

Transcript of Proceedings

Date: July 22, 2013

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



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1 IN THE COMMONWEALTH COURT OF PENNSYLVANIA

2 - - -

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

Petitioners,

: C.A. No.

10 vs.

: 330 M.D. 2012

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

14 Respondents.

:
:
:

18 TRIAL DAY SIX

19 Honorable Bernard L. McGinley

20 Harrisburg, Pennsylvania

21 Monday, July 22, 2013

22 1:00 p.m.

24 REPORTED BY:

Gail L. Inghram Verbano, CSR, RDR, CRR

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1 Harrisburg, Pennsylvania

2 Monday, July , 2012; 1:00 p.m.

3 - - -

4 THE CLERK: You may remain seated.

5 Commonwealth Court is now in session, Honorable

6 Bernard L. McGinley presiding.

7 THE COURT: Good afternoon.

8 MR. WALCZAK: Good afternoon, Your

9 Honor.

10 MS. HICKOK: Good afternoon, Your

11 Honor.

12 MR. RUBIN: Good afternoon, Your Honor.

13 THE COURT: Everybody is well rested
14 and in good humor, I take it. And I'm glad to see
15 that we have come to an updated trial list.

16 And I understand the first witness will
17 be Rebecca Oyler.

18 MR. RUBIN: Your Honor, our first
19 witness will be David Proctor. And Mary Toadvin
20 was on the list for today, but we're actually not
21 going to call her. So it will just be Mr. Proctor
22 and Rebecca Oyler today, along with a video for
23 Secretary Aichele.

24 THE COURT: Okay, very good.

25 MR. WALCZAK: Plaintiffs call David

1 Proctor.

2 - - -

3 DAVID PROCTOR, having first been duly
4 sworn according to law, was examined and testified
5 as follows:

6 - - -

7 DIRECT EXAMINATION

8 - - -

9 BY MR. WALCZAK:

10 Q Good afternoon.

11 A Good afternoon.

12 Q Again, you need -- if you could pull
13 that mic a little bit down maybe.

14 A That will be good.

15 Q Please state your full name.

16 A David Proctor.

17 Q And spell the last name.

18 A P-R-O-C-T-O-R.

19 Q How old are you?

20 A 67.

21 Q And you live in Harrisburg?

22 A Yeah.

23 Q Do you live in just downtown
24 Harrisburg?

25 A Yeah.

1 Q And how long have you lived there?

2 A That particular address?

3 Q Yes.

4 A Eight years.

5 Q Are you right on Second Street?

6 A Yeah.

7 Q And do you work, Mr. Proctor?

8 A No, retired.

9 Q Are you on Social Security?

10 A Yes.

11 Q Mr. Proctor, are you -- do you suffer
12 from any disabilities?

13 A Yes.

14 Q What -- can you tell us about your
15 disabilities.

16 A Still have repercussions from a
17 herniated disk and deteriorating disks -- I mean,
18 vertebrae and a broken hip.

19 Q You had a broken hip?

20 A Yeah.

21 Q And does that make it difficult to
22 walk?

23 A Yeah.

24 Q Did you also have a knee injury?

25 A A what?

1 Q A knee injury.

2 A Oh, yeah. I busted it up too.

3 Q And do you have -- is there a -- you
4 sound a little hoarse when you speak. Is there
5 some reason for that?

6 A 55 years of smoking. Plus I have a --
7 I was diagnosed with precancer of the throat some
8 years ago.

9 Q Now, you indicated you have trouble
10 walking. Do you walk many places?

11 A Pretty much everywhere I go.

12 Q How far do you walk?

13 A Not far.

14 Q When is the last time you walked a
15 mile?

16 A A mile? Two years ago.

17 Q And where did you walk a mile to?

18 A To my eye doctor's.

19 Q Is that because you missed the bus that
20 day?

21 A No. I had the time to do it and I
22 allowed for it; and I walked over, down to the
23 doctor's.

24 Q And how long did it take you to walk a
25 mile?

1 A I don't know. I guess it took me about
2 an hour and a half.

3 Q Was that difficult for you?

4 A I took it slow and sat down a lot.

5 Q So it took you an hour and a half to
6 manage that mile walk?

7 A Yeah, at least.

8 Q And how do you get to the grocery
9 store?

10 A Grocery? Bus, PennDOT.

11 Q Where does that pick you up?

12 A Right in front of where I live.

13 Q And that takes you back from the
14 grocery store to your place?

15 A Yeah.

16 Q Are you a registered voter?

17 A Yeah.

18 Q Do you remember when you first
19 registered to vote?

20 A I think when I was 21.

21 Q How often do you vote?

22 A Every time.

23 Q Did you vote in the May primary, just a
24 couple months ago?

25 A Yeah.

1 Q How about in November of 2012 for the
2 presidential election?

3 A Yeah.

4 Q And how did you get there?

5 A I walked.

6 Q And how far is that?

7 A About two blocks.

8 Q What polling place do you vote at?

9 A A church on State Street.

10 Q A church on State Street?

11 A Yeah, between Second and Front.

12 Q And you're able to walk those two
13 blocks?

14 A Oh, yeah.

15 Q When you went to vote in this past May,
16 did anyone ask you for photo ID?

17 A No.

18 Q Did anybody give you a handout that
19 discusses the types of ID that would be acceptable
20 in the future?

21 A No.

22 Q Let me ask you the same questions about
23 the November presidential election. Do you recall
24 whether anybody at your polling place asked you to
25 produce ID?

1 A No. I took it, but I -- nobody asked
2 for it.

3 Q When you say "took it," we'll come back
4 to your IDs in just a minute.

5 Do you recall whether anybody gave you
6 a piece of paper in November that discussed the
7 types of IDs that would be acceptable in the
8 future?

9 A No. I mean, no, they didn't -- only
10 thing I was offered is who to vote for and stuff.
11 But nothing like that.

12 Q So you were asked just to sign your
13 name?

14 A Yeah, like always.

15 Q Do they know you at your polling place?

16 A Most of the time somebody does.

17 Q Let's talk about your photo IDs. Do
18 you have a PennDOT -- currently have a PennDOT ID?

19 A Yeah, for the bus; stamps, stickers for
20 a month.

21 Q I'm sorry?

22 A That's what it was for -- yeah, I do.

23 Q You have a PennDOT -- what PennDOT ID
24 do you have?

25 A It's bus passes.

1 Q Oh, a bus pass?

2 A With a sticker -- yeah.

3 Q You have a bus -- does that have a
4 photo on it?

5 A Yeah.

6 Q Does that have an expiration date?

7 A Once your sticker runs out, then you
8 got to get another one to ride the bus.

9 Q So it's just a pass to ride the
10 Harrisburg bus?

11 A Yeah, but you got to go to the PennDOT
12 to get it.

13 Q Okay. Do you have a driver's license?

14 A Not anymore.

15 Q Do you have what's called a PennDOT
16 photo ID?

17 A No.

18 Q When is the last time you had a PennDOT
19 driver's license?

20 A '95.

21 Q And you have not driven since 1995?

22 A Nothing to drive.

23 Q Now, you have some photo IDs; is that
24 right?

25 A Yeah.

1 Q You have a Department of Public Welfare
2 photo ID from the early 1990s; is that right?

3 A Yeah.

4 Q And you have a photo ID from a swim
5 club from a ways back; is that right?

6 A Yeah.

7 Q But you don't have any photo ID that's
8 current today except for the bus pass that you
9 mentioned; is that right?

10 A Yeah.

11 Q Do you know where the closest PennDOT
12 office is to you?

13 A Yeah.

14 Q Is that the headquarters office down on
15 the river?

16 A Yeah.

17 Q And that's about a mile and a half from
18 your place?

19 A Maybe two miles. Could be three miles.
20 I know where it is, but ...

21 It's -- it's not a mile.

22 Q It's more than a mile?

23 A (Nods head.)

24 Q And can you take mass transit from your
25 apartment on Second Street to that PennDOT office?

1 A No.

2 Q Now, is there a service that you
3 occasionally use that provides rides, say, to the
4 doctor's office?

5 A Yeah, Shared-Ride.

6 Q Shared-Ride?

7 A Yeah.

8 Q And how does that work?

9 A Well, you can call them up and get them
10 24 hours ahead of time or more, two days ahead of
11 time, and establish a time and date and place to go
12 for a doctor's appointment.

13 Q Do you know whether you can use that
14 service for anything other than the doctor?

15 A I don't think so. I don't know. I
16 never had to or wanted to.

17 Q And do they charge you for that
18 service?

19 A Not to go to the doctor.

20 Q Do you know if they charge you to go
21 somewhere other than a doctor?

22 A I know I can go to a grocery store, but
23 I'd have to pay for it. I mean, I do know that.

24 Q Now, do you have any family members who
25 could drive you from your apartment to the PennDOT

1 office?

2 A No.

3 Q Now, I understand you have a niece who
4 has a car; is that right?

5 A Yeah.

6 Q And she has four children?

7 A Yeah.

8 Q And she lives about 10 miles from you?

9 A Yeah.

10 Q And she works six days a week as the
11 florist manager at the Giant grocery store?

12 A Yeah.

13 Q So you don't think she could take you
14 to PennDOT?

15 MR. HUTCHISON: Objection, Your Honor,
16 leading.

17 THE COURT: Overruled.

18 MR. WALCZAK: I'm sorry, the answer?
19 What was the answer to that?

20 THE WITNESS: I wouldn't ask her.

21 BY MR. WALCZAK:

22 Q You wouldn't ask her. Why is that?

23 A Because on top of her job, she's got
24 four kids and her own life to be, you know, busy
25 most of the time.

1 Q And you don't have any other family
2 members who have a car who could take you?

3 A No.

4 Q Do you have any friends with cars who
5 could drive you there?

6 A No.

7 Q Now, your name was given to the
8 Commonwealth a little over a month ago as a witness
9 in this trial. Has anyone from the State, either
10 PennDOT or Department of State, contacted you about
11 helping you get an ID?

12 A No.

13 Q Has anybody from the State contacted
14 you to offer you a ride to the PennDOT down on
15 Riverfront Plaza?

16 A No.

17 MR. WALCZAK: I have no further
18 questions.

19 MR. HUTCHISON: May I inquire, Your
20 Honor?

21 THE COURT: You may.

22 - - -

23 CROSS EXAMINATION

24 - - -

25 BY MR. HUTCHISON:

1 Q Mr. Proctor, when did somebody from
2 Petitioners first contact you? When did somebody
3 from this side of the table first contact you? Do
4 you remember?

5 A After I had done a survey.

6 Q Did they call you in June?

7 A They might have called me in May.

8 Q May?

9 A It was a while ago.

10 Q Did they ever offer to help you get an
11 ID, to get down to PennDOT?

12 A No; didn't come up -- except for my
13 feelings about not getting one. I mentioned that,
14 because the topic of conversations was this right
15 here. And I said, No, I don't agree or approve.

16 Q You don't agree or approve with what?

17 A Of having to have an ID to go vote.

18 Q But did they ever offer to help you go
19 get an ID?

20 A No.

21 Q Did they ever offer to help you get a
22 ride down to the PennDOT location?

23 A No.

24 Q Is there a bus stop by your house?

25 A No, except for -- no.

1 Q There are no bus stops by your house?

2 A Only bus comes there is the grocery
3 bus.

4 Q That's the only bus that comes by your
5 house?

6 A Yeah.

7 Q Have you ever asked Shared-Ride if you
8 can go anywhere other than the doctor?

9 A No; didn't need to.

10 Q If you needed to get an ID to vote,
11 could you ask Shared-Ride?

12 A I could, but I wouldn't.

13 Q You wouldn't?

14 A No.

15 Q Why not?

16 A Because I'm not going to get one.

17 Q And that's a choice that you've made?

18 A Yeah.

19 Q Is that the same reason you wouldn't
20 ask your niece to take you down to PennDOT?

21 A No. But what little time she has left
22 out of her day for herself, I don't feel it's right
23 to take it from her.

24 Q But you wouldn't ask?

25 A What?

1 Q You wouldn't ask her to take you down
2 to PennDOT?

3 A Not unless my life depended on it.

4 Q You mentioned that you have a
5 PennDOT ID which is a bus pass; is that correct?

6 A Yeah, if I had a sticker, an active --
7 one day that cost, whatever -- 40- or 20-ride one
8 does.

9 Q And you said that has your picture on
10 it?

11 A The card does.

12 Q Did you have that card with you?

13 A No.

14 Q What's the sticker say?

15 A Just a date, month.

16 Q What month?

17 A Whatever month it's for.

18 Q Is it good for the next month?

19 A It's for 40 rides.

20 Q Is it good for the next month or only
21 the month that's on it?

22 THE COURT: It's good for the number of
23 rides; not good for the month? Is that what it is?

24 THE WITNESS: It has a 30-day period,
25 you know. But we've got your -- you get your rides

1 in and -- if the month lapses, I guess you lose
2 your -- the rest of the rides. I never had any
3 extra left over, so ...

4 BY MR. HUTCHISON:

5 Q But it's for a 30-day period?

6 A As I remember -- that's a good --

7 Q Would you say that expires after
8 30 days?

9 A Yes; or unless you use up the rides.
10 Something like that -- that's close.

11 Q And that's issued by PennDOT?

12 A Yeah. That's where you get the
13 sticker.

14 Q Now, you used to have a driver's
15 license; is that correct?

16 A Uh-huh.

17 Q And you said it expired in 1995?

18 A Yeah.

19 Q Did you ever consider renewing it?

20 A No.

21 Q Why not?

22 A Didn't have anything to drive.

23 Q Did you ever consider exchanging it for
24 an ID?

25 A No; didn't need one.

1 Q You didn't need an ID?
2 A No.
3 Q Do you -- you receive Social Security?
4 A Yeah.
5 Q Is that a check?
6 A No.
7 Q How do you receive it?
8 A Direct deposit.
9 Q And that's to a bank account?
10 A Yeah.
11 Q When did you open the bank account?
12 A 2000.
13 Q Did you need an ID to open your bank
14 account?
15 A Yeah, but I used the ones I got.
16 Q You used what? I'm sorry.
17 A I used the ones that I have.
18 Q What are they?
19 A What are they?
20 Q Yes.
21 A A Merchant Marine's card; my department
22 of -- medical assistance card; and the picture ID
23 of a swimming club I used to belong to; and a
24 PennDOT card.
25 Q What was --

1 A They're all picture ID.

2 Q Was the PennDOT card the bus card?

3 A Yeah.

4 Q And the Merchant Marine card, did that
5 have your picture on it?

6 A Yeah.

7 Q Does it have an expiration?

8 A I was 19 years old.

9 Q Does it have an expiration date?

10 A No. It doesn't have present address on
11 it either.

12 Q Is it indefinite?

13 A I would think so. I've always been
14 under the impression that it is.

15 Q That it is what?

16 A Indefinite.

17 Q Does it say that on it?

18 A The information that is gathered in
19 order to obtain a Merchant Marine's card, it's
20 forever.

21 Q Have you ever called Shared-Ride to ask
22 for a ride down to PennDOT at the Riverfront?

23 A Have I ever?

24 Q Yes.

25 A No.

1 Q Have you ever called PennDOT asking for
2 any type of accommodation to get your ID?

3 A To do what? For what?

4 Q To get an ID from PennDOT, have you
5 ever asked for any accommodations?

6 A I thought you just asked me that.

7 Q I'm sorry?

8 A Didn't you just ask me that?

9 Q No, I did not. I'm asking you if you
10 ever asked PennDOT -- called PennDOT directly and
11 asked for any type of accommodation to get the ID.

12 A They'd probably tell me to go get a bus
13 or call Shared-Ride.

14 Q But you've never asked?

15 A No. I didn't have a need to.

16 Q And you testified that you're 67 years
17 old?

18 A Yeah.

19 Q Have you ever heard of the League of
20 Women Voters?

21 A What?

22 Q The League of Women Voters.

23 A Yeah.

24 Q Have they ever offered to help you get
25 an ID?

1 A I don't recall ever hearing from them.

2 Q Have you ever heard of the Homeless
3 Advocacy Project?

4 A I'm not sure.

5 Q Have they ever offered to help you get
6 an ID?

7 A I said I'm not sure.

8 Q You're not sure if they've ever offered
9 to help you get an ID?

10 A I'm not sure if I've ever heard from
11 them.

12 Q Have you ever heard from the NAACP?

13 A What for?

14 Q About getting an ID.

15 A (Shakes head.)

16 MR. HUTCHISON: That's all I have, Your
17 Honor.

18 THE WITNESS: No.

19 BY MR. HUTCHISON:

20 Q I'm sorry?

21 A No, I haven't heard from them.

22 MR. HUTCHISON: Thank you.

23 THE WITNESS: And not nothing about an
24 ID.

25 MR. HUTCHISON: No further questions,

1 Your Honor.

2 MR. WALCZAK: We have nothing further,
3 Your Honor.

4 THE COURT: Thank you, Mr. Proctor.
5 You can step down.

6 MR. RUBIN: Petitioners call Rebecca
7 Oyler. Rebecca Oyler.

8 - - -

9 REBECCA OYLER, having first been duly
10 sworn according to law, was examined and testified
11 as follows:

12 - - -

13 DIRECT EXAMINATION

14 - - -

15 BY MR. RUBIN:

16 Q Please state your full name.

17 A Rebecca K. Oyler.

18 Q Ms. Oyler, we've met before. But,
19 again, I'm Mike Rubin with Arnold & Porter, and I
20 have a few questions for you today. And you've
21 testified before in this matter; correct?

22 A Yes.

23 Q Back at the July hearing, you
24 testified; correct?

25 A Yes, I did.

1 Q And you were deposed back in June of
2 2012; is that right?

3 A Yes.

4 Q And then most recently, June 10th of
5 2013; is that right?

6 A Yes.

7 Q During the prior testimony, you were
8 policy director at Department of State; is that
9 right?

10 A Yes, I was.

11 Q And since your June 10th deposition,
12 you've taken a new job; is that right?

13 A Yes, I have.

14 Q You are now, if I understand correctly,
15 director of policy and planning at the Pennsylvania
16 Department of Conservation and Natural Resources;
17 is that right?

18 A That's correct.

19 Q My questions today are all going to be
20 related to your work up until the time you left the
21 Department of State, okay?

22 A Yeah.

23 Q You joined the Department of State in
24 2000; is that right?

25 A Yeah, that's correct.

1 Q And at that time you joined as the
2 director of policy; is that right?

3 A Yes.

4 Q And you had that position until 2003?

5 A Yes.

6 Q And then you went over to, I think you
7 said, you told us in the past the SURE office; is
8 that correct?

9 A Correct.

10 Q And you were there from 2003 to 2011
11 doing election-related work; is that right?

12 A Yes, correct.

13 Q Then in February 2011 you returned to
14 be director of policy at the Department of State?

15 A Correct.

16 Q And held that position until mid June
17 of this year?

18 A Yes.

19 Q And you were not a political appointee
20 to the Department of State, were you?

21 A I'm not sure what you mean by political
22 appointee. I was appointed by the administration.

23 Q Which administration?

24 A Originally the Ridge administration,
25 Governor Ridge.

1 Q At Department of State, you reported
2 directly to the Deputy Secretary, Shannon Royer; is
3 that right?

4 A Yes, correct.

5 Q And also reported to Secretary Aichele?

6 A Yes.

7 Q And as policy director, is one of your
8 jobs to liaison with the Governor's policy
9 departments?

10 A Yes. The secretary of policy and
11 planning for the Governor's office; correct.

12 Q And also liaison with the rest of the
13 Department of State; is that right?

14 A Correct, yes.

15 Q And you routinely reviewed pieces of
16 legislation?

17 A Yes.

18 Q And you wanted to ensure that the
19 Governor's policies were being implemented at the
20 Department of State; is that right?

21 A Yes.

22 Q And also, conversely, that the
23 Department of State's interests were represented in
24 the Governor's office; is that right?

25 A That's correct, yes.

1 Q As part of your job, was one of the
2 requirements to be knowledgeable about election
3 laws and the election requirements in Pennsylvania?

4 A Yes.

5 Q And that included the election law that
6 preceded Act 18, the photo ID law?

7 A Correct. As part of my previous
8 responsibilities, I was familiar with those laws;
9 yes.

10 Q And as part of your work on photo ID
11 law, you also had to understand how the new law was
12 going to change the requirements under the old law;
13 is that right?

14 A Yes, that's correct.

15 Q And in the law that was in effect
16 before Act 18, and I guess technically, given
17 the -- through the May 2013 election was still in
18 effect, a first-time voter was required to show ID
19 at the polling place; is that right?

20 A Yes, first time in a new election
21 district; yes.

22 Q So if you're a first-time registered
23 voter at all, you had to show ID; is that right?

24 A Correct, yes.

25 Q And if you move polling places, because

1 you say you moved, you had to show ID again at that
2 time; right?

3 A That's right; yes.

4 Q One of the forms of acceptable ID under
5 the old law was the voter's voter registration card
6 itself; is that correct?

7 A Yes. That was one of the second-tier
8 forms of ID if the voter did not have a photo ID,
9 yes.

10 Q And whether it was Tier 1 or Tier 2, it
11 was good enough to vote?

12 A Yes.

13 Q No question about that?

14 A No, no question about that, under the
15 former statute; yes.

16 Q And as a registered voter, by
17 definition the voter at some point in time had a
18 voter registration card. They all get them; right?

19 A Yes.

20 Q And if you change your registration to
21 change it to a new address, you get a new copy of
22 your voter registration card; correct?

23 A Yes.

24 Q And that's mailed to you; right?

25 A Yes.

1 Q And if you lose your voter registration
2 card, there's a process to request a replacement
3 card; correct?

4 A Correct.

5 Q And you can do that, again, by mail; is
6 that right?

7 A Yes.

8 Q And you can do that without any cost;
9 correct?

10 A Correct.

11 Q And you don't need to go anywhere to
12 get that? You could just do it by mail; right?

13 A Correct.

14 Q So would you agree that every single
15 registered voter under the prior law had access to
16 at least one form of ID that would let them vote in
17 person?

18 A Yes; by virtue of being registered,
19 yes.

20 Q At this time I want to show you what's
21 Respondents' Exhibit 27.

22 Ms. Oyler, do you recognize
23 Respondents' 27? And I can draw your attention to
24 the bcc line on this email.

25 A Yeah, I see the bcc line.

1 Q And this is an email that was sent by
2 Jonathan Marks to all the county board of
3 elections; right?

4 A Yes, it seems that way.

5 Q And it was October 9th, 2012;
6 correct?

7 A Yes.

8 Q And you were bcc'd on this; is that
9 right?

10 A Correct.

11 Q And there were a number of attachments
12 to this email; is that right?

13 A Yeah.

14 Q I'd like to turn your attention to, I
15 think it's the fourth page of this document, the
16 memo from Jonathan Marks.

17 Do you see that?

18 A Yes.

19 Q And this is dated October 10th, 2012;
20 is that right?

21 A Correct.

22 Q And this was a memo in which Mr. Marks
23 was following up to -- with each of the county
24 boards of elections with respect to the upcoming
25 November 2012 election; is that right?

1 A Yes.

2 Q And do you see under "soft rollout"?
3 Do you see that paragraph?

4 A Yes.

5 Q And in that paragraph Mr. Marks is
6 explaining that, in light of the Court's
7 injunction -- and he doesn't mention the
8 injunction, but he's explaining that there will,
9 again, be a soft rollout in which voters will be
10 asked but will not be required to show an
11 acceptable form of photo ID.

12 Do you see that?

13 A Yes.

14 Q And then it says [reading]: If a voter
15 does not present an acceptable form of photo ID,
16 the poll worker must give the voter a copy of the
17 attached handout.

18 Do you see that?

19 A Yes.

20 Q And if you could then turn the page to
21 what looks like the handout. And what's on the
22 screen and what you have in front of you, is that
23 the handout that poll workers were supposed to give
24 out to voters who lacked ID in November?

25 A I'm sorry. I'm not sure. Let me read

1 this.

2 I suppose, based on the context of the
3 email, yes, it must be.

4 Q From your understanding of how the
5 Department of State interacts with the counties,
6 Mr. Marks sent this email saying, You need to hand
7 this out. But did the Department of State have any
8 way to force the counties to do that?

9 A No.

10 Q Does the Department of State have any
11 way to verify that each county at each of the
12 polling places actually hands something out that
13 they're supposed to?

14 A No. The poll workers work for the
15 counties themselves, not for the State. So we rely
16 on the counties to enforce the provisions of the
17 statute and the requirements with their poll
18 workers.

19 Q And in your experience at Department of
20 State, have you found that some counties do one
21 thing or certain poll workers vary --

22 MS. HICKOK: Your Honor, objection;
23 lack of foundation. There's no testimony that she
24 has interacted with the counties directly.

25 THE COURT: Overruled.

1 BY MR. RUBIN:

2 Q Have you found that there's variability
3 in how closely counties and specific polling places
4 follow the request from the Department of State?

5 A Yes, anecdotally. I'm not sure if --
6 I'm not aware firsthand of that; but anecdotally,
7 I've heard that there's some inconsistencies.

8 Q Are you aware of anything done at the
9 Department of State to verify that all the polling
10 places, in fact, handed out the required voter ID
11 information in the November 2012 election?

12 A Well, I do know that the Department
13 mailed a mailing to every poll worker in the state
14 this past election cycle and that we tried very
15 hard to make sure every poll worker was aware of
16 the requirements of the statute and would be
17 enforcing them. And that's the first time we've
18 done direct poll worker outreach that I'm aware of.

19 Q Are you aware of any work by the
20 Department of State to verify that the poll workers
21 followed the instructions from the Department of
22 State?

23 A No, not directly.

24 Q Now, looking at this handout itself, I
25 see there's a mention under "acceptable IDs" to

1 something called the PA Department of State voter
2 ID card.

3 Do you see that?

4 A Yes.

5 Q Does anywhere on this form explain what
6 the PA Department of State voter card ID card is?

7 A No; but the hope is that since the
8 Web site and the phone number for the Department
9 are provided at the bottom, if there are any
10 questions on that the voter would contact us.

11 Q Does this form tell you if you have a
12 question about the PA Department of State voter ID
13 card you should go to this Web site or call this
14 number?

15 A Well, it does say that to find the
16 DLC -- meaning the driver's license center --
17 nearest you, what is needed to get a photo ID, how
18 to vote if you have a religious objection to having
19 your photograph taken, what identification is
20 needed to vote by absentee ballot or general
21 information, visit the Web site or call the phone
22 number.

23 Q And you mentioned the DLC -- well, in
24 that paragraph, does it say anything in that
25 paragraph about the Department of State voter ID

1 card that you just read?

2 A No; but that would be included in
3 general information, I think.

4 Q Does it tell you that the Pennsylvania
5 Department of State voter ID card should be gotten
6 at PennDOT?

7 A No, not specifically.

8 Q Does it tell you the Department of
9 State ID is free?

10 A No; but, again, this handout is limited
11 with regard to space. And we provided, I think,
12 what we believed to be the most pertinent
13 information and then a place where a voter could
14 get additional information if need be.

15 Q I see that under the bullet point PA
16 Department of State voter ID card, there's space
17 after the word "card."

18 Do you see that?

19 A Yes.

20 Q Could you have added the words
21 "available for free to all voters"?

22 A I'm not sure. I wasn't involved in
23 designing the card.

24 Q Just from your eye, can you see that
25 that would fit there? A lot of white space, isn't

1 there?

2 MS. HICKOK: Objection, Your Honor.

3 THE COURT: She can answer the
4 question.

5 THE WITNESS: There appears to be
6 space.

7 BY MR. RUBIN:

8 Q Is there anything on here telling a
9 voter that the Department of State voter ID card
10 can be received without any supporting
11 documentation?

12 A No, I don't see any mention anywhere of
13 supporting document with regard to any of the
14 cards.

15 Q Do you see anywhere that it tells a
16 voter who has gone to PennDOT in the past and has
17 been turned down for a PennDOT ID for voting that
18 they can now go back to PennDOT again and there's
19 now a card they can get without whatever caused
20 them to get rejected in the past?

21 A No. Again, I think space was a
22 consideration; and providing the contact
23 information was hoped that for the questions like
24 that, the voter would contact us.

25 Q Does it tell anyone how to get to a

1 PennDOT location if you don't drive?

2 A No.

3 Q It says you can get a free-of-charge
4 ID -- and that's in the first paragraph -- at a
5 PennDOT driver's license center; is that right?

6 A Yes.

7 Q Does it tell you there's somewhere to
8 go other than a PennDOT driver's license center to
9 get a free ID?

10 A No.

11 Q Does it tell you that there's a way to
12 get a free ID from a PennDOT driver's license
13 center without going to the PennDOT driver's
14 license center?

15 A No.

16 Q Any suggestion you can get one by mail?

17 A No.

18 Q Any suggestion you can call PennDOT and
19 get some sort of accommodation if you're not able
20 to get to PennDOT?

21 A No. But, again, it does emphasize
22 about if you have questions regarding the process,
23 you should call the number.

24 Q Or go to the Web site; right?

25 A Right, correct.

1 Q There's a lot of information up on --
2 that's the VotesPA Web site; right?

3 A Yes.

4 Q There's information up there, isn't
5 there?

6 A Yes.

7 Q You've written a lot of that
8 information; correct?

9 A Some of it, yes.

10 Q There are a lot of something called
11 FAQs, Frequently Asked Questions, that you were one
12 of the authors of; is that right?

13 A Yes. I was involved in drafting them.
14 Yes.

15 Q Now, each of those FAQs tells you that
16 to get the free ID, whatever it is, you need to go
17 to a PennDOT driver's license center; correct?

18 MS. HICKOK: Your Honor, he's asking a
19 generalized question about a number of FAQs without
20 showing her any of them.

21 THE COURT: You'll get a chance to
22 cross-examine, counsel.

23 BY MR. RUBIN:

24 Q You're familiar with the FAQs that you
25 were involved with; correct?

1 A Somewhat, yes.

2 Q Yes. Are you aware of any
3 documentation that you were involved in creating
4 that said you can get a free ID from PennDOT or the
5 Department of State card from somewhere other than
6 going -- in a way other than going to a driver's
7 license center?

8 A No. And I think the reason being that
9 the statute clearly references PennDOT as the
10 provider or the primary provider of the free IDs
11 from the State.

12 Q But in terms of PennDOT providing it,
13 was there ever a suggestion that you could get
14 something from PennDOT, some form of ID from
15 PennDOT without actually going to a driver's
16 license center in any of the materials that you've
17 worked on?

18 A Not that I can recall, no.

19 Q And now materials you didn't work on
20 but you may have reviewed in your 13 years at
21 Department of State, are you familiar with any
22 other materials that told people, told voters who
23 might be having trouble getting to a PennDOT
24 location that there are ways to get an ID out of
25 PennDOT without going to a driver's license center?

1 A Not that I'm aware. But all of our
2 materials would have had the phone number and the
3 Web site address, particularly the phone number,
4 where a voter could call for information on those
5 items.

6 Q So now you need to -- you get a handout
7 at the polls, and it doesn't tell you a lot of
8 information but says you could go to a Web site;
9 right?

10 A Yes.

11 Q And now you get to that Web site, and
12 now you have to go to another Web site or call
13 another phone number at PennDOT to find out
14 additional information that's not on the Web site
15 you've now directed them to? Is that what your
16 testimony is?

17 A I guess that's possible.

18 Q Now, you're also knowledgeable about
19 Act 18; is that right?

20 A Yes.

21 Q And you first became aware of what
22 became Act 18 shortly after you returned as policy
23 director in February 2011; is that right?

24 A Yes, that's correct.

25 Q And you learned about it -- when you

1 first learned about the law, the bill that was at
2 that time a House bill, you had conversations with
3 people in the Governor's office; is that right?

4 A Yes.

5 Q To understand what the Governor's
6 position was?

7 A Yes.

8 Q And you confirmed, as I think you
9 probably already understood, the Governor supported
10 the photo ID bill.

11 A Yes, that's correct.

12 Q And you worked on Act 18 from the
13 perspective of the Department of State; right?

14 A Yes.

15 Q And in your role as policy director
16 prior to the enactment of Act 18, you did a lot of
17 research on the specific provisions that were being
18 proposed and discussed for the legislation; is that
19 right?

20 A Yes. That's typically what I do with
21 any bill that we're analyzing.

22 Q And you understood that the -- that
23 Act 18, the photo ID law, was a legislative
24 priority for the Governor; right?

25 A Yes, I think so.

1 Q And for the Secretary of the
2 Commonwealth?

3 A Yes.

4 Q And your research on photo ID law
5 included how voter ID laws were implemented in
6 other states; is that right?

7 A Yes.

8 Q And what those voter ID laws in other
9 states looked like; is that right?

10 A Yes, to some extent.

11 Q And how the proposed law compared to
12 laws in other states; right?

13 A Yes.

14 Q And you researched the effect of those
15 laws in other states; right?

16 A Yes.

17 Q And you were also involved in
18 estimating how many potential voters might request
19 a free ID; is that right?

20 A Yes.

21 Q And also creating an estimated budget
22 for those free IDs; is that right?

23 A That's correct, yes.

24 Q I'd like to talk to you, first, about
25 your research on the law of -- and that you learned

1 and found when you researched the laws in other
2 states, okay?

3 A Okay.

4 Q One of the states you looked at in
5 particular was Indiana; is that right?

6 A Yes.

7 Q When you looked at Indiana, did you
8 find out that anyone over the age of 65 can vote
9 absentee without a photo ID?

10 A I'm sorry. I don't recall exactly what
11 each other state had in their laws. And I haven't
12 had a chance to review that in some time. So I'm
13 sorry; I can't recall exactly.

14 Q Do you recall looking into that
15 question?

16 A Yes. That probably would have been
17 part of what my research was.

18 Q If I were to suggest to you that
19 everyone over age 65 in Indiana --

20 MS. HICKOK: Objection.

21 BY MR. RUBIN:

22 Q -- can vote absentee without a photo
23 ID, does that sound consistent with your
24 recollection?

25 MS. HICKOK: Objection. She's said she

1 studied many states, and he's now asking her about
2 a specific state after she said she can't recall.

3 THE COURT: She does okay on her own,
4 counsel. I'll overrule the objection.

5 BY MR. RUBIN:

6 Q Does that sound familiar to you?

7 A I recall that there were other states
8 that had that provision. I don't remember if
9 Indiana was one of them. I'm sorry.

10 Q Do you recall whether Indiana allows
11 anyone with any disability to vote absentee without
12 a photo ID?

13 A I don't recall.

14 Q If you accept my representation that
15 that's what Indiana's law provides, do you agree
16 with me that those options are not available to
17 voters in Pennsylvania?

18 A Could you repeat the options for me
19 again, please.

20 Q Sure. If you're over 65, you
21 automatically get to vote absentee without a photo
22 ID. Is that an option that's available in
23 Pennsylvania?

24 A No.

25 Q And if you have any type of disability,

1 you get to vote absentee in Indiana. That's not an
2 option in Pennsylvania; right?

3 A Not exactly. We have a different
4 provision for not being able to access a polling
5 place and a voter system, but not exactly that
6 provision.

7 Q Right. In Pennsylvania, you need to be
8 able to swear under oath that you, not only that
9 you have a disability but that it prevents you from
10 getting to your polling place or operating the
11 polling equipment; correct?

12 A Yes. Under affirmation, I believe,
13 yes.

14 Q And you need to put down a doctor's
15 name and address; is that right?

16 A I believe so, yes.

17 Q Did you learn that in Indiana the
18 nondriver's photo ID that's issued by their
19 equivalent of PennDOT -- I think it's called
20 Indiana Bureau of Motor Vehicles -- is free to
21 everybody, not just to registered voters? Did you
22 learn that?

23 A I don't recall.

24 Q But in Pennsylvania, the PennDOT
25 nondriver's license -- the nondriver's photo ID is

1 free only to registered voters; right?

2 A Yes.

3 Q And if it's correct that in Indiana
4 they made it free for everybody and removed that
5 obstacle of having to be a registered voter --

6 MS. HICKOK: Your Honor, argumentative.

7 BY MR. RUBIN:

8 Q -- it's a difference from Pennsylvania;
9 is that right?

10 THE COURT: Rather than compare it to
11 Indiana, just ask her what Pennsylvania doesn't
12 have or does have.

13 MR. RUBIN: Fair enough.

14 BY MR. RUBIN:

15 Q Pennsylvania has 71 driver's license
16 centers; correct?

17 A That's my understanding, yes.

18 Q Did you do any comparison to how many
19 driver's license centers were available in other
20 states?

21 A No, not that I recall.

22 Q In Pennsylvania, someone who is a
23 resident of a licensed care facility still needs to
24 show photo ID to vote; is that correct?

25 A Correct, yes, if they're voting in the

1 polling place.

2 Q Correct. If I represented to you that
3 in Indiana they don't have -- a resident of a
4 licensed care facility does not have to show photo
5 ID, is that something you learned in your --

6 A I don't recall that.

7 Q Other states you learned that there
8 were -- that have photo ID laws -- that anyone,
9 regardless of age or disability, could vote
10 absentee; is that right?

11 A Yes, that's true.

12 Q And did you also learn that in other
13 states they have far more the equivalent of PennDOT
14 locations around the state than in Pennsylvania?

15 A That I don't recall looking into, so
16 I'm not sure.

17 Q Do you recall looking into other states
18 where there was a safety net where if you showed up
19 at the polls and don't have your ID because you
20 lost it or it expired or you didn't understand the
21 law or you just couldn't get one, you're able to
22 sign an affidavit at the polls and cast a regular
23 ballot?

24 A Yes, there were some states that
25 provided that.

1 Q Pennsylvania does not; correct?

2 A Correct.

3 Q Have you heard in the context of the
4 photo ID law a comparison to requiring photo ID for
5 voting to requiring photo ID for traveling on an
6 airplane?

7 A Yes.

8 Q It goes --

9 A The comparison has been made.

10 Q Right.

11 -- something like this: If you need an
12 ID to fly, you might -- you need one to vote -- you
13 should need one to vote; right?

14 A Yes.

15 Q That's kind of the argument, how it
16 goes?

17 A I've seen that argument, yes.

18 Q In analyzing the photo ID law, did you
19 look at whether you actually need a photo ID to
20 fly?

21 A No, I did not.

22 Q Did you look to see whether, in fact --

23 MS. HICKOK: Your Honor, he --

24 BY MR. RUBIN:

25 Q -- there's a safety net and exception

1 process so that if you don't have a photo ID, you
2 left it at home, it's expired, you can still fly
3 with simply other screening mechanisms?

4 A No, I did not know.

5 MS. HICKOK: Your Honor, objection. He
6 didn't ask her whether it was her argument. And he
7 didn't ask her whether -- she testified she didn't
8 look into the NTSA or any other standards, and yet
9 he's continuing the line of questioning.

10 THE COURT: And I believe the witness
11 answered no; is that correct, Ms. Oyler?

12 THE WITNESS: Could you repeat the
13 question, please. I'm sorry.

14 BY MR. RUBIN:

15 Q Might be easier if the court reporter
16 just read back the answer.

17 (Record read.)

18 THE WITNESS: That's correct; I did
19 not.

20 BY MR. RUBIN:

21 Q Now I want to move to a different
22 subject, which was your role with the
23 implementation of the photo ID law. So after it
24 was adopted. And let's take it through the
25 November 2012 election; okay?

1 A Okay.

2 Q And during that time period, you were
3 actively involved in the implementation process;
4 correct?

5 A Yes. At least to some extent, yes.

6 Q You attended biweekly voter ID update
7 meetings; is that right?

8 A Yes.

9 Q And that's where all the relevant
10 people got together and discussed that was going
11 on; is that right?

12 A Correct, yes.

13 Q And you were involved in meetings with
14 PennDOT; is that right?

15 A Yes. Just one meeting with PennDOT,
16 yes.

17 Q You wrote an overview for all the
18 agencies on the requirements of the photo ID law?

19 A Yes.

20 Q And you put together meetings to inform
21 other agencies about the requirements; is that
22 right?

23 A Yes.

24 Q You reviewed internal Q-and-A
25 documents; is that right?

1 A Correct.

2 Q And you reviewed information posted to
3 the Web site; is that right?

4 A Yes.

5 Q You even did a WebEx training for the
6 legislative staff; is that right?

7 A Yes.

8 Q And one of the relevant questions was
9 how many people lacked ID; is that right?

10 A Yes, that was a question.

11 Q And you needed to know -- well, forget
12 about you -- the Department of State and PennDOT
13 needed to know how many people would be requesting
14 ID at the driver's license centers; correct?

15 A Yes. That was a question that was
16 asked during the course of conversations before the
17 bill passed.

18 Q And it was for budgeting purposes;
19 correct?

20 A Yes, that's correct.

21 Q And knowing how many people lacked ID
22 is also relevant to figuring out how to actually
23 help people get ID; is that right?

24 A Yes.

25 Q Now, are you aware that the Court has

1 previously estimated that the number of people
2 lacking ID ranges between 1 percent and 9 percent?

3 A Yes.

4 Q And that 1 percent figure came from
5 you; is that right?

6 A Yes. That was the original estimate
7 with regard to the budgeting estimate when the bill
8 was being debated.

9 Q And you think a more realistic number
10 is higher than 1 percent; right?

11 MS. HICKOK: Your Honor, that is not --
12 he's presupposing answers in his questions.

13 THE COURT: I think she's testified
14 before, so I'll permit it.

15 THE WITNESS: Yes. I believe the
16 number is between those two figures. As you said,
17 between 1 percent and 9 percent. I believe it's
18 closer to 1 percent than it is to 9 percent.

19 BY MR. RUBIN:

20 Q Based on your research and information
21 and the work you've done through the time of your
22 June 10th, 2013 deposition at least,
23 realistically is it correct that you think that the
24 number is probably somewhere between 95 and
25 96 percent of people have an ID?

1 A Well, let me clarify that those numbers
2 are specific to PennDOT ID cards.

3 Q Fair enough.

4 A So, yes, I think probably in the
5 neighborhood of 96 percent is a relevant figure. I
6 think it's probably in the neighborhood of 96 and
7 97 percent, on the higher end of that range.

8 Q Do you remember being asked the same
9 exact question at your deposition in June?

10 A Yes.

11 Q And at that time, you recall giving the
12 testimony that it was between 94 and 95 percent?

13 A I don't recall that specifically. If
14 you have my deposition, I will --

15 Q I do. Could I have the...
16 If you take a look at Page 10, please.
17 Page 10, lines 19 through 23, do you
18 want to read that for us.

19 A Yes.

20 [Reading]: I believe I testified last
21 year that I realistically think that the number is
22 probably somewhere between those two numbers --
23 meaning 91 and 99 percent -- at 95 and 96 percent
24 but I don't know that objectively. That's from my
25 research and information.

1 Yes.

2 Q Does that refresh your recollection
3 that June 10th you gave the testimony and the
4 numbers was 95 to 96 percent?

5 A Yes.

6 MS. HICKOK: Your Honor,
7 mischaracterizes what she just read.

8 THE COURT: Counsel, let your witness
9 explain, and I think your objection will go away.

10 Counselor?

11 BY MR. RUBIN:

12 Q Does that refresh your recollection?

13 A Yes. I said 95 or 96 percent. I
14 believe a few minutes ago you said 94 or
15 95 percent.

16 Q If I did, then I apologize.

17 A Okay.

18 Q But I think you also just said
19 97 percent; right?

20 A Yes. I think it's in the higher range
21 of those numbers.

22 Q But last time you were asked this
23 question, it was 95 to 96 percent; right?

24 A Yes. Specifically PennDOT IDs, yes.

25 Q And just as a matter of math, that

1 means 4 to 5 percent lacking; correct?

2 A PennDOT IDs, yes.

3 Q The 9 percent statistic, that comes
4 from the database match; correct?

5 A Correct, yes.

6 Q And we've heard lots of testimony about
7 that, so I'm not going to go into that at length
8 with you.

9 A Thank you.

10 Q I'm sure you're thankful for that.
11 In your answers you also limited it to
12 the PennDOT IDs; is that right?

13 A Yes, that's correct.

14 Q And that's because, theoretically,
15 someone who lacks a PennDOT ID may have another
16 form of ID; correct?

17 A Yes.

18 Q You're not aware of the Department of
19 State doing any work to determine how many people
20 who lack a PennDOT ID have another form of
21 acceptable ID under Act 18, are you?

22 A No, not that I'm aware of.

23 Q And Secretary Aichele did not ask you
24 to do that research, did she?

25 A No.

1 Q Nor did Deputy Secretary Royer;
2 correct?

3 A Correct.

4 Q And no one asked you to consult with an
5 outside expert; is that right?

6 A Correct.

7 Q Or to do a survey of Pennsylvania
8 voters and work with outside experts to design one
9 to figure out how many people lacked of any sort
10 that's acceptable under Act 18; right?

11 A Correct.

12 Q At one point you looked into this
13 question by trying to see how many passports were
14 issued to Pennsylvania voters; is that right?

15 A I did, yes.

16 Q And you got data to see how many
17 passports were issued by [sic] Pennsylvania
18 residents; correct?

19 A To Pennsylvania residents, yes.

20 Q And you didn't find this data helpful;
21 right?

22 A Correct.

23 Q There was no way to tell whether the
24 people who had a passport also had a PennDOT ID or
25 didn't have a PennDOT ID; correct?

1 A That's correct.

2 Q And you could draw no meaningful
3 conclusions from that data; correct?

4 A That's right.

5 Q And you understand that to get a
6 passport, you usually need a photo ID; is that
7 right?

8 A I believe you're correct about that,
9 yes, at least now. I'm not sure about past
10 requirements.

11 Q Sometime in the distant past. When you
12 say "now," anytime since Act 18 was passed; is that
13 fair?

14 A Yes.

15 Q Now, based on your research and work as
16 policy director, one of the research projects was
17 to see how -- what the impact has been of photo ID
18 laws elsewhere; is that right?

19 A Yes.

20 Q And what the real-world implications
21 are of the photo ID law; is that right?

22 A Correct.

23 Q On real voters; correct?

24 A Correct.

25 Q And, based upon that, you concluded

1 that certain groups would have a harder time
2 finding IDs than others; is that right?

3 A I'm not sure -- could you ask that
4 question again.

5 Q Sure. Based on your research and work
6 as policy director of Department of State, your
7 research into the photo ID laws of other states and
8 your understanding of Pennsylvania, isn't it true
9 that you've concluded that there are certain groups
10 that would have a harder time finding IDs than
11 others?

12 A I'm not sure about having my research
13 conclude those things. But I do know that the
14 General Assembly was concerned about specific
15 groups of people because they addressed them
16 directly in the statute.

17 Q Putting aside your research, you as
18 policy director agreed with some of those concerns;
19 right?

20 A I believe the concerns were valid.

21 Q And the groups would include minority
22 populations; is that right?

23 A That's one of the populations of
24 concern, yes.

25 Q Non-English-speaking populations?

1 A That was one as well.

2 Q Socioeconomic groups who may not have
3 access to certain provisions that allow them to
4 easily get IDs; that was a group?

5 A That was another group, yes.

6 Q Elderly population; is that right?

7 A Yes.

8 Q Disabled populations?

9 A Yes. Those were -- I'm sorry. Finish.

10 Q And college students?

11 A Yes.

12 Q Did I leave off any groups that you
13 were concerned about?

14 A Not that I recall. But those were the
15 groups that members of General Assembly were
16 concerned about and addressed in the statute.

17 Q As policy director, you were involved
18 in a lot of back-and-forth when the law was being
19 considered between the General Assembly and the
20 Department of State and the Governor's office; is
21 that right?

22 A Yes.

23 Q And trying to figure out what should be
24 in the law and what should be out of the law; is
25 that right?

1 A Correct.

2 Q And there are provisions that were in
3 the original draft that the Department of State
4 wanted out of the law; correct?

5 A Yes.

6 Q One of them in particular was a
7 provision that was going to be cumbersome to
8 implement and costly without much benefit; namely,
9 allowing a resident of a care facility to vote in
10 person at a polling place in that care
11 facility -- after they've shown ID for the first
12 time, they wouldn't have to show it again; is that
13 right?

14 A That's correct; the care facility
15 polling place exemption, yes.

16 Q Right. And just so we're clear, that
17 is not in the final Act 18; right?

18 A It is not.

19 Q And it's not in because Department of
20 State, along with Department of Aging, thought it
21 to be too cumbersome to implement; is that right?

22 A Correct. We recommended against it.
23 But we thought there were better ways to address
24 this specific population, which ultimately did end
25 up in the law.

1 Q And we'll come do that. I just want to
2 just clarify that one piece.

3 And there are certain things that the
4 Governor and the Department of State wanted in the
5 law that were put in the law at their request;
6 correct?

7 A I assume so. We made certain
8 recommendations. The General Assembly took some of
9 them and did not take others.

10 Q And you didn't have authority on your
11 own to take a position on behalf of the Department
12 of State; right?

13 A No; correct.

14 Q You had to vet that up through the
15 right channels; correct?

16 A Yes, generally.

17 Q And those channels started with your
18 direct supervisor, Shannon Royer; correct?

19 A Yes.

20 Q And when you wrote memos that went out
21 stating the Department of State's policy and
22 position on some aspect of photo ID law and sent
23 them to the Governor's office, that was done with
24 the permission and authority of Department of
25 State; correct?

1 A Yes. Generally, they are a
2 collaboration among many people at the Department
3 of State. But, yes.

4 Q You weren't a rogue agent writing memos
5 to the Governor saying, This should be in or this
6 should be out; that's right?

7 A No.

8 Q Same thing when you were communicating
9 with the General Assembly: You were acting in what
10 you understood to be the position of the
11 Secretaries of the Commonwealth and the Governor;
12 is that right?

13 A Correct, yes.

14 Q And there are times you worked with
15 other departments, such as the Department of Aging,
16 to come up with joint recommendations; is that
17 right?

18 A Yes. That's part of my function as a
19 policy director. Policy directors work amongst
20 themselves, amongst the agencies where we need to.
21 So, yes.

22 Q Let's turn to some of the specific
23 provisions in Act 18. It contains a specific list
24 of acceptable forms of ID; correct?

25 A Correct.

1 Q And that list and those forms of ID are
2 more limited than what existed under the prior law;
3 is that right?

4 A Yes.

5 Q And you agree that across Pennsylvania
6 there are a lot of forms of identification that
7 people use in their everyday lives that are not
8 acceptable for voting under Act 18; is that right?

9 A Yes. There are certain requirements
10 for IDs that are acceptable for voting in Act 18.
11 Yes.

12 Q And there are a lot of forms of ID that
13 people, outside of voting, in their everyday life
14 use to prove up their identity that would not be
15 acceptable for voting; is that right?

16 A Yes. There are other forms of ID that
17 would not be acceptable, yes.

18 Q Right. You just were sitting in the
19 courtroom when the prior witness testified;
20 correct?

21 A Yes.

22 Q You heard how he explained that he
23 opened a bank account using various forms of ID,
24 including a pool pass, that would not be acceptable
25 for voting in Pennsylvania, under Act 18; is that

1 right?

2 A That's correct.

3 Q And one of the reasons that a lot of
4 these IDs that people use in their everyday lives
5 aren't acceptable for voting is because they lack
6 an expiration date; is that right?

7 A Yes.

8 Q And another reason is that the entity
9 that issued the ID is not considered an acceptable
10 issuer under Act 18; is that right?

11 A Correct. There are a list of entities
12 that are acceptable issuers, yes. To the extent
13 they wouldn't be included in Act 3, then -- excuse
14 me -- to the extent that they're not included in
15 the voter law, then they wouldn't be acceptable;
16 yes.

17 Q So the 18-year-old high school student
18 who has no car so has no driver's license but has a
19 high school photo ID couldn't use that because the
20 school districts can't issue IDs that are
21 acceptable under the photo ID law; is that right?

22 A That's correct.

23 Q And municipalities and counties in the
24 Commonwealth are not considered acceptable issuers
25 other than IDs issued to their own employees;

1 correct?

2 A Correct.

3 Q So that means a firearm carry permit is
4 not acceptable to vote; is that right?

5 A That's correct.

6 Q Even though you need to do a background
7 check to get a firearm carry permit, it's not good
8 enough to go under Act 18; is that right?

9 A That's correct; although I believe you
10 need a photo ID in order to get a carry permit. So
11 one would assume the people who have the carry
12 permits also have the photo ID that would be
13 acceptable.

14 Q You can get a carry permit with an
15 out-of-state driver's license; correct?

16 A That I don't know.

17 Q And you can get a carry permit if you
18 have a carry permit from another state; isn't that
19 correct?

20 A I don't know.

21 Q So the assumption you just made that
22 they already have another form of ID, if what I
23 just asked you is correct, that assumption would be
24 incorrect? If you even follow that question --

25 A I'm sorry.

1 Q -- because I didn't, and I'll object to
2 my own question.

3 If it's correct that if you have a
4 carry permit from New York you can just turn it in
5 and get one on a reciprocal basis from
6 Pennsylvania, that means they don't necessarily
7 have a photo ID that would be acceptable for
8 voting; right?

9 A No; though they would easily be able to
10 get one at a PennDOT photo ID center. But --

11 Q But they wouldn't have one --

12 A -- that would not be acceptable;
13 correct.

14 Q And there are over 3,000 school
15 districts, municipalities and counties all over the
16 State of Pennsylvania; correct?

17 A Correct.

18 Q By definition, in every city, town and
19 state. And that city, town and county, there's a
20 county or city or town or borough or other
21 municipalities; is that correct?

22 MR. KEATING: I'm going to object.

23 THE WITNESS: Right.

24 BY MR. RUBIN:

25 Q Very easy to get to; right?

1 A I guess so, yes.

2 Q Would you agree it's easier to get to
3 one of those than to 71 locations that are
4 scattered across the state, the PennDOT driver's
5 license centers?

6 A Well, I guess it depends on where you
7 live. But it could potentially be easier to get
8 to, yes.

9 Q Do you agree that by imposing the
10 requirement that there be an expiration date on an
11 ID and that it not be expired, that made the list
12 more restrictive?

13 A Yes.

14 Q And you learned that a lot of college
15 IDs, at the time Act 18 was being drafted, did not
16 have expiration dates on them; correct?

17 A Yes, that's correct.

18 Q Including none of the state colleges;
19 is that right?

20 A Correct. Though I believe some of
21 those universities and colleges have amended their
22 IDs and provided acceptable IDs since then.

23 Q And some have not; correct?

24 A Correct.

25 Q And you agree that proving identity is

1 a separate issue than proving status such as my
2 status as a college student or my status as a
3 current driver?

4 A Yes, I believe so.

5 Q And proving identity is looking at the
6 picture, comparing it to the face and the name;
7 correct?

8 A Yes, I guess so.

9 Q And if it's an expired college ID, that
10 means I'm not a college student anymore; right?

11 A Presumably, yes.

12 Q And you don't need to be a college
13 student to vote; correct?

14 A Correct.

15 Q And if it's an expired driver's
16 license, it means I can't drive anymore; correct?

17 A Correct.

18 Q But I don't need to drive in order to
19 vote; correct?

20 A Correct.

21 Q And we can go through that list and add
22 analogies for passports and pretty much any other
23 ID; is that correct?

24 A Sure, yes.

25 Q I'd like to now show you Exhibit 2093,

1 Petitioners' Exhibit 2093.

2 This is a September 2011 memo from you
3 to Secretary Aichele; is that right?

4 A Yes.

5 Q And you copied Deputy Secretary Royer
6 and Patrick -- and I always get his name wrong --
7 is it "Geho"?

8 A Yes.

9 Q Got it right finally.
10 And he was Director of Legislative
11 Affairs?

12 A Correct.

13 Q And this is a memo that goes through
14 the Governor's legislative priorities for the fall
15 of 2011; correct?

16 A Correct.

17 Q And the first one is HB934, which is
18 what became Act 18; correct?

19 A That's correct.

20 Q And at the bottom of the first page
21 there's a paragraph that talks about absentee
22 voting; is that right?

23 A Correct.

24 Q And in that paragraph it talks about
25 amending the existing absentee voting law to add a

1 requirement that voters provide identification; is
2 that right?

3 A Yes.

4 Q And this made absentee voting harder in
5 Pennsylvania; correct?

6 A I'm not sure if it made it harder. It
7 introduced an identification requirement to apply
8 for absentee ballot.

9 Q Compared to the prior law, it added
10 additional requirements and restrictions; correct?

11 A Yes, for security purposes. Yes.

12 MS. HICKOK: Your Honor, I object to
13 this line of questioning. The absentee ballot
14 provision is not at issue in their pleadings.

15 THE COURT: Overruled.

16 BY MR. RUBIN:

17 Q And it required -- the proposal you
18 were making and ultimately what became Act 18, it
19 requires a current and valid driver's license
20 number, correct, to vote absentee?

21 A I'm not entirely sure if it has to be
22 current and valid.

23 Q Would you like to see Act 18 to refresh
24 your memory?

25 A Sure.

1 MR. RUBIN: This is Respondents' 1,
2 which is already in evidence, Your Honor -- I'm not
3 sure if it's been moved into evidence, but it's
4 already been handed up.

5 BY MR. RUBIN:

6 Q If you turn to Page 10 of
7 Respondents' 1, I think you'll find the relevant
8 language, and specifically Lines 19 through 22.

9 A Yes, that's correct. Current and valid
10 driver's license number.

11 Q So a DOS ID would not work for that
12 provision; correct?

13 A Correct.

14 Q And for voting in person, there's a
15 12-month grace period for a PennDOT ID for a
16 driver's license; correct?

17 A Yes; correct.

18 Q That doesn't apply for voting absentee;
19 correct?

20 A Correct.

21 Q But putting aside whether it's current
22 and valid, the first thing that they're required to
23 provide is a driver's license number; correct?

24 A Yes.

25 Q And if someone doesn't have a photo ID,

1 including a driver's license to vote in person, by
2 definition they can't provide a current and valid
3 driver's license to vote absentee; correct?

4 A Yes; although they can provide the last
5 four digits of their Social Security number.

6 Q You anticipate my next question.

7 A Sorry.

8 Q So for those voters who don't have a
9 current and valid driver's license number, they
10 have to provide a Social Security number, the last
11 four digits; correct?

12 A Yes.

13 Q And then the county boards take that,
14 when the absentee ballot comes in, and verify it
15 against the SURE database before they count the
16 ballot; correct?

17 A Correct.

18 Q And those requirements were not in
19 existence under the prior law; correct?

20 A Correct.

21 Q Those are new restrictions on absentee
22 voting?

23 A New requirements, yes.

24 Q I'd like to then have you turn to the
25 next page of Exhibit 2093, Page 2.

1 Do you see the paragraph that begins

2 [reading]: With the Governor's office's

3 approval -- do you see that paragraph?

4 A Yes.

5 Q And it says [reading]: -- we are

6 discussing the following issues with the Senate

7 staff.

8 And I want to focus on the second

9 bullet point if we can. And it says [reading]:

10 Expanding the list of photo IDs that would qualify.

11 And it lists out a number of types of

12 photo ID cards that would be included in this

13 proposal; right?

14 A Yes.

15 Q Expired driver's licenses for voters

16 over 65. Was that the proposal?

17 A That was one of the items under

18 discussion at that time.

19 Q Did this make it into the final act?

20 A No.

21 Q And the concern that gave rise to that

22 proposal was that at a certain age, people stopped

23 driving; right?

24 A I think so, yes.

25 Q Well, you don't just think so. You

1 know that from all your discussions with the
2 Governor's office, with the Secretary of State's
3 office and with the General Assembly; correct?

4 A Yes. I believe that was the concern,
5 that at a certain -- as people got older, they may
6 give up their driver's licenses and might not have
7 as easy access to ID. That was the concern, yes.

8 Q But they might still have -- you say
9 "give up their driver's license." But they may be
10 carrying it around still expired, but they just
11 can't drive with it because they don't drive
12 anymore?

13 A Yes.

14 Q So if the picture still looks like
15 them, they can take it to the polls, they can show
16 it to the poll worker, they compare the face, name,
17 the picture, their identity is proven; right?

18 A I believe that was the idea, yeah.

19 Q But that didn't make it into the final
20 law; correct?

21 A No. There are other provisions that
22 were aimed at that population that made it into the
23 statute.

24 Q The only other provision aimed at that
25 population is the fact that a licensed care

1 facility is authorized to issue ID to its
2 residents; correct?

3 A That's one of the options, yes.

4 Q Is there any other option that was
5 aimed at this population?

6 A Yes. The final statute allows a
7 PennDOT photo identification card or driver's
8 license to be valid up to 12 months after it
9 expires. So that that would give the person an
10 extra year to obtain another form of ID, which
11 could include another PennDOT photo ID card.

12 Q But that extra year, when -- let's go
13 back to -- I'm going to break my own promise --
14 when there was the database match done last summer,
15 PennDOT and the Department of State identified
16 500,000 voters whose IDs would be expired for more
17 than a year come the November 2012 election;
18 correct?

19 A Yes, I think so.

20 Q So that was a temporary fix that
21 wouldn't help those 500,000 voters because their
22 IDs would be expired for more than a year in
23 November; right?

24 A I believe so. But all those voters
25 would be able to get a new ID card upon showing up

1 at a photo ID center with no documentation. So
2 allowing them extra time to do so was what I
3 believe that the intention was.

4 Q And if somebody can't get -- that still
5 requires them to show up at a driver's license
6 center; correct?

7 A Yes.

8 Q And if they can't get to a driver's
9 license center, they're out of luck under that
10 12-month grace period; is that right?

11 A Yes. But giving them sufficient time
12 to do so, I think, is what the statute was meant to
13 provide.

14 Q We're now 16 months past the time that
15 the statute was enacted; correct?

16 A Yes.

17 Q So any ID that was expired when the
18 statute was enacted is now more than 12 months
19 expired unless it's been renewed; correct?

20 A Correct.

21 Q The next option was -- well, let me ask
22 another question. If you don't live in a licensed
23 care facility, the licensed care facility provision
24 really doesn't help you; right?

25 A Well, there are other ways that it

1 could help. For instance, if you're receiving
2 at-home care from a facility that is affiliated
3 with a licensed care facility, there is a potential
4 that that care facility could issue you an ID card.
5 There are other variations on that.

6 Q Rare exceptions, hypotheticals;
7 correct?

8 A Yes. And I don't know if they're rare;
9 but there are other provisions that they help.

10 Q Well, you're not telling this Court
11 that that's going to help get everyone who needs ID
12 who doesn't live in a licensed care facility ID?

13 A No, certainly not everyone. There are
14 other options that are provided for others.

15 Q And that's not going to come close to
16 doing that; right?

17 A I don't know.

18 Q And no one has asked you to find out?

19 A No.

20 Q Is that no one -- are you agreeing with
21 me that no one asked you to find out?

22 A To find out what specifically?

23 Q How many people these hypotheticals
24 that you just gave would actually cover.

25 A No, I'm not sure how we would do that.

1 Q Employee ID cards. Now, this was a
2 proposal to allow any Pennsylvania employer,
3 government or nongovernment, who issues an ID card
4 to have that acceptable for voting; correct?

5 A That was the proposal at the time.

6 Q And they did not make it into the final
7 statute; correct?

8 A Correct.

9 Q And retirement center ID cards, another
10 proposal at this time that didn't make it into the
11 final statute; correct?

12 A Correct.

13 Q And photo IDs issued by counties,
14 municipalities and school districts, other than
15 municipalities and counties issuing IDs to their
16 own employees, that proposal didn't make it into
17 the final statute?

18 A Correct.

19 Q And even employ IDs issued by school
20 districts, that didn't make it into the final
21 statute; correct?

22 A Correct.

23 Q And photo IDs issued by institutions of
24 higher learning or higher education, that did make
25 it into the final statute; right?

1 A It did, yes.

2 Q And then it says [reading]: Photo IDs
3 may not necessarily need to include expiration
4 dates; right?

5 A Correct.

6 Q And who was thinking that the photo IDs
7 would not necessarily need to include expiration
8 dates?

9 A I don't recall specifically who was
10 proposing which of these options at the time.
11 These were just items that were under discussion in
12 the General Assembly at the time that we documented
13 for the memo.

14 Q And in that memo, it talks about this
15 is what was being discussed with the Governor's
16 office's approval; correct?

17 A Yes. Those were the areas of
18 discussion; yes. Those were not specific proposals
19 that were approved by the Governor's office but
20 were under discussion at the time with the General
21 Assembly.

22 Q I'd like to now show you 1559,
23 Petitioners' 1559.

24 This is an email string between you and
25 a Gail -- is it "Reinard"?

1 A Reinard, yes.

2 Q Reinard. And the email traffic goes
3 from September 20th, 2011 through
4 September 26th, 2011; is that right?

5 A Yes.

6 Q Who was Ms. Reinard?

7 A She is a Senate Republican staffer.

8 Q And she worked on the State Government
9 Committee; correct?

10 A Yes.

11 Q And that's the committee with
12 jurisdiction over the photo ID law; correct?

13 A Correct, yes.

14 Q And this email is about drafting, the
15 drafting of the photo ID law; right?

16 A Correct. The bill had already passed
17 the House at this point. It was under discussion
18 in the Senate.

19 Q And you keep anticipating my questions.
20 So thank you.

21 And so the Governor, the Secretary, the
22 House and the Senate were in negotiations over what
23 the final bill would look like; right?

24 A Yes, that's correct.

25 Q I'd like to have you turn your

1 attention to the page that is Bates numbered at the
2 bottom 6592, which is the second page, and
3 specifically the email at the bottom of the page,
4 where you write [reading]: Hi, Gail. I was just
5 about to respond to your email re expiration dates.

6 Do you see that?

7 A Yes.

8 Q So there was a prior email talking
9 about expiration dates; right?

10 A Yes.

11 Q And then in the next paragraph you
12 respond to -- when you talk about expiration dates;
13 correct?

14 A Yes.

15 Q And you say that [reading]: Regarding
16 expiration dates on ID cards, I asked around, and
17 no one really seems to have strong feelings about
18 it; correct?

19 A Yes.

20 Q And specifically, asking around meant
21 talking to Deputy Secretary Shannon Royer; correct?

22 A Yes. Amongst other people at the
23 Department of State; right.

24 Q Jonathan Marks?

25 A Yes.

1 Q Other people?

2 A Yes. Generally all the people that
3 were involved in discussions about elections at the
4 time.

5 Q Secretary Aichele?

6 A Not necessarily. Possibly. I'm not
7 sure.

8 Q And those were the people that didn't
9 have strong feelings about requiring expiration
10 dates; correct?

11 A Correct.

12 Q You then make -- in that same paragraph
13 go on to make some observations about what you
14 understand about expiration dates on various ID
15 cards; right?

16 A Yes.

17 Q And you say that many employer ID cards
18 don't have expiration dates; correct?

19 A Yes.

20 Q And that was in the context of the
21 discussions of adding private employee ID cards;
22 correct?

23 A Yes.

24 Q But you also understand that
25 Commonwealth employee ID cards frequently do not

1 have expiration dates too; is that right?

2 A They do not; correct.

3 Q And you also say that [reading]: We've
4 been informed that some veterans' ID cards don't
5 either; correct?

6 A Yes.

7 Q And that makes sense, because once
8 you're a veteran, your status as a veteran doesn't
9 ever expire; correct?

10 A Correct.

11 Q But under the photo ID law, a veteran's
12 ID card isn't good enough to vote; right?

13 A No. Actually, a veteran's ID card is
14 sufficient to vote if it contains an expiration
15 date that says "indefinite."

16 Q That's for a military ID; right?

17 A Yes.

18 Q But for a Veterans Administration card,
19 that's not a military ID; correct?

20 A Correct. That would not be acceptable.

21 Q It needs to have an expiration date on
22 it; correct?

23 A Correct.

24 Q And you learned that some veterans'
25 IDs, specifically those, don't have expiration

1 dates; right?

2 A Yes, that's correct.

3 Q And Gail writes back to you and says
4 [reading]: Good to know that not everyone is
5 wedded to keeping the expiration date; is that
6 right?

7 A Yes, that's what she says.

8 Q I'd like you to now turn to the
9 paragraph that continues on from what's Bates
10 numbered 6591 to the top of 6592.

11 Do you see that paragraph?

12 A Yes.

13 Q And in that paragraph, you say
14 [reading]: We'd like to propose removing the care
15 facilities exemption.

16 Do you see that?

17 A Yes.

18 Q And that's the care facilities
19 exemption we talked about earlier today; right?

20 A Yes, for polling places. Yes.

21 Q Right. And that got out of the bill?

22 A It did.

23 Q And the original concern with the
24 facilities was that people living in those
25 facilities could not access a PennDOT photo license

1 center to obtain identification; right?

2 A Correct.

3 Q And then you write [reading]: Now that
4 we have agreed to expand the list, I think we may
5 open up the possibilities to make it easier for
6 these voters to obtain ID; correct?

7 A Correct.

8 Q And by expanding the list, you then
9 give some examples; right?

10 A Yes.

11 Q One of them is expired driver's
12 licenses or PennDOT photo ID cards if they're over
13 65; correct?

14 A Yes.

15 Q It didn't make it into the final bill;
16 correct?

17 A Correct.

18 Q Perhaps also adding voters who reside
19 in a care facility, so that there's no expiration
20 date requirement for those people; correct? Is
21 that what you're writing?

22 A I think so, yes.

23 Q And we also suggest adding ID cards
24 issued by care facilities; is that right?

25 A Yes.

1 Q And that did make it into the final
2 bill?

3 A It did, yes.

4 Q But those ID cards need to be -- to
5 have an expiration date; correct?

6 A Yes.

7 Q And the facilities have to actually
8 issue the ID cards; correct?

9 A Yes.

10 Q And you learned through your research
11 that few, if any, licensed care facilities were
12 actually issuing ID cards to their residents;
13 correct?

14 A Yes, that was true at the time. Though
15 the Department did quite a bit of outreach to care
16 facilities in concert with other departments to try
17 and help them comply with that requirement for
18 issuing IDs.

19 Q Well, let's talk about -- you use the
20 word "requirement." There is no requirement in
21 Act 18 or any other law that requires a care
22 facility to issue IDs for voting to their
23 residents; correct?

24 A No, it's not a requirement.

25 Q So what I said is correct?

1 A I'm sorry. Could you repeat what you
2 said.

3 Q Sure. Is it correct that the photo ID
4 law nor any other law requires a care facility to
5 actually issue IDs for voting to their residents?

6 A No, that's not a requirement. You are
7 correct.

8 Q Thank you. The double negatives
9 are ...

10 And the Department hasn't done any
11 survey of all the care facilities to determine if
12 they all are, some of them are, most are or very
13 few are issuing IDs to the residents; isn't that
14 right?

15 A They haven't that I'm aware of.

16 Q And you're not aware of anyone else
17 doing that type of survey; correct?

18 A Not that I'm aware of.

19 Q And there was also at some point a
20 discussion of including retirement home IDs;
21 correct?

22 A That was a point of discussion at one
23 point.

24 Q And that was not included; correct?

25 A Correct; if there are retirement homes

1 that are licensed care facilities.

2 Q I'd like to now show you 2091,
3 Petitioners' 2091.

4 And this is an October 26, 2001, [sic]
5 email exchange in which you were involved; correct?

6 A Yes.

7 Q And I want to specifically focus your
8 attention on the email at the bottom of the first
9 page, which is from you to Joseph Murzyn. Who is
10 that?

11 A Joseph Murzyn was the Deputy
12 Legislative Director for the Governor at the time,
13 I believe.

14 Q Patrick Geho, who is the Legislative
15 Affairs Director for Department of State; correct?

16 A Yes.

17 Q Shannon Royer, who we're all familiar
18 with.

19 And then Rebecca Myers. Who's Rebecca
20 Myers?

21 A Deputy Director of Policy Planning for
22 the Governor.

23 Q And in this email that you sent, you
24 write [reading]: FYI, here's the current proposal
25 that we sent over to the Senate strengthening the

1 draft language that Gail has sent us; is that
2 right?

3 A Yes.

4 Q And below that you have included the
5 draft language that you sent over; correct?

6 A Yes.

7 Q And in this draft language, this
8 language implemented the "if you're over 65, you
9 can use an expired driver's license"; correct?
10 Ii(c)?

11 A Yes.

12 Q And then if, in small Roman i -- ii, I
13 guess -- that's listing out other types of IDs that
14 are acceptable; correct?

15 A Yes.

16 Q Photo identification, for example by
17 colleges, that's A; is that right?

18 A Yes.

19 Q And an employee photo identification
20 card from any Pennsylvania employee; correct?

21 A Yes.

22 Q And I said employee. I meant employer;
23 is that right?

24 A Yes, that's right.

25 Q Photo identification issued by any

1 political subdivision. That would be
2 municipalities or counties; correct?

3 A Yes.

4 Q Including school districts; right?

5 A Yes, this includes school districts.

6 Q And then you also have the care
7 facility photo identification card; right?

8 A Yes.

9 Q And then, and then little Roman iii
10 says that those do not have to have an expiration
11 date, but if they do, it can't be expired; is that
12 right?

13 A Correct.

14 Q So this wasn't just -- these proposals
15 weren't just sort of academic discussions? You
16 actually drafted up statutory language that went
17 over to the Senate; correct?

18 A Yes. I believe, if I remember
19 correctly, the lower-case language was sent to us
20 from the Senate and we added the upper-care
21 language.

22 But you'll have to forgive me. There
23 were many discussions back and forth in which there
24 were various proposals exchanged. And I believe
25 that was the case here.

1 Q Fair enough.

2 But again, the -- it wasn't just
3 discussions on expanding the list of IDs? The
4 actual language, regardless of who drafted it and
5 who revised it, was put together by the General
6 Assembly and the executive branch; correct?

7 A Yes. There are many proposals. This
8 was one of them.

9 Q I'd like to now show you Petitioners'
10 Exhibit 2092. This is a -- are you familiar with
11 this document?

12 A Yes.

13 Q What is this document?

14 A I believe the previous exhibit mentions
15 wanting to put a list together of all IDs that were
16 currently under discussion. And that's what this
17 document is, a list of many of the IDs that were
18 under discussion at the time.

19 Q And I want to walk through some of
20 those. But if we can go down to -- go to the
21 second page, the paragraph that says [reading]:
22 IDs that would qualify under HB 934.

23 Do you see that paragraph?

24 A Yes; as passed in the House.

25 Q And that says currently -- in the

1 parenthetical at the end [reading]: Currently no
2 state system school ID card includes expiration
3 dates; right?

4 A Correct.

5 Q Let's go to the first page. And there
6 are various types of ID cards; and it says whether
7 it's in the House bill, whether it's in the most
8 recent Senate draft and whether the Governor
9 supports it; correct?

10 A Yes.

11 Q And then there are various notes;
12 correct?

13 A Correct.

14 Q And the second row is government,
15 Federal Government or Pennsylvania photo ID cards
16 with expiration dates; do you see that?

17 A Yes.

18 Q And then under the notes it says
19 [reading]: Some states have allowed ID cards
20 issued by other states to be provided. For
21 example, a New Jersey driver's license or a
22 New York driver's license would count to vote in
23 another state.

24 A Yes.

25 Q Or another type of ID issued by a

1 different state that otherwise met the
2 qualifications would count; correct?

3 A Possibly, yes.

4 Q That did not make it into the Act 18;
5 correct?

6 A Correct.

7 Q And the next row is expired government
8 photo IDs; right?

9 A Yes.

10 Q And under notes it says [reading]:
11 Expired driver's licenses are okay in Georgia.

12 Do you see that?

13 A Yes.

14 Q And Kansas allows expired IDs for
15 voters 65 plus; is that right?

16 A Yes.

17 Q And just so I'm clear, you were the
18 author of this chart?

19 A Yes, I believe I was.

20 Q Great.

21 The next row [reading]: Photo IDs
22 issued by Pennsylvania public and private
23 institutions of higher learnings; these do not
24 typically contain expiration dates.

25 Do you see that?

1 A Yes.

2 Q And then the notes shows that student
3 IDs are provided for in other states and list out a
4 number of states; correct?

5 A Yes.

6 Q And do you know whether those states
7 required expiration dates on those college IDs?

8 A I don't recall.

9 Q And then photo IDs issued by political
10 subdivisions or school districts. Do you see that
11 row?

12 A Yes.

13 Q And then under notes [reading]:
14 Similar provision in Georgia would include county
15 gun permits and student IDs for voters in high
16 school. Right?

17 A Yes.

18 Q And neither of those made it into the
19 final bill; right?

20 A Correct.

21 Q Let's take a look at Petitioners'
22 Exhibit 1566.

23 Do you recognize this email?

24 A Yes.

25 Q And this is from December 1st and

1 December 2nd of 2011; correct?

2 A Yes.

3 Q Subject line is Voter ID Bill
4 Agreement; is that right?

5 A Yes.

6 Q And in your email of December 1st you
7 say, As requested -- well, let me step back.

8 This is an email from you to the
9 Secretary, to the Deputy Secretary, to the Press
10 Secretary and to the Director of Legislative
11 Affairs; correct?

12 A Correct.

13 Q And you say [reading]: As requested,
14 here is a summary of the final agreement the
15 Governor's office reached yesterday with the House
16 and Senate as to the types of ID that will qualify
17 under Senate amendment House bill 934.

18 A Yes.

19 Q And then you list out various types of
20 IDs. And one of them is military or veterans ID
21 that either does not designate an expiration date
22 or the date is indefinite.

23 Do you see that?

24 A Yes.

25 Q And then a current and valid ID which

1 shows the name and photo of the individual issued
2 by a college or a care facility; right?

3 A Correct.

4 Q And "current and valid" didn't
5 necessarily mean it had to have an expiration date
6 on it; right?

7 A Right. That was my belief at the time,
8 yes.

9 Q The response to your email from
10 Mr. Royer is [reading]: This is great. Thanks.

11 Is that right?

12 A Yes.

13 Q And the next day you sent another
14 email; is that right?

15 A Correct.

16 Q And you explained that your prior
17 email, what you understood the final agreement to
18 be, didn't match what the final text was that came
19 over from the Senate; right?

20 A Yes, that's correct.

21 Q And you explained that [reading]: Our
22 draft language did not require an expiration date
23 on these IDs -- namely college IDs and care
24 facility IDs; is that right?

25 A Yes.

1 Q And then you went to go and find out
2 what the final answer was from the Governor's
3 office on this issue; is that right?

4 A Yes.

5 Q And what did you find the final answer
6 to be?

7 A I don't believe I got an answer from
8 the Governor's office. The language that came over
9 from the Senate was what was ultimately amended
10 into the bill, I believe. So that was the answer,
11 the decision was made by the General Assembly.

12 Q Do you have an understanding that it
13 was with the support of the Governor?

14 A The Governor signed the bill. So yes,
15 I believe so.

16 Q Fair enough.

17 I'd like to now turn to 1562. And I'm
18 sure, Ms. Oyler, the next time you look at a bill,
19 you won't write so many memos so you won't be asked
20 about them. But we're almost done.

21 This is a memo from the Office of
22 Policy and Legislative Affairs, Department of Aging
23 and State; correct?

24 A Correct.

25 Q And it's on letterhead from the

1 Pennsylvania Department of State; correct?

2 A Yes.

3 Q And it's a memo to the deputy -- two
4 Deputy Chiefs of Staff, Secretary of Policy and
5 Planning, and Secretary of Legislative Affairs, all
6 in the Governor's office; right?

7 A Yes.

8 Q Cc'g Secretary Aichele, Secretary
9 Duke -- Secretary of Aging -- is that right?

10 A Correct.

11 Q The Deputy Secretary of Policy and
12 Planning of the Governor's office; right?

13 A Yes.

14 Q Deputy Secretary of Legislative Affairs
15 at the Governor's office; is that right?

16 A Yes.

17 Q Your direct boss, Deputy Secretary
18 Royer; right?

19 A Yes.

20 Q And it says it's a revised memo; is
21 that right?

22 A Correct.

23 Q And so there was an earlier version,
24 but this was the last version; right?

25 A Yes, that's right.

1 Q And this was a joint memo submitted by
2 the Department of State and the Department of
3 Aging; right?

4 A Yes.

5 Q You worked with two folks from Aging;
6 is that right?

7 A Correct.

8 Q And they're your counterpart over there
9 in Policy; is that right?

10 A Yes.

11 Q You also worked with Patrick Geho's
12 counterpart in Legislative Affairs at Department of
13 Aging; correct?

14 A Yes.

15 Q And you worked with Mr. Geho himself;
16 correct?

17 A Yes.

18 Q The first paragraph of the memo says
19 "as requested" -- so I assume there was a request
20 for this analysis?

21 A Yes.

22 Q Who was the request from?

23 A It was from the Governor's office. I
24 don't remember specifically who.

25 Q And you write [reading]: We are

1 providing an overview of potential administrative
2 and practical issues surrounding discussions over
3 House bill 934 related to senior citizens of
4 Commonwealth.

5 Correct?

6 A Correct.

7 Q And by "we," you're referring to the
8 Department of State and Aging; correct?

9 A Yes.

10 Q You also say [reading]: We are also
11 proposing the potential solutions outlined below to
12 those problems as the bill is discussed with the
13 Senate.

14 Right?

15 A Correct.

16 Q The first section of this bill deals
17 with the facilities exemption; right?

18 A Yes.

19 Q And that's the exemption that was
20 originally in the House bill where someone who
21 lived in a care facility that also was his or her
22 polling place could vote at that polling place
23 without an ID after voting at least once with an
24 ID; is that right?

25 A Yes, that's correct.

1 Q And, bottom line, neither Department of
2 State or Aging thought that was a good, practical
3 idea; correct?

4 A Correct.

5 Q And on Page 3 of the memo, which is
6 Bates numbered 6503 -- can you go to the top --
7 there you go. You write [reading]: We
8 respectfully request that the Governor's office
9 ensure that it be removed from House bill 934.

10 A Correct.

11 Q And it was?

12 A It was.

13 Q All right. Now, the next section goes
14 into issue of care facilities; right?

15 A Yes.

16 Q And this is where you recognized there
17 is a concern for people living in care facilities
18 under the photo ID law; right?

19 A Yes. Though I think it helps to put it
20 in context at the time.

21 The House bill that had passed the
22 House earlier that year only allowed
23 government-issued ID cards. And the facilities
24 exemption, we believed, was a -- was a means that
25 the General Assembly intended for residents of

1 these care facilities to be able to easily comply
2 with the requirements. So we were providing
3 alternatives for that specific population.

4 If the care facilities polling place
5 exemption was taken out of the bill, we were
6 providing other options that would help to mitigate
7 the issues for those voters.

8 Q One of the things that was a problem
9 for those voters is, although there are some
10 polling places in care facilities, a lot of
11 residents of care facilities vote at places other
12 than the polling place in their facility; right?

13 A Correct. We believed at the time there
14 were not many polling places located in care
15 facilities that would have been covered by the
16 facilities polling place exemption.

17 Q But it would be very expensive to
18 modify the SURE database and administer that, and
19 so that's why you opposed it?

20 A Correct, yes.

21 Q Fair enough.

22 You write -- the memo says [reading]:
23 We agree that voters who live in care facilities
24 may encounter difficulties complying with the photo
25 ID requirements of the bill if they do not already

1 have a qualified ID and cannot get to a PennDOT
2 photo center due to illness or physical disability.

3 Is that right, you wrote that?

4 A Yes.

5 Q And the "we" again means State and
6 Aging; correct?

7 A Correct.

8 Q And you offer two potential solutions
9 to residents of care facilities; right?

10 A Correct.

11 Q And you also --

12 A Yes.

13 Q And you also recommend that, in
14 addition to whichever solution is picked, there
15 also be an outreach program to educate and inform
16 voters who live in care facilities or older voters
17 and voters with disabilities in the community about
18 the impact of House bill 934 and how they can
19 comply with the new requirements. Is that right?

20 A Correct. And that outreach program
21 that was proposed is on Page 5 and 6.

22 Q We'll get there. I'm going to go
23 through this in order.

24 And the outreach needed to tell them
25 two things: One, that there are these new

1 requirements for voting; is that right?

2 A Correct.

3 Q And two, how essentially to get ID that
4 would comply and let you vote; correct?

5 A Yes.

6 Q The two are equally important; correct?

7 A Yes.

8 Q So if people know there is an ID
9 requirement and they know they can't vote -- or
10 they don't have one of those IDs but they don't
11 know how can get one, you don't tell them how they
12 could get one, that may cause people just not to
13 try to get an ID; right?

14 A I suppose that could be true, yes.

15 Q So the first option is expanding the
16 list of identification cards?

17 A Yes.

18 Q And you write [reading]: A proposal
19 being discussed in the Senate would provide that a
20 Pennsylvania care facility photo identification
21 card of the individual would qualify as proof of
22 identification in the polling place; right?

23 A Yes.

24 Q And that's what made it into Act 18
25 finally; correct?

1 A Yes. That was amended into the bill in
2 the Senate.

3 Q Right.

4 And in the next paragraph you wrote
5 [reading]: We understand that it's not typical for
6 care facilities in Pennsylvania to issue photo ID
7 cards to their residents; right?

8 A Yes.

9 Q And then you have an interesting word
10 here: "Nonetheless".

11 What's "nonetheless" signify in that
12 paragraph?

13 A I think we believed that there was a
14 potential that that would be amended into the bill
15 as it was. And if it were amended into the bill,
16 we made an additional recommendation, nonetheless,
17 that personal-care homes also be added to the list
18 of qualified care facilities.

19 Q And there are three types of qualifying
20 care facilities; correct?

21 A Yes. In the statute, yes.

22 Q And you know that elderly people don't
23 all live in licensed care facilities; correct?

24 A Yes.

25 Q And disabled people don't all live in

1 licensed care facilities; correct?

2 A True.

3 Q Some of them are cared for at home by
4 family members; correct?

5 A Yes.

6 Q Some of them are lucky enough and well
7 enough to live on their own still; correct?

8 A Yes.

9 Q And they may be able to live in their
10 building, take the elevator up and down, and the
11 building has everybody they need and they rarely
12 need to get out, and they really can't get very far
13 even if they do get out; is that right? You know
14 those people exist; correct?

15 A I'm sure they do.

16 Q And some of those people live in
17 buildings that have the polling place right there;
18 right?

19 A Yes, I believe that's probably true.

20 Q Not a licensed care facility, though?
21 Right?

22 A Potentially, yes.

23 Q And allowing the licensed care facility
24 to issue these IDs doesn't help that voter unless
25 there's the hypothetical that they have home

1 healthcare or something that somehow could get them
2 an ID that way; right?

3 A Yes, that's true. But to put this into
4 context, we were responding to the care facilities
5 polling place exemption, which we thought would be
6 very limited effect.

7 This proposal would have expanded it to
8 more than 2,000 care facilities, and we thought
9 that would do a lot more good than the care
10 facilities polling place exemption that was
11 currently in the bill.

12 Q Only does good, you agree, if the care
13 facility actually issues the ID to the voter;
14 correct?

15 A Yes.

16 Q And nothing in the bill required the
17 care facility to issue the ID; correct?

18 A Correct.

19 Q Nothing gave the voter a right to
20 demand from the care facility issuing me an ID so I
21 can vote; is that right?

22 A Correct.

23 Q So the voters' ability to vote, their
24 right to vote, under this provision, depends on the
25 discretion of the care facility; correct?

1 A That's true. But the three departments
2 that are involved in licensing these care
3 facilities all did outreach to all the care
4 facilities, I believe, to help them be able to
5 issue ID to their voters who might need them. So
6 we tried to mitigate that concern.

7 THE COURT: Mr. Rubin, how long do you
8 expect to have Ms. Oyler --

9 MR. RUBIN: I probably have this and
10 one other exhibit, Your Honor. Probably another
11 20 minutes. Probably be good a good time for a
12 break.

13 THE COURT: We'll take a break now
14 then.

15 THE CLERK: Commonwealth Court is now
16 in recess.

17 (Recess taken.)

18 THE CLERK: Please remain seated.
19 Court is now in session.

20 BY MR. RUBIN:

21 Q We were discussing Exhibit 1562 and the
22 paragraph that's on the Page 6503 under "Expanding
23 the List of Identification Cards." In that
24 paragraph you write [reading]: We understand that
25 the care facilities don't typically issue the IDs.

1 Right?

2 A Correct.

3 Q And you said [reading]: Nonetheless,
4 if adding those types of ID is being considered,
5 the Department of Aging recommends adding personal
6 care homes to the definition; right?

7 A Yes, correct.

8 Q Nowhere does this say that the
9 Department of Aging or Department of State
10 recommends that this care facilities ID card
11 actually be added to the bill; right? That's not
12 something endorsed in this memo by either Aging or
13 State?

14 A I believe this was a list of options
15 that would address some of the concerns that led to
16 the care facilities polling place exemption. So
17 that appeared on the list of options in the memo
18 here.

19 Q Right. And the memo says it's a
20 proposal being discussed in the Senate; and then it
21 never says, unlike other places, that "Department
22 of Aging recommends" or "Department of State
23 recommends" or "We propose" with respect to that
24 type of ID card; isn't that right?

25 A That may be true. I think the fact

1 that we recommended adding personal care homes to
2 the list was understood to mean that we would
3 support that change.

4 Q Well, it says "if adding it is
5 considered."

6 A Yes; and we did not know at that point
7 whether or not it would be included in the bill or
8 not. But if it was, we recommended that personal
9 care homes be included.

10 Q But this memo doesn't say Department of
11 State or Department of Aging recommends that
12 licensed care -- I'm sorry -- that licensed care
13 facilities IDs be added to the bill. Never says
14 that; correct?

15 A Not that I can find.

16 Q The next paragraph talks about IDs
17 issued by political subdivisions of the
18 Commonwealth and school districts; right?

19 A Correct.

20 Q And it lists out the numbers of each of
21 those; correct?

22 A Yes.

23 Q 67 counties; right?

24 A Yes.

25 Q 2,562 municipalities; right?

1 A Correct.

2 Q 500 school districts; right?

3 A Yes.

4 Q And you recommended against allowing
5 those entities to issue IDs that would count for
6 voting other than municipality or county employee
7 IDs; correct?

8 A I don't think we spoke to the employee
9 IDs specifically. But we recommended against
10 including municipal IDs overall here, yes, for the
11 reasons listed.

12 Q And you write that there's little clear
13 benefit to allowing them to issue IDs; right?

14 A Right.

15 Q Would you agree that having issuers in
16 every city, town and state would be a benefit to
17 voters and make it easier for them to get ID?

18 A Well, I believe there are lots of
19 options provided for in the statute as it passed.
20 I don't know what the benefit would be of providing
21 other options.

22 Q To make it easier for people to get ID,
23 it would be a benefit; correct?

24 A Well, I mean, the General Assembly has
25 to balance the availability of certain ID cards

1 versus the security, integrity of the election.

2 And the decisions they ultimately made as to
3 whether to include some ID cards and others were a
4 result of that determination of the General
5 Assembly.

6 Q Do you agree with me that if every city
7 and town could issue ID, it would be easier for
8 voters to get the ID?

9 A Theoretically, yes.

10 Q Theoretically it would be easier to get
11 to the town in which you lived than a PennDOT
12 facility, perhaps in a county that doesn't have
13 one? That would be easier; right?

14 A That may be easier, but that's not what
15 the statute provided for ultimately.

16 Q I understand that. But in terms of
17 benefit, there is a benefit of making it easier for
18 the voters; right?

19 A Possibly. But as I said, the General
20 Assembly has to balance benefits against other
21 constituencies and against other concerns. So I
22 didn't make those decisions ultimately.

23 Q Understood. This is a memo from the
24 Department of State and Aging to the Governor's
25 office; correct?

1 A Yes; and we recommended against
2 including municipal IDs.

3 Q Because you determined -- and your
4 conclusion was it offered little benefit; correct?

5 A Yes. And we listed the reasons why we
6 believed that the issuance of these ID cards may
7 not be closely controlled by the municipal
8 authority; and the identity and residency and the
9 ID recipient is not consistently verified, if at
10 all, when they are provided.

11 Q And you know from the earlier document,
12 exhibit that we looked at, that in Georgia these
13 type of IDs are acceptable; correct?

14 A Yes, I believe so.

15 Q And that makes the Pennsylvania final
16 law more restrictive than, for example, the Georgia
17 law, correct, in this regard?

18 A In this regard, I believe so.

19 Q Let's take a look at the second, the
20 next option that you offered, which is on Page 4 of
21 your memo, ending Bates No. 6504. It's entitled
22 "Absentee Ballot Option."

23 Are you on that page?

24 A Yes.

25 Q And this begins [reading]: As you

1 know, the Department of State has proposed an
2 amendment to HB 934.

3 Do you see that?

4 A Yes.

5 Q And in this language it's talking about
6 something the Department of State has proposed;
7 correct?

8 A Correct.

9 Q Language that's missing from when
10 you're talking about the licensed care facilities;
11 is that right?

12 A I'm sorry. Language that's missing
13 from --

14 Q The "recommendation from the Department
15 of State or Department of Aging" language. We just
16 talked about how it's not there for the licensed
17 care facility cards.

18 A Right.

19 Q Under this proposal -- this is what
20 would require identification for voters who apply
21 for absentee ballots; correct?

22 A Correct.

23 Q And not only for when they apply but
24 also, if they didn't submit it when they applied,
25 for when they submit the ballots themselves, have

1 to put identification; right?

2 A Yes.

3 Q Otherwise, the ballot doesn't count;
4 correct?

5 A Correct.

6 Q And you wrote [reading]: We believe
7 that this identification requirement -- meaning the
8 last four digits of the Social Security number --
9 would be easier for residents of care facilities to
10 comply with, since most likely have Social Security
11 numbers to provide on their application.

12 A Yes.

13 Q You wrote that?

14 And then you wrote [reading]: Casting
15 absentee ballots would obviate the need for those
16 voters to obtain photo ID in most cases.

17 A Correct.

18 Q The problem that -- you identify a
19 problem in the next paragraph; correct?

20 A Yes.

21 Q That there are tight restrictions that
22 are embedded in both the election code and the
23 constitution as to who can vote absentee; right?

24 A Yes, that's correct.

25 Q And the concern was that there would be

1 voters -- for example, someone who lives in a care
2 facility -- that is also their polling place, that
3 they would be able to get to the polls but would
4 not be able to get to PennDOT to get an ID;
5 correct?

6 A Yes. I believe that's why the General
7 Assembly included the care facilities polling place
8 exemption. So that was the concern, yes.

9 Q And that's one of the concerns that
10 you're addressing with your absentee ballot option;
11 correct?

12 A Yes.

13 Q And this is -- in the next paragraph,
14 you write [reading]: We propose an additional
15 amendment.

16 Correct?

17 A Correct.

18 Q And which would provide that voters who
19 are unable to obtain qualifying photo ID due to
20 illness or physical disability can vote by absentee
21 ballot; right?

22 A Yes.

23 Q And then you provide some analysis of
24 why that is consistent with the Pennsylvania
25 constitution and the election code; correct?

1 A Yes.

2 Q Now, in the next paragraph you bold the
3 first sentence; correct?

4 A Yes.

5 Q And you do that because you say
6 [reading]: Please note that this proposed
7 amendment to the absentee voting section would
8 apply to more voters than just those residing in
9 care facilities; right?

10 A Yes.

11 Q Then you write [reading]: We believe
12 that providing the absentee ballot voting option
13 for these voters is a good solution.

14 Right?

15 A Yes.

16 Q And it's a good solution to ensure that
17 no qualified elector is disenfranchised because
18 illness or disability prevented him or her from
19 obtaining necessary proof of ID, no matter the
20 specific circumstances involved.

21 Correct?

22 A Correct.

23 Q And the word "disenfranchised," that's
24 your language; correct?

25 A Yes. That's in the memo.

1 Q And it was language that was concurred
2 in by the Department of Aging; correct?

3 A Yes.

4 Q Sorry. I didn't hear you.

5 A Yes. I'm sorry.

6 Q In the last sentence in that paragraph
7 you write [reading]: This change follows the same
8 policy of providing a remedy to disenfranchisement
9 through happenstance beyond the control of the
10 elector.

11 Right?

12 A Yes.

13 Q And what you're referring to there is
14 someone who can get to their polling place but
15 can't get to PennDOT and doesn't have access to
16 another ID? That's not the fault of the elector;
17 right?

18 A Correct. This was in the context
19 specifically of care facilities. But yes.

20 Q Well, the amendment that you're
21 proposing applied beyond care facilities; correct?

22 A That's correct.

23 Q And the Department of State and Aging
24 thought it was a good thing to apply beyond care
25 facilities; correct?

1 A Yes.

2 Q Because there are people who live
3 outside of care facilities who can get to one of
4 9300-or-so locally accessible polling places but
5 can't get to PennDOT; right?

6 A Potentially, yes.

7 Q That's something you understood to be
8 true when you wrote this memo; correct?

9 A Yes.

10 Q Now, if we can turn to the next page,
11 Page 5, this is where you go to the outreach
12 program; correct?

13 A Yes.

14 Q And you talk about the Department of
15 Aging working with various entities to reach out
16 and educate them as part of this outreach program;
17 correct?

18 A Yes.

19 Q Under Act 18, Department of Aging
20 wasn't given any money to do this, were they?

21 A Not that I'm aware of.

22 Q There are specific actions that are
23 listed. Do you see where it says [reading]:
24 Ombudsman will be trained to educate voters on the
25 new requirements?

1 A Yes.

2 Q Was that ever done?

3 A I don't know. These were
4 responsibilities of Department of Aging, and I'm
5 not necessarily aware of how they were ultimately
6 followed through with.

7 Q And then it says [reading]: Apprise
8 volunteers, people trained to counsel people on
9 Medicare benefits, will be trained to educate
10 voters.

11 Do you know if that was done?

12 A I don't know.

13 Q That's all I have for that exhibit.
14 I'd like to now show you Exhibit 1677.

15 And for the record, this version has
16 been redacted to remove certain materials pursuant
17 to the Court's order.

18 Do you recognize 1677?

19 A Yes.

20 Q This is a legislative bill analysis;
21 correct?

22 A Correct.

23 Q And if you turn to the last page, it
24 lists out who the office or -- the names, office or
25 program and phone numbers of the staff that

1 participated in completing this bill analysis; is
2 that right?

3 A Yes. This is the bill analysis form
4 that we use to analyze all of our bills.

5 Q Fair enough.

6 And you're listed on the last page;
7 correct?

8 A Correct.

9 Q Along with Patrick Geho; is that right?

10 A Yes.

11 Q Steve Turner, Shauna Clemmer and Patty
12 Dillon; correct?

13 A Correct.

14 Q And this is a form that, as you said,
15 that's used for all the bills; correct?

16 A Correct.

17 Q Who does it go to?

18 A It's circulated internally within the
19 Department, and then it is sent to the Governor's
20 office ultimately.

21 Q The first section of it has a
22 recommendation; is that right?

23 A Yes; a position recommendation.

24 Q And then there's a bill summary;
25 correct?

1 A Correct.

2 Q And then there are various other
3 sections which we'll get to.

4 A Yes.

5 Q Under the bill summary in the first
6 paragraph, you note that this is the final bill;
7 that it requires qualified absentee electors to
8 provide proof of identification. And that's a new
9 requirement; correct?

10 A Correct.

11 Q And that's what we've talked about
12 previously; right?

13 A Yes.

14 Q There are not page numbers on this, so
15 we'll use the Bates numbers. If you take a look at
16 the page, the second page, 5427, and that lists out
17 the various types of ID that are acceptable;
18 correct?

19 A Yes.

20 Q And then if you turn to the next page,
21 5428, that goes through some issues with the
22 various types of IDs listed out as acceptable;
23 correct?

24 A Yes.

25 Q And with respect to college IDs, the

1 first bullet point on that page, you write
2 [reading]: The bill requires IDs to contain an
3 expiration date, but most IDs provided by
4 universities do not have one.

5 Is that right?

6 A Yes.

7 Q And then you conclude [reading]:
8 Therefore, either institutions of higher learning
9 will have to include an expiration date on their
10 IDs or the students will have to get to a
11 Pennsylvania driver's license -- let me start over.

12 [Reading]: -- or the students will
13 have to get a Pennsylvania driver's license or
14 federal government-issued ID with the ID
15 requirements to vote.

16 Right?

17 A Correct.

18 Q So the college IDs didn't have
19 expiration dates for most colleges; correct?

20 A Correct.

21 Q And the next paragraph talks about the
22 care facility IDs that we've spent a lot of time
23 talking about; right?

24 A Yes.

25 Q And you say [reading]: However, the

1 Department has learned --

2 MS. HICKOK: Your Honor, can we clarify
3 something? He says "you say." But she did not
4 testify that she was the author of this document.

5 MR. RUBIN: I'll clarify, Your Honor.

6 BY MR. RUBIN:

7 Q How much of this document did you
8 write?

9 A I believe I wrote very little of it,
10 actually.

11 Q But you had input into it?

12 A Yes. The Department of State authored
13 the document.

14 Q Fair enough. So I will use the term
15 "Department of State" instead of "you."

16 A Okay. Thank you.

17 Q The Department of State wrote
18 [reading]: However, the Department has learned
19 that most care facilities do not currently issue
20 IDs.

21 Right?

22 A Correct.

23 Q And then the Department of State
24 concluded [reading]: Therefore, individuals in a
25 care facility will have to have another acceptable

1 form of ID or care facilities will have to begin
2 providing IDs with expiration dates.

3 A Yes.

4 Q Then you have a sub-bullet; correct?

5 A Correct.

6 Q The Department of State has a
7 sub bullet.

8 It says [reading]: The care
9 facilities -- If care facilities do not issue an
10 acceptable ID, an individual who lives in a care
11 facility and whose license or federal
12 government-issued ID has been expired for over a
13 year may have problems trying to vote if he or she
14 is not well enough to get a new ID but his or her
15 polling place is located in the care facility.

16 Department of State wrote that?

17 A Yes.

18 Q And Department of State believed that
19 when it was written?

20 A Yes.

21 Q And they'd have trouble voting if the
22 polling place was in their care facility because
23 they couldn't vote absentee; right?

24 A Correct.

25 Q Therefore, the elector could not claim

1 that he or she could not make it to the polling
2 place because it's in the care facility. That's
3 what we just said; right?

4 A Yes.

5 Q And that was the Department of State's
6 position?

7 A Yes.

8 Q However -- the Department of State goes
9 on [reading]: However, the elector may not be well
10 enough to get to a PennDOT photo center to get a
11 new ID; right?

12 A Yes.

13 Q The individual may then claim that he
14 or she has been deprived of the right to vote.

15 That was the Department of State's
16 position on this bill; correct?

17 A Yes. That was one of the concerns that
18 was highlighted on the analysis.

19 Q Going down on that page where it says,
20 the second paragraph that starts with "Section 2 of
21 the Bill." Do you see [reading]: Section 2 of the
22 bill also adds a Subsection B to the new
23 Section 206?

24 Do you see that?

25 A Yes.

1 Q And that requires the Department of
2 Transportation to issue an identification card as
3 described at 75 Pa.C.S., Section 1510(b).

4 A Yes.

5 Q And that is part of the Motor Vehicle
6 Code; correct?

7 A Yes.

8 Q And that's the section that describes
9 the PennDOT nondriver's photo ID; correct?

10 A I believe so, yes.

11 Q If you drop down two bullet points, do
12 you see where the Department of State said
13 [reading]: PennDOT has said that there are 71
14 photo centers around the state.

15 Do you see that?

16 A Yes.

17 Q And then the Department of State said
18 and concluded that someone may challenge the law
19 based on the fact that there are only 71 photo
20 centers and some people may not be able to get an
21 ID without significant costs to get to a photo
22 center.

23 That was the Department of State's
24 conclusion?

25 A Yes. Though I'll note that if that's

1 the case, ultimately the bill included an indigency
2 exemption which would allow a person who would have
3 to pay to get to a driver's license center to vote
4 and be exempt from the ID requirement. So that's
5 how --

6 Q You keep doing this to me, because that
7 was going to be my next question, which is fine.

8 Can you turn the page, please, to
9 what's 5249. And that section talks about the
10 provisional ballot provisions; correct?

11 A Yes.

12 Q It says, Section 3 of the bill amends
13 25PS -- and it goes on from there.

14 A Yes.

15 Q And it provides that if the elector is
16 unable to produce proof of identification on the
17 grounds that the elector is indigent and unable to
18 obtain proof of identification without the payment
19 of a fee or other grounds or, 2, the elector's
20 proof of identification is challenged by the judge
21 of elections, they get to cast a provisional
22 ballot; correct?

23 A Correct.

24 Q So on this indigent exception, there's
25 been some testimony on that. I just want to

1 clarify that it's not just the elector is indigent;
2 they also have to be able to say that they can't
3 get the ID without a fee; is that right?

4 A Correct.

5 Q And in the Department of State's
6 analysis of this they write in the subparagraph
7 right below it [reading]: The amendment
8 specifically states that the indigent individuals
9 who are unable to obtain proof of identification
10 without payment of a fee can vote by provisional
11 ballot.

12 Right?

13 A Yes.

14 Q And then it talks about a certain
15 subsection, which I won't read into the record, and
16 it requires the elector to sign an affirmation
17 stating that he or she could not obtain proof of
18 identification without paying a fee. And then the
19 Department of State has a "however" sentence;
20 correct?

21 A Yes.

22 Q And the Department of State wrote
23 [reading]: However, the bill provides for an
24 indigent elector to obtain proof of identification
25 from PennDOT free of charge.

1 Right?

2 A Correct.

3 Q And then the Department of State asks a
4 question. Can you read us what the Department of
5 State's question is, please?

6 A [Reading]: Therefore, how could an
7 indigent elector sign the statement if he or is
8 able to obtain proof of identification free of
9 charge?

10 Q The Department of State then offers a
11 possibility that the fee is meant to include costs
12 to obtain a form of identification required by
13 PennDOT in order to issue the ID and/or any cost to
14 travel to a PennDOT photo ID center; right?

15 A Correct.

16 Q And that's just a possibility of what
17 "indigent" means; right?

18 A Yes.

19 Q And the Department of State --
20 "indigent" is not actually defined in the statute;
21 correct?

22 A That's correct.

23 Q It is up to each individual county to
24 decide what "indigent" means; correct?

25 A True. But the voter has to sign an

1 affirmation attesting that they believe themselves
2 to be indigent. So I believe that a county would
3 be hard-pressed not to believe a voter signing an
4 affirmation in that regard.

5 Q That's Rebecca Oyler's opinion; right?

6 A Yes.

7 Q But as a matter of law, the counties
8 get to decide that, correct, not Rebecca Oyler?

9 A Yes.

10 Q And each individual county gets to make
11 their own interpretation, decision; correct?

12 MS. HICKOK: Your Honor, she's not a
13 lawyer. I mean, he's asking her what the legal
14 effect of a state statute is.

15 THE COURT: If she knows, she can
16 answer.

17 THE WITNESS: I don't know how much
18 leeway a county has to determine whether or not a
19 voter is being truthful on an affirmation.

20 BY MR. RUBIN:

21 Q You do or you do not?

22 A I do not know.

23 Q Do you recall testifying -- I think it
24 was the courtroom next door last July -- that your
25 interpretation of what it means to be indigent is

1 not binding on the counties?

2 A Yes. My interpretation is certainly
3 not binding on the counties.

4 Q When someone casts a provisional
5 ballot, it's not guaranteed to be counted; correct?

6 A Correct.

7 Q There's a whole process for counting
8 provisional ballots; correct?

9 A Yes.

10 Q And there's a whole challenge process;
11 correct?

12 A Yes.

13 Q And someone's provisional ballot can be
14 not counted because they didn't sign their name
15 correctly or a whole host of technical reasons;
16 right?

17 A Yes, there are a number of reasons a
18 provisional wouldn't be counted.

19 Q It can also be the case that somebody
20 says, You know what? I don't think Jane Smith, who
21 I know voted by provisional ballot claiming she
22 didn't have an ID because she's indigent -- when I
23 see her, she's driving around in her BMW. I'm
24 going to challenge her indigent ballot affirmation?

25 MS. HICKOK: Your Honor, this is asking

1 for legal conclusions.

2 MR. RUBIN: The witness has worked in
3 the election laws for 13 years, Your Honor. I
4 think she has the grounds to talk about the
5 procedures.

6 THE COURT: Well, I don't think you
7 have to be a lawyer to answer that question. We'll
8 permit the question.

9 BY MR. RUBIN:

10 Q So you understand there are procedures
11 for people to challenge the provisional ballots;
12 correct?

13 A Yes. The Election Code provides
14 challenge procedures that are open to the public.

15 Q So anybody can challenge it?

16 A Yes. Under certain circumstances, yes.

17 Q And so if I -- it's not entirely up to
18 the counties to decide whether someone's indigent
19 because anybody can challenge that ballot; correct?

20 A Anybody can challenge it, but the
21 election board is ultimately the decider of whether
22 or not the ballot will count.

23 Q And the voter who casts a provisional
24 ballot gets notice of the challenge only if it's
25 possible to give them notice; right?

1 A I can't recall that specific section.

2 Q Fair enough. The law will be what the
3 law is.

4 If you cast a regular ballot, that's
5 going to get counted; right? There's no challenge
6 provisions; right?

7 A There are no challenge provisions for
8 casting a regular ballot. There are challenge
9 provisions for being registered to vote, for
10 instance. But not when you show up and cast a
11 regular ballot; right.

12 Q If you get to go to the -- on election
13 day to the polling place and go into the polling
14 booth -- and in my day, you pulled the lever -- but
15 push the buttons nowadays, and your ballot gets --
16 "You have now voted," it says. You voted. It's
17 done. It's counted; right?

18 A Correct.

19 Q Don't have that same guarantee with a
20 provisional ballot; correct?

21 A Yes, correct.

22 Q And the next full paragraph talks more
23 about the indigent elector provisions; correct? So
24 Section 3 of the bill amends -- and it goes on;
25 correct?

1 A Yes.

2 Q There's another subsection in which it
3 talks about the indigent voter provision; correct?

4 A Yes.

5 Q And the Department of State again
6 repeats the same question and the same possible way
7 around it; right?

8 A Correct.

9 Q And one of the costs to obtain
10 identification was obtaining a -- for example, a
11 copy of your birth certificate costs money; right?

12 A Yes, it did at the time.

13 Q And now it no longer does; right?

14 A For Pennsylvania residents, yes.

15 Q So that part of this possible way of
16 being an indigent -- signing an indigent
17 declaration or affirmation no longer applies;
18 correct?

19 A Correct, yes.

20 Q Harder to truthfully say you're
21 indigent and can't obtain ID without a -- without
22 paying a fee; right?

23 A Yes. That's because of the Department
24 and PennDOT both worked very hard to try to get IDs
25 to everybody who could possibly get one. So yes,

1 it is harder. Because we tried to make everything
2 free.

3 Q And the indigent exception is now less
4 of a safeguard or safety net; right?

5 A Yes. But the flip side of that is it's
6 also less of a concern because we think more people
7 will be able to get IDs, so therefore reducing the
8 possibility that a voter might be challenged, for
9 instance, on an indigency declaration.

10 Q When someone casts a provisional
11 ballot, the Department of State also thought there
12 was a possibility that the district officials may
13 not even tell the person, Oh, by the way, you need
14 to now go and six days later, within six days sign
15 an indigency affirmation at the county board?

16 MS. HICKOK: Your Honor, that
17 mischaracterizes the document.

18 BY MR. RUBIN:

19 Q Well, let's just look at what the
20 document says.

21 You see the second sub bullet point.
22 It says [reading]: The district election officials
23 will have to be sure to notify those who vote by
24 provisional ballot that they are required to
25 provide the county board of elections with an

1 affirmation within six days of the election.

2 A Yes.

3 Q And that implies that the Department of
4 State had a concern that district election
5 officials may not remember to notify the voter?

6 A Yes, that's true. And that's why the
7 Department took the step to advise counties that
8 they should have this affirmation available at the
9 polls so that the voters could complete them there
10 and not have to send them in later.

11 Q Again, that is the Department of
12 State's recommendation, but that's not binding on
13 the counties; correct?

14 A It's not binding. But typically they
15 take our recommendations.

16 Q And sometimes they don't?

17 A Sometimes they don't.

18 Q And for a voter who happens to be the
19 unlucky person in one of those counties that
20 doesn't take that recommendation, they're out of
21 luck; right?

22 MS. HICKOK: Your Honor, that
23 mischaracterizes the process.

24 THE COURT: Overruled.

25 THE WITNESS: I have no reason to

1 believe that counties wouldn't provide this as
2 recommended, because it makes their jobs easier.

3 BY MR. RUBIN:

4 Q And if they printed up 100, then the
5 101st voter is out of luck too; right?

6 A I guess that's potentially true. But
7 knowing the county election officials I know and
8 having worked with them, I think they would do
9 everything in their power to prevent that from
10 happening.

11 Q And some things are outside of their
12 power; correct?

13 A Sometimes, sure.

14 Q And even the best intentions, things
15 sometimes don't go seamlessly; right?

16 A True.

17 Q And the Department of State also
18 recognized another problem with the provisional
19 ballot process. They wrote, Department of State
20 wrote [reading]: However, electors may forget to
21 follow up after the election and their ballots will
22 not be counted; right?

23 A Yes. But again, that's why we
24 suggested that affirmations be provided at the
25 polling places, so the electors wouldn't have to

1 follow up afterward. So we are trying to mitigate
2 these concerns as we implemented the law.

3 Q None of those are a guarantee to
4 voters; right?

5 A No.

6 Q And each of these imposes an additional
7 burden, additional hurdle on the voter who lacks
8 ID, right, that a voter who happens to have ID
9 doesn't have to suffer?

10 A I guess so. I'm not sure how much of a
11 burden it is to fill out an affirmation and leave
12 it at the polling place with your provisional
13 ballot.

14 Q Can we turn to the second-to-last page,
15 ending 5432, Section 8, Pros and Cons. Do you see
16 that section?

17 A Yes.

18 Q Under "Pros," the first sentence,
19 Department of State says, "Voter ID will preserve
20 the integrity of every vote in Pennsylvania."

21 A Yes.

22 Q Do you agree with me that it will
23 preserve the integrity of every voter in -- of
24 every vote in Pennsylvania if the voter is able to
25 comply with the photo ID requirements?

1 A Yes. I guess so.

2 Q And do you agree with me that if an
3 otherwise qualified voter who has been voting in
4 Pennsylvania for, say, decades is unable to vote
5 because of the photo ID requirements, then the
6 integrity of his or her vote is not preserved?

7 A Yes. And that's why the Department of
8 State and the other agencies involved have done
9 everything within our power to try to prevent that
10 from happening. So, yes.

11 Q So is it your testimony that there's
12 nothing else the Department of State can do to
13 better implement this law?

14 A I think we have done everything that we
15 see as being reasonable and within our means to do.

16 Q Nothing else that you're aware of, at
17 least until the time you left, that would suddenly
18 fix any problems that remain? Nothing else in the
19 works; right?

20 A Not that I'm aware of.

21 Q Now, there's also a "Con" that's
22 identified; correct?

23 A Yes.

24 Q Now, one of the cons is there are
25 administrative costs to the bill; right?

1 A Yes.

2 Q That's not what we're here about.

3 Can you read for us what the Department
4 of State's argument in opposition to the bill was,
5 the con, after "additionally"?

6 A Yes. "Some Pennsylvanians may not have
7 photo identification and may not appear before the
8 County Board of Elections within six days so that
9 their provisional ballot will be counted."

10 I should add that the bill was amended
11 in the Senate to mitigate this circumstance so that
12 a voter doesn't have to appear in the county.
13 They're able to mail, email or fax their
14 affirmation in. So there was an additional
15 provision provided in the statute that helps
16 mitigate that con.

17 Q And that requires access to an email
18 account or a fax machine; correct?

19 A Or a postage stamp.

20 Q Or a postage stamp. That was going to
21 be my next one.

22 Now, with those -- weighing the pros
23 and those cons, if you go to the very first page,
24 Department of State's recommendation was to support
25 the bill; correct?

1 A Yes.

2 Q In the prior memo that we talked about,
3 which is Exhibit 1562, there was the absentee
4 voting ballot option; correct?

5 A Yes.

6 Q And which was designed to prevent the
7 disenfranchisement through happenstance beyond the
8 control of the elector; correct?

9 A Yes.

10 Q And that option was not adopted;
11 correct?

12 A It was not. There were other
13 amendments to the bill that helped to mitigate the
14 circumstance.

15 Q And the other amendment was -- the
16 other amendments were the grace period on the photo
17 IDs; right?

18 A Yes.

19 Q Or PennDOT IDs?

20 A Yes.

21 Q And the care facility IDs; correct?

22 A Yes. And there are other types of IDs
23 that were added to the bill after the memo was
24 written.

25 Q And what other type of ID was added to

1 the bill?

2 A Military veterans ID cards. And the
3 bill was also amended after the bill was drafted to
4 include the word "substantially" when it referred
5 to the name conforming, therefore, hopefully
6 including more ID cards that voters may have.

7 It also was amended to include the
8 ability for the voter, like I said, to mail, email
9 or fax the affirmation. There were several
10 amendments that were made after this memo was
11 drafted which helped to mitigate a lot of the
12 concerns.

13 Q Those concerns do not mitigate a voter
14 who lives close to their polling place and lacks ID
15 so can't vote absentee; correct?

16 A I'm sorry. Those concerns do not
17 mitigate, you said?

18 Q Right.

19 A They can mitigate that circumstance,
20 depending on if the voter chooses to take advantage
21 of them.

22 Q Well, let's be clear.

23 The voter does not have photo ID,
24 doesn't live in a care facility, isn't a college
25 student, isn't a veteran, isn't in the military.

1 Their driver's license is expired, their passport
2 is expired, they have none of the acceptable photo
3 IDs. That's our person.

4 They're ill. Say they're 94 years old.
5 They walk with a walker, and they vote by taking
6 the elevator down in their building.

7 That's our hypothetical. Are you with
8 me?

9 A Yes.

10 Q That person can vote in person and
11 cannot vote absentee; correct?

12 A Possibly, yes.

13 Q And if that person can't get to PennDOT
14 to get an ID, that person is going to be
15 disenfranchised through no fault of that elector;
16 correct?

17 A No, I don't believe that they
18 necessarily will be disenfranchised because we've
19 tried to work with other agencies -- with PennDOT
20 through the Shared-Ride Program, and through
21 outreach to senior citizens groups and things like
22 that -- to try to provide options and ways that can
23 get that voter to PennDOT. PennDOT will provide
24 special accommodations for voters like that as
25 well.

1 Q Wait a second. So they still got to
2 get to PennDOT?

3 A Yes.

4 Q Still got to get to PennDOT. And you
5 mentioned the Shared-Ride service; right?

6 A Yes.

7 Q Shared-Ride service is not mentioned
8 anywhere on the VotesPA Web site; correct?

9 A I don't know.

10 Q Have you ever looked?

11 A Not specifically for the Shared-Ride
12 Program, no.

13 Q And until you left recently,
14 information that went up onto the Web site went
15 through you; correct?

16 A Some of it. Not all of it.

17 Q You never drafted a Frequently Asked
18 Questions for people that said, I need an ID and I
19 can't get to PennDOT; help me?

20 A No, though I know the Department did
21 receive phone calls asking that specific question
22 where we provided information about the Shared-Ride
23 Program.

24 Q The information that was provided to
25 them was to dial 511; correct?

1 A I don't know the specific information.

2 Q So you don't know that information?

3 A No.

4 Q And would it surprise you if the votes
5 line was told, Tell them to dial 511 and they'll go
6 through a whole bunch of voice prompts?

7 A I don't know what the specific
8 instructions were.

9 Q And in terms of working with other
10 groups, the Department of State itself hasn't
11 provided any transportation to help people get to
12 PennDOT; right?

13 A No. We don't have the means to do
14 that.

15 Q And just to be clear, you haven't
16 written any type of handout or pamphlet or
17 Frequently Asked Questions to give to voters put up
18 on your Web site that explains to them how do you
19 get to PennDOT if you can't get there?

20 A No, I don't believe so. But again, in
21 the same memo the Department of Aging had
22 volunteered and was stepping up to do outreach to
23 various partners that might be able to help us in
24 that regard.

25 Q But they were provided no money;

1 correct?

2 A Correct.

3 Q And you don't know whether they
4 actually did any of that; correct?

5 A I don't know.

6 Q And you don't know how many of the
7 licensed care facilities were actually issuing IDs;
8 correct?

9 A No. I wouldn't be the person to ask
10 that.

11 Q Right. And in doing your analyses when
12 this bill was being considered and this amendment
13 was being -- the care facilities amendment was
14 being considered, what you found out is that those
15 facilities don't issue those types of IDs; correct?

16 A Correct. And that's why we did an
17 outreach program to the facilities themselves, to
18 try and encourage them to do so.

19 Q And there was a lot of resistance to
20 that; right?

21 A Not that I'm aware of.

22 Q Were you the one doing that outreach,
23 or was that Department of Aging?

24 A It was the Department of Aging, Public
25 Welfare, and Health.

1 Q Not you?

2 A Not me.

3 Q So you don't know what resistance they
4 received; correct?

5 A No, I don't.

6 Q And you certainly have no basis to
7 testify that even most care facilities were issuing
8 those IDs; is that right?

9 A No, I don't know.

10 Q So you have no basis to testify to
11 that; correct?

12 A No, that would be outside of my
13 responsibilities.

14 Q And the one proposal that you made to
15 the Governor's office to address this, the absentee
16 ballot option, just to be clear, that option was
17 not adopted; correct?

18 A That option was not adopted, but there
19 was more than one proposal in this memo, and
20 several of the proposals that we recommended were,
21 in fact, adopted, including the care facilities ID,
22 adding the personal-care home and the extensive
23 outreach program -- were all adopted subsequent to
24 this memo.

25 Q Well, the memo doesn't recommend the

1 care facilities, right, the care facility IDs? It
2 just says this is a proposal being discussed and,
3 if you do it, you should add another term?

4 A Yes. Our understanding was that the
5 Senate would be adding that language, and we
6 suggested if that were the case, then the care --
7 the personal-care homes should also be added. And
8 that's, in fact, what happened.

9 Q And you can't testify here, you aren't
10 testifying here that there are not people who will
11 be disenfranchised by this law; is that right?

12 A I think that anybody who wants to get
13 an ID can choose to get one, that we have made them
14 broadly available; and that those who choose to
15 vote by absentee ballot as well can also comply
16 with the new ID requirement without having to get a
17 photo ID.

18 Q And those voters who are unable to get
19 to PennDOT, it's your view that it's because they
20 made a choice they don't want to vote?

21 A I think we've provided lots of options
22 for those voters to try to get ID cards. The
23 General Assembly, to the extent that it amended the
24 bill after this memo was drafted, added lots of
25 options; and further than that, we've provided

1 other options as well, including the Department of
2 State ID card.

3 We've had three soft rollouts since the
4 law was passed. I think we've done everything to
5 try to prevent that from happening.

6 Q And now it's the fault of a 94-year-old
7 voter who can't get to PennDOT making a choice not
8 to get there and it's her choice not to vote; is
9 that your position?

10 A If you make us aware of that voter, I
11 would be happy to pick her up and take her to a
12 photo ID center.

13 MR. RUBIN: Your counsel is aware of
14 her.

15 No more questions, Your Honor.

16 MS. HICKOK: May I inquire, Your Honor?

17 THE COURT: Sure.

18 MS. HICKOK: Thank you. And in the
19 first instance, I'm sure that it was inadvertent,
20 but if we could supply a complete copy of our 1;
21 what the witness was given was only a truncated
22 copy of excerpts of the act rather than the full
23 exhibit.

24 - - -

25 CROSS EXAMINATION

1 - - -

2 BY MS. HICKOK:

3 Q Ms. Oyler, you testified at the
4 beginning that you had been working for the
5 Department of State until recently. And you were
6 asked a lot of questions about the process as the
7 bill was in different stages and going through
8 different drafts and all of the things that
9 happened.

10 What date was it when the bill passed?

11 A It was March -- I'm sorry. It appears
12 as though it was March 14th, 2012. I'm not sure
13 of the exact date, but -- is that correct?

14 Q But approximately around there?

15 A Yes.

16 Q And at the point when the bill passed,
17 did your responsibilities change?

18 A Yes.

19 Q In what way did they change?

20 A I was not the primary person to manage
21 the day-to-day responsibilities of implementing the
22 law.

23 I did have certain review
24 responsibilities. I reviewed documentation. I
25 attended meetings. But I wasn't primarily

1 responsible for the day-to-day management of
2 implementing it.

3 Q So is it your understanding that there
4 may be things that occurred at the Department of
5 State relative to the implementation that you might
6 not have been aware of?

7 A Yes, I think it's absolutely true.

8 Q And do you recall how soon after the
9 implementation of the act -- or after the passage
10 of the act that the responsibilities shifted
11 somewhat?

12 A Yes. It was within a month or two
13 after the act that my responsibilities shifted. I
14 would say April or May of that year.

15 Q Thank you. And in that regard, you
16 were asked some questions about FAQs. And do you
17 understand FAQs to be Frequently Asked Questions?

18 A Yes.

19 Q And are those forms that the Department
20 of State does in multiple contexts?

21 A Yes.

22 Q And were you involved in drafting any
23 of the early FAQs?

24 A Yes. The -- primarily not drafting but
25 reviewing.

1 Q Okay. And have those FAQs been updated
2 from time to time?

3 A Yes.

4 Q And have you been involved with all of
5 those?

6 A Probably most of them. Perhaps not
7 all.

8 Q And with all the updates?

9 A I'm not sure if I was involved in all
10 of them.

11 Q Thank you.

12 If you could turn to the act -- and I
13 know you were asked some questions about it.

14 On Page 27, at the bottom of the page
15 there is a paragraph that begins, "Notwithstanding
16 the provisions of this section."

17 Could you read that to us, please.

18 A Yes. [Reading]: Notwithstanding the
19 provisions of this section, a qualified absentee
20 elector shall not be required to provide proof of
21 identification if the elector is entitled to vote
22 by absentee ballot under the Uniformed and Overseas
23 Citizens Absentee Voting Act -- citation -- or by
24 an alternative ballot under the Voting
25 Accessibility for the Elderly and Handicapped

1 Act -- citation.

2 Q Does that mean that the questions that
3 you were asked earlier about having a driver's
4 license number or a Social Security number in the
5 final act as passed do not apply to people who are
6 protected under the provisions of those two acts?

7 A Yes. The people who are affected by
8 those two acts would not be required to provide
9 identification under the absentee section of the
10 law.

11 Q And are you aware of the UMOVA state
12 statute?

13 A Yes.

14 Q And under the UMOVA state statute, are
15 there further exemptions from the absentee
16 requirements of identification?

17 A Yes; that are reinforced in UMOVA.

18 Q And which populations is UMOVA
19 specifically concerned with?

20 A Specifically the voters covered by the
21 Uniformed and Overseas Citizens Absentee Voting
22 Act.

23 Q And does UMOVA also have veterans
24 provisions in it?

25 A Yes.

1 Q Okay. Thank you.

2 And you were asked some questions about
3 1677, which is the bill analysis. Do you recall
4 those?

5 A Yes.

6 Q Can you tell us what date that bill
7 analysis was.

8 A It was December 14th, 12011.

9 Q And were there any modifications to the
10 bill after that date or before the act was enacted?

11 A Yes, there were amendments in the
12 Senate.

13 Q And do you recall any of those
14 specifically?

15 A Yes. There were two amendments in the
16 Senate. I'm not exactly sure the date of the first
17 amendment, whether it was before or after this bill
18 analysis. But I can tell you the provisions that
19 those two amendments included.

20 So from the time, for instance, that
21 the memo that we've been discussing was drafted,
22 between that time and the time the bill passed
23 finally in March, there were eight specific
24 amendments made to the bill, eight specific
25 provisions added, which expanded the type and

1 number of IDs that are provided, and also made the
2 process easier for voters.

3 It added, the first amendment added
4 three new types of IDs. We discussed college and
5 university IDs; care facility IDs, which we've been
6 discussing; and also military veterans IDs.

7 It also extended the expiration date on
8 PennDOT-issued ID cards for 12 months, thereby
9 giving those voters longer to get an additional ID
10 card beyond that.

11 It also added the word "substantially"
12 to conform, making it easier for voters who might
13 have an ID card that's issued in a nickname or a
14 diminutive of their name, ensuring that those IDs
15 card would be acceptable.

16 It also was amended to, as I mentioned
17 before, provide an affirmation for someone who
18 forgot their ID. Affirmation and the copy of ID
19 could be provided by mail, fax or email after the
20 election, in order for the provisional ballot to be
21 counted, rather than showing up in the county
22 election office.

23 And it also was amended, in
24 December 2011, to include the soft rollout for the
25 primary election the following year.

1 It was then amended again in March of
2 2012, where they added municipality IDs -- or
3 employer municipality IDs. So there were actually
4 two separate times the bill was amended between
5 then and the time it passed, including eight
6 specific expansions that make the bill easier to
7 comply with.

8 Q Thank you. I want to ask you a couple
9 questions about some of the things you were talking
10 about specifically.

11 If you could look at 1562, which was
12 one of the memos that you were asked about. On the
13 top of Page 2, it talks about care facility. And
14 if you could look at that definition really
15 quickly, is that definition precisely the same as
16 the definition that was in the act?

17 A No. The act ultimately included
18 personal-care homes, which was a recommendation of
19 this memo.

20 Q Okay. And while we're talking about
21 care facility exemptions, is it only the residents
22 of a care facility that are entitled to use the
23 care facility ID?

24 A No. The bill isn't specific with
25 regard to who may use a care facility ID. It would

1 be up to the care facility who they're comfortable
2 issuing IDs to. So it may also be employees.

3 Q And you had mentioned earlier that
4 sometimes a facility has additional services that
5 it provides. And I believe that -- and please
6 correct me if I get this wrong. But if I recall
7 correctly, you were saying that sometimes they
8 provided in-home nursing care or that the facility
9 might provide other services to elderly persons; is
10 that correct?

11 MR. RUBIN: Objection, Your Honor.

12 THE WITNESS: Yes.

13 MR. RUBIN: This witness doesn't have
14 foundation. She said, herself said that she didn't
15 know --

16 MS. HICKOK: Your Honor, he inquired
17 into this area. I'm simply clarifying what she --

18 THE COURT: Let's hear from the
19 witness. She'll tell us whether or not she knows.

20 THE WITNESS: Yes. I can tell you that
21 we received inquiries from care facilities that
22 they wanted to issue ID cards to residents of
23 affiliated facilities that weren't one of the
24 defined facilities in the act. They wanted to know
25 if they would be permitted to do so. Some

1 facilities have an assisted living residence that's
2 part of their company but wasn't specifically a
3 care facility as defined in the act.

4 And we told them that, the Department
5 of State told them that there's nothing that limits
6 a care facility from issuing ID card to residents
7 of those other care facilities.

8 So I can tell you that the Department
9 did take that position with regard to the care
10 facilities and who they can issue ID cards to.

11 BY MS. HICKOK:

12 Q Thank you very much.

13 You also were asked about this table.
14 Do you recall that?

15 A Yes.

16 Q And on the second page there is a
17 discussion of colleges and universities in the part
18 that is towards the bottom, and it says [reading]:
19 IDs that would qualify under HB 934.

20 THE COURT: What exhibit is that?

21 MS. HICKOK: I'm sorry, Your Honor.
22 It's 2092.

23 THE WITNESS: Yes.

24 BY MS. HICKOK:

25 Q And were the school IDs that are

1 discussed in here revised before the act was
2 passed?

3 A Yes. At the time, as I said, the bill
4 that passed the House only included
5 government-issued IDs. So our interpretation was
6 that that would include the state system of higher
7 education schools, because they were affiliated
8 with the state.

9 It would not include all of the other
10 universities and colleges the state has residents
11 here.

12 Q So as you're defining state system
13 schools, what would those schools be?

14 A The state system of higher education,
15 for instance, Shippensburg, Millersville, Clarion,
16 West Chester, the state system university schools.

17 Q Now, what about Penn State?

18 A Penn State would not be included in
19 that list.

20 Q And in the final bill was Penn State
21 included?

22 A Yes. In the final bill that was
23 amended in the Senate, they included all accredited
24 college and university IDs.

25 Q So that includes not just public but

1 private as well?

2 A Yes.

3 Q Thank you.

4 You were also asked some questions
5 about Respondents' Exhibit No. 27, if you recall
6 those. Do you recall those questions?

7 A Yes.

8 Q And you were shown, at the back, the
9 handout that was given to be handed out at the
10 polls?

11 A Yes.

12 Q And if you would look at the first
13 paragraph and read that for us, please.

14 A "If you are a registered voter and do
15 not have one of the IDs listed and need one for
16 voting purposes, you are entitled to get one free
17 of charge at a PennDOT driver's license center."

18 Q And where would a person get the DOS
19 ID?

20 A At a PennDOT driver's license center.

21 Q So if a person went to a driver's
22 license center with this handout and said, I am
23 looking for an ID that is free of charge, would
24 they then either be told about the free nondriver's
25 ID or the DOS ID or both?

1 MR. RUBIN: Objection, Your Honor.

2 This witness doesn't have foundation to testify
3 about what PennDOT would tell people. She's not
4 from PennDOT and --

5 THE COURT: Sustained.

6 MS. HICKOK: I withdraw that question.

7 BY MS. HICKOK:

8 Q If you look over -- I believe that you
9 were asked about whether this sheet advises a
10 person that they must get an ID from PennDOT.

11 Are there other places listed on here
12 where a person might be able to look to say, Wait a
13 minute, I might be able to get a form of
14 identification from that location?

15 A Yes. This handout lists all the
16 acceptable IDs contained in this statute, including
17 care facilities, military IDs, a passport, employee
18 IDs from the Federal Government, Pennsylvania or
19 county or municipal government, and accredited PA
20 public and private colleges, universities and
21 seminaries.

22 MS. HICKOK: Thank you very much,
23 Ms. Oyler. I have no further questions.

24 MR. RUBIN: Very briefly, Your Honor.

25 - - -

REDIRECT EXAMINATION

- - -

BY MR. RUBIN:

Q You can keep Exhibit 27 in front of you in the same flier.

That -- I want to draw your attention to the bullet point that says U.S. Military ID.

Do you see that?

A Yes.

Q And it's -- U.S. military ID is different than an ID issued by the Veterans Department; correct?

A Yes.

Q And the Veterans Department IDs don't qualify because they don't have expiration dates; correct?

A Correct.

Q And even a military ID or a veteran's ID that's not a Veterans Department ID, it says [reading]: It must have a designated expiration date or designation that the expiration date is indefinite; correct?

A Yes.

Q So not all military IDs or veterans IDs are going to work; correct?

1 A Correct.

2 Q You mentioned something called the
3 UMOVA Act?

4 A Yes.

5 Q What is that?

6 A It's Uniformed Military Overseas
7 Voters -- I'm sorry. It's out of context.

8 Q Well, I think the "O" is the key word
9 there, "overseas"; right?

10 A Overseas voters.

11 Q It means -- it applies to people who
12 are overseas; correct?

13 A Yes.

14 Q So someone who is overseas, either
15 military or veteran, gets to vote absentee without
16 their ID requirements; correct?

17 A Yes.

18 Q But if you're a Pennsylvania citizen --
19 even if you're a veteran, even if you're in the
20 military -- and you're living in Pennsylvania, this
21 act doesn't apply to you; correct?

22 A It applies to military voters living in
23 the States and also overseas nonmilitary voters.

24 Q So it's overseas nonmilitary voters?

25 A Yes.

1 Q And if -- is it your testimony that
2 anybody in the States has an automatic exception --

3 A I'm sorry --

4 Q -- an automatic exception to voting
5 absentee with ID requirements?

6 A Anybody covered by the UMOVA Act.

7 Q Yes. Active military?

8 A Active military, yes.

9 Q But not a veteran; correct?

10 A Not a veteran; correct. Unless they're
11 an overseas civilian.

12 Q And then you need to be overseas;
13 correct?

14 A Yes.

15 Q You said that the Department of State
16 recommended that care facilities issue IDs to other
17 types of residents even if they're living in part
18 of a facility that wouldn't actually be the
19 licensed nursing home, for example; right?

20 A Yes. We recommended, it was up to the
21 care facility who they were comfortable issuing
22 those IDs to.

23 Q But you also recommend that they not
24 issue IDs to nonresidents; correct? By "you" I
25 mean the Department of State.

1 A I don't know.

2 MR. RUBIN: That's all I have, your
3 Honor.

4 MS. HICKOK: Your Honor, can I have one
5 moment?

6 THE COURT: Certainly.

7 (Pause.)

8 MS. HICKOK: Sorry, Your Honor. I have
9 just one question.

10 - - -

11 RECROSS-EXAMINATION

12 - - -

13 BY MS. HICKOK:

14 Q Ms. Oyler, I've handed you what is
15 marked as Respondents' Exhibit 256. And if you
16 look at the second page, it is a series of
17 definitions from the statute that we've been
18 talking about, which is the UMOVA, the Uniformed
19 Military and Overseas Voter Act.

20 And if you could look down to the
21 definition of covered voters and read that, please.

22 A "Covered voter: All of the following
23 apply. A uniformed service voter who is registered
24 to vote in this Commonwealth;

25 "No. 2, an overseas voter who is

1 registered to vote in this Commonwealth;

2 "No. 3, a uniformed service voter who
3 is not registered to vote in this Commonwealth but
4 who otherwise satisfies the voter eligibility
5 requirements of this Commonwealth;

6 "And No. 4, an overseas voter who is
7 not registered to vote in this Commonwealth but who
8 otherwise satisfies the voter eligibility
9 requirements of this Commonwealth, including
10 residency requirements."

11 Q Okay. So as you look at that list, is
12 that limited to people who are overseas?

13 A No. A uniformed service voter is
14 covered by this act regardless of whether they're
15 overseas.

16 MS. HICKOK: Thank you very much.

17 MR. RUBIN: We have nothing further,
18 Your Honor, for Ms. Oyler.

19 THE COURT: Okay. You're done,
20 Ms. Oyler. Thank you.

21 THE WITNESS: Thank you.

22 MR. RUBIN: Your Honor, we have a very
23 brief, a-minute-and-30-second video, if you want to
24 end today with that or put it up tomorrow.

25 THE COURT: No, we'll do that today.

1 MR. RUBIN: Whitney Moore will be
2 addressing that.

3 MS. MOORE: Your Honor, this is
4 Petitioners' Exhibit 1529. It's a clip from
5 Secretary Aichele's testimony before the Senate
6 Appropriations Committee during the budget hearings
7 this past February. The date of the clip, I
8 believe, is February 25th, 2013.

9 Secretary Aichele was asked a question
10 by Senator Matt Smith, and this is her answer.
11 We've included Senator Smith's question just to
12 give context, but Secretary Aichele statement is
13 what we are going to be playing.

14 MR. HUTCHISON: Your Honor, we object
15 to playing only an excerpt of the exchange. It's
16 about a three- or four-minute exchange, and they
17 want to play only one minute 30 seconds.

18 THE COURT: You'll get a chance to the
19 play the other four minutes if you want.

20 MS. MOORE: And I apologize, Your
21 Honor. I don't think this was transcribed at the
22 hearing.

23 THE COURT: That means our poor court
24 reporter is going to try and take this down.

25 (Whereupon an excerpt of Petitioners'

1 Exhibit 1529 was played in open court as follows:)

2 UNIDENTIFIED SPEAKER: Do you swear
3 that the testimony you are about to give
4 will be the truth, the whole truth and
5 nothing but the truth, so help you God? If
6 so, please indicate by saying "I do."

7 SECRETARY AICHELE: I do.

8 UNIDENTIFIED SPEAKER: For the record,
9 please state your name and position.

10 SECRETARY AICHELE: Carol Aichele,
11 secretary of the commonwealth.

12 SENATOR SMITH: What is the current
13 number, according to the Department of
14 State, of individuals in Pennsylvania who
15 do not have a valid photo identification
16 for purposes of voting?

17 SECRETARY AICHELE: That number has
18 still not been determined. Studies show
19 that most Pennsylvania residents have an
20 acceptable form of photo ID.

21 SENATOR SMITH: What studies are you
22 referring to?

23 SECRETARY AICHELE: Well, we've looked
24 at the numbers in the Department of State.
25 And an interesting study came out, because

1 most of the concern -- a great deal of the
2 concern was centered on the City of
3 Philadelphia; and independently, The
4 Committee of Seventy did a study on their
5 own and found that 96.5 percent of
6 registered voters in Philadelphia have
7 valid photo IDs.

8 (End of video clip.)

9 MS. MOORE: Thank you, Your Honor.

10 MR. HUTCHISON: Your Honor, we would
11 prefer to play the rest of the video, under Rule
12 106, which allows completion at the time that the
13 recorded statement is entered.

14 THE COURT: Sure.

15 MR. HUTCHISON: Thank you.

16 MS. MOORE: Just for clarification, is
17 that her entire testimony or is this just the --

18 MR. HUTCHISON: The entire exchange
19 with the senator.

20 MS. MOORE: The entire question and
21 question --

22 MR. HUTCHISON: -- with that senator.

23 MS. MOORE: So all of the Secretary's
24 questions and answers?

25 MR. HUTCHISON: Yes.

1 MS. MOORE: Just making sure I
2 understand.

3 (Whereupon a further excerpt of
4 Petitioners' Exhibit 1529 was played in open court
5 as follows:)

6 SECRETARY AICHELE: -- office of
7 legislation.

8 UNIDENTIFIED SPEAKER: Okay. I
9 appreciate that input. So you will support
10 that legislation when it's introduced?

11 SECRETARY AICHELE: I would like to see
12 what you have proposed, because it's very
13 important that the integrity of the
14 voter --

15 (Interruption of video clip.)

16 MS. MOORE: Objection, Your Honor.
17 This isn't what was represented to be --

18 THE COURT: Can we stop the tape. We
19 can't speak all -- even as good a court reporter as
20 we have, we can't all talk over the tape.

21 MS. MOORE: Your Honor, this is not the
22 same exchange. This is a different member of the
23 Senate.

24 MR. HUTCHISON: I think there is a
25 brief overrun, with the technical, making it work.

1 I think the questions and answers are about to
2 start with the next exchange. I apologize for the
3 extra overrun. It's unavoidable.

4 (Whereupon a further excerpt of
5 Petitioners' Exhibit 1529 was continued:)

6 SENATOR SMITH: Thank you, Madam
7 Secretary, for joining us here today. You
8 talked a little in your answer to Chairman
9 Smucker's question about the process of
10 protecting the integrity of the voting
11 system; and that's certainly, I think,
12 essential to the Department of State's
13 mission --

14 MS. MOORE: Your Honor, we object to
15 this. This is getting into the fraud, which is the
16 subject of the stipulation.

17 THE COURT: Let it play and then you
18 can objection.

19 SENATOR SMITH: -- starting with the
20 expenditure of \$5 million in HAVA funds
21 that could have been used for other
22 purposes to improve our voting system but
23 were spent on the outreach for the voter ID
24 requirement that actually didn't take
25 effect in the November election; shifting

1 numbers with respect to the number of
2 individuals who do not have a valid photo
3 ID in Pennsylvania; the November 2012 sort
4 of hybrid half implementation of the voter
5 ID law where people were told to bring
6 their voter ID but were also told at the
7 same time that it wasn't required -- and
8 there were, I think, several cases where
9 individuals were denied the right to vote
10 based on that misunderstanding; and as
11 well, it looks like that will be the same
12 case this primary season this May, where
13 individuals are told to bring their photo
14 ID but it may be asked for it but won't be
15 required to produce it.

16 Those examples as well as, I think,
17 the Department of State's
18 admissions/stipulations as part of
19 litigation that they could -- that your
20 department could not really point to any
21 demonstrable cases of voters fraud.

22 Do you think -- with all that said,
23 do you think that the Department's actions
24 since the voter ID law passed -- forgetting
25 about the merits of the law and that

1 argument; that's a separate argument.

2 But do you think that the
3 Department's actions since the law was
4 passed have produced greater confidence in
5 the electoral system in Pennsylvania?

6 SECRETARY AICHELE: Senator, I do. If
7 nothing else, it's brought the focus of
8 Pennsylvania residents to the issue of
9 voting integrity. And --

10 SENATOR SMITH: Madam Secretary, if you're
11 going to be turning that way, you need to
12 bring the mike with you. Thank you.

13 SECRETARY AICHELE: Okay. Poll after
14 poll has shown that Pennsylvanians want
15 some kind of voter identification when they
16 vote.

17 We see, if you look at the
18 numbers -- and this hasn't changed in the
19 last year. The 2010 census says that there
20 are 9.6 million Pennsylvanians who are
21 citizens and could vote if they chose to
22 vote.

23 PennDOT, doing a similar screen,
24 says that they have 9.5 million
25 Pennsylvanians who are of voting age and

1 citizens of the state of Pennsylvania. So
2 that's like 100,000 votes that -- 100,000
3 people who are not already in the PennDOT
4 database.

5 One of the things that has, I think,
6 been glossed over in this discussion is
7 that when we ran a check between the exact
8 name on the voter registration and the name
9 on the driver's license number, we had
10 91 percent of Pennsylvanians matched:
11 name, birthday, Social Security number.

12 So then we look at the issue of how
13 many people don't use their legal name on
14 their voter registration form. And I don't
15 know how many numbers there are, but it
16 seemed that there were -- it seems that
17 there are people, even Supreme Court
18 justices, who don't use their legal name on
19 their voter registration.

20 SENATOR SMITH: Madam Secretary, with
21 respect to that 91 percent number from
22 PennDOT, is the 9 percent, that sort of
23 delta there, is that the reason the
24 number -- the letter was generated in
25 August 2012 to the 758,000 Pennsylvania

1 residents?

2 SECRETARY AICHELE: Yes, sir, it is.

3 And it is, it is a bringing together of at
4 least 150,000 people who are no longer
5 residents of Pennsylvania; because upstairs
6 in my office I have 150,000 letters that
7 say "addressee unknown."

8 The next largest group of people in
9 that 759,000 are people who don't use their
10 legal name on their voter registration.

11 And then the next biggest group in
12 that are people who are both in
13 Pennsylvania, primarily students, who do
14 have not Pennsylvania driver's licenses
15 because they grew up in New Jersey or
16 New York or Maryland or California or
17 someplace else.

18 So those numbers affected --
19 similarly, the law passed by the General
20 Assembly allows for voter identification by
21 military ID, voter ID issued by a care
22 facility, student IDs --

23 SENATOR SMITH: Sure. And what was the
24 purpose of the letter to the 759,000
25 individuals who received it? To inform

1 them that they could not use the ID that
2 they had in their position and tell them to
3 go get a new ID? Or was it to them, Hey,
4 you might have a problem; it's incumbent
5 upon you to go fix it? I mean, what was
6 the purpose of the letter?

7 SECRETARY AICHELE: The second part of
8 your question is correct. We were not able
9 to get -- the Department of State and
10 PennDOT were not able to get an exact
11 match. Please verify that you have
12 acceptable photo ID because we want you to
13 be able to vote in this election.

14 And many, many people said, Oh, I
15 already have a driver's license. I just
16 didn't use the right -- same name; or, Oh,
17 I have a passport, I have a military ID, I
18 have a student ID with an expiration date.
19 Many, many.

20 SENATOR SMITH: So that universe could
21 include people who received the letter who
22 needed a new ID; and it could also have
23 included people who, at the end of the day,
24 had a perfectly valid photo ID?

25 SECRETARY AICHELE: Perfectly valid

1 photo ID. And the letter was very clearly
2 written.

3 SENATOR SMITH: So even though someone had
4 a perfectly valid photo ID, they received a
5 letter from the Department of State telling
6 them that their photo ID may not be valid?

7 SECRETARY AICHELE: The letter said
8 that they did not have an exact match
9 between the name on their voter
10 registration and their Pennsylvania
11 driver's license.

12 SENATOR SMITH: Isn't that part of the
13 problem with the law, that it lacked the
14 clarity in terms of implementation; that
15 they were individuals who received a
16 letter, an official letter from the
17 Department of State, about two months --
18 two to three months before an election
19 informing them that they may -- may or may
20 not need to go get a new photo ID; we
21 really don't know; as the Department of
22 State, we are putting the onus on the
23 citizen to make that determination?

24 Don't you see the problem with the
25 clarity when someone receives that type of

1 letter?

2 SECRETARY AICHELE: I think, I think
3 residents were able to read the letter
4 clearly and determine -- and take a look at
5 their -- at their driver's license or their
6 photo ID. They could -- the parameters of
7 the law passed by the General Assembly very
8 clearly -- the letter stated those IDs that
9 were valid. So anyone reading the letter,
10 Senator, I --

11 SENATOR SMITH: Well, if it was just to let
12 people know what photo IDs were valid, why
13 didn't it go to all 9.6 million registered
14 voters?

15 SECRETARY AICHELE: We did that through
16 our mass media campaign; circulated the
17 same information through television, radio,
18 newspapers, billboards, signs on buses.
19 That was the \$5 million voter education
20 campaign.

21 SENATOR SMITH: But no letter was sent out
22 to anyone other than the 759,000
23 individuals who received that August 2012
24 letter?

25 SECRETARY AICHELE: 759 -- voters who

1 did not have an exact match with a
2 Pennsylvania driver's license.

3 SENATOR SMITH: What is the current number,
4 according to the Department of State, of
5 individuals in Pennsylvania who do not have
6 a valid photo identification for purposes
7 of voting?

8 SECRETARY AICHELE: That number has
9 still not been determined. Studies show
10 that most Pennsylvania residents have an
11 acceptable form of photo ID.

12 SENATOR SMITH: What studies are you
13 referring to?

14 SECRETARY AICHELE: Well, we looked at
15 the numbers in the Department of State.
16 And an interesting study came out, because
17 most of the concern -- a great deal of the
18 concern was centered on the City of
19 Philadelphia; and independently, The
20 Committee of Seventy did a study on their
21 own and found that 96.5 percent of
22 registered voters in Philadelphia have
23 valid photo IDs.

24 SENATOR SMITH: So that applies to
25 Philadelphia. But the only study that you

1 know of that you're referring to is the
2 Department of State study? Wasn't there
3 some discrepancy between the PennDOT study
4 that detailed hundreds of thousands of
5 individuals who didn't have an acceptable
6 form of photo ID, versus the Department of
7 State study that had a much smaller
8 number -- I believe 1 percent or so? We
9 still don't know how many individuals don't
10 have a valid photo ID with any degree
11 certainty.

12 SECRETARY AICHELE: Senator, I'm not
13 aware of any study by PennDOT over issues
14 with the State -- PennDOT won't tell you
15 the number of people without photo ID in
16 Pennsylvania.

17 SENATOR SMITH: Yeah.

18 SECRETARY AICHELE: There was no -- in
19 fact, the only study we did was a match --
20 a computer match between registered voters,
21 the name people used to vote in
22 Pennsylvania and the name that they used on
23 their Pennsylvania driver's license.
24 That's it.

25 SENATOR SMITH: So you still believe that

1 the statement you made in an Op-Ed in
2 November of 2012 that almost all eligible
3 PA voters already carry an acceptable photo
4 ID for voting is correct?

5 SECRETARY AICHELE: That's correct.

6 SENATOR SMITH: And you also said in
7 that Op-Ed that to suggest fraud does not
8 happen in Pennsylvania is to ignore the
9 facts. Do you also believe that statement
10 is true as well?

11 SECRETARY AICHELE: I do.

12 SENATOR SMITH: Notwithstanding the fact
13 that the Department stipulated as part of
14 the lawsuit that you could not point to any
15 identifiable cases of voter fraud?

16 SECRETARY AICHELE: Let me just share
17 with you this information --

18 SENATOR SMITH: Quickly. We need to
19 move on.

20 SECRETARY AICHELE: I think there's an
21 issue -- I think we need to do a better job
22 of looking at the way we register voters in
23 Pennsylvania. One of the things -- look at
24 this form. You need to provide your name,
25 your birthday, and either your driver's

1 license or your Social Security number.

2 (End of video clip.)

3 MS. MOORE: Your Honor, we would move
4 to strike. Most of this is not even responsive to
5 the statement we played. It's also in violation of
6 the fraud stipulation that's on record on this
7 matter. It's also a lot of hearsay.

8 THE COURT: It's nonjury. I'll take
9 all of that into consideration. Okay?

10 MS. MOORE: Thank you, Your Honor.

11 THE COURT: Thank you.

12 MR. RUBIN: Your Honor, just for
13 housekeeping matters, we move into evidence
14 Exhibits 27, 2093, 1559, 2091, 2092, 1566, 1562,
15 1677; and then the video, which is 1529.

16 I'm not moving into evidence Act 18.
17 They can. I don't object to it, but it is what it
18 is.

19 THE COURT: I do have something I want
20 you to work on together: The mysterious No. 122,
21 or -- what is it? 142. I heard so many numbers.

22 MS. HICKOK: 144, Your Honor.

23 THE COURT: 144. That can be solved
24 with a phone call, I think, to get together -- two
25 parties get together and conduct an

1 off-the-record --

2 MS. HICKOK: Your Honor, we have been
3 discussing that number and trying to come to a
4 point of agreement on it. We have not yet done so,
5 but we're trying.

6 THE COURT: Come to a point of
7 agreement on it, Counselor. No trying. I think
8 you can come to a point of agreement.

9 MR. WALCZAK: Your Honor --

10 MR. KEATING: Your Honor, we've been
11 working -- excuse me. I think we are working on
12 that number a little bit and talking about it back
13 and forth. And we've been analyzing that number
14 with the Department's and other information, which
15 is why we believe that the number is not what it
16 is; and we have a fundamental disagreement as to
17 what the number means and once you extrapolate
18 it --

19 THE COURT: We have a fundamental
20 disagreement. That's because DOT is involved in
21 this; right? Is DOT involved?

22 MS. HICKOK: Yes, it is.

23 MR. KEATING: Yes, that's correct.

24 THE COURT: So why don't we talk to DOT
25 and ask DOT to help us solve this conundrum.

1 MR. KEATING: They have been helping
2 us.

3 MS. HICKOK: Yes, Your Honor.

4 THE COURT: They obviously haven't
5 helped us enough.

6 MS. HICKOK: We will get their help.
7 Thank you, Your Honor.

8 MR. WALCZAK: Your Honor, just point of
9 clarification.

10 Since Your Honor instructed us to try
11 to get together last week, we asked Mr. Siskin's
12 folks to compare the exceptions spreadsheet with --
13 which is what we had Mr. Marks testify to -- with
14 this new 144.

15 And what they told us is that, in fact,
16 there's 194 names on that new spreadsheet. It's
17 not 144; it's 194. What we asked them to do was to
18 look at how many of those 194 impacted on our 124.

19 And first of all, they told us our 124
20 is really 129, because we undercounted the number
21 of people who got ID after election day, so rather
22 than 42 it was 47. And then there's 82 who didn't
23 get the ID at all.

24 So the total pool of numbers from that
25 exception sheet is 129 voters registered on or

1 before October 9th who either got ID late or
2 didn't get ID at all. When they compare that 194,
3 that new list of numbers with that 129, they found
4 that 62 were not included at all on that PennDOT
5 sheet.

6 So the first thing we asked Respondents
7 was to agree that at least those 62 individuals --

8 MS. HICKOK: I thought we were
9 talking --

10 MR. WALCZAK: -- did not have ID, did
11 not get ID in a timely fashion or did not get it at
12 all. And we couldn't reach agreement even on that,
13 even those folks.

14 THE COURT: I'm suggesting that we can
15 reach agreement on that. I want you to give it one
16 more try. If we can't reach a final number, we can
17 reach a position that is your position; and the
18 same with you. And we can put that into a written
19 affidavit or exhibit.

20 Okay, Counsel?

21 MR. WALCZAK: We'll try, Your Honor.

22 MR. KEATING: Absolutely.

23 THE COURT: Okay. We'll recess until
24 tomorrow at 9:15; because I'm on a panel tomorrow
25 afternoon, and I have to do some things with

1 another job that I have to perform. So we'll see
2 you at 9:15 tomorrow.

3 MR. RUBIN: Your Honor, just for the
4 schedule, I think tomorrow we'll going to have
5 Collins, as well as a live witness. Maybe the
6 parties will be able to iron out exactly what the
7 deposition means and the agreements on some very
8 narrow issues. So a short witness live tomorrow,
9 assuming Ms. Collins is available.

10 MR. KEATING: Yeah, for clarification,
11 Ms. Collins is also live.

12 MR. RUBIN: What's that?

13 MR. KEATING: You said you had Collins
14 and a live witness. Collins is also live.

15 You said tomorrow you had Collins and a
16 live witness.

17 MR. RUBIN: Oh, yes. Collins as a live
18 witness.

19 THE COURT: I'm glad to hear that she's
20 still with us. We'll see you tomorrow.

21 THE CLERK: Commonwealth Court is now
22 adjourned.

23 (Proceedings adjourned: 4:36 p.m.)
24
25

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I, Gail Inghram Verbano, Registered
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Gail Inghram Verbano, RDR, CRR, CSR
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