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

THE BAILIFF: Commonwealth Court is now in session. Honorable Bernard L. McGinley presiding.

MS. HICKOK: Good morning, Your Honor.

MR. HUTCHISON: Your Honor, we just have a brief housekeeping matter. Last week, during Mr. Mark's examination, we introduced Exhibit 233 and 243. At the time we did not have electronic copies for the Court. We have those now and I'd just like to hand those up.

THE COURT: What were those numbers again?

MR. HUTCHISON: 233 and 243.

MS. HICKOK: May I inquire, Your Honor?

THE COURT: Certainly.

MS. HICKOK: Thank you.

- - -

JONATHAN MARKS, having been previously sworn, was examined and testified as follows:

## CONTINUED DIRECT EXAMINATION

BY MS. HICKOK:

Q. Mr. Marks, I believe that when with we adjourned we were talking about absentee voters. Is there a group of absentee voters that are designated as either permanent absentee or permanent alternative?

1 A. There are, yes.

2 Q. What does that mean?

3 A. Permanent means that the county boards of  
4 elections, upon request, must send out absentee  
5 ballot, absentee ballot applications to those voters  
6 in each primary election for I believe it's a  
7 four-year period of time before you re-up.

8 If an individual requests to be a permanent  
9 absentee voter, they will automatically receive an  
10 absentee ballot application during that period of  
11 time.

12 Q. So, for approximately a four-year period?

13 A. I believe -- I believe every four years they  
14 have to recertify that they need that status.

15 Q. And do you have any understanding as to how  
16 many persons in the SURE database are either permanent  
17 absentee or permanent alternative?

18 A. I believe at last count, there were  
19 approximately 12,000.

20 Q. Thank you. Now, there were a number of  
21 petitioners initially in this action, and now there  
22 are two individual petitioners, Wilola Lee and Bea  
23 Bookler. Have you had occasion to look at either of  
24 them and their SURE entries?

25 A. I did look at Bea Bookler's record recently.



1 Q. And what did you tell us about what the SURE  
2 entry reflects as to Miss Bookler?

3 A. It appears that she changed address, moved  
4 from Montgomery County to Chester County in October of  
5 2008, I believe. She was voting at the polls for  
6 several years. In most recent election, in the 2012  
7 election, I believe she voted by absentee ballot.

8 Q. When she moved in 2008, would that have  
9 triggered the identification requirements under prior  
10 statute?

11 A. It would have, yes.

12 Q. And if Miss Bookler had come to the polls --  
13 and this is purely a hypothetical question. If she  
14 had come to the polls without the proof of  
15 identification required, what would have been the  
16 process under the old statute?

17 A. Well, the process for -- we call them  
18 first-time voters, would have been -- if they had not  
19 provide proof of identification, she would have voted  
20 by provisional ballot.

21 Q. And provisional ballots, are those something  
22 that's contemplated under HAVA or is it a state court  
23 creation; how did provisional ballots come to be?

24 A. It's provided for through HAVA. There is an  
25 enabling legislation in state law that talks about the

1 details of how that's done in Pennsylvania.

2 Q. So, if a person fills out a provisional  
3 ballot, what does that actually mean?

4 A. The provisional ballot means -- it means what  
5 the name implies; that it will be -- that it's a valid  
6 ballot provisionally until the county board of  
7 elections, in this case, has a chance to review it to  
8 determine if the individual voting that provisional  
9 ballot was qualified to vote either in that election  
10 district or at all.

11 Q. Once the county board of elections makes that  
12 determination, is that just done in silence or are  
13 they required to notify the voters; is there something  
14 else they need to do?

15 A. They are required to notify the voter. The  
16 provisional ballots, the process of canvassing the  
17 provisional ballots is done in a public meeting, which  
18 I believe occurs seven days after the election, if I'm  
19 recollecting right.

20 Q. If a voter challenges the determination of the  
21 county board of elections, what recourse do they have?

22 A. If the county board of elections makes a  
23 determination on the provisional ballot, they can be,  
24 as with any other decision made by the county boards,  
25 can appeal that to the Court of Common Pleas.

1 Q. Okay. Thank you.

2 Now, there has been testimony about the SURE  
3 database and flags. Can you tell us what a flag in  
4 the SURE database is?

5 A. Generally, a flag is -- trying to think of the  
6 best way to describe it, but it is something that  
7 identifies a record as unique in some way, requiring  
8 some action or -- some action either on the part of  
9 the voter or on the part of the system.

10 For example, we talked about the first-time  
11 voter. There are two flags in the system that  
12 identify them. One is for the federal requirement is  
13 called -- it's kind of a misnomer, but it's called the  
14 "must vote in person" flag. The other flag for the  
15 state law requirements, the first-time voter  
16 requirements, is the must-confirm ID.

17 So, those flags are on the voter's record,  
18 which indicates in the system that that person needs  
19 to provide ID when voting.

20 Q. Is there also a cancelled flag?

21 A. There is cancelled flag, yes.

22 Q. What does the cancelled flag mean?

23 A. Well, the cancelled -- actually, the cancel is  
24 a status more so than a flag. It is -- it is -- I  
25 think we may have discussed this a little bit last

1 week, but if we didn't, you have three basic types of  
2 statuses of voters within the system: Active which is  
3 indicated by an A; inactive, indicated by an I; X is  
4 cancelled. That would be a cancelled record.

5 Q. Okay. And there are various reasons that a  
6 voter might be cancelled?

7 A. There are, yes.

8 Q. What about felony-on-hold; is that a flag or a  
9 status?

10 A. Felony-on-hold is a status.

11 Q. How does that status get generated?

12 A. It's generated by the county boards of  
13 elections on the voter's record; and if they obtain  
14 information indicating that an individual, a  
15 registered voter is currently incarcerated on a  
16 conviction of a felony, they would change that voter's  
17 status to felony-on-hold.

18 Q. That comes to the committing county, so if a  
19 person is a resident of York County, for example, and  
20 commits a felony and then goes to SCI Camp Hill or SCI  
21 Graterford, which county is notified of the  
22 felony-on-hold status.

23 A. The county of residence, so in this case it  
24 would be York County.

25 Q. Okay. Thank you. And did you have a occasion

1 to review in the SURE database the number of persons  
2 that are marked as a felony-on-hold?

3 A. Yes.

4 Q. I'm going to hand up what has been marked as  
5 Exhibit 225.

6 Mr. Marks, can you tell us who Cassius -- I'm  
7 not going to pronounce his name correctly --

8 A. Arulkumaran.

9 Q. Thank you. Can you tell me who he is?

10 A. He is the project manager for our tier two  
11 support vendor. That's support for the SURE systems,  
12 and also the elections and campaign finance systems,  
13 and then lobbying disclosure system.

14 Q. And did you ask that he pull out for you the  
15 information on felony-on-hold status?

16 A. I did, yes.

17 Q. Does this email reflect the results of his  
18 search?

19 A. It does, yes.

20 Q. Are there anything about these data that  
21 strike you as unexpected?

22 A. I -- the number of the total number of them is  
23 unexpected. And I would expect more. This is  
24 consistent with -- this is essentially the same amount  
25 of voters that we saw several months ago when we took

1 a look at this. So, it's a very low number. That is  
2 the most striking thing about it.

3 Q. Does that say to you that perhaps the counties  
4 are not getting the reports of the people who are  
5 actually felons?

6 A. It does, yes.

7 Q. I'm going to show you what's been marked as  
8 Exhibit 245. Do you recognize this document,  
9 Mr. Marks?

10 A. I do, yes.

11 Q. Is this document one that you have the  
12 responsibility for maintaining?

13 A. I do, yes.

14 Q. Can you briefly explain to us what the  
15 difference is in the way that a person who is a past  
16 felon, a person who is a currently incarcerated felon,  
17 and a misdemeanor, the way that they are treated  
18 under the election laws?

19 A. Briefly. I'll try.

20 A past felon is treated essentially like any  
21 other registered voter in that they -- if they are not  
22 currently incarcerated, they can register to vote as  
23 anyone else. If they were registered to vote prior to  
24 entering incarceration, their period of incarceration,  
25 they would be registered after that was over.

1 Misdemeanants are not felons, obviously, so  
2 they're voter registration status doesn't change. The  
3 only thing that may change is how they vote. They  
4 cannot register to vote from an address where they may  
5 be confined in a penal institution, but they could  
6 vote absentee ballot from their last known residence  
7 or address.

8 The -- I know we had discussion in here about  
9 pretrial detainees as well. They haven't been  
10 convicted yet, so obviously, there voter registration  
11 status has not changed.

12 Incarcerated felons are not able to vote.

13 Q. And does incarceration extend to the time that  
14 a person is in a community corrections center or some  
15 call it a halfway house?

16 A. That's my understanding of the analysis that  
17 was done several years ago by our legal counsel is  
18 that the term "incarceration" is the key term. If  
19 they are considered incarcerated, confined, then  
20 that's what matters.

21 Q. And if a person were incarcerated, and were --  
22 if a person were incarcerated, are you telling me that  
23 a person could not vote while -- that is a felon?

24 A. It would be on their -- it would depend on  
25 their status.

1 Q. On their status.

2 A. If they're incarcerated for a felon, no.

3 Q. So, if a person is a felon and is  
4 incarcerated, that person cannot vote?

5 A. That's correct.

6 Q. Now, if a person were a felon in March of  
7 2013, but anticipated being released in April of 2013,  
8 would that person be entitled to register to vote if  
9 they were going to be freed by the May 2013 election?

10 A. I would think they could truthfully swear the  
11 affirmation if they knew for a fact that they wouldn't  
12 be incarcerated at the time of the next election.

13 If that's what you're asking, whether they  
14 could sign the form --

15 Q. That is what I'm asking.

16 A. If they could sign the form truthfully, I  
17 would say yes.

18 Q. Okay. But if that same person were not going  
19 to be out until August, that person couldn't  
20 legitimately register to vote in March because of the  
21 intervening May election; is that correct?

22 A. That's correct, yes.

23 Q. Now, we had some discussion -- then let me  
24 just get one follow-up question to the felon in  
25 question. Would the person who is a felon and



1 currently incarcerated be considered an invalid voter;  
2 is that how you would characterize that person?

3 A. I would -- I would, yes. While you're in that  
4 felony-on-hold status, you're not considered a valid  
5 voter.

6 Q. There has been discussion about the many  
7 changes that occurred since Act 18 took place. Was it  
8 your responsibility to convey those changes to the  
9 County Board of Electors?

10 A. It was primarily my responsibility, yes.

11 Q. And what ways did you convey those changes?

12 A. In most cases, they were through either  
13 official memorandum or email notifications. We did  
14 have at least one conference call, as I recall.

15 Also, we had a summer conference, a summer  
16 conference with the county election officials in State  
17 College in August of last year and we spent a good bit  
18 of our time on the agenda talking about voter ID  
19 requirements of Act 18.

20 Q. And was it important to you that the County  
21 Boards of Electors be apprised of changes as they were  
22 occurring?

23 A. It was, yes.

24 Q. And why?

25 A. Well, simple most obvious reason is that

1 ultimately, they are the ones that are administering  
2 the elections at the local level, in conjunction,  
3 obviously, with the local election boards, the judges  
4 of elections, the clerks of elections at each  
5 individual polling place; but the bulk of  
6 administering elections is done by the County Boards  
7 of Elections.

8 Q. Thank you.

9 MS. HICKOK: Your Honor, with your  
10 indulgence, I have a series of those communications  
11 that I would like to have Mr. Marks authenticate and  
12 put into the record; but I would prefer, unless  
13 counsel has a challenge to any of them, you know, just  
14 to identify them and not go through them one by one,  
15 because they're all of the same class.

16 So, if we could start with Respondents'  
17 Exhibit No. 7; and then I am going to read you the  
18 entire list, so maybe we can pull the stack and give  
19 it to them.

20 So it's Respondents' 7, Respondents' 8,  
21 Respondents' 9, Respondents' 10, Respondents' 12,  
22 Respondents' 14, Respondents' 15, Respondents' 21,  
23 Respondents' 23, Respondents' 25, Respondents' 27,  
24 Respondents' 28, Respondents' 29, Respondents' 30,  
25 Respondents' 31, and Respondents' 32.

1 THE COURT: Can we do this maybe at a  
2 break and continue questioning?

3 MS. HICKOK: All right. I'm sorry,  
4 Your Honor. That's fine.

5 THE COURT: That way they can take  
6 their time at break.

7 MS. HICKOK: I apologize, Your Honor.

8 THE COURT: But we'll take Mr. Marks'  
9 word for it that he has made efforts, continues to  
10 make efforts to communicate with the county election  
11 officials.

12 THE WITNESS: Thank you, Your Honor.

13 MS. HICKOK: Can we pull 78, then.

14 BY MS. HICKOK:

15 Q. Mr. Marks, can you identify what's been marked  
16 as Respondents' Exhibit 78.

17 A. I can. This is the poll worker guide that was  
18 sent out to all of the poll workers, the judges of  
19 elections, and inspectors of elections that we had on  
20 file.

21 Q. And I believe you testified yesterday that  
22 that was not something that's always done, or did I  
23 misunderstand?

24 A. No, you did not misunderstand. To my  
25 knowledge, it's the first time that we directly

1 communicated with individual poll workers. It's  
2 typically done entirely through the county boards of  
3 elections.

4 Q. Thank you. That was actually what I was going  
5 to ask.

6 Is there anything in the poll worker guide,  
7 aside from the fact that the very existence of it is  
8 unusual -- is there anything in the poll worker guide  
9 itself that is of note?

10 A. Of note other than had the general content, I  
11 think we -- the goal here was to provide kind of a  
12 primer on Act 18, as briefly as we could; and also  
13 give the local election officials a sampling of the  
14 types of photo IDs that they might see at the polling  
15 place.

16 Q. Were there questions that came back from the  
17 poll workers after they received these guides?

18 A. There were some questions that came back from  
19 poll workers. As I recall, most of the questions  
20 didn't come directly to us; they came up during  
21 training. We sent this out at a time immediately  
22 preceding training, at least at most counties,  
23 immediately preceding training that the county  
24 elections were doing. It was done in concert with  
25 that effort.

1           Some of the questions were asked at the county  
2 boards of elections, but one of the questions that  
3 seemed to be coming up frequently was the  
4 substantially conforming -- what is meant by  
5 substantially conform in terms of the name on the ID.

6           So, the one piece that we added, and that was  
7 a question that the counties had asked us about prior,  
8 too. So, we did put a section in here specifically  
9 addressing the substantially conformed question, and  
10 providing as many examples as we could.

11 Q.       Now, after that time in the summer of 2012,  
12 have additional questions come up evidencing confusion  
13 about substantially conforming?

14 A.       I don't know that we had got a significant  
15 amount of questions since that time. There were  
16 probably a couple of months during last year, with --  
17 during the summer and leading up to the November  
18 election where we got a lot of questions, we received  
19 a lot of questions about the meaning of substantially  
20 conform.

21           I have not seen a whole lot of questions or  
22 heard about a whole lot of questions being asked  
23 either of the Department or the county boards of  
24 elections.

25 Q.       And as you have worked with the SharePoint

1 system and some of the questions that have come up  
2 there, have you found incidents when or instances when  
3 the names that were in -- that were being used in an  
4 application, say, for DOS ID, were not matchable to  
5 the information as it was recorded in the SURE  
6 database?

7 A. Yes.

8 Q. And in those instances, what has had to happen  
9 in order to verify that that person is actually  
10 registered?

11 A. Well, in many cases, we need to do additional  
12 investigation, if that required a call to the county  
13 board of elections or even to the voter, the applicant  
14 herself. It also requires to take a deeper look at  
15 the system to find -- using all of the available  
16 information, the information that was available to  
17 find potential matches.

18 You know, it taught us a few lessons early on  
19 about how that process works, and where we needed to  
20 take it.

21 Q. As a result of those experiences and trying to  
22 find those people that were hard to find, have you  
23 changed your instructions to the people who are  
24 handling the calls from PennDOT?

25 A. Yes. We did two things: First, we changed

1 the tier one process. Loosened it up, made the search  
2 criteria broader.

3 The tier two folks, which are the folks  
4 physically in my office, we had them go through a very  
5 rigid protocol or set of search criteria and had them  
6 by process of elimination look at each of these  
7 different elements, including the house number, street  
8 address, and to try to find potential matches that may  
9 not be readily apparent based on the information  
10 provided by the applicant at the time of the request  
11 for the DOS ID.

12 Q. And has that helped?

13 A. It has.

14 Q. How can you tell that it's helped?

15 A. Looking at -- looking at the information --  
16 statistical information regarding calls, and IDs  
17 issued by PennDOT versus what we're adding to the  
18 exceptions process, the number of exceptions being  
19 created out of the total number of DOS IDs being  
20 issued has decreased significantly.

21 I think out of 166 that were issued from  
22 January to June, we created four, maybe five  
23 exceptions.

24 Q. So, now, if a person comes into the exceptions  
25 process, and that person simply has not been

1 registered, what does the system do in order to  
2 determine when that person is registered?

3 A. What the system does is it goes out and checks  
4 the SURE system nightly. There's a job that runs  
5 against the SURE system, which it essentially looks  
6 for potential matches.

7 It will use -- it uses truncated first  
8 name/last name. I think we're using the first three  
9 characters of the first name and first three  
10 characters of the last name. It will look at date of  
11 birth, but it will not necessarily ignore the  
12 potential match if the date of birth doesn't match.

13 It will return it as a potential match. That  
14 occurs on a nightly basis, provided that the exception  
15 record is in a "not registered" status at the time.

16 If there are a number of potential matches  
17 found, and it is fairly common with common names. I  
18 would expect my name, Jon Marks, is common enough  
19 where you will see a whole list of potential matches.

20 We call them multiple matches, but these are  
21 records that could be the voter that you are looking  
22 for. At that point staff has to go through each of  
23 those ID numbers, and provide those potential matches  
24 and determine, looking at the information on the  
25 application for DOS ID versus what's housed in the



1 SURE system, whether any of those are in fact a match.

2 Q. And again, if questions arise, they might have  
3 to contact the voter or the county; is that correct?

4 A. That's correct, yes.

5 Q. Once a person is identified as having actually  
6 registered, are the -- what happens then?

7 A. Once the -- essentially, once the voter shows  
8 up in the system, which is at the time their  
9 application for voter registration is approved, that  
10 the SURE ID number of that individual, the correct  
11 match, is entered into the system.

12 The flag of voter registration status is  
13 changed from false to true and there are a couple of  
14 others that I'm probably forgetting.

15 But if those fields are entered and certain  
16 conditions are met, a UPS label is automatically  
17 generated by the system that is to be used to mail the  
18 card out to the applicant.

19 Q. In terms of the cards, you have testified, I  
20 believe, that the way that the new process was  
21 supposed to work, after September 25th, 2012, is that  
22 PennDOT would actually take a picture of the person,  
23 issue a card, but instead of handing it to the person,  
24 would actually send that card to you; is that correct?

25 A. Correct. If at the time the voter was -- the

1 applicant was at PennDOT, the SURE helpdesk could not  
2 verify their voter registration, that's true. The  
3 card would be generated, but it would be sent to us,  
4 to the Department of State along with a voter  
5 registration application.

6 In most cases, if the individual is not  
7 registered to vote, the PennDOT employees give them  
8 that opportunity.

9 So, they would at least get an ID card, maybe  
10 as well get a voter registration application along  
11 with that, that they would forward to the county --  
12 appropriate county voter registration office.

13 Q. Do you currently have a number of ID cards?

14 A. We do. We are holding I believe 49 cards at  
15 the moment.

16 Q. As each of those persons then shows up as  
17 registered to vote, you said there's a UPS number  
18 that's generated. Are those cards then sent to the  
19 voter?

20 A. They are. And we use the -- we use the UPS  
21 specifically because it's trackable. It's easily  
22 trackable. It's trackable through software.

23 Aside from checking the voter registration  
24 status, once the UPS label is generated, and the  
25 package is sent, the system checks on a nightly basis

1 the status of that package through the software that  
2 UPS provides for tracking such status.

3 Once it's confirmed it has arrived, then we  
4 indicate that the applicant has received their ID  
5 card.

6 Q. Now, you mentioned a moment ago that when an  
7 application was approved, then the -- there would be a  
8 record generated in SURE. Is there also a record  
9 generated in SURE if the application is rejected?

10 A. There's no record, voter record created, but  
11 there is an applications table that can be searched to  
12 identify whether a particular application has been  
13 rejected or not.

14 Q. And are there persons who entered the  
15 exceptions process whose applications were rejected by  
16 the counties?

17 A. There were, yes.

18 Q. And if an application is rejected by the  
19 county and there is no SURE entry, is that person  
20 eligible to vote?

21 A. No.

22 Q. Now, just prior to the November election, I  
23 recall that we had a letter incident -- a weather  
24 incident, Hurricane Sandy had occurred. Did that have  
25 any impact on the electoral process?

1 A. It did. Because of the timing of it, it had a  
2 substantial impact. It was just a week before the  
3 election, and actually started a week before the  
4 election, and lasted a few days -- several days in  
5 some counties.

6 Q. What kinds of measures were taken by the  
7 Department of State in response to Hurricane Sandy?

8 A. Well, our goal was to obviously inform the  
9 Governor's office regarding what was going on in the  
10 counties. We were doing a lot of outreach to counties  
11 to find out whether they were open or closed.

12 We were also finding out from counties the  
13 status of their absentee ballot requests. Hurricane  
14 Sandy started at a time where there was an imminent  
15 deadline to request absentee ballots, and then by the  
16 end of the week, there was a deadline to return it.  
17 So, our focus was very much on absentee balloting at  
18 that point in time.

19 We were also working with FEMA to find out and  
20 assess damage, but that really came on later on in the  
21 process. Early on, it was mostly a discussion about  
22 absentee balloting and what could be done to address  
23 any delays or problems that may be caused by Hurricane  
24 Sandy, as it related to absentee balloting deadlines  
25 and procedures.

1           Coming out of that was actually a series of  
2 executives orders issued by the Governor extending  
3 deadlines for application and receipt of absentee  
4 ballots. I believe there were a total of three of  
5 them by the time it was said and done.

6 Q.       Did you in retrospect looking back find that  
7 it also impacted the counties' ability to process the  
8 voter registration applications?

9 A.       It did. Those counties that were backlogged,  
10 and even up to a week before the election obviously  
11 all of their operations were impacted in some way.

12           Aside from the absentee balloting, which was  
13 the most obvious to us, there were -- for example,  
14 Philadelphia County, we have already discussed was  
15 still entering voter registration applications. With  
16 office closures and all of the challenges associated  
17 with the weather, that obviously delayed that process  
18 even further.

19 Q.       And are there times when a county may be  
20 undertaking HAVA verification and may put an  
21 application in pending status if it's unable to verify  
22 immediately?

23 A.       Yes. HAVA verification being one of them, but  
24 there are pending statuses that require additional  
25 information from the voter, and individuals at any

1 given moment in time applications are in that status.

2 Q. And as you have looked at the people who were  
3 in SharePoint who looked as though they were  
4 registered well after the election or even shortly  
5 after the election, did you find that, in some  
6 instances, that registration was impacted by either  
7 the HAVA verification process or Hurricane Sandy, or  
8 some sort of delay such as that?

9 A. I certainly knew we were able to tell those  
10 that were impacted by an on-hold or pending -- excuse  
11 me, not on-hold but pending status. An application in  
12 some cases was sitting in pending status for several  
13 months.

14 Q. As soon as that was processed and the person  
15 was registered, were the cards that you had, once they  
16 showed as a person being registered, were those cards  
17 that you had sent out to the voters?

18 A. Yes.

19 Q. I want to show you what's been marked as  
20 Respondents' 259.

21 Do you recognize this document, Mr. Marks?

22 A. I do.

23 Q. And is it in part an email from you and in  
24 part an email to you?

25 A. It is. It's an email thread between myself

1 and -- or between me and Scott Shenk over at  
2 Pennsylvania Department of Transportation.

3 Q. Can you tell me who Mr. Shenk is?

4 A. Mr. Shenk -- and I will not even attempt to  
5 guess. I forget what his title is now. He is  
6 basically responsible kind of day-to-day operations on  
7 driver licensing.

8 Q. What prompted you to send this email to  
9 Mr. Shenk?

10 A. We had a number of -- a number of exceptions,  
11 194, I believe, that the only thing we had received  
12 from PennDOT for them or voter registration  
13 applications, and in many cases, the majority of the  
14 cases, we didn't have any other documentation that  
15 indicated they were exceptions or that they were DOS  
16 ID requests.

17 As you recall a few minutes ago, we talked  
18 about the new process, and what that was supposed to  
19 look like. We would get an ID card delivered from  
20 PennDOT, in those cases along with the voter  
21 registration mail application; and we would also get  
22 delivered through the P drive, through a shared drive,  
23 a copy of the application for DOS ID.

24 Q. Would you also have a record of a call?

25 A. Yes, we would have a record of a search done

1 by the helpdesk when the call came in from PennDOT;  
2 and in the bulk of these cases, we had no -- we didn't  
3 have any of those other pieces, or we may have one  
4 piece in a few occasions.

5 But what I knew at that time was that we had  
6 194 individuals that all we got was a voter  
7 registration application; no -- no card. And that  
8 was -- it was the decision point, for me, what do we  
9 do with these, knowing that there's a big question  
10 mark over them.

11 So, I sent this email to Scott, hoping that he  
12 could clarify what exactly they were from PennDOT's  
13 perspective.

14 Q. Now, did you find this clarifying?

15 A. Partially, yes. It confirmed my suspicions  
16 regarding the 194, for the most part; but it didn't  
17 answer all of the questions. So, at that point, I  
18 made a decision to keep treating all of the 194 as if  
19 they were exceptions and move forward under the  
20 current protocol.

21 Q. Is it your understanding that Mr. Shenk felt  
22 constrained not to give you specific PennDOT  
23 information about specific individuals on the list of  
24 the 194 that you sent him?

25 A. Yes. I thought he might actually put it in



1 this email, but maybe it was another. But it was my  
2 understanding at the time that he could not give me  
3 any information beyond the statistical summary that he  
4 provided in this email.

5 Q. So, as a result, you had a knowledge, if I can  
6 restate what I think you just told me -- you had  
7 knowledge that there were a number of persons who were  
8 being tracked in SharePoint who actually had never  
9 made application for a DOS ID; is that correct?

10 A. That's my understanding, yes.

11 Q. But from the information that Mr. Shenk  
12 provided, you could not go to SharePoint and say, this  
13 individual is one that should be deleted; is that  
14 correct?

15 A. That's correct. What I suppose had -- had the  
16 statistical summary come back and he confirmed that  
17 all 194 came in to PennDOT to conduct PennDOT  
18 business, and perhaps I would have reached a different  
19 conclusion; but at the time not knowing which 50 may  
20 in fact be exceptions, DOS ID exceptions, I made the  
21 decision to treat them all as if they were DOS ID  
22 exceptions so that no one would slip through the  
23 cracks.

24 Q. Now, since that time when you were receiving  
25 just VRMAs, have you had other experiences where you

1 have not received the materials from PennDOT that you  
2 expected to receive?

3 A. We have had a handful of occasions where we  
4 didn't get everything that we expected to receive.

5 Q. And those might be in that same category as  
6 the 144 where they weren't actually exceptions at all?

7 A. Right, or they were exceptions that we needed  
8 to get additional information or some might show up  
9 either in the mail or P drive that we would have to  
10 get clarification on. But it's been a very small  
11 number since that point in time.

12 Q. And is it the Department of State's position  
13 that they will be overly concerned to communicate to  
14 people as though they were in the exceptions process,  
15 even though they might not actually be in the  
16 exceptions process?

17 A. Correct. If I understand what you are saying,  
18 we're treating -- unless we have an ironclad evidence  
19 to suggest otherwise, if there's a question mark,  
20 we're going to treat everyone as if they're an  
21 exception and as if they're waiting for something from  
22 us. We'll -- as I said, if we need to reach out to  
23 PennDOT, as we did in this case, on an individual  
24 case-by-case basis to get additional clarification,  
25 we'll do that, knowing that, you know, a I'm not going

1 to get access to all of PennDOT's records. They're  
2 sensitive records.

3 I think we have established that PennDOT is  
4 very -- for very good reasons, is not just handing  
5 over their sensitive information to anyone who is  
6 asking, including someone from another state agency.

7 So, it does require us from time to time to do  
8 back and forth with PennDOT to get whatever  
9 clarification we can. If, after that back and forth,  
10 we can't determine that this person shouldn't be in  
11 the exceptions process, we're going to continue to  
12 treat them like an exception and do whatever we need  
13 to do to make sure that they get their ID card as --  
14 if in fact there is a DOS ID card or picture ever  
15 taken.

16 But I think it would be my opinion, I guess, I  
17 think it would be irresponsible to do anything else,  
18 unless I have information that I know absolutely.

19 Q. Mr. Marks, as you look at the whole process as  
20 it has evolved since Act 18, including, you know,  
21 working on backfilling data from PennDOT into the SURE  
22 database that PennDOT did back in July of 2012,  
23 looking at the coordination with PennDOT on the DOS  
24 ID, looking at -- you know, what initially was just an  
25 Excel spreadsheet and then became SharePoint, are

1    there things that you have learned about the SURE  
2    database?

3    A.       There are. Since the beginning of this  
4    process, we have learned a number of things that --  
5    and in some case cases, we knew, but we didn't fully  
6    understand the nature of certain things.

7            This process has, has enabled us to learn  
8    additional lessons about the SURE system, about how  
9    county boards of elections, county voter registrars  
10   process applications, process absentee ballot  
11   applications; and I think those lessons have -- have  
12   taught us, you know, how to move forward and what we  
13   may need to do to further improve the accuracy of the  
14   voter registration database as it's maintained by the  
15   various county boards of elections.

16   Q.       Why is having an accurate database important?

17   A.       I think it's important for a number of  
18   reasons. I think certainly, an accurate database is  
19   -- addresses the concern about the integrity of the  
20   election process. If the perception is that -- I'll  
21   give you an example.

22            If you have, you know, including all of your  
23   inactive voters, if a county -- last week, we talked a  
24   little bit about list maintenance mailings and how  
25   that process works.

1           If a county does not do those list maintenance  
2 mailings on an annual basis, you will see an increase  
3 in the number of voters who are registered or who are  
4 on those voter registration rolls within a particular  
5 county.

6           It reaches a point where the perception  
7 becomes, you know, in some cases, extreme cases, you  
8 will have more registered voters than there are  
9 residents of the county. Certainly, it happens more  
10 frequently in individual municipalities.

11           But, you know, it impacts people's confidence  
12 in the process if you have bloated registration rolls.

13           Conversely, it impacts people's confidence in  
14 the process if they are a registered voter and the  
15 county has difficulty finding them and the local  
16 election official has difficulty finding them on a  
17 poll book, and they get thrown into the provisional  
18 ballot process.

19           So, you know, I guess to summarize my answer,  
20 the -- maybe the best way is to remember what SURE  
21 stands for. It's the Statewide Uniform Registry of  
22 Electors, and we continue to make efforts to nail it,  
23 for lack of a better term, on the uniformity part.

24           Recall just ten years ago or less than ten  
25 years ago, we had 67 individual voter registration

1 databases or voter registration processes. While  
2 there was some uniformity as a result of state law,  
3 there wasn't a uniform database.

4 Now there is a single location. So, insuring  
5 that everything is done uniformly is certainly  
6 critical to both the confidence people have in the  
7 integrity of the voter registration rolls, but also  
8 the confidence that individual voters have in the  
9 status and the maintenance of their own voter record.

10 Q. Mr. Marks, if you could briefly look through  
11 these documents and tell me whether these appear to be  
12 the mailings that you sent out to the county boards of  
13 elections from the time that Act 18 was passed until I  
14 believe 32 is in April 2013, just prior to the May  
15 2013 election?

16 A. Okay. Yes, this does appear to be, at least  
17 the majority of my direct communications or  
18 communications directly on behalf of the counties.

19 MS. HICKOK: Thank you. Your Honor, I  
20 have no further questions.

21 THE COURT: Thank you. Will you be  
22 extensive? Do you think it would be a good time to  
23 break now?

24 MR. WALCZAK: I will be probably be  
25 extensive, Your Honor.

1 THE COURT: We'll take a ten-minute  
2 recess.

3 (COURT RECESSED AT 10:09 A.M. AND  
4 RECONVENED AT 10:21 A.M.)

5 THE BAILIFF: Court is now in session.

6 MR. WALCZAK: May I inquire, Your  
7 Honor?

8 THE COURT: Certainly.

9 CROSS-EXAMINATION

10 BY MR. WALCZAK:

11 Q. Good morning, Mr. Marks.

12 A. Good morning.

13 Q. We meet again here in this trial.

14 A. We do.

15 Q. Good to see you again.

16 A. Good to see you as well.

17 Q. I want to go back and clean up some things  
18 from your testimony on Thursday, when we last met  
19 here, and we'll move forward and then cover your  
20 testimony from today, if that's okay.

21 A. Sure.

22 Q. Now, do you still have the exhibits up there  
23 from Thursday; do you have all of your exhibits up  
24 there?

25 A. There's a pile over here. I may. I can

1 check.

2 Q. I'm looking for R 152 which is the list of all  
3 of the polling places. Do you see that?

4 A. It might take me a few minutes to go through  
5 this.

6 Q. Please take your time.

7 THE COURT: He might have them.

8 THE WITNESS: What is the number?

9 MR. WALCZAK: I have more copies if  
10 it's not up there.

11 MS. HICKOK: It might be easier than  
12 for him to --

13 THE WITNESS: Yeah, it might be easier  
14 than to waste the Court's time. Thank you.

15 BY MR. WALCZAK:

16 Q. Now, I believe you testified last Thursday  
17 that you live in Perry County; is that right?

18 A. I do, yes.

19 Q. And you have had two different addresses in  
20 Perry County over the last few years; is that right?

21 A. I have, yes.

22 Q. At least the way I took it, there was a  
23 suggestion that it's a rural area, and that there are  
24 people who would need a car to be able to get to a  
25 polling place; is that correct?



1 A. In some cases, yes.

2 Q. And I believe you said that you used to live  
3 in a place called Shermans Dale; is that correct?

4 A. That's correct, yes.

5 Q. And I believe you said that it may be a  
6 mile-and-a-half or two miles from your home where you  
7 lived there to the polling place?

8 A. Yes, that's my recollection.

9 Q. Now, you weren't suggesting that it is just as  
10 easy to get to a driver's licensing center from your  
11 home in Perry County as it is to get to the polling  
12 place, are you?

13 A. I was not.

14 Q. And in fact, if you look at Exhibit 152,  
15 Respondents' 152, there are close to 9300 polling  
16 places across the entire Commonwealth; is that right?

17 A. That sounds right, yes.

18 Q. There are only 71 driver's licensing centers  
19 that issue IDs across the entire Commonwealth; is that  
20 right?

21 A. That's my understanding, yes.

22 Q. Kelby, if we could put up Petitioners' Exhibit  
23 26. If you could click on to show the counties that  
24 have no driver's licensing centers.

25 Mr. Marks, I think you have seen this map

1 before, correct?

2 A. I have, yes.

3 Q. And do the shaded counties there to your  
4 knowledge correspond to those counties that do not  
5 have a single licensing center?

6 A. As I recall, this does coincide with that,  
7 yes.

8 Q. And kind of working our way clockwise, in  
9 Forest County, do you know how many polling places  
10 there are in that county?

11 A. Boy, I don't know off the top of my head. I  
12 believe it's probably fairly small, maybe even less  
13 than 20.

14 Q. Yeah. Maybe you could look at Respondents'  
15 Exhibit 152. I assume you're familiar with that  
16 document and could find those pretty quickly.

17 A. You're testing my knowledge.

18 THE COURT: Is Forest at 10:00,  
19 Mr. Walczak? Is Forest at about 10:00 on that  
20 exhibit?

21 MR. WALCZAK: Yes.

22 THE COURT: Does that help you at all,  
23 Mr. Marks?

24 THE WITNESS: Yes. By my count, there  
25 are less than ten.

1 BY MR. WALCZAK:

2 Q. Nine, maybe?

3 A. Nine. Yes.

4 Q. Nine. So there's no licensing center in  
5 Forest County, but nine polling places in the county;  
6 correct?

7 A. That's correct, yes.

8 Q. And moving around the next county, there is  
9 Cameron. Would you agree with me that there are ten  
10 polling places in Cameron County?

11 A. That sounds correct. I can look it up, but I  
12 know it's relatively small number.

13 Q. And then -- well, it's a small number, but  
14 that's larger than the number of places where somebody  
15 there could go get a photo ID to vote; is that right?

16 A. That's right, it is.

17 Q. So it's ten more places than you would have  
18 photo ID places, correct?

19 MS. HICKOK: Your Honor, I would object  
20 to the characterization that it is less than the  
21 places that photo ID is available.

22 THE COURT: Overruled.

23 BY MR. WALCZAK:

24 Q. Now, we looked at Clinton County which to the  
25 naked eye, which I assume is slightly larger, there

1 are 33 polling places in Clinton County?

2 A. That sounds about right.

3 Q. And?

4 MS. HICKOK: Your Honor, he's referring  
5 him to a document. He should give him a chance to  
6 look at the document.

7 THE WITNESS: I can tell you exactly  
8 how many there are here in a minute, if I can read the  
9 small type.

10 MR. WALCZAK: Just for the record, this  
11 was produced by you all and did not produce a  
12 magnifying glass with it.

13 MR. KEATING: Did you request one?

14 MR. WALCZAK: Yes, at my deposition and  
15 his deposition I did request it.

16 MR. KEATING: I offered you one.

17 MR. WALCZAK: Yes, you did.

18 THE WITNESS: Yes, it looks like there  
19 are 33.

20 BY MR. WALCZAK:

21 Q. Just to save time, I'm going to suggest to you  
22 that the, the count that we have done using that  
23 document for the rest of the counties -- and if on  
24 redirect your counsel wants to point out an error, I  
25 suppose they can.

1 But just let me ask you if this sounds right,  
2 for Sullivan County up at about 2:00 there, 16 polling  
3 places?

4 MS. HICKOK: Your Honor, I think the  
5 document speaks for itself.

6 THE WITNESS: Yeah.

7 MS. HICKOK: I don't know that it's  
8 helpful to suggest a number that is verifiable from  
9 the document.

10 THE COURT: Overruled.

11 BY MR. WALCZAK:

12 Q. Montour County, the little county south of  
13 Sullivan there, 15 polling places?

14 A. Sounds right.

15 Q. Union County there to the west of Montour, 26  
16 polling places. In Juniata County, there are 20  
17 polling places. Does that sound about right?

18 A. Sounds about right.

19 Q. In Fulton County, there are 13 polling places.  
20 And then in Perry County, where I guess you  
21 live and lived, there are 32 polling places?

22 A. Sounds right.

23 Q. So, there are all of those polling places in  
24 these counties and there's not a single licensing  
25 center in any of those counties; is that correct?

1 A. That's correct, yes.

2 Q. Now, I believe you testified that when you  
3 lived in Shermans Dale, it was about a mile or  
4 mile-and-a-half or mile-and-a-half to two miles --

5 A. Yeah, that was my recollection. A mile or  
6 maybe mile-and-a-half.

7 Q. To your polling place?

8 A. To my polling place, yes.

9 Q. Do you recall where the closest driver's  
10 licensing center was to Shermans Dale?

11 A. It would have been here in Harrisburg.

12 Q. Harrisburg? Are you sure that wouldn't have  
13 been Carlisle?

14 A. I -- you know what, I never considered going  
15 to Carlisle, so I didn't measure it. I always came to  
16 Harrisburg. I work in Harrisburg, so I would imagine  
17 they're similar distances, close.

18 Q. Do you recall whether the zip code in Shermans  
19 Dale is 17090?

20 A. No, I don't recall. Sorry.

21 Q. You don't recall?

22 A. My memory is a little fuzzy on that.

23 Q. If we could put up Plaintiffs' Exhibit 2130.  
24 I'll get 2131 as well.

25 Now, if you will take a look at what's been

1 marked as Petitioners' Exhibit 2130; do you see that?

2 A. I do, yes.

3 Q. Do you recognize what this website is?

4 A. Yeah. This is PennDOT's driver vehicle  
5 services website.

6 Q. It's locator search results. And it says  
7 location 17090 zip code; do you see that?

8 A. I do, yes.

9 Q. If I tell you that's what the Postal Service  
10 said the zip code was for Shermans Dale, would you  
11 agree with that?

12 A. I won't argue.

13 Q. You just don't remember. And below that lists  
14 the closest photo ID center, is that right?

15 A. Right, it appears to be, yes.

16 Q. And the closest one to Shermans Dale would be  
17 Carlisle which is seven miles, correct?

18 A. Mileage-wise, it appears that that's the case.

19 Q. And if you look at Exhibit 2131, this is a  
20 printout from the first page of a MapQuest search  
21 which shows Shermans Dale to the address for the  
22 driver's licensing facility in Carlisle. And if you  
23 compare the address on page two of the preceding  
24 exhibit might verify that --

25 MS. HICKOK: Your Honor, he's not a

1 PennDOT employee, and he is not a MapQuest employee.

2 THE COURT: He doesn't have to be to  
3 answer the question.

4 MS. HICKOK: Okay.

5 BY MR. WALCZAK:

6 Q. So, have we entered those search parameters  
7 right there for the directions?

8 A. It appears you did, if the location is Walnut  
9 Bottom Road in Carlisle, for the driver exam. I'm not  
10 sure if that's apparent on any of these documents; but  
11 if that is the address of the driver license center,  
12 then it does look like the address is correct.

13 Q. Just too make sure we're being totally  
14 aboveboard here, if you look at 2130 on the top of the  
15 second page, it lists the address as 950 Walnut Bottom  
16 Road; do you see that?

17 A. On the second page of 2130?

18 Q. Yeah. That's the PennDOT website printout.  
19 Do you see that?

20 A. Yes.

21 Q. And go back to the MapQuest Exhibit and it's  
22 got 950 Walnut Bottom Road?

23 A. Right.

24 Q. Now, below that, it says suggested routes, and  
25 apparently there's at least two ways that you could



1 go. One is shorter; it's 13.53 miles. Do you see  
2 that?

3 A. I do, yes.

4 Q. And the estimated time is 27 minutes; do you  
5 see that?

6 A. I do.

7 Q. And then the other way is longer. I guess you  
8 go to highway 81, may be faster, but it's about seven  
9 miles farther and that says 28 minutes.

10 A. Yes, that's correct.

11 Q. Okay. And from your recollection of when you  
12 lived in Shermans Dale, does that sound like about the  
13 amount of time it would take to get to the Carlisle  
14 DLC.

15 A. Yeah, to get to Carlisle. As I said, I always  
16 went to Harrisburg for the DLC, and probably in most  
17 cases would have taken the second route. The first  
18 one, you have to drive up over a mountain.

19 It's not, it's not exactly a highway. It's a  
20 scenic drive, which I don't mind; but in the winter  
21 months is not something that I relish.

22 Q. Right. So, like in early November, there  
23 might be snow there; correct?

24 A. Potentially, yeah.

25 Q. So that is significantly further than the mile

1 or mile-and-a-half that you would have to go to a  
2 polling place; is that right?

3 A. That's fair, yes.

4 Q. And if you didn't work in Harrisburg or you  
5 didn't have a car, that would be substantially more  
6 difficult; correct?

7 A. If I didn't have a car, yes.

8 Q. Let's do one more. I believe you testified  
9 that you now live in a little town called Liverpool;  
10 is that right?

11 A. That's correct, yes.

12 Q. If we could have 2132 and 2133.

13 I show you what's been marked as Petitioners'  
14 2132 and 2133. Is the zip code for Liverpool 17045;  
15 does that sound right?

16 A. It is, yes.

17 Q. And so 2132 is the PennDOT website, the search  
18 locator; is that correct?

19 A. It is, yes.

20 Q. And when you put in that zip code, the closest  
21 facility is actually 11 miles away in Elizabethville;  
22 is that correct? Is that what this shows?

23 A. It does, yes.

24 Q. Is that, to your knowledge, the closest  
25 driver's licensing facility?

1 A. I don't know. I don't know that I have ever  
2 gone to the Elizabethville facility to do any PennDOT  
3 business.

4 Q. Now, at the bottom of the page there, it lists  
5 Elizabethville, shows the type of facility, and if you  
6 could turn to the second page of this exhibit. Now,  
7 this says it's in Dauphin County; correct?

8 A. Yeah, that would be northern Dauphin County.

9 Q. And in fact there's only one day a week that a  
10 person in Liverpool could get a voter ID at the  
11 Elizabethville facility; is that right?

12 A. That appears to be the case based on this  
13 printout.

14 Q. Right. Because you in fact have to have both  
15 the driver's license center and the photo license  
16 center both have to be open at the same time, correct?

17 A. I don't know, but I believe that's correct;  
18 but I couldn't say for sure if they both have to be  
19 open at the same time.

20 Q. For instance on Saturday, the driver license  
21 center is closed and only the photo license center is  
22 open; is that correct?

23 A. It appears to be.

24 Q. So, Saturday would not be an option to go get  
25 your ID in Elizabethville; is that correct?

1 A. I don't believe it would. Like I said, I  
2 don't know if both have to be open at the same time in  
3 order to do this, but...

4 Q. Then if you look at Thursday, the one day  
5 that's open, there's a third row there that says "best  
6 times to visit."

7 Do you know why that's on there?

8 MS. HICKOK: Your Honor, he is not a  
9 PennDOT employee. He can't testify as to why PennDOT  
10 would put information up on its website.

11 THE COURT: Overruled.

12 MR. WALCZAK: If you know.

13 THE WITNESS: I don't know why,  
14 necessarily why that's indicated as "best time to  
15 visit."

16 BY MR. WALCZAK:

17 Q. But the best time is from 11:00 a.m. to 12  
18 p.m. on Thursday; is that right? Is that what it says  
19 on the printout?

20 A. Let me -- I'm trying to follow you here. It  
21 appears to be, yes.

22 Q. So there's one hour during the whole week  
23 that's the best time to visit to go get a photo ID, is  
24 that right?

25 A. It appears to be. I don't know exactly how

1 the determination is made that that's the best time to  
2 visit.

3 Q. Back to the first page. It says that it's 11  
4 miles from Liverpool to Elizabethville; is that right?

5 A. It does, yes.

6 Q. Are you familiar with the general area?

7 A. I am.

8 Q. So, that's as the crow flies; right?

9 A. It is. There's actually a ferry that goes  
10 from just below Liverpool to Millersburg. If that's  
11 in operation, you can take your car and cross the  
12 river, but it is as the crow flies.

13 Q. So, if we go to 2133, which is the MapQuest  
14 printout; do you have that?

15 A. I do.

16 Q. And if you look at A, entered Liverpool with  
17 the zip code there; is that accurate?

18 A. Yes.

19 Q. And then below that, if you want to compare  
20 that address to the one on the top of page two of the  
21 other exhibit, 4686 State Route 209, that's the  
22 address for the Elizabethville driver's licensing  
23 center; do you see that?

24 A. It is, yes.

25 Q. So, again, this suggests two routes, back to

1 2133. One is 34 and a quarter miles; that takes 51  
2 minutes. Do you see that?

3 A. I do, yes.

4 Q. And the other is almost 40 miles, 39.56 miles,  
5 and it takes almost an hour; is that correct?

6 A. It is, yes.

7 Q. How far is your polling place from where you  
8 are now?

9 A. In Liverpool, it's about a block.

10 Q. A block.

11 A. A city block.

12 Q. Could we have Respondents' Exhibit 137.

13 I'm going to show you what's been marked as  
14 Respondents' Exhibit 137. This is a printout produced  
15 by your agency of colleges and universities and their  
16 status of issuing compliant IDs?

17 A. It appears to be, yes.

18 Q. I believe on the original, the shaded areas  
19 are in yellow, and there it just shows up as gray; can  
20 you see those?

21 A. I can, yes.

22 Q. And you're not claiming that all colleges and  
23 universities issue compliant IDs for voting purposes,  
24 correct?

25 MS. HICKOK: Your Honor, this is

1 completely beyond the scope of direct. He was not  
2 asked about this exhibit, nor did he testify that he  
3 had anything to do with it.

4 MR. WALCZAK: I'll be very brief, Your  
5 Honor.

6 THE COURT: It's overruled. You may.  
7 BY MR. WALCZAK:

8 Q. So, just some of the institutions in  
9 Pennsylvania that as of now are not issuing IDs that  
10 students could use to vote, on that first page, would  
11 be Bucknell University? Do you agree with me?

12 MS. HICKOK: To the extent that he  
13 knows.

14 THE WITNESS: Yes, according to the --  
15 I believe this has been referred to as the sticker  
16 tracker. According to this document it appears that  
17 they do not.

18 BY MR. WALCZAK:

19 Q. This is the latest information that your  
20 agency has as to compliance by the universities and  
21 colleges?

22 A. I wouldn't know if it's the latest  
23 information. I didn't collect this information, but I  
24 believe it's fairly recent.

25 Q. If you look on the bottom left-hand corner; is

1     there a date on there?

2     A.         There is, yes.

3     Q.         What is that date?

4     A.         July 15, of this year.

5     Q.         And this is a document produced by Respondents  
6     in this case, correct?

7     A.         Yes, I believe it would have been produced by  
8     them.

9     Q.         A couple more on the first page, Carlow  
10    University in Pittsburgh does not provide IDs; is that  
11    right?

12    A.         Yes, that appears to be the case.

13    Q.         I believe they're in alphabetical order, if  
14    that helps. And at the very bottom, Duquesne  
15    University; is that correct?

16    A.         It appears that they do not issue IDs,  
17    compliant IDs.

18    Q.         That's a fairly large university, I believe.

19    A.         I believe it's a fairly large university, for  
20    that part of the state anyway.

21    Q.         Just -- a few more that you may have heard of.  
22    On the second page, you have Grove City College,  
23    that's north of Pittsburgh; is that right? They don't  
24    provide IDs?

25    A.         It appears that they -- they provide IDs, but



1 it doesn't appear that it has an expiration date or a  
2 sticker.

3 Q. Without that expiration date, it can't be used  
4 for voting?

5 A. Correct, yes.

6 Q. And Harverford College, halfway down the page;  
7 no ID?

8 A. Correct. It has a photo, but it does not have  
9 a -- an expiration date.

10 Q. Lafayette College near the bottom.

11 A. Same is true there.

12 Q. Go to the fourth page, about halfway down,  
13 Robert Morris University.

14 A. That's correct. That's a photo ID that does  
15 not have an expiration date or a sticker.

16 Q. That's a Pittsburgh area institution?

17 A. I believe it is, yes.

18 Q. And you also have St. Vincent College and  
19 Slippery Rock University; is that right?

20 A. I'm sorry, what was the first one.

21 Q. St. Vincent College?

22 A. In Latrobe. That's true. No expiration date  
23 or sticker. And Slippery Rock, the same is true  
24 there. It's a photo, but no expiration date.

25 Q. And on the next page, says five on the bottom,

1 last page we'll look at. Villanova University, no  
2 IDs, no compliant ID; correct?

3 A. Correct. There's no expiration date or  
4 sticker.

5 Q. Washington & Jefferson College south of  
6 Pittsburgh, correct?

7 A. That's correct, yes.

8 Q. And then Widener University?

9 A. Chester County. Yes. No expiration date or  
10 sticker.

11 Q. Now, I believe when you testified a couple of  
12 weeks ago -- it does seem like we have been here  
13 forever, doesn't it? -- you indicated that the  
14 Department of State had not taken, made a systematic  
15 effort to track the various care facilities -- and  
16 there's three different kinds -- to see which of those  
17 were issuing compliant IDs; is that right?

18 MS. HICKOK: Your Honor, it  
19 mischaracterizes his prior testimony.

20 THE COURT: Overruled.

21 THE WITNESS: Yeah, I believe I said I  
22 was not aware if we undertook a systematic -- if it  
23 was done, it was done by someone else.

24 BY MR. WALCZAK:

25 Q. So, for instance, you're not aware of a chart

1 similar to the one we just looked at for colleges and  
2 universities that was presented on these various  
3 facilities for the elderly and disabled?

4 A. I know there's a list on our website of those  
5 that qualify, and certainly a lot goes on in regard to  
6 Act 18. I don't necessarily -- I'm not responsible  
7 for all of it.

8 Q. Right. And the list that you mentioned,  
9 there's actually three lists which you have sent to  
10 the counties which has all of the facilities that are  
11 licensed either by Department of Health or the  
12 Department of Public Welfare and I believe the  
13 Department of Aging; is that correct?

14 A. Correct. We have provided copies of the list  
15 directly to the counties; and to my knowledge, they  
16 have been and are still posted on our website.

17 Q. And those are all -- that list is of  
18 institutions that are eligible, correct, to issue IDs?

19 A. Correct, yes.

20 Q. It's not a list that in any way shows which  
21 one of those facilities actually issue IDs that could  
22 be used for voting; is that right?

23 A. It is not.

24 Q. Now, did -- are you aware of somebody from the  
25 Department of State calling Bethany Village last

1 Thursday?

2 A. I became aware of it as I was sitting in the  
3 courtroom.

4 Q. Was that done at your direction?

5 A. It was not, no.

6 Q. Do you know who called Bethany Village from  
7 your agency?

8 A. I don't. I didn't look into it after I left  
9 here.

10 Q. But you're aware of somebody from the  
11 Department of State contacting Bethany Village to find  
12 out if they issue IDs last Thursday?

13 A. I am aware of -- I have heard what everyone  
14 else heard in the courtroom. I didn't verify any  
15 information. I didn't need to.

16 Q. Since you testified on July 18th, has the  
17 Department of State undertaken any effort to determine  
18 which of the eligible care facilities issues compliant  
19 IDs?

20 A. I don't know directly if that was done; but  
21 there may have been an effort to obtain the list, yes.

22 Q. And who would be making that effort?

23 A. I -- if I -- I don't know for sure, but I  
24 would expect the person who has dealt with this over  
25 the past year has been Megan Sweeney at the Department

1 of State outreach to universities and these  
2 institutions.

3 So, I would expect if that were being done, it  
4 would be done by Megan or by someone at Megan's  
5 direction.

6 Q. Do you know whether Miss Sweeney has been  
7 doing that over the last couple of weeks.

8 A. I don't know. It's -- I couldn't say for sure  
9 whether it's been done or not.

10 Q. All right. I want to clarify a point about  
11 absentee ballots. There was a suggestion in your  
12 testimony last Thursday that the absentee ballot  
13 process mirrors the voter registration process; is  
14 that correct? In terms of the kinds of IDs that you  
15 need, right?

16 A. It -- yeah, generally, it does. In that it  
17 requests an absentee ballot -- under the Act 18  
18 requirement, an absentee voter would provide their  
19 driver's license or the last four digits of their  
20 Social Security number.

21 Q. And the suggestion, I think that I at least  
22 got, was that you had to have one of those two; and  
23 that's actually not accurate; is it?

24 A. No, I don't -- if I suggested that, it was --  
25 that was incorrect; and I believe what I have said is

1 that you either have to have a driver's license, the  
2 last four digits of the Social Security number, or you  
3 have to affirmatively say that you have neither. You  
4 have not been issued a Social Security number --

5 Q. Right.

6 A. -- or a driver's license.

7 Q. And that's my recollection of your testimony  
8 from the 17th, is that if you go to, for instance,  
9 PennDOT to get an ID, and they ask you for the last  
10 four digits of your Social Security, if you have an ID  
11 and don't know it or can't remember it, then the  
12 process stops and you have to go retrieve that number;  
13 correct?

14 A. Right. You'd have to contact whoever you need  
15 to to get the number; but you have to be able to say  
16 that you don't have one, not that you didn't bring it  
17 with you.

18 Q. But if you don't have one, whether it's to  
19 register to vote or to vote absentee, you can vote  
20 with just your voter registration number?

21 A. Correct. You have to affirm that you do not  
22 have either one of those.

23 Q. Now, there was some discussion again last  
24 Thursday about some exemptions for seniors and for  
25 veterans, and there was discussions of some federal

1 laws and some state statutes that impact on those two  
2 categories of voters.

3 Now, you're not suggesting that there is some  
4 exemption under either federal or state law for  
5 veterans to have to produce ID at the polls; is that  
6 correct?

7 A. Not generally, no, not veterans.

8 Q. So, for the military, the exemption is for  
9 folks who are stationed overseas and they can get an  
10 absentee ballot without any ID; correct?

11 A. Correct. Those are individuals who fall under  
12 the Uniformed and Overseas -- UOCAVA.

13 Q. And in fact those folks would have their  
14 military IDs which are compliant anyway, correct?

15 A. They would have military IDs during active  
16 duty for sure.

17 Q. And if you are a veteran, and you're  
18 hospitalized here in Pennsylvania, you can vote  
19 absentee; correct?

20 A. I believe the term used is hospitalized or  
21 bedridden. And yes, you can vote absentee, and you're  
22 exempted under the state law of UMOVA.

23 Q. But there's no general exemption for veterans  
24 otherwise who are not hospitalized or active military  
25 overseas from having to show ID, correct?

1 A. Correct. They're not -- they're not --  
2 there's no exemption other than the ones covered under  
3 the laws referenced in Act 18.

4 Q. And similarly, there's no exemption for people  
5 over 65 to have to show ID; correct?

6 A. Generally, for people over 65, no. It would  
7 be individuals who are 65 or older, and assigned to an  
8 inaccessible polling location.

9 Q. And those individuals can vote by what's known  
10 as alternative ballot, correct?

11 A. They can, yes.

12 Q. And I think you said there's about 12,000 of  
13 those statewide?

14 A. No, I believe we were discussing permanent  
15 absentee voters. That number is 12,000.

16 Q. Do you know how many of those alternative  
17 ballots there are?

18 A. I don't recall how many alternative that --  
19 the overall number of alternative ballots that were  
20 cast in each specific election.

21 Q. But for an alternative ballot, you in fact  
22 have to be over 65, or disabled, and that has to be  
23 verified or certified by a physician; correct?

24 A. Yes, I believe it does; yes.

25 Q. And you have to be assigned to a polling place



1 that's not accessible under the Americans with  
2 Disabilities Act, correct?

3 A. As I understand it, if you are disabled, you  
4 qualify, under the law. If you're 65 or older, you  
5 have to be assigned to an inaccessible polling place.

6 If you're disabled you qualified no matter  
7 what to vote by absentee or alternative ballot under  
8 both federal and state law.

9 Q. But the disability has to be that you can  
10 either not get to a polling place, or are you unable  
11 to operate the machine; correct?

12 A. Generally, that is -- I believe that's the --  
13 those are the words used in the Election Code.

14 Q. It's not the fact just that you are disabled;  
15 it's that your disability prevents you from either  
16 attending the polling place or voting on the machine?

17 A. I believe that's how the statute is formed,  
18 yes.

19 Q. Let's have Exhibit 1433.

20 I show you what's been marked as Petitioners'  
21 Exhibit 1433. You will see this is a series of IDs  
22 for a gentleman named David Proctor. Do you see that?

23 MS. HICKOK: Your Honor, he hasn't  
24 testified that he has any knowledge of this document.  
25 It wasn't part of direct at all.

1 MR. WALCZAK: Your Honor, that's not  
2 going to be important for my questions.

3 MR. KEATING: Well, then take it down.

4 THE COURT: We'll proceed. Go ahead.

5 BY MR. WALCZAK:

6 Q. What I want to ask you, Mr. Marks, is if you  
7 could look at the -- there's three IDs on the first  
8 page, there's an ID on the second page, and then the  
9 back of the second page ID is on the third page.

10 Could you look at these and tell me whether  
11 any of these IDs could be used for voting?

12 A. Certainly the pool membership and the monthly  
13 pass would not. It's hard to tell from the United  
14 States Coast Guard, a branch of the military. It  
15 looks like some of the information in the first one on  
16 the first page that bears what appears to be the seal  
17 -- the raised seal of the Commonwealth. I can't tell  
18 what may be above the border. It's hard to  
19 distinguish whether that's issued by a state agency or  
20 by a government agency.

21 Q. It says United States Coast Guard near the  
22 top, correct?

23 A. It does.

24 Q. And is that considered a military ID under the  
25 Act 18?

1 A. I also see U.S. Merchant Marines document.

2 So, it does appear to be a military ID of some sort.

3 Q. There's no expiration date on this?

4 A. I can't tell what's been redacted there. It  
5 appears date of birth for sure, and address; but I  
6 don't -- I do not see an expiration date on it.

7 Q. And I mean, there are some redactions, but the  
8 preprinted information designating what the  
9 information is, is still visible there; isn't it?

10 A. It appears to be, yes.

11 Q. So you have -- looks like it says Z or BK  
12 number; do you see that?

13 A. I do, yes.

14 Q. Date of birth, place of birth and citizenship  
15 and then home address; correct?

16 A. Correct.

17 Q. So, there's no expiration date on here;  
18 correct?

19 A. Yes, I'm going to assume that the card ends  
20 right below the signature.

21 Q. And in fact, the other way that a military ID  
22 could be compliant is if it says "this ID never  
23 expires"; correct?

24 A. Correct.

25 Q. But it has to affirmatively say that; is that

1 right?

2 A. Yeah, I believe there would have to be some  
3 indication on the card that is indefinite or that it  
4 never expires.

5 Q. So, none of these four IDs would allow  
6 Mr. Proctor to vote on Election Day if Act 18 was in  
7 effect; is that right?

8 A. Based on what's represented on this exhibit,  
9 that would be correct; yes.

10 Q. Let's have Exhibit 2134. I show you what's  
11 marked as Petitioners' Exhibit 2134. Do you recognize  
12 this?

13 A. Yes, it appears to be the affirmation of  
14 indigence.

15 Q. Now, it may be a little bit confusing because  
16 there's a couple of affirmations of indigence that are  
17 relevant to Act 18; is that right?

18 A. Yeah. I believe there's one that would go  
19 along with the request for the ID, and then there's  
20 this -- this particular one that we're looking at here  
21 is the one provided at the polling place or for the  
22 voter to cast a provisional ballot.

23 Q. This is in fact a form produced by the  
24 Department of State on August 2nd, 2012; is that  
25 right? If you look at the bottom there.

1 A. That's -- yes, that's correct.

2 Q. And is this the form that would still be in  
3 effect for someone to affirm indigency on Election  
4 Day, if the law goes into effect?

5 A. Yes. I don't recall that there have been any  
6 updates made to this since last August.

7 Q. Now, I want to direct your attention to the  
8 top paragraph there. It says, "I declare under oath  
9 or affirmation that"; do you see that?

10 A. I do, yes.

11 Q. And that it says that the person who  
12 individually appeared before the election board on  
13 that date to cast an individual ballot, it's the same  
14 person; correct?

15 A. Correct, yes.

16 Q. And that they do not possess any form of proof  
17 of identification, correct?

18 A. Correct, yes.

19 Q. And that in the last sentence there, it says,  
20 they should be allowed to vote without an ID because  
21 "I am indigent." Did I read that correctly?

22 A. You did, yes.

23 Q. And then there's the word "and"; do you see  
24 that?

25 A. Yes.

1 Q. "Unable to obtain proof of identification  
2 without the payment of a fee;" is that right?

3 A. Correct, yes.

4 Q. So, in fact for a person to claim that they  
5 should be allowed to vote without an ID on Election  
6 Day, they have to affirm under oath that they are both  
7 indigent and unable to obtain proof of identification  
8 without paying a fee; is that correct?

9 MS. HICKOK: Your Honor, I object to  
10 the request for a legal conclusion.

11 THE COURT: Overruled.

12 THE WITNESS: That's correct, yes.

13 BY MR. WALCZAK:

14 Q. Now, if we could look at Respondents' Exhibit  
15 78, which I think we have already looked at this  
16 morning, it's the poll worker guide. It looks like  
17 this.

18 Now, if you could look at the first page of  
19 this, Mr. Marks, please. I believe you testified that  
20 this was an unprecedented mailing, at least  
21 unprecedented in your tenure, directly from the  
22 Department of State to all poll workers to give them  
23 supplemental information about the voter ID law; is  
24 that correct?

25 A. Correct, yes.

1 Q. Because normally the training of poll workers  
2 and other elections officials is done at the county  
3 level by the counties, correct?

4 A. Correct.

5 Q. The Department of State does not have direct  
6 communication with the poll workers?

7 A. Correct. We are not -- it's not within our  
8 purview to train poll workers directly. That  
9 authority is given to the County Boards of Elections.

10 Q. Now, if you will go to the third page, and at  
11 the bottom, it says, page two of six.

12 A. Yes.

13 Q. And at the bottom there, it says, "what if a  
14 voter cannot afford to obtain acceptable photo ID?"  
15 Do you see that?

16 A. I do, yes.

17 Q. There in the second line, it says, "in order  
18 for the provisional ballot to count, the voter must  
19 within six days after the day of the election provide  
20 the County Board of Elections with an affirmation by  
21 mail, electronically or in person that the voter is  
22 the same person who cast the provisional ballot, and  
23 that the voter is indigent and therefore unable to  
24 obtain proof of identification without the payment of  
25 a fee." Correct?

1 A. Correct.

2 Q. And the affirmation referred to in that  
3 sentence is the one that we just looked at, correct?

4 A. That's correct, yes.

5 Q. Now, let's look at the last sentence in that  
6 paragraph under "what if a voter cannot afford to  
7 obtain acceptable photo ID." The first clause there  
8 reads, "please note that the voter ID law does not  
9 place any burden on poll workers to make a  
10 determination about whether a voter is indigent."

11 Did I read that correctly?

12 A. That's correct, yes.

13 Q. Now, you're not suggesting that poll workers  
14 should overlook somebody's affirmation that they're  
15 indigent and can't afford to get ID; are you?

16 A. No, I'm not suggesting they should overlook  
17 it. What is meant here is that it was to give them  
18 some peace of mind that the burden was not falling  
19 entirely upon them to make a -- some determination as  
20 to whether that affirmation was true.

21 It's another way of saying that it should be  
22 taken on its face that it's true.

23 Q. So, if somebody lies about them not being able  
24 to afford to get ID, that's not something that is  
25 going to somehow result in a prosecution of the poll



1 worker; correct?

2 A. No. The -- right. The poll worker -- it's --  
3 there's no burden on the poll worker to find out  
4 whether the person is affirming truthfully.

5 Q. And continuing that sentence, it says,  
6 "because a process is in place that allows for the  
7 challenging of provisional ballots during the county's  
8 official canvass;" is that right?

9 A. Correct.

10 Q. And I believe your testimony from two weeks  
11 ago was that in fact, because the affirmation is  
12 worded that it's not just that you're indigent, but  
13 that you cannot afford to get the ID, that it could  
14 be --

15 MS. HICKOK: Your Honor --

16 BY MR. WALCZAK:

17 Q. -- challenged if somebody in fact signed that  
18 affirmation; correct?

19 MS. HICKOK: -- mischaracterizes his  
20 prior testimony.

21 THE COURT: Overruled.

22 THE WITNESS: Right. It could be  
23 challenged. The provisional ballot could be  
24 challenged if there's evidence to suggest that the  
25 individual was able to obtain the ID without the

1 payment of a fee.

2 Or in other words, I guess, the way I  
3 would say it, if -- trying to think of an example. If  
4 somebody, for example, goes shopping three days a week  
5 at Macy's, drives around in a Lexus and then shows up  
6 at the polling place on Election Day and signs this  
7 affirmation, I would think that somebody could  
8 probably make a strong case that that individual did  
9 not truthfully affirm those facts.

10 That process is in place. Any  
11 provisional ballot can be challenged, and the  
12 determination at the County Board of Elections can be  
13 challenged by interested parties.

14 BY MR. WALCZAK:

15 Q. Going back to the affirmation, the second part  
16 of that condition is that you are unable to obtain  
17 proof of identification without the payment of a fee;  
18 correct?

19 A. Correct.

20 Q. Now, there's no fee to get a PennDOT secure  
21 voter note, is there?

22 A. There's no fee for the card itself, no.

23 Q. And there's no fee for the Department of State  
24 ID, which people can use to vote; correct?

25 A. Right. There's no charge for generation of

1 the card, no.

2 Q. So, would you agree with me that that would  
3 provide an opportunity for people to contest a  
4 provisional ballot that said I cannot afford a fee for  
5 an ID?

6 A. It may. I can't say whether that would be  
7 used as a sole basis for a challenge.

8 Q. Let's look at Petitioners' Exhibit 1515.

9 I show you what's been marked as Petitioners'  
10 Exhibit 1515. Is this the affirmation that a voter  
11 must sign in order to apply for a free Department of  
12 State ID?

13 A. Yes, it appears to be.

14 Q. And you have to --

15 MS. HICKOK: Your Honor, let the date  
16 be noted for the record, please.

17 THE COURT: Certainly.

18 BY MR. WALCZAK:

19 Q. So, the date at the bottom says 2/14/13; is  
20 that correct?

21 A. That's correct. February 14th of this year.

22 Q. Does this differ in any material way from the  
23 affirmation that would have been used before this?

24 A. In a material way? It does differ slightly,  
25 in an affirmation prior to this there was a

1 clarification made regarding the next election.

2 In other words, what the person was affirming,  
3 when they would expect not to have ID, qualifying ID.

4 Q. And so, this was to prevent the problem we saw  
5 last fall where somebody had an ID, some form of  
6 PennDOT ID that could be used for voting, but it would  
7 not expire until maybe a few days before Election Day;  
8 correct?

9 A. Correct. If they showed up a month before the  
10 election, for example, and the ID was valid at that  
11 point, but would expire at some point before the  
12 November election, then.

13 Q. There's nothing on here that requires  
14 indigence, correct?

15 A. No. There's no reference to indigence.

16 Q. When somebody comes in to apply for the  
17 Department of State ID, you do the SURE registration  
18 check that you testified about earlier today; correct?

19 A. That's correct, yes.

20 Q. Now, when somebody comes in for a PennDOT  
21 secure non-driver ID, the person only has to say that  
22 they need this for voting, not that they're  
23 registered; correct?

24 MS. HICKOK: Your Honor, he's asking  
25 about PennDOT procedures on...

1 THE COURT: I'll let him answer, if he  
2 knows.

3 THE WITNESS: My understanding of the  
4 process is that they would just need to affirm that  
5 they need the ID for purposes of voting.

6 BY MR. WALCZAK:

7 Q. So, they don't have to, in fact, affirm that  
8 they are registered; correct?

9 A. That's correct, yes.

10 Q. And so, when you have the background  
11 documents -- the -- which would be the raised seal  
12 birth certificate, the official Social Security card,  
13 and two proofs of residence -- then you can just come  
14 in and say, I need this for voting, and they will  
15 issue that card, and there's no SURE database  
16 registration check done at that time; correct?

17 A. That's correct, yes.

18 Q. But they can also apply to register to vote at  
19 that time, if they're not registered; correct?

20 A. They can, yes.

21 Q. And that application is done electronically;  
22 is that right?

23 A. It is, yes.

24 Q. So, the difference is, because these are  
25 individuals who have shown these documents that

1 support who they claim they are, they're getting a  
2 secure ID, and so, they fill out on a computer screen  
3 at PennDOT the application for registration; correct?

4 A. Correct. Effectively, the HAVA verification  
5 that we have referred to has already been done because  
6 PennDOT has verified that information through the  
7 production of the documents, and their own  
8 verification of that information.

9 Q. So, once that electronic application is  
10 completed, where does that go from PennDOT?

11 A. That electronic application comes to the  
12 Department of State in a batch file, and it has a  
13 county ID on it.

14 So we parse those out -- along with the  
15 attached digitized signatures, we parse them out and  
16 deliver them to the county election offices through  
17 SURE as a batch of electronic applications to be  
18 processed.

19 Q. And how quickly is that done?

20 A. It's -- the -- we received the file, the  
21 initial applications. Those were folks newly  
22 registered. And we get that file three days a week,  
23 and it's sent to the counties overnight.

24 So, if we get, for example, the file on Monday  
25 night from PennDOT, by Tuesday morning, it will be in

1 the county -- in each county's individual workflow.

2 Q. Because this is an electronic application, is  
3 it easier for the counties to enter that data into the  
4 SURE database?

5 A. It is. The data is already entered. The  
6 address, the high level information is already  
7 entered. Obviously, the HAVA verification has already  
8 been done because the driver's license number is  
9 resident there. And the digitized signatures is  
10 contained in the files. So there's no need to clip a  
11 signature from a paper document. So, it's much more  
12 efficient.

13 Q. So, just to be clear, there are two different  
14 processes that are used by PennDOT and Department of  
15 State, depending on which ID you apply for; correct?

16 A. Correct. And the key difference is the HAVA  
17 verification process.

18 Q. So, if you apply for a PennDOT ID because you  
19 have the documentation to get that secure ID, it's  
20 done -- all done electronically; right?

21 A. Correct, yes.

22 Q. And, but when you're applying for the  
23 Department of State ID, then we're into this process  
24 that you described earlier this morning; is that  
25 right?

1 A. That's correct, yes.

2 Q. So, you have to do the SURE database check;  
3 correct?

4 A. Right. You have to do the SURE database  
5 check, correct.

6 Q. And the voter registration mail application is  
7 filled out in hard copy at PennDOT, correct?

8 A. That's correct, yes.

9 Q. And then it's sent by U.S. mail to the  
10 Department of State, correct?

11 A. It is, yes.

12 Q. And it's supposed to be sent along with the ID  
13 that PennDOT has made, but not given to the voter  
14 because they couldn't verify the voter registration;  
15 correct?

16 A. That's right, yes.

17 Q. And then Department of State sends that by  
18 U.S. mail to whatever county of residence is, for  
19 entry into SURE; correct?

20 A. We actually send that by UPS as well.

21 Q. Is that overnight mail?

22 A. It's not overnight mail. It's two- to  
23 three-day mail. In most cases, it's there by the next  
24 day.

25 Q. So, there's two steps on that Department of



1 State ID where you send in the VRMA, which is short  
2 for voter registration mail application?

3 A. Right.

4 Q. Where there's a transmission by mail, correct?

5 A. That's correct, yes.

6 Q. And not electronic mail?

7 A. Correct.

8 Q. Now, you testified two weeks ago that  
9 presidential elections are just different; is that  
10 right?

11 A. They are. They do have a different dynamic.

12 Q. Because the volume is far larger than any  
13 other election cycle, correct?

14 A. Correct, yes.

15 Q. And the burden on counties to do the entry of  
16 the new voter registrations is much greater, uniquely  
17 greater during presidential elections; correct?

18 A. It is, yes.

19 Q. And there's a couple of reasons for those.  
20 One is that you just have way more people who are  
21 interested in voting and are submitting their  
22 registrations, correct?

23 A. Right. We see greater interest among  
24 potential voters, first-time voters especially, in a  
25 presidential election year than you do in any other

1 election cycle.

2 Q. And you also have the phenomenon of  
3 third-party voter registration drives, correct?

4 A. Correct, yes.

5 Q. So, these could be done by the political  
6 parties, by the campaigns; correct?

7 A. Correct.

8 Q. They could be done by groups like the League  
9 of Women Voters, correct?

10 A. Yes.

11 Q. And these would be volunteers or not  
12 volunteers who go out and try to find people who are  
13 not registered, and encourage them to register, have  
14 that applicant fill out the form, and then the  
15 volunteer or the canvasser collects that and they hold  
16 it and bring a batch in to the counties; correct?

17 A. Correct. That's how it works in most cases.

18 Q. One of the difficulties that the counties have  
19 seen over the years is that there are large batches --  
20 large in volume -- of these voter registrations that  
21 are brought in just before or at the deadline, the  
22 registration deadline; is that correct?

23 A. Yes, in some cases that's true.

24 Q. I believe you testified that it could be two  
25 to three weeks for those registrations to be entered

1 into the SURE database by the counties, correct?

2 A. It's different. I believe I testified to the  
3 fact that it's different from county to county.  
4 Obviously, every county's experience isn't the same as  
5 every other county's experience.

6 Certainly, the southeastern part of the state  
7 especially, we have seen over the years that the  
8 volume is much higher there, and that -- and that  
9 certain counties struggle to get applications entered  
10 within that first ten- to 14-day period after the  
11 close of the registration, but that's not universal  
12 experience, necessarily.

13 Q. But I believe you identified the two counties  
14 as having maybe a longer lag time as Allegheny and  
15 Philadelphia; is that correct?

16 A. I know in Philadelphia specifically -- I don't  
17 know that Allegheny -- every presidential election  
18 cycle or every election cycle has a hard time.

19 2008 I believe in Chester County had a large  
20 backlog. So it wouldn't necessarily always be those  
21 two counties, but --

22 Q. So, it could be other counties in addition to  
23 Allegheny and Philadelphia?

24 A. It's typically --

25 MS. HICKOK: Mischaracterizes his prior

1 testimony.

2 THE WITNESS: Yeah. What I'm saying is  
3 it may not be a problem in Allegheny in every election  
4 cycle. The trend has been that Philadelphia is, you  
5 know, where the majority of this occurs; and  
6 therefore, the one that gets the most backlogged.

7 Allegheny County does experience some  
8 backlog, but I don't know that it's significantly  
9 different than some of the southeastern counties that  
10 surround Philadelphia.

11 BY MR. WALCZAK:

12 Q. You say you don't know. Are you saying that  
13 Allegheny County processes these faster than, say, two  
14 weeks during presidential elections at the deadline?

15 A. I don't know if they process all of them  
16 faster than two weeks. I'm making a distinction  
17 between Philadelphia, who -- you know, that county is  
18 literally days before the election is still entering  
19 the voter registration applications. They are unique  
20 among all counties, and have been in the last two  
21 presidential elections.

22 But Allegheny has -- Allegheny County has  
23 backlog. I don't know that it's any different than  
24 some of the southeastern counties that experience the  
25 same thing.

1           So, for them, it may be two weeks after the  
2     deadline, whereas Philadelphia is going past three  
3     weeks after the deadline.

4     Q.       Now, the import of that is that if, for  
5     instance, as in 2012, the registration deadline was  
6     October 9th, if we go three weeks, which is 21 days --  
7     that's the math I think I can do -- that puts you at  
8     October the 30th; is that right?

9     A.       Correct, yes.

10    Q.       So, and the importance of that is that the  
11    person's voter registration does not show up in the  
12    SURE database until October 30th; correct?

13    A.       Correct. If the application is not processed  
14    and approved until that point, then, yes, it will not  
15    show up in the SURE database.

16    Q.       And you testified a moment ago that in  
17    Philadelphia they're still entering these  
18    registrations literally days before the election; is  
19    that your testimony?

20    A.       Yes. That's recent experience, certainly, in  
21    2012.

22    Q.       So, until that voter is entered into the SURE  
23    database, there can't be a verification that they're  
24    registered; correct?

25    A.       Correct. Until the -- until that's -- that

1 application that was submitted is approved, there  
2 can't be verification.

3 Q. And you cannot mail the Department of State ID  
4 until that approval has occurred, correct?

5 A. Correct, yes.

6 Q. So, you can have a person who comes in to get  
7 a DOS ID at PennDOT in early October, but they were  
8 part of a registration drive at the end of September.

9 Do you follow me?

10 A. Yes.

11 Q. And when the PennDOT person looks in the SURE  
12 database in early October, there can't be any  
13 verification; correct?

14 A. I want to make sure --

15 MS. HICKOK: I object to the form of  
16 the question, Your Honor.

17 MR. WALCZAK: I'm sorry.

18 BY MR. WALCZAK:

19 Q. And the PennDOT worker would call the  
20 Department of State, and the Department of State  
21 worker can't verify the registration because it's not  
22 in there, yet. Correct?

23 A. Correct. The PennDOT worker at this point is  
24 not doing the verification directly. They would be  
25 contacting the helpdesk to get the verification.

1 Q. So, even though when that person's  
2 registration eventually gets entered, they will be  
3 eligible to vote in November; correct? If it's before  
4 -- if it's delivered to the county --

5 A. If their application was delivered -- if their  
6 application was either postmarked by the deadline or  
7 if it was delivered by hand on or before the deadline,  
8 then it would be -- that person would be a qualified  
9 voter at the time the application was approved.

10 Q. But if that voter then went to PennDOT prior  
11 to entry into the SURE database, they would leave  
12 without a DOS ID; correct?

13 A. Correct. That card would come to us until  
14 that verification were complete.

15 Q. And that's under the new streamlined process  
16 that started September 25th, correct?

17 A. That's correct, yes.

18 Q. And so, in fact, DOS, Department of State,  
19 would not be able to mail that card to the person  
20 until their registration shows up in the SURE  
21 database; correct?

22 A. Correct.

23 Q. So, in the case particularly of Philadelphia  
24 voters, that might not be until just days before the  
25 election; correct?

1 A. Correct, yes.

2 Q. Now, there's another issue in checking these  
3 registrations in the SURE database besides the lag  
4 time and having them entered at the county level, and  
5 that's something that you referred to as legacy data;  
6 is that correct?

7 A. Legacy data are data from the counties'  
8 previous voter registration database.

9 Q. So, the SURE database started in 2006?

10 A. By January of 2006, all 67 counties were on  
11 SURE.

12 Q. I believe you testified on July 17th that the  
13 process was really looking forward to try to get  
14 uniformity of the data going forward; is that correct?

15 A. Yeah. I think -- I think -- that's not to say  
16 there was no effort made to get uniformity going in;  
17 but certainly, there are limitations.

18 So, it was focused mostly on point forward  
19 getting uniformity, yes.

20 Q. And prior to 2006, each county did what it did  
21 to enter the data and maintain the data; correct?

22 A. Correct. As I said, the counties were phased  
23 in over an almost three-year period of time. Some  
24 counties had already been in SURE, using the SURE to  
25 maintain their records, but it wasn't complete. The



1 picture wasn't complete until Philadelphia came on in  
2 December of 2005.

3 Q. And if I recall, your testimony was that you  
4 were focused on getting the data right moving forward,  
5 so you didn't make an effort to harmonize that old  
6 data at the time; correct?

7 MS. HICKOK: Your Honor,  
8 mischaracterizes the prior record.

9 THE COURT: He can answer.

10 THE WITNESS: I don't think I -- as I  
11 just said, I don't think -- that's not to say that the  
12 Department at the time didn't attempt to provide  
13 uniformity coming in; but there were limitations  
14 because of the variety of different databases.

15 So, the system was very much designed  
16 to, to the extent possible, to insure uniformity  
17 moving forward.

18 BY MR. WALCZAK:

19 Q. Hence, the problem we identified of our  
20 94-year-old voter, Helen, from Schuylkill County. Do  
21 you recall her? Registered in 1944, and do you recall  
22 my questions about that?

23 A. Correct, yes.

24 Q. And the folks in your shop could not identify  
25 her registration because when she registered in 1944,

1 it was as Mrs. John/last name as opposed to under  
2 Helen/last name; correct?

3 A. I think it was Mrs. Carl is how she was  
4 registered, but I -- I don't know that that was  
5 necessarily the lack of uniformity or an issue with  
6 the legacy system.

7 It's a totally different first name and  
8 probably says more about the, that time in our  
9 nation's history than it does about the voter  
10 registration database.

11 Q. Sure. Yeah. And she is not going to be the  
12 only voter who would have registered during that era  
13 of our history, is she?

14 A. Certainly not, no.

15 Q. Sadly, there's fewer of those; but she's not  
16 going to be the only voter who would have registered  
17 in the fashion that she did, namely using her  
18 husband's first name. Correct?

19 A. I don't know whether she is in the database or  
20 not, but certainly, it wouldn't be surprising that she  
21 wouldn't be the only one.

22 Q. We're going to get to the exceptions in just a  
23 minute, but I want to try to put them in context here.

24 So, you've heard some big numbers over the  
25 last year thrown out about the number of voters in

1 Pennsylvania who might not have an ID to vote; is that  
2 right?

3 MS. HICKOK: Objection to the form of  
4 the question.

5 THE WITNESS: I have heard numbers.

6 BY MR. WALCZAK:

7 Q. So, for instance, one number that's out there  
8 was generated by the Department of State I believe in  
9 a press release on July 3rd, 2012, regarding the  
10 database match; do you recall that?

11 A. I do, yes.

12 Q. The headline was, "most voters have ID." Do  
13 you recall that?

14 A. Correct, yes. I believe that's how it was  
15 characterized.

16 Q. But what it identified as nine voters -- 9% of  
17 the voters could not be matched to a PennDOT ID; is  
18 that correct?

19 A. Correct. The match could not be made between  
20 the two databases, the voter registration records  
21 against PennDOT's database.

22 Q. And that was the number of 759,000; correct?

23 A. That's correct, yes.

24 Q. And in fact that 759,000 did not include  
25 another half million voters who had a PennDOT, but

1 that would have been expired by November 6, 2012;

2 correct?

3 A. It did not.

4 Q. So, in fact, that number was 1.25 million  
5 voters who could not be matched to the PennDOT ID by  
6 the Department of State and PennDOT; correct?

7 A. The numbers --

8 MS. HICKOK: Your Honor,  
9 mischaracterizes the record.

10 THE WITNESS: The number is the  
11 759,000. There was a match made, that's -- the  
12 500,000 is expiration date, analysis of the expiration  
13 date.

14 BY MR. WALCZAK:

15 Q. So, but that 500,000 is not part of the  
16 759,000; correct?

17 A. Correct.

18 Q. And those are people who had a PennDOT ID, who  
19 were expired, but less than a year, but would not have  
20 been valid for voting on November 6th.

21 A. Those were confirmed matches of individuals  
22 who, that -- are we talking now about the ones that  
23 matched the, you know --

24 Q. Well --

25 A. -- the millions that matched or the --

1 Q. -- strike --

2 A. -- the 759,000 are the ones that we could not  
3 find through the match a record in PennDOT for.

4 Q. Right. But the 500,000, you found a match?

5 A. Correct.

6 Q. But they were expired, correct?

7 A. They were -- they would be expired, I believe  
8 was the analysis by the time of the November election,  
9 so they would be expired 12 months by the time of the  
10 November election.

11 Q. And when you say expired, it's a different  
12 expiration calculation than whether it can be used for  
13 driving or some other form of ID; right?

14 A. It is. It is based on our understanding of  
15 the Act 18 requirement.

16 Q. Right. And so, what I mean by that is that if  
17 your driver's license expires on July 30th, 2013, then  
18 as of tomorrow, you can't use that to drive; correct?

19 A. Right. Unless you renew it.

20 Q. Right. But you could not use that one,  
21 correct?

22 A. Correct.

23 MS. HICKOK: Your Honor, he's not an  
24 expert in driving laws.

25 THE COURT: He's doing well.

1 THE WITNESS: I can testify to my own  
2 experience. If I do not renew my driver's license,  
3 it's expired. Unless I have a piece of paper that I  
4 may have printed off of PennDOT's website, the  
5 temporary one, I don't have a valid driver's license.

6 BY MR. WALCZAK:

7 Q. But for voting purposes, under Act 18, it's --  
8 that license has to be -- you have a year's grace, so  
9 it has to be expired by more than a year; correct?

10 A. Correct.

11 Q. And the 500,000 that were identified were  
12 folks whose license was expired for purposes of  
13 driving, so it's beyond the expiration date, but have  
14 not -- but would not be usable under November 6th to  
15 vote; correct?

16 A. I think that's a fair characterization. The  
17 analysis was the group of voters who may not -- a  
18 group of PennDOT individuals who may not by the time  
19 of the November election have a, a current valid  
20 PennDOT product.

21 Q. So that when you add those two together, it's  
22 about 1.25 million, correct?

23 A. Not arguing math, but it sounds --

24 THE COURT: Okay. Mr. Marks, as I  
25 understand it, we're trying to distinguish between

1 valid licenses and the licenses that would expire  
2 before the election date.

3 Now, under Act 18, you get one year's  
4 grace with an expired license?

5 THE WITNESS: That's correct, yes.

6 THE COURT: So, maybe you can get back  
7 to this 1.25 million voters total and explain on the  
8 record about the half million.

9 MR. WALCZAK: Your Honor, just for the  
10 record --

11 THE COURT: We may have just lost a  
12 step in the process. I'm an elderly judge.

13 MR. WALCZAK: All right.

14 BY MR. WALCZAK:

15 Q. Just for purposes of clarifying, the testimony  
16 regarding these numbers was gone over very, very  
17 carefully with Mr. Burgess from the Department of  
18 State; is that right?

19 A. Correct, yes.

20 Q. What is Mr. Burgess's first name?

21 A. Dave.

22 Q. David Burgess. So, it would be his testimony  
23 that gives the details on these numbers; but very  
24 briefly, so the 759,000 voters identified in that  
25 PennDOT match were individuals for whom -- were voters

1 in the SURE database for whom they could not find any  
2 entry in PennDOT database; correct?

3 A. Right. We couldn't find a match. We couldn't  
4 say with certainty that that was match.

5 Q. And the 500,000 were people who you found a  
6 record in the PennDOT database, but those people in  
7 fact would not have a ID suitable for voting on  
8 November 6th, because it would be expired by more than  
9 a year; correct?

10 MS. HICKOK: Your Honor, just a quick  
11 point of clarification. He said, "you found" but  
12 actually the match was done by PennDOT. It was not  
13 done by the Department of State.

14 THE COURT: Sure.

15 BY MR. WALCZAK:

16 Q. Was that right, Mr. Marks?

17 A. That's correct. They did the match. As we  
18 discussed before, their database is sensitive. They  
19 would not necessarily provide us access to that. So  
20 we provided a file for them to use to do the matches  
21 against their database.

22 And 500,000 are -- essentially, that's a group  
23 of 500,000 matches that have a question mark over them  
24 because of the expiration date.

25 Q. Right.



1 A. It may not have --

2 Q. So these are folks who had an ID but it's  
3 already expired and they haven't renewed it yet;  
4 correct?

5 MS. HICKOK: Your Honor, I believe that  
6 mischaracterizes the record.

7 THE WITNESS: I believe that's how the  
8 analysis was done, if I recall.

9 BY MR. WALCZAK:

10 Q. Are you aware of a survey commissioned by the  
11 Petitioners in this case to identify how many voters  
12 did not have ID?

13 A. I know that there was one done last summer as  
14 part of this case.

15 Q. Are you aware that that -- the number that the  
16 expert came up with was somewhere between 700,000 and  
17 over a million --

18 MS. HICKOK: Your Honor, I'm --

19 BY MR. WALCZAK:

20 Q. -- depending on whether or not the names were  
21 conforming?

22 MS. HICKOK: Object to lack of  
23 foundation.

24 THE COURT: Overruled.

25 MR. WALCZAK: I'd just ask if Counsel

1 could wait until I finish my question before posing  
2 her objection.

3 THE COURT: That would help, Counsel,  
4 if you could wait until he asks the question.

5 MS. HICKOK: Okay.

6 BY MR. WALCZAK:

7 Q. Are you aware of testimony in this court this  
8 year by Petitioners' expert, Dr. Siskin?

9 A. I am aware of that, yes.

10 Q. And do you know that he found that there were  
11 511,000 people when he matched PennDOT database with  
12 the Department of State SURE system, 511,000 voters  
13 that could not be matched to a PennDOT product; is  
14 that correct?

15 MS. HICKOK: Your Honor, I object.  
16 That mischaracterizes Dr. Siskin's testimony.

17 THE COURT: Overruled.

18 THE WITNESS: My understanding of the  
19 match that was done by Dr. Siskin or the analysis of  
20 the databases that was done by Dr. Siskin is that  
21 there were -- I believe 500,000 is accurate -- that  
22 based on the criteria that he used, he could not make  
23 a match.

24 BY MR. WALCZAK:

25 Q. You are familiar that Ms. Oyler, who I believe

1 works in your agency?

2 A. She did.

3 Q. And her estimate was that there was between 4%  
4 and 5% of voters don't have an ID?

5 A. I don't recall if that -- I didn't hear her  
6 testimony, so I don't know if that was the number she  
7 provided or not.

8 Q. And do you know that 4% to 5% of 8.2 million  
9 would be about 246,000 to 328,000?

10 A. Testing whether I can do the math in my head  
11 and percentages, but that sounds roughly correct.

12 Q. I think it's been shown that neither one of us  
13 should be trusted with the math.

14 A. Unless I have a calculator handy.

15 Q. I believe you're familiar with the fact that  
16 Secretary Aichele who actually is the head of the  
17 elections in Pennsylvania -- is that right?

18 A. She is -- yes, she is the chief -- the State's  
19 chief election official.

20 Q. And she in fact testified in front of the  
21 Pennsylvania Senate that she was interested in a  
22 Philadelphia study that found 3.5% of voters in  
23 Philadelphia didn't have ID.

24 MS. HICKOK: Objection.

25 Mischaracterizes the record and lack of foundation as

1 to this witness.

2 THE COURT: I don't know where you got  
3 that figure. I don't remember it. Is it in the  
4 record?

5 MR. WALCZAK: That's the videotape that  
6 we showed at the end of the hearing day, I think  
7 sometime last week. It was her testimony, and  
8 Respondents' counsel insisted on playing the entire  
9 additional three minutes, which actually turned into I  
10 think 13 minutes; but, yes, that is in the record.

11 THE COURT: If you can answer the  
12 question.

13 THE WITNESS: I don't recall exactly  
14 what percentage and what number of the survey she was  
15 referring to. I know she did testify before the  
16 Senate during budget hearings about the voter ID.

17 And the message I took away from that  
18 is that she was continuing -- continuing to look at  
19 it, and she was interested in getting any information  
20 that may be available.

21 BY MR. WALCZAK:

22 Q. And the lowest number that has been thrown out  
23 during any of these proceedings for people who don't  
24 have ID is 89,000; is that a number that's familiar to  
25 you?

1 A. I don't know that the number 89,000 was thrown  
2 out. I think that the -- initially based on a very  
3 quick analysis between the voting age population  
4 estimates from the U.S. Census Bureau versus the  
5 number of individuals who had a PennDOT ID; and  
6 according to PennDOT's database, PennDOT's numbers,  
7 that the number was around 1%, which I believe would  
8 be roughly 89,000.

9 Q. And you think even that number is low?

10 A. I don't know whether that number is low. I  
11 think there are certainly other estimates that suggest  
12 that that -- that the number may be higher, but I  
13 can't say what the number is.

14 Q. So, when we're talking about the IDs that have  
15 been issued since Act 18 went into effect, we're  
16 talking about 3800 Department of State IDs; is that  
17 right?

18 A. Yes. Well over 3800.

19 Q. And about 13,000 PennDOT voter IDs, is that  
20 right?

21 A. Yeah, I believe currently that number is about  
22 right.

23 Q. So, we're talking about less than 17,000 IDs  
24 that have been issued since the law went into effect,  
25 correct?

1 A. Correct, yes.

2 Q. So, when we look at the process for the State  
3 getting IDs to people who need to vote, we're talking  
4 about relatively small numbers compared to any of  
5 these estimates of how many people don't have IDs; is  
6 that right?

7 MS. HICKOK: Your Honor, I object to  
8 the characterization of it as "all IDs" as opposed to  
9 just those two particular forms of ID.

10 THE COURT: As to those particular  
11 forms of ID? Mr. Marks.

12 THE WITNESS: You know, I'm not a  
13 statistician by profession; but if you're comparing it  
14 to those estimates, and I guess it depends on which  
15 estimate you are comparing it to, if it's -- it would  
16 seem like a relatively small number, small percentage.

17 BY MR. WALCZAK:

18 Q. So, even if you compare it to 89,000, it's  
19 only about 18% of the people who are identified as not  
20 having PennDOT ID; is that right?

21 A. I would say that's actually a substantial  
22 number, 18%. I guess it really depends on whether  
23 you're a glass-is-half-empty or a glass-is-half-full  
24 person.

25 Q. Sort of like a majority of voters have ID in

1 Pennsylvania, right?

2 A. Well, what I'm saying is that almost 20% is  
3 one in five. You know, if you are comparing it to  
4 hundreds of thousands, then obviously the percentage  
5 is exponentially lower.

6 Q. All right. So, but even if under 89,000, that  
7 would mean there's still 72,000 people who don't have  
8 the ID; is that right?

9 A. Potentially, yeah. Based on that estimate,  
10 yes.

11 Q. But that's a lot higher if the estimate is a  
12 quarter million or half a million voters without ID,  
13 correct?

14 A. The percentage of the cards that have been  
15 issued out of the total universe of potential cards  
16 that could be issued, yes, it would be a small  
17 percentage.

18 Q. All right. Let's talk about the exceptions  
19 process.

20 So, we're talking about a total of 3,830 IDs  
21 that -- DOS IDs that have been issued since August  
22 27th; is that right?

23 A. Correct, yes.

24 Q. And in the months leading up to the election,  
25 it was about 3400 in September, October, November; is

1 that right?

2 A. That sounds about right, yes.

3 Q. So, we're talking about, compared to the total  
4 number of people who don't have a PennDOT ID or  
5 potentially don't have a PennDOT ID, this is a --  
6 we're talking about only 3400 of those; right?

7 A. Right. 3400 of the -- again, if we're going  
8 back to the comparisons with the estimates.

9 Q. And you had a month from August 27th to  
10 September 25th to figure out the implementation for  
11 the DOS ID; is that correct?

12 A. Well, we had a month from the -- from the  
13 moment that we started that process, we had a month  
14 until the new process at the end of September began.

15 I'm not sure I understand the question. It  
16 was a month between when we started -- when the  
17 Department of Transportation first started issuing DOS  
18 IDs on our behalf to the date when the liberal access  
19 process was put into place.

20 Q. Right. But let's back up. So, the Department  
21 of State ID was first discussed at the beginning of  
22 June; correct?

23 A. I believe that time frame is right.

24 Q. So, that was in response to Attorney Kotula's  
25 email identifying those four categories of voters who



1 may be having trouble getting a secure ID because they  
2 didn't have the documentation; correct?

3 MS. HICKOK: Your Honor,  
4 mischaracterizes the record and refers to privileged  
5 information.

6 THE COURT: And what's the privileged  
7 information that you are trying to protect?

8 MS. HICKOK: He is talking about advice  
9 of counsel, and he referred to it as advice of  
10 counsel.

11 MR. WALCZAK: It's in the record, Your  
12 Honor. We had this discussion.

13 THE COURT: Just rephrase the question.  
14 Ask him.

15 BY MR. WALCZAK:

16 Q. So, there's a memo from Miss Kotula that  
17 identified four categories of folks who might have  
18 trouble getting secure IDs because they didn't have  
19 the documentation; correct?

20 A. I don't recall it as a memo. It might have  
21 been an email. If the document has been presented, I  
22 could take a look at it and refresh my memory.

23 Q. Fair enough. I do believe it was an email.

24 And then the actual ID was announced by the  
25 Department of State in -- just before the start of the

1 trial in this case last July; is that correct?

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

3 Q. And the announcement was that we will be ready  
4 to go at the end of August, correct?

5 A. Correct, yes.

6 Q. And the launch date for the new ID was August  
7 27th, correct?

8 A. It was, yes.

9 Q. So, when the new streamlined process started,  
10 you had two months leading up to the launch date, plus  
11 a month of actual implementation; correct?

12 A. Right. From the time that we initially  
13 discussed it to generating the cards, to the liberal  
14 access process, that's a two-month period of time;  
15 yes.

16 Q. Now, the new process, this new liberal access  
17 process actually started on September the 25th; did it  
18 not?

19 A. Yes, I believe that date is correct.

20 Q. So, in fact, there were memos circulated in  
21 the preceding days announcing that the, starting on  
22 the morning of the 25th, that PennDOT was to begin  
23 using this liberal access process; correct?

24 A. Correct, yes.

25 THE COURT: Why was this a liberal

1 access? What were the changes that you decided to  
2 make?

3 THE WITNESS: The changes that we made,  
4 we previously -- the individual had to provide proof  
5 of residence, for example, along with their Social  
6 Security number.

7 The individual was not given the card  
8 at the time. A verification was made; no card was  
9 generated. So once verification was made, they would  
10 get a letter instructing them to go back to PennDOT.  
11 So, it would be two trips necessary to PennDOT to  
12 ultimately get the DOS ID card.

13 Those are the -- those are the two  
14 substantive changes to the process. There was no  
15 additional documentation, aside from providing your  
16 Social Security number; and the card would be issued  
17 at the time you -- your photo would be taken at the  
18 time the card would be issued at the time that you  
19 showed up, to avoid the possibility of having to make  
20 a second trip in person.

21 MR. WALCZAK: Your Honor, if I might  
22 inquire, because I actually think there's a third  
23 change that went along with that.

24 BY MR. WALCZAK:

25 Q. Mr. Marks, was there a third change that

1 eliminated the exhaustion requirement?

2 A. Yes. I'm sorry. I -- yeah, the exhaustion  
3 requirement being that previously there was an effort  
4 made in exchange between the applicant and PennDOT to  
5 insure that they could not obtain the PennDOT ID.

6 I guess the best way to frame it, I think it  
7 was discussed this way last year, is that the DOS ID  
8 was -- was sort of the ID of last resort, not  
9 necessarily the ID of preference.

10 Q. But when you went in, if you did not certify  
11 that you have tried and been unable to get a PennDOT  
12 ID, you were forced to apply for that secure ID and  
13 exhaust that process before you were eligible to get  
14 the DOS ID; correct?

15 A. Right. It was a process of elimination. You  
16 basically had to attempt or at least answer a series  
17 of questions about whether you could obtain a secure  
18 ID before you were given an opportunity to obtain a  
19 DOS ID.

20 Q. And the problem was that that often required  
21 folks to take more than one trip to PennDOT to get the  
22 ID, correct?

23 A. Correct. I think -- you know, to the extent  
24 that they didn't have the documentation or couldn't  
25 recall whether they had the documentation; yes.

1 Q. So, the importance of the new streamlined  
2 process that started on September 25th was that the  
3 person could go in and take one trip; correct?

4 A. Correct, yes.

5 Q. So, they didn't have to exhaust. They could  
6 just come in and say, "I don't have an ID to vote, and  
7 I need one." Correct?

8 A. Correct. As I said, the two substantive  
9 changes as a practical matter was the second trip was  
10 eliminated, and the individual did not need to bring  
11 in any additional documentation aside from their  
12 Social Security number, if they had one.

13 Q. And the one kind of holdup at this point that  
14 prevented people from getting that ID, when they went  
15 to PennDOT on that first visit, was the inability to  
16 verify the voter registration in the SURE database;  
17 correct?

18 MS. HICKOK: Mischaracterizes the  
19 record.

20 THE WITNESS: Again, the ID -- if we  
21 are talking about the new process, the ID is issued.

22 It's the chain of custody that is the  
23 question depending on the status of verification of  
24 the voter registration record: Is the card handed to  
25 the individual at that moment or will they receive it

1 from the Department of State at the time that they can  
2 be verified. That's the difference.

3 BY MR. WALCZAK:

4 Q. And the exceptions process -- and that's a  
5 term used by the Department of State, correct?  
6 Exceptions?

7 A. Correct. Right.

8 Q. And those are the people who go to PennDOT to  
9 get an ID, but leave without an ID card; correct?

10 A. Right. They do not have physical possession  
11 of the ID card, yes.

12 Q. And the way the process was supposed to work  
13 starting on the 25th was that the ID was made by  
14 PennDOT and then sent to the Department of State, who  
15 would hold on to it until they could verify the  
16 voter's registration in the SURE database; correct?

17 A. Right. That's how the process worked, yes.  
18 They would send the ID card to us if verification  
19 couldn't be made with us, and we would hold it until  
20 the time that that voter -- voter's record could be  
21 verified.

22 Q. Now, the Department created something called  
23 an exceptions spreadsheet which we played with back on  
24 July 18th in this courtroom, which is the big rolled  
25 up document; do you recall that?

1 MS. HICKOK: Your Honor, point of  
2 clarification. There was an actual spreadsheet that  
3 was testified to at the remand hearing that was the  
4 initial documentation of the exceptions process.

5 I believe that what Mr. Walczak is  
6 referring to isn't actually a SharePoint database,  
7 which is distinct from the original spreadsheet.

8 MR. WALCZAK: I certainly accept that  
9 characterization, Your Honor.

10 BY MR. WALCZAK:

11 Q. So, that spreadsheet is a printout in  
12 Microsoft Excel of a SharePoint database that was  
13 designed to track all voters who went into this  
14 exceptions process, meaning they went to PennDOT,  
15 applied for a DOS ID, and left without one; correct?

16 A. The spreadsheet is a -- is a byproduct of the  
17 database, essentially a report extracted from the  
18 database, of all of the data that's resident in the  
19 database along with the common headers.

20 The database was really set up to track the  
21 DOS IDs and to maintaining the chain of custody of the  
22 cards, really.

23 Q. So, it was designed to track the people that  
24 were not getting an ID when they went to PennDOT to  
25 get one; correct?

1 A. Correct. It was designed to -- remember, the  
2 process went from the individual -- the card is not  
3 generated. The individual will get it from the  
4 Department of State.

5 The exception process was they would get a  
6 notification to contact the Department of State. As  
7 we were tracking the exceptions, we would send a  
8 notification to them or letter to them or phone call,  
9 there was a phone number provided.

10 The process changed; and what SharePoint was  
11 designed to do was to track that new process, that new  
12 process being that the Department of Transportation,  
13 when an individual applied for a DOS ID, would have  
14 the individual fill out the paperwork, contact the  
15 Department of State to do the voter registration  
16 verification, and if verification was made, the  
17 individual received the card on the spot and they were  
18 able to walk out with a card.

19 If verification was not made, then the  
20 protocol was, and is, that PennDOT takes that ID  
21 card -- or goes ahead and takes the photo of the  
22 individual, takes that ID card and any paperwork that  
23 may accompany that in the form of voter registration  
24 mail application; and they will mail the card and the  
25 voter registration mail application to the Department



1 of State.

2 The documents that -- the request for the DOS  
3 ID would be uploaded to the P drive as was the process  
4 initially.

5 And on our side, we set up SharePoint to track  
6 and to maintain custody of the cards.

7 Obviously, we had to have a way for doing a  
8 couple of things: Maintaining custody of the cards,  
9 and also doing the verification process  
10 systematically, for lack of a better term.

11 Q. Now, I'm going to get to the 144 in a moment;  
12 but as of July the 8th when I took a supplemental  
13 deposition of you ordered by the Court, you had not  
14 mentioned the existence of the 144.

15 MS. HICKOK: Your Honor, that  
16 mischaracterizes the record.

17 THE WITNESS: I don't recall that we  
18 discussed directly the 144 during that deposition; but  
19 certainly the Department had provided information  
20 regarding the 144, and the larger group of 194, back  
21 in December. I guess it was actually January then.

22 BY MR. WALCZAK:

23 Q. So, the spreadsheet was discussed at two  
24 depositions as this would accurately depict how many  
25 went to PennDOT and could not obtain an ID on the

1 initial trip; is that correct?

2 MS. HICKOK: Your Honor,  
3 mischaracterizes the record.

4 THE WITNESS: I think -- you keep  
5 saying, "could not obtain an ID on the initial trip."

6 There's only one trip under the new  
7 process. The SharePoint site in the beginning was set  
8 up purely to track the DOS ID cards that were coming  
9 over from PennDOT.

10 By the time of my deposition, we had  
11 actually backfilled information in some of the older  
12 process. Included in that was the 144 that had a  
13 question mark. It became -- it became a tracking tool  
14 for all of the so-called exceptions that we created.

15 THE COURT: How about we recess for  
16 lunch at this point.

17 MR. WALCZAK: Okay. Thank you, Your  
18 Honor.

19 THE COURT: We'll recess until 1:15.

20 THE BAILIFF: Commonwealth court is now  
21 in recess.

22 (COURT RECESSED AT 11:59 A.M. AND  
23 RECONVENED AT 1:19 P.M.)

24 THE BAILIFF: Please stay seated.

25 THE COURT: Sorry I'm a little late. I

1 had some cases to attend to.

2 CONTINUED CROSS-EXAMINATION

3 BY MR. WALCZAK:

4 Q. Good afternoon, Mr. Marks.

5 A. Good afternoon.

6 Q. When we broke this morning, I had just started  
7 to ask you about the exceptions spreadsheet. I'm  
8 going to ask you questions about three different  
9 documents, some of which you may have seen and some of  
10 which you haven't; but I'm going to -- just to clarify  
11 where we're going, I'm going to ask you about the  
12 exceptions spreadsheet, and I'm going to ask you about  
13 the 144, and I'm going to ask you about call logs.

14 Okay?

15 A. Okay.

16 Q. Let's start with spreadsheets.

17 MS. HICKOK: Your Honor, depending upon  
18 what questions he's going to ask about the 144, we may  
19 need to go in camera; and some of that information is  
20 information that is not within Mr. Marks' possession,  
21 knowledge or control.

22 THE COURT: Okay. I trust Counsel that  
23 he will stay away from anything that's privileged. I  
24 think we have identified and made a ruling on certain  
25 motions, and proceed, but okay.

1 MR. WALCZAK: Your Honor, I suspect  
2 that part of -- that Mr. Marks may not be able to  
3 answer some of the questions that I have, but I will  
4 explore to see how far we can go; and if we do get  
5 into that, I certainly will be sensitive to private  
6 information and don't believe we need to close the  
7 courtroom for that.

8 BY MR. WALCZAK:

9 Q. So, Mr. Marks, the exceptions spreadsheet is  
10 what Department of State or the -- I'm sorry, the  
11 SharePoint database which then can be printed out in a  
12 spreadsheet is the system that the Department of State  
13 adopted on or about September 27th to track what  
14 happens to those folks who are not issued an ID on --  
15 when they go to PennDOT; correct?

16 A. It was designed initially to track those  
17 individuals and track exceptions to those individuals  
18 who showed up at PennDOT, and were issued a card, but  
19 that card was sent to us for safekeeping until that  
20 individual was verified.

21 Q. But that spreadsheet actually tracks people  
22 who did not get a card even before the new process  
23 went into effect on September 25th; correct?

24 A. Right. Eventually, it was backfilled to  
25 include what we have called old process as well, so

1 that everything was in one place.

2 Q. But the spreadsheet, at least the version  
3 we're looking at from earlier this month, has 615  
4 exceptions listed in there; correct?

5 A. There was 615 records in there, yes.

6 Q. And 109, according to your testimony in  
7 depositions earlier this month and a couple of weeks  
8 ago here in trial, 109 of those would be backed out  
9 because they were folks who came in under the old  
10 process; correct?

11 MS. HICKOK: Objection.  
12 Mischaracterizes the record.

13 THE COURT: Let the witness answer the  
14 question.

15 THE WITNESS: I don't know. I'm not  
16 sure what you mean by backed out, but I -- we're  
17 looking at all 615 as exceptions for purposes of  
18 tracking.

19 Whether some of those were old process  
20 versus liberal access process versus anomalies, I  
21 don't know that I can get into a discussion with you  
22 of specific figures and go over a list of specific  
23 exceptions, but...

24 BY MR. WALCZAK:

25 Q. Let me try it a different way. So, your

1 testimony on the July 18th in this courtroom was that  
2 109 of those entries out of 615 were added in late  
3 May, early June from a, literally a spreadsheet -- not  
4 a database -- that you had used to track exceptions  
5 prior to the new process; correct?

6 A. Correct. There were 109 that were taken from  
7 a spreadsheet that was tracking the old process and  
8 added into SharePoint.

9 Q. And prior to your testimony on July 18th, when  
10 Mr. Jones deposed you on June 6th, there was no  
11 mention of this 144 number; is that correct?

12 A. I don't recall if there was specific mention  
13 of it, but I don't think we talked about the 144  
14 explicitly.

15 Q. In that deposition, you said that the  
16 spreadsheet would accurately depict how many went to  
17 PennDOT and could not obtain an ID on that initial  
18 trip; do you recall saying that?

19 A. The entire spreadsheet, all 615? Or the...

20 Q. You said that --

21 A. In other words, that that would accurately  
22 reflect the individuals who did not walk out of  
23 PennDOT with an ID, yes.

24 Q. At the July 8th deposition -- you recall that  
25 I took your deposition on that day -- and you made no

1 reference to the fact that there was 144 folks out  
2 there who may have gotten ID some other way; is that  
3 correct?

4 A. That's correct, yes.

5 Q. Even in your testimony in this court, if you  
6 recall, you characterized the spreadsheet as an  
7 accurate representation of the workload associated  
8 with the process for obtaining the DOS ID; do you  
9 recall that?

10 A. That sounds accurate, yes.

11 Q. And you also said that you were not aware of  
12 Petitioners' counsel being presented any other  
13 information about the exceptions process.

14 MS. HICKOK: Your Honor --

15 BY MR. WALCZAK:

16 Q. Do you recall that?

17 MS. HICKOK: -- that mischaracterizes  
18 the record.

19 THE COURT: The witness can answer the  
20 question if he can.

21 THE WITNESS: I don't recall that.

22 BY MR. WALCZAK:

23 Q. All right. July 18.

24 A. Is it Petitioners' counsel or Respondents'  
25 counsel?

1 Q. I show you the certified transcript from the  
2 proceedings in this court on Thursday, July 18th.

3 Do you see that?

4 A. I do, yes.

5 Q. If you could turn to page 620, and you will  
6 see there's -- what's called a Min-U-Script. There's  
7 four to a page. So I will direct your attention to  
8 page 620.

9 A. Okay.

10 Q. Let me ask you to just look over for yourself  
11 the, before line 9 and we're talking about the  
12 spreadsheet here.

13 A. Okay.

14 Q. And then on line 9 on 620, "that this is  
15 representative of how the exceptions process set up by  
16 the Department of State was operating here, and they  
17 may have gotten an ID outside the exceptions process,  
18 but in this, this is an accurate representation of  
19 what Department of State was doing; correct?"

20 Your answer: "It's an accurate representation  
21 of the workload associated with the process for  
22 obtaining the DOS ID. This is a tracking database."

23 Did I read that correctly.

24 A. You did, yes.

25 Q. And then the next question, line 17. "Okay.



1 But there's no -- there's no information on this  
2 database or anything we have been given about how any  
3 of these folks may have gotten an ID in some other  
4 fashion. Are you aware of anything that's been  
5 presented to us?"

6 Answer, you: "Correct. I'm not aware of  
7 anything off the top of my head, no?"

8 Did I read that correctly.

9 A. You did, yes.

10 Q. All right. Let's talk about the 144. We've  
11 had some testimony about this this morning when  
12 Ms. Hickok was asking you questions. See if I  
13 understand this.

14 The 144 are people that the Commonwealth now  
15 claims went to PennDOT and received a different  
16 PennDOT product, not the DOS ID, but got either a  
17 driver's license or a PennDOT non-driver photo ID; is  
18 that correct?

19 MS. HICKOK: Your Honor, that  
20 mischaracterizes the record or -- and the prior  
21 testimony. That is not what he testified to.

22 THE COURT: We'll let him answer the  
23 question.

24 THE WITNESS: It appears based on  
25 information that's available, that became available

1 recently, that those 144 -- in fact, we had reason to  
2 believe back in December that a 144 of 194 of those  
3 records may have gotten a product from PennDOT. We  
4 just didn't know which out of the 144.

5 BY MR. WALCZAK:

6 Q. I want to make sure this is clear. I'm not  
7 trying to slide something by you. I want to make sure  
8 that we're all on the same page on the 144.

9 The 144 are apparently people who are on this  
10 exceptions spreadsheet. They are part of the 615,  
11 correct?

12 A. They are, yes.

13 Q. And your testimony is that these 144 are  
14 people who went to PennDOT and did not get a  
15 Department of State ID, correct?

16 A. Yes. Based on all of the information  
17 available, they did not get a Department of State ID.

18 Q. But they did in fact get a different PennDOT  
19 ID, a non-DOS ID that would be valid for voting;  
20 correct?

21 MS. HICKOK: Your Honor, the testimony  
22 was that he does not have access to that information.  
23 He had access to what was in the email. He has not  
24 seen PennDOT's confidential sealed exhibit. So, he  
25 cannot testify as to what PennDOT has in its

1 knowledge.

2 THE COURT: He works with PennDOT. He  
3 has worked with PennDOT in the past.

4 You can answer the question, if you  
5 know.

6 THE WITNESS: I can't answer the  
7 question as to -- based on the information that was  
8 made available to me.

9 Starting in December, we knew there  
10 were 144 that fit into that. The problem is we sent  
11 194 names over to PennDOT, not knowing which 144.

12 We -- I had a decision to make. Do we  
13 guess, or do we treat all of them as exceptions? And  
14 the decision was made at that point that we're going  
15 to continue to treat them as exceptions, even though  
16 we knew that 144 of them may never have intended to  
17 apply for a DOS ID.

18 BY MR. WALCZAK:

19 Q. So, and I'm not asking to you divulge how this  
20 affects any particular voter.

21 What you found out was that when you sent that  
22 email to PennDOT asking about 194 individuals, right,  
23 they came back and said 144 of those individuals got  
24 another PennDOT ID; correct?

25 A. Yes --

1 Q. Is that your understanding?

2 A. -- I believe the email speaks for itself. But  
3 my understanding of the email is that 144 of them went  
4 to PennDOT and obtained a PennDOT ID.

5 Q. And the reason that they are on this  
6 exceptions spreadsheet is because, for whatever  
7 reason, the PennDOT folks -- when the person went in,  
8 supposedly got this other ID, the PennDOT folks had  
9 them fill out a voter registration mail application;  
10 correct? And then sent that application to the  
11 Department of State, correct?

12 A. I don't know exactly all of the circumstances  
13 that -- what I know is that we received from PennDOT  
14 voter registration mail applications for 194  
15 individuals absent a card.

16 How -- what happened prior to that point in  
17 time, I can't speak to.

18 Q. And your inference is that it was -- or strike  
19 that.

20 So, what the Department of State did, perhaps  
21 out of an abundance of caution, is that you took all  
22 of those individuals for whom you got just that voter  
23 registration mail application, and put them into this  
24 SharePoint tracking system, so they make up the 144 --  
25 they are part of the 615 exceptions; correct?

1 A. That's correct, and they're also part of the  
2 subgroup of 194. Again, the decision was, if the  
3 response from PennDOT had been all 194 came in to  
4 PennDOT to get a PennDOT ID, we may have tracked them  
5 differently, outside of this process; but because we  
6 did not know which of the 615 these 144 were, we  
7 decided to keep them in the exceptions process, all of  
8 them. All 194.

9 Q. I feel like I'm waving a weapon and  
10 threatening to unfold this here. So, just to  
11 understand, we've looked at this spreadsheet, this  
12 exceptions spreadsheet that has the voter ID numbers;  
13 correct? And I don't know that we need to unroll this  
14 now.

15 A. It has a lot of other information, but it does  
16 include the voter ID numbers. I'm assuming you're  
17 talking about the SURE ID number, the nine-digit  
18 number.

19 Q. Yes, correct.

20 A. All right.

21 Q. As you sit here today, you cannot testify to  
22 how the 144 that we've just been talking about impacts  
23 what's report on this SharePoint tracking system;  
24 correct?

25 A. I'm not sure what you mean by "how it

1 impacts." I know -- I know that of the 615 records  
2 that are on there, there are 144 of those records  
3 that, it appears, based on -- that all of the  
4 information we have, could have been treated  
5 differently than DOS ID exceptions.

6 But because we could not identify which 144 of  
7 the 615 fit into that category at that time, we  
8 included them in the exceptions process and continued  
9 moving forward to treat them as exceptions.

10 Q. And you said you couldn't -- you didn't know  
11 which of these voters were part of that 144; and, as  
12 you sit here today, you still don't know. Correct?

13 A. We have information that suggests that there  
14 are specific 144.

15 Q. Do you -- have you seen that list of 144  
16 voters that apparently have the, some other PennDOT  
17 ID?

18 MS. HICKOK: Your Honor, may I clarify?  
19 I think there are two questions that are implicit in  
20 the one question.

21 One of the questions is whether he has  
22 since been apprised of who the 144 are.

23 The second question is whether he has  
24 seen the sealed exhibit, and I believe those are two  
25 different answers.

1 BY MR. WALCZAK:

2 Q. Yeah. I'm not trying to insinuate that you  
3 knew this in advance and withheld this. I'm just  
4 asking whether at this point in time, as you sit here  
5 right now, you know which of the 144 voters on the  
6 exceptions spreadsheet are part of the 144.

7 A. Correct. The initial spreadsheet that we sent  
8 to them, in recent weeks, was sent back; and the  
9 specific 144 were identified on that as receiving  
10 PennDOT IDs.

11 Q. So, you've now seen that?

12 A. I've seen -- I have not seen the underlying  
13 information, all of the underlying information.

14 What I have seen is our list returned to me  
15 with an indication of which of the 144 received  
16 PennDOT IDs.

17 Q. So, you just have a list of the voter numbers  
18 that correspond to the exceptions spreadsheet of the  
19 144; correct?

20 A. I have a list of names. We can review the  
21 spreadsheet that we sent to PennDOT back in December;  
22 but essentially it is that spreadsheet with a column  
23 added indicating which ones received PennDOT IDs.

24 Q. But if I was to unroll this spreadsheet and  
25 start going through and saying, let's look at voter

1 12, for instance, would you be able to tell me whether  
2 or not that person got a PennDOT ID, if this says that  
3 they didn't have any sort of ID on Election Day?

4 A. I don't think I can sit in this courtroom and  
5 go over that. We'd have to sit down in a room with  
6 all of the documentation and go through all of them.

7 Q. And just to be clear: So, you have not seen  
8 the columns on those 144 in a document that provides,  
9 for instance, issuance date for the ID?

10 A. There may have been a -- in that spreadsheet  
11 in a notes column information about some of them that  
12 contained the date; but I have not seen all of the  
13 underlying documents that are sealed.

14 It's hard for me to answer a question, because  
15 I don't know what "it" is. I haven't seen "it." I  
16 know what I have seen, which is a list that identifies  
17 which of the 194 are in the 144 group, and an  
18 indication that they received a PennDOT ID.

19 And if there were comments in the column to  
20 the right of that provided by PennDOT, I believe some  
21 of them may have indicated dates, but not necessarily  
22 all of them.

23 Q. Okay. And --

24 MR. WALCZAK: Counsel, if I could just  
25 clarify -- I'm sorry, Your Honor. If I could clarify



1 with counsel that Mr. Marks has not seen the sealed  
2 exhibit.

3 MS. HICKOK: That's correct.

4 MR. WALCZAK: He has not seen it. So,  
5 then I can't -- there's no foundation to ask him  
6 questions about that. All right.

7 BY MR. WALCZAK:

8 Q. Let me ask you about the call logs.

9 Now, an issue that arose when we were  
10 discussing this exceptions spreadsheet was that we  
11 were looking at a create date field; do you recall  
12 that?

13 A. I do, yes.

14 Q. And I believe your testimony on the 18th was  
15 that it is an auto generated date. Whenever that  
16 first time a person enters information on that voter,  
17 it puts the date and time in there; correct?

18 A. Correct. The create-a-date simply identifies  
19 the date and time that the record was created in  
20 SharePoint.

21 Q. That date may or may not correspond with the  
22 day that the voter went to PennDOT to get an ID,  
23 correct?

24 A. Correct. In most cases it does not correspond  
25 with the date that the voter went to PennDOT.

1 Q. So there could be a day or two days more lag  
2 between the create date when and when the person  
3 actually was at PennDOT to get an ID; correct?

4 A. Correct.

5 Q. And it was suggested during your July 8th  
6 deposition that there would be an accurate measure of  
7 the date on which the voter went to PennDOT, and that  
8 would be in the form of call logs maintained by the  
9 Department of State; is that correct?

10 A. That's correct, yes.

11 Q. In these call logs, that should reflect a date  
12 on which somebody from PennDOT called to inquire about  
13 whether a voter was registered in the SURE database;  
14 is that correct?

15 A. Correct. And it's -- the term call log is  
16 really -- it -- this log is a -- keeps a record of  
17 each search that is done in the application provided  
18 for verifying voter registration.

19 So, the date and time that the search was done  
20 would be indicated there, and that process occurs  
21 while the individual is on the phone with PennDOT.

22 And if it helps to explain it, they're on the  
23 phone -- PennDOT calls. Gets on the phone with our  
24 helpdesk. At that moment, our helpdesk is given  
25 information, including the name and address of the

1 individual who is applying for the DOS ID; and they're  
2 entering that information into an application, a  
3 software application that searches the SURE database.

4 That's what it's logging. So, because it logs  
5 that moment in time that a search was done, you can  
6 make the assumption that that's when the person from  
7 our helpdesk was on the phone with PennDOT.

8 Q. And if one were to compare the call log  
9 spreadsheet or database with the exceptions  
10 spreadsheet or database, you could pinpoint for many  
11 of the applicants the date on which they came to  
12 PennDOT to get an ID; correct?

13 A. You can draw the conclusion based on what I  
14 just explained that that was the date that the  
15 individual went to PennDOT to obtain the DOS ID.

16 Q. So, in terms of trying to ascertain which  
17 voters went to PennDOT after the start of the new  
18 streamlined process on September 25th, and were there  
19 on or before November 6th, the more accurate way of  
20 assessing that would be to use the call log date; is  
21 that correct?

22 A. Right. The more accurate way for us to  
23 assess, and really the only accurate way for us to  
24 assess it is to use the call log date.

25 PennDOT may have some different way of

1 assessing that same information, but what we have  
2 available to us is a call log or the search log that  
3 is indicative of the searches done by our helpdesk  
4 technicians. So, that's -- that's our most accurate  
5 measure.

6 Q. And do you know whether there are in fact  
7 corresponding call logs for all 615 voters in the  
8 exceptions spreadsheet?

9 A. No, I don't believe there are corresponding  
10 call log entries for all 615.

11 Q. Okay. But for those where you have them, that  
12 would be the better date to use than the create date,  
13 if we wanted to be accurate about when the voter  
14 showed up at PennDOT to get their DOS ID?

15 A. Right. Inside the Department of State's  
16 process, that is the only accurate measurement for  
17 making that determination.

18 Q. All right. So, I want to go over some  
19 formulas here for how we might be able to assess how  
20 many people in fact went to PennDOT between certain  
21 times, applied for an ID, and whether they got it, and  
22 if they got it, when. Okay? You follow me?

23 A. I follow you. I'm not sure how effectively  
24 we're going to be able to do that. These are -- we  
25 are talking a lot about numbers and we're trying to

1 put them in different buckets.

2 These records are -- many of them are unique  
3 in a lot of ways. So when I sit down and analyze them  
4 I, in some cases, have to look at all of the available  
5 information to make a determination where I think that  
6 particular person fits in the bigger picture.

7 Q. So, you're saying that the Department of State  
8 has a difficult time figuring out exactly what  
9 happened with these 615 exceptions in the spreadsheet?

10 A. I don't -- I'm not saying they have a  
11 difficult time. I'm saying I would have a difficult  
12 time sitting here without all of the documentation in  
13 front of me to have that discussion.

14 Q. So, you're saying that you can't just take  
15 this SharePoint spreadsheet with 615 entries and  
16 answer a question about who applied when and -- when  
17 and/or whether they got an ID; can you?

18 A. I could probably answer some questions about  
19 it, but I think we have established a call log date is  
20 not in that spreadsheet. It's not maintained in  
21 SharePoint.

22 So, each record is unique and each record  
23 represents an individual and it has to be looked at in  
24 that context.

25 Q. So, you really have to look at three separate

1 sets of data to figure out what happened to these 615  
2 people that the Department of State put into the  
3 SharePoint exceptions database; correct?

4 A. I think we can look at the SharePoint database  
5 to determine the current status and final resolution.

6 Trying to piece together when the person  
7 showed up at PennDOT and when each individual thing  
8 occurred, we may need more than just the spreadsheet  
9 that has been extracted from SharePoint.

10 Q. So, if we wanted to determine how many of the  
11 applicants went to PennDOT and did not get a DOS ID,  
12 we would look at whether or not, under "mailed ID"  
13 column, it says false; correct?

14 A. I think -- I don't know that -- again we're  
15 mixing together the PennDOT side of this and the  
16 Department of State side.

17 What we track in SharePoint, you will see two  
18 columns, as I recollect: ID received and a column  
19 that effectively shows whether the ID was sent to an  
20 individual.

21 So, you could count up the numbers, but this  
22 is tracking how many IDs we received from PennDOT.

23 THE COURT: Are we going to put this on  
24 the screen?

25 MR. WALCZAK: We can, Your Honor. It

1 may be easier to look at -- we're not going to spend a  
2 lot of time.

3 BY MR. WALCZAK:

4 Q. So, I'm showing you what's been marked as  
5 Petitioners' Exhibit 2072. This is the Excel printout  
6 of the SharePoint exceptions database; is that  
7 correct?

8 A. It appears to be, yes.

9 MS. HICKOK: May I clarify. Is this  
10 the redacted version that's been put up? I can't --  
11 yeah.

12 MR. JONES: It's 2071.

13 MR. WALCZAK: Sorry. 2071 is the  
14 exhibit number.

15 BY MR. WALCZAK:

16 Q. Does yours have Social Security numbers on  
17 there, Mr. Marks? It should be blank. It's about 10  
18 over from the left.

19 A. It is blank, yes.

20 Q. Now, when we went over this in detail -- we're  
21 not going to do that again -- there is a comment  
22 section about a third of the way from the left. Do  
23 you see that?

24 A. (NO RESPONSE.)

25 Q. Correct?

1 A. Do you have it up on the screen?

2 Q. Yeah, it probably is easier --

3 A. I've given up trying to manipulate this large  
4 document. Yes.

5 Q. So, there is a comment field?

6 A. There is, yes.

7 Q. Which was -- and it's updated, just looking at  
8 the first page, I see April 1st for instance on voter  
9 10. Do you see that?

10 A. I see that, yes.

11 Q. And my recollection of your testimony is that  
12 this is kind of a high level -- or a more in-depth  
13 look at what's happened to this particular voter.  
14 It's a free-form entry field, correct?

15 A. Right. It's an area where relevant comments  
16 and notes can be made regarding that specific  
17 exception.

18 Q. And there's another field three columns from  
19 your right called "notes." Do you see that?

20 A. Yes.

21 Q. And there's more information entered on there.  
22 It's mostly -- either SURE database numbers or it says  
23 that difficulties matching; is that correct?

24 A. Correct. The primary purpose of that field,  
25 though you can type text into that field, it is auto



1 populated in the event that you get -- remember  
2 earlier, we talked about potential matches and how the  
3 system goes about identifying those.

4 If you get a number of potential matches it  
5 will actually insert systematically those numbers, the  
6 ID numbers for a staff member to go out and verify.

7 Q. All right. And so both of these fields are --  
8 in fact enable your staff to enter additional  
9 information explaining the status of this voter's  
10 attempt to get DOS ID; correct?

11 A. They can. The majority of those comments are  
12 in the comments field.

13 Q. Now, and in neither of these fields or  
14 anywhere else in this database is there any  
15 information about which of these voters are part of  
16 the 144; correct?

17 A. Correct.

18 Q. And nor is there any data on this showing when  
19 that person went to PennDOT, according to the call  
20 log; correct?

21 A. That's correct, yes.

22 Q. So, in just looking at this spreadsheet, you  
23 can't tell me the status -- tell me the status of the  
24 voter's application for DOS ID in an accurate way  
25 without consulting those other two sources of

1 information; correct?

2 A. I can't piece -- you're asking for the status  
3 of a voter's application versus -- as I recall, our  
4 conversation was about piecing together the trail.  
5 You know, what happened? When did this voter show up  
6 at PennDOT? That requires more information.

7 This -- this -- if you look at the fields that  
8 are captured on this, this is primarily to track the  
9 work flow under the new process. We receive an ID  
10 card from PennDOT. We track the status of the  
11 individual's voter registration.

12 As we have established, I think a long time  
13 ago, you end up with this exceptions process largely  
14 because we cannot verify your voter registration.

15 We track that, the status of the individual's  
16 voter registration as well as the status of the card,  
17 the DOS card itself; and if we receive an ID card from  
18 PennDOT for an individual, one of these exceptions, we  
19 will track when we received it, when the individual  
20 was verified registered, and also we will track when  
21 that card was shipped to the voter and it even include  
22 the UPS tracking number for the package that contained  
23 the card.

24 Q. So, to take an example, our 94-year-old voter  
25 from Schuylkill County, Helen, who registered in 1944,

1 you can't look at this spreadsheet and tell me whether  
2 she is one of the 144; can you?

3 A. I can't, no.

4 Q. Do you know whether she is one of the 144?

5 A. I don't believe she is; but again, I don't  
6 have all of the information in front of me.

7 Q. And if she is in fact not one of the 144, that  
8 means that the information on this chart is correct as  
9 to that voter; correct?

10 A. Yes. At the time this was created, certainly.

11 Q. Now, the one field we might not be certain of  
12 is the created field which says that -- has a date of  
13 9/28/2012; correct?

14 A. Correct.

15 Q. So, she would have been at PennDOT no later  
16 than that date, but could have been there earlier;  
17 correct?

18 A. That's correct.

19 Q. So in order to determine whether she was at  
20 PennDOT before or after the new streamlined process  
21 went into effect, you would have to check the call  
22 log; correct?

23 A. Right. If we were being asked to make a  
24 determination whether it was before or after a  
25 particular date, the only tool we would have available

1 to us at the Department of State is that call log  
2 information.

3 Q. And do you know whether 94-year-old Helen went  
4 to PennDOT before or after the new process went into  
5 effect?

6 A. I don't recall off the top of my head if she  
7 was one who went before or after December -- September  
8 25th.

9 Q. All right. So, if we look at these three  
10 sources of information -- this spreadsheet, 2071 -- we  
11 look at the 144, and we look at the call logs, and we  
12 find out that Helen in fact went to PennDOT after the  
13 new streamlined process went into effect, so that  
14 would be September 25th or later; correct?

15 A. If -- yeah, the process started on September  
16 25th, so...

17 Q. Right. So September 25th. We know she was  
18 registered to vote since 1944, correct?

19 A. Right.

20 Q. She did not get a DOS ID on that date,  
21 correct?

22 A. Correct.

23 Q. And she did not get a PennDOT ID, either, if  
24 she's not on the 144; correct?

25 A. If she's not on the 144 -- I couldn't say

1 whether she got PennDOT ID or not; but what I can say  
2 is that I know there are 144, and I know which 144.

3 I couldn't tell you whether any of the other  
4 ones may have gotten a PennDOT ID or not gotten a  
5 PennDOT ID.

6 Q. But if she --

7 A. And that information I have to get from  
8 PennDOT; and as we've established, it's not readily  
9 available to me. I have to ask for it.

10 Q. But, so if she is not one of the 144 who  
11 apparently got another form of PennDOT ID, you have no  
12 information that she got an ID other than a Department  
13 of State ID; correct?

14 A. Correct. In our process, we wouldn't know  
15 whether she got some other form of identification.

16 Q. And from what the spreadsheet tells us is that  
17 she had a DOS ID delivered to her on March 13, 2013;  
18 correct?

19 A. Will you show that to me on the --

20 Q. It's voter 12.

21 A. Yes, the deliver date field shows when the ID  
22 was delivered.

23 Q. So, she's not part of the 144. This would  
24 have been a voter who went to PennDOT -- and I'll just  
25 tell you it was September 26th, and we could look at

1 that -- went to PennDOT under the new system, was in  
2 fact properly registered to vote, could not be  
3 confirmed as registered, and did not get an ID until  
4 March 13th of 2013; correct?

5 A. Right. Based on the information that's  
6 available to us.

7 Q. This would be a duly registered voter who  
8 under the voter ID law would not have had an ID to  
9 cast a ballot on November 6th, correct?

10 A. Right. In her case, if she was registered  
11 under a different name, so she would have had an ID  
12 that was inconsistent with her voter record, but...

13 Q. Well, but in order to apply for the Department  
14 of State ID, she has to sign that affirmation saying  
15 that she has no other ID that can be used to vote;  
16 correct?

17 A. Correct.

18 Q. So, she wouldn't have any other ID if she is  
19 applying for a Department of State ID; correct?

20 A. I don't know if that's true in each individual  
21 case; but certainly, that's the expectation, that the  
22 individual signing that affirmation is doing so  
23 truthfully, and that they do not have another  
24 qualifying form of ID.

25 Q. But that affirmation, as we went over earlier,

1 says, I do not have any of the forms of ID, and then  
2 lists all of the acceptable forms of ID.

3 A. Correct.

4 Q. And so she would have to affirm under oath  
5 that she doesn't have any of those, correct?

6 A. She would, yes.

7 Q. So, if she did not get this Department of  
8 State ID before November 6th, she would not have been  
9 able to cast a ballot under the new law; correct?

10 A. Had the law been in effect, yes. That would  
11 be correct.

12 Q. The fields that we looked at now to do that  
13 analysis, that would be an appropriate way to look to  
14 see whether these other voters -- to see when these  
15 other voters went to PennDOT and whether and when they  
16 got their ID; correct?

17 A. All right. You're talking about the  
18 spreadsheet again?

19 Q. I'm talking about using the spreadsheet, the  
20 144, and the call logs.

21 A. Right. We could put together -- from the  
22 perspective of the Department, we could piece together  
23 based on the information available to us when the  
24 person went to PennDOT to request the ID, when we  
25 received the card, and when we shipped the card out --

1 if and when we ship the card out to the individual.

2 Q. And have you done that?

3 A. I have taken a look at that for the individual  
4 records, all piecing together the track.

5 Q. So, do you have some document which would  
6 further expound on which of these voters went to  
7 PennDOT when and whether they got an ID and if so,  
8 when?

9 A. There is a spreadsheet that we created within  
10 the last several days that would -- that added in the  
11 additional pieces of information, including the call  
12 log date, if it was available.

13 Q. And you haven't been asked to testify about  
14 that effort today?

15 A. No, I haven't been asked to.

16 Q. Now, just on voter 12, 94, registered and  
17 since 1944, there's no risk that she would not be  
18 allowed to vote when she came to the polls, if the  
19 voter ID law was not in effect; is there?

20 A. I'm sorry. Could you repeat the question.  
21 There's no risk?

22 Q. This individual comes -- shows up on Election  
23 Day at her polling place.

24 A. Right.

25 Q. There's no voter ID law; she's asked to sign



1 her name. Correct?

2 A. Right.

3 Q. She doesn't need to show ID unless she is a  
4 first-time voter at this polling place, correct?

5 A. Correct.

6 Q. The fact that there may be a difference  
7 between how she is entered in the SURE database and  
8 anything else is not going to be relevant, if the  
9 voter ID law is not in effect; correct?

10 A. I don't know that it's -- I don't know that I  
11 would say it's not going to be relevant. It appears  
12 that she may be signing her name differently than the  
13 signature on the voter registration records.

14 It's possible that where she votes everyone  
15 knows who she is and has never questioned why her  
16 signature differs from -- I don't know. She may sign  
17 the poll book the way she has signed her voter  
18 registration record years ago.

19 Q. Now, if that had been a problem since 1944,  
20 there was some incompatibility, would you not expect  
21 that she would have notified the Department of State  
22 or changed her voter registration?

23 A. I don't know that she would have notified us,  
24 but she certainly could notify the County Board of  
25 Elections.

1 Q. And make that change?

2 A. She could, yes.

3 Q. So, but for this voter ID law, if it had been  
4 in effect, she would have been allowed to vote without  
5 an issue?

6 A. You say, if it hadn't been in effect? It  
7 wasn't in effect.

8 Q. It wasn't in effect, right.

9 A. Right.

10 Q. So, she was able to show up --

11 A. Correct.

12 MR. WALCZAK: One moment, Your Honor.

13 BY MR. WALCZAK:

14 Q. And if the ID law was in effect and she went  
15 and got a DOS ID, and that name was not exactly the  
16 same as it is in the voter registration database, she  
17 wouldn't have been allowed to vote; correct?

18 A. When you say not exactly the same, probably a  
19 decision or determination would have been made within  
20 the meaning of substantially conform.

21 Q. But if she came in as -- if she got her DOS  
22 card in the name of Helen as opposed to Mrs. Carl,  
23 with the last name, that wouldn't have been  
24 substantially conforming; would it?

25 A. Correct. A different first name, if it was

1 Carl versus Helen, it's not even the same gender, so I  
2 would expect that the poll worker may have questioned  
3 that.

4 Q. So, the voter ID requirement would introduce  
5 that additional element of uncertainty about whether a  
6 voter, who is duly registered, would be allowed to  
7 vote.

8 A. I don't know that the voter ID law would  
9 introduce that, but it's probably introduced a long  
10 time ago.

11 Q. But that's not an issue she has to confront  
12 now without the voter ID law?

13 A. I don't know. Again, it's really depending  
14 upon what occurs at the polling place.

15 MR. WALCZAK: That's all I have for  
16 right now, Your Honor.

17 MS. HICKOK: Your Honor, may I inquire?

18 THE COURT: Certainly.

19 MS. HICKOK: Thank you.

20 REDIRECT EXAMINATION

21 BY MS. HICKOK:

22 Q. Mr. Marks, before lunch, you were asked a  
23 series of questions about some PennDOT exhibits, and I  
24 don't know if you have those in front of you.

25 A. I do.

1 Q. If you look at exhibit which was marked as  
2 Petitioners' Exhibit 2132. On the front page, it  
3 lists two different PennDOT facilities as the top two  
4 places on the locations search results, and I believe  
5 you were asked a series of questions about  
6 Elizabethville.

7 What is the second of those two?

8 A. Selinsgrove.

9 Q. And are you aware of where Selinsgrove is?

10 A. I am, yes.

11 Q. And is that -- if you look on the second page,  
12 can you tell me what hours the driver's license center  
13 on Selinsgrove is open?

14 A. The driver's license center in Selinsgrove,  
15 according to this information on the second page, is  
16 open Tuesday, Wednesday, Friday, and Saturday.

17 Q. Okay. So, if you were deciding to go to one  
18 of the PennDOT centers, you would have an option to go  
19 to a PennDOT center that is open more than one day a  
20 week; is that correct?

21 A. I would, yes.

22 Q. And you were also asked a question about a  
23 MapQuest map, and it appeared to me that you had  
24 testified that there was a ferry that crosses the  
25 river. It looked as though the PennDOT map did not

1 take into account the possibility of taking a ferry  
2 across the river; is that correct?

3 A. That's correct.

4 Q. You were also asked a series of questions  
5 about disabled voters and voters who are over the age  
6 of 65; do you recall those questions?

7 A. I do, yes.

8 Q. And you were asked a question about an  
9 inability to attend a polling place or vote by a  
10 machine. Is that a standard under state law or under  
11 federal law?

12 A. It's a state law standard.

13 Q. And --

14 A. I believe it's in the definition of --

15 Q. Go ahead.

16 A. I'd have to look at the Election Code to tell  
17 you exactly what it says, but those words are  
18 familiar, and I believe they're in the Pennsylvania  
19 Election Code.

20 Q. Is there a federal law standard, or a federal  
21 law statute that has a different standard for  
22 disability?

23 A. I don't know the details, but certainly have  
24 the ADA and the Voting Accessibility for the Elderly  
25 and Handicapped Act. They have their own set of

1 standards independent of anything that may be state  
2 law.

3 Q. And are you required, when administering an  
4 election, to take into account federal law standards  
5 as well as state law standards?

6 A. We are certainly in federal elections, and in  
7 a lot of cases we do as well in state elections.

8 Q. You were also asked a series of questions  
9 about the indigency affirmation, and I believe at one  
10 point that you were asked a question about whether the  
11 payment for a generation of a card was the payment of  
12 the fee. Do you recall that line of questioning?

13 A. I do, yes.

14 Q. And is there a potential that a person would  
15 have to pay a fee associated with getting a card that  
16 is different from the payment for the generation of  
17 the card itself?

18 A. Correct. I think when I testified, I tried  
19 to -- at least tried to make the distinction clear  
20 that you don't have to pay for the generation of the  
21 card, but there may be other costs associated with the  
22 generation of the card. Public transportation is one  
23 that jumps into my head.

24 Q. If a person had to pay that cost and that cost  
25 were burdensome, would it be the position of the

1 Department of State that that person could sign the  
2 indigency affirmation?

3 A. Yes.

4 Q. Thank you.

5 You were asked a series of questions about the  
6 call log, and I believe you also testified about what  
7 you called a P drive or a shared drive?

8 A. Yes.

9 Q. Can you explain to the Court what the shared  
10 drive is?

11 A. The shared drive is basically a location for  
12 storing electronic documents, a network location that  
13 is common or shared among agencies or individual  
14 users, I guess the best way to describe it.

15 At home I have a PC. It's not on the network.  
16 It's not -- I don't share anything with anyone outside  
17 of myself.

18 At work, I have a PC that's connected to a  
19 network. There are a number of drive locations, some  
20 of them shared, that I have access to as well as other  
21 individuals on that network.

22 Q. I believe your testimony was that there were  
23 times when there were applications for the DOS ID card  
24 that were put into that shared drive; is that correct?

25 A. That's correct, yes.

1 Q. Are there instances where you could look at  
2 the date on which those documents were uploaded as  
3 further confirmation of when a transaction with  
4 PennDOT might have occurred?

5 A. Right. We would actually look not only at  
6 when they were uploaded, but the date that they were  
7 signed by the PennDOT employee. That tool could be  
8 used as well.

9 Q. And for the entries on the spreadsheet where  
10 there are no call logs and there are no P drive  
11 documents, are those instances in which you did not  
12 receive evidence of an application for a DOS ID?

13 A. Right. We didn't -- we didn't receive any  
14 evidence other than possibly the receipt of a voter  
15 registration mail application.

16 So, we didn't have any other evidence to  
17 support the conclusion that, that they were normal  
18 work flow coming from PennDOT to the Department of  
19 State.

20 Q. And so, in those instances, there may be no  
21 shared documents and no call whatsoever to the  
22 helpdesk to verify anything; is that correct?

23 A. That's correct, yes.

24 MS. HICKOK: Thank you. I have no  
25 further questions.



1 MR. WALCZAK: All right. Just one  
2 area.

3 RECROSS-EXAMINATION

4 BY MR. WALCZAK:

5 Q. Mr. Marks, Ms. Hickok asked about the  
6 indigence exception or affirmation at the voting  
7 polls; and you said that there could be some fee that  
8 would enable that person to credibly sign the  
9 affirmation besides having to pay for the actual ID  
10 itself. Is that right?

11 A. Correct. I believe the term -- and we can  
12 look at it again if you would like -- I believe the  
13 term is cost of obtaining -- if I'm not mistaken, and  
14 correct me if I'm wrong -- but I believe the language  
15 is cost of obtaining an ID.

16 Q. Now, if you could find Respondents' No. 78.

17 A. Poll worker guide.

18 Q. Yes. This is the instruction -- unprecedented  
19 in your tenure -- the instruction that the Department  
20 of State sent to all poll workers in Pennsylvania,  
21 poll workers and election officials in Pennsylvania;  
22 correct?

23 A. Correct.

24 Q. And can you point to anything in this poll  
25 worker guide that tells the folks working at the polls

1 that things like travel would be considered a cost  
2 that would enable the voter to honestly sign the  
3 affirmation?

4 A. I don't know that we have all of the details  
5 of what that may include, no.

6 Q. So, you are not aware of that information  
7 being transmitted in this mailing to the poll workers;  
8 are you?

9 A. Correct, no. That information was not in this  
10 mailing directly to the poll workers.

11 MR. WALCZAK: Thank you.

12 MS. HICKOK: Your Honor, at this time,  
13 Mr. Hutchison would like to move some of the exhibits  
14 into evidence, please.

15 MR. HUTCHISON: Your Honor, beginning  
16 from Thursday, Exhibits 7, 8, 9, 10, 12, 14, 15, 16,  
17 21, 23, 25, 27, 28, 29, 30, 31, 32, 78, 129, 141, 152,  
18 225, 233, 235, 243, 245, 259.

19 Respondents would move those exhibits  
20 into evidence, Your Honor.

21 MR. WALCZAK: We don't object, Your  
22 Honor.

23 We would also move to admit the  
24 exhibits we used with Mr. Marks, which would be 2130,  
25 2131, 2132, 2133, 1433, and 2134.

1 MR. HUTCHISON: Your Honor, we would  
2 object to 1433. Those were the materials from  
3 Mr. Proctor, who did not authenticate those documents.

4 THE COURT: They'll be admitted. He  
5 testified. He identified those items particularly.  
6 Okay. All of those exhibits will be  
7 admitted.

8 MS. HICKOK: Thank you, Your Honor.

9 THE COURT: Are we finished with  
10 Mr. Marks?

11 MS. HICKOK: I believe so, Your Honor.  
12 Unless there's more.

13 MR. WALCZAK: I'm finished, Your Honor.  
14 I was packing up my things. Sorry.

15 MR. KEATING: Can Mr. Marks be excused,  
16 Your Honor?

17 THE COURT: Very good.

18 MR. KEATING: Thank you.

19 THE COURT: Thank you, Mr. Marks.

20 MR. KEATING: Before they change their  
21 minds.

22 MS. HICKOK: Your Honor, the  
23 Respondents call Megan Sweeney.

24 - - -

25 MEGAN SWEENEY, having been first duly

1 sworn, according to the law, was examined and  
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MS. HICKOK:

5 Q. Good afternoon, Ms. Sweeney.

6 A. Good afternoon.

7 Q. Could you please identify your full name for  
8 the record?

9 A. Sure. Megan Patricia Sweeney.

10 Q. What is your title?

11 A. I'm Special Assistant to the Secretary.

12 Q. When you say "Secretary," is that Secretary of  
13 the Commonwealth?

14 A. Yes.

15 Q. What do you do in that role?

16 A. I assist the Secretary and our Deputy  
17 Secretaries with special projects.

18 Q. And how many Deputy Secretaries do you work  
19 with?

20 A. There are currently two.

21 Q. Do you work with both of them?

22 A. Yes.

23 Q. When you say special projects, what does that  
24 mean?

25 A. For instance, I'm in charge of our continuity

1 of operations as well as the Governor's Innovation  
2 Office Liaison. I assist with the Electoral College;  
3 things like that.

4 Q. Do you meet with the Secretary regularly?

5 A. Yes.

6 Q. Do you meet with the Deputy Secretaries  
7 regularly?

8 A. Yes.

9 Q. Do you report to anyone other than the  
10 Secretary and the Deputies?

11 A. No.

12 Q. Ms. Sweeney, are you familiar with the term  
13 "project plan"?

14 A. Yes, I am.

15 Q. What is a project plan?

16 A. A project plan is a Microsoft program that  
17 allows you to chart out a project, put in the task,  
18 dates, who is tasked with carrying that out. I tend  
19 to usually put a little note tab on the side and it  
20 allows you to oversee a project.

21 Q. Okay. And Ms. Sweeney, I'm going to show you  
22 what's been marked as Respondents' Exhibit 51.

23 Do you recognize that document?

24 A. Yes, I do.

25 Q. What is that document?

1 A. It's a copy of the project plan that I oversaw  
2 for the voter ID project.

3 Q. When you say oversaw, did you actually enter  
4 any of the data that are here?

5 A. Yes, I did.

6 Q. Are you familiar with the tasks that are set  
7 forth in this project plan?

8 A. Yes.

9 Q. At what point did you develop this project  
10 plan?

11 A. It was over the spring, the early spring. I  
12 worked with a member of --

13 Q. Spring of --

14 A. Spring of 2012. Sorry.

15 Q. Thank you.

16 A. I worked with a member of one of our  
17 contractors who had shown me how to use the Microsoft  
18 project program, and then I was tasked with keeping up  
19 with it and entering in information.

20 Q. Now, we heard testimony earlier in this trial  
21 from a person named Rebecca Oyler. Are you familiar  
22 with her?

23 A. Yes.

24 Q. And was she tasked with the oversight of the  
25 project plan?

1 A. No.

2 Q. Did you at some point take over entirely for  
3 Ms. Oyler?

4 A. Yes.

5 Q. At what point in time?

6 A. After the Bill was passed around late March  
7 and early April is when I fully took it over.

8 Q. And what were you charged with doing with  
9 regard to Act 18?

10 A. I was tasked with helping with the educational  
11 outreach, a lot of the day-to-day activities. Also  
12 making sure that anybody that needed information had  
13 it. If anybody had any questions, I would be the  
14 person who would find out the answers for someone like  
15 that.

16 Q. Can you give us, you know, kind of a  
17 25,000-foot overview of the types of things that you  
18 documented in this project plan?

19 A. Sure. We had -- obviously, there were  
20 technical aspects to it. That was done mostly by Dave  
21 Burgess, and our SURE, Statewide Uniform Registry of  
22 Electors, team.

23 I also tried to record any conference calls --  
24 and by record, I mean take down -- enter the date of  
25 the conference calls, if they were with PennDOT, along

1 with press calls, outreach activities. We had a lot  
2 of requests for materials.

3 I tried to make sure that that was in here to  
4 make sure that we would be able to go and see the date  
5 and see who was tasked with it and if anybody had any  
6 questions.

7 Q. Were you assigned to have any kind of  
8 relationship with people from other agencies?

9 A. Yes.

10 Q. In what way?

11 A. I would reach out to other agencies. For  
12 instance, the Department of Public Welfare, the  
13 Department of Health, Aging, as well as the Department  
14 of Education, to make sure that we were reaching their  
15 constituencies regarding the new law.

16 We reached out to the Governor's Commission on  
17 Latino Affairs, Asian-American Affairs,  
18 African-American Affairs, the Department of Community  
19 and Economic Development, later Bravo.

20 I reached out to the Department of Agriculture  
21 for the state fairs. We were trying to hit as many  
22 different constituencies as possible.

23 Q. Did you also work with community  
24 organizations?

25 A. Yes.



1 Q. What sorts of community organizations did you  
2 work with?

3 A. We would work a lot with minority groups, with  
4 homeless organizations. There were a lot of veterans  
5 affairs groups. A lot of events with state  
6 representatives and state senators.

7 There was one in particular that we did I  
8 believe it was August 1st of 2012 with Representative  
9 Cherelle Parker, which was full of community leaders,  
10 in which we answered questions.

11 So, as those issues came up, we were happy to  
12 work with people and have webinars and things like  
13 that.

14 Q. Did you do any work with the counties?

15 A. Yes, we reached out to the counties,  
16 especially the county election offices. I know there  
17 was an affordable housing webinar where there were  
18 county employees that were on there as well.

19 Q. And did any of the counties establish voter ID  
20 task forces?

21 A. Specifically the Bucks County -- Shannon Royer  
22 and I assisted with the Bucks County Voter ID Task  
23 Force. It was an organization that I believe they --  
24 the members were appointed by the commissioners, and  
25 they had asked Shannon and myself to attend the first

1 meeting. And then there were I believe two other  
2 meetings that I assisted with, and then they sent  
3 recommendations to the county commissioner -- the  
4 county commissioners, sorry.

5 Q. And were you able to provide them information  
6 and answer questions as they came up?

7 A. Sure. They had questions about the education  
8 campaign, what we were doing, things of our outreach  
9 activities. They were looking to supplement our  
10 activities in a more targeted area towards their  
11 counties specifically.

12 Q. And did you welcome that effort on their part?

13 A. Absolutely. We had -- any idea we could take,  
14 we would welcome.

15 Q. You mentioned Bravo. Can you identify for the  
16 Court what Bravo is?

17 A. Bravo was one of our state vendors. They were  
18 tasked with community outreach activities.

19 Q. When you say "community outreach activities,"  
20 can you explain that to the Court?

21 A. They would reach out to organizations on our  
22 behalf. They have offices in Philadelphia, Harrisburg  
23 and Pittsburgh, which was very helpful.

24 In terms of we would get a lot of requests for  
25 events for people to, you know, sit at a table, hand

1 out information, and they would do that. They had a  
2 subgroup, Skyler Group, which was targeted with  
3 minority outreach, including one of their employees  
4 that spoke Spanish who would provide -- who would give  
5 presentations in Spanish.

6 Q. And you have been using the word "we" to a  
7 certain extent. Who besides Bravo Group attended  
8 these events that you have been discussing?

9 A. Myself, Shannon Royer, Ron Ruben and Jon  
10 Marks.

11 Q. And did the Secretary herself attend any of  
12 them?

13 A. Yes, she did. She attended the Area Agency on  
14 Aging event in Gettysburg. I believe she attended the  
15 County Commissioners Association of Pennsylvania  
16 event. She would travel. She did a Drexel voter ID  
17 event. I just remember because my friend was in  
18 labor. And just a number of events like that.

19 Q. And did you personally attend events?

20 A. I did. I attended between 40 and 50, I think.

21 Q. And were they all here in Harrisburg?

22 A. No, they were throughout the state.

23 Q. Like which parts of the state?

24 A. Sure. I know I attended one in the northeast  
25 around the Scranton area. I attended a number of them

1 in Philly -- in the Philadelphia area. I did one in  
2 Wyoming -- Susquehanna County a lot. In the  
3 Harrisburg area.

4 In the southwest, I did events in Washington  
5 County. Actually brought my mom to that one. And  
6 then in the northwest, I was on conference calls with  
7 representative Michele Brooks. She had town halls,  
8 and she had asked me to kind of be on the line for any  
9 voter ID questions.

10 Q. And so, did you do that?

11 A. Yes.

12 Q. Now, you mentioned Susquehanna County. Was  
13 that an event that you did with one of the Petitioners  
14 in this case?

15 A. Yes.

16 Q. And which Petitioner was that?

17 A. The League of Women Voters.

18 Q. And can you tell us about the format of that  
19 particular presentation?

20 A. Sure. It was a panel discussion. It was  
21 myself and it was a community outreach coordinator  
22 from PennDOT. I don't remember his name, but -- for  
23 that region.

24 Q. And what type of information was being  
25 presented?

1 A. People would have questions, kind of scenarios  
2 regarding the voter ID law. We did have one woman who  
3 stood up and she was -- she was actually concerned she  
4 wasn't getting assistance, and it -- non-voter ID  
5 assistance. And she was very upset, and so, she sat  
6 down after a while. It wasn't a voter ID related  
7 question, and I went up to her afterwards and I gave  
8 her my name and number and got her information, and  
9 then called -- called I believe the county.

10 I'm not -- I know I called people to see what  
11 I could do to help this woman get assistance.

12 Q. But, now, you were tasked with voter ID,  
13 right? So, you could have just said -- go talk to  
14 this person?

15 A. I -- she was -- she stood up. She was crying.  
16 And it was just -- I mean, it just kind of the right  
17 thing to do, I guess. And people in government a lot  
18 of times, people think that there's this barrier; and  
19 I think I said this -- I have said this before, but I  
20 have older members of my family, and I would want  
21 somebody to do that for one of the older members of my  
22 family. I wanted people to feel comfortable with the  
23 law, and to feel like they had somebody in government  
24 that they could call.

25 Q. And did people follow up with you with

1 questions or issues if they came up?

2 A. Yes.

3 Q. And what types of questions and issues were  
4 you receiving?

5 A. The number one question was is my driver's  
6 license an acceptable form of ID. If I had questions  
7 that were related to say more of a PennDOT issue, I  
8 would send them over to Scott Shenk or Eric Alsvan or  
9 vice versa. If somebody at PennDOT had a question  
10 about voting, they would send them to me.

11 And then we kind of had an open channel and we  
12 would contact the person and follow up.

13 Q. And if -- I believe that we have had Exhibit  
14 89, that has come up in the past. 137. Sorry. It's  
15 on here the wrong number. Sorry.

16 Do you recognize this document?

17 A. Yes, I do.

18 Q. Can you tell us what it is?

19 A. It's our list of colleges -- well,  
20 institutions of higher learning. This is something  
21 that we had reached out to these institutions, and to  
22 see if they were issuing IDs with the name, photo,  
23 expiration date.

24 Q. When did you begin reaching out to these  
25 institutions?

1 A. Last year. Probably about the spring last  
2 year, early spring. Maybe like April.

3 Q. And as you received updated information, did  
4 you update this document?

5 A. Yes.

6 Q. If we could hand the witness Exhibits 123 and  
7 113, please.

8 Ms. Sweeney, do you recognize these two  
9 documents?

10 A. Yes, I do.

11 Q. And are you familiar with the underlying  
12 facts?

13 A. Yes. Temple University had -- based on  
14 student action, had decided to add expiration dates to  
15 their IDs so they would be an acceptable form of ID,  
16 and then Penn State had also done the same thing.

17 I think the, I think the -- for new students,  
18 the IDs had the expiration dates and then for existing  
19 students, they would get stickers.

20 Q. So that if somebody had an existing ID, they  
21 could -- there was a sticker that Penn State would  
22 give them to affix to that identification that would  
23 then make it compliant; is that correct?

24 A. Yes.

25 Q. And in the Department's view, is affixing an

1 expiration sticker to a form of identification

2 sufficient to make it comply with the law?

3 A. Yes.

4 Q. To your knowledge, does Penn State do that for  
5 all of its campuses, or is it only for Main Campus?

6 A. For all of its campuses.

7 Q. Thank you. And do you have any idea how many  
8 students attend all of the Penn State campuses, taken  
9 together?

10 A. It says here there's 90,000-plus students. I  
11 don't know the exact estimate of every school, but --

12 Q. Okay. Thank you. As you look at this  
13 document of -- sorry, going back to Exhibit 137, have  
14 you spoken directly with any of the institutions that  
15 are listed on here?

16 A. Yes.

17 Q. What has been the kind of interaction that you  
18 have had with these institutions?

19 A. Sure. I would call them and ask to speak to  
20 Senator Barrar and somebody in communications and say,  
21 do you have any plans for adding an expiration date if  
22 they didn't. Most of the time they would.

23 MS. MOORE: Objection, Your Honor.

24 This is hearsay.

25 THE COURT: I'm sorry. Could you say



1 that a little louder, please.

2 MS. MOORE: I'm sorry. I think this is  
3 hearsay she's testifying to now.

4 MS. HICKOK: She is testifying to how  
5 she created this document and how she put the  
6 information on it.

7 THE COURT: Yeah. We'll let her  
8 testify.

9 THE WITNESS: I would ask, did you have  
10 a name, photo and expiration date on the ID card, and  
11 then ask if they had any plans to do so, and then  
12 provide information as needed in terms of reaching  
13 information out to the institutions as well. We had  
14 reached out to not just the Department of Education,  
15 but different organizations, the independent colleges,  
16 the community colleges, things like that.

17 BY MS. HICKOK:

18 Q. And did you reach out to any of the umbrella  
19 organizations for those educational institutions?

20 A. Yes. Like PASSHE.

21 Q. Can you identify what PASSHE is for us.

22 A. Oh, sorry. Hopefully. Pennsylvania  
23 Association of State System of Higher Education.

24 There's an independent -- the Association of  
25 Independent Colleges and Universities of Pennsylvania.

1 And there's a community college organization, and we  
2 have reached out to them so they could contact the  
3 universities as well.

4 Q. Okay. Thank you. I'm going to show you  
5 what's been marked as Exhibits 83, 85 and 87.

6 When he gives you these, I'm going to ask him  
7 to give you 84, 86 and 88 as well. And I -- may I  
8 ask, Ms. Sweeney, do you speak Spanish.

9 A. I took seven years of it, so very basic; but  
10 to a degree, yes.

11 Q. If you would look at 83 and 84 together and  
12 then 85 and 86 together and 87 and 88 together, and  
13 tell us whether the even numbered exhibits are simply  
14 the Spanish version of the odd numbered exhibits?

15 A. Yes.

16 Q. If it's okay with you, I'm not going to try to  
17 butcher the Spanish pronunciation; I'll just ask you  
18 the questions about the English versions. Can you  
19 identify what these documents are?

20 A. Sure. They are the lists of personal care  
21 homes, assisted living residencies and long-term care  
22 facilities that we received.

23 Personal care homes we had received from the  
24 Department of Public Welfare. Personal -- the  
25 assisted living residencies, last year we received a

1 list from the Department of Aging. Their purview has  
2 now fallen under the Department of Public Welfare.  
3 And then the long-term care facilities is the  
4 Department of Health.

5 Q. And did you make any effort at any point in  
6 time to ascertain whether any of the -- these  
7 facilities -- let me -- let me back up for a moment.

8 Are these facilities the three kinds of  
9 facilities that are listed under the statute as  
10 eligible to issue compliant identification?

11 A. Yes.

12 Q. And did you make any efforts to ascertain  
13 whether any of these facilities were indeed issuing  
14 compliant identification?

15 A. Sure. We had reached out to a number of  
16 senior organizations. There were also organizations  
17 such as LeadingAge PA and the Pennsylvania director --  
18 Association of Directors of Nursing Home  
19 Administrators who had conducted surveys of their  
20 members. I know with LeadingAge, I think it was 87%  
21 of nursing facilities and things like that.

22 MS. MOORE: Objection, Your Honor. We  
23 had an interrogatory request for this information, and  
24 it was never provided. It was a continuing request.

25 This is I think the first we're hearing

1 of this. It's also hearsay.

2 THE COURT: Did you produce this  
3 information subject to the interrogatory?

4 MS. MOORE: I have a copy of the  
5 response here if that would be helpful, Your Honor.

6 MR. KEATING: Why don't you show the  
7 interrogatory response, and we'll see what you are  
8 talking about.

9 MS. MOORE: Your Honor, it's on page  
10 28. Number 37.

11 THE COURT: Where do you want me to go,  
12 Counsel.

13 MS. MOORE: Number 37, Your Honor.

14 THE COURT: Is there a page number?

15 MS. MOORE: Oh, yes. Sorry. Page 28.

16 MS. HICKOK: Your Honor, I believe that  
17 this is asking a different question than the question  
18 that the witness was answering.

19 She was answering a question about the  
20 outside agencies and other organizations that she  
21 reached out to in assessing whether there were people  
22 who were issuing specific IDs, not as to listing  
23 facilities by name that had specific identification.

24 MS. MOORE: Your Honor, we think that  
25 anything she was told by an outside organization is

1 hearsay.

2 THE COURT: I'll overrule your  
3 objection. We'll take this as information that I  
4 should receive. You will be allowed to cross-examine.

5 MS. MOORE: Thank you, Your Honor.

6 BY MS. HICKOK:

7 Q. I'm sorry, Ms. Sweeney. Can you continue.

8 A. Sure. I know that outside organizations had  
9 been surveying facilities as well. We also attended  
10 events at a number of facilities such as Maris Grove.

11 I know I went to New Portland, in  
12 Philadelphia, and we had done just a number of events,  
13 as well as kept contact with -- the Department of  
14 Public Welfare, the Department of Health, the  
15 Department of Aging.

16 Q. And the places that you did outreach at and  
17 where you attended events, are those documented in  
18 Exhibit 51?

19 A. Yes, sorry. Yes, they're in the project plan.

20 Q. That's information that you provided to the  
21 Respondents, is it not? I mean, to the Petitioners,  
22 is it not?

23 A. Yes.

24 Q. Thank you. When you did events, were there  
25 times at which you became aware of whether that

1 facility at which you were doing events was providing  
2 identification?

3 A. Yes.

4 Q. Can you tell us what the difference is between  
5 the kinds of identification that are provided by care  
6 facilities as opposed to, say, universities?

7 A. Sure. One of the things that we really wanted  
8 to drive home with the care facilities is that  
9 according to the law, it's type of identification,  
10 it's not identification card, for instance.

11 So, when we reached out to the Department of  
12 Public Welfare, Health and Aging, we actually had a  
13 template that we also shared with different  
14 organizations as well. It was a piece of printer  
15 paper with a spot for a photo, a name, and an  
16 expiration date as well as a section for the facility  
17 to put their name, so that they would know it was  
18 issued by that facility.

19 Q. Did you come to understand from any of the  
20 agencies that you were working with whether it would  
21 be easy or difficult for any of these facilities to  
22 issue identification?

23 A. Many of them -- there were organizations that  
24 said that the, that the facilities were waiting to  
25 hear the outcome; that many of their residents voted

1 by absentee ballot. That was something that we heard.

2 Q. And do these organizations -- not the  
3 organizations, but the underlying facilities, do they  
4 maintain photographic identification of their  
5 residents?

6 A. Yes, that I'm aware of.

7 THE COURT: Which of these, the  
8 assisted living residencies, the long-term care  
9 facilities, or -- and the other one?

10 THE WITNESS: Sure. What I have been  
11 told is there's a law -- and I'm not sure if it's a  
12 state law or federal law, admittedly -- where these  
13 facilities have to have a picture of their resident on  
14 file. So that was something that we found out kind of  
15 during the initial outreach with the other  
16 departments.

17 BY MS. HICKOK:

18 Q. And I think the Court -- and please, if I get  
19 it wrong, correct me -- but I think the Court's  
20 asking, does this apply to all three classes of  
21 facility or is this to only one class?

22 A. All three that I'm aware of.

23 Q. Thank you. Now, did we ask you during the  
24 course of this litigation to verify with Devon Senior  
25 Living, whether it is issuing compliant ID?

1 A. Yes.

2 Q. And what have you found out?

3 A. They do.

4 Q. Thank you. Now, there was testimony from the  
5 Department of Aging earlier in this trial where they  
6 mentioned AAA or the Area Associations For Aging -- I  
7 believe I have got the acronym.

8 A. Area Agencies on Aging.

9 Q. Area Agencies For Aging. Sorry. Could you  
10 tell us, did you have any direct contact with those  
11 organizations?

12 A. Yes. On a statewide level, I know Secretary  
13 Aichele spoke at their statewide conference. I  
14 believe it was July of 2012 in Gettysburg. I just  
15 remember it more because I was with her.

16 We also had Bravo with tables of materials for  
17 the agencies. We would also reach out on a county  
18 level. I know for instance, the Bucks County  
19 organization was in the voter ID task force. If we  
20 had any issues and people had any questions, even  
21 with, say, transportation or things like that, they  
22 were one of the first organizations that we reached  
23 out to, just because they would know their local  
24 organizations better.

25 Q. And again, would those kinds of outreach and



1 contacts be documented in the project plan?

2 A. Yes.

3 Q. If you look in the project plan, is -- is it  
4 broken down -- and again we're looking at Exhibit  
5 51 -- is it broken down by type of contact or is it  
6 broken down by date?

7 A. By type of contact.

8 Q. And then within that type of contact, is  
9 there -- is it broken down by date within that?

10 A. Yes.

11 Q. And if you look at, for example, 792, can you  
12 tell us about that event?

13 A. Sure. It's -- there was a health and safety  
14 fair with Representative Steven Barrar. It was in  
15 Delaware County, out kind of past the Granite Run  
16 Mall. It was something that I attended. I sat at a  
17 table and handed out information, including  
18 information on voter ID; and when people would pick  
19 up -- since it was before the primary, people would  
20 pick up information, I would remind them that they  
21 would be asked, but not required to show ID.

22 Q. The date shown on here is what?

23 A. April 13th, 2013.

24 Q. So, are you continuing to do outreach and to  
25 attend events as people are requesting?

1 A. This was an event where we had received a  
2 request from Representative Barrar through our press  
3 office; and when I went, I brought along voter ID  
4 materials that we already had printed out there to the  
5 event.

6 So, we had also -- we were also doing earned  
7 media. We had shifted towards earned media campaign;  
8 but in terms of outreach, this was an event that we  
9 had been invited to go to, and then I brought along  
10 materials.

11 Q. And if you receive other invitations to  
12 events, are you attending them?

13 A. Yes.

14 Q. And are there other items or events about  
15 outreach that are documented on here from after the  
16 election in November 2012?

17 A. I don't see any.

18 Q. Okay. But they would be on here?

19 A. Yes.

20 Q. Okay. Thank you.

21 THE COURT: How about we take a  
22 ten-minute recess. We'll give our reporter a chance  
23 to exercise a little bit. I'm sure her fingers are  
24 numb.

25 THE BAILIFF: Commonwealth Court is in

1 recess.

2 (COURT RECESSED AT 2:51 P.M. AND  
3 RECONVENED AT 3:11 P.M.)

4 THE BAILIFF: Court is now in session.

5 THE COURT: Thank you. Everybody  
6 please be seated.

7 MS. HICKOK: May I resume? Thank you,  
8 Your Honor.

9 BY MS. HICKOK:

10 Q. Miss Sweeney, I'm going to show you what's  
11 been marked as Respondents' Exhibits 52, 53 and 54.

12 Do you recognize those exhibits?

13 A. Yes.

14 Q. Can you identify for us what they are?

15 A. 52 and 53 are -- let's see. 52 is a listing  
16 of events from Bravo, events that Bravo attended.

17 53 is a list of -- they would send me a list  
18 of who they contacted.

19 And 54 is the section of the project plan for  
20 outreach and events, specifically I think press calls  
21 and events. Let's see. Yeah. Taken out of the  
22 project plan.

23 Q. So, are these documentation of the things we  
24 discussed a little bit earlier as to the parts of the  
25 education and outreach that Bravo was responsible for?

1 A. Yes.

2 Q. Thank you. And if I could show you Exhibit  
3 55. Can you identify this document?

4 A. Sure. This is a list of material requests  
5 that we would receive. We would get it from various  
6 places. It says, on page three, it says -- bottom of  
7 page three, the Bravo list, they were the requests  
8 that we received through Bravo.

9 Essentially, what would happen is I would be  
10 on the road or people in my office would be on the  
11 road, and so we had three assistants who would help  
12 put the postcards and put the posters together and get  
13 them shipped out, unless it was local. Like the  
14 Central Penn Food Bank, I just drove it there after  
15 work.

16 Q. So, these were all organizations or  
17 representatives or others who were asking for voter ID  
18 materials; is that correct?

19 A. Yes.

20 Q. To your knowledge, were all of the requests  
21 supplied?

22 A. Yes.

23 Q. And if they wanted someone to come and speak  
24 as well, did you work to accommodate that?

25 A. Yes. If it was a speaking event, we would try

1 to have somebody from the Department of State attend,  
2 and then we attended a lot of the events where people  
3 would -- someone would be sitting at a table, and  
4 would let Bravo work at these events.

5 Q. Thank you. Going back to Exhibit 51 for just  
6 a minute. Starting with line 805 and then picking up  
7 from 865 to 879, and again from 953 -- boy, all the  
8 way to 986, I see a number of outreaches that are  
9 identified either as DVMA or veterans groups. Can you  
10 tell me why there are so many of those?

11 A. One of the groups that we had decided, along  
12 with the Bravo Group, but we decided as the Bravo  
13 Group outreach was -- to reach out to was Department  
14 -- was Veterans Affairs.

15 We had reached out to the Department of  
16 Military and Veterans Affairs ourselves, but then  
17 Bravo had contacted a number of counties' Veterans  
18 Affairs offices, and they had done -- contacted --  
19 worked with the Department of Military and Veterans  
20 Affairs to contact all of the counties.

21 Q. Why did veterans in particular get specific  
22 outreach?

23 A. One of the -- or a type of ID that was listed  
24 under Act 18 was military and veterans cards for  
25 active and retired military. The cards can say

1 indefinite on the top right-hand side, and then  
2 military dependents.

3 It also has the -- it has an expiration date  
4 on the top right-hand side. But we wanted to make  
5 them aware of that particular provision of the law as  
6 well.

7 Q. Do some of the veterans who have the form of  
8 military ID that you are talking about also have a  
9 separate identification from the Veterans  
10 Administration?

11 A. Yes.

12 Q. And is the Veterans Administration ID  
13 compliant with Act 18?

14 A. No.

15 Q. And were you concerned with avoiding confusion  
16 in that regard?

17 A. We just wanted to reach as many people as  
18 possible. We knew that this aspect of the law was  
19 something that we really wanted to get out and to  
20 reach out to veterans' groups and to make sure that  
21 they were aware, and could reach out to their networks  
22 as well.

23 Q. And what response did you -- let me ask you  
24 first: Did you do any of this outreach yourself  
25 personally?

1 A. I talked to the Department of Military and  
2 Veterans Affairs and shared our frequently asked  
3 questions. A lot of the contact with the county  
4 veterans affairs organizations was through Bravo.

5 Q. When you spoke to the Department of Military  
6 and Veterans Affairs, what was the reaction that they  
7 gave to you?

8 A. They were positive. They were open to -- we  
9 had asked them to put information on their website,  
10 which they did. They had reached out to their  
11 organizations, and had just at a very welcoming --  
12 very helpful in terms of helping us to put at the word  
13 about the law.

14 Q. Okay. Thank you. You've described a number  
15 of different events that were attended and different  
16 places where outreach was made. Do you have any  
17 understanding as to how many of the 67 counties were  
18 contacted and/or visited during 2012?

19 A. In terms of -- it's a little difficult to say  
20 because a lot -- we reached out to a lot of statewide  
21 organizations, a lot of regional organizations. Say,  
22 we reached out to a group in Mercer County in the  
23 northwest that might be the northwest -- some type of  
24 organization, but we tried to reach as many different  
25 groups as we could, and as often as we could, and had

1 really made a focus of reaching as many people as  
2 possible.

3 Q. Did you put a lot of miles on your car?

4 A. Yes, I did. And I stayed at my mom's house  
5 quite a bit. She is in Delaware County.

6 Q. In Delaware County. But did you also go to  
7 places more in the west of the state or in the north  
8 of the state?

9 A. I had gone to Washington County. There was a  
10 Greene County event I was supposed to go to. Both  
11 were for Senator Solobay. I didn't go -- I had  
12 someone from Bravo go to the Greene County one. I  
13 think it was right after the injunction.

14 And then with Representative Michele Brooks, I  
15 was on the phone for two of her town halls. I believe  
16 Bravo did another one. I'm not sure which county.

17 And we had -- I know somebody from our press  
18 office went to Armstrong. There were just a lot of  
19 different people moving in a lot of different places.

20 Q. Okay. At the end, those are documented in the  
21 project plan?

22 A. Yes.

23 Q. Thank you. Now, did you encounter any  
24 different responses or questions in the urban areas as  
25 opposed to the rural areas?



1 A. No. I mean, the first question that I would  
2 get or the top question that I would get was, is my  
3 driver's license acceptable form of ID. I would say  
4 is it current or 12 months expired? They would say  
5 yes or -- you know, then I would say, then it is.  
6 They would say, great, and walk away.

7 If there were any issues in terms of rural  
8 areas, I know at the Michele Brooks events, that was  
9 for members of the Amish community, but they didn't  
10 have any voter ID questions either day.

11 With urban areas, it would just kind of depend  
12 on the event, I guess.

13 Q. And did you do specific outreach to the  
14 homeless?

15 A. Yes. That was something we actually talked  
16 about. I talked with Jen Riley from Bravo with a  
17 diverse kind of planning meeting. And she had  
18 mentioned -- I was at an event with -- I think it was  
19 Representative Dwight Evans. It was at 63rd and  
20 Chestnut, and I remember asking them about groups or  
21 asking people about groups to reach out to, and  
22 somebody had mentioned the Southeastern United Way,  
23 and I mentioned to Jen and she said she was on the  
24 board. So, we really brought home that we wanted to  
25 do outreach to the homeless.

1           So, I know they did an affordable housing  
2   webinar that had a lot of attendees. We worked with  
3   the Pittsburgh Food Bank, the Central Pennsylvania  
4   Food Bank, and think our press office reached out to  
5   the Pennsylvania Library Association and so that was  
6   just something that was very much at forefront of our  
7   minds.

8   Q.       Now, you mentioned earlier the FAQs. Are you  
9   referring to frequently asked questions?

10   A.       Yes.

11   Q.       Are you responsible for drafting the  
12   frequently asked questions?

13   A.       Yes.

14   Q.       Are they posted to the website?

15   A.       Yes.

16   Q.       And have they been updated over the course of  
17   the time since Act 18 was passed?

18   A.       Yes.

19   Q.       I'm going to show you what's been marked as  
20   Exhibits 144 to 151, if you could look at those  
21   quickly for me. Do you recognize those documents?

22   A.       Yes. They're our frequently asked questions  
23   that are currently on your our website.

24   Q.       So, these are the current versions of the  
25   frequently asked questions.

1 A. Yes.

2 Q. Do you pay attention to whether any of these  
3 need to be updated on a regular basis?

4 A. Yes.

5 Q. And are any of these ever translated into  
6 Spanish?

7 A. Yes.

8 Q. Are they also posted on the website?

9 A. Yes.

10 Q. There was testimony earlier in the trial about  
11 the fact that they -- a gender code that is available  
12 in the PennDOT data is not on the DOS ID. Do you  
13 recall any issues coming up with regard to gender?

14 A. Yes. We had received a question, I believe,  
15 through Bravo about gender related issues. I talked  
16 to PennDOT, found out about their DL -- I believe it's  
17 DL 25 form.

18 Q. And I think we actually have a copy of it  
19 which might refresh your recollection. It's Exhibit  
20 128. Is this the form that you were referring to?

21 A. Yes. It's apparently DL 32. Sorry.

22 Q. That's okay. A lot of numbers and letters.  
23 Can you tell me what your understanding is of  
24 this form?

25 A. Sure. If someone has decided to have -- or if

1 someone goes through a gender reassignment, they can  
2 work with PennDOT and have -- it's either a physician,  
3 a therapist or social worker that fills out the form  
4 with the person saying that their gender identity is  
5 now -- and there's a box of what they identify as, and  
6 that's the way that a person can change their gender  
7 identity on their PennDOT identification.

8 Q. On the DOS identification does it have any  
9 space for gender?

10 A. I don't think so. I don't remember.

11 Q. Did you receive any questions about  
12 transgendered persons?

13 A. Yes. Through Bravo, and that had led me into  
14 contact PennDOT and also do some research. I think  
15 this form was updated in -- around 2010, and then I  
16 reached out to the person who had had the question,  
17 and then they were satisfied. I sent them a copy of  
18 this document.

19 Q. Thank you. Now, in terms of social media, did  
20 you work with Bravo at all to establish any social  
21 media?

22 A. Yes. They had -- they were in charge of a  
23 Facebook page and a Twitter feed both under VotesPA.

24 Q. And were those -- did anybody go to any of  
25 those?

1 A. Yes, they did.

2 Q. Really? Okay. Do you have any idea how often  
3 they were frequented or signed on to or any measure  
4 of --

5 A. Very regularly, people would either ask  
6 questions or make comments. If it was a question,  
7 Bravo would forward that over to myself and either I  
8 would send them the answer. If I needed clarification  
9 on something, I would go to someone else in my  
10 department.

11 Q. But you did try to answer questions or respond  
12 to comments when they were made?

13 A. Yes.

14 Q. Now, I'm going to show you what's been marked  
15 as Respondents' 109.

16 Have you seen this document before?

17 A. Yes.

18 Q. Can you tell us what this document is?

19 A. Yes. I was made aware of an organization that  
20 was offering free transportation to individuals, and  
21 as I would go around to events -- this happened a  
22 couple of times; I don't have a hard number -- but as  
23 this would happen, I would pass it along to Jess  
24 Mathis, who was the point person for our 1-877-VotesPA  
25 number.

1           So if someone had a question, I think she says  
2 here, if you get any questions from Philadelphia  
3 residents requesting rides to PennDOT, we can provide  
4 this information.

5 Q.           And did you have more than one organization  
6 that volunteered to provide rides to PennDOT?

7 A.           Yes.

8 Q.           Were they only in Philadelphia, or were there  
9 any elsewhere?

10 A.          I don't recall the exact locations. We would  
11 start -- we had really actually started to hear, you  
12 know, you would start to hear that people were going  
13 to organize and things like that; and as we became  
14 aware of any groups that had -- that they were  
15 definitely doing it, we would pass it along to Jess.

16 Q.          And was it your expectation that that would  
17 then get publicized to people who might need rides?

18 A.          Yes. This was given to the staff answering  
19 the phones at the 1-877-VotesPA number.

20 Q.          In your capacity as project manager for voter  
21 ID, did you ever become aware that there had been an  
22 issue with Shared-Ride where one of the transportation  
23 providers was not crossing county lines?

24 A.          Yes.

25 Q.          What was done to address that?

1 A. I contacted Toby Fauber, who is the Deputy  
2 Secretary over at PennDOT that oversees the  
3 Shared-Ride Program. And then PennDOT sent out a memo  
4 to the counties saying that they needed to -- they  
5 were required to take residents to driver's license  
6 centers, even if the closest one was over a county  
7 line.

8 Q. After that time and that interaction, have you  
9 had any further complaints?

10 A. We had an issue where someone had needed an  
11 ID. I think it was Forest County. And as soon as I  
12 heard about that, I contacted Toby again, at PennDOT,  
13 and then he said that he took care of the issue.

14 Q. And after that, have you had any complaints?

15 A. No.

16 Q. Okay. Thank you very much.

17 I'm going to show you a document that's been  
18 marked as 130.

19 MS. MOORE: Your Honor, we would object  
20 to this exhibit as hearsay. It's a compilation of  
21 news articles and it's -- assuming going to be offered  
22 for the truth of the matter asserted.

23 MS. HICKOK: Actually --

24 THE COURT: Let's get some background  
25 first.

1 BY MS. HICKOK:

2 Q. Ms. Sweeney, do you recognize this document?

3 A. Yes.

4 Q. Can you tell us what this is?

5 A. This is a group of news articles regarding  
6 events that I attended, and I believe also some of my  
7 Tweets and FourSquare check-ins where I posted  
8 pictures from events that I was at. Essentially, I'm  
9 about to go on. Here's a picture of the crowd, type  
10 of stuff.

11 Q. Did you maintain this as part of your file?

12 A. Yes.

13 Q. And did you produce this simply to document  
14 what you had been to and where you had -- what things  
15 that you had done?

16 A. Yes.

17 Q. Thank you. If I could show you what's been  
18 marked as --

19 MS. MOORE: Objection, Your Honor. We  
20 would just like to make the hearsay objection again.

21 THE COURT: Overruled.

22 BY MS. HICKOK:

23 Q. If I could show you what's been marked as  
24 Exhibit 66 and 67. I guess 68 as well. Sorry. Do  
25 you recognize these documents?



1 A. Yes.

2 Q. Can you tell me what these documents are?

3 A. These are what we referred to as our agency  
4 posters. These are posters that we shared with other  
5 agencies as well as the outside organizations.

6 Q. And which other agencies would that be?

7 A. PennDOT, the Department of Public Welfare, the  
8 Department of Health, the Department of Aging. We  
9 shared posters with -- there were posters at  
10 CareerLink centers, Labor and Industry. We shared  
11 them with Military Veterans Affairs. We would bring  
12 them to events.

13 I would kind of load up a bunch in my car, and  
14 then load them -- you know, have them at events I was  
15 speaking at, so people could distribute them on their  
16 own as well.

17 Q. I see that they're both in Spanish and in  
18 English. Is it your practice to have materials in  
19 both Spanish and English?

20 A. Yes.

21 Q. Do you public materials in other languages as  
22 well?

23 A. We -- as part of our print campaign, we had  
24 print ads that were in Russian, Korean, Vietnamese,  
25 traditional Chinese, and I think I may be forgetting a

1 language. But as they became available -- Korean.

2 As they became available, we would pass them  
3 along to organizations that would be able to  
4 distribute them to communities that would benefit from  
5 having materials in those languages.

6 Q. Was there demand for those materials?

7 A. Yes.

8 Q. Did you supply that demand?

9 A. Yes.

10 Q. If I could have Exhibits 44 through 49. Could  
11 you identify 44 through 49 for me?

12 A. Sure. The first two posters are the polling  
13 place posters that we sent to the counties to put in  
14 their polling locations. Then this actually turns out  
15 it's what was handed out during the general election.

16 This is the text of our handouts, English and  
17 in Spanish. We had -- especially even after the  
18 injunction, we worked with Bravo.

19 MS. MOORE: Excuse me. I'm sorry.  
20 Would it be possible for to us get the numbers. She  
21 is saying "this."

22 THE WITNESS: Sorry.

23 MS. HICKOK: Sorry.

24 THE WITNESS: I guess these are 44 and  
25 45 are the posters -- the polling place posters.

1                   46 is what was handed out during the  
2 general election to voters.

3                   47 is the text of our -- one of our  
4 handouts in English and in Spanish.

5                   48 is one of our handouts in English.

6                   49 is -- let me see if there are other  
7 pages. 49 is our handout as well as other texts  
8 that's in Spanish. We had to use something similar to  
9 the last two pages. We would hand them out as buttons  
10 for people to put on their web pages to link to the  
11 VotesPA website.

12 BY MS. HICKOK:

13 Q.           And how many organizations or people did you  
14 hand out button links to?

15 A.           That, I don't recall a hard number, but it was  
16 one of the things when we would initially contact  
17 people, we would offer as an option, that they could  
18 put on their website.

19 Q.           And were people responsive to that?

20 A.           Yes. I know that Commonwealth agencies had  
21 all put the button on their website as well.

22 Q.           If we could look at Exhibit 68. I believe you  
23 already have it in front of you. Can you tell me what  
24 Exhibit 68 is?

25 A.           This is a copy of a mailing insert. We had

1 worked with other agencies including the Department of  
2 Aging, Department of Public Welfare, I believe license  
3 inspection -- yes -- regarding putting these in  
4 mailings they were already doing to Pennsylvania  
5 residents, regarding -- so they would be getting a  
6 mailing on the voter ID law in addition to the others  
7 that we did later on.

8 Q. And I note this looks like a pre-injunction  
9 mailing; does that look correct to you?

10 A. Yes. It was the time for the mailing was May  
11 1st to September 30.

12 Q. And I don't know if you have any idea, but if  
13 you could, you know, kind of think about the amount of  
14 paper that was handed out; do you have any idea, taken  
15 together, how much materials were distributed through  
16 other organizations, through Bravo, through other  
17 agencies?

18 A. I -- I couldn't give -- I mean, I can't even  
19 imagine. We were getting -- we were doing rush orders  
20 for posters, you know, 10,000 here and 10,000 there.  
21 I was looking at the exhibits -- Exhibit 55, which is  
22 the voter ID materials distribution.

23 We did 20,000 post cards in English just to  
24 two food banks; and then every time we would go to an  
25 event, we would bring materials. And then if it was,

1 say, a church organization, I might bring the general  
2 frequently asked questions, the elderly one and maybe  
3 the homeless one, and so, we sadly killed a lot of  
4 trees.

5 Q. Thank you, Ms. Sweeney.

6 MS. HICKOK: I have no further  
7 questions at this time, Your Honor.

8 MS. MOORE: Your Honor, may I have five  
9 minutes to get organized?

10 THE COURT: Okay.

11 MS. MOORE: Thank you.

12 THE COURT: We'll recess for five  
13 minutes.

14 THE BAILIFF: Commonwealth Court is now  
15 in recess.

16 (COURT RECESSED AT 3:41 P.M. AND  
17 RECONVENED AT 3:50 P.M.)

18 THE COURT: Please be seated.

19 THE BAILIFF: Court is now in session.

20 THE COURT: All set.

21 MS. MOORE: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MS. MOORE:

24 Q. Hi, Miss Sweeney. I'm Whitney Moore. We have  
25 met previously.

1 A. Yes. Hi. Good to see you again.

2 Q. Ms. Sweeney, I'd like to start by asking you a  
3 few follow-up questions about some of the documents  
4 that Respondents' counsel handed you when you were  
5 doing your testimony.

6 The first thing I'd like for you to take a  
7 look at is Exhibit 137, which is Respondents' Exhibit  
8 137. It looks like this. It's got highlighting on  
9 it. I think it's the sticker tracker, is what we have  
10 heard it referred to as.

11 A. Yes.

12 Q. And I'd also like you to pull out Exhibits 83,  
13 85, and 87, which I believe are the list of assisted  
14 living residencies and the long-term care facilities  
15 by county and the personal care homes; do you see  
16 those?

17 A. Yes.

18 MS. MOORE: Your Honor, I think you  
19 have these from when they were handed out previously.

20 THE COURT: Yes, I do.

21 BY MS. HICKOK:

22 Q. Ms. Sweeney, you haven't provided today -- you  
23 haven't provided the Court with anything that looks  
24 like the sticker tracker, but that covers the care  
25 facilities; have you?

1 A. No.

2 Q. And is that because that document doesn't  
3 exist?

4 A. Yes.

5 Q. And I believe you said in connection with the  
6 care facilities that there was a law that required  
7 them to have a photo on file for their residents; is  
8 that correct?

9 A. Yes.

10 Q. Having a photo on file, that doesn't mean that  
11 the facility issues an ID that's useful for voting;  
12 does it?

13 A. No.

14 Q. And a photo and medical record, that's not a  
15 document that a person can take to the polls to vote  
16 with; correct?

17 A. No.

18 Q. And I believe the Court asked or was getting  
19 at the question of how many of the care facilities are  
20 issuing photo IDs right now that are acceptable for  
21 voting. You don't know that number, do you?

22 A. I don't have a hard number now.

23 Q. The next number I'd like to touch on with you  
24 is Exhibit No. 55, which I believe is the material  
25 requests document. It came in with several others,

1 exhibits.

2 A. Here it is. Yeah.

3 Q. You got it?

4 A. Yes.

5 Q. Okay. Now, I was looking through this while  
6 you were discussing it, and it looks like there are a  
7 couple of different dates that are provided on this  
8 document. It looks like there's a date requested,  
9 which I'm assuming is the date the materials were  
10 requested; is that right?

11 A. Yes.

12 Q. And there's also a date sent which is the date  
13 that you sent the materials to them; is that correct?

14 A. Yes.

15 Q. Okay. It looks like all of these dates that  
16 materials were sent are before September 25th which is  
17 when the Department of State ID requirements changed;  
18 am I reading that correct?

19 A. Yes.

20 Q. So, the supporting document requirement for  
21 the Department of State ID, that was still in effect  
22 when these materials were sent?

23 A. As far as I can tell, yes. Everything was  
24 before that date.

25 Q. And most of the material on this list, it



1 looks like were sent in English; is that right?

2 A. Yes. It was based on what people requested.

3 Q. So, mostly English documents?

4 A. Yes.

5 Q. The next one I'd like to ask you about,  
6 Ms. Sweeney, is Exhibit 51, which I believe you  
7 identified as the project plan that you kept for the  
8 voter ID project?

9 A. Yes.

10 Q. Okay. And I believe that Respondents' counsel  
11 asked you about some items in material. The ones that  
12 I'm interested in start on page 37. And these are the  
13 veteran affairs outreach?

14 A. Yes.

15 Q. Are you familiar with that? And the question  
16 is really just -- I was looking and I noticed that  
17 starting on line 960, it's veteran affairs state  
18 level, and going through the next page, and all the  
19 way to 986, which I think is the end of that section,  
20 it looks like these are all state level or county  
21 director outreaches; is that correct?

22 A. Yes.

23 Q. So, these are -- are these calls to those  
24 people?

25 A. These would be different points of contact,

1 whether it was calls or if people called them. This  
2 is Bravo's contacts.

3 Q. But these don't reflect meetings with groups  
4 of veterans, do they?

5 A. No, they would go into events.

6 Q. Thank you. I believe you said earlier,  
7 Ms. Sweeney, you attended between 40 and 50 events  
8 during the -- before the November election; is that  
9 correct?

10 A. Yes.

11 Q. You didn't collect contact information for  
12 everybody at those events, right?

13 A. No.

14 Q. And you did tell people at those events about  
15 voter ID?

16 A. Yes. I would generally give the list of IDs  
17 and I would go into the process of if someone needed  
18 the ID, how to get one at PennDOT and then answer any  
19 questions.

20 Q. So, you told people specifically how they  
21 could get the Department of State ID once it was  
22 available?

23 A. Yes.

24 Q. You told people they had to go to PennDOT to  
25 get the Department of State ID?

1 A. Yes.

2 Q. And prior to September 25th, you told people  
3 that they needed proof of residency, they had to bring  
4 the supporting documents with them?

5 A. Yes.

6 Q. And you were telling people as well that the  
7 process required them to try to get the secure PennDOT  
8 ID first and then they could try to get the Department  
9 of State ID?

10 A. Yes.

11 Q. After the requirements to get that card  
12 changed on September 25th, you didn't do anything to  
13 reach out to the people you had already met with and  
14 tell them that those requirements were changed; did  
15 you?

16 A. We continued to do events, and then tried to  
17 just keep doing as much outreach as we could.

18 Q. But with the specific people that had come to  
19 the events before September 25th, you didn't have a  
20 way to reach out to them; did you?

21 A. No.

22 Q. You mentioned I believe that you did some  
23 homeless outreach as part of the voter ID outreach  
24 project?

25 A. Yes.

1 Q. You didn't reach out to the Homeless Advocacy  
2 Project, did you? It's one of the Petitioners in this  
3 matter.

4 A. Not that I'm aware of. Bravo did a lot of the  
5 outreach and I know the affordable housing webinar had  
6 a lot of different groups, so I'm not sure if they  
7 were on there or not.

8 Q. But as far as you were aware, the Homeless  
9 Advocacy Project wasn't one of those groups?

10 A. I don't think so.

11 Q. And there were voter outreach events in  
12 Philadelphia, right?

13 A. Yes.

14 Q. But none of the outreach went to 19th and  
15 Vine, to work with Philly Restart; did they?

16 A. Not that I'm aware of.

17 Q. I believe you also talked about a health fair  
18 that you attended in April of this year?

19 A. Yes.

20 Q. And you and I spoke previously about that,  
21 right?

22 A. Yes.

23 Q. I think you said you distributed voter ID  
24 handouts at that event?

25 A. Yes.

1 Q. But none of the handouts you distributed were  
2 specifically about the Department of State ID, were  
3 they?

4 A. No.

5 Q. They didn't describe how you get the  
6 Department of State ID or where you go or that it's  
7 free?

8 A. No.

9 Q. And nobody asked you about the Department of  
10 State ID at that event, did they?

11 A. No.

12 Q. Nobody asked you how to get a free ID at all?

13 A. No.

14 Q. You did have people ask you if their driver's  
15 license was okay?

16 A. Yes.

17 Q. So, as of April, at least, there were still  
18 voters who were not sure if they could use their  
19 driver's license to vote?

20 A. Yes.

21 Q. You didn't meet with anyone at that event who  
22 didn't have ID, right?

23 A. No.

24 Q. So, as far as you know, you didn't actually  
25 help anyone at that event get free ID?

1 A. That, I'm not sure. I mean, they could have  
2 taken the -- I think the handout says you're entitled  
3 to one free of charge, so if they saw that, they may  
4 have been -- that may have helped them without talking  
5 to me.

6 Q. But as far as you're aware, there was no one  
7 that you specifically helped; is that right?

8 A. I didn't help anyone directly.

9 Q. I'd like to back up for a second just to make  
10 sure that I understood you correctly on a couple of  
11 earlier points. The first thing is, I think you said  
12 that you didn't collect information from voters at all  
13 of the events you attended; right?

14 A. I didn't have, say, like a sign-in sheet or  
15 anything like that.

16 Q. Right. Okay. And also -- I think this was  
17 just -- I think that I just didn't understand your  
18 question here. I asked you previously, that a photo  
19 and a medical record isn't an ID that a person can use  
20 to vote. That's correct, right?

21 A. Yes. It's like their medical records. They  
22 can't bring the folder to vote.

23 Q. Thank you.

24 Ms. Sweeney, I believe you also were asked  
25 earlier about one of the voter ID outreach projects,

1 the mailing inserts?

2 A. Yes.

3 Q. And that I think was Respondents' Exhibit 68?

4 A. Yes.

5 Q. I believe you said that this was supposed to  
6 be sent out between May 1st and September 30th; is  
7 that right?

8 A. Yes.

9 Q. So this was pre-injunction as Respondents'  
10 counsel put it?

11 A. Yes.

12 Q. But once this was sent to the agencies for  
13 distribution, it wasn't revised; was it?

14 A. No.

15 Q. So, it was not revised to add the Department  
16 of State ID?

17 A. No.

18 Q. Ms. Sweeney, I'd also like to ask you a little  
19 bit about the Shared-Ride transportation. It's  
20 Respondents' Exhibit 109. Trans Mercy Philadelphia.

21 A. Opened right to it.

22 Q. Did you find it?

23 A. Yeah.

24 Q. I believe you said this was an example of the  
25 ride opportunities that were sent, that Jessica Mathis

1 sent; is that correct?

2 A. Yes.

3 Q. This is the only example of Jessica Mathis  
4 sending out that information, though; isn't it?

5 A. Yes. I had sent -- well, I don't know what  
6 she sent on, but I -- when I would forward her, I  
7 think there was something with North or New Courtland  
8 in Germantown.

9 There were groups like the voter ID coalition  
10 was going to do rides; but then after the injunction  
11 happened, I think that had ended, but we didn't send  
12 anything, but we knew it might happen.

13 Q. So this is one example of one that you knew  
14 was happening; is that right?

15 A. This is the one that I see from Jess from the  
16 Bureau of Elections.

17 Q. This information for the Philadelphia  
18 residents, this wasn't put on the VotesPA website; was  
19 it?

20 A. No.

21 Q. And it wasn't included in the ad campaign in  
22 Philadelphia, was it?

23 A. No.

24 Q. It also wasn't added to the handouts, was it?

25 A. No.



1 Q. The Shared-Ride information generally wasn't  
2 put on the VotesPA website, was it?

3 A. No.

4 Q. You spoke previously about attending a number  
5 of events and helping people at those events. You  
6 only helped a few people one-on-one, didn't you, at  
7 those events?

8 A. Well, it would depend. Essentially, if people  
9 came and had questions at the events during the  
10 presentation, but usually it would be after any  
11 representation we did that people would have questions  
12 and I'll share, but, yes, it was a small number that  
13 actually verbally, you know, stood or raised their  
14 hand to ask a question.

15 Q. And in terms of people who sort of came up to  
16 you one-on-one and you had to do more than just answer  
17 a question on the spot for, that was probably fewer  
18 than ten people; right?

19 A. Yes.

20 Q. Ms. Sweeney, the outreach plan, it originally  
21 included robo calls; right?

22 A. Yes.

23 Q. But those were cancelled after the injunction?

24 A. Yes.

25 Q. You weren't aware of any discussions at the

1 Department of State about using the robo calls to  
2 communicate to voters that they didn't need to have an  
3 ID for the November election; are you?

4 A. No.

5 Q. And you're not aware of any discussions about  
6 revising the robo calls to tell voters, if you don't  
7 have an ID, you can obtain one for free with no  
8 documentation; are you?

9 A. No.

10 Q. There was also originally supposed to be a  
11 lottery crawl, right?

12 A. Yes.

13 Q. That was cancelled as well?

14 A. Yes.

15 Q. Ms. Sweeney, can you take a look at  
16 Respondents' Exhibit No. 67, please. I believe it's  
17 identified as one of the agency posters.

18 A. Yes.

19 Q. This doesn't list the Department of State ID,  
20 does it?

21 A. No, it does not.

22 Q. And it doesn't tell voters that they would  
23 need to go to PennDOT to get a Department of State ID?

24 A. No.

25 Q. And it doesn't tell people that there's a

1 Department of State ID they can get with no  
2 documentation?

3 A. No.

4 Q. And can you please also take a look at No. 48,  
5 Respondents' Exhibit 48. I believe you described this  
6 as one of your English language handouts; is that  
7 correct?

8 A. Yes.

9 Q. This one doesn't list the Department of State  
10 ID either, does it?

11 A. No.

12 Q. And if you look over on the right under "what  
13 you need to know," the first paragraph there, it says,  
14 "if you are a registered voter and do not have one of  
15 these IDs and require one for voting purposes, you are  
16 entitled to get one free of charge with supporting  
17 documentation at a PennDOT driver's license center."

18 Did I read that correctly?

19 A. Yes.

20 Q. So, this does indicate that you need  
21 supporting documentation?

22 MS. MOORE: One moment, Your Honor.

23 Thank you, Ms. Sweeney.

24 I'm done, Your Honor.

25 MS. HICKOK: May I?

1 Thank you, Your Honor.

2 REDIRECT EXAMINATION

3 BY MS. HICKOK:

4 Q. Ms. Sweeney, you were asked --

5 A. Hi again.

6 Q. -- you were asked just a moment ago about the  
7 Homeless Advocacy Project and Philly Restart and  
8 whether you had done events with them or for them.

9 Was it the policy of the Department to do  
10 events with anyone who requested them?

11 A. Yes.

12 Q. If the Homeless Advocacy Project had asked to  
13 do an event with you, would you have been happy to do  
14 it?

15 A. Yes. I believe we did them with the League of  
16 Women Voters as well as with the NAACP.

17 Q. And if Philly Restart had asked you to do an  
18 event for them or with them, would you have done that?

19 A. Yes.

20 MS. HICKOK: Thank you, Ms. Sweeney.

21 I have no further questions, Your  
22 Honor.

23 MS. MOORE: I have nothing further.

24 THE COURT: Okay. Thank you,  
25 Ms. Sweeney.

1 MS. HICKOK: Your Honor, at this time,  
2 we would like to move in.

3 MR. HUTCHISON: Exhibits 44, 45, 46,  
4 47, 48, 49, 51, 52, 53, 54, 55, 66, 67, 68, 83, 84,  
5 85, 86, 87, 88, 109, 113, 123, 128, 130, 137, 144,  
6 145, 146, 147, 148, 149, 150, and 151.

7 MS. MOORE: Your Honor, we would like  
8 to renew our objection to Exhibit 130, which is the  
9 news articles.

10 THE COURT: It will be noted. Thank  
11 you.

12 MR. KEATING: We want to move to put in  
13 the depositions.

14 MR. HUTCHISON: Your Honor, at this  
15 time we would submit the depositions designations for  
16 Jennifer Riley, from the Bravo Group. We have  
17 coordinated with the Petitioners to designate and  
18 counter-designate, as well as the exhibits to her  
19 deposition. This one was not videotaped. So there's  
20 no videotape for it.

21 THE COURT: Could you give me a list of  
22 what you just recited, short note.

23 MR. HUTCHISON: Yes. For the exhibits  
24 that we introduced?

25 THE COURT: That you just mentioned

1 right now, the deposition.

2 MR. HUTCHISON: The deposition, yes.

3 THE COURT: What was the young lady's  
4 name? I have it here someplace.

5 MR. HUTCHISON: Jennifer Riley from the  
6 Bravo Group.

7 THE COURT: That's a video dep?

8 MR. HUTCHISON: This one is not.

9 Your Honor, deposition is identified as  
10 Respondents' Exhibit 261, and the exhibits to the  
11 deposition are Respondents' Exhibits 261A through  
12 261K.

13 In addition, we also have the  
14 videotaped deposition of William Brown, which includes  
15 both the video itself and the deposition transcript.  
16 Respondents have designated the entirety of both the  
17 video and the transcript.

18 During the deposition, Respondents'  
19 counsel represented that the exhibits would not be  
20 admitted into evidence; but we are offering them as  
21 they would be during cross-examination at trial to  
22 provide -- also to provide context for the Court, so  
23 to maintain the representation we'll not move to admit  
24 those exhibits.

25 MS. SCHNEIDER: Your Honor, we have

1 certain objections to the introduction of this  
2 deposition, but I just wanted to give you a little  
3 background.

4 William Brown was identified by  
5 Petitioners for the purpose of describing his  
6 experience at PennDOT. He went to PennDOT to get a  
7 non-driver photo ID, and he was charged \$13.50 for it.

8 Mr. Brown is a client of Philly  
9 Restart, so we decided not to offer him because his  
10 evidence was cumulative, and the direct testimony  
11 lasted ten minutes.

12 The bulk of the deposition especially  
13 and the video is a lot of cross-examination, and we  
14 object to some of the lines of questioning of that  
15 cross-examination, specifically Respondents questioned  
16 him extensively about his prior convictions.

17 And under the Pennsylvania Rules of  
18 Evidence, Rule 609, prior convictions do not come in.  
19 These were convictions for drug-related offenses. The  
20 only thing that comes in are convictions that relate  
21 to truthfulness or dishonesty.

22 I'd like to designate the pages and  
23 lines that we object to for the record.

24 THE COURT: Whose witness was  
25 Mr. Brown?

1 MS. SCHNEIDER: He was our witness,  
2 Your Honor. He was identified an the Petitioners'  
3 witness list. Because his evidence was cumulative for  
4 the purpose that we identified him, we decided not to  
5 call him.

6 THE COURT: We'll note your exception.  
7 Thank you, Counsel.

8 MS. SCHNEIDER: May I identify the page  
9 numbers and lines?

10 THE COURT: Certainly.

11 MS. SCHNEIDER: Thank you, Your Honor.  
12 Page 38, line 4, to page 46, line 15;  
13 and then page 51, line 4, to 52, line 1; and page 86,  
14 line 19, to page 88, 23; and we hope Your Honor will  
15 give it the weight they deserve.

16 THE COURT: And I'd like a little note  
17 from you as to those lines. I can't write that fast  
18 anymore. Three weeks ago, I could have.

19 MR. HUTCHISON: Your Honor, may I  
20 respond?

21 THE COURT: Sure.

22 MR. HUTCHISON: First of all, counsel  
23 elicited the drug offenses herself on page 4; and they  
24 were relevant not for truthfulness or for impeachment,  
25 but to demonstrate that Mr. Brown was not eligible to



1 register when he did register to vote and that he  
2 registered at an invalid address under the law. That  
3 was the purpose for introducing the criminal evidence.

4 MS. SCHNEIDER: Your Honor, there was  
5 already testimony that he was incarcerated. If they  
6 wanted the make the argument that he wasn't a valid  
7 voter, they could have made that; however, I just want  
8 to point out that Mr. Brown will be released on August  
9 15th, and he is entitled and was entitled to register  
10 to vote at any time after April 22nd.

11 And to the extent that he inadvertently  
12 registered at the halfway house, he could change his  
13 address now or when he is released on August 15th.

14 So, the rule that prior convictions  
15 don't come in is because the Supreme Court has  
16 determined that their unfair prejudice outweighs the  
17 probative value. That's already been determined under  
18 the Rules of Evidence and that's why those prior  
19 convictions don't come in.

20 MR. HUTCHISON: Your Honor, if I can  
21 respond. He registered to vote or he applied to  
22 register in April. The next election was in May. He  
23 wouldn't have been released until August; therefore,  
24 he was ineligible in April to register.

25 THE COURT: Okay. I don't know if you

1 are making her argument that this video should not be  
2 admitted or if this is your argument that it should  
3 be.

4 MR. HUTCHISON: I'm arguing that it is  
5 relevant, but for other purposes.

6 THE COURT: It's a little ambiguous.

7 MR. HUTCHISON: Sorry.

8 THE COURT: If he couldn't vote, he  
9 couldn't vote. If that's your objection, I'll  
10 entertain that. It seems to me that it would be a  
11 quasi-valid objection on its face, because if he  
12 couldn't vote, why should I watch his video? But I'll  
13 consider that, okay? I'll consider your argument, and  
14 I will consider your argument.

15 MS. SCHNEIDER: Thank you, Your Honor.

16 One other item I wanted to make sure, I  
17 had mentioned -- I had notified Mr. Hutchison that  
18 there was confidential information on Exhibit 3, and I  
19 wanted to make sure that that confidential information  
20 was redacted. It was a bank account number from  
21 Philly Restart.

22 MR. HUTCHISON: It's been redacted,  
23 Your Honor.

24 THE COURT: I thought it was redacted.  
25 As long as it was redacted, it will be okay.

1 MR. HUTCHISON: It's been redacted.

2 MS. SCHNEIDER: Thank you, Your Honor.

3 MR. HUTCHISON: Your Honor, just for  
4 the record that was Respondents' Exhibit -- the  
5 deposition transcript is 262, and the Exhibits were  
6 262a through 262f, and the video is 263.

7 MR. KEATING: Is that it?

8 MR. HUTCHISON: Yes.

9 MR. KEATING: Your Honor, typically, we  
10 would rest at this point, but we have a small  
11 procedural problem; and that's the Petitioners haven't  
12 rested. So, that's where we are at. That's where  
13 we're at in this case. Vic.

14 MR. WALCZAK: Your Honor, we have one  
15 rebuttal witness that we would call. It's Brian  
16 Niederberger.

17 THE COURT: Is he available now?

18 MR. WALCZAK: He is, Your Honor, and I  
19 expect him to be about 20 minutes.

20 MS. HICKOK: Your Honor, we would  
21 object to this witness. We do not believe he has  
22 anything probative to add to any of the testimony that  
23 was here, and we also believe that he would be  
24 testifying about confidential information, which  
25 should not be attested to in public.

1 MR. WALCZAK: Your Honor, if I could --  
2 it might be helpful if I give the Court a little bit  
3 of background about this information.

4 This is a numbers guys. The Court has  
5 asked the parties to try to agree on what the numbers  
6 are in these various spreadsheets that Mr. Marks has  
7 testified about. We thought we had the numbers from  
8 that SharePoint spreadsheet, the 615 entries in there;  
9 but then we learned about this somewhat mysterious  
10 144. We have now gotten that information.

11 Then we learned that some of the people  
12 should be categorized as under the old process because  
13 they went to PennDOT at an earlier date.

14 What we have done is taken all of that  
15 information, all three of those sources from the  
16 Commonwealth, given them to Mr. Niederberger, who is  
17 really just plugging in the numbers to report on how  
18 it affects the spreadsheet; and he will testify in  
19 three ways -- present the data in three ways.

20 One is what the exceptions spreadsheet  
21 shows by itself. The four corners of the spreadsheet.

22 Then he will show what the numbers are,  
23 if you accept the Commonwealth's contention that the  
24 144 voters had a valid ID through some other source.

25 And then the third way is that we don't

1 believe that all 144 of those voters should be  
2 credited as having an ID. And he will testify what  
3 the numbers are based on our assessment of which of  
4 those 144 actually had ID through some other source.

5 THE COURT: I thought I saw a  
6 notification between counsel that Mr. Niederberger  
7 would testify; is that right?

8 MS. HICKOK: Your Honor, they had  
9 stated that they might need to bring him in as a  
10 rebuttal to Mr. Myers. What they are doing with him  
11 now goes way beyond that. It is testimony that does  
12 not rebut Mr. Marks because it doesn't talk about what  
13 it is that Department of State knows and understands.

14 It is also testimony that does not  
15 rebut Mr. Myers because they themselves said that they  
16 do not have access to the same information that the  
17 Department of Transportation does; and therefore, they  
18 are trying to place onto documents ascriptions that  
19 never existed and to interpret those in ways that go  
20 well beyond what either the Department of State or the  
21 Department of Transportation would be able to state  
22 separately as to the underlying data.

23 This would have to be something that  
24 would have to be in camera, and we would have to have  
25 multiple people come back to testify that has nothing

1 to do with the procedure that was actually followed or  
2 the information that was actually used by the  
3 Department of State.

4 MR. WALCZAK: Your Honor, the Court  
5 asked the parties to get to the bottom of the numbers.  
6 We have done that.

7 THE COURT: We can do this in camera,  
8 and then we can entertain her objection.

9 MR. WALCZAK: Your Honor, I don't  
10 believe we need to do this in camera. I have spent a  
11 half hour with Mr. Niederberger. We have --

12 THE COURT: We'll just close the  
13 courtroom, and we'll just ask the people in the  
14 attendance --

15 MR. WALCZAK: Your Honor, I don't think  
16 it's -- I think the courtroom under the Pennsylvania  
17 Constitution should not be closed unless there's a  
18 compelling reason to close that. There will be no  
19 confidential information that will be disclosed  
20 through my examination. This is -- we're just running  
21 numbers.

22 THE COURT: I'll give you an exception.  
23 That's fine. Give you an exception. But I want to  
24 keep moving with this, okay? We'll have to ask  
25 everybody to remove themselves. We have some issues

1 concerning the testimony that's coming. So, we'll  
2 take this testimony in camera.

3 (THE PROCEEDINGS RECESSED FROM OPEN  
4 COURT FOR THE DAY AT 4:20 P.M.

5 THERE WAS AN IN CAMERA PROCEEDINGS  
6 WHICH IS CONTAINED IN A SEPARATE CONFIDENTIAL  
7 TRANSCRIPT.)  
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## REPORTER'S CERTIFICATE

I, Marjorie Peters, a Registered Merit Reporter, Certified Realtime Reporter, and Notary Public in and for the State of Pennsylvania, that the foregoing record was taken at the time and place stated herein and was recorded stenographically by me and then reduced to typewriting under my direction, and constitutes a true record to the best of my skill and ability.

I certify that I am not a relative or employee of either counsel, and that I am in no way interested, directly or indirectly, in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office this            day of 2013.

\_\_\_\_\_  
Marjorie Peters, RMR, CRR

My commission expires March 13, 2016

Original certification on file at Miller Verbano Reporting.

Adam N. Miller, Custodian















































































