater?

5 A It is. The numbers bear that out.

6 Q So you have how many millions of people
7 voting in a presidential election year in
8 Pennsylvania?

9 A I believe in 2008, it was 6 million, may
10 have topped over 6 million.

11 Q And how many voted in April?

12 A April, I don't recall. You may be able
13 to tell me, Vic. But it was a substantial number
14 compared to previous -- as you know, we were actually
15 relevant in the 2008 primary for a change.

16 Q And coming back to this letter,
17 Plaintiffs' Exhibit 239, in that third paragraph
18 again, it says [reading]: With the implementation of
19 voter ID, the SURE help desk is now responsible for
20 accepting calls from PennDOT to verify registration
21 status for DOS ID card applicants; is that right?

22 A That's correct, yes.

23 Q So that's not a responsibility that DOS
24 had in 2008, is it?

1 A It's not, no.

2 Q And it's not a responsibility they've
3 had, in fact, until just very recently; correct?

4 A That's correct, yes.

5 Q And in that next sentence you say
6 [reading]: With this change -- so because of voter
7 ID, the call volume has increased significantly.

8 Did I read that correctly?

9 A Yes. Between the two functions leading
10 up to a presidential election, as well as voter ID,
11 call volume has gone up.

12 Q So the demands of a presidential election
13 year, especially the general election, are very high
14 anyway because you have so many voters and so much
15 activity; correct?

16 A Correct, yes.

17 Q Now, on top of that, you have all of the
18 calls generated by PennDOT and the Department of
19 State ID card verification checks, correct?

20 A Yes.

21 Q And none of those calls had to be made in
22 2008?

23 A That's correct, yes.

24 Q So all of these calls are brand-new that

1 go on top of what your department has already had to
2 deal with; correct?

3 A Yeah. The calls for voter ID are
4 brand-new.

5 Q And you've had at least two budgetary
6 cutbacks to your staffing and resources since 2008;
7 correct?

8 A Right.

9 MR. WALCZAK: Thank you.

10 THE COURT: Anything else for this
11 witness?

12 MS. HICKOK: No, your Honor.

13 THE COURT: You may step down.

14 Please call your next witness.

15 MR. CAWLEY: Respondents call Kurt Myers.

16 - - -

17 KURT MYERS, having first been previously
18 duly sworn according to law, was examined and
19 testified as follows:

20 - - -

21 DIRECT EXAMINATION

22 - - -

23 THE COURT: You're still under oath.

24 THE WITNESS: I understand, Your Honor.

1 BY MR. CAWLEY:

2 Q Mr. Myers, there have been a number of
3 affidavits submitted to the Court, and I'd like to
4 ask you about some of the issues raised in those
5 affidavits.

6 Have you looked into the circumstances of
7 a Petitioner by the name of Nadine Marsh and her
8 attempts to obtain a photo ID?

9 A Yes, I have.

10 Q Can you explain for the Court what
11 happened in her case.

12 A Well, it appears in her case when she
13 went to get a photo ID, she had some of the documents
14 but not all the documents. And specifically she did
15 not have the birth certificate.

16 The policy at that time when she visited
17 us, before you would be in the position to issue the
18 DOS ID, was that you would go through an attempt to
19 issue the individual a voter ID issued by PennDOT.

20 And at that point, she went through the
21 process. We did a verification on the birth
22 certificate. We were able to verify just this week
23 that she does not -- or at least the Department of
24 Health couldn't verify her certification. And I

1 believe it was on Monday or Tuesday we sent her a
2 letter stating that she was eligible for the DOS ID.

3 Q And incidentally, you said the policy at
4 the time.

5 If Nadine Marsh were to come into a
6 PennDOT center for the first time today, what would
7 have happened differently?

8 A She would have been issued a DOS ID.

9 Q And you mentioned a letter that went out
10 to her. Do people under your supervision in your
11 part of PennDOT routinely send letters in the course
12 of doing business to people like Nadine Marsh who are
13 having difficulty obtaining an ID?

14 A Absolutely. There are a number of cases
15 where individual communication, either through letter
16 or through email, other means of communication,
17 telephone calls, to work with customers.

18 Q Who is Janet Dolan?

19 A Janet is the director of the Bureau of
20 Driver Licensing.

21 Q Is she under your supervision?

22 A Yes, she is.

23 (Respondents' 14 was marked for
24 identification.)

1 BY MR. CAWLEY:

2 Q I'm handing you what has been marked as
3 Exhibit R-14.

4 Have you had a chance to review
5 Exhibit R-14?

6 A Yes, I have.

7 Q Have you seen this exhibit before?

8 A Yes, I have.

9 Q Is this the letter that you referred to
10 that went to Nadine Marsh?

11 A That's correct.

12 Q And what does this letter indicate will
13 happen if and when Ms. Marsh shows up to the PennDOT
14 center?

15 A She will be issued a Department of State
16 ID.

17 Q Will she need to bring other documents
18 with her?

19 A No, she will not.

20 Q Switching topics, throughout this
21 litigation, there's been conversations about people
22 for whom -- people who a PennDOT driver's license or
23 a photo ID that is expired but it's not expired
24 12 months or more. But by the time the election

1 rolls around, it will be expired more than 12 months.

2 In the early implementation of voter ID,
3 what was PennDOT's position on that scenario?

4 A From early on we had discussions with the
5 Department of State. And I believe it was sometime
6 in the period of late March where we had the
7 determination that the law was clear that an ID
8 needed to be expired for at least a year before such
9 time that another ID could be issued for free.

10 Q Is that the reason why -- okay. So based
11 on that rationale, what did PennDOT do when somebody
12 came in who said, I'm going to need this ID to vote
13 in November; and by that time, I should be entitled
14 to get it for free?

15 A Well, the law, in my opinion at least, or
16 based upon the conversations that we've had with the
17 Department of State, is clear that we're not in a
18 position to be able to replace that ID for free until
19 after the year period of time has expired.

20 There needs to be standards in any
21 process. And we don't know -- and while I know that
22 on Tuesday, in discussion with Plaintiffs' counsel, I
23 was asked the question about, well, don't you folks
24 know that there's an election coming up.

1 And the answer is certainly they know
2 there's an election coming up. What they don't know
3 is special elections or other items that may require
4 somebody moving forward to have an ID.

5 So while it would be nice to be able to
6 have that flexibility, number one, I don't believe
7 the law allows for the flexibility; and number two,
8 is that while it may not make common sense to people
9 from the standpoint of saying to somebody you need to
10 come back in a week, that employee was following the
11 procedures as established within the law.

12 Q So you've been describing this policy of
13 how to deal with PennDOT driver's licenses or photo
14 IDs that are leading up until the point when they are
15 12 months or longer expired.

16 How has this policy or the interaction
17 with customers in this situation changed since the
18 Department of State voter ID became available?

19 A Well, certainly from the standpoint of
20 the Department of State standpoint, it gave us more
21 flexibility when the new card came into play.

22 Up until that point in time we didn't
23 have the flexibility of being able to offer the
24 customer another product.

1 When we got around to August 27th and
2 began issuing the Department of State product, we
3 then were in a position to be able to say to an
4 individual, even though your product is expiring, we
5 can, if you cannot afford to renew it, issue you a
6 Department of State product.

7 Q So to put a very fine point on it, if a
8 voter is concerned that their expired PennDOT
9 driver's license or photo ID will become more than
10 12 months' expired by November 6th and they don't
11 want to pay \$13.50 to renew that, what should they
12 do?

13 A Well, I want to be clear about this.

14 The issue of the Department of State
15 product for the purposes of somebody who has lost an
16 ID -- perhaps they've had a PennDOT ID and they've
17 lost it or they've had an ID that's been stolen. In
18 those cases we will replace that product either by
19 someone coming in and paying the \$13.50 for a
20 duplicate product for the driver's license and/or
21 the -- the driver's license. If somebody wants a
22 free ID, we will substitute the Department of State
23 ID for that purpose.

24 I want to be clear. And in my previous

1 statement, I have gone down a path that I'm not quite
2 sure I was very clear about. And that is when it
3 comes to an expired document, if somebody has an
4 expired document and it hasn't been expired for more
5 than a year, they would need to pay the fee.

6 If it's expired for more than a year,
7 then they have a choice. They can certainly get a
8 free replacement ID, PennDOT ID, or they can get a
9 free DOS ID. But the year expiration is associated
10 just with the PennDOT ID or the PennDOT driver's
11 license.

12 But it has to be a year. That's the
13 standard that was set, and that's the qualification
14 that you have on it based upon the law.

15 Q Okay. I'd like to ask you some questions
16 about testimony that we've heard and the contents of
17 affidavits before the Court. They claim that PennDOT
18 does not follow the document requirements that it
19 sets forth to the public.

20 First, if people do not know what
21 documents they are supposed to bring with them to
22 PennDOT, where can they go to get that information
23 before they go to the trouble of traveling to a
24 PennDOT driver's license center?

1 A Well, they really have two main options
2 available to them. One is our call center. They can
3 either talk to a customer service representative at
4 our call center and/or they can go through our
5 automated system to get additional information,
6 including locations of sites, what services those
7 sites will offer and the hours of operation of those
8 sites.

9 The other option is to go out on our Web
10 site. All of the forms that we've talked about here
11 today and over the last two days are forms that are
12 certainly available on the Web site for customers to
13 download and print.

14 Q Were you here for the testimony by
15 Petitioners' witnesses so far today?

16 A Yes, I was.

17 Q So you may have heard testimony about
18 information actually physically available inside the
19 driver's license centers.

20 Does PennDOT distribute forms and other
21 pamphlets and information to PennDOT driver's license
22 centers to be displayed in a rack or some other
23 location like that?

24 A We have applications in our driver

1 licensing centers. We also have certain forms in our
2 driver licensing centers.

3 Quite frankly, I know that --

4 MR. WALCZAK: Your Honor, I'm going to
5 object. The question was, does PennDOT distribute
6 these forms. Now, he's responding that these are
7 available inside the licensing centers, and there's
8 no --

9 THE COURT: What's the basis of your
10 objection?

11 MR. WALCZAK: There's no foundation. And
12 he's gone beyond the scope of the question.

13 THE COURT: Sustained. Sustained.

14 Ask him another question.

15 MR. CAWLEY: I'll back up.

16 BY MR. CAWLEY:

17 Q So my question just has to do with forms
18 and pamphlets available inside the driver's license
19 centers.

20 Just on that topic alone, does PennDOT
21 generally distribute those kinds of paper forms to
22 the various driver's license centers across the
23 Commonwealth?

24 A There are distributions of forms across

1 the Commonwealth to our centers; that's correct.

2 Q And the only extent of the question that
3 I intended to ask was, is that a reliable method --
4 as reliable -- well, compare the reliability of that
5 method of getting information to the ones you already
6 told us about with the Web site and the toll-free
7 number.

8 A I certainly think it is another
9 mechanism, and it's certainly reliable from the
10 standpoint of the availability of forms, yes.

11 Q Is that dependent on who else has been
12 using the information that day?

13 A It certainly can be. You can walk into a
14 center, and a bin can be empty of forms simply
15 because a person was in right before you and took the
16 last one and the staffing hasn't gotten back out to
17 put new forms back out.

18 Q With regard to a specific affidavit
19 that's before the Court, a woman named Ethel Hughes
20 has described how she took her friend, Margaret
21 Macarone, to the driver's license center in
22 Shillington but was unable to obtain an ID.

23 Have you looked into the circumstances of
24 Ms. Macarone's attempt to get a photo ID?

1 A I have.

2 Q And has she been able to receive a photo
3 ID?

4 A Yes, she has.

5 Q Milton Goldson explained in an affidavit
6 that he obtained a photo ID at the Norristown
7 driver's license center only after having to go
8 between two separate buildings and being initially
9 denied because his old ID expired back in February of
10 this year.

11 So with that synopsis, and Counsel can
12 correct me with any other relevant details from that
13 affidavit, first describe for the Court, is there
14 some sort of unique architecture at the Norristown
15 center that would cause a customer to go between
16 buildings?

17 A There are two buildings at the Norristown
18 location. We put up a second building that's
19 probably -- I'm only estimating, but I suspect is no
20 more than 10 to 15 feet apart from the other
21 building, the existing building.

22 We did that because of volume of
23 customers and adding to the space. This is an area
24 that's owned by the Department of Transportation, the

1 land. So the best approach when we did this a number
2 of years ago was to add the second building.

3 Q And with regard to Mr. Goldson, was he
4 able to obtain a free photo ID that he can use for
5 voting?

6 A He was. And it was actually under a
7 different part of the law. Section 1510 of the
8 Vehicle Code allows for an individual who surrenders
9 their driver's license to receive a complimentary
10 free ID card when they surrender their driver's
11 license, which is what he did in this particular
12 case.

13 Q And was that his choice to do that? Do
14 you know?

15 A I would believe that it was a choice that
16 was offered --

17 MR. WALCZAK: Objection; foundation.

18 MR. CAWLEY: I asked if he knows if it's
19 the choice. I think that's pretty clear.

20 THE COURT: Let's take it easy.

21 There was no problem with the question.
22 Your objection is overruled.

23 But he did ask you if you know.

24 THE WITNESS: Could you repeat the

1 question.

2 BY MR. CAWLEY:

3 Q Yes. Based on your investigation of the
4 circumstances of Mr. Goldson's attempts to get his
5 ID, do you know whether that's a choice that he made
6 to surrender the license?

7 A I don't know that specifically.

8 Q Okay. I'd like to ask you some questions
9 about some more of the live testimony that you heard
10 here today.

11 You heard some testimony about the
12 Smithfield location in Pittsburgh. Were you present
13 for that testimony?

14 A Yes, I was.

15 Q And are they -- are all of the people
16 working inside of the Smithfield location PennDOT
17 employees?

18 A No, they're not. Some are contracted
19 employees.

20 Q And by whom are the contract employees
21 employed?

22 A They're employed by PIBH.

23 Q What does PIBH stand for?

24 A Pennsylvania Industries for the Blind and

1 Handicapped.

2 Q And you may have heard testimony about
3 someone saying, I believe it was "a guy" said that
4 PennDOT is no longer giving out free IDs for voting.

5 Do you know anything about the
6 circumstances that were described there?

7 A I don't know the specific circumstances
8 behind that, other than I believe that that was the
9 18th that they were discussing, and that was the
10 day I believe there was a rally in the street outside
11 of the building.

12 Q And what else do you know was going on on
13 the 18th of September that may have been relevant
14 to this circumstance?

15 A I believe that's also when the Supreme
16 Court came back with its decision.

17 Q Did PennDOT send out any word to the
18 Pittsburgh offices or to any other driver's license
19 center on the 18th of September that PennDOT would no
20 longer give out free driver's licenses -- I'm
21 sorry -- free photo IDs for voting?

22 A Absolutely not.

23 Q Have you had a chance to review the
24 exhibit that was offered -- the form to verify

1 residency that was given to the young lady who went
2 to vote there?

3 A The exhibit is still here.

4 Q I'll refer you specifically to
5 Exhibit 237.

6 A Yes, that's what I have here.

7 Q Okay. And is that -- is the first page
8 of that exhibit a PennDOT form?

9 A I've never seen this form before.

10 Q Is this something that that particular
11 center may have come up with for this purpose?

12 A It is --

13 Q If you know.

14 A I don't know specifically. Can I say
15 that it's possible. It's possible that the center
16 may have come up with this. But it is not a form
17 I've ever seen.

18 Q When you look at the second page of that
19 form, is that an official form issued by the
20 Commonwealth?

21 A Yes, it is.

22 Q Have you been involved in the development
23 of these forms that get used for various purposes?

24 A Specific to the Department of State

1 forms?

2 Q Well, whether it's this form or other
3 forms that are routinely used in the course of
4 business at PennDOT.

5 A Certainly in the case of the Department
6 of State forms, I've had the opportunity to review
7 them after they've been drafted. And in some cases
8 with PennDOT forms, I may review them. But not in
9 all cases for PennDOT forms.

10 Q Well, I guess the point I'm getting at
11 here is that, do you or other people in the higher
12 levels of PennDOT review forms before they are used
13 for official purposes in the driver's license
14 centers?

15 A Well, the answer to that is yes. We do
16 for -- certainly for all of the forms that were
17 created for the Department of State, I've looked at
18 those forms.

19 As far as all the PennDOT forms that are
20 reviewed, there are some I have been involved with
21 from a review standpoint, but I can't sit here and
22 say that I've reviewed every single PennDOT form
23 that's ever been created.

24 Q Were you present for the testimony of

1 Mr. Dylan Bellisle from SEIU?

2 A Yes, I was.

3 Q And are you able to respond to any of the
4 points that he made about his observations around
5 Pennsylvania?

6 A Was this the gentleman from Chicago?

7 Q Yes.

8 A Quite frankly, his comments were so
9 general in nature that I'm not sure I could add much
10 clarification to his statements.

11 Q I'd like to ask you some general
12 questions about the operation of PennDOT driver's
13 license centers.

14 Has PennDOT made any plans to keep the
15 driver's license centers open for longer hours to
16 accommodate voters who wish to obtain a photo ID?

17 A We have. And in point of fact, I know
18 there were discussions this morning from some of the
19 customers' experiences about wait times and things of
20 that nature. And certainly most of them seem to be
21 centered around being in the Philadelphia centers.

22 Certainly from our standpoint -- in fact,
23 today is the first day that all of the five centers
24 in the Philadelphia County region will be open until

1 7 o'clock tonight.

2 We recognize that -- we want to be sure
3 that individuals are able to get the services that
4 they need, and this was one way to attempt to address
5 that, by staying open later on Thursdays. And we'll
6 be open later on Thursdays at those five centers all
7 the way to the Thursday after the election.

8 Q And you mentioned wait times. Does
9 PennDOT keep track of wait times for customers at all
10 of the driver's license centers?

11 A We do. And there's no question about the
12 fact that some centers are busier than others. And I
13 think we heard that testimony this morning.

14 Some centers people walked into, there
15 was no waiting; they went right to the counter.
16 Other areas they went to and they waited an hour and
17 a half or more, two hours.

18 Clearly, in those instances where people
19 feel they waited too long, we didn't meet their
20 expectations. No question about that and -- based
21 upon their testimony.

22 So the things that we're doing such as
23 adding the additional hours in the Philadelphia
24 region is in direct response to that; and opening up

1 the door for more flexibility as far as available
2 time.

3 Q And on the specific matter of keeping
4 track in terms of minutes, the average wait times at
5 the various PennDOT driver's license center, how long
6 has PennDOT been doing that?

7 A We have been doing it for at least the
8 last decade. I suspect that it may be even longer
9 than that, but certainly within the last decade and
10 back to 2000.

11 Q Why do you keep that data?

12 A Well, it's -- the measure -- it's a
13 helpful measure in the customers' experience from the
14 standpoint that we know. And just as myself, when I
15 walk into some business, I don't like to wait. And
16 my tolerance level is probably just that of everybody
17 else in this room, which is usually around 15,
18 20 minutes; and then I start to get to a point where
19 I want to get in and I want to get out. Now, in the
20 case where somebody has waited two hours, obviously
21 we've gone beyond that.

22 So we measure to ensure that we're making
23 the decisions necessary to try to adjust for that.
24 We can't always do it. We only have so many

1 locations across the state. We have 71. And so you
2 can't always address all those issues.

3 There are some times we are busier than
4 others. I know that people testified about going in
5 on Saturdays. Saturdays are historically a busy day
6 for us, because, yes, a lot of folks are off of work
7 and that's a day that they go into the center.

8 Q You mentioned that this data goes back at
9 least a decade. Has PennDOT seen wait times that
10 exceed your target goals before the voter ID law came
11 into effect?

12 A Oh, absolutely.

13 Q And all of that being said, does PennDOT
14 have any policy or rule that an employee at a
15 driver's license center must limit or cap the amount
16 of time that they spend with any given customer?

17 A No, absolutely not. Every case is
18 individual. When somebody comes in, it may be very
19 quick, very efficient from the standpoint that the
20 individual has all the paperwork that they need.

21 And other times it may be that there's
22 work that has to be done from the standpoint of the
23 review of the documentation, and that may take
24 longer.

1 We don't set any time limit on our
2 employees to say that every transaction must be done
3 in 10 minutes, whether you're done or not. We say to
4 our employees, "Take care of the customer. Work with
5 them." If that takes 20 minutes, it takes 20
6 minutes. If it takes 5 minutes, then it takes
7 5 minutes.

8 Q One specific question. There's been
9 testimony before today about the Shared-Ride Program
10 for those who need help getting to a PennDOT driver's
11 license center.

12 Does such a person using the Shared-Ride
13 Program need a photo ID to get on the ride in the
14 first place?

15 A No, they don't.

16 Q Are you aware of your front-line
17 employees in the driver's license centers receiving
18 complaints or boisterous conduct from dissatisfied
19 customers?

20 A It does occur. I think everybody has to
21 keep perspective of the fact that we see somewhere
22 around 2.4 million customers face-to-face every year.
23 There are customers that come to our centers that
24 sometimes are disappointed because they're under

1 suspension; they want their license back and don't
2 understand all the things that have happened as far
3 as the courts are concerned related to their records.

4 There are other reasons that people don't
5 understand what the standards are and why we have the
6 standards that we have.

7 It would certainly be easy from our
8 standpoint to say, Well, we ought to make this day a
9 little easier; let's make sure that that happens.

10 People need to remember what a photo ID
11 is used for. In our case, for the PennDOT ID or
12 driver's license, it can be used to get on an
13 aircraft, a commercial aircraft.

14 We all know the disaster of 2001. And
15 those individuals had driver's licenses from states.
16 And it was one of the reasons they were able to get
17 on those aircraft, because of the fraudulent
18 documents they utilized to get those licenses.

19 So I think we all need to remember that
20 the standards are there for a reason, and it may not
21 just be getting on an aircraft. It may be a bank
22 loan. It may be doing something that potentially
23 allows that person to commit fraud if they're able to
24 get those IDs too easily.

1 Now, quite frankly, that's why the DOS ID
2 was created. It was created as a fallback for voting
3 purposes only. And certainly it's gone through an
4 evolutionary process since August 27th and now
5 today is a relatively easy document to get, short of
6 coming to our center and filling out a form.

7 Q So in terms of people expressing
8 dissatisfaction with PennDOT's service in the
9 driver's license centers, did PennDOT experience the
10 same feedback before the voter ID law became
11 effective?

12 A It can certainly happen with individuals.
13 And the situation sometimes can be severe with
14 certain customers with the way that they may react.
15 And some of it is frustration not necessarily at
16 PennDOT but simply because of the fact that their
17 circumstances have put them in a position where they
18 don't qualify for a product.

19 So the voter ID law has changed that to
20 some degree only in the fact that there are some
21 people who do come in and are upset because they
22 don't have a particular document that they need to be
23 able to get a PennDOT ID.

24 MR. CAWLEY: Thanks. Those are all the

1 questions I have.

2 THE COURT: You may inquire.

3 - - -

4 CROSS EXAMINATION

5 - - -

6 BY MR. WALCZAK:

7 Q Good afternoon, Mr. Myers.

8 Mr. Cawley asked you about wait times at
9 PennDOT centers; is that right?

10 A That's correct.

11 Q And he asked you if you keep track of the
12 wait times; is that correct?

13 A That's correct.

14 Q In fact, you keep charts of wait times;
15 is that correct?

16 A That's correct.

17 (Petitioners' 139 was marked for
18 identification.)

19 MR. WALCZAK: Your Honor, I'm handing up
20 what's been marked as Plaintiffs' Exhibit 139.

21 BY MR. WALCZAK:

22 Q Mr. Myers, I'm showing you what's been
23 marked as Plaintiffs' Exhibit 139.

24 Do you recognize this?

1 A Yes, I do.

2 Q Is this, in fact, the chart where you
3 keep track of wait times?

4 A This is a chart, yes, that has wait times
5 on it for four years, 2009 through 2012, or at least
6 August of 2012.

7 Q And, to your knowledge, are the data on
8 this reasonably accurate?

9 A Based upon how we collect the data; yes.

10 Q This is your own data; correct?

11 A That's correct, yes.

12 Q And the way that this is structured, that
13 across the top it's got the month; correct? So you
14 got January through December?

15 A That's correct.

16 Q And then above that it says "30 minutes."
17 And that signifies the percentage of people who wait
18 30 minutes or less?

19 A That is correct.

20 Q And then down the left-hand column, it
21 looks like there's four years of entry for each
22 driver's licensing location; is that right?

23 A That is also correct, yes.

24 Q So I want to take you to the column that

1 says "August."

2 And if you go down, for instance, to
3 Easton, for 2012 there -- let me say that for 2010 in
4 Easton, 77.31 percent of the people waited less than
5 30 minutes?

6 A That's correct.

7 Q And then in 2011 it was 78 percent of the
8 people waited less?

9 A That's also correct.

10 Q But in 2012 there was a significant
11 increase in wait times there to 57.87 percent waited
12 30 minutes or less; right?

13 A That is also a correct number.

14 Q So more than 40 percent of the people now
15 are waiting more than 30 minutes; is that correct?

16 A Yes, approximately 42 percent.

17 Q And there's nothing on this form that
18 will tell you exactly how long people waited?

19 A There's nothing on this form, no,
20 specifically to say what was the longest wait time of
21 the day or the month for this.

22 Q And you've heard testimony this morning
23 from people who said they waited two, three, four,
24 five hours. You don't have any evidence as you sit

1 here today to say that those people are not telling
2 the truth, do you?

3 A I'm not going to question their veracity.
4 I'm assuming that what they waited is what they
5 waited.

6 Q And if you turn to the second page of
7 Plaintiffs' Exhibit 139, if you go -- sticking still
8 with the August column -- and I figure that's
9 important because that's one of the most recent
10 months. And you don't have data for 2012 and
11 September yet. In 2010 at the very bottom it says
12 "Arch Street"?

13 A Yes.

14 Q So in 2009 only about 27 percent of the
15 people waited over 30 minutes; is that right? And
16 I'm subtracting that number from --

17 A Yes. I understand what you're saying.
18 Yes, that's correct.

19 Q And in 2010, it was only about
20 23 percent?

21 A Correct.

22 Q And in 2011 it's up to 47 percent?

23 A Yes.

24 Q And now in 2012, almost 75 percent of the

1 people were waiting over 30 minutes?

2 A Yes.

3 Q And, again, you don't know whether that's
4 31 minutes or three hours?

5 A That's correct.

6 Q But there's a significant increase in how
7 long people are waiting at the Arch Street station in
8 Philadelphia; is that correct?

9 A There is.

10 Q Now, do you have the same level of staff
11 there in 2012 as you had in 2011?

12 A I don't know the specific answer to that.

13 Q Is there any other explanation other than
14 the voter ID demands?

15 A There are certainly plenty of
16 explanations.

17 Q What could those be?

18 A When you take a center and you look at it
19 in a vacuum as you have, just picking out Easton and
20 Arch Street and suggest that somehow that's
21 indicative of the fact that the voter ID has impacted
22 those sites, I think you also have to look at the
23 other sites on this chart, many of which are well
24 ahead in service of turnaround time from the

1 standpoint of customer service.

2 There are a lot of factors that can
3 impact a center. It could be people who are sick.
4 It could be people who are on an extended sick leave
5 from the standpoint of filling positions.

6 As I testified on Tuesday, I believe,
7 Philadelphia in particular, especially at the
8 Arch Street location, we get a lot of college kids
9 in, especially foreign exchange students needing
10 documentation.

11 So there are multiple reasons on why a
12 particular site may show some degradation in the
13 total customer service turnaround time. But you've
14 got to look at the big picture why that's happening
15 and not just is it related to voter ID.

16 Now, I've already said that the biggest
17 area for voter ID in our locations is Arch Street.
18 And that's one of the reasons -- and in the
19 Philadelphia centers. And that's one of the reasons
20 on why we've added the additional hours. So we've
21 reacted to that fact that clearly people are waiting
22 longer; and we're -- and as such, we've added those
23 hours.

24 Q It's not your testimony that there's new

1 colleges and universities in Philadelphia today

2 than -- more than there were last year?

3 A I'm certainly not testifying to that.

4 I'm simply stating that there are other factors to
5 why there are wait times that may fluctuate, and one
6 of them is colleges and universities starting up for
7 the year.

8 Q And colleges and universities start at
9 the same time every year; right? Approximately.

10 A That is probably a fair statement.

11 Q And so when we compare August to August
12 from one year to the next, those fluctuations should
13 be included in that estimate; correct?

14 A There could be other factors. I
15 certainly recognize the fact that voter ID has been
16 added this year. Again, we've added the extended
17 hours in our Philadelphia centers. We've reacted to
18 that.

19 Q Now, is Easton one of your busier
20 locations?

21 A Easton is a very busy location; that is
22 correct. The Northeast region has been growing. In
23 fact, the Easton location was opened -- I forget the
24 exact year. I believe it was 2006 or 2007, somewhere

1 in that range. Because our Lehigh Valley location
2 was very, very busy, we built the Easton location
3 because of the influx of people moving into the
4 Northeast.

5 Q And you testified that Arch Street is
6 very, very busy?

7 A That's correct.

8 Q If you turn the page of Plaintiffs'
9 Exhibit 139 and let's, sticking with the August
10 column, Columbus Avenue, do you see that?

11 A Yes. Columbus Boulevard.

12 Q I'm sorry?

13 A Columbus Boulevard.

14 Q Yes, Columbus Boulevard. Sorry. Is that
15 also known as Ogontz?

16 A No.

17 Q What's that one?

18 A Ogontz is also known as West Oak Lane.
19 We have it listed here as West Oak Lane. Also call
20 it Ogontz.

21 Q Where is Columbus Boulevard?

22 A Where is Columbus Boulevard? It's right
23 along the river in Philadelphia. It runs just up
24 from the Walt Whitman Bridge.

1 Q So that's a Philadelphia location?

2 A Yes.

3 Q And in 2011 in August, only about
4 10 percent of the people waited longer than
5 30 minutes; is that right?

6 A That's correct.

7 Q And 2012 just slightly less than
8 75 percent of the people waited more than 35 minutes;
9 is that correct?

10 A That is correct.

11 Q Going down the form, Island Avenue, that
12 is a Philadelphia location also?

13 A That is correct.

14 Q And in 2011, less than 1 percent of the
15 people waited over 30 minutes; is that right?

16 A Yes.

17 Q And in August of 2012 when, for the first
18 time you are having to deal with voter ID, 27-plus --
19 I'm sorry -- 77-plus percent of people were waiting
20 over 30 minutes; is that correct?

21 A That's correct.

22 Q And, again, you don't know whether those
23 are 31 minutes or three hours?

24 A No, I do not. And, again, that is the

1 reason why we've added additional hours on a weekly
2 basis leading up to the election and after.

3 Q Now, what's the normal times when the
4 PennDOT offices are open?

5 A The regular hours for the majority of our
6 driver licensing centers are Tuesday through
7 Saturday, approximately 8:30 to 4:30.

8 The reason I say that is that Pittsburgh
9 is opened Monday through Friday the same hours.

10 Q And so the one change you've made is to
11 extend the hours in -- is it all the Philadelphia
12 locations or some?

13 A The five Philadelphia driver's license
14 centers.

15 Q On one day you extend them to 7:00; is
16 that correct?

17 A That's correct.

18 Q So you haven't extended the hours on any
19 other day; correct?

20 A Not at this point, no.

21 Q And you testified that Saturdays tend to
22 be the busiest times with the longest waits?

23 A They can be, yes.

24 Q And I believe you testified that's a day

1 when people are actually able to go in, because if
2 they work or have other responsibilities, that's a
3 day they can get away; correct?

4 A I testified that that's a day that a lot
5 of people are off and they can go to our centers.

6 Q You haven't increased the hours for
7 Saturday, have you?

8 A No, we have not.

9 Q Now, when a PennDOT location is --
10 licensing bureau's -- what's the term?

11 A That is actually some of the testimony
12 earlier today, is that there's a -- we have driver
13 licensing centers.

14 Q Driver's license centers?

15 A And we have driver photo centers.

16 Q Those are different?

17 A And there is a difference, that's
18 correct.

19 Q So there's 71 places in the Commonwealth
20 of Pennsylvania that issue voter ID cards; correct?

21 A That is correct.

22 Q Which ones are those?

23 A They are the driver's license centers.

24 Q So not the photo license centers?

1 A The photo centers, yeah, that's correct.

2 They are not the photo centers.

3 Q What does a photo center do that a
4 driver's license center doesn't do?

5 A The photo centers are the areas primarily
6 for people who are renewing their driver's license.
7 Once they've sent in their money and received their
8 camera card, it's a location they can go to and get
9 their picture taken. Those are centers that are
10 staffed by our PIBH staff.

11 Q And how many of those centers are there?

12 A Stand-alone, over and above -- every
13 driver's license center, that's a photo center, so
14 there's 71 of those. And I believe there are 26
15 stand-alone photo centers across the state.

16 Q And none of those 26 stand-alone centers
17 have you made available for people to go and get
18 voter IDs?

19 A We don't have the computer systems or the
20 technology available to be able to do that, that's
21 correct.

22 Q So you can't go to those centers?

23 A That's correct, absolutely.

24 Q Now, of the 71 centers, not all of them

1 are open five days a week; is that right?

2 A That is also correct.

3 Q And I think we had testimony at the last
4 trial that, in fact, there's, I believe, 10 --
5 there's 10 counties that have no licensing center,
6 correct, about?

7 A There are definitely counties that do not
8 have licensing centers. The exact number, I forget.

9 Q And there are 13 counties that the
10 licensing centers are only open one day a week?

11 A Again, there are definitely counties that
12 have centers that are only open one day a week, that
13 is correct.

14 Q And there's a number of counties that the
15 center is only open two days a week; correct?

16 A That is also correct.

17 Q And that's among the 71?

18 A That is correct.

19 Q And then there are centers that are open
20 five days a week?

21 A Yes.

22 Q Do you know how many of those there are?

23 A I believe the number is approximately 32.

24 Q So there's only 32 places where it's open

1 five days a week?

2 A Again, I'm going off of memory. I know I
3 testified at the last trial. I know you-all had a
4 map, and I just don't remember the number
5 specifically.

6 Q Is it true that when you say a center is
7 open five days a week that that doesn't necessarily
8 mean that that center is open five days a week to
9 process somebody's voter ID application?

10 A When those centers -- when a driver
11 licensing center is open, it is open and it can
12 process IDs.

13 Q And I believe you testified earlier about
14 Nadine Marsh and you had looked into her situation?

15 A Yes.

16 Q And you may recall, in her declaration,
17 she testified that she looked up the -- or her
18 granddaughter looked up when the East Rochester
19 licensing center is opened. Is East Rochester one
20 that's open five days a week?

21 A Yes, it is.

22 Q And she looked on the Web site and it
23 said that it's open on Mondays. And so they went
24 there and were told that they could not get a voter

1 ID on a Monday; is that correct?

2 A That would be correct, yes. The photo
3 center would have been open.

4 Q So the licensing center is open but, in
5 fact, you can't get a voter ID on a Monday there?

6 A In the building the photo center is open,
7 the licensing center would not be open on Monday.

8 Q So how many of those 32 centers that
9 apparently are open five days a week, how many of
10 those centers can you not get a voter ID every single
11 one of those five days?

12 A Again, you can get a voter ID Tuesday
13 through Saturday.

14 Q But you can't get it on Monday?

15 A Correct.

16 Q Even though the center is open on Monday?

17 A Excluding the Pittsburgh downtown
18 location, which is on a Monday.

19 Q Is there a day in Pittsburgh where you
20 can't get a voter ID that the center is open?

21 A The photo center, I believe, is open the
22 same hours as the downtown location is. So I believe
23 that that is Monday through Friday. That's the best
24 of my knowledge.

1 Q Mr. Myers, when Ms. Marsh's granddaughter
2 went to look at the Web site for the East Rochester
3 PennDOT, nowhere on there did it say that you can
4 only get voter ID on Tuesday, Wednesday, Thursday,
5 Friday and Saturday, or whatever day. There's
6 nothing on that Web site that tells somebody what
7 days you can get the voter ID, is there?

8 A No, that's inaccurate.

9 Q It's what?

10 A That is inaccurate.

11 Q Tell me what's on there.

12 A On the locator, if you were to go to the
13 locator, put your ZIP Code in, it would then tell you
14 the closest centers, and it would tell you the
15 services that are available at those centers, the
16 days that service is available, and in addition to
17 that, it would tell you the hours of availability.
18 You also have that functionality on our 1-800-number
19 to do the exact same thing.

20 Q Now, we have a number of folks, Ms. Marsh
21 and a number of other declarants, testified that they
22 looked on the Web site and they ended up going on a
23 day where they were told they can't get the voter ID.

24 My question to you is, is there anywhere

1 on those Web sites, on those locaters, when you go
2 there, where it specifically talks about what days
3 you can get voter ID? Not what's -- whether it's the
4 licensing center or the drivers' center or the photo
5 ID, but it specifically says if you want voter ID,
6 you have to come on Tuesday, Wednesday and Thursday,
7 don't come Monday?

8 A We offer multiple services. So if you're
9 asking the question, specifically state voter ID, the
10 answer to that is no. It offers the services that
11 are available in a general sense of issuance of IDs.

12 Q So you have to know whether or not a
13 voter ID is issued by the photo ID place or it's
14 issued by the driver's license place. If you don't
15 know -- and I certainly didn't know -- then you can't
16 tell on which day you get the voter ID unless you
17 call and ask somebody?

18 A We have a 1-800 number for the call
19 center that's more than capable of answering
20 questions of that nature. And I've stated before, as
21 I said last Tuesday, this is a shared responsibility
22 on the part of our customers as well as PennDOT.

23 Q Now, you mentioned that for Jessica
24 Hockenbury that you were asked about the day she went

1 there and she testified that -- as did Alice
2 Thompson -- testified that they were told that there
3 is no more free voter IDs; correct?

4 A They were apparently told that by a PIBH
5 employee.

6 Q PIBH is somebody that was hired by
7 PennDOT; correct?

8 A They're under contract to us, that's
9 correct.

10 Q And how many locations across the state
11 hire PIBH employees?

12 A Well, PIBH employees are photo techs.
13 They're the individuals that actually take the
14 photos. They are also many of the greeters at the
15 front door. So they also do that function as well.

16 Q You don't think they are PennDOT
17 employees?

18 A I consider them PennDOT contract
19 employees, yes.

20 Q And how many of those employees are out
21 there in those 71 centers?

22 A I don't have an exact number for you.
23 But it's in the hundreds certainly.

24 Q And what percentage of the workforce at

1 those centers are PIBH employees?

2 A Well, again, the work responsibilities
3 are segregated. Those individuals don't do initial
4 issuance of driver's licenses or ID or driver testing
5 and/or the knowledge testing part of it. That's the
6 responsibility of PennDOT employees.

7 The PIBH are primarily the photo techs.
8 They're the individuals that actually take the
9 pictures. They are also people who are the greeters
10 at our locations.

11 Q When you say they're the greeters,
12 they're the people who might be giving out
13 information to people who ask questions when they
14 walk in; is that correct?

15 A It is possible. And certainly that's the
16 case in one of the cases that I listened to this
17 morning.

18 Q Do those PIBH folks get the same training
19 as PennDOT staff?

20 A No, they don't. And, actually, they are
21 instructed to simply give the individual a ticket and
22 have the person go and then talk to the expert that
23 is behind the counter.

24 Unfortunately sometimes our folks, the

1 PIBH folks are trying to be helpful, and there is
2 opportunity for them to not know all the details and
3 then potentially, because the customer is not sure,
4 if they're not sure it can potentially lead to
5 confusion.

6 Q For instance, when you mentioned on
7 Tuesday that early that morning a training memo had
8 been sent out to all of the PennDOT centers, that
9 training memo would not have gone to the PIBH
10 employees, would it?

11 A There was a separate document that went
12 to PIBH management explaining the process that they
13 needed to follow.

14 I'm -- let me -- for point of
15 clarification, are you talking about this Tuesday
16 morning?

17 Q Yes.

18 A Yes, there was a separate memo that went
19 to PIBH.

20 Q They get some different memo?

21 A Well, they get a memo that's germane to
22 them, not to -- not to the PennDOT staff.

23 Q And so they didn't get a memo outlining
24 the details in the same way that the PennDOT

1 employees got a memo outlining the details of this
2 new process for getting the DOS ID; correct?

3 A Again, because we want those people who
4 are trained to be able to issue IDs and to go through
5 the documents that, especially for getting a PennDOT
6 ID, we want the customer to be talking to these
7 individuals to get that information.

8 Q But as you just testified, it's -- you
9 can't say that PIBH folks, who are supposed to be
10 doing the photos, are not also acting as greeters
11 when things are busy and trying to be helpful; is
12 that right?

13 A Certainly that can occur. There are a
14 lot of good-natured individuals who are trying to be
15 helpful, just as people come in to our locations from
16 the outside and try to give advice, even though they
17 may not know all the facts.

18 Q So you're not denying -- you don't have
19 any evidence that what Ms. Thompson and
20 Ms. Hockenbury testified to, that they were told by
21 somebody in a blue PennDOT uniform that they weren't
22 giving out any more free IDs; it's not your testimony
23 that they're not telling the truth?

24 A I believe that that's what they were

1 told.

2 Why they were told that, I don't know. I
3 have my hypothesis on what happened. The fact of the
4 matter is, there is certainly nothing that came out
5 from PennDOT and/or from PIBH to say that we had to
6 stop issuing voter IDs.

7 Q But that happened last week? Correct?

8 A Based upon their testimony, yes.

9 Q Now, you testified that you all send
10 forms to the different drivers locations; is that
11 right?

12 A We send publications, yes.

13 Q You can't sit here and testify today and
14 tell me that all of these licensing centers, in fact,
15 put out all the forms that you send to them?

16 A I can't testify that every one has done
17 that. They are certainly instructed -- given
18 instructions on what they need to do, and it's each
19 supervisor's responsibility at that center.

20 Q You don't have any data here to say that
21 you checked and verified that all of these licensing
22 centers have all of the DOS IDs forms that's
23 required?

24 A We have -- we've certainly talked to our

1 staff. We've checked with our staff as far as
2 signage is concerned and things of that nature.

3 Q But you can't tell us with any certainly
4 that every one of these 71 licensing centers has all
5 the DOS ID forms displayed and available for people
6 who come in, can you?

7 A It is a management expectation that they
8 would. But I can't sit here today and say that
9 absolutely positively today that a rack at a
10 particular center does have a form in it.

11 Q Kind of working backwards from your
12 direct, almost back to the beginning here.

13 So close to the beginning, we started
14 with who has to pay for IDs. And so -- and I got a
15 little bit confused, and you testified there that you
16 started -- I think you said down the wrong path and
17 then clarified, and I was left confused. So I want
18 to try to clarify this.

19 So if somebody has a PennDOT ID, and
20 let's say a nondriver PennDOT ID, and they come in
21 and they say I've lost it or it's been stolen and I
22 need it because I desperately want to vote in five
23 weeks, will you issue that for free?

24 A Not the PennDOT ID. What we will do is

1 we'll give the customer -- and this has been since
2 the August 27th date when the DOS ID was available,
3 what we'll do is give them the option of getting the
4 ID at no charge.

5 Q So is it your testimony that the clerks
6 are supposed to offer people the DOS IDs, or do they
7 have to ask for a DOS ID?

8 A It's my belief that the customer service
9 representative should offer that as an option.

10 Q So they should affirmatively say, "If you
11 don't want to pay, you can get a DOS ID"?

12 A The scenario that you gave me from the
13 standpoint of the lost or stolen and, in fact, that's
14 on our matrix that we've given to employees that
15 basically lays out what circumstances.

16 Q You can't sit here and give me assurances
17 that every clerk gives that, in fact applies the
18 system in that fashion?

19 A I can't sit here and give you assurances
20 that that's actually factual.

21 Q I want to talk about the situation of
22 when your PennDOT ID is nonexpired by more than a
23 year. So this is the situation -- so this is the
24 gentleman in the wheelchair who was here whose ID

1 expired on October the 31st of 2011.

2 And I don't know if you noticed, there's
3 an affidavit from a woman named Brenda Andrews, and
4 we had some testimony about her from one of the
5 organizers about how her ID expired on September the
6 30th.

7 So it is PennDOT's policy that when
8 somebody has an ID that's been expired less than a
9 year and they want to renew it, they have to pay for
10 it?

11 A That is correct. I would say it's more
12 than a policy, though. It's -- it is an
13 understanding that that's been signed off by the
14 Department of State, and I believe clearly is stated
15 in the law itself.

16 Q Which law?

17 A In the voter ID law.

18 Q And the voter ID law says what?

19 A It says that a driver's license or a
20 PennDOT photo ID can be used for voting purposes if
21 it is expired for up to a year after its expiration
22 date.

23 Q And, in fact, on the affirmation that you
24 have to sign in order to get a PennDOT ID, I believe

1 it says on there you have to affirm that you have no
2 other ID that's valid?

3 A That's correct.

4 Q And that's true also for the new DOS ID
5 procedure; correct?

6 A That would be correct, yes.

7 Q So as the State, the Commonwealth is
8 interpreting that, it is that -- it's not a question
9 of whether that ID can be used on the next election
10 day; it's whether or not it's expired on the day that
11 that person presents to PennDOT?

12 A Yes, it's based upon whether or not that
13 document has been expired for a full year. If it's
14 one day on a full year, then the individual could
15 sign the affirmation stating that they have no other
16 form of identity for the purpose of voting and then
17 they would get it free.

18 Q So that individual who comes in and has,
19 say, a nondriver photo ID that's not been expired a
20 full 12 months, they also can't get a free DOS ID;
21 correct?

22 A No. That's correct.

23 Q And they can't get a new DOS ID under
24 this new protocol?

1 A That would be correct, because they would
2 have an existing document.

3 Q Right. So when you take Mr. Cobb's
4 situation, his ID expires on October the 31st.
5 October 31st, 2011. Correct? That was -- that was
6 the testimony right?

7 A I believe that was his testimony.

8 Q So if his ID expires on -- expired on
9 October 31st, 2011, he cannot get a free ID for
10 voting purposes until October 31st, 2012, or
11 November 1st, 2012?

12 A He expired on October 30th.

13 Q October 31st of ...

14 A Then would be November 1st, assuming --
15 I don't know what day that is on November 1st.

16 Q So Mr. Cobb has no other ID he can use to
17 vote at this point. And so if he's going to want to
18 vote and needs to get an ID, he's got to pay unless
19 he waits until after October 31st, 2012?

20 A That's correct.

21 Q I think the 31st is a Wednesday. I'm
22 counting backwards. I tried to look on my phone, but
23 Your Honor required us to turn our phones off, so I
24 couldn't check.

1 So the licensing office or the photo
2 office is open on what days in Media; do you know?

3 A In Media? I'm trying to think what the
4 closest location -- I think he said that he went to
5 the Granite Run location.

6 Q I believe that's correct.

7 A That would be a five-day-a-week location,
8 so that would be Tuesday through Saturday.

9 Q So he can go -- he's going to have
10 Wednesday, Thursday, Friday, and Wednesday before
11 election day to go and get a free ID?

12 A That's incorrect, because Granite Run is
13 one of the sites that we've decided to open on Monday
14 before election day. So he'll actually have that
15 Monday and Tuesday until election day.

16 Q So if he wants to get a free ID, he has
17 to go one of those five days in order to be able to
18 vote if that's the only ID he's got?

19 A That would be correct, but based upon the
20 law and based upon the interpretation of the law.

21 Q And if his ID expired on November the
22 5th, he would have to go on Election Day is the
23 only way he could get a free ID to vote?

24 A I think he could use it on November the

1 5th. It would be November 6th that it would be a
2 problem.

3 Q If his ID expired on November the 5th,
4 2011, and he shows up to vote on November the 6th,
5 2012, and that's the only ID he has, he's not going
6 to be able to vote on a regular ballot, is he?

7 A If his -- if his license expires on
8 November the 5th, Election Day is November the
9 6th, he would be able to -- on November the 6th,
10 he would be able to get in and get a free ID.

11 Q But he could not use that ID that he had
12 that expired November 5th of 2011 to vote on
13 November the 6th, 2012; is that right?

14 A Based upon the way that the law is
15 written, my understanding.

16 Q So all of those people who may be unlucky
17 enough to have their licenses expire November 1st,
18 2nd, 3rd, 4th, 5th of 2011 are going to have
19 just a handful of days to go out and get a free ID
20 that they can use to vote? That's their window to
21 get a free ID; is that right?

22 A Again, that's -- that is the way that the
23 law has been applied; and to answer your question,
24 they would have a limited amount of time, yes, that's

1 correct.

2 Q And you're saying the law requires that?
3 That's right?

4 A That's my understanding.

5 MR. WALCZAK: One moment, Your Honor.

6 No further questions, Your Honor.

7 MR. CAWLEY: We have no further
8 questions, Your Honor.

9 THE COURT: You may step down, thank you.
10 Anything else?

11 MR. CAWLEY: No, Your Honor.

12 MR. WALCZAK: Your Honor, the Petitioners
13 would like to make a motion that all evidence,
14 documentary and testimonial, about the change to the
15 protocol for the Department of State ID be stricken
16 and excluded from the record.

17 Plaintiffs served on the Commonwealth a
18 request for production of documents. And the
19 first -- and this was served, I believe, the evening
20 of the Supreme Court's decision. So I think that was
21 the 18th. September the 18th.

22 And the very first request is [reading]:
23 Documents sufficient to show all procedures being
24 used to deploy the Department of State and PennDOT ID

1 cards for voting purposes, including but not limited
2 to the requirement to apply for PennDOT ID before
3 being processed for a Department of State ID card,
4 requirements to obtain a Department of State ID card.
5 This includes all amendments to any procedures issued
6 over time.

7 And on Friday afternoon we had a status
8 conference with Your Honor. In fact, we had filed a
9 request to conduct a deposition of a Commonwealth
10 witness, organizational deposition about the
11 implementation of the DOS ID. And, in fact,
12 Mr. Cawley opposed -- I'm not sure who else was on
13 that call. I think Mr. Putnam and Ms. Hickok may
14 have been on that call.

15 They opposed us getting any discovery,
16 and they said that we'd had extensive discovery
17 leading up to the hearing. The discrete issue before
18 the Court now and the hearing on Tuesday is simply
19 what's been happening in the last few weeks, what the
20 agencies have actually been doing and whether they've
21 continued on the plans they've already detailed to
22 the Court and to opposing counsel.

23 So they're saying that the entire purpose
24 of this hearing is to look back, and then shortly

1 after -- and Your Honor agreed with the Commonwealth,
2 it's too burdensome, too many things going on for us
3 to be able to take any kind of discovery or
4 deposition of Commonwealth witnesses. So that was
5 refused. That's fine.

6 Later that evening, somewhere around
7 5 o'clock, the Commonwealth did produce documents,
8 which they produced a lot of documents. They
9 produced thousands of pages of documents on all sorts
10 of issues.

11 What they didn't produce was any
12 documents about the change in the protocol. And, in
13 fact, we didn't learn anything about that change in
14 protocol until 4:58 on Monday afternoon.

15 Now, the pretrial statements, I believe,
16 were due at noon. We didn't get the Commonwealth's
17 at noon, as far as I know. But it was due at noon.
18 And in their list of exhibits there was nothing, none
19 of -- well, I'm sorry. Let me back up.

20 In the pretrial statements, for the first
21 time they state in there that the exhaustion
22 requirement has been eliminated.

23 And we were all busy. Mr. Gersch finally
24 read that late in the afternoon, immediately sent an

1 email to Mr. Cawley saying, what do you mean the
2 exhaustion requirement has been eliminated? We have
3 not produced -- you have not produced any documents
4 about a change to the DOS process. If you have any
5 documents, please produce those.

6 And within minutes, we get a response
7 that I just sent them to your associate, and, in
8 fact, they had sent seven documents about the change
9 to the DOS process to Ms. Hurley in Mr. Gersch's
10 office. And those seven documents detailed kind of
11 what we know to this point about the change in how
12 the DOS process was going to be handled.

13 At least one of those documents in there
14 is dated September 21st, which is several days
15 before. There is not a single email that has been
16 produced about this change in the process, which
17 they've testified the discussions began the day of
18 the Supreme Court's decision.

19 And so the fact that none of these
20 documents were identified at the time of the
21 pretrial, none of this information was given to us in
22 the discovery that we had requested, I think in
23 fairness, Your Honor, that all of that testimony and
24 all of that evidence should be stricken from the

1 record and should be excluded, because we really are
2 prejudiced in that we have not been able to test
3 that.

4 THE COURT: Except that it was your
5 questions that brought out the evidence.

6 MR. WALCZAK: We did what we could and
7 what we had to do. But, in fact, none of that
8 evidence should come in. If there are restrictions
9 put on the kind of evidence that the Petitioners can
10 introduce, because maybe we can't quite get everybody
11 here into court, some of the affidavits are not
12 100 percent right, some of the names and addresses
13 may have been produced a little bit late, then I
14 think it would be only fair to exclude the evidence
15 that the Commonwealth did not identify at the time of
16 the pretrial and did not produce until later, even
17 though clearly some of it, if not all of it, was
18 available before then.

19 THE COURT: Do you want to be heard?

20 MR. CAWLEY: Yes, very briefly, Your
21 Honor.

22 First, as Your Honor has already
23 recognized in our status conferences, there's some
24 question as to whether discovery in such a tight time

1 frame should even be allowed. Discovery on a
2 preliminary injunction, whether it should be allowed.

3 Notwithstanding that question, Your Honor
4 is well aware of what the Rules of Civil Procedure
5 provide for response times. Typically, I would have
6 30 days.

7 As a show of good faith, we produced a
8 massive number of documents, to which Mr. Walczak
9 just referred, in the course of a few days. We
10 dropped everything and scoured all of the records we
11 could find to provide everything that was current
12 until that date.

13 Obviously we can't provide documents that
14 don't exist yet.

15 I think the essence of what Mr. Walczak
16 is arguing is that we did not continue to produce
17 documents every single day since then, because we've
18 been here, and that was the reason that we weren't --
19 that we were opposed to doing depositions both in
20 Harrisburg and out in Beaver County, because we were
21 producing these documents. We were drafting the
22 brief for the Court. We do not have an endless
23 supply of people constantly gathering documents to
24 update them every couple of hours.

1 So we provided all the documents on a
2 very expedited schedule that we had available to
3 us -- and including he's just admitted documents
4 about this new process -- as soon as they got to our
5 possession.

6 So we would oppose any motion to strike
7 that testimony.

8 MR. WALCZAK: Just very quickly, Your
9 Honor. It is mind-boggling to think how the
10 Commonwealth and their attorneys could possibly have
11 missed the fact that they are talking about
12 overhauling the way in which they are deploying the
13 Department of State ID. In fact, it was the very
14 first question that we asked in our discovery
15 request.

16 THE COURT: I'm spending a lot more time
17 dealing with discovery issues than I am trying to get
18 to the meat of this case.

19 I know that both of you have some hard
20 feelings about this. I get it.

21 My concern is that the reason that
22 information is in the record is because you've
23 brought it in the record. It would seem that you
24 waived an objection to it, so I'm going to overrule

1 it.

2 Having said that, the problem with the --
3 this new procedure, in my view, is that I'm now asked
4 to make another predictive judgment about something
5 that's not -- hasn't been implemented yet, and I have
6 some questions about whether or not it's the type of
7 information I can use.

8 So -- and I'm -- it's in the record for
9 whatever it's worth. Might as well allow the Supreme
10 Court to know about it.

11 But I'm not sure it's the type of
12 information you want me to rely on. I need to think
13 about that a little bit more. I certainly feel like
14 I'm trying to shoot a moving target. That's the
15 trick.

16 All right. So I dealt with that. What I
17 really want to know is, do we have any more evidence
18 to -- can I close the evidence now? That's really
19 where I'm going.

20 It's about 4:10.

21 MR. WALCZAK: Your Honor, I think except
22 moving in the exhibits that were offered this
23 afternoon.

24 THE COURT: There was one Petitioners'

1 exhibit -- I'm sorry, there were two Petitioners' exhibits, 239, which is the SURE help desk memo, and
2 139, which is a chart. Do you move those?
3

4 MR. WALCZAK: Yes, Your Honor.

5 THE COURT: Is there an objection?

6 MR. CAWLEY: No objection.

7 (Petitioners' 139 and 239 were
8 received into evidence.)

9 THE COURT: They're received. There are
10 two Respondents' exhibits, 13 is a data entry of
11 names and SURE -- in the SURE system. And 14,
12 PennDOT letter to Mrs. Marsh.

13 MS. HICKOK: Those are moved, Your Honor.

14 THE COURT: Those are what?

15 MS. HICKOK: Moved.

16 THE COURT: Any objection?

17 MR. WALCZAK: Your Honor, on Exhibit 14 I
18 have asked Ms. Marsh and her granddaughter to
19 immediately let me know when they receive that
20 letter. As of noon today, I have not received an
21 indication that they have received that letter.

22 So I think -- we could not object to the
23 introduction of this evidence with the understanding
24 that they may well have mailed it. But as of this

1 date, which is September the 27th, Ms. Marsh has
2 not received this letter.

3 THE COURT: All right. 14 is received,
4 and 13 is received. The evidence is closed.

5 (Respondents' 13 and 14 were
6 received into evidence.)

7 THE COURT: You may have a brief closing.
8 Can you keep it to 10 minutes or do you need --

9 MR. WALCZAK: Your Honor, I will keep it
10 shorter than my last one, which was only --

11 THE COURT: You keep it shorter than your
12 cross-examination?

13 MR. WALCZAK: Your Honor, there's quite a
14 bit to unpack. I was wondering if we could just take
15 a 10-minute, maybe just a short 10-minute break.

16 THE COURT: Before we do that, before we
17 do that, now that I seem to have you antsy, how much
18 time do you need?

19 MR. WALCZAK: Twenty minutes, Your Honor.

20 THE COURT: All right. Twenty minutes
21 work?

22 MS. HICKOK: I believe so.

23 THE COURT: We'll take a 10-minute break.
24 You'll each get 20 minutes. Now, you may save some

1 of that for rebuttal, as in a short amount of that.

2 (Recess taken.)

3 THE COURT: You may fire when ready.

4 MR. WALCZAK: Thank you, Your Honor.

5 May it please the Court, I think we're
6 all stressed. I know we're all tired and
7 sleep-deprived and, I think, fraying around the
8 edges. So I just wanted to thank the Court for your
9 patience for allowing us to put the evidence in
10 today.

11 Apologies if a little rough at times
12 here. And I want to thank Mr. Cawley and Ms. Hickok
13 and Mr. Putnam. They have been good to work with
14 here.

15 Contrary to what Mr. Putnam said the
16 other day where he's talking about the six-factor
17 injunction test, that's irrelevant. We're here on a
18 remand with very clear directions from the Supreme
19 Court.

20 And what we're not here on is a clean
21 slate. We're not looking at this through the filter
22 of a preliminary injunction standard. We're not
23 looking at whether this is constitutional or not.

24 The Pennsylvania Supreme Court gave very

1 specific instructions to this Court and used the
2 language that this Court is obliged to enter a
3 preliminary injunction, obliged, very strong
4 language, unless the Commonwealth can show two
5 things.

6 One is that the procedures being used for
7 deployment of the Department of State IDs cards
8 comport with the requirement of liberal access, which
9 the general assembly attached to the issuance of
10 transportation identification cards; or that this
11 Court is convinced that there will be, quote, no
12 voter disenfranchisement for purposes of the upcoming
13 election. They didn't say there will be no
14 substantial disenfranchisement. They didn't say you
15 have to show there's 10 people, 10,000 people,
16 100,000 people.

17 The Court's language is no voter
18 disenfranchisement for purposes of the upcoming
19 election. That's the Supreme Court's language.

20 Extremely tough standard. We would
21 suggest that that leaves very little wiggle room for
22 the Court.

23 So we're going to focus only on these two
24 points. First of all, on the issue of liberal

1 access, what the Court was referring to there is made
2 very clear by Page 4 of the Supreme Court's opinion.
3 And what they were talking about is the exhaustion
4 requirement. If there is an exhaustion requirement,
5 that is inconsistent with liberal access.

6 It is beyond pure adventure at this point
7 that between August the 27th and September 25th,
8 the Court was applying an exhaustion requirement.

9 It's admitted in their pretrial brief.
10 They admitted it here in court. And, in fact, they
11 announced with some fanfare on Tuesday morning that
12 just the day before they have changed that; they had
13 misunderstood it.

14 So it is perfectly clear; the
15 Commonwealth has admitted that between August
16 the 27th and September the 25th, they were
17 applying this new DOS ID with an exhaustion
18 requirement which, according to the Supreme Court,
19 does not meet the standard of liberal access.

20 That should be the end of the case,
21 because the test, the two tests, two-part test that
22 the Court gave to this Court is a conjunctive one.
23 Not one or the other. The Commonwealth has to be
24 able to meet both of them. They cannot meet that

1 first one. They have admitted that.

2 Now, Commonwealth is undoubtedly going to
3 argue today that, yes, we weren't doing it right; but
4 we're doing it right now. We've made the changes.
5 We've heard the Supreme Court. We're going to do it
6 right now.

7 I want to recall for the Court the
8 context from the first trial because the day before
9 that trial started, Secretary Aichele holds a press
10 conference here in Harrisburg and announces with some
11 fanfare that we're going to have this new DOS ID.

12 And they did it because, frankly, there
13 were a lot of problems with the PennDOT ID, and
14 people couldn't get that. And they announced that
15 that ID is not in effect yet, but it will be at the
16 end of August.

17 And our entire presentation to this
18 Court -- our presentation to this Court during those
19 seven days in July and August was showing exactly why
20 that PennDOT ID did not enable all voters to get that
21 ID.

22 So we had Viviette Applewhite. We had
23 Wilola Lee. We had Nadine Marsh. We had experts,
24 Niki Ludt and Michele Levy, who came in and talked

1 about how hard it is to get these IDs and not
2 everybody can get them.

3 The Commonwealth's entire defense was:
4 Okay. We get it. Maybe we weren't doing it right;
5 but we're going to do it right now, with this new
6 DOS ID which is going to come out next month. We
7 give you our assurances, Judge, that this is going to
8 work. This is going to cure the problems. People
9 are going to be able to come in and get IDs.

10 You'll recall Mr. Marks testifying:
11 People can just come to PennDOT and in five minutes
12 will be able to get this DOS ID.

13 And now it's really, to quote that great
14 and eminent jurist and scholar "Yogi" Berra, "This is
15 déjà vu all over again."

16 What we have is the Commonwealth is
17 likely going to argue: Okay. We've had lots of
18 problems with the implementation. The Supreme Court
19 has already said it's not consistent with liberal
20 access; but we made these changes to the DOS ID
21 process, and now it's going to work. All these
22 assurances. Everybody is going to know about it.
23 Everybody is going to be able to get the ID.

24 The problem with that, Your Honor, is

1 what the Supreme Court, in fact, said, on Page 5 of
2 its opinion, is that that is essentially based on a,
3 quote, predictive judgment that these upcoming
4 procedures, quote, will ultimately be sufficient to
5 forestall the possibility of disenfranchisement.

6 It's a prediction on as-yet-unimplemented
7 changes.

8 And then on Page 6, the Court's
9 characterization of the record is, in the middle of
10 Page 6: The problem with that, this is an ambitious
11 effort by the general assembly within a relatively
12 short time frame and an implementation process which
13 has by no means been seamless in light of the serious
14 operational constraints faced by the executive
15 branch.

16 They recognized the problems. They
17 looked at the record. They said, "Boy, there's lots
18 of problems here."

19 And what was the Supreme Court's response
20 to that kind of prediction?

21 They said no.

22 And in that next-to-last paragraph, they
23 say [reading]: Given this state of affairs, we are
24 not satisfied with a mere predictive judgment based

1 primarily on the assurances of government officials,
2 even though we have no doubt that they are proceeding
3 in good faith.

4 And then they directed this Court -- we
5 turn to the Commonwealth Court, quote, To make a
6 present assessment of the actual availability of the
7 alternative identification cards on a developed
8 record in light of the experience since the time the
9 cards became available.

10 They directed this Court to look at
11 whether those predictions that the Commonwealth had
12 made back in July and early August had actually borne
13 out. Is it seamless? Is it smooth?

14 And the importance of that is that it's
15 got to be based on experience. This has to be
16 assessed based on the evidence, because we don't
17 doubt the good faith and sincerity of Mr. Marks and
18 Mr. Royer and Mr. Myers when they come in here and
19 they truly want to make this work. They may even
20 think that they can make it work. But the fact is,
21 there's not a lot of time.

22 And as all three of them testified and as
23 we'll put in our post-trial brief, there are
24 countless references in their testimony to whenever

1 you do something new, there's problems; there's bumps
2 in the road. You learn something new. Sometimes you
3 fix it sooner; sometimes you fix it later. You just
4 don't know.

5 And if there's any individual who
6 demonstrates the importance of relying on evidence
7 and on experience, it's Ms. Marsh. Ms. Marsh
8 couldn't get it under the first system, on the
9 PennDOT system, because she doesn't have a birth
10 certificate. She's got a letter.

11 So if we follow the prediction from the
12 last trial, she should have just been able to walk it
13 to the Department of State and get a DOS ID. As we
14 sit here today on September 27th, she doesn't have
15 an ID that will allow her to vote in November. And
16 it's not because she hasn't tried.

17 She, through her granddaughter, in fact,
18 started two days before that DOS ID came online. On
19 the 25th, they started sending emails saying, "We
20 can't figure out what documents we need." Took
21 almost a week before they got a response.

22 Then she got sick. Then she goes in.
23 She looked on the Web site, and lo and behold it's
24 open; they go. But they don't issue cards that day.

1 So they make the 40-minute drive home.

2 They go back the next day. And as I
3 stand here today, I don't know whether she didn't get
4 the ID because they said she had to go through the
5 birth certificate check or they couldn't find her
6 voter registration. She wasn't told. They say
7 they've now sent a letter, but she hasn't received
8 it.

9 And I don't -- nobody doubts that
10 Mr. Marks or Mr. Myers or Mr. Royer or
11 Secretary Aichele wanted to deny her, deny Ms. Marsh
12 an ID or the ability to vote. But it's the system.

13 The system is not working. There are
14 glitches. There is no way that any of these
15 officials can give this Court any kind of guarantee
16 that nobody is going to be disenfranchised over the
17 course of the next five weeks.

18 For this Court to approve and allow this
19 law to continue based on the changes that the
20 Commonwealth announced on Tuesday would be to repeat
21 what happened the last time.

22 And in the Supreme Court's words, we can
23 respectfully submit that they would not be satisfied
24 with a decision based on such predictions.

1 Two very quick points.

2 One, this is not -- this would not be --
3 granting an injunction would not be disrespectful of
4 the legislature. The legislature did not anticipate
5 that when they passed this law, that there would be a
6 five-week window when maybe there's a seamless, easy
7 process to get ID.

8 As the Republican Caucus amicus brief
9 says, Oh, yeah, they passed this so there's 237 days.
10 There's plenty of time for people to go out and get
11 IDs.

12 Well, we're now down to five weeks; and
13 in some of these PennDOT offices, that means five
14 days where people can go get the ID. This is not
15 what the legislature had in mind. Granting an
16 injunction is not in any way offensive to or
17 inconsistent with what the legislature was hoping to
18 accomplish.

19 Education is not going to be a cure. Not
20 one of the ads that Mr. Royer talked about tells
21 people how to get the ID, what documents they need,
22 where they need to go, during what hours. All it
23 says is you got to have ID or you can't vote. The
24 message is: I don't have ID. I'm not going to be

1 able to go. I may as well not go.

2 And, most importantly, there is not a
3 single ad that says, You don't need any documents
4 now. All you got to do is go to PennDOT with no
5 documents; and as long as you're registered to vote,
6 you can get an ID.

7 So we've got all this information out
8 there, whether it's through news reports or letters
9 that PennDOT has -- that the Department of State has
10 sent out telling people, Yeah, you can get ID; you
11 got to bring a birth certificate, Social Security
12 number, proofs of ID.

13 Well, that's changed. There isn't a
14 single ad that they've showed us that's going to
15 advise people that you can get this very simply
16 without any kind of documents. And the testimony was
17 they've already spent that \$5 million. There's no
18 more money to do that kind of education campaign.

19 So, Your Honor, for all of those reasons,
20 it would be improper for this Court to look at
21 whether or not this new process, which was
22 unveiled -- and there's no evidence, there's no track
23 record, there's no experience about how it's going to
24 work or whether Ms. Marsh is going to be able to get

1 her ID under this system -- would be an inappropriate
2 basis on which to deny a preliminary injunction.

3 Now, very quickly, we have produced a lot
4 of evidence, much of it through declarations. And
5 this goes both to the fact that people are going to
6 be disenfranchised.

7 And it also goes to the first point that
8 no matter what kind of assurances you get in good
9 faith from the officials, things aren't always going
10 to go according to plan. So you really can't say
11 that everybody is going to be able to get that ID

12 So we have a couple of folks, we have
13 Mrs. Ginensky and Ms. Kukowski, all elderly disabled
14 folks, who have testified that they can't get to
15 their polling place -- in Mrs. Ginensky's case, it's
16 in her building.

17 She doesn't need to leave that building
18 except by ambulance to go to the doctor. So she can
19 vote in her building. She can't vote absentee, but
20 she can't get to a DMV. She simply can't do that.
21 These are people who will not be able to vote and
22 can't vote absentee.

23 You also, as Mr. Cobb testified, there's
24 a declaration from Brenda Andrews and Lori Flynn. We

1 heard testimony from Mr. Myers. There are people who
2 have only one form of ID, and they cannot get -- and
3 that ID is not going to work on Election Day. And
4 they cannot get a new ID now without having to pay.

5 And one of the things the Supreme Court
6 said on Page 2 of the opinion, where they talk about,
7 you only have to sign an affidavit, first thing they
8 say in there, it's got to be at no cost.

9 So the Commonwealth can say, oh, yeah,
10 Mr. Cobb can go, but he's going to have to go in
11 those three or four days that PennDOT is open after
12 his ID has expired. That's inconsistent with the
13 statute.

14 THE COURT: I know you have a script
15 here. You have certain points you want to cover.
16 But I do want to inquire about what an injunction
17 might look like.

18 And I tried to give you both a clue of
19 it's something I want to hear about. And I know that
20 you don't think -- you think that it should be --
21 everything enjoined, and Mr. Cawley thinks nothing
22 should be enjoined.

23 But I'm wondering if there's something
24 else besides all or nothing that is on the table.

1 And let me make some specific suggestions.

2 And I look back in this Georgia case,
3 Common Cause versus Billups, 439 fed sup second,
4 1294.

5 There are a lot of differences between
6 that case and this case. But it was an injunction
7 that was issued as to a specific election, which was,
8 I guess, a good two days after the opinion was
9 issued. And there was a specific description in the
10 injunction about how it would operate. That's a
11 possibility. I'm looking at Act 18. There is actual
12 disenfranchment language, not in Act 18, but in the
13 Election Code itself.

14 It's found -- this is 25 P.S. 3050 A.41;
15 and then 22I.

16 This is preexisting language. "A
17 provisional ballot shall not be counted if," and then
18 there's some additions from Act 18, which talks about
19 provisional ballots cast by people that do not have
20 proof of identification, as that term is defined in
21 Act 18.

22 That's the actual disenfranchising
23 language. It's in the election code as a result of
24 Act 18. It's not all Act 18 language. Some of it

1 preexists, which is why I probably didn't catch it
2 the first 50 times I read the stat.

3 But the real disenfranchisement, if at
4 all, comes with those provisions, it seems to me.

5 So I'm not sure that you're going to be
6 able to answer my question on the run right now. But
7 it's something that I'm saying to you now so that you
8 can take some notes and hopefully think about it when
9 you submit something to me tomorrow.

10 I'm trying to think how to do this, how
11 to deal with the offending activities that are at
12 issue, and not just throw everything out.

13 MR. WALCZAK: Your Honor, let me just say
14 that we do not think that a two-day injunction would
15 be sufficient. We think --

16 THE COURT: Two day?

17 THE COURT: Your Honor said that the
18 election was two days hence in the Georgia case.

19 THE COURT: No. He enjoined the
20 application of the statute at a specific election,
21 which was the next election.

22 MR. WALCZAK: Right. Your Honor, we've
23 talked a lot since Your Honor raised this on Tuesday,
24 and we do not see a remedy short of enjoining the

1 enforcement of the ID requirement at the polls in the
2 next election.

3 I think the problem with limiting that to
4 just the next election is that we don't know how long
5 it's going to take the Commonwealth to implement the
6 procedures they've just announced today, how well
7 they're going to work.

8 And in Georgia, my understanding if I am
9 not mistaken, as a result of that federal court
10 injunction, the Legislature went back into session
11 and made a number of changes, including appending the
12 number of places where folks could get ID'ed to
13 county offices, changing the absentee ballot rules.
14 There's a lot of things that could happen if this
15 Court sends the signal that there's a problem with
16 this law at this point.

17 THE COURT: Are there any parts of it
18 that can be preserved?

19 For example, is there anything wrong with
20 having somebody go to the polls and having a county
21 poll worker say, "Do you have photo ID?" It seems to
22 me that there's no problem with that. It's something
23 after that becomes problematic.

24 MR. WALCZAK: No, there's no problem with

1 asking for ID if you're not going to prevent somebody
2 who doesn't have the ID from voting.

3 I think one of the concerns we have is
4 really a practical one, is that regardless of what
5 happens, there's really going to be a lot of
6 confusion in public.

7 And if, in fact, either this Court or the
8 Pennsylvania Supreme Court issues an injunction,
9 there's still going to be a lot of people who aren't
10 sure is there an ID requirement in effect or isn't in
11 effect.

12 If, in fact, the poll workers are allowed
13 to continue to ask for ID when folks show up, what's
14 the message that goes out to the public?

15 It seems to me we have very little time
16 left before the election, and the message really
17 needs to go out that at least for this next election,
18 there's no ID requirement, except for the ones that
19 existed prior to this law.

20 The HAVA requirements. Nobody is talking
21 about disturbing that. Nobody is talking about
22 disturbing the signature requirements. What we're
23 talking about is enjoining.

24 THE COURT: Nobody is talking about the

1 requirements for proof of identification for absentee
2 ballots.

3 MR. WALCZAK: We talked about that last
4 night, and we actually think that that's probably
5 okay, because it's de facto not an ID requirement.
6 Right.

7 THE COURT: It's a photo ID.

8 MR. WALCZAK: It's not a photo ID
9 requirement. It's, in fact, as I understand it,
10 consistent with the HAVA requirements to register to
11 vote.

12 So either last four digits, there's a
13 question about some people who don't have Social
14 Security numbers should have unique voter
15 registration.

16 And there's nothing that would prevent
17 the Commonwealth from continuing to issue free IDs to
18 individuals. And we talked about whether that would
19 send mixed signals.

20 If the Commonwealth is truly committed to
21 enforcing this law in the future, they have to be
22 committed to make sure that all eligible voters have
23 the ID. Then, presumably, they would continue
24 aggressively to market and issue these pre-IDs

1 without any kind of documentation.

2 THE COURT: And it strikes me also that
3 it might be useful to get at least a count of people
4 that are asked for an ID and just for whatever
5 reason, they don't have it or they don't show it.

6 So you at least get a number and you know
7 where they are, what precinct they're in.

8 MR. WALCZAK: So ask for ID for purposes
9 of trying to identify.

10 THE COURT: To quantify.

11 MR. WALCZAK: To quantify -- Your Honor,
12 our concern is about not just the right -- the
13 mechanical right of voting, but the right to vote and
14 have that vote counted.

15 THE COURT: Right.

16 MR. WALCZAK: That's the important thing.

17 So long as everybody who can't meet the
18 HAVA requirements, the registered to vote, going back
19 to the old system, every single one of those people
20 needs to be allowed to vote. Nobody who cannot meet
21 the requirements of Act 18, just Act 18, cannot be
22 prevented from voting, that's our concern. I think
23 we need to talk more --

24 THE COURT: That's why I'm doing it in

1 front of everybody, so we can respond. How are you
2 doing on your 20 minutes?

3 MR. WALCZAK: I was hoping you were like
4 Chief Judge McKeen in the Third Circuit where
5 20 minutes means an hour.

6 THE COURT: Can you wrap it up?

7 MR. WALCZAK: Your Honor, I can wrap it
8 up. We think that Supreme Court really has issued a
9 very narrow mandate to this Court.

10 The fact that they have over the last
11 month been applying an exhaustion requirement means
12 it's consistent with liberal access. That requires
13 this Court to issue an injunction.

14 And Mr. Myers testified he can't give
15 assurances about what his folks are doing out there.
16 We learned there's contract folks that can be telling
17 people who knows what, as they did in Pittsburgh
18 where they told them there's no longer voter IDs.

19 Under those circumstances, there's no way
20 that a reasonable assurance can be given or this
21 Court can conclude that nobody is going to be
22 disenfranchised at the next election.

23 We're certainly happy to consider any
24 more ideas about how to make it more narrow, but the

1 bottom line has to be that it cannot be used to deny
2 anybody the right to vote in November.

3 Thank you.

4 MS. HICKOK: Your Honor, there are
5 several points with which I disagree. Let me start
6 with the idea that what you were given was a narrow
7 mandate.

8 Certainly that's what the dissenters
9 would have done. They said that you should be given
10 a mandate to enter an injunction. But what the
11 majority did instead is it said, you have discretion.

12 And I believe that what the majority did
13 as well is it said, look, you made a prediction in
14 the future tense. I want you to turn that into a
15 future perfect. I want you to say, based upon what
16 they have done, what will you be able to say about
17 what will have happened come November?

18 And the Commonwealth is completely on
19 board with the fact that when the Supreme Court
20 issued their opinion, it caused a dilemma; because
21 what it said is, the Commonwealth has been construing
22 a statute in a way that is different from the Supreme
23 Court.

24 The Commonwealth is under an obligation

1 to behave lawfully. At the same time, it was not
2 opportunistic. If you look at the evidence that has
3 been placed before you by us, the evidence that has
4 been placed before you is about how the DOS ID was
5 implemented. That is the future perfect record that
6 you were asked to build from the -- by the Supreme
7 Court.

8 And we have told you, this is how it was
9 implemented. This is what happened in the first few
10 days. This is what has happened since then.

11 What is striking about the contrary
12 evidence that came forward is that the contrary
13 evidence was not so much about people who couldn't
14 get IDs, it was about people who were resentful of
15 the process that it took them to get IDs.

16 And unfortunately, Your Honor, the
17 statute itself says when you want an ID from PennDOT
18 and that entails certain things.

19 The General Assembly knows how many
20 PennDOT centers there are in the state. It knows
21 what it means to go to a PennDOT center. It's been
22 that way for years. When you get your first driver's
23 license, you go to a PennDOT center.

24 That was something it built into the

1 statute. And when the Supreme Court read the
2 statute, it did not say, you know what, I find the
3 fact that there's a PennDOT center mentioned to be
4 unconstitutional.

5 Instead, what the Supreme Court said is,
6 the statute itself guarantees liberal access. And
7 you are to look and see whether what has been done in
8 the -- what they called a "work-around" by
9 implementing the DOS ID has provided to the voters
10 the means consistent with what the General Assembly
11 intended. And what the General Assembly said is --
12 and if you'll excuse me I'll read the exact words
13 that the Supreme Court said about it.

14 It said that "PennDOT shall issue them at
15 no cost to any registered elector who has made
16 application therefor and has included with the
17 completed application a statement signed by the
18 elector declaring under oath or affirmation that the
19 elector does not possess proof of identification and
20 requires proof of identification for voting purpose.
21 As such, the law establishes a policy of liberal
22 access to identification cards."

23 The question before you was, as the
24 record has been built, from the time that you could

1 not have assessed at the time of the hearing, does
2 that liberal access exist?

3 Are those cards available at no cost?
4 Are those cards available by the making of an
5 application? Are those cards available to any
6 registered elector?

7 And, Your Honor, you have evidence before
8 you of the exceptions processes. And in every one of
9 those instances that are left as exception processes,
10 these are people who were not registered electors.

11 They had not yet been approved under the
12 statute as registered electors. Therefore, they
13 could not be issued ID. Those are the people who do
14 not yet have IDs.

15 The other people came in. They were
16 frustrated. But frustration is a part of everyday
17 life. I get frustrated when somebody tells me I'm
18 going to deliver something on Tuesday, be there all
19 day. I can't afford to be out of the office all day.
20 But I have to be there if I'm going to take that
21 delivery. I get frustrated when I call a customer
22 service center and I wait on hold. But that happens
23 all the time.

24 What you have heard is, well, you have

1 heard people who are in this Commonwealth, the
2 Department of State, and the Department of
3 Transportation who have been so committed to seeing
4 this thing work that they have sacrificed themselves.
5 They have put themselves on overtime lists. They
6 have worked weekends. They have made recitations
7 throughout the Commonwealth in their evenings. They
8 have done everything they can to ensure education, to
9 ensure implementation, to ensure a seamless process.

10 And whenever it occurred that there was a
11 problem, they worked overtime to make sure that
12 problem was taken care of immediately so that a
13 person who was disadvantaged on August 28th or
14 August 29th, because the system had glitches, got
15 personal follow-up to make sure that they had an ID
16 before September so that they could go in and vote in
17 November.

18 And that commitment has been there. And
19 that is what the record shows.

20 Your Honor asked a question and said -- I
21 want to address one other thing.

22 When Mr. Royer was up here talking about
23 education and talking about all the ways that
24 television was going to reach people and all the

1 things that were being done, the response that came
2 back is, you know what, there are people here who
3 will just get up and go make popcorn.

4 But what the Petitioners have been trying
5 to tell you about are people who really care about
6 voting and don't drive. Those people are going to
7 make popcorn during their car agency commercials and
8 the dealership commercials. They're not going to
9 make popcorn when the Department of State comes out
10 to talk about something that's important to the
11 election.

12 And the education effort, Mr. Royer
13 talked about how those education efforts were
14 working. Mr. Myers and Mr. Marks talked about the
15 additional support that they've given to 8th and
16 Arch, which is the busiest PennDOT center.

17 Mr. Myers talked about the fact that
18 August is the busiest month for PennDOT. We're
19 through August. You have the record of what happened
20 during August.

21 Now, we're in traditionally low times,
22 and becoming lower times for PennDOT, and these are
23 the times when the need for the IDs conceivably could
24 be the greatest.

1 But you've also heard that other states
2 experienced exactly the same thing that we have
3 experienced so far, which is that very few of these
4 IDs are actually necessary because most people
5 already possess the IDs under the statute.

6 Your Honor, in keeping with that --

7 THE COURT: I have to tell you, one of
8 the things that surprised me here was the number of
9 IDs that have been issued. I expected more. And I'm
10 going to say a lot more than 11,000.

11 The testimony I heard at the first trial
12 was 1 percent, maybe a little bit more than
13 1 percent, up to some higher number. I thought the
14 1 percent number -- the higher-than-1-percent was a
15 reasonable figure.

16 But we're talking about a fraction of
17 that now. And that -- I'm concerned about that part.
18 If you have any comments to make, I'd like you to
19 focus in on that.

20 MS. HICKOK: Well, my understanding is
21 that the numbers are actually consistent with what
22 we've seen in other places, in that while there are
23 people who don't have IDs, a lot of those people are
24 also not people who are intent on voting.

1 And so the fact that there may be people
2 out there, those are people who are not going to be
3 registered to vote by October 6th either -- or
4 October 9th, sorry and, therefore, that the numbers
5 are actually consistent.

6 And if they were to increase, if the
7 voter registration drives were to be successful so
8 that you had a lot more people and you heard that the
9 voter registration is down from where it was in
10 2008 -- if that voter registration number exists --
11 it comes up, there certainly are ways that, between
12 now and November, there's that excess capacity at
13 PennDOT to handle that, now that the August crunch is
14 passed.

15 And so it could handle significant
16 numbers -- Mr. Myers testified it couldn't handle
17 double. But I don't think we're anticipating that
18 there would be double.

19 THE COURT: I don't think he said he
20 couldn't handle double --

21 MS. HICKOK: It would stress --

22 THE COURT: It would tax -- stress --

23 MS. HICKOK: That's right. It would --
24 thank you for the correction, Your Honor.

1 Your Honor, you asked us to evaluate and
2 to evaluate carefully the standard of an injunction,
3 and we have done that. We know that an injunction in
4 the past, the Supreme Court has talked, on several
5 occasions, about what happens in the intersection
6 between a statute and a constitutional right and what
7 happens when you go beyond the scope of what an
8 injunction can handle.

9 And, Your Honor, in the cases that we
10 cited in our pretrial memorandum, we were talking
11 about Crow, which is a case from your own court. We
12 were talking about Commonwealth ex rel. Davis versus
13 Van Emborg, which is the case that was talking about
14 you may not do business -- to an adult bookstore.
15 And the court said: Wait a minute. You can't tell
16 them you can't do business. You have to tell them
17 what exactly they have done wrong.

18 And so I've also looked back at the
19 cases -- we've also looked back at the cases that
20 came out of the Schaefer Act and the Revenue and the
21 whole mess that led into the Abbotts Dairy cases
22 where you had the Court saying: Look, I want you to
23 stop this activity to the Department of Revenue. You
24 can't impose that tax. And by the way, you're not

1 going to be able to impose a mercantile tax going
2 forward.

3 And then they realized that that wasn't
4 what it was able to say, so it turned around and it
5 took it back. And it caused a disaster.

6 And out of that comes the very reasonable
7 requirement that you look at what the offending
8 activity would be, and you tailor an injunction to
9 that offending activity. And given what the Supreme
10 Court has said, the places you start are first with
11 the Statute 2626, and whether any of those
12 requirements has failed to be enacted.

13 If any of those requirements has failed
14 to be enacted, then clearly there needs to be an
15 injunction saying: I find that this record does not
16 establish that this has happened. It must happen
17 going forward.

18 That's absolutely mandatory.

19 THE COURT: What do you think the
20 offending activity is here? It seems to me that it's
21 somebody won't have their vote counted. Somebody has
22 got to show up to the polls.

23 MS. HICKOK: I think -- hold on. I am
24 going to address that question. But I was saying on

1 the very narrow grounds, if you look at 2626 and if,
2 for example, you found that a person couldn't go to a
3 PennDOT office, period, like there weren't any, then
4 we would have to create PennDOT offices.

5 If you found that we had to give things
6 to registered electors and instead we were giving
7 them to somebody else, you have to say: No, the
8 statute says registered electors.

9 This is what the Court has said is
10 required for liberal access. It has to be at no
11 cost. If you were to find that it is not no cost,
12 then you would have to enjoin that. And we
13 understand that that's a kind of injunction that you
14 have to do.

15 But the second issue goes to the issue
16 that you raised earlier, which is the issue of the
17 provisional ballots and the fact that asking someone
18 to go to the polls and to cast a provisional ballot
19 is perfectly consistent both with the Constitution
20 and with the statute.

21 The place where there is a risk, which
22 you need to evaluate in determining whether our
23 record is sufficient to show that there is no risk of
24 disenfranchisement, if you are not convinced of that,

1 then the Court said that you may take that point of
2 provisional ballot and say, for this election
3 alone -- and even Justice McCaffery said that this
4 law is not unconstitutional on its face, that, given
5 reasonable implementation, there is nothing wrong
6 with asking for photo identification at the polls.

7 So the point, which you have identified
8 that is the crux point, is that point at which the
9 provisional ballots are being counted. And the way
10 that the statute reads today is that you have six
11 days to provide photo identification.

12 A narrowly tailored injunction would say
13 you have six days to provide photo identification, or
14 you have six days to provide an affidavit or a
15 declaration or an affirmation. And we've actually
16 drafted a form, if you wanted to see one, that would
17 say: I couldn't get a photo identification for this
18 election and, therefore, that vote would have to be
19 counted. So that there would be a substitute
20 procedure for those people who could not get their
21 photo ID before this election without the destruction
22 and chaos of enjoining a statute.

23 And, Your Honor, I harken back to the
24 pretrial that they filed -- the motion that they

1 filed to not hold a hearing at all. And in it they
2 said: We don't want them to implement. We don't
3 want them to enforce. We don't want them to take any
4 steps.

5 That's chaos. And that's not called for
6 by what's here, which is moving forward for exactly
7 what the legislature contemplated. And we believe
8 that the record shows that the intent of the
9 legislature to have free access to these cards has
10 been met by the Department of State and Department of
11 Transportation.

12 But, Your Honor, we also did take
13 seriously what you said about considering what kinds
14 of scopes you might have -- what kind of scope of an
15 injunction you might have to consider based upon how
16 you look at this record and what you do.

17 And if you would like, Your Honor, I
18 would be happy to hand up what we were able to come
19 up with as a possible alternative in that regard.

20 THE COURT: Why don't you send it to me
21 in the post-hearing material. You're going to make a
22 submission.

23 MS. HICKOK: I can do that.

24 THE COURT: Both sides will make a

1 submission within the next 24 hours.

2 MS. HICKOK: That's correct, Your Honor.
3 I believe it's 24 hours from 4:10.

4 THE COURT: 4:30.

5 MS. HICKOK: Thank you, Your Honor.

6 THE COURT: Okay. That will be helpful.

7 The provisional ballot seems to be a
8 problem -- or it seems to be the point, the sticking
9 point. That's where sometimes there's a -- sometimes
10 those are counted; sometimes those are not counted
11 depending on certain conditions. It's not the
12 smoothest part of Act 18 by any stretch of the
13 imagination.

14 Here's my concern about that.

15 The provisional ballot initially was
16 to -- I think this came in in 2002, 2003 when HAVA
17 was enacted. And it was -- the purpose of
18 provisional ballot was to guard against somebody who
19 just became registered or just moved.

20 Someone was showing up at the polls for
21 the first time, their name may not be in the
22 registration system. This would not be a great
23 number of people. It's been a while since I actually
24 had one of these provisional ballot cases, but this

1 was not a numbers game, really. It was sort of like
2 a safety net.

3 MS. HICKOK: Although there's a
4 tremendous amount of mobility that goes on.

5 THE COURT: Well, then the purpose of the
6 provisional ballot, I believe, in Act 18 is to catch
7 people who left their ID at home. And I think a
8 number of people have said that over the past two
9 hearings. I'm not sure that would be a large number
10 of people either.

11 MS. HICKOK: That's right.

12 THE COURT: So if I'm concerned that
13 there are a large number of people out there that
14 would need to access the provisional ballot
15 procedure, that could be a problem, because it may be
16 asked to deal with more people than it was intended
17 to deal with. That was the concern I have with just
18 tinkering at the provisional ballot stage.

19 So when you make your submission to me in
20 the next day, if you -- maybe you want to talk to the
21 people that you represent to see if that's even
22 something they can deal with.

23 I remember in the first trial, it might
24 have been Mr. Wolosik from Allegheny County who was

1 concerned about the numbers and compared the past
2 experience with a provisional ballot with what they
3 were trying to prepare for going forward.

4 So I -- part of the problem I'm having
5 is, first of all, deciding whether or not to grant an
6 injunction, and number two, trying to decide what it
7 might look like if I do; and trying to decide what's
8 the good part of this act and -- I'm not going to say
9 "the good part" because people would argue about
10 that.

11 But what's the part of the act that's the
12 offending activity here or the disenfranchising
13 activity here, and how can I deal with that and save
14 whatever is left?

15 Because, let's face it, there are a lot
16 of parts of the act that we're not complaining about
17 now.

18 MS. HICKOK: That's correct, Your Honor.

19 THE COURT: For example, the education is
20 a good thing. If you assume that somewhere along the
21 line this is going -- something like this is going to
22 come, I think the education is a good thing.

23 I think letting them gear up for some
24 sort of easier-to-get ID is a good thing if you

1 assume -- and I don't know exactly what Petitionersss'
2 conceptions were at the argument. It might have been
3 viewed broader by the Supreme Court than --

4 MS. HICKOK: Well, I was going to say the
5 Supreme Court itself can -- recognize what their
6 concession --

7 THE COURT: I don't really see this case
8 going away by itself after this election.

9 But if you assume that somewhere along
10 the line there may be a photo ID requirement, not
11 only the education but also the procedures to issue
12 them as liberally as possible, it makes sense not to
13 interfere with that.

14 MS. HICKOK: I agree with that, Your
15 Honor.

16 THE COURT: I'm trying to be more precise
17 about how I tinker with Act 18, if I tinker with it
18 at all.

19 MS. HICKOK: And in that regard, Your
20 Honor --

21 THE COURT: How are you doing with your
22 20 minutes?

23 MS. HICKOK: I have four.

24 In that regard, I think that 25 P.S.

1 2626, which is what the Supreme Court focused on and
2 sets forth how it is that the Supreme Court believed
3 liberal access would be granted, is a good place to
4 start in assessing whether there has been any
5 unlawful activity to date.

6 And then the second question is
7 whether -- notwithstanding any unlawful activity --
8 if there's unlawful activity, you have to take care
9 of it, and I understand that.

10 If there has not been unlawful activity,
11 then the second part of your question, which is, And
12 how do we guarantee that nobody who wants to vote,
13 who's registered to vote and who couldn't get ID,
14 comes to the polls and doesn't have their ballot
15 counted? That's the second question.

16 And because it is future, there is a
17 certain amount of prediction that is going to go into
18 evaluating what the risk is of that and what the cure
19 is for that. And the suggestion that we made and
20 will make regarding the provisional ballots is based
21 upon the fact that there's nothing unlawful about the
22 requirements that lead up to that point in time.

23 And the only possible risk of
24 disenfranchisement arises at the provisional ballot

1 stage. And we believe that it would not affect that
2 many people, that there would not be a lot of people
3 who would come that would not have that picture ID.

4 Because remember, Your Honor, the second
5 part of that is that between November 6th and
6 November 13th, they certainly can get picture ID
7 then as well. So that it would only be those people
8 who didn't come to the polls with picture ID and
9 cannot get picture ID after they've come to the polls
10 that would need to submit that affirmation for --
11 with the provisional ballot.

12 Thank you, Your Honor.

13 THE COURT: All right.

14 MR. WALCZAK: Your Honor, might I have
15 one minute?

16 THE COURT: If you can hold it to one
17 minute, you got it.

18 MR. WALCZAK: Yes, Your Honor.

19 The problem with provisional ballots,
20 Your Honor, is that they are not certain. The
21 testimony from Mr. Wolosik is sometimes people aren't
22 even told, when they're processed, whether they're
23 approved or not approved. So forcing people to vote
24 on provisional ballots is likely to cause a lot of

1 problems and result in disenfranchisement.

2 When we're talking about the numbers, the
3 only evidence in the record is from Mr. Wolosik, who
4 said it was 2,800 in 2008. He's expecting upwards of
5 35,000. Mr. Santana said there was 8,000 in
6 Philadelphia in 2008, they're expecting upwards of
7 200,000.

8 Those are two huge numbers. And a big
9 concern, Your Honor, that I would raise about this
10 Court monkeying around with how provisional ballots
11 work is judicial legislation, for this Court to be
12 rewriting a statute somehow. And I think it does
13 raise some question of --

14 THE COURT: What I'm thinking of is just
15 blocking implementation of that one specific section
16 that contains the disenfranchisement language.

17 If that were to happen, if that would be
18 the form of the injunction, somebody would go to the
19 polls. Somebody would be asked for a photo ID. If
20 they did not have a photo ID, they would be permitted
21 to cast a provisional ballot, period. There would be
22 no disenfranchisement language.

23 MR. WALCZAK: The problem with that, Your
24 Honor --

1 THE COURT: Other than a preexisting
2 disenfranchisement.

3 MR. WALCZAK: Well, Your Honor, by
4 definition, a provisional ballot doesn't count until
5 something else happens.

6 THE COURT: No, it's provisional. It
7 counts -- it shall not be counted unless, so the
8 "shall not be counted" -- let me read the language
9 again here.

10 Now [reading]: A provisional ballot
11 shall not be counted if.

12 And the two new circumstances have been
13 added. So if you take those two circumstances out,
14 then there would be no statutory basis not to count
15 the provisional ballot.

16 My concern actually is more with the
17 numbers than with how to do it. I'm just -- I'm
18 worried whether I'm putting a round peg in a square
19 hole with this. But I'm offering the suggestion to
20 you, along with several other ones, for your
21 consideration so that you can give me some written
22 argument on it in the next day.

23 MR. WALCZAK: One of the messages that
24 would come out from something like that is that you

1 still need ID at the polls then, so you're going to
2 have people who already think that they need certain
3 kinds of document to get ID; if they don't have ID,
4 they're just going to stay home.

5 If there's any message saying that you
6 need to have ID when you come to the polls, those
7 people aren't going to vote. So --

8 THE COURT: I don't have any evidence
9 about that. That's -- if you think that's in the
10 record someplace, you need to tell me that.

11 MR. WALCZAK: Well, I think it came in
12 through our experts in the record, which Your Honor
13 has discounted. But I think there's some evidence in
14 the record about people either don't know about it or
15 are mistaken about having ID.

16 THE COURT: Well, this is an issue I
17 wanted to get out in the open. I didn't really
18 expect you to have answers now. But give it your
19 best shot tomorrow. There being nothing further to
20 come before the Court, we stand adjourned until the
21 next call.

22 THE CLERK: Commonwealth Court is now
23 adjourned.

24 (Proceedings adjourned: 5:17 p.m.)

CERTIFICATE OF SHORTHAND REPORTER

I, Gail Inghram Verbano, Registered
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