

Transcript of Proceedings

Date: July 24, 2013

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



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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

**CERTIFIED
TRANSCRIPT**

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

Petitioners,

vs.

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

Respondents.

C.A. No.
330 M.D. 2012

TRIAL DAY EIGHT

Honorable Bernard L. McGinley

Harrisburg, Pennsylvania

Wednesday, July 24, 2013

9:30 a.m.

REPORTED BY:

Marjorie Peters, RMR, CRR

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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.

MR. KEATING: Good morning, Your Honor.

MR. RUBIN: Good morning, Your Honor.

THE COURT: Okay. So for next week, I am with the Court of Judicial Discipline on Monday, so we won't start until Tuesday, and we'll start Tuesday at 9:30. But tomorrow, let's start at 9:00. Now, it looks like we have two for Thursday, Marks and Wecker.

MS. HICKOK: That's correct, Your Honor.

MR. KEATING: Correct, Your Honor.

THE COURT: So let's start at 9:00 and that way we can close court at about 3:00 so I can get back west on Thursday night. Okay.

Now there's motions today. Is there something that I have to look at now?

MR. RUBIN: Your Honor, this affects when Respondents call Kurt Myers this afternoon. It's the eighth day of trial. We don't have data that we can independently verify and validated on who this 144 is. If Mr. Myers is planning on testifying to this, it is something that we believe that Your Honor needs to address before his testimony.

MS. HICKOK: Your Honor, we have provided an answer; and in the answer, we have discussed the fact that we

1 have been working very hard to work with Petitioners to meet
2 their demands. In fact, we have asked a non-party to work
3 through the weekend and through the night to get us answers on
4 their questions.

5 We have also, as you know, told them that
6 because the PennDOT database was accessible to their expert
7 that they could independently verify through him; and they
8 indeed have told Your Honor that they would like to bring that
9 person who has done that independent verification here to
10 testify.

11 So, the idea that this is something that has
12 not been addressed and indeed was addressed by PennDOT at your
13 Court's -- at the Court's request, I just -- I don't see the
14 grounds for this motion.

15 MR. RUBIN: Your Honor, the information that
16 our expert has from PennDOT is very limited. It is not the
17 information that PennDOT has. We do not have the information
18 that PennDOT has. What we have is a doc chart that has
19 information on 81 out of 144 by our count. That information
20 is not anything that's actual business records. It is a --
21 it's conclusions, characterizations, whether by counsel or
22 whether by PennDOT working with counsel, we don't know; but by
23 their own characterization, it is not at all a business
24 record. It's not what we're entitled to have.

25 MS. HICKOK: Your Honor, you asked us to come

1 specific question, the 500 people on this spreadsheet after
2 supposedly were accessed, those are people who went to PennDOT
3 asking for a DOS ID and were not given one, and he agreed
4 unequivocally, yes.

5 The December email which was produced in April
6 does not give any information about who the 144 people were,
7 does not indicate that these people were on the DOS exceptions
8 spreadsheet, gave us no reason to believe they were even
9 linked; and when Mr. Marks assured us that it wasn't, there
10 was no reason to follow up.

11 THE COURT: We have Mr. Myers scheduled for
12 this afternoon.

13 MS. HICKOK: That's correct, Your Honor.

14 THE COURT: Is he part of the mystery of the
15 144?

16 MS. HICKOK: He is the Department of
17 Transportation's witness, Your Honor.

18 MR. RUBIN: That doesn't necessarily answer
19 the question of whether he can testify as to 144, being the
20 Department of Transportation's witness does not mean that he
21 has personal knowledge of the 144, that he has done this work.
22 The work, whatever it is, he has not done --

23 THE COURT: We'll find out later on. We'll
24 put him on for direct, Mr. Keating.

25 MR. KEATING: Your Honor, Mr. Marks -- my

1 to an agreement as to the 144, and you asked us to reach out
2 to PennDOT in order to get the information to do that. As we
3 have said repeatedly, PennDOT is under very strict privacy
4 requirements.

5 We had talked to Petitioners about the need to
6 anonymize any information that we provided to them. They
7 agreed to the anonymization. They did not agree to put the
8 other exhibit under seal, which meant that we had to put
9 whatever we provided under seal; and we have worked
10 desperately to try to come to an agreement.

11 If you will look at the email traffic that
12 follows our answer to the motion, you will see that what we
13 were assured consistently is that what we were providing was
14 helpful and useful, and that indeed, they had been able to
15 verify a number of people as not being in the exceptions
16 process, just as was contended, and just as was supported by a
17 document that had been produced back in April, and that they
18 chose not to question about.

19 MR. RUBIN: Your Honor, that is not an
20 accurate statement of the record. We chose to question
21 Mr. Marks about the spreadsheet at his July deposition. He
22 was asked specifically whether there was any reason to believe
23 that the spreadsheet was inaccurate. His unequivocal answer
24 was no. That's page 189 of his deposition in July.

25 In the June deposition, he was asked the

1 understanding, is going to testify about the 144, and that he
2 was asked to review those documents, and we anticipate that he
3 will testify as to how many of those 144 actually did have
4 IDs, to his understanding.

5 MR. RUBIN: And that's precisely the
6 information we don't have.

7 THE COURT: You will get it, you will have a
8 chance to talk to Mr. Marks tomorrow.

9 MR. RUBIN: Well, is it Mr. Marks or Mr. Myers
10 that will testify to that?

11 MR. KEATING: I'm sorry. I meant Mr. Myers.

12 MR. RUBIN: I believe it's Mr. Myers.

13 THE COURT: Let's see what happens. If you
14 need some time before you begin your cross, we'll give you
15 some time; but I have got to get this thing moving. We're way
16 behind schedule.

17 MR. RUBIN: Can we have a standing objection
18 to any of this testimony, Your Honor?

19 THE COURT: Certainly.

20 MR. RUBIN: Okay.

21 THE COURT: Okay. First witness.

22 MR. KEATING: Your Honor --

23 MR. JONES: Before they start, we have final
24 housekeeping matters, some written documents that we would
25 like to move into evidence before the Respondents begin their

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1 case.

2 First, we would offer into evidence,

3 Petitioners' Exhibits 1446, 1447, and 1448. These are

4 Exhibits to a stipulation that the parties entered into on

5 June 6th, 2013.

6 These three documents are correspondence

7 either to or from representative Darryl Metcalf who was a

8 principal sponsor of Act 18. The parties stipulated in June

9 to the authenticity of the documents, and that Representative

10 Metcalf has verified their authenticity.

11 The first two documents are email chains in

12 which both Representative Metcalf and also representative

13 Steve Barrar raised questions about the statutory

14 authorization and existence of the DOS ID.

15 THE COURT: Metcalf and who is the second?

16 MR. JONES: Steve Barrar. B-A-R-R-A-R.

17 They're members of the House of Representatives.

18 MR. KEATING: Which one are you talking about,

19 G?

20 MR. JONES: G and H.

21 MR. KEATING: Yeah. The stipulation is -- do

22 you have a copy of the stipulation itself?

23 MR. JONES: I do. The stipulation is that the

24 attached documents -- they were actually A through J. We're

25 only submitting three of them, G, H and I; and that they are

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1 authentic copies of the material described in the stipulation

2 and separately stipulating that Representative Metcalf, who is

3 on all of the correspondence, verified the authenticity of

4 each of the exhibits, acting through his legal counsel.

5 I can hand up a copy of the stipulation if

6 Your Honor would like.

7 THE COURT: That's no problem.

8 MR. KEATING: I think that's a credible way to

9 do that. The stipulation itself, if you want to enter that.

10 MR. JONES: The final document is a letter

11 from Representative Metcalf to Secretary --

12 THE COURT: On the stipulation, what were the

13 letter numbers --

14 MR. JONES: G.

15 THE COURT: -- for the record?

16 MR. JONES: Sure. They are Exhibits G, H and

17 I to the stipulation, which are the first three entries on the

18 second page.

19 THE COURT: Okay. I'm sorry to interrupt you.

20 MR. JONES: Sure.

21 The final exhibit, Exhibit I, which is

22 Petitioners' 1448 is an October 26th, 2012, letter from

23 Representative Metcalf to Secretary Aichele expressing

24 concerns about aspects of the Department of State's education

25 campaign, relating to Act 18. So, we would move those

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1 exhibits into evidence.

2 MR. KEATING: Your Honor, we don't object

3 moving them into evidence. They have no relevance to the

4 issue before the Court, but the letters are what they are.

5 MR. JONES: Next, we move into evidence

6 Petitioners' Exhibit 1515, which is the affirmation that

7 voters have been asked to sign in order to try to obtain a

8 PennDOT ID -- free PennDOT ID for voting or DOS ID since

9 February of this year, when the affirmation changed.

10 We had sent a proposed stipulation to

11 Respondents' counsel just regarding the authenticity and

12 admissibility of the document, but didn't receive a response.

13 It's a one-page document.

14 MR. KEATING: I think Mr. -- Mr. Myers is

15 going to testify to this and we'll get this in anyway,

16 correct? Yeah.

17 THE COURT: This affirmation was effective on

18 what date?

19 MR. JONES: February 14th, 2013. It's in the

20 lower right-hand corner. A change was made to the affirmation

21 on that date. This is the most current version.

22 Then finally, we would like to confirm in

23 evidence Petitioners' Exhibit 25, which is a stipulation dated

24 July 25th, 2012, regarding the location of PennDOT facilities

25 that offer voter IDs.

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1 MR. KEATING: Is that in the record?

2 MR. JONES: I believe it's in the record

3 already. We would also like to hand up a copy and also offer

4 an excerpt from the June 4th, 2013, deposition of Kurt Myers.

5 MR. KEATING: We would object to that, Your

6 Honor. Mr. Myers is going to testify. They can use anything

7 he says in his deposition for the cross-examination. I'm not

8 sure why we're stipulating to that at this point in time.

9 THE COURT: Wait until Mr. Myers testifies.

10 Okay?

11 MR. JONES: Sure. We were trying to save

12 time, but that's fine, Your Honor.

13 THE COURT: That's a better time to do it.

14 MR. JONES: My colleague, Whitney Moore will

15 offer a couple of other items.

16 MS. MOORE: Thank you, Your Honor. Whitney

17 Moore.

18 Respondents and Petitioners have worked

19 together on the third party vendor depositions so that we can

20 put in designations, and not have to actually play the videos

21 here in court. I have got the Red House and Harmelin material

22 here, and I'm going to go through that now.

23 I'm going to start with Red House

24 Communications. We have transcript of Red House, which is

25 Petitioners' Exhibit 1468. The CD of the designations which

1 is 1468A, and then the exhibits from the deposition, which are
 2 going to be -- I'm going to go through these slowly -- 1468d,
 3 1468e, 1468f, 1468g, 1468h, 1468i, 1468j, 1468k, 1468l, 1468m,
 4 1468n, 1468o, 1468p, 1468q, 1468r, 1468s, 1468t, 1466, 1467,
 5 1469, 1472, 1473, 1470, 1474, and 1475; and I'm going to hand
 6 out copies of all of this now.

7 Your Honor, the copy of the transcript that
 8 you have -- and Respondents' counsel has received one of these
 9 as well -- it's the one I gave you yesterday -- but it's not
 10 this copy, but it's highlighted with -- it's marked off with
 11 red and blue. The red designations are Petitioners'
 12 designations. The blue designations are Respondents'
 13 designations.

14 We have also filed a list of the designations;
 15 and I can hand up a copy of that, if that would be helpful as
 16 well.

17 Next, Your Honor, is Harmelin Communications.
 18 Harmelin Media. It's the deposition of Lyn Strickler dated
 19 June 14th, 2013.

20 The materials that I have here are 1476, which
 21 is the deposition transcript; 1476a, which is the CD. And
 22 again, the transcript and the CD reflect the designations that
 23 Respondents and Petitioners have agreed to.

24 I also have, the exhibits are 1477, 1478,
 25 1479, 1480, 1481, 1482, 1483, 1484, 1485, 1486, and 1487.

1 We also have an email that is 1476c, and the
 2 attachment to the email which is 2008. These are -- these
 3 reflect information that was requested during the Harmelin
 4 deposition. Harmelin's counsel provided us the information in
 5 an email, and then there was an attachment to the email
 6 afterwards. Respondents and Petitioners have agreed to put
 7 this in as well.

8 So, I would like to move for the admission of
 9 all of this.

10 MR. KEATING: No objection, Your Honor.

11 MS. MOORE: Thank you, Your Honor.

12 MR. RUBIN: Petitioners also would like to
 13 offer Petitioners' Exhibit 1618, Your Honor, which I will hand
 14 up, and I -- my understanding is that there will be an
 15 objection to this one. This is interrogatory responses.

16 MR. HUTCHISON: Your Honor, we object to the
 17 redaction of the interrogatory answer.

18 MR. RUBIN: Your Honor, this interrogatory --

19 MR. HUTCHISON: Excuse me.

20 MR. RUBIN: I'm sorry. Your Honor, I was in
 21 the middle of presenting this. I'm sure they'll have an
 22 opportunity to present -- to object.

23 THE COURT: Let him go first.

24 MR. RUBIN: Your Honor, this is Respondents'
 25 supplemental response to interrogatory number 24, Petitioners'

1 third set of interrogatories; and specifically we asked a very
 2 specific question, question 24, which was intended -- and this
 3 was at the Court's order that they responded. They originally
 4 objected, but the Court ordered them to provide a response.

5 The purpose of this was to bring current the
 6 no-fraud stipulation, particularly Paragraph 5, which said
 7 that they had no evidence that there was a likelihood of fraud
 8 in the November election. This question was limited to state
 9 whether the Commonwealth claims there was incidence of
 10 in-person voter fraud in Pennsylvania in the November 6, 2012,
 11 election that would have been prevented had the photo ID law
 12 been in effect at the time of the November 6, 2012, election.

13 The portion of this that we're submitting is
 14 their answer to that actual question, which is Respondents
 15 currently possess no knowledge or information from which they
 16 might confidently conclude that any incident of in-person
 17 voter fraud, i.e., an incident which a person appeared at a
 18 polling place on Election Day impersonated a registered voter,
 19 and voted or attempted to vote --

20 MR. KEATING: Your Honor, we're going to
 21 object to him reading this into the record, unless he's going
 22 to read into the record the entire answer.

23 THE COURT: Why don't I get an unredacted
 24 answer.

25 MR. RUBIN: Yes. I will provide an unredacted

1 answer, Your Honor; but we would object to having entered
 2 specifically, Your Honor, the fraud stipulation had a specific
 3 paragraph that specifically referenced a prior answer to the
 4 interrogatory. The only basis that would be offered
 5 justification for the block.

6 The rest of this answer goes on at length to
 7 insert non-responsive information to this request in a vehicle
 8 to try to get around the prior stipulation. It goes on at
 9 length about speculation, about what might happen in the
 10 future. It talks about what the General Assembly was
 11 thinking, which is objectionable simply because Mr. Royer has
 12 no basis for offering that opinion testimony. It goes in and
 13 offers supposed evidence of fraud that existed, none of which
 14 is admissible in this case.

15 MR. KEATING: Mr. Rubin's going through a
 16 characterization of this response is objectionable, Your
 17 Honor.

18 MR. RUBIN: None of this is actually
 19 responsive to the interrogatory that was asked and is not a
 20 proper vehicle for them to enter into this case.

21 MR. HUTCHISON: Your Honor, Deputy Secretary
 22 Royer was here last Thursday. If they had issues with this
 23 interrogatory they could have raised it then, but they
 24 relinquished the witness.

25 And in addition they never filed any motion to

1 strike, any motion in limine before trial as the Court
2 requested. Any objection they have is waived at this point.

3 Not only that, they relied on this and quoted
4 the redacted portion in their pretrial memo. And now they
5 seem to redact this, but not that; and their purported expert,
6 Dr. Lorraine Minnite was retained to opine on this
7 interrogatory and submitted a report on it.

8 Any objection they have is waived.

9 THE COURT: Okay. That's a good point, but
10 let's proceed. I'll make a ruling on that after I hear the
11 testimony today, and in the future. I think that we'll be
12 talking to other witnesses, and I want to see what happens
13 with them in this regard.

14 MR. RUBIN: Thank you, Your Honor.

15 MS. PETERSON: Petitioners would also like to
16 offer into evidence certain of Respondents interrogatory
17 responses. First Petitioners offer into evidence Exhibit
18 1616, which is Respondents' responses to Petitioners' third
19 set of interrogatories.

20 Petitioners would specifically direct the
21 Court to Respondents' answers to interrogatories 2, 5, 8, 9,
22 10, 12, 13, 15, 16, 17, 21, 27 and 34.

23 Next, Petitioners would offer into evidence
24 Exhibit 1617, which is a letter from Respondents offering
25 certain supplemental responses.

1 MR. KEATING: Is that all? 1617. Why don't
2 we talk about each one of these as we go along.

3 MS. PETERSON: Sure.

4 MR. KEATING: Your Honor, I'm not sure why
5 we're trying to enter into evidence answers to interrogatories
6 at this late date in the case. We have a verification from
7 Shannon Royer, and he testified. And if they wanted to talk
8 about these responses by Shannon while he was up there, they
9 could have asked him about it and put them in, and here
10 they're selectively putting into court responses to
11 interrogatories. We would object to this procedure.

12 MS. PETERSON: Your Honor, these are
13 statements of the party, and we're submitting the entire
14 responses. We're just specifically directing the Court to
15 certain of these responses, but we are submitting the entire
16 interrogatory responses from Respondents.

17 THE COURT: Your objection will be noted,
18 Mr. Keating.

19 MR. KEATING: Thank you, Your Honor.

20 MS. PETERSON: And next Petitioners offer into
21 evidence Exhibit 1617, which is a letter from Respondents
22 offering supplemental responses to Petitioners' third set of
23 interrogatories. Here's a copy. And Petitioners would
24 specifically direct the Court to Respondents' answers to
25 interrogatories 13, 16, and 23.

1 MR. KEATING: We would direct the Court's
2 attention to 5, 20, 30 and 34.

3 MS. PETERSON: And Petitioners offer into
4 evidence Exhibit 1523, which is Respondents' responses to
5 Petitioners' fourth set of interrogatories.

6 And then finally, the parties have worked
7 together on designating certain aspects of the deposition
8 testimony of Ronald Ruben, the Press Secretary and the
9 Director of Communications at the Department of State.

10 We have -- the context of the deposition
11 testimony relates to materials that the Department of State
12 has provided to libraries. I have the transcript which
13 contains both designations, Petitioners' designations are
14 highlighted in red, and Respondents' designations are
15 highlighted in blue, and this morning we filed a paper
16 combining both those designations. This would be Exhibit
17 1593.

18 MR. RUBIN: Your Honor, at this time, the
19 Petitioners are not in a position to close their case. Kurt
20 Myers has not testified and will be testifying in our case as
21 well through cross-examination.

22 In addition, on the issue of the 144, for the
23 reasons we have noted, we presented our evidence on that. We
24 do not have from the Respondents any actual business records
25 or discovery. We are not in a position to have closed our

1 case as to that.

2 So, at this time, we are not in a position to
3 close our case and we leave our case open at this point.

4 THE COURT: Sure.

5 MR. KEATING: Your Honor, at this time we're
6 not ready to go forward with our case until they rest. Have
7 they rested, Your Honor? I mean, for rebuttal testimony, you
8 don't keep the case open. That would be part of the evidence.

9 THE COURT: Was he listed as one of their
10 witnesses?

11 MR. KEATING: I believe he was.

12 THE COURT: So, we'll let them for the purpose
13 to keep their case open, okay? He's going to testify today?

14 MR. KEATING: That is correct, Your Honor.

15 THE COURT: And I think he can request the
16 Court to direct them to close their case at the conclusion of
17 his testimony.

18 MR. KEATING: We would ask this Court on an
19 oral motion right now to direct them to close their case at
20 the close of Mr. Myers' testimony.

21 THE COURT: We'll cross that bridge when we
22 come to it.

23 MR. KEATING: Thank you, Your Honor.

24 THE COURT: I will be happy to entertain it
25 then. Okay.

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1 MR. KEATING: With that caveat.
 2 Is there anything else you want to present
 3 before we put on our first witness?
 4 MR. RUBIN: No, there's nothing else we want
 5 to present at this time, Your Honor.
 6 MR. KEATING: We would call our first witness,
 7 Kelly O'Donnell, to the stand.
 8 KELLY O'DONNELL, having first been duly sworn
 9 according to law, was examined and testified as follows:
 10 DIRECT EXAMINATION
 11 BY MR. KEATING:
 12 Q. Good morning.
 13 A. Good morning.
 14 Q. How are you doing?
 15 A. I'm well. How are you?
 16 Q. Good. I'm doing fine, thank you.
 17 Miss O'Donnell, is it okay if I call you Kelly?
 18 A. Yes, that's fine.
 19 Q. Have you ever testified in court before?
 20 A. No, I have not.
 21 Q. I'm sorry?
 22 A. No, I have not.
 23 Q. Are you nervous?
 24 A. Slightly.
 25 Q. So am I. Where do you work?

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1 A. I work for the Pennsylvania Department of Aging.
 2 Q. How long have you been working there?
 3 A. I have been an employee of the Department of Aging since
 4 May of 2011.
 5 Q. What is your current position?
 6 A. My current title is the director of the operations and
 7 the management office.
 8 Q. How long have you had that position?
 9 A. I have been in that position since about March of 2012.
 10 Q. What does the Department of Aging do? What are their
 11 responsibilities?
 12 A. The Department of Aging oversees the health and wellness
 13 of older adults in Pennsylvania.
 14 Q. What do they do for older adults in Pennsylvania?
 15 A. The Department of Aging coordinates and administers
 16 programs and services that benefit the health and wellness,
 17 promote independence of older adults. We consider our
 18 foundation to be prevention and protection. Prevention
 19 related to health and wellness, protection related to elder
 20 abuse.
 21 Q. What is an older adult, what age?
 22 A. A person is considered to be an older adult at age 60.
 23 Q. So, everyone 60 and over are your responsibilities under
 24 the Department of Aging?
 25 A. Yes.

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1 Q. What kind of services do you provide? When I say that,
 2 I mean Department of Aging.
 3 A. The Department of Aging provides services such as the
 4 PACE program. The PACE program is the pharmaceutical
 5 assistance contract for the elderly. It's a prescription drug
 6 assistance program. We administer and oversee protective
 7 services. We administer and oversee health and wellness
 8 programs. We work very closely with our 52 Area Agencies on
 9 Aging in Pennsylvania to insure that programs and services are
 10 delivered.
 11 Q. What is the population of people over 60 in
 12 Pennsylvania, approximately?
 13 A. The approximate population of persons age 60 and over in
 14 Pennsylvania is 2.7 million.
 15 Q. I assume that you work with other agencies in trying to
 16 complete your mission; is that a correct statement?
 17 A. That's correct.
 18 Q. What agencies do you work with and what types of things
 19 do you do with them?
 20 A. Two agencies we work with primarily are the Department
 21 of Public Welfare and the Department of Health. They have
 22 programs and services as well that impact persons over the age
 23 of 60.
 24 Q. What sort of issues come up that you deal with with the
 25 Department of Health, in conjunction with your agency?

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1 A. Primarily they're administration of nursing facilities.
 2 Department of Health licenses nursing facilities in
 3 Pennsylvania.
 4 Q. And what about the Department of Aging, do they license
 5 any types of facilities for the elderly.
 6 A. It would depend on how you define facility.
 7 Q. How do you define facility?
 8 A. Facilities are typically residential, where a person
 9 would live -- would spend 24 hours a day. We do -- the
 10 Department of Aging does license what are called older adult
 11 daily living facilities. It's more commonly known as an adult
 12 day care. It's a day program for older adults.
 13 Q. So, the Department of Aging, they have -- they license
 14 adult day cares for elderly citizens, and they're not
 15 overnight residential facilities; is that correct?
 16 A. That's correct. It's a day program.
 17 Q. A day program. And the Department of Health, they
 18 license nursing homes and residential type facilities; is that
 19 your understanding?
 20 A. The Department of Health does license nursing
 21 facilities. The Department of Public Welfare licenses other
 22 types of residential facilities such as personal care homes
 23 and assisted living facilities.
 24 Q. Does that include long-term nursing homes?
 25 A. Yes. That would be under the Department of Health's

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1 purview.

2 Q. How many -- what's the population of Pennsylvanians in

3 long-term nursing homes approximately.

4 A. There are approximately --

5 MS. SCHNEIDER: Objection. Objection, Your

6 Honor. I don't believe that they have laid the proper

7 foundation for this witness to testify to that. She has

8 already testified that the Department of Aging doesn't license

9 those facilities.

10 THE COURT: We'll permit it.

11 MR. KEATING: Thank you.

12 BY MR. KEATING:

13 Q. What is the approximate population of elderly persons in

14 long-term nursing homes, if you know?

15 A. There are approximately 81,000 people residing in

16 nursing facilities.

17 Q. What about long-term care homes?

18 A. A nursing facility would be considered a long-term care

19 facility.

20 Q. And what about assisted living?

21 A. Assisted living facilities, there are approximately

22 1,200 individuals residing in personal care homes in

23 Pennsylvania.

24 Q. Let's talk about the adult care facilities which you

25 license. How many are there in Pennsylvania?

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1 A. Are you referring to the adult day cares?

2 Q. Yes.

3 A. We license approximately 265 adult day cares in

4 Pennsylvania.

5 Q. And how many elderly does that help?

6 A. Approximately 12,000 individuals attend an adult day

7 care in Pennsylvania.

8 MS. SCHNEIDER: I have an objection to the

9 relevancy of this testimony. Act 18 doesn't apply to adult

10 day care centers.

11 THE COURT: Overruled.

12 MR. KEATING: We'll talk about Act 18 in a

13 little bit, but I just want to lay a foundation.

14 THE COURT: How many people attend the

15 centers?

16 THE WITNESS: Over 12,000.

17 BY MR. KEATING:

18 Q. And how many centers are there?

19 A. Approximately 265.

20 Q. What services are provided in those centers for the

21 elderly?

22 A. In adult day cares, the services are primarily social

23 services. There's activities for the older adults -- for the

24 participants to benefit from. It they also receive a visit

25 from a nurse on a quarterly basis. They receive a meal, a

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1 lunch, and snacks throughout the day.

2 Q. What about information; is there any information

3 disseminated from your agency to these centers concerning

4 issues revolving around elderly people?

5 A. Absolutely. We would share any information of relevance

6 to older adults, to the participants in the adult day care

7 centers.

8 Q. What type of issues are we talking about, or information

9 are we talking about?

10 A. If there's a new program that's being offered to older

11 adults, we would provide that information about our PACE

12 program. In fact, we provided them information about how to

13 obtain a voter ID.

14 Q. Other than the adult care facilities, what about the

15 AAA; is that what we're talking about?

16 A. We work very closely with our 52 Area Agencies on Aging

17 in Pennsylvania.

18 Q. And when we are talking about the AAAs, that's not adult

19 care facility. Are those county or municipal based agencies?

20 A. The 52 Area Agencies on Aging are a variety. Some of

21 them are a county -- county-run program. Some of them are

22 non-profits.

23 Q. What services do they provide for the elderly?

24 A. The Area Agencies on Aging provide coordination of

25 services. So, if somebody would call them and ask about

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1 services that could be provided in the home -- for example,

2 personal assistance, if they need assistance with their

3 laundry, shopping, they help to coordinate transportation for

4 the older adults.

5 They also act as a resource for information, if a person

6 has questions about, you know, long-term care, getting into a

7 nursing facility, a personal care home, assisted living

8 facility or an adult day care. They can provide that

9 information to them.

10 Q. And does the Department of Aging coordinate and interact

11 with the local AAAs in this respect?

12 A. Yes, on a daily, constant basis.

13 Q. Do they have specific liaisons in the AAAs that

14 coordinate with the Department of Aging?

15 A. The Department of Aging communicates primarily with the

16 director of -- each Area Agency on Aging has a director, but

17 then within the Department of Aging, staff would communicate

18 with their counterpart at the Area Agency on Aging. For

19 example, we have a Prime Time Health Coordinator at the

20 Department of Aging. The Prime Time Health Coordinator at the

21 Department of Aging would communicate with all 52 prime time

22 health coordinators at 52 Area Agencies on Aging.

23 Q. And relative to that, when you have information that you

24 want to disseminate, how is that done?

25 A. Again, in a variety of ways, primarily through the 52

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1 directors; but then staff would communicate with their
 2 counterparts at the 52 Area Agencies on Aging.
 3 Q. So you reach out to the AAAs at the county level,
 4 correct?
 5 A. Yes.
 6 Q. And you reach out to the adult day care facilities,
 7 correct?
 8 A. We do, yes.
 9 Q. And you coordinate with the Department of Health,
 10 correct?
 11 A. Yes.
 12 Q. Do you have any type of newsletter that you put out
 13 there?
 14 A. The Department of Aging produces a weekly wrap-up, we
 15 call it the Friday wrap-up. It's distributed to about 3,000
 16 individuals. Those individuals include independent persons
 17 who may have contacted the Department, provider organizations,
 18 nursing facilities, personal care homes, adult days, and all
 19 of our 52 Area Agencies on Aging.
 20 Q. Do you have a website?
 21 A. We do, yes.
 22 Q. What information is provided on the website?
 23 A. We provide information about all of the programs and
 24 services that we offer in Pennsylvania either through the
 25 Department of Aging or the 52 Area Agencies on Aging.

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1 Q. If someone has a question or concern about issues,
 2 elderly care or Medicare or anything they have, not only about
 3 themselves who are elderly, but members of the family, how do
 4 they reach out to the Department of Aging to find out
 5 information?
 6 A. They could reach us through a variety of means; whether
 7 it be through our website, we have an email address they can
 8 use, we have a direct phone line, we have an 800 number. We
 9 often get handwritten letters as well at the Department.
 10 Q. And other than just asking for information, help and
 11 assistance, are there individuals who have complaints that
 12 they can register or ask Department of Aging to look into?
 13 A. Absolutely.
 14 Q. What are typical complaints your Department deals with?
 15 A. We hear a variety of complaints. For example, we hear
 16 complaints about the property taxes in Pennsylvania. We hear
 17 complaints about how hot it is outside. We hear complaints
 18 about what the senior center is serving for lunch.
 19 Q. Too much meat loaf?
 20 A. Too much meat loaf sometimes.
 21 Q. Would it be fair to say that the elderly are not shy
 22 about voicing their complaints.
 23 A. That would be an accurate statement, yes. No offense.
 24 Q. What does the Department do about it?
 25 A. We handle each and every complaint accordingly.

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1 Q. And they can do it by phone, website, email; correct?
 2 A. Yes, or handwritten letter.
 3 Q. Is the Department active in helping develop legislation
 4 or statutes which may affect the elderly in Pennsylvania?
 5 A. Yes, we are.
 6 Q. In what respect?
 7 A. Any legislation that could potentially impact or benefit
 8 an older adult, the Department of Aging would reach out to the
 9 respective agency that is leading the charge on that
 10 legislative front.
 11 Q. How do you learn about it?
 12 A. We communicate with our sister agencies on a regular
 13 basis. We do have a legislative director headquartered at the
 14 Department of Aging, and he keeps us updated on the relevant
 15 legislation.
 16 Q. And let's talk about Act 18. Did the Department of
 17 Aging have any input or comments prior to the enactment of Act
 18 18 about what provisions should or should not be in the Act?
 19 A. Yes, we did.
 20 Q. How so?
 21 A. The Department of Aging worked closely with the
 22 Department of State on a review of the legislation to
 23 determine if -- one, if it would have any impact on persons
 24 over the age of 60; and then, two, if there were any
 25 amendments or changes that could be made to the law.

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1 Q. When we talk about persons over the age of 60 who are
 2 elderly, we're not just talking about people who are
 3 homebound, in nursing facilities; we're talking about anyone
 4 over 60. Correct?
 5 A. Correct. As soon as you turn age 60, you qualify as an
 6 older adult.
 7 Q. I'm not quite there yet, but hopefully I'll make it. Do
 8 we have a copy of Respondents' Exhibit No. 260.
 9 You have been handed what's been marked as Respondents'
 10 Exhibit No. 2960. Do you recognize that document?
 11 A. Yes, I do.
 12 Q. What is it?
 13 A. This is an email that was sent to the 52 Area Agency on
 14 Aging directors following a conference call that was held with
 15 them on September the 25th.
 16 Q. What was the purpose of that conference call?
 17 A. The purpose of the conference call was to provide the 52
 18 Area Agencies on Aging with the most current information
 19 regarding the voter ID law. It appears that a few days prior
 20 to this conference call, the Department of State issued or --
 21 issued the opportunity to obtain a Department of State voter
 22 ID card.
 23 Q. Besides the Area Agencies, are there other people this
 24 email has been sent to relative to the conference call?
 25 A. Yes. I recognize staff from the Department of State as

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1 well as PennDOT, the Secretary of Aging is copied as well as
 2 our deputy secretary.
 3 Q. Do you recall who in the Department of State you were
 4 working with relative to Act 18?
 5 A. Following the passage of Act 18, the primary point
 6 person I worked with at the Department of State was Megan
 7 Sweeney.
 8 Q. What concerns, if any, did the Department of Aging have
 9 with provisions of Act 18?
 10 A. Our primary concern was just insuring that people had
 11 accurate information. There was a lot of misinformation at
 12 the time regarding the voter ID law.
 13 Q. After Act 18 was passed, did the Department of Aging
 14 take any steps to disseminate information relative to the
 15 requirements under Act 18?
 16 A. We did, yes.
 17 Q. What did you do?
 18 A. Again, working primarily through the Area Agencies on
 19 Aging, we provided information that the Department of State
 20 had created, fact sheets, FAQs regarding the requirements of
 21 the voter ID law and information on how to obtain a voter ID.
 22 Q. Did you do any mailings; did you mail out any
 23 information?
 24 A. We did, yes.
 25 Q. How many mailings did you mail out and where did you

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1 mail them to?
 2 A. The Department of Aging completed a mailing to PACE
 3 recipients. There's over 350,000 PACE recipients in
 4 Pennsylvania. In addition, we work with a contractor who does
 5 additional outreach -- who does outreach regarding additional
 6 benefits available. They completed 12 mailings. My
 7 understanding is that mailing reached over three-quarters of a
 8 million people.
 9 Q. When you say three-quarters of a million people, we are
 10 talking about three-quarters of a million elderly people;
 11 correct?
 12 A. To the best of my knowledge, they were all elderly; yes.
 13 Q. Over 60.
 14 A. Over 60.
 15 THE COURT: Were all of the mailings
 16 addressing to DOS ID? I'm sorry.
 17 MR. KEATING: Department of State ID.
 18 THE COURT: I withdraw the question. I'm
 19 sorry to interrupt.
 20 MR. KEATING: No objection, Your Honor.
 21 BY MR. KEATING:
 22 Q. Were you aware of the fact that later on, there was a
 23 new ID that was put out by the Department of State that was a
 24 voter ID?
 25 A. Yes.

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1 Q. Was any information disseminated about that new option
 2 that was presented?
 3 A. Yes. Again, we would have worked through the Area
 4 Agencies on Aging to insure that they had the most current
 5 information regarding the voter ID law, including the
 6 availability of the Department of State ID.
 7 Q. Is that on your website?
 8 A. Yes.
 9 Q. It is still on your website?
 10 A. Yes.
 11 Q. Was there a mailing done about that, if you recall?
 12 A. I don't recall.
 13 Q. Okay. Did you get a lot of comments, feedback or
 14 complaints from the elderly about Act 18 and the voter ID law?
 15 A. The feedback that we heard was related to the
 16 requirement to provide an ID. We didn't receive feedback
 17 regarding the requirement to obtain -- or the steps required
 18 to obtain an ID.
 19 Q. If you had, is that something that would have been
 20 brought to your attention?
 21 A. Yes. I was the point person for the Department of
 22 Aging. My name was widely disseminated, my phone number, my
 23 email address to the public for people to contact if they had
 24 questions, concerns, comments, related to the voter ID law.
 25 Q. What about making provisions to disseminate information

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1 as to how elderly persons can get to a PennDOT ID in order to
 2 get the voter ID card; a lot of questions and complaints about
 3 that?
 4 A. Not that came to my attention, no.
 5 MR. KEATING: With the Court's indulgence.
 6 BY MR. KEATING:
 7 Q. I've been asked to ask you about personal care homes.
 8 Can we talk about personal care homes and what they are, and
 9 who oversees them?
 10 A. Yes. Personal care homes are licensed by the Department
 11 of Public Welfare. Personal care homes are considered
 12 residential care facility, so a person resides there 24 hours
 13 a day, seven days a week. The personal care home would
 14 provide for that person's basic needs, social, medical, all of
 15 their meals would be provided, any personal care or personal
 16 assistance.
 17 Q. Are they regulated or licensed by the Department of
 18 Aging?
 19 A. They are not, no.
 20 Q. Who are they regulated by?
 21 A. They're licensed by the Department of Public Welfare.
 22 Q. Now, those adult care centers which are licensed by your
 23 Department, they're not under Act 18 to allow them to give
 24 voter IDs; are they?
 25 A. Correct. They don't fall under the definition of care

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1 facility under Act 18.
 2 Q. What is the definition of care facility under Act 18?
 3 A. My understanding of the definition of care facility
 4 under Act 18 is that if you are a licensed long-term care
 5 facility, a licensed assisted living facility or a licensed
 6 personal care home, you are eligible to produce a photo ID for
 7 voting purposes to your residents.
 8 Q. And what information, if any, did your Department give
 9 out about the Shared-Ride Program.
 10 A. Working through the 52 Area Agencies on Aging, we
 11 insured that the Area Agencies on Aging had information
 12 regarding the Shared-Ride Program and the availability of the
 13 Shared-Ride Program to take people to PennDOT photo centers.
 14 Q. And that information that you give to your agencies, is
 15 that only to get to PennDOT for voter ID, or do you give
 16 information about the Shared-Ride Program generally to help
 17 people out?
 18 A. We would provide information generally. Transportation
 19 is used for a variety of purposes by the older adults. They
 20 use it to get to the pharmacy; they can use it to get to their
 21 doctors' appointments.
 22 Q. Do they have driver's license? Are you still allowed to
 23 drive after 60?
 24 A. Yes, you are.
 25 Q. Are people over 60 mobile?

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1 A. Yes.
 2 MR. KEATING: No further questions, Your
 3 Honor.
 4 MS. SCHNEIDER: Your Honor, may I inquire.
 5 THE COURT: Certainly.
 6 CROSS-EXAMINATION
 7 BY MS. SCHNEIDER:
 8 Q. Good morning, Miss O'Donnell. My name is Marian
 9 Schneider and I'm one of the attorneys for the Petitioners. I
 10 just have a few follow-up questions for you.
 11 MS. SCHNEIDER: Your Honor, I'd like to show
 12 the witness Petitioners' Exhibit 1562, which I believe is
 13 already admitted in this case.
 14 BY MS. SCHNEIDER:
 15 Q. Miss O'Donnell, earlier today, you testified that you
 16 worked with the Department of State to do analysis of Act 18;
 17 isn't that right?
 18 A. Yes, that's correct.
 19 Q. Looking at Petitioners' Exhibit 1562, is this a document
 20 that you worked with the Department of State regarding Act 18?
 21 A. Yes.
 22 Q. Now, in this memo, at the time that this memo was
 23 written, you knew that most of the care facilities as you just
 24 defined them did not issue ID; isn't that right?
 25 A. At the time this memo was written, care facilities, to

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1 the best of my knowledge, weren't issuing photo IDs.
 2 Q. Okay. So, and since the time this memo was written, you
 3 haven't done any work to determine how many care facilities
 4 are issuing ID; have you?
 5 A. I personally have not, no.
 6 Q. Okay. You have done no work to identify how many voters
 7 have received a care facility ID, have you?
 8 A. I have not, no.
 9 Q. So, also at the time this memo was written and today,
 10 not every older Pennsylvanian lives in a care facility;
 11 correct?
 12 A. That's correct.
 13 Q. And so, some people who don't live in care facilities
 14 don't have an acceptable photo ID; right?
 15 A. I wouldn't have knowledge of that.
 16 Q. You wouldn't have any knowledge about whether there are
 17 some people who don't live in care facilities, might not have
 18 a photo ID?
 19 A. Without asking them directly, I wouldn't know.
 20 Q. Okay. So, but in this memo, you knew that there was
 21 some people who did live in care facilities, might not have a
 22 photo ID. In fact, that was a concern of this memo, wasn't
 23 it?
 24 A. The concern that was referenced in the memo is that a
 25 person living in a care facility may not -- may no longer have

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1 a driver's license because they reside in the care facility
 2 and are no longer driving.
 3 Q. Right, and they might not have an acceptable ID for
 4 voting?
 5 A. Yes.
 6 Q. You can put that one aside for now.
 7 Your Honor, I'd like to show the witness an exhibit
 8 that's been marked for identification as Petitioners' Exhibit
 9 1592.
 10 THE COURT: Sure.
 11 MR. KEATING: May I see that? Yeah, sure.
 12 Yeah.
 13 BY MS. SCHNEIDER:
 14 Q. Miss O'Donnell, you have in front of you a document, a
 15 three-page document that appears to be an email chain with the
 16 subject line, "Potter County AAA question;" do you see that?
 17 A. Yes.
 18 Q. This is a series of emails between you and Megan
 19 Sweeney; isn't that right?
 20 A. Yes.
 21 Q. Could you turn to the last page of the document. I just
 22 turn your attention to the first email that starts that chain
 23 that's dated Wednesday, September 12, 2012; do you see that?
 24 A. Yes.
 25 Q. In that email, you wrote, "the glitch is that ID is

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1 required to get the reduced rate on the ride by the
 2 individuals, but these individuals do not have ID."
 3 Do you see that?
 4 A. Yes.
 5 Q. This email was about trying to transport people without
 6 ID to PennDOT to get ID, correct?
 7 A. That's what it appears to be, yes.
 8 Q. And your concern was that in order to obtain a reduced
 9 rate on the public transportation provider, an individual
 10 would need to produce an ID to qualify for the reduced rate;
 11 isn't that right?
 12 A. Yes. That would be the case.
 13 Q. So, it was a Catch-22 situation; they couldn't get a
 14 reduced fare because they didn't have an ID, but they couldn't
 15 get an ID -- so they couldn't get a ride to get an ID; isn't
 16 that what this situation was?
 17 A. Yes. Without valid ID, you can't access the Shared
 18 Ride.
 19 Q. And reduced rate for the ride doesn't mean it's free,
 20 does it?
 21 A. It may be free for qualifying individuals.
 22 Q. But in fact, the ride -- this was a discount. It talks
 23 about discount of the rate, right?
 24 A. I didn't ask specifics whether or not everyone was
 25 paying or everyone was qualifying for the reduced rate or if

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1 everyone was getting a free ride.
 2 Q. But the email was that these people couldn't even
 3 qualify for whether it was a reduced rate or break down to
 4 zero, they didn't qualify because they didn't have ID; right?
 5 A. Right. Without valid ID, you wouldn't qualify for a
 6 Shared Ride.
 7 Q. So this email chain, if you look through the email
 8 chain, it doesn't indicate that this issue was resolved; does
 9 it?
 10 A. The email doesn't indicate that it was resolved,
 11 correct.
 12 Q. In fact, you don't know whether it was resolved or not;
 13 do you?
 14 A. I don't recall if it ever was.
 15 Q. Okay. I want to direct your attention -- but sitting
 16 here today, you don't know whether this was resolved or not.
 17 A. Correct.
 18 Q. Let's look at the second page of this Exhibit. The
 19 middle of the page, this is an email from you to Megan
 20 Sweeney. Do you see that?
 21 A. Yes.
 22 Q. Do you see the line where it says, also, while I have
 23 you, would you know if there's a list of, quote, best
 24 practices, unquote, or creative ways that people have been
 25 getting to the driver's license centers; do you see that?

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1 A. Yes.
 2 Q. Did you ever get a list of the best practices for
 3 getting people to PennDOT?
 4 A. I don't recall if that list came from PennDOT or if we
 5 obtained it from our Area Agencies on Aging. That was also a
 6 question that we presented to them.
 7 Q. Are you saying that you did get a list of best
 8 practices?
 9 A. I don't recall if it's in a list form, but we did
 10 discuss it with our Area Agencies on Aging.
 11 Q. Is there a document that describes what the -- there's
 12 no document that describes what these best practices are, is
 13 there?
 14 A. Not to my knowledge.
 15 Q. Okay. You can put that one aside, Miss O'Donnell.
 16 MS. SCHNEIDER: Your Honor, I'd like to show
 17 the witness an exhibit that's been marked for identification
 18 as Petitioners' Exhibit 1591.
 19 BY MS. SCHNEIDER:
 20 Q. Miss O'Donnell, this is another email chain, looks like
 21 it's from you, and starting -- I'm sorry. Let's look at the
 22 last page. This email chain starts with an email from a
 23 program director at a senior center in southeastern
 24 Pennsylvania; do you see that?
 25 A. Yes.

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1 Q. It's from an Amy Stover in Souderton; is that correct?
 2 A. Yes.
 3 Q. On the second-to-the-last page is where Ms. Stover's
 4 email begins. In the first email, Ms. Stover asked you if
 5 photo IDs issued by senior centers are valid for voting. Do
 6 you see that?
 7 A. Yes.
 8 Q. And you responded that photo IDs issued by senior
 9 centers are not valid for voting; is that right?
 10 A. Yes.
 11 Q. Because a senior center is not a care facility as that's
 12 defined under Act 18; right?
 13 A. That's correct.
 14 Q. A senior city -- center, though, is a live-in facility
 15 for low income seniors and people with disabilities; is that
 16 right?
 17 A. No, that's not correct.
 18 Q. It's -- is it a residential facility?
 19 A. A senior center is not a residential facility.
 20 Q. Okay. Let's look at the -- can you -- I'm still on the
 21 second page. Can you look at your response to Ms. Stover?
 22 A. Yes.
 23 Q. So, you tell her, but -- you tell her that -- this is
 24 where you respond that the senior center issuing a photo ID
 25 won't be acceptable, but you also tell her that people who

Page 1277

1 lack ID will have to go to PennDOT; don't you?
 2 A. Yes.
 3 Q. In the last line of the large paragraph of your email,
 4 you say, "if you are in the system, you will then have to go
 5 to a driver's license or photo center to have your photo taken
 6 for the free non-drivers photo ID." Do you see that?
 7 A. Yes.
 8 Q. But people can't get a photo ID from a photo center, can
 9 they?
 10 A. I was under the impression that you could.
 11 Q. You were under the impression sitting here today that
 12 you can?
 13 A. I don't recall if the specific location for obtaining an
 14 ID is from a driver's license center or a photo center. I
 15 understand there is a distinction between the two, but I don't
 16 recall which one is --
 17 Q. In fact, you can't get a photo ID unless you go to a
 18 driver's license center; isn't that true?
 19 A. I'll take your word for it.
 20 Q. So, do you say -- is it your testimony that you don't
 21 know one way or the other?
 22 A. Sitting here at this point, I don't recall which one is
 23 the appropriate location.
 24 Q. Assuming that I'm correct, that you can only get an ID
 25 from a driver's license center, then the information you gave

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1 to Ms. Stover is incorrect; is that right?
 2 MR. KEATING: I'm going to object, Your Honor.
 3 That's a false assumption.
 4 THE COURT: The witness can answer the
 5 question.
 6 THE WITNESS: Could you repeat the question,
 7 please.
 8 THE COURT: Could you -- I know you're
 9 speaking quickly. You're a fast talker. Try and slow down
 10 just a little bit for my sake, okay.
 11 MS. SCHNEIDER: Yes, Your Honor. Thank you,
 12 Your Honor.
 13 BY MS. SCHNEIDER:
 14 Q. Ms. O'Donnell, my question was, assuming I'm correct,
 15 and that you can't get a PennDOT ID at a photo center and you
 16 can only get it at a driver's license center, the information
 17 you sent to Ms. Stover in your email is incorrect; isn't it?
 18 A. If what you're stating is correct, it appears that I
 19 told her that she would have to go to a driver's license
 20 center, or a photo center. So, one of the two would be the
 21 appropriate location.
 22 Q. Right. So, one of them is right and one of them is
 23 wrong; is that right?
 24 A. Yes.
 25 Q. But you also told her that she could schedule an

Page 1279

1 appointment for a large group to come in, didn't you?
 2 A. Yes.
 3 Q. Let's turn to the first page of this exhibit.
 4 Ms. Stover emailed you back, didn't she?
 5 A. Yes.
 6 Q. And her response back to you is about four months after
 7 her initial email; isn't it?
 8 A. Yes.
 9 Q. So, she first contacted you in April; the second one is
 10 in August. Is that right?
 11 A. Through email, yes.
 12 Q. Excuse me?
 13 A. Through email, yes.
 14 Q. Okay. In fact, Miss Stover contacted a photo license
 15 center; didn't she?
 16 A. She states in her email that she attempted to contact,
 17 yes.
 18 Q. And they told her that they couldn't issue the ID there,
 19 didn't they?
 20 A. Yes.
 21 Q. So, your advice -- this confirms that your advice to her
 22 to go to the photo center was wrong, doesn't it?
 23 A. Yes.
 24 Q. Okay. And she also mentions that she was trying to
 25 contact PennDOT to arrange for a group appointment to bring

Page 1280

1 people to PennDOT, doesn't she?
 2 A. Yes.
 3 Q. But she couldn't find any contact info for the nearest
 4 driver's license center, could she?
 5 A. It appears that she wasn't able to obtain contact
 6 information for the Dublin license center, yes.
 7 Q. So, she, in the four months of her effort, she hadn't
 8 been able to arrange transportation for people she knew didn't
 9 have a photo ID; isn't that right?
 10 A. Her email appears to be more about trying to contact
 11 PennDOT, not about for arranging transportation. Looks like
 12 that was a secondary concern.
 13 Q. No, I -- her email states that she wanted to know what
 14 she -- she starts out by asking you whether they could issue
 15 IDs and whether they would be acceptable, you have already
 16 testified to that, right?
 17 MR. KEATING: Your Honor. That's
 18 argumentative. The email says what it says.
 19 MS. SCHNEIDER: Okay, withdrawn, withdrawn.
 20 BY MS. SCHNEIDER:
 21 Q. In fact, let me ask you a different question.
 22 Transportation for people who don't drive is not readily
 23 available in Pennsylvania, is it?
 24 MR. KEATING: I'm going to object. That's way
 25 beyond the scope of what -- what she does for a living at the

1 Department of Aging.
 2 MS. SCHNEIDER: Your Honor, this witness
 3 emailed a senior center that she testified is someone that she
 4 works with to provide services, and she emailed that person
 5 and told her that she could make a group appointment to bring
 6 people who don't have ID to PennDOT; and I'm just asking her
 7 whether -- my question to her is, it's not easy for people who
 8 don't drive to get to PennDOT.
 9 I think she is advising them that they can
 10 contact PennDOT to get ID. I want her answer on that
 11 question.
 12 MR. KEATING: It's not easy for people who
 13 don't drive to get to PennDOT? Is that what your question is?
 14 Do you want to testify how easy it is for people to get to
 15 PennDOT who don't drive?
 16 MS. SCHNEIDER: If the Court will allow it,
 17 Miss O'Donnell testified to this, about this at her
 18 deposition.
 19 THE COURT: Can you answer the question, if
 20 you know what the question is?
 21 THE WITNESS: I can speak to arranging
 22 transportation utilizing the Shared-Ride Program. I can't
 23 speak to whether or not people who don't utilize the
 24 Shared-Ride Program have trouble getting to PennDOT.
 25 BY MS. SCHNEIDER:

1 Q. Earlier in this case when you gave your deposition,
 2 didn't you state that your had a concern that there was a
 3 concern about -- that it was -- that transportation as a whole
 4 in Pennsylvania is an issue; isn't that what you testified to?
 5 A. I would have been referring to the Shared-Ride Program,
 6 yes.
 7 MS. SCHNEIDER: Okay. Your Honor, I have to
 8 show Miss O'Donnell her testimony at her deposition.
 9 MR. KEATING: Do you have a copy for us? What
 10 page are we looking at?
 11 MS. SCHNEIDER: I'll tell you in a moment.
 12 BY MS. SCHNEIDER:
 13 Q. Miss O'Donnell, I'd like to direct your attention to
 14 page 88 of your deposition transcript that I just handed you.
 15 All right. Did you read -- did you find that page, Miss
 16 O'Donnell?
 17 A. Yes.
 18 Q. If you would look at lines starting with line 21. You
 19 say, "but transportation as a whole in Pennsylvania is an
 20 issue." Do you see that?
 21 A. Yes.
 22 Q. Going and turning and looking at page 89, in response
 23 Miss Hurley was questioning you and she said, "what do you
 24 mean by it was an issue in Pennsylvania?" And line three, you
 25 say, "it's not always readily available. We have a lot of

1 rural counties in Pennsylvania. You may have to travel to get
 2 to the bus route." And then Miss Hurley says "so it's
 3 difficult in Pennsylvania for people who don't drive to get
 4 from location to location; is that right?" And you say, "it
 5 can be."
 6 MR. KEATING: Your Honor, we object to her
 7 reading the deposition into the record. If you have specific
 8 questions about what was asked during the deposition, that's
 9 fine.
 10 BY MS. SCHNEIDER:
 11 Q. So, Miss O'Donnell, in fact, as you testified earlier,
 12 transportation for people in Pennsylvania who lack an ID is
 13 not readily available; is that correct?
 14 A. I would have been referring specifically to accessing
 15 Shared-Ride transportation. That's what I would have specific
 16 knowledge of.
 17 Q. You can put your deposition aside for now.
 18 MS. SCHNEIDER: Your Honor, I'd like to show
 19 the witness what's been marked for identification as
 20 Petitioners' Exhibit 2016.
 21 THE COURT: What's that Exhibit number?
 22 MS. SCHNEIDER: 2016, Your Honor.
 23 BY MS. SCHNEIDER:
 24 Q. Ms. O'Donnell, earlier today, you testified after Act 18
 25 was passed that the Department of Aging worked in coordinating

1 with its 52 Area Agencies on Aging to carry out an educational
 2 outreach campaign; is that right?
 3 A. Yes, that's correct.
 4 Q. So, looking at Petitioners' Exhibit 2016, this is a
 5 document on Department of Aging letterhead; isn't it?
 6 A. Yes.
 7 Q. This was prepared under your direction?
 8 A. Yes.
 9 Q. Did you write it?
 10 A. I would have written parts of it, yes.
 11 Q. It was prepared for handing out to the public regarding
 12 the photo ID law, wasn't it.
 13 A. Yes.
 14 Q. The Department of Aging distributed this memo through
 15 those 52 Area Agencies on Aging, correct?
 16 A. Yes, that's correct.
 17 Q. Its purpose as to educate them about the law, right?
 18 A. Yes.
 19 Q. So, if you could, I'd like you to turn to the second
 20 page of this exhibit. You see a section that's entitled "I
 21 have an expired Pennsylvania driver's license or photo ID."
 22 Do you see that section?
 23 A. Yes.
 24 Q. In subsection 2, you wrote, "go to a PennDOT driver's
 25 license or photo ID center." Do you see that?

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1 A. Yes.

2 Q. But people can't get a non-driver photo ID at a photo ID

3 center, can they?

4 A. That's my understanding.

5 Q. Okay. So, that information wasn't accurate, was it?

6 A. No. It was not.

7 Q. In fact, you repeated that instruction throughout this

8 document, didn't you?

9 A. Ah --

10 Q. I'll direct you. You can look on the third page,

11 subsection 3 and 4; it's repeated there, isn't it?

12 A. Yes.

13 Q. Also on that third page in subsection 1, it's repeated?

14 A. Yes.

15 Q. So, this is again a document that was given to voters to

16 help them get photo ID, right?

17 A. I didn't distribute this to voters directly. I just

18 distributed it to our Area Agencies on Aging.

19 Q. Fair enough, but your intention was that they would

20 deliver it to the people that they serve; isn't that right?

21 A. Yes.

22 Q. And there's no information in this document whatsoever

23 about the Department of State ID, is there?

24 MR. KEATING: I'm going to object to that,

25 Your Honor.

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1 MS. SCHNEIDER: She can.

2 THE COURT: She can answer the question.

3 BY MS. SCHNEIDER:

4 Q. You can answer.

5 A. The document isn't dated, so I can't confirm whether or

6 not the ID -- the Department of State ID existed at the time

7 this was created.

8 Q. But in the document itself, there's nothing in there

9 about the Department of State ID; is there?

10 A. I don't see anything, no.

11 MS. SCHNEIDER: Your Honor, I'm going to show

12 the witness Petitioners' Exhibit 2067, which has already been

13 admitted in evidence.

14 BY MS. SCHNEIDER:

15 Q. Miss O'Donnell --

16 THE COURT: Let's take a five or ten minute

17 break.

18 THE BAILIFF: Commonwealth Court is now in

19 recess.

20 (COURT RECESSED AT 10:50 A.M. AND RECONVENED

21 AT 11:05 A.M.)

22 THE COURT: Remain seated.

23 THE BAILIFF: Court is now in session.

24 MS. SCHNEIDER: Thank you, Your Honor.

25 BY MS. SCHNEIDER:

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1 Q. Miss O'Donnell, I want you to look at Petitioners'

2 Exhibit 1591 that we already looked at earlier. One more

3 thing about that exhibit.

4 A. I'm sorry?

5 Q. 1591. If you turn to the second page, at the bottom of

6 the second page, the first email that Miss Stover wrote to

7 you. So, Miss Stover told you in the first line, she said,

8 quote, "Many of our participants are understandably concerned

9 about needing a photo ID at the polls this November," unquote;

10 do you see that?

11 A. Yes.

12 Q. That was the purpose of this email, right? Well,

13 actually, withdrawn. But that's what Miss Stover told you in

14 the email, correct?

15 A. That's what she stated, yes.

16 Q. I also want to ask you -- you can put that one aside.

17 If you can look at Petitioners' Exhibit 2016 that we talked

18 about before.

19 Do you remember at your deposition, you talked about

20 this document at your deposition; correct?

21 A. Yes.

22 Q. And Petitioners didn't have a copy at your deposition,

23 right?

24 A. Correct.

25 Q. In fact, your counsel or counsel for Respondents

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1 produced this after your deposition; right?

2 A. Yes.

3 Q. And this was the only document that counsel produced

4 that was asked for at your deposition, right?

5 A. As I recall, yes.

6 Q. And you never produced another version of this document,

7 correct?

8 A. No.

9 Q. Okay. Thank you. Now I want to look at Petitioners'

10 Exhibit 2067 that was already admitted into evidence.

11 This document is a letter about the PACE program, isn't

12 it?

13 A. The first page is, yes.

14 Q. What's -- the rest of the letter -- the rest of that was

15 this -- earlier today -- earlier today, you talked about a

16 mailing from PACE; didn't you?

17 A. Yes.

18 Q. Is this document the mailing that you were referring to?

19 A. I believe it is, yes.

20 Q. You believe this is the mailing that you referred to

21 earlier?

22 A. One of the mailings, yes.

23 Q. This is just the PACE mailing, correct?

24 A. There were multiple PACE mailings.

25 Q. Well, look at the third page of this document, pages

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1 three and four; do you see that?
 2 A. Yes.
 3 Q. This is an insert that was provided by the Department of
 4 State, isn't it?
 5 A. Yes.
 6 Q. In fact, this insert was mailed with the PACE mailing;
 7 isn't that correct?
 8 A. Yes, to the best of my knowledge.
 9 Q. This was -- this mailing went out after the Court's
 10 order -- Court's order halting Act 18, and I'll tell you the
 11 date of that order was October 2, 2012; is that right?
 12 A. To the best of my recollection, yes. The date of the
 13 order was October 2nd.
 14 Q. No, this mailing went out after that; is that right?
 15 A. I don't see a date on the mailing, so I can't testify to
 16 that, unless I'm missing it.
 17 Q. But you testified earlier that there were 12 mailings
 18 that went out to the Department of Aging, and its other
 19 coordinated agencies; correct?
 20 A. Yes.
 21 Q. None of them -- none of those mailings talked about the
 22 DOS ID, did they?
 23 A. I don't recall if any of them did or did not.
 24 Q. But in fact they would have had that -- the page three
 25 and four of the document you're looking at, the DOS insert,

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1 those other 12 mailings would have had that DOS insert in
 2 them; wouldn't they?
 3 MR. KEATING: I'm objecting to that question,
 4 Your Honor. If she wants to ask her what dates mailings were
 5 put out and what was included in those mailings, that's fine;
 6 but for her to say, I want to know what those 12 mailings were
 7 and were they all the same thing, did they have the DOS --
 8 that's objectionable.
 9 THE COURT: You do have 12 mailings. If you
 10 could direct her to a mailing, I think it would help her
 11 answer your question, or is this the mailing that we're
 12 talking about, or all 12 of them?
 13 MS. SCHNEIDER: Let me rephrase my questions,
 14 Your Honor.
 15 BY MS. SCHNEIDER:
 16 Q. In the 12 mailings that you mentioned, there was an
 17 insert from the Department of State in those mailings; is that
 18 correct?
 19 A. Yes, that's correct.
 20 Q. Looking at page three and four of the Petitioners'
 21 Exhibit 2067, that is the insert from DOS that you received;
 22 is that correct?
 23 A. It's one of the inserts, yes.
 24 Q. Is it your testimony that you received multiple inserts
 25 from DOS?

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1 A. Yes. We were providing the most up-to-date information.
 2 Q. I'm sorry, there's no question pending.
 3 MR. KEATING: She is trying to respond to the
 4 question. And let her finish, please.
 5 MS. SCHNEIDER: You will have an opportunity.
 6 Your Honor, he will have an opportunity on
 7 redirect, if he would like.
 8 THE COURT: So you, you received several
 9 inserts from the Department of State?
 10 THE WITNESS: We received all inserts that the
 11 Department of State created, yes.
 12 BY MS. SCHNEIDER:
 13 Q. I just want to clarify one question regarding
 14 Petitioners' Exhibit 2016. Remember, we were talking about
 15 that. You produced -- Respondents' counsel produced this
 16 document after your deposition, correct?
 17 A. Correct.
 18 Q. You did not produce another version of this document,
 19 did you?
 20 MR. KEATING: Your Honor, if she wants to
 21 cross-examine me as to what I provided them pursuant to her
 22 deposition, that's fine.
 23 MS. SCHNEIDER: Your Honor, I'm sorry. Let me
 24 rephrase my question for the witness.
 25 THE COURT: Okay.

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1 BY MS. SCHNEIDER:
 2 Q. You did not provide your counsel for the Respondents
 3 with another version of this document, did you?
 4 A. No, I did not.
 5 MS. SCHNEIDER: Okay. Thank you, Your Honor.
 6 No further questions at this time.
 7 THE COURT: Just for the record, I think you
 8 wanted to ask her, there's no mention of a DOS ID in this
 9 insert; is that correct?
 10 MS. SCHNEIDER: Yes, Your Honor. I would be
 11 happy to ask her that question.
 12 BY MS. SCHNEIDER:
 13 Q. Miss O'Donnell, did you hear what the Court said?
 14 A. I did, yes.
 15 Q. There's no mention of a DOS ID in that insert that went
 16 out with the PACE mailing; is that correct?
 17 A. In this particular mailing, there's no reference to the
 18 DOS ID; correct.
 19 MS. SCHNEIDER: Thank you.
 20 MR. KEATING: I just have a couple of
 21 follow-up questions.
 22 REDIRECT EXAMINATION
 23 BY MR. KEATING:
 24 Q. Let's talk about Exhibit 2016, okay?
 25 A. Okay.

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1 Q. Now, the top of that, it says, you be will be asked for
 2 photo ID at the April 24 primary election, but it will not be
 3 required; is that correct?
 4 A. Correct.
 5 Q. Would it be safe to assume that this document was put
 6 out at some point prior to April 24th of the primary election?
 7 A. I think that's fair to say, yes.
 8 Q. And it also says, you will be reminded that a photo ID
 9 is required for the November 6th general election; is that
 10 what that says, correct?
 11 A. Yes.
 12 Q. Was a photo ID required for the November 6 general
 13 election?
 14 A. It was not required.
 15 Q. So, would it be fair to say that this document was
 16 generated before the November 6th general election?
 17 A. Yes, that would be fair to say.
 18 Q. On page three, which has Bates stamp at the bottom
 19 PA-12009989, it says in paragraph three, provide your birth
 20 certificate or naturalization paper, Social Security card, and
 21 two proofs of residency such as a utility bill lease or tax
 22 statement; is that what that says?
 23 A. Yes.
 24 Q. That is what you were required to have document-wise in
 25 order to get acceptable photo ID at that time, correct?

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1 A. When the law was first passed, yes, that was correct.
 2 Q. So, prior to the April 24th primary election, is it your
 3 understanding that that's what was required at that time?
 4 A. Yes; that's my understanding.
 5 Q. And what were you required to do back then to get a DOS
 6 ID, Department of State ID?
 7 A. Prior to the -- prior to the primary election, the DOS
 8 ID did not exist.
 9 Q. There was no DOS ID at the time, was there?
 10 A. Correct.
 11 Q. Okay. Now, I want to talk a little bit about their
 12 Exhibit 1591, and this has to do with the emails that goes
 13 back to Amy Stover from Generations of Indian Valley.
 14 Was there some discussion about her attempt to try to
 15 get some transportation in order to get voter IDs?
 16 A. Through the email exchange, there was some discussion
 17 about scheduling transportation to obtain voter ID.
 18 Q. Were you aware that that PennDOT does reach out to
 19 organizations and help get --
 20 MS. SCHNEIDER: Objection, Your Honor.
 21 There's no foundation for her knowledge of what PennDOT was.
 22 MR. KEATING: You didn't let me finish the
 23 question.
 24 THE COURT: Yeah. I'll permit the question.
 25 Finish the question. She can answer.

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1 BY MR. KEATING:
 2 Q. Were you aware that PennDOT does reach out to provide
 3 transportation to organizations of people who want to go to
 4 PennDOT and get voter IDs?
 5 A. Yes, I'm aware of that outreach.
 6 Q. Were you aware that they actually did that for
 7 Generations of Indian Valley?
 8 A. I'm not aware of whether or not they did.
 9 Q. Now, we spoke a little bit about -- or I guess on
 10 cross-examination there was a little bit of discussion about
 11 the long -- the care facilities, and whether the care
 12 facilities issue IDs or not to their people at their
 13 residence; do you remember that?
 14 A. Yes.
 15 Q. And I believe that you testified that you were not
 16 specifically aware of what care facilities do or do not give
 17 out such IDs, correct?
 18 A. That's correct.
 19 Q. And generally, there are three types of care facilities.
 20 There's long-term nursing homes, right?
 21 A. Yes.
 22 Q. There are personal care homes?
 23 A. Yes.
 24 Q. And there are -- what's the third type? Assisted
 25 living?

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1 A. Yes.
 2 Q. And in the long-term nursing home, I think you testified
 3 there are 80,000 residents?
 4 A. Approximately 81,000 residents.
 5 Q. And did you say how many are in the personal care homes?
 6 A. I don't recall if I stated, but it's approximately
 7 46,000.
 8 Q. And I think you said the assisted living about 1200?
 9 A. Correct.
 10 Q. In all of those situations, if a resident wants to vote
 11 and is having a hard time getting a voter ID, or if the
 12 resident is not being given an ID at that center, can they
 13 contact the Department of Aging and complain about it?
 14 MS. SCHNEIDER: Your Honor, objection. Lack
 15 of foundation.
 16 THE COURT: I'll permit the question.
 17 MR. KEATING: Yeah.
 18 BY MR. KEATING:
 19 Q. We were talking before about the elderly don't have much
 20 of a problem in voicing their concerns; but residents of these
 21 facilities, if their facility is not giving them IDs, do they
 22 have a method in which to bring it to your agency's attention?
 23 A. Yes.
 24 Q. Have they?
 25 A. No.

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1 Q. There's a little bit of testimony about this PACE
 2 Exhibit, the 2067 exhibit, and there was a question about
 3 whether this was mailed after the Court's order or before the
 4 Court's order. Do you know when this was mailed?
 5 A. I don't know on this particular mailing, when this was
 6 issued.
 7 Q. Were you aware that there were some mailings that were
 8 mailed out to individuals after the Court's order that had
 9 information that was not correct?
 10 A. Yes.
 11 Q. Was that your fault?
 12 A. I'll probably get blamed for it.
 13 Q. Does an individual who uses the Shared-Ride Program, do
 14 they need an ID to use the Shared-Ride Program?
 15 A. Yes, it's my understanding that it's a requirement of
 16 the Shared-Ride Program to show a valid ID.
 17 Q. A valid ID, does that need to continue a photo ID for
 18 the Shared-Ride Program?
 19 A. I don't have the knowledge of whether or not it needs to
 20 be a photo ID.
 21 Q. Okay. So, the question of whether there was a glitch
 22 about trying to get a photo ID when you already -- didn't
 23 already have an ID, you're not aware that that wasn't a
 24 glitch; are you?
 25 That was a terrible question. Would it surprise you to

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1 learn that it's much easier to get a Shared-Ride ID, that you
 2 do not need a photo and, therefore, could use a Shared-Ride ID
 3 to get a PennDOT, to get a voter ID? Were you aware of that
 4 at the time of your deposition?
 5 A. I'm aware that some Shared-Ride providers do allow for a
 6 non-photo ID as proof of age to access the Shared-Ride
 7 Program, yes.
 8 Q. Do you know what the requirements are for a Shared-Ride
 9 transit ID?
 10 A. I do not, no.
 11 Q. Obviously, you weren't here yesterday when LaVerne
 12 Collins testified on behalf of the Shared-Ride Programs?
 13 A. That's correct.
 14 MR. KEATING: Thank you.
 15 MS. SCHNEIDER: Your Honor, no further
 16 questions at this time; but I would like to move into evidence
 17 Petitioners' Exhibit 1591, 1592, and 2016.
 18 MR. KEATING: We don't object and we'd like to
 19 move into evidence Respondents' Exhibit No. 260.
 20 MS. SCHNEIDER: We don't have any objection to
 21 that, Your Honor.
 22 MR. KEATING: Thank you. Can we excuse the
 23 witness, Your Honor?
 24 THE COURT: Certainly.
 25 THE WITNESS: Thank you.

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1 MR. KEATING: Best thing I said all day, huh?
 2 Your Honor, we would call our next witness,
 3 Kurt Myers.
 4 KURT MYERS, having been first duly sworn
 5 according to the law was examined and testified as follows:
 6 DIRECT EXAMINATION
 7 BY MR. KEATING:
 8 Q. Good morning, Kurt. How are you?
 9 A. Good morning.
 10 Q. You've testified in this case before, haven't you?
 11 A. That is correct.
 12 Q. I'm going to start off with just some very general
 13 background questions for the record, and then we'll talk about
 14 more specific issues.
 15 Kurt, you work at PennDOT; correct?
 16 A. That is correct, yes.
 17 Q. How long you have worked there?
 18 A. I have been with the Department for 15 years.
 19 Q. What is your current position?
 20 A. I am the Deputy Secretary for Safety Administration.
 21 Q. What does that mean?
 22 A. I am responsible for driver and vehicle services.
 23 Q. Driver and vehicle services. What all is under that
 24 umbrella?
 25 A. Issuance of driver's licenses, issuance of registration

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1 and titling, safety inspections, emissions inspections,
 2 insurance, oversight of dealers.
 3 Q. In your position, would it be fair to say that you have
 4 the ability to access drivers' records and find out and
 5 determine whose drivers' records have been suspended, expired,
 6 anything of that nature?
 7 A. That is correct. Through my staff, yes.
 8 Q. How many drivers are there in Pennsylvania?
 9 A. There are approximately 8.8 million licensed drivers in
 10 Pennsylvania.
 11 Q. How many unlicensed drivers?
 12 A. I don't know the answer to that.
 13 Q. Now, let's talk about PennDOT products. What's a
 14 PennDOT product?
 15 A. Well, a PennDOT product could be a driver's license. It
 16 could be a registration card. It could be a license plate.
 17 Any of those would be products that we produce.
 18 Q. Are there -- driver's licenses; is that considered to be
 19 a secured ID?
 20 A. Driver's license and the ID card are both considered to
 21 be secure documents.
 22 Q. You say the ID card, what are we talking about?
 23 A. Well, there are approximately 1 million identification
 24 cards that are issued in the Commonwealth as well as the 8.8
 25 million, I mentioned earlier, driver's licenses.

1 Q. So, it's really the non-driver's license PennDOT ID?
 2 A. That's correct.
 3 Q. Okay. And I'm sorry, between the driver's licenses that
 4 have been issued and the non-driver's license secure IDs, how
 5 many of those have been issued by PennDOT?
 6 A. There are approximately 9.8 million.
 7 Q. 9 point --
 8 A. 8 million.
 9 THE COURT: Repeat that question for me,
 10 Mr. Keating.
 11 BY MR. KEATING:
 12 Q. Between the driver's licenses that have been given out
 13 by PennDOT and the non-driver's license secure IDs, how many
 14 are out there, how many have been issued?
 15 A. Approximately 9.8 million.
 16 Q. Now, for the purposes of the non-driver's license secure
 17 IDs, why do people get them?
 18 A. Well, the fact of the matter is over the years, the
 19 driver's license has become more than just a document to show
 20 that you're licensed to drive in the Commonwealth, or for that
 21 matter, any other jurisdiction across the country.
 22 It has become the trusted form of identification,
 23 whether it be for law enforcement or for banking, for other
 24 organizations that depend upon looking at a driver's license.
 25 Most of us today, I don't believe, can go to a doctor's

1 office without showing a driver's license. I know that mine
 2 requires it every time I come.
 3 That trust is such that we have standards that we have
 4 developed over the years based upon best practices of not only
 5 other jurisdictions but also things that we have developed in
 6 the process of building the confidence level for us to allow
 7 that secure ID to be issued to that individual. So that when
 8 another party takes that ID as identification, they can trust
 9 that we have done the work to insure that that person is who
 10 they say they are.
 11 So, in those cases where individuals don't drive, and
 12 don't need a driver's license, the ID card is something that
 13 they get so that they can utilize it for that identification
 14 purpose.
 15 Q. Let's talk about a security factor relative to that. Is
 16 there anything special about the driver's license itself that
 17 makes it any better than, say, another ID with your photo on
 18 it?
 19 A. Yes, your driver's license has overt, covert and
 20 forensic security features that are attached to it. Some of
 21 the things that would be considered overt as an example is the
 22 ghost image. It simply makes it harder for somebody to forge
 23 the document.
 24 There are other things that would be considered in the
 25 covert qualification that you may be aware of. You have been

1 to the airport, you have checked in and asked -- they've asked
 2 for your driver's license and they'll turn it over and put a
 3 black light on it and that will show an emblem, when they put
 4 the black light on it.
 5 Forensic is something that, quite frankly, I am not even
 6 aware of all of the features in the forensic. That is
 7 something that law enforcement utilizes in investigations.
 8 Q. Are there -- those are the -- what we'll call the secure
 9 types of ID; correct?
 10 A. Those are the secure types of IDs, yes.
 11 Q. Other than driver's licenses and non-driver's license
 12 secure IDs, are there other types of secure IDs that are
 13 manufactured by PennDOT for other agencies or within PennDOT
 14 itself?
 15 A. We produce other IDs. They have some security features
 16 in them, but not all of the security features that secure IDs
 17 do from a product standpoint.
 18 Q. And the security features, is that unique to
 19 Pennsylvania, or do other states have the same sort of
 20 provisions, if you know?
 21 A. All states have worked, especially since 9/11, to insure
 22 that the driver's license ID card, not only from a product
 23 standpoint is as secure as possible, but also the processes
 24 and procedures to vet somebody so that they are -- we are sure
 25 that they qualify for an ID. So, it is something that is

1 across the country.
 2 Q. Is there reciprocity relative to acknowledging other
 3 driver's licenses in other states?
 4 A. Well, we certainly recognize from a law enforcement
 5 standpoint, we certainly recognize other driver's licenses for
 6 individuals driving through our state.
 7 Q. We just had some testimony from Kelly O'Donnell relative
 8 to the elderly in Pennsylvania. Demographically, I guess the
 9 Department of Aging said 60 and over is considered to be
 10 elderly in Pennsylvania. How many driver's licenses are there
 11 for, say, people who are over 65 right now?
 12 A. The number is approximately 1.7 million.
 13 Q. 1.7 million Pennsylvania citizens over 65 have a valid
 14 driver's license; is that what you are saying?
 15 A. That's approximate, yes.
 16 Q. What about the non-driver's license secure ID, over 65;
 17 about how many are in Pennsylvania?
 18 A. There are a little less than the numbers that I just
 19 mentioned for the driver's license. I believe the number is
 20 somewhere in the range of 200,000.
 21 Q. So, between the driver's licenses and non-driver's
 22 license secure IDs, what, there's another 2 million people
 23 over 65 that have that?
 24 A. It would be close to that, yes.
 25 Q. Is that --

1 A. That's an approximate number.
 2 Q. Is there any age limit as to how old you can be to drive
 3 in Pennsylvania; is there any cut-off?
 4 A. No. In fact, we have licenses that are currently issued
 5 to individuals are over 100. Now, having said that, that
 6 doesn't mean they necessarily drive a vehicle, but they do
 7 qualify to have a license; and in many of those cases, I'm
 8 sure those are situations where the individual is using it as
 9 identification.
 10 Q. You don't require them to come in and show you how to
 11 parallel park at 104 or anything?
 12 A. We have a -- no, we don't; but we do have a program.
 13 It's a random program where we recall 1900 drivers every month
 14 to have them go and get a medical report to insure us that
 15 they're capable of driving from a doctor's standpoint; and
 16 obviously, that 1900 is weighted towards more mature drivers
 17 than younger drivers.
 18 Q. If they are considered to be ineligible to drive, is
 19 there some mechanism by which they can turn in their driver's
 20 license and switch it for a non-driver's license secure ID?
 21 A. Yeah. That's correct. And in fact, it's in the Vehicle
 22 Code that allows for it. If somebody voluntarily surrenders
 23 their driver's license, the Department will issue free of
 24 charge an ID card as a replacement.
 25 Q. Okay. Let's talk about the driver's license centers in

1 counties; therefore, we should have a center in each county.
 2 That makes no sense.
 3 Q. Who decides where the centers are located; whose
 4 decision is that?
 5 A. The decision from the standpoint -- I'll give you an
 6 example.
 7 Just recently, last year, we moved our center from a
 8 center called East Rochester, which is outside of Pittsburgh,
 9 and we moved that to Beaver Falls. The center that we had in
 10 East Rochester was one that we had had from the 1960s. It was
 11 antiquated. We needed to upgrade it.
 12 We put a briefing paper together for the Secretary. I
 13 met with the Secretary. The Secretary gave me the go-ahead to
 14 relocate.
 15 At that point in time, the decision making process as to
 16 where we exactly located was based upon my decision as well as
 17 my staff's. After careful analysis, we made the decision to
 18 move approximately eight miles away to Beaver Falls.
 19 We went into a strip mall that was greater population
 20 from the standpoint of people visiting that area, and that was
 21 some of the primary reasons for that decision. That, and the
 22 fact that it was bigger and modern.
 23 Q. Does PennDOT do a regular review of the different
 24 centers to determine whether they should be relocated or what
 25 should be done with them?

1 Pennsylvania. How many are there?
 2 A. There are 71.
 3 Q. Where are they?
 4 A. Well, they're throughout the Commonwealth. They are
 5 concentrated based upon demographics, so the largest number of
 6 driver's license licensing centers are in the Philadelphia
 7 region, followed by the Pittsburgh region.
 8 Obviously, as you get out into some of the areas that
 9 are less populated, there are fewer driver's licensing centers
 10 in those areas.
 11 Q. Are you aware of the fact that there are some counties
 12 that don't have a driver's license center at all?
 13 A. Yes, I am.
 14 Q. How does PennDOT justify not having driver's license
 15 centers in some counties?
 16 A. Well, frankly, it's quite straightforward and very
 17 logical. We build our centers where the population is, and
 18 the county lines are arbitrary lines that are drawn for the
 19 purposes of governance. The fact of the matter is, is that
 20 when we put a driver's licensing center in, we're looking for
 21 where the people are. That's why we have five centers in
 22 Philadelphia County alone.
 23 It wouldn't make sense, it wouldn't be prudent from the
 24 standpoint of how we spend taxpayer dollars if we simply put
 25 centers simply because arbitrarily Pennsylvania has 67

1 A. We're looking at our older centers; and, over time, we
 2 have been changing them out, if you will.
 3 For example, before we did the location in Beaver Falls,
 4 we had moved the location in Erie; and before that, we had
 5 moved the location from -- in Bortondale, Pennsylvania, which
 6 is outside of Philadelphia, to an area of Granite Run.
 7 Bortondale was a stand-alone location and very small
 8 size, very antiquated and older building; and we moved to a
 9 stand-alone building as part of the Granite Run Mall. There
 10 again, population, bus transportation, all of those types of
 11 things are available at that location.
 12 Q. Does PennDOT keep track of how many transactions are
 13 done in each of different centers?
 14 A. We do keep track of the total number of transactions,
 15 yes.
 16 Q. Why do you do that?
 17 A. Well, from a customer flow and also making sure that
 18 we're living up to our expectations and the customer's
 19 expectations as far as service. And also the distribution of
 20 complement. Our complement is limited. We only have so many
 21 individuals within our organizations.
 22 So, we do our best to make sure that we move them to the
 23 various locations based upon the volumes of customers that are
 24 coming to those centers.
 25 Q. Of course, we're only talking about driver's license

1 centers, but PennDOT is actually a bigger organization that
 2 does a lot more than just driver's license and --
 3 A. Oh, absolutely. My complement is right around 1,061,
 4 keeping in mind as I mentioned earlier, all of the things that
 5 we are responsible for outside of driver's licensing. But the
 6 complement of PennDOT is close to 12,000, a little under
 7 12,000. So we have about 10% of the staff.
 8 Q. Relative to the licensing centers, are they all handicap
 9 accessible?
 10 A. All of the buildings, when they were built, were built
 11 to ADA requirements.
 12 Q. How do you determine how big of a staff you have in each
 13 of the locations?
 14 A. Well, again, it would be subject to the volumes, numbers
 15 of people that are coming in. I know a number of years ago
 16 now, probably back -- I'm going to say it's 2007/2008. I
 17 believe we took somewhere in the range of 11 to 15 positions
 18 and actually moved them from the central part of the state to
 19 the Philadelphia region because that area, obviously from a
 20 demographics standpoint, is growing. There's -- obviously,
 21 it's a large population base. So, we brought those people --
 22 those positions, I should say, to that area to help bolster
 23 our service levels there.
 24 Q. And what about the hours of operation at the centers;
 25 who decides what they are, as well as the days of the week

1 issuance. That's where the individual comes in and takes a
 2 knowledge test about the rules of the road to qualify for
 3 their learner's permit.
 4 We also do the actual skills testing, drivers' testing
 5 at those centers as well. And of course, everyone at the
 6 centers has a photo center with it where the photo can be
 7 taken.
 8 Q. Every one of centers has a photo center where the photo
 9 can be taken; is that what you said?
 10 A. That is correct, yes.
 11 Q. What is the difference between the hours of operations
 12 and the day of operations between the center and the photo
 13 center, if there is one?
 14 A. If there's any difference at all, it normally is that
 15 the photo centers are open longer hours; and I think it's
 16 important to note that we actually, in addition to the 71
 17 driver's licensing centers that have photo centers, we also
 18 have stand-alone photo centers.
 19 There's a very basic reason for that; and that is from
 20 the standpoint of renewal of driver's licenses, we renew about
 21 2.2 million driver's licenses a year. We renew another
 22 200,000 of the IDs. So, all of those pictures are being
 23 taken; and so, as such, we have more centers where you can go
 24 from a photo center standpoint to be able to get your picture
 25 taken, because you don't need the services at the driver's

1 they're open?
 2 A. Well, again, that would fall under my responsibility as
 3 well as my staff's. Understanding, again, we have a limited
 4 number of complement. We also work within a 40-hour week. So
 5 anything over 40 hours is going to be overtime.
 6 So, while we have some flexibility from the standpoint
 7 of the workday, short of having staff work overtime, we have
 8 to fit it in within that 40-hour period of time.
 9 A number of years ago, long before I was in this
 10 position, a decision was made that the sites would be open
 11 from Tuesday through Saturday, allowing Saturday -- which is
 12 one of our busier days -- for those individuals who work
 13 Monday through Friday.
 14 The only site that's not open on a Saturday is actually
 15 our downtown Pittsburgh location which it actually open Monday
 16 through Friday.
 17 We have some sites, very few, Dunmore comes to mind, I
 18 believe on Wednesdays. It opens later, and stays open later
 19 at night. But that is a rarity that we do that type of
 20 schedule. But again, we're working within that 40 hours
 21 that's available to us.
 22 Q. Other than issuing driver's licenses, renewing driver's
 23 licenses and non-driver's license secure IDs, what other
 24 services do the centers offer?
 25 A. Well, we certainly do knowledge testing for initial

1 licensing center. You already have an ID. You're simply
 2 renewing it.
 3 Q. Relative to renewing a driver's license, is that
 4 something you can do over the internet, or do you have to go
 5 into a center?
 6 A. You can renew over the internet; and in point of fact,
 7 somewhere around the range of 33% of our customers go on to
 8 renew either their driver's license and/or their vehicle
 9 registration.
 10 Understanding with the driver's license, when you renew,
 11 what gets sent -- you pay, you put the information in, you
 12 pay; and in turn, we send you what is called a camera card.
 13 And that camera card then needs to be taken to the driver's
 14 licensing -- excuse me, to the photo center at the driver's
 15 licensing center or a stand-alone photo center to get your
 16 picture taken and get your new product.
 17 Q. Okay. What other services does PennDOT provide over the
 18 internet where you're not required to actually go into a
 19 center?
 20 A. Well, there are multiple number of services; and
 21 frankly, we continue to add services to internet transactions.
 22 As I mentioned, obviously, the driver's license renewal,
 23 the registration renewal for your vehicle. You can get paid
 24 information about your driving record on the -- you can get a
 25 restoration letter to let you know what you need to do if are

1 you under suspension, what you will need to do to restore your
 2 license when you have served your suspension.
 3 You can go on and put in combinations of various letters
 4 to see whether or not a vanity plate is available before you
 5 place your order so that, that's one other option that's
 6 available to you.
 7 So it really runs the gamut, including going online and
 8 being able to update your record to become an organ donor.
 9 Q. Okay. When you go in to register or get a driver's
 10 license, can you also register to vote at that time?
 11 A. You can make application to register to vote.
 12 Q. Good point. When you make an application to register to
 13 vote, what is involved?
 14 A. Well, there are two potential processes. The primary
 15 process is in the initial issuance of a license, or ID card.
 16 Once you have been vetted through the process, you go to
 17 the photo technician. The photo technician will show you a
 18 series of screens. On that series of screens will be
 19 questions in reference to that, do you want to make
 20 application for voting purposes.
 21 And based upon what you check off, that information then
 22 is captured, and then sent to the Department of State. The
 23 Department of State then sends it off to the counties who are
 24 actually responsible for it.
 25 You can do that, and that's asked each time that you do,

1 asked each time that you do a renewal.
 2 In addition to that, we also have the forms and -- the
 3 Department of State forms for the purposes of making
 4 application, the actual paper forms that you can fill out.
 5 Q. Let's talk about PennDOT and the way they work with
 6 other state agencies. Obviously, you talked about the
 7 Department of State; correct?
 8 A. That's correct.
 9 Q. What other state agencies does PennDOT work closely
 10 with?
 11 A. Well, we work closely with the DEP on a number of
 12 matters. We work closely with the Department of Health,
 13 especially as it relates to organ donation. DEP would be, for
 14 example, our auto emissions program that we work very closely
 15 with them on, as well as issues associated with highway
 16 construction.
 17 The -- we have mentioned the Department of State. We
 18 work as well with the Department of Banking. The list goes on
 19 and on. Essentially, we have some form of outreach almost to
 20 every agency out there.
 21 Q. What are the main agencies you work with, then?
 22 A. Primary agencies would be the Department of State and I
 23 would say DEP. Those would be the two main agencies. And now
 24 we recently partnered with DCNR on an efficiency project where
 25 we're doing processing of their titles and registrations -- or

1 renewals, excuse me, for registration on snowmobiles and ATVs.
 2 Q. Relative to training individuals who work at the
 3 centers, what kind of training do you provide to them?
 4 A. Well, from the standpoint of the training for the
 5 centers' individuals, any new employee that comes in to the
 6 organization, as soon as they're hired they come in and -- I
 7 want to take a step back here.
 8 The first thing we do is we do an FBI background check
 9 on everybody individual that goes into our field operations.
 10 Again, this gets to the issue of issuing a secure product and
 11 having certain standards.
 12 Once that person has clearance from their background
 13 checks and are hired, they come to central office here, to the
 14 Riverfront Office Center. They spend normally about five days
 15 here. During that period of time, they will receive the basic
 16 training related to some of the things that they just need to
 17 know as Commonwealth employees.
 18 They will receive fraud, fraudulent document training
 19 which is actually one full day where we go through what to
 20 look for in fraudulent documents and how to identify those
 21 types of documents.
 22 Q. What kind of documents are we talking about?
 23 A. These would be documents that, through best practices
 24 working with other jurisdictions as well as ICE, Homeland
 25 Security, that have been shown to be fraudulent, and we're

1 training our staff on what to look for.
 2 So that if somebody comes in with a birth certificate or
 3 some type of a naturalization papers that are fraudulent, they
 4 know what they should be looking for. Social Security card,
 5 something of that nature.
 6 Q. Besides that, what other type of typical training?
 7 A. Well, they would get -- they would get the time during
 8 that week with hands-on training from the standpoint of how to
 9 use the terminal and what to expect from that standpoint of
 10 the various functions that they need to be able to handle when
 11 they're on the counter in one of our driver's licensing
 12 centers.
 13 They would also get customer service training on how to
 14 deal with customers. So that the -- the list is fairly
 15 extensive of items that they are trained with in that first
 16 week.
 17 Obviously, having said that, they learn a lot,
 18 obviously, when they get into the field and we do follow-up
 19 training based upon what the item might be. In some cases we
 20 do webinars where we'll hold staff after work or before work
 21 to come in and receive a webinar information about a
 22 particular program.
 23 Q. Do you have updates on training on a regular basis?
 24 A. We do; and for example, we just did updating training on
 25 all of our staff on the fraudulent documents as a refresher

1 course, if you will.
 2 So, that type of thing is done, yes. And in addition to
 3 that, we also have on our database of available for our staff
 4 what is actually I believe called robo help.
 5 Q. Called what?
 6 A. Robo help. It's actually just items that are in our
 7 database. If you have a question, you can refer to it. It's
 8 question-and-answer type of document that is utilized by not
 9 only our field staff but also central office as well as our,
 10 as well as our call center.
 11 Q. In that respect, if a consumer needs information
 12 relative to PennDOT products, relative to expiration dates or
 13 anything about PennDOT, what are the different available
 14 resources do they have, or what does PennDOT provide to help
 15 them out with that?
 16 A. Well, let me be clear about something, because I believe
 17 it came up in the prior testimony; and that is, that we don't
 18 advertise our phone numbers for our individual driver's
 19 licensing sites in the yellow pages.
 20 Q. You don't want people to hunt you down?
 21 A. It's not that, no. There's a very logical reason on why
 22 we do it. And quite frankly, again, as I said earlier, we
 23 have very limited resources when it comes to our field site.
 24 We do have a call center. Our call center has an 800
 25 number as well as --

1 Q. When you say your field site, what do you mean?
 2 A. Our driver's licensing centers and our photo centers for
 3 that matter.
 4 Q. So, the physical centers all around Pennsylvania.
 5 A. Physical centers, correct. But there's a very logical
 6 reason on why we don't publish those numbers.
 7 We want our folks to be able to focus on their core
 8 responsibilities, which is the issuance of identification as
 9 well as the testing, and on both skills and knowledge testing.
 10 If we were to take phone calls at our individual
 11 centers, most of our individual staff would be spending most
 12 of their time on the telephone. Why do I say that? We have a
 13 call center that is staffed by 125, approximately, customer
 14 service representatives. We receive 15,000 phone calls a day.
 15 Now, 8,000 of those go to customer service
 16 representatives. 7,000 of those go to our automated system.
 17 The automated system walks people through the questions that
 18 they may have; and in the case of almost 50% of our customers,
 19 the IVR is enough to allow them to get the information that
 20 they need, including information about our website.
 21 Obviously, that's another way to reach us, through emails.
 22 We can be emailed. PennDOT is now on Twitter. We're
 23 also on Facebook and we do now get inquiries through those
 24 systems as well. And we have staff that monitors Facebook and
 25 Twitter; and when people do inquire about particular

1 situations -- obviously, because the confidentiality of
 2 records, we can't go back on Facebook and respond to what
 3 their particular situation is, but we can do the outreach to
 4 say, send us an email and we'll follow up with you.
 5 So, those are the types of various outreaches that we
 6 have for people to get to us.
 7 Q. I assume there are typical questions that people call up
 8 and ask all the time, and that would be part of the robo
 9 calling, punch one or two and figure out what the hours and
 10 days are at certain centers?
 11 A. That's correct. You can have forms faxed to you. Under
 12 the voter ID script, as an example, if you want information
 13 sent to you, for example, of a 584a, one of the forms that
 14 needs to be filled out for a PennDOT driver's license or ID,
 15 or the affirmation as an example, you can do that all
 16 automated and put in your fax number and it will automatically
 17 fax those documents to you.
 18 Q. Let's step back for a minute, and let's talk about what
 19 types of documents do you need in order to apply for a regular
 20 driver's license.
 21 A. The documents that --
 22 Q. If any. I assume there are some.
 23 A. There are, absolutely. And again, that has really
 24 evolved, and especially has evolved since 9/11; and in
 25 particular since 2003, I believe, when the General Assembly

1 here in Pennsylvania passed a legal presence law, which meant
 2 that you needed to prove that you were legally present here,
 3 not only in the United States, but also in -- and that you
 4 were a resident of Pennsylvania.
 5 So, things have really evolved over the years. Again,
 6 primarily because of 9/11. But what you are required today to
 7 have -- and I think this is really important for everybody to
 8 understand is this issue of, we don't look at one individual
 9 document and say that that's sufficient, you are who you say
 10 you are.
 11 I describe it as a confidence ladder, and we build that
 12 ladder one rung at a time looking -- and the reason we look at
 13 various documents is we want to be able to climb as high as
 14 possible on that ladder.
 15 I'm not suggesting that we probably ever get to 100%,
 16 but we certainly want to try to get into a confidence level in
 17 the high 90 percentile that that person standing in front of
 18 us is who they say they are.
 19 That's why we ask for a birth certificate with a raised
 20 seal. It's harder to fraudulently produce something. That's
 21 why we actually ask for the actual Social Security card. Even
 22 though, when we have a Social Security card, we're doing an
 23 electronic verification with the Social Security
 24 Administration. We're getting back that, yes, we have a
 25 person on record by that name, with that birth date.



1 We do the same thing with immigration documents that are
2 brought to us. We have a system called SAVE, that is part of
3 the Department of Homeland Security, where we can enter that
4 document information and Homeland Security will come back and
5 tell us whether or not those documents are legitimate or not.

6 In addition, if you don't have a birth certificate,
7 we'll accept a passport. If -- the Social Security card, as I
8 mentioned, and then also two forms of verification of what
9 your Pennsylvania address is.

10 Q. Isn't that a large burden for people who just want a
11 driver's license to come up with those documents to get a
12 driver's license?

13 A. Well, again, it goes back to my earlier statement about
14 the fact that driver's licenses and the ID card is no longer
15 just for driving. It has become the trusted form of
16 identification.

17 And for the banks and other organizations to trust that
18 the person is who they say they are, especially getting on a
19 commercial aircraft, it's our belief that it's important that
20 we have standards that we follow to insure that those
21 individuals are who they say they are.

22 Q. And who actually makes that decision?

23 A. Well, the decision is made in the field by our field
24 staff at the driver's license centers when they're doing that
25 initial vetting.

1 Q. Are you required to have the same documents in order to
2 get a non-driver's license secure ID as you are to get a
3 driver's license?

4 A. That is correct, yes.

5 Q. But if I have a driver's license, can I switch that in
6 for a -- just a regular PennDOT ID?

7 A. That is also correct. I will note when I -- when we
8 talk about the two documents, obviously, a driver's license,
9 you also have to pass the skills and knowledge test to get
10 that. So, there is a slight difference.

11 Q. We'll talk about the DOS ID in a little bit, but are
12 there other IDs that PennDOT produces either for other
13 agencies or other reasons other than those two that are fairly
14 common?

15 A. Sure. And obviously as you said, we'll talk about the
16 DOS ID later; but the fact is, we produce two products for
17 Labor and Industry. One is a lead identification card and the
18 other is an asbestos identification card.

19 We produce about 6,000 of those each year and they're
20 good for a year it's identification for their staff, and we
21 also do an identification card for our authorized messengers.

22 Q. What about the Department of Corrections?

23 A. We work very closely with the Department of Corrections.
24 There is a program, and there we are actually issuing to the
25 individual inmate; but it is a program through the Department

1 of Corrections for the Commonwealth. It's actually a program
2 that started from a pilot standpoint back in the 2006, I
3 believe, but it was voluntary at that point in time.

4 The Department of Corrections made the program mandatory
5 in I believe May or June of 2012. What I mean by that is that
6 it used to be that the inmate would have the option of either
7 getting an ID or not getting an ID when they were released.

8 In 2012, they made the program mandatory so that every
9 inmate that's being released into probation or they have done
10 their full time can get an identification card.

11 The way the program essentially works is that it's to
12 insure that when that inmate walks out that door, they have an
13 ID in hand because one of the most difficult things, again
14 getting back to this whole point of a trusted ID, is that for
15 these individuals to get a leg up, day one, that
16 identification is critical to them, whether it's getting a job
17 or applying for services or probably for that matter getting a
18 place to stay, probably someone is going to ask them for some
19 type of identification.

20 So, the Department of Corrections made a decision to go
21 forward with this on a mandatory basis.

22 This year, since we started, which is now we're into it
23 about 13 months that it has been mandatory, I believe we have
24 issued about 8600 IDs to inmates who are being released.

25 Most of those inmates are Pennsylvania citizens, so

1 they're already on our database. They have already been
2 vetted in the past. Some are initial issuance, but the vast
3 majority of them, I believe the numbers will suggest they are
4 individuals that are -- that had an ID at one point in time
5 and so we're reissuing them a product.

6 Q. Are they considered to be secure IDs or not?

7 A. They are secure IDs, yes.

8 Q. And that's only the inmates, state inmates being, is
9 that also correct?

10 A. At this time, it's only state inmates. We have had
11 conversations with counties. We have also had conversations
12 with the Federal Government in reference to federal detainees
13 from the standpoint that, as I understand the system -- and
14 it's very limited -- when someone is in federal prison before
15 they are brought back to Pennsylvania for a Pennsylvania
16 residence before release.

17 So, we do work with them today, but our ultimate goal
18 with the counties as well as with the Federal Government is to
19 institute a program that would be similar across the board, to
20 the degree possible.

21 We have had conversations with Philadelphia County.
22 They're very interested in the program. We want to be sure
23 that we can handle the volume with the Commonwealth first
24 before expanding it to the counties as well as the Federal
25 Government.

1 Q. Let's talk about numbers. Let's talk about PennDOT
 2 products and DOS IDs issued over the past couple of years as
 3 just a general thing.
 4 Do we have Exhibit 2072 from Petitioners? Do we have
 5 that? Is that some sort of a chart? Do you recognize this
 6 document, Kurt?
 7 A. I do, yes.
 8 Q. What is it?
 9 A. This is a listing by site, by month, for the period from
 10 March, which would have been March 15th of 2012, when the law
 11 went into effect, through it looks like early July -- I don't
 12 know the specific date that it ends in early July -- of DOS
 13 IDs that were issued by location, by month, during that period
 14 of time.
 15 Q. When you talk about the law that went into effect, we're
 16 talking about the voter ID act?
 17 A. That's correct, yes.
 18 Q. When we talk about the D-O-S ID, or the DOS ID, we're
 19 talking about the Department of State ID?
 20 A. That's correct.
 21 Q. And how many have been issued to date?
 22 A. From the standpoint of IDs, PennDOT IDs that have been
 23 issued free, during that period of time, which is page one and
 24 two, I might add --
 25 Q. Okay.

1 and the number of DOS IDs each center issued by month for a
 2 total of 3,830.
 3 BY MR. KEATING:
 4 Q. Let's step back and go to when the Act was passed. When
 5 was it passed?
 6 A. My understanding was is that it was -- I believe that it
 7 went -- it became effective on March 15th. It was actually
 8 passed and signed into law on March 14th.
 9 Q. What are the significant provisions of the Act as it
 10 affects PennDOT?
 11 A. Well, certainly, from the standpoint that it identifies
 12 the driver's license and/or the identification card as PennDOT
 13 products that are acceptable for voting purposes.
 14 Q. You have to have a PennDOT product in order to vote?
 15 A. Well, it goes beyond that.
 16 Q. Okay.
 17 A. And it certainly lists a number of other products that
 18 are available and acceptable for voting purposes; but from the
 19 standpoint of your question specific to PennDOT, what affects
 20 us is obviously the issuance of the driver's licenses or the
 21 ID cards.
 22 Q. Okay. So, citizens who have passports or other types
 23 of -- while a concern of PennDOT, that was not the biggest
 24 issue that PennDOT had to deal with; is that a correct
 25 statement?

1 A. -- according to this, it's 12,981.
 2 Q. Those are the free PennDOT IDs?
 3 A. Those are the free PennDOT IDs.
 4 Q. What about the other pages; what do they represent?
 5 A. Well, the last two pages of the document are the same
 6 information; however, for DOS IDs. But of course, only
 7 beginning on August 27th of 2012, which is the date that we
 8 began issuing the DOS ID.
 9 There, that reflects a total of 3,830 DOS IDs that we
 10 have issued. Once again obviously --
 11 THE COURT: Could you repeat that. I'm sorry,
 12 Mr. Myers. Could you repeat that again?
 13 THE WITNESS: Yes, the entire answer to the
 14 last two pages?
 15 THE COURT: I think what you did is, you might
 16 have blocked the microphone, or at least I had difficulty.
 17 THE WITNESS: I'm sorry. The last two pages
 18 of the document refer to the DOS IDs.
 19 Now, the DOS IDs didn't begin being
 20 implemented until August 27th of 2012. That's why as you see
 21 under 2012, you see it begins with August.
 22 It goes through sometime in July. Again, I
 23 don't know the specific date, but it would be in early July
 24 that this report was most likely run. And it reflects the 71
 25 locations across the Commonwealth, driver's licensing centers,

1 A. That's correct. Because the oath affirmation that was
 2 utilized from day one, that has since been modified, the oath
 3 affirmation said that you could sign that and receive a free
 4 PennDOT product ID card, identification card as long as you
 5 had no other form of identification acceptable for the
 6 purposes of voting.
 7 So, that was a self-affirmation on the part of the
 8 individual making that statement, that they had no other form
 9 of identification. Then we would issue the product free.
 10 Q. And if someone filled out that form, were there any
 11 checks and balances to determine whether that was a correct
 12 statement or not?
 13 A. No. It was a self-certification of the independent
 14 involved.
 15 Q. When the act was first passed, talking about PennDOT
 16 products, obviously driver's licenses. Was the other form,
 17 the non-driver's license secure ID that was anticipated would
 18 be the typical voter ID identification used?
 19 A. That would be the free product, yes, that PennDOT would
 20 issue would be the ID.
 21 Q. If it's -- if it weren't for voting purposes, and you
 22 were trying to get it, how much would it cost?
 23 A. \$13.50.
 24 Q. Did that change?
 25 A. From the standpoint of price?

1 Q. From the standpoint of the law, and whether new IDs were
 2 made. Tell us a little bit about the evolution of the DOS ID.
 3 A. The evolution of the DOS ID began at a meeting in June
 4 of 2012 when there were first discussions about the ability to
 5 be able to produce an ID that had less requirements associated
 6 to it related to the secure ID that PennDOT issues.
 7 As part of that conversation, the determination was made
 8 to move forward with creating the DOS ID; and outreach was
 9 done to our vendor, who we have a driver's license vendor who
 10 produces the product for us, as well as our own systems folks
 11 to talk about what we need to do from our system standpoint.
 12 And the process was put together with bringing to the
 13 realization of the new product, as I said earlier, on August
 14 27th of 2012.
 15 Q. August 27th of last year?
 16 A. I believe that that was the date, yes, that it was began
 17 to be issued.
 18 Q. What was the difference in the required documentation
 19 for the DOS ID as opposed to the non-drivers secure ID at
 20 PennDOT?
 21 A. Well, the process really evolved over time, and there
 22 were changes made from the standpoint of what was originally
 23 required to later on changes as to what was required for
 24 the -- to receive the DOS ID, just the process itself. Those
 25 were decisions that were made by the Department of State.

1 from PennDOT?
 2 A. It doesn't have to come from PennDOT, no.
 3 THE COURT: You want to take a break now,
 4 Mr. Keating?
 5 MR. KEATING: Yes, Your Honor.
 6 THE COURT: We'll break until 1:15.
 7 THE BAILLIFF: Commonwealth Court is now in
 8 recess.
 9 (COURT RECESSED AT 12:12 P.M. AND RECONVENED
 10 AT 1:15 P.M.)
 11 THE COURT: Please remain seated.
 12 THE BAILLIFF: Court is now in session.
 13 MR. KEATING: Good afternoon, Your Honor.
 14 THE COURT: Good afternoon.
 15 MR. KEATING: May I continue?
 16 THE COURT: Please.
 17 BY MR. KEATING:
 18 Q. Kurt, before we left off this morning, we were talking
 19 about Act 18, and I want to ask you something about Act 18 and
 20 the ID requirements under the Act.
 21 Under the Act, is PennDOT required to issue an ID for
 22 free to certain voters?
 23 A. That is correct, yes.
 24 Q. Okay. Is the DOS ID card one of those?
 25 A. It's one of the free IDs that we issue, yes.

1 We clearly issued the product. It is -- but the
 2 decisions from the standpoint of the form, the affirmation,
 3 what the application form would look like, those were all
 4 decisions that were Department of State's, including what
 5 would be accepted as far as information is concerned.
 6 Q. Was that done with discussions with PennDOT, or did they
 7 just come out with it and say, here, PennDOT, this is what
 8 we're doing, take care of it.
 9 A. There were discussions with PennDOT, certainly, but
 10 ultimately the decision and the ability to make that decision
 11 was the Department of State's from the standpoint of what the
 12 requirements would be for the card. And for that matter what
 13 the card actually looked like. They helped to design it.
 14 Q. Do you know whether PennDOT was required under the Act
 15 is issue a Department of State ID?
 16 A. The -- from the standpoint of being required to issue a
 17 Department of State ID, no, I don't think that the Department
 18 is required to issue a Department of State ID.
 19 Q. Does the Department of State, do they dictate that you
 20 must -- did they call you up and say, look, this is what we're
 21 going to do; PennDOT, you have to do this for us?
 22 A. No. In point of fact, during that meeting and during
 23 that -- during that meeting and during that conversation, I'm
 24 the one who brought up the ID of producing another product.
 25 Q. But pursuant to the Act, does that product have to come

1 Q. Now, let's talk about a couple of other things.
 2 Relative to IDs issued, driver's license or non-driver's
 3 identification card with photos, what do you do about
 4 individuals who have objections because of their religion to
 5 having their photos taken; is there an exception for that?
 6 A. The Department has a number of different exception
 7 processes. That is certainly one of them, with IDs.
 8 We have some individuals who do have religious
 9 objections to getting their photo taken, and we have a process
 10 that we work with them on to be able to issue them a photo
 11 exempt ID card.
 12 Q. Do we know how many driver's licenses are out there
 13 right now that fall under that exception?
 14 A. Photo exempt driver's license, there are a little less
 15 than 2,000 of those; and photo exempt identification cards,
 16 there's right around 4,000 of those issued.
 17 Again, that would be out of the total of approximately
 18 9.8 million that are currently in issuance.
 19 Q. That same exemption would apply, I assume for the sake
 20 of discussion, for individuals who are coming in for the DOS
 21 ID? Can you get a photo exempt DOS ID?
 22 A. No.
 23 Q. Let's talk about suspended license and expired licenses.
 24 Do you keep -- does PennDOT keep a database on how many
 25 licenses out there are suspended?

1 A. Yes, we do.
 2 Q. Why?
 3 A. Well, we need, as part of our administrative
 4 responsibilities under the law, to keep track of those
 5 individuals and insure that they serve whatever their
 6 suspension period is before being reinstated.
 7 Q. Do you keep track of how many licenses there are out
 8 there that are expired?
 9 A. Yes.
 10 Q. What happens if, during an individual's suspension, the
 11 license itself expires?
 12 A. Well, it would show on our records as being expired, but
 13 also suspended.
 14 Q. If the individual came back and tried to renew their
 15 license during that suspension period, would they be able to
 16 do that?
 17 A. They would be able to renew their license, but the
 18 suspension would need to be served; and then when the
 19 suspension is served, then we would apply the renewal monies
 20 against the renewal and allow them to re-establish their
 21 license.
 22 Q. What about you testified as to reciprocity between
 23 states, and how licenses are recognized by other states. What
 24 happens if an individual moves out of Pennsylvania and moves
 25 to another state, and their license expires here in

1 A. Well, we are supposed to get a report from the
 2 Department of Health that lists all of the deaths on a regular
 3 basis.
 4 Q. Do you?
 5 A. No, we don't. Not recently. The Department of Health
 6 has had some issues with its system, and we have not received
 7 any death reports from the Department of Health until just
 8 recently about a week ago, and that report contained about
 9 38,000 names for the -- and they were primarily related to
 10 2010, 2011, and 2012. So, we received no death reports for
 11 2013.
 12 Q. Prior to receiving that, would there be information in
 13 your database if the person's license has expired, although
 14 the fact may remain that they may not be alive anymore?
 15 A. That's correct, because when we receive the death
 16 report, we put an indicator on the license that the person is
 17 deceased.
 18 Q. Now, let's talk about the interrelationship between the
 19 Department of State and the Department of Transportation,
 20 Pennsylvania Department of Transportation relative to the DOS
 21 ID.
 22 As a basic way of how that works, if a person went into
 23 the Department of Transportation and said they wanted an ID,
 24 what would that happen? And I'm talking about when this was
 25 still -- first put into place.

1 Pennsylvania?
 2 A. It really depends upon what state they move to. Some
 3 states report back to us licenses that have been surrendered
 4 to them by Pennsylvania residents who have moved out of state.
 5 Other states do not.
 6 Recently, I looked at those numbers, and I believe there
 7 were approximately 38 states that do report to us, but
 8 obviously, then, that would leave a number of states, 12
 9 states, that do not report to us on a regular basis.
 10 So, it's really just a matter of the individual states
 11 telling us whether or not a Pennsylvania resident has moved
 12 into their jurisdiction.
 13 If they don't, that record stays on our record. Either
 14 way, it stays on our record.
 15 Q. Yeah.
 16 A. And at some point in time, it expires. But it stays on
 17 our record.
 18 Q. So, you may have an individual who has moved out of
 19 state, the license expired, and you don't even know they moved
 20 out of state?
 21 A. That's correct.
 22 Q. The other thing I wanted to discuss relative to your
 23 database is if you have an individual whose license has
 24 expired in your database, what do you do -- what information
 25 do you get as to whether they have passed away or not?

1 A. For the Department of State ID, or just with the law put
 2 in place?
 3 Q. Act 18 was put in place and then it was decided to start
 4 the Department of State IDs; and you get the Department of
 5 State ID typically, where?
 6 A. Well, you would get it at one of the 71 driver's
 7 licensing centers that we discussed earlier.
 8 Q. Okay. So, someone walks in to one of the driver's
 9 license centers and says, I want an ID. What happens?
 10 A. Well, under those circumstances, our employees are
 11 instructed to ask what they want the ID for. That really
 12 helps determine which route we take them down from the
 13 standpoint of the product.
 14 If somebody specifically says, I just want an ID and I
 15 want it for voting purposes, obviously, the quickest way to go
 16 is through the Department of State ID, and issue that ID to
 17 them.
 18 If, however, they say to us, well, I want an ID. I want
 19 to be able to vote with it, but I also want to be able to use
 20 it to cash checks or to show to my doctor or whatever the case
 21 may be, where somebody is looking for that trusted form of
 22 identification.
 23 In that case, we would go down the route of trying to
 24 get that individual issued an ID, photo ID. So, it will
 25 depend a little bit about what they want it for. If they want

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1 it just for voting purposes, and they are -- want the DOS ID,
 2 at that point in time, they would need to fill out the
 3 Department of State application form, which asks for their
 4 name, address, date of birth.
 5 Q. The initial application form?
 6 A. That's correct.
 7 Q. Do we have Exhibit No. 74? Do you recognize this form?
 8 A. Yes, I do.
 9 Q. When did this form first come out?
 10 A. This form came out at the very beginning when we began
 11 to issue the Department of State ID, and there have been a few
 12 modifications to this since then.
 13 Q. In the bottom right corner, it says ID form, September
 14 24th, 2012?
 15 A. Correct.
 16 Q. Is that when this came out?
 17 A. This particular form, yes. This has been updated from
 18 the original form.
 19 Q. What is different in the updated form?
 20 A. I believe the original form asked for gender, and gender
 21 was taken off of the form at that point in time.
 22 Q. Why was that?
 23 A. There was a certain constituency that we were made aware
 24 of -- I should say that the Department of State was made aware
 25 of, as I understand it, by the Plaintiffs' attorneys that had

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1 concerns about the gender being asked for; and so, it was
 2 decided to take it off the form because it was something that
 3 the Department of State decided that they didn't need.
 4 Q. Now, this says initial issuance of a DOS ID; correct?
 5 Again, a DOS ID, how long is it good for?
 6 A. For ten years.
 7 Q. Ten years. Do you have a form for a replacement
 8 application?
 9 A. Do we have a form at this point?
 10 Q. Yes.
 11 A. Not that I'm aware of that there's a specific form for a
 12 replacement after ten years. I mean, certainly, if you lose a
 13 document, the product, you can get it replaced.
 14 Q. Okay. Do we have a document Exhibit No. 75? Does that
 15 look familiar?
 16 A. Yes, it does.
 17 Q. If someone wants -- is this a form they fill out if they
 18 need a free replacement DOS ID?
 19 A. That is correct, if they have lost or it's been stolen
 20 or somehow mutilated that they couldn't use it.
 21 Q. Obviously, it's not one that's been expired; correct?
 22 A. Correct. That hasn't happened yet. That's why we
 23 didn't have the form.
 24 Q. We still have several years to go. For the purposes of
 25 filling these out, do you also have to fill out any sort of

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1 oath or affirmation?
 2 A. That is also correct, yes.
 3 Q. And what is the purpose or basis of that oath? And that
 4 would be No. 76, please.
 5 A. Well, the oath is to affirm that you have no other form
 6 of acceptable identification for the purposes of voting. So,
 7 you're self-certified under penalty of law, that you have no
 8 other form of identification suitable for voting.
 9 Q. And if a person goes in to get their free DOS ID, does
 10 PennDOT check their records to see whether they do have a
 11 current PennDOT ID they could use to vote?
 12 MS. CLARKE: Objection, Your Honor, this lacks
 13 foundation. This witness is competent to testify about --
 14 this witness is competent to testify about the policies and
 15 procedures, but there's no foundation that the witness
 16 actually understands what actually happens when a person goes
 17 in.
 18 THE COURT: He can tell us whether or not he
 19 does.
 20 BY MR. KEATING:
 21 Q. Are there any policies or procedures put into place at
 22 PennDOT that once someone signs an oath or affirmation, the
 23 records are checked at PennDOT to see if they have an actual
 24 ID?
 25 A. No, we're not looking. They do a self-certification.

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1 We take them at their word.
 2 Q. What do you do with the application and what do you do
 3 with the oath?
 4 A. They're both scanned and imaged into our system.
 5 Q. And are they then have the photo taken, given the ID and
 6 send them home; what happens?
 7 A. That's correct.
 8 MS. CLARKE: Your Honor, a continuing
 9 objection to the extent that the witness is purported to
 10 testify about what actually happens. It lacks foundation.
 11 THE COURT: Noted.
 12 BY MR. KEATING:
 13 Q. What's supposed to happen?
 14 A. Well, after we have received the application, and we
 15 have received the affirmation, we are going to do the outreach
 16 to the Department of State to verify that the individual is a
 17 registered voter, and --
 18 Q. Because only registered voters are permitted to have
 19 these?
 20 A. That's correct.
 21 Q. So you have to check first with the Department of State
 22 to see if they're registered?
 23 A. That's correct.
 24 Q. And how do you outreach or reach out to the state to
 25 determine that; what's the process?

1 A. That is a phone call.
 2 Q. Okay. What if they're not registered to vote?
 3 A. If they're not registered to vote, we'll still have them
 4 go over and have their picture taken. We will also have them
 5 fill out the paper form for the application to register; and
 6 that information, along with their documents and the -- copies
 7 of their document, I should say, and their card that we have
 8 taken the picture of, will be sent to the Department of State.
 9 Q. That requires the time for someone at the Department of
 10 State to be able to pick up the phone and check that; is that
 11 correct?
 12 A. I'm sorry. I'm not sure I understand the question.
 13 Q. Well, the question is, when you check to determine
 14 whether the individual is registered to vote or not, that's
 15 done by phone; right?
 16 A. Yes. We are talking to a Department of State
 17 representative.
 18 Q. Okay. And have steps been taken to implement that
 19 process to make it easier to determine whether they're
 20 registered to vote or not?
 21 A. We have looked at additional options from the standpoint
 22 of ways that that process could be streamlined even further.
 23 Q. If the person is not registered to vote at that time and
 24 wants to register to vote, what is the process?
 25 A. Well, we have paper forms available that they can fill

1 out at our location. As I said earlier, we would take that
 2 form along with the card that was produced, along with their
 3 forms, and we would send them to the Department of State.
 4 The Department of State would -- even if somebody says
 5 that I'm registered, I was at a voter drive -- registration
 6 drive, and I'm registered and the Department of State doesn't
 7 have it, we would still have the form filled out and send that
 8 in, so that we're sure that the person has the proper
 9 information to get registered by the Department of State.
 10 But once it goes to the Department of State, then it's
 11 their responsibility from there.
 12 Q. So, what they do with it from there, that's their baby?
 13 A. Correct.
 14 Q. Is it possible for individuals to come in who already
 15 have valid ID for voting purposes -- say, a driver's
 16 license -- and ask to be able to register to vote and say, I
 17 want to register -- I have an ID, I don't want a voter ID, can
 18 I fill out paperwork just so I can register to vote? Is that
 19 permitted?
 20 A. Certainly, we have the paperwork.
 21 Q. If that's done, what do you do with the paperwork in
 22 that respect?
 23 A. In that particular instance, it may either be given to
 24 the customer to fill out and to be sent in. There may be
 25 situations where we are the ones who are sending it in. I'm

1 not 100% sure in that case, where they already have an ID.
 2 Q. But in that situation, you would forward it to the
 3 Department of State, the application, but there would be no
 4 photo card with it; is that correct?
 5 A. There would be no photo card. And a customer -- and
 6 again, I want to be clear about that. The customer may say,
 7 hey, can I have the form, I'm going to fill it out and send it
 8 in myself. So there could be situations like this. Again,
 9 this is again very specific to your question of if somebody
 10 already has an ID.
 11 Q. Correct. And that would be sent by PennDOT to the
 12 Department of State without any photo.
 13 A. Not in all cases, is my point. In some cases it could
 14 be, but in other cases, the customer may simply want to take
 15 the form with them and fill it out and send it in themselves.
 16 Q. We had some discussions with an earlier witness relative
 17 to groups and organizations that have attempted to get their
 18 voter IDs done on their behalf by bringing them in and
 19 assisting them with transportation to come in to PennDOT and
 20 have that done for them.
 21 Does PennDOT or has PennDOT ever partnered to assist the
 22 issuance of voter IDs with anybody?
 23 A. We certainly have. There have been a number of
 24 organizations that have approached us and asked for
 25 assistance, either in prescreening of documents, so -- or

1 making appointments for groups to come in. And we try to
 2 schedule that in our least busy periods of time; but
 3 certainly, it has happened, yes.
 4 Q. Can you tell us some examples of some organizations that
 5 you have done that for?
 6 A. Specifically the Organization of Seventy, I think is the
 7 name.
 8 Q. Seventy Org?
 9 A. We have worked with them. We have worked -- there was a
 10 convent that we worked with.
 11 Q. Is that the Sisters of IHM, the Congregation of the
 12 Sister Servants of the Immaculate Heart of Mary; does that
 13 sound familiar?
 14 A. Sounds like the one, yes.
 15 Q. What about Generations of Indian Valley?
 16 A. Yes.
 17 Q. Halfway House located in Pittsburgh?
 18 A. Yes, I believe so.
 19 Q. Community Services for New Portland?
 20 A. Yes.
 21 Q. Laurel View Village?
 22 A. Yes.
 23 Q. Peace Action Philadelphia?
 24 A. Yes.
 25 Q. Watermark -- I guess it's Watermark House in

1 Philadelphia?
 2 A. Yes.
 3 Q. And others?
 4 A. And others, right. And the outreach varies. It varies
 5 from either answering maybe a coordinator's questions about
 6 what they need to do, to sending individuals out to collect
 7 paperwork, bring it back and look at the paperwork.
 8 So there are a number of different avenues that can
 9 potentially help to take, dependent on what the organization
 10 is looking for from the standpoint of assistance; but many
 11 times it's just simply answering questions.
 12 Q. Let's talk about the photos that you keep on file.
 13 Individuals come in, have their photos taken. How long do you
 14 keep those photos on file?
 15 A. I believe our database goes back to 1994. We have about
 16 38 million photos on file, digital photos on file.
 17 Q. What is the purpose of keeping all of these photos on
 18 file?
 19 A. Well, we keep them because they're part of the
 20 individual's record. The reason there's 38 million -- and of
 21 course, the population of Pennsylvania is significantly less
 22 than that -- is that we keep your photo every four years. So,
 23 we have a running history of what you look like from year to
 24 year, from those four-year cycles.
 25 Q. When you are switching from a driver's license to

1 A. I was not here, but I am aware of the background of the
 2 case.
 3 Q. What's your recollection of the background of the case?
 4 A. Well, my understanding is that his father had
 5 surrendered his driver's license for medical reasons, and sent
 6 it in to the Department to -- with filling out a form and
 7 sending it in saying that he wanted to surrender his license
 8 and get a photo ID.
 9 Our records indicate that we issued a photo ID to his
 10 father in December of 2012. We learned later on, I believe,
 11 in April of 2013 that his father was claiming that the product
 12 had not been received, in which case there was additional
 13 documentation from the standpoint of -- or conversation about
 14 it, and the Department issued him a free ID, I believe it was,
 15 in the April of 2013.
 16 I will note that the Department has a procedure in which
 17 we -- if we get mail back from someone, we mark it, the
 18 product, as unclaimed on our database. There was nothing on
 19 the father's records to suggest that we ever received any
 20 product back.
 21 Q. So, it didn't come back as wrong address or something
 22 like that.
 23 A. It didn't come back, and our records were not marked so.
 24 So therefore, you know, I don't know what happened to it.
 25 Regardless -- bottom line is that the customer said they never

1 another type of ID, are there instances where PennDOT can use
 2 those photos on file instead of requiring a person to come in
 3 and have a new photo taken?
 4 A. Certainly. We can and we have.
 5 Q. What are the common situations where that happens?
 6 A. Well, as I noted in my deposition of last year, I
 7 believe in -- I think it was in June of 2012 -- we have always
 8 had a program for individuals who are, say, in the military or
 9 overseas, maybe on work where somebody just can't get back to
 10 be able to renew their driver's license.
 11 So, from an exception process, we'll allow that
 12 individual to utilize the existing photo on the database.
 13 Obviously, they still have to pay for the product.
 14 So, there are cases, as well, where somebody is maybe
 15 bedridden or something of that nature, where it potentially
 16 could be used as well.
 17 It's very rare, but we do use it.
 18 Q. Okay. Are the photos ever destroyed or erased for any
 19 purpose or any reason?
 20 A. We have not purged our photos, again, since about 1994.
 21 Q. We had testimony here the other day from a guy by the
 22 name of Mr. Rogoff, and were you here to hear him testify?
 23 He's an attorney from Philadelphia, Pepper Hamilton and
 24 Scheetz. He was trying to help his father-in-law get a photo
 25 ID. Do you have...

1 got it.
 2 Q. Does PennDOT process a lot of mail on a routine basis?
 3 How much mail does PennDOT process?
 4 A. We process about -- in and out, about two-and-a-half
 5 million pieces of mail.
 6 Q. Two-and-a-half million pieces of mail a year?
 7 A. No, no. That's a month. It's closer to about 31
 8 million pieces of mail a year.
 9 Q. 31 million pieces of mail a year?
 10 A. Right. In and out.
 11 Q. Okay. Now, the petitioners have introduced several
 12 voters who claim that they have or will experience difficulty
 13 in getting to the PennDOT driver's license. Do you recognize
 14 the names of Mina Pipstein, Catherine Howell or Margaret
 15 Pennington?
 16 A. I recognize them because I have been asked about them
 17 recently, yes.
 18 Q. And who were you asked about them by?
 19 A. By --
 20 Q. By us.
 21 A. The attorney, yes.
 22 Q. Okay. Were you asked to research them at all in your
 23 database or to see what was going on with them?
 24 A. Yes, we were.
 25 Q. What did you come up with; what did you find?

1 MS. CLARKE: Objection, Your Honor. We don't
 2 have any documents. There's no -- we don't have any basis to
 3 examine the witness. This is hearsay.
 4 MR. KEATING: It's not hearsay, Your Honor.
 5 MS. CLARKE: Well, we don't have the business
 6 record that was referred to.
 7 MR. KEATING: I don't need it. I'm going to
 8 ask him what his investigation into his records relative to
 9 these people happen to be.
 10 THE COURT: He can testify. We'll take it for
 11 what it's worth.
 12 MR. KEATING: Okay.
 13 THE WITNESS: These individuals at one point
 14 in time had a product from the Department; and as such, we
 15 have a photo that is on file and could be utilized for the
 16 purposes of issuing an ID.
 17 BY MR. KEATING:
 18 Q. Okay. Let's talk a little bit about the database with
 19 the Department of State and the Pennsylvania Department of
 20 Transportation. Let's talk about the 144 exceptions. Do you
 21 know what I'm talking about?
 22 A. Yes, I do.
 23 MS. CLARKE: Your Honor, we object to this
 24 line of questioning. We don't have the documents or
 25 information supporting what Mr. Myers is going to say. The

1 THE COURT: Everybody has talked about the
 2 mystery of the 144. I want it solved. So, I'm going to let
 3 this witness testify, okay? If he can shed light on it, you
 4 can cross-examine. Maybe his views are worthless, but I'm
 5 going to go into this mystery and try and resolve it. Since
 6 you can't resolve it, I'm going to let the witnesses try to
 7 resolve it. Your exception is noted.
 8 MR. KEATING: Thank you, Your Honor.
 9 BY MR. KEATING:
 10 Q. Let's talk about 144. What is your understanding
 11 relative to the information you've received from the
 12 Department of State that you are to investigate concerning
 13 some exceptions that were in their data, the database?
 14 A. Well --
 15 Q. What was the mystery?
 16 A. The information that I am aware of relates to PennDOT's
 17 role in this, in that the Department of State sent us a list
 18 of individuals and asked us if we could confirm whether these
 19 individuals had a PennDOT ID.
 20 Q. When did they do that?
 21 A. I believe it was in approximately December of 2012.
 22 Q. Okay. What did you do?
 23 A. We went down through the list and noted those
 24 individuals that had an ID.
 25 Q. How long was the list, approximately?

1 only thing we have been given is a document that the lawyers
 2 have specifically said is not a business record; and I want to
 3 say, too, that I don't want to get into he said/she said, but
 4 we have always agreed to confidentiality, to maintain
 5 confidentiality, if that information were going to be produced
 6 to us.
 7 He's -- finally, I don't believe Mr. Myers is
 8 competent to testify, so we object to this line of
 9 questioning.
 10 THE COURT: Noted.
 11 MR. KEATING: Thank you.
 12 MS. CLARKE: Your Honor, if we get into this,
 13 I would ask that we could voir dire the witness to demonstrate
 14 his lack of competency to testify about this. It's going to
 15 be hearsay. It's going to be --
 16 MR. KEATING: You can do that on
 17 cross-examination.
 18 MS. CLARKE: It's going to be not based on --
 19 it will be hearsay and will also not be based on anything that
 20 the witness did, and it will be based on documents that we
 21 don't have here before us.
 22 MR. KEATING: I think it's based on documents
 23 kept in the ordinary course of business and documents they
 24 could have had access to in the information if they had asked
 25 for it.

1 A. The original list, I believe, had 194 names on it.
 2 Q. Okay. Go ahead.
 3 A. And of those 194, 144 had an ID. On our records.
 4 Q. What was the Department of State asking you to do?
 5 A. Just simply to confirm that they had an ID, or if we --
 6 if our records had it, show that they had an ID on our
 7 database.
 8 Q. Okay. Why were they -- why were they asking you to do
 9 that?
 10 A. Well, I have -- quite frankly, they would be the better
 11 ones to respond to that; but from my understanding of it, it
 12 was simply that they had individual records that they wanted
 13 to validate specifically that these people had either gotten
 14 an ID or they still didn't have an ID.
 15 Q. Did you tell them specifically by name and Social
 16 Security number specifically which people did not or did have
 17 ID?
 18 MS. CLARKE: Your Honor, object to the
 19 question because it assumes that it's -- he's using the form
 20 "you," and it's clearly not you, and --
 21 MR. KEATING: All right.
 22 MS. CLARKE: -- it's not clear who is doing --
 23 who the "you" is in this case. It clearly was not Mr. Myers
 24 because he testified in June of 2013 that he had no idea about
 25 any of this.

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1 So, I object to the form of the question,
 2 because it's very unclear and misleading, because we can't
 3 tell who the "you" is.
 4 THE COURT: Overruled. You can cross-examine.
 5 BY MR. KEATING:
 6 Q. Quite frankly, I forgot the question. What was the
 7 question?
 8 (THE LAST QUESTION WAS READ BACK BY THE REPORTER.)
 9 BY MR. KEATING:
 10 Q. I would like to rephrase that question.
 11 Are you aware of whether PennDOT gave them specific
 12 information of individuals within your database as to whether
 13 they had ID -- acceptable ID or not?
 14 MS. CLARKE: Your Honor, I object because we
 15 also can't tell who the "they" is in the question.
 16 THE COURT: Noted.
 17 MR. KEATING: Thank you.
 18 BY MR. KEATING:
 19 Q. You can answer.
 20 A. Thank you. There was an individual from my staff, a
 21 gentleman by the name of Scott Shenk, who responded back to
 22 the Department of State. He did not give them the individual
 23 names. He gave them information that there were 144 on the
 24 list that had identification.
 25 Q. Why didn't he give them the names?

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1 A. Well, from the standpoint of our role in this, the -- I
 2 think it's important to understand that the information that
 3 we gather from the citizens of the Commonwealth, the
 4 confidential private information of individuals is something
 5 that is at the core of our business, to assure confidentiality
 6 of those records, even when it's with another state agency, to
 7 insure that we take every step possible to insure that those
 8 records are -- remain confidential.
 9 This was an inquiry from the Department of State. He, I
 10 believe, simply felt that it was sufficient to answer their
 11 question at that time as to how many of these individuals
 12 actually had IDs, and that's what he did.
 13 Q. Is it your understanding that the reason why they were
 14 requesting that is because the Department of State were trying
 15 to determine whether these individuals should have had IDs and
 16 didn't or what was PennDOT's understanding about what they
 17 were trying to find out?
 18 A. My understanding was that they were simply trying to
 19 verify this list of 194, and how many people on it had,
 20 specifically had IDs.
 21 Q. Out of this list of 194, how many did?
 22 A. My understanding is that 144 did.
 23 MR. KEATING: With the Court's indulgence,
 24 Judge, would you like to ask Mr. Myers any more questions
 25 about the 144?

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1 THE COURT: No, I'm fine.
 2 MR. KEATING: Okay.
 3 BY MR. KEATING:
 4 Q. As a follow-up to that, pursuant to the Court's
 5 direction, did you -- did PennDOT provide additional
 6 information concerning how or why they had ID in such a way to
 7 also keep it confidential?
 8 A. Yes.
 9 Q. Who has that -- when was that?
 10 A. Well, that was just recently, over the last couple of
 11 weeks here where information was then gathered, and then
 12 supplied to our attorneys.
 13 Q. Why are you so concerned about confidentiality of
 14 information of drivers in your database?
 15 A. Well, first of all, the information is protected not
 16 only federally under federal law, DPVA, Driver Privacy
 17 Protection Act, but also under 6114 of the Vehicle Code.
 18 There are horror stories about people who have had their
 19 information compromised. We take that job very seriously and
 20 we have done everything we possibly could to insure that the
 21 information that's been given over for the purposes of this
 22 case has been protected, either by insuring that everybody --
 23 and I know there's court stipulations and so forth and so on
 24 -- to insure that this information is kept protected.
 25 We owe that, we have that responsibility to the people

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1 and the citizens of the Commonwealth, and we take it very
 2 seriously.
 3 Q. Did PennDOT release a database of their information to
 4 experts in this case for the experts to analyze and report?
 5 A. It was, once there was a court order to do so.
 6 Q. Was that done under a confidentiality agreement?
 7 A. It was.
 8 Q. Am I allowed to see that information?
 9 A. I believe you're part of the confidentiality agreement,
 10 so, I would assume that you could see it.
 11 Q. I didn't sign it. I'm not allowed to see it.
 12 A. Okay.
 13 Q. Okay. Thank you. I'm being directed to ask an
 14 additional follow-up question to you, if I may.
 15 We spoke earlier about handicapped accessibilities of
 16 the centers, the different centers, and accessibility of all
 17 of that. Are they updated on a regular basis to provide
 18 accessibility for handicapped and frail people?
 19 A. Well, what I testified to earlier is that all of our
 20 sites, when they were built, were built to the ADA standards
 21 of the time. Have there been specific upgrades to certain
 22 buildings? Certainly, there have over time. Specifically
 23 what they are, I don't have a list of those.
 24 Q. We also spoke about whether PennDOT tracks and
 25 determines the waiting time for customers when they go in to

1 the centers; correct?
 2 A. That's correct.
 3 Q. What is the average waiting time for a customer to have
 4 when they go in to PennDOT?
 5 A. Well, it varies from center to center, and so,
 6 obviously, our centers in Philadelphia, some of those centers
 7 are going to have longer wait periods of time than, say, a
 8 center that may be in the middle part of the state.
 9 Q. What's the average waiting time?
 10 A. The average waiting time will vary by season, but it
 11 certainly can be in the -- in the 80 to 85% range of people
 12 who are serviced in 30 minutes or less; and that's really the
 13 way we calculate it, from that percentage.
 14 And certainly, in individual centers it can vary
 15 dramatically; but it can be less than that. Say, in August,
 16 which is really a busy month for us, we may see that that
 17 number is lower, in the 70 percentile range that are serviced
 18 in 30 minutes or less.
 19 Q. What about hours? Do you ever have reports of customers
 20 waiting hours and hours to be served?
 21 A. I can't sit here and say it never happens. We have 2.5
 22 million customers who come in to see us face-to-face each
 23 year; but certainly, if people were waiting hours at every
 24 location, I suspect that I would hear about it.
 25 While we certainly have cases where somebody did wait

1 from central office will call the customer back, research it,
 2 and talk to the employee, find out what happened, and try to
 3 rectify the problem, whatever it might be.
 4 Q. When you say notepad, is that electronic?
 5 A. It's what we call it. It's nothing more than the
 6 electronic transmission of what the customer service
 7 representative has captured of the customer's concern with
 8 that, and so, that will come in to us.
 9 Q. When you -- when I say you, I mean you personally. Do
 10 you review any of the complaints?
 11 A. I do. It's a help for me to keep a pulse on how the
 12 business is going and what our customers are saying, and what
 13 their concerns are. And so, from the standpoint of the
 14 notepads that come in through the call center, I'm cc'ed on
 15 those.
 16 I will read them knowing the appropriate people have
 17 been sent them to deal with; but if I have a particular
 18 concern with a notepad and what a customer has said, I will
 19 email the person who is taking care of it, asking them that
 20 they make sure that they bring me up to date on what occurred
 21 and when they do the research and find out.
 22 Q. What are the most common complaints that PennDOT gets
 23 that rise to your level?
 24 A. The ones that come in a notepad may be that somebody
 25 felt that their 16-and-a-half-year-old failed their test and

1 for some period of time because something was wrong, we're
 2 going to research that and find out what happened. Was the
 3 system down? Was our staffing not there, appropriately, or
 4 whatever the situation might have been.
 5 Q. People who do wait in these centers, do you have seats?
 6 Can you sit down and wait?
 7 A. In the vast majority of our centers -- I noted earlier
 8 that we're in the transition period. Some of our older
 9 centers have less seats than our new, modern centers do.
 10 But I would say there's seats in all centers. But as to
 11 some of the older ones, some of those are limited; but the
 12 newer centers certainly have, you know, a number of seats.
 13 Q. And does PennDOT have a mechanism of which customers who
 14 are dissatisfied might lodge complaints with PennDOT?
 15 A. Sure, we have a -- on our website, we have a section
 16 where you can email us or call our call center and let us know
 17 about complaints, compliments or concerns that you want to
 18 raise to us.
 19 The call center can handle many of those. It may be
 20 that the -- something relatively simple that the call center
 21 can deal with.
 22 On items that -- where somebody feels that they have
 23 been mistreated or misinformed to the point where the call
 24 center doesn't feel they can handle it, they send in what's
 25 called a notepad into the central office and then somebody

1 that the examiner was unfair. And they want somebody to do
 2 something about it because the examiner was rude or some
 3 allegation of that nature. So, we get those.
 4 We get other allegations where somebody will say that --
 5 and again, these are the ones that would rise up through a
 6 notepad and that I would see -- where somebody might say that
 7 they felt they were discriminated against.
 8 Q. Okay.
 9 A. So, obviously, we're going to research that immediately,
 10 if there's an allegation of that. So, those are the types of
 11 situations where we would get a notepad.
 12 Q. Do you get complaints as not enough driver's license
 13 centers around the state? Any complaints about that?
 14 A. You know, I -- I really don't get complaints about that.
 15 What we get complaints from parents who -- which is probably
 16 understandable, because in the summertime, they want to -- the
 17 kids want to be able to take their test, and sometimes takes
 18 up to six weeks in the summertime to get a schedule; and we'll
 19 get complaints from parents saying, you know, you ought to
 20 have more examiners. You ought to have more tests.
 21 I suspect part of that is because they're tired of
 22 listening to their kid tell them they want to take the test
 23 right away, but -- you know.
 24 Q. But what about complaints that my elderly grandfather
 25 and grandmother can't get to PennDOT for voter ID? Do you get

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1 those, too?

2 A. Not specifically to us, no. I have not heard that to

3 us. Obviously with the case concerning voter ID --

4 Q. Yeah, you have heard it in this case, yeah.

5 A. Yeah, it's been raised. But me personally hearing it.

6 We get people who say, well, jeez, I wish you were in this

7 part of town as opposed to that part of town. We get people

8 who say, I was at your center and I had to wait too long.

9 That type of a thing.

10 But, you know, from a standpoint of, you know, adding

11 more centers, I'm not sure I have ever had anyone say to me,

12 jeez, you ought to have more centers. You ought to have ten

13 more centers around the state or whatever.

14 Q. Do you get a lot of compliments?

15 A. We probably get more compliments than people would

16 expect.

17 Q. Okay. Thank you.

18 MS. CLARKE: May I inquire, Your Honor?

19 CROSS-EXAMINATION

20 BY MS. CLARKE:

21 Q. Good afternoon, Mr. Myers.

22 A. Good afternoon.

23 Q. We have met before. I'm Jennifer Clarke from the Public

24 Interest Law Center of Philadelphia representing the

25 Petitioners in this case.

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1 We can do a little discovery here. So, what I want to

2 do is take you back about a couple of weeks ago when you said

3 you started gathering information and sending it to the

4 attorneys.

5 So, let's start with what information was it that you

6 were gathering and sent to the attorneys? Let me just start

7 first -- who was actually gathering the information?

8 A. It would have been my staff. It would have been Scott

9 Shenk and over the weekend, we had a couple of other

10 individuals that were assisting him.

11 Q. And who were those people?

12 A. One of the individuals was Chris Miller. It would be

13 female. Then also another woman by the name of Brenda

14 Collins, and one other individual. His first name is Dios,

15 and I'm trying to think of his last name. I apologize. It

16 starts with an A.

17 Q. These four individuals, when did they start gathering

18 information?

19 A. Well, Scott has been working on information for a period

20 of time; but there was a request that came in on late Friday

21 night, and we worked -- when I say we, I mean PennDOT, the

22 Safety Administration employees under my responsibility --

23 worked on it Friday night and then came in and worked on it

24 all day on Saturday and put the information together on these

25 individuals.

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1 Q. Okay. You say Scott was doing something before that.

2 What was Scott doing before that?

3 A. The same type of thing, but the volume was a little bit

4 less, so he was able to pretty much do it by himself.

5 Q. What was he doing specifically?

6 A. He was looking up individual records of individuals who

7 the names had been given to us. I believe these are names

8 that in many cases came from the testimony, and so forth,

9 about the individual's records, and the various things in the

10 records.

11 Q. Were these the names of people who Mr. Walczak asked

12 about at Mr. Marks's deposition?

13 A. I'm sorry. I don't know.

14 Q. Do you have any understanding about who the individuals

15 were?

16 A. Well, I understand that they were individuals that the

17 Department of State was sending to us, and I believe some of

18 them were individuals who had testified.

19 Q. Okay. So, can you -- maybe you could just tell me what

20 your understanding is about who the individuals were that

21 Mr. Shenk was looking up during this period of before the

22 rush.

23 A. They were -- it is my understanding is that they were

24 individuals that were related to this case, from the

25 standpoint of individuals that had either testified; and then

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1 there were also individuals that the Department of State was

2 asking us about as well.

3 Q. Okay. And what information, just before the rush now,

4 what information did Mr. Shenk -- did he personally consult

5 the records or did someone else do that?

6 A. No, he personally consulted the records.

7 Q. What records was it that he was consulting?

8 A. They would be our driver's license record database.

9 Q. Did he create any kind of summary or any kind of

10 document as to sum up the result of his research?

11 A. Yes, he did.

12 Q. What was that document?

13 A. I believe it's an Excel spreadsheet that has information

14 on it.

15 Q. When did he create that spreadsheet?

16 A. It's been a work in progress, as I say, more and more as

17 the names came in over a period of time; and we did the -- or

18 he did the research and, as I noted on Saturday, because of

19 the sheer numbers that we had, and it takes some time to be

20 able to look at the record and do a chronology of what changes

21 happened to that license, and so we had other people help.

22 Q. Did Mr. Shenk look at any particular fields in the

23 database to do the research?

24 A. I'm sure that he did, yes.

25 Q. What fields did he look at?

1 A. Well, he would have been looking at fields as to what
 2 the individual -- what type of contact the individual had with
 3 us. Did they have a product, what type of product they would
 4 have had.
 5 Q. Okay. So, you said he would have. Do you know what
 6 fields he looked at for each individual?
 7 A. I don't know the specific fields that he looked at, but
 8 I know what the task was.
 9 Q. And the task was?
 10 A. The task was to look at any changes on the records for a
 11 period of time, which I believe was from August to the present
 12 -- August of 2012 to the present, and also make a
 13 determination as to whether or not the individual had an ID
 14 and when it expired.
 15 Q. Now, you -- and Mr. Shenk made a determination based on
 16 the research that he did about the people that he -- the
 17 individual names that he was given?
 18 A. I wouldn't say that he made a determination. The facts
 19 are the facts. The record is the record. It is what it is.
 20 So, he didn't determine anything. He just simply took the
 21 information and put it on the spreadsheet.
 22 Q. So, the document, if I wanted to see what his judgment
 23 was about what was in the database, I would need to see the
 24 spreadsheet that he created?
 25 MR. KEATING: Objection, Your Honor.

1 front of you; it says the individual was suspended on such and
 2 such a date. There's no determination there. That's what
 3 happened. So, that's what he's putting into the spreadsheet.
 4 Q. So, what -- okay.
 5 A. If there's a name change.
 6 Q. Then I want to get to the late Friday night/Saturday
 7 night effort. What was your understanding of what you were
 8 being asked to do?
 9 A. We were being asked to review records, again. My
 10 understanding was that we were being asked to review records
 11 specifically from the period of August of 2012 through the
 12 present, and to note any updates or changes to the records;
 13 and then also to note on it if the customer had a record,
 14 number one, and number two, what the expiration date was of
 15 that record.
 16 Q. Did you personally do the work for any of the particular
 17 names that you were given?
 18 A. No, I did not.
 19 Q. What was your understanding of what the names were --
 20 who the names were that were given to you over the weekend?
 21 A. My understanding was that they were named -- that in
 22 some way or another had been raised during this case, and that
 23 there was -- there was a desire to have clarification as to
 24 whether or not these individuals had a product, didn't have a
 25 product; if they had a product, was it expired; if it was

1 BY MS. CLARKE:
 2 Q. Is that right?
 3 MR. KEATING: He did not say that he used
 4 judgment. He said he used what was in the record.
 5 THE COURT: You may answer the question.
 6 THE WITNESS: I'm sorry. Could you ask the
 7 question again?
 8 MS. CLARKE: Could you read back the question?
 9 (THE RECORD WAS READ BACK BY THE REPORTER.)
 10 THE WITNESS: Well, again, the record is the
 11 record. There is no judgment. There is no determination on
 12 his standpoint. He's just simply reading what the record
 13 says, what's been captured, and reporting that on the
 14 spreadsheet.
 15 If you wanted to know the specifics of an
 16 individual case, you would have to -- you would have to look
 17 at that individual, you know, record on that Excel
 18 spreadsheet.
 19 BY MS. CLARKE:
 20 Q. Right. So, you would want to know what Mr. -- if I
 21 wanted to see what Mr. Shenk's determination was based on what
 22 he saw in the database, the Excel spreadsheet would be what I
 23 would look at; is that right?
 24 A. Well, again there's no determination. This is not
 25 rocket science. This is, you have his computer screen in

1 expired, when did it expire, all of which I can only make an
 2 assumption as to the fact that -- to determine whether or not
 3 these individuals would have had IDs for the purposes of
 4 voting.
 5 Q. Now, did Mr. Shenk and his crew record the results of
 6 their work over the weekend on any document?
 7 A. Yes, they created an Excel spreadsheet. I believe it
 8 was Excel.
 9 Q. Did they add to the Excel spreadsheet that they were
 10 working on?
 11 A. Well, again, as I said, there were names -- there were
 12 some additional names that came in; but I'm not sure that
 13 the -- the last list that we received from the Department of
 14 State I believe was Friday night, and so that would be what
 15 was on the spreadsheet.
 16 There may have been some additional names, a few
 17 additional names on Monday. I don't know if they were put on
 18 a separate spreadsheet or on that spreadsheet. I'm not sure.
 19 Q. So, what I want to know is if I want to see the work
 20 product from the weekend's project, is there one document, are
 21 there multiple documents?
 22 A. I believe there's one document for the work product over
 23 the weekend. But what I'm simply saying is there may have
 24 been additional names early this week; and I'm not sure if
 25 they were put on to that work product of the weekend, or if

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1 they're on a separate spreadsheet. I just don't know the
 2 answer to that.
 3 Q. What were the fields on the spreadsheet?
 4 A. Well, there were -- there were a number of fields there,
 5 but the primary one was under the area where we listed the
 6 various transactions that had taken place.
 7 Q. Okay. What does that field -- what is that field
 8 called?
 9 A. I believe it was simply called "comment field" because
 10 it is where that information was captured.
 11 Q. And that information being the -- what was that
 12 information?
 13 A. It would have been the information right off the record
 14 which would have said, this individual on this date had a name
 15 change, or this individual had an address change or something
 16 of that nature.
 17 Q. What were the other fields in the database -- sorry, in
 18 the spreadsheet?
 19 A. It would have been the name -- and I believe the address
 20 was on there as well.
 21 Q. Any other fields?
 22 A. I believe that there were -- I just don't recall them
 23 specifically.
 24 Q. Now, to whom -- so, when did -- when did your office
 25 first give a version of the spreadsheet to someone else?

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1 A. The spreadsheet, I believe, was finished at around 4:30
 2 on Saturday, and it was Scott sent the spreadsheet to our
 3 attorney for PennDOT, and the PennDOT attorney forwarded it to
 4 the -- to our counsel.
 5 Q. Okay. Do you know who they forwarded it to?
 6 A. I'm not 100%. I am assuming it was Tim and Alicia and
 7 Todd. I don't recall the specific email as to who was on the
 8 list.
 9 Q. And that spreadsheet was at 4:30 on Saturday, you said?
 10 A. Approximately 4:30 was about the time it finished.
 11 Q. Now, you don't know sitting here today whether the
 12 database itself accurately reflects what happened at the
 13 PennDOT center at the time when whoever the individual was
 14 came in; do you?
 15 A. The database is recording what transaction was initiated
 16 and completed.
 17 Q. Right. And you don't know whether that was accurately
 18 recorded by the customer service representative at the time
 19 the person came in?
 20 A. Well, from the standpoint of the database, a transaction
 21 took place, and the database was updated. You'd have to
 22 clarify your question to say, from the standpoint of accuracy.
 23 I'm not sure exactly what you mean by that. What I can
 24 tell you is, is that an individual had a transaction that took
 25 place on that day that was initiated by an employee.

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1 Q. Now, I want to go back to December of 2012. You told us
 2 that in December of 2012, there was an email sent by someone
 3 to the Department of State, to someone at the Department of
 4 Transportation.
 5 A. That's correct.
 6 Q. You remember that testimony. Now, did you personally
 7 see that email?
 8 A. I don't recall if I personally saw the email that came
 9 in. I believe it came -- went directly from Jonathan Marks
 10 with the Department of State to Scott Shenk.
 11 Q. And did you do any of the investigation that led to the
 12 response from the Department of Transportation back to the
 13 Department of State?
 14 A. Did I review it?
 15 Q. Did you do any investigation as a result of the email?
 16 A. I'm sorry. No, I did not.
 17 Q. Who did that investigation?
 18 A. That would have been Scott Shenk.
 19 Q. What did Mr. Shenk do?
 20 A. Well, he would have had to have looked at the database,
 21 the PennDOT database, driver's licensing database.
 22 Q. I want to know what he actually did.
 23 A. Well, step by step, I can't testify to that; but I can
 24 tell you that the only place that you can get the data is off
 25 the PennDOT database.

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1 Q. Did Mr. Shenk create any documents when he did the work
 2 back in December?
 3 A. Yes, he did.
 4 Q. Tell me what that document -- what that work product
 5 looks like.
 6 A. I believe it was just -- it was in email form. I don't
 7 recall the specifics of it, but I know that he did get -- I
 8 believe he got back to Jonathan on -- and I'm fairly confident
 9 that he got back in writing to Jonathan.
 10 Q. Do you know that he got back to them?
 11 A. I know he got back to them. As to do I recall
 12 specifically seeing the email that he got back to them? No, I
 13 don't; but I know he did get back to them.
 14 Q. And you know that because you have seen the email since
 15 then?
 16 A. No, that's just in conversations with Scott.
 17 Q. When did you have those conversations with Scott?
 18 A. Well, the most recent ones that I have had have been in
 19 the last couple of weeks.
 20 Q. So, over the weekend?
 21 A. As I said, over the last couple of weeks, I have had a
 22 number of conversations with Scott and I know the subject
 23 matter came up during those conversations.
 24 Q. Okay. So, you -- in over the past couple of weeks, in
 25 the context of getting ready for this trial, you had

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1 conversations with Scott?
 2 A. Yes. Yes.
 3 Q. Other than the email that Scott prepared with names on
 4 it, did you do any work with Scott -- did you know whether
 5 there were any other documents that Scott prepared back in
 6 December?
 7 A. Well, I think I testified already that the information
 8 that we gave back to the Department of State in December
 9 didn't have any names.
 10 Q. I'm sorry. That's right. Did Scott prepare a document
 11 to -- in order to put what he did into the email?
 12 A. Was there an attachment? Is that what you are asking
 13 me?
 14 Q. No, I'm asking whether there were any documents that
 15 Scott prepared in order to create the information in the
 16 email.
 17 A. I don't know the specific answer to that.
 18 Q. Now, you suggested that in December Scott found all 144
 19 people were in -- there were 144 people who already had
 20 products in the PennDOT database?
 21 A. That is correct.
 22 Q. Now, when you did this work over the weekend, there were
 23 not 144 people. Of the 144 people, not all of them were in
 24 the PennDOT database; were they?
 25 A. I'm sorry, I think you're confusing apples and oranges

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1 here because the 144 were addressed back in December. The
 2 list that we were working on over the weekend, from my
 3 understanding, was a separate list, a new list that we had not
 4 looked at in the past.
 5 Q. Do you have the names of the people who you looked at
 6 this time?
 7 A. Certainly we have the names.
 8 Q. Do you have them -- are they written down somewhere?
 9 A. They are on spreadsheets and, you know, we -- we sent
 10 the list by the Department of State.
 11 Q. Okay. And the list --
 12 A. Or to the attorneys.
 13 Q. What was the form that the list was sent to you by the
 14 Department of State?
 15 A. I'm going to -- again, I'm going to assume it was an
 16 Excel spreadsheet. I don't know 100% that it was, but it was
 17 some form like that.
 18 Q. How many names were you sent in all?
 19 A. I don't recall the total, but I know that I believe it
 20 was over 100.
 21 Q. Over 100. How many of those over 100 names that you
 22 were sent were you able to find a record in PennDOT for?
 23 A. Many of those individuals had PennDOT records.
 24 Q. How many?
 25 A. I don't know the specific number.

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1 Q. Where would I go to find the specific number?
 2 A. That information was sent to our attorneys, and I
 3 believe also to the Department of State.
 4 Q. Okay. I'm sorry, how many names were sent to you to do
 5 the research on?
 6 A. I don't remember the specific number, but I believe it
 7 was over 100.
 8 Q. Okay. You don't know the specific number?
 9 A. No, I don't.
 10 Q. And the place that I could see the specific number would
 11 be the spreadsheet that you created?
 12 A. Correct.
 13 Q. And possibly something that the lawyers sent you to ask
 14 you to do the work?
 15 A. Correct.
 16 Q. And then how could I -- where could I find the answer to
 17 the question of how many of those people, as a result of the
 18 research that your people did, already had a PennDOT product?
 19 A. Well, that would be on the finalized product that was
 20 sent back at 4:30 on Friday.
 21 Q. That would be on the spreadsheet?
 22 A. Correct.
 23 Q. But is it fair to say that however many people there
 24 were of this 100-plus, not all of those people already had a
 25 PennDOT product?

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1 A. Again, I don't recall the specifics of the results. As
 2 I said, it was done over the weekend. We had -- we received
 3 the list at 6:00 or 6:30 on Friday night, and so, I just don't
 4 recall the specifics of it.
 5 MS. HICKOK: Your Honor, this --
 6 BY MS. CLARKE:
 7 Q. It's fair to say, though, that -- it's fair to say that
 8 not all of the people on your spreadsheet you were able to
 9 find -- your people were able to find a PennDOT product for?
 10 MR. KEATING: Your Honor, all of this
 11 information was actually filed today in response to their
 12 motion with the Court, and --
 13 MS. HICKOK: It was filed under seal.
 14 MR. KEATING: Under seal.
 15 MS. HICKOK: But they have copies of it.
 16 MR. KEATING: These questions have been
 17 answered. I can tell you how many names right now, and it's
 18 been filed today in response to the motion.
 19 THE COURT: Well, we can go in limine. Could
 20 you stay away from the under seal names? I really don't think
 21 that that's going to do any good for you.
 22 MS. CLARKE: Sure. Sure, Your Honor. I would
 23 be happy to show the witness the document that was filed under
 24 seal, and we can determine whether that relates to what he's
 25 discussed. And I will refrain from identifying confidential

1 information.
2 I'm not sure how you all want to handle this,
3 but I'm going to pass this out to counsel, the witness.
4 THE WITNESS: Thank you.
5 MS. HICKOK: Your Honor, should we go in
6 camera on this?
7 MS. CLARKE: I will not be using -- I'll use
8 first names only, and but not last names --
9 MS. HICKOK: Your Honor --
10 MR. KEATING: And I said, we can go in camera
11 and still stay on the record; but this is exactly the type of
12 thing that we're flirting with disaster concerning
13 confidentiality names and records.
14 THE COURT: What we'll do is we'll take a 10
15 minute working recess. We'll go off the record, and let you
16 talk to Ms. Clarke, and we'll arrive at a method of
17 cross-examination of Mr. Myers.
18 MR. KEATING: Thank you, Your Honor.
19 THE BAILLIFF: Commonwealth Court is now in
20 recess.
21 (COURT RECESSED AT 2:24 P.M. AND RECONVENED AT
22 2:37 P.M. AS FOLLOWS:)
23 THE COURT: Okay. I think we looked at names
24 under seal. I am a little confused. I thought that Jonathan
25 Marks testified about names that DOT sent to them, and

1 eventually there was an exceptions process that -- could that
2 be checked?
3 MS. CLARKE: Your Honor, I think one of the
4 issues here is that that exceptions database and who those
5 people are, we can't yet -- we don't know whether what we're
6 doing today relates to those people.
7 MS. HICKOK: Your Honor, that's actually not
8 true. The reason that that document is so highly
9 confidential -- and I think we should do this in camera -- is
10 because there are ways to for them to link that information to
11 the other information.
12 THE COURT: Okay. We can ask that the
13 courtroom be cleared, so we could do it in camera, the
14 investigation.
15 THE BAILLIFF: Ladies and Gentlemen, at this
16 time we are going to have to clear the courtroom, so
17 non-attorneys will have to exit.
18 MS. HICKOK: Your Honor, do I want Mr. Myers
19 to remain.
20 THE COURT: Sure. Mr. Myers.
21 (AT 2:39 P.M. THE COURTROOM WAS CLEARED OF ALL
22 PERSONS EXCEPT AS AGREED TO BY COUNSEL. IN CAMERA PROCEEDINGS,
23 PAGES 1379 to 1398, WERE HELD FROM 2:39 P.M. UNTIL 3:03 P.M. AND
24 ARE CONTAINED IN A SEPARATE TRANSCRIPT. SUBSEQUENTLY, THE
25 PROCEEDINGS CONTINUED IN OPEN COURT AT 3:04 P.M. AS FOLLOWS:)

1 MS. CLARKE: May I continue, Your Honor.
2 THE COURT: Sure.
3 BY MS. CLARKE:
4 Q. Mr. Myers, I want to get back to the 71 PennDOT
5 facilities.
6 A. Yes.
7 Q. Last summer, we all agreed on how many counties do not
8 have a PennDOT licensing center; do you recall that testimony?
9 A. Yes, I do.
10 Q. And that -- and what I want to ask you is whether those
11 counties still -- whether there are -- let me -- strike that.
12 In the stipulation that we agreed upon last year and was
13 entered into evidence as Exhibit 25, there were nine counties
14 that didn't have any photo driver's license centers. Are
15 there still nine counties that don't have driver's license
16 centers?
17 A. Yes.
18 Q. Okay. Those are Cameron, Clinton, Forest, Fulton,
19 Juniata, Montour, Perry, Sullivan and Union.
20 A. If those are the list off the stipulation, that hasn't
21 changed.
22 Q. You're not suggesting that there are no registered
23 voters in those counties, are you?
24 A. Certainly not.
25 Q. Last summer, we agreed that there were 13 counties that

1 were open one day a week; that was Columbia, Clarion, Wayne,
2 Huntington, Carbon, Mifflin, Pike, Bradford, Susquehanna,
3 Northumberland, Wyoming, Greene and Tioga. Do they counties
4 still have centers that are only still open one day a week?
5 A. The stipulation is still accurate.
6 Q. The stipulation still accurate with respect to the list
7 of counties that are only open two days a week?
8 A. That is correct.
9 Q. Okay. Those are Armstrong, Potter, Bedford,
10 Westmoreland, McKean, Indiana, Jefferson, Venango, Elk and
11 Warren; is that right?
12 A. If you're reading off the stipulation, yes.
13 Q. If it's in the stipulation --
14 A. It hasn't changed.
15 Q. -- it remains correct.
16 MS. HICKOK: Your Honor, there is one county
17 on there as to which the documents attached to the stipulation
18 have different information from the summary in the
19 stipulation, and that's Westmoreland County.
20 THE COURT: Okay. So, that's a change. Are
21 you aware of that, Mr. Myers?
22 THE WITNESS: I did not realize that it was
23 incorrect on the stipulation.
24 MS. CLARKE: Okay.
25 THE WITNESS: I believed -- I understood that

1 there was a comment made by one of the plaintiffs' witnesses
 2 that -- about a particular county, and I was aware of that,
 3 but I was not aware that it was in the stipulation as well
 4 like that, so --
 5 BY MS. CLARKE:
 6 Q. You weren't aware of that when we asked you this
 7 question in your deposition in June?
 8 A. I was not aware that it was in the stipulation as being
 9 wrong. I thought it was only related to the witness from the
 10 plaintiff who had noted that there was only one location in
 11 the county, but I didn't realize it was wrong in the
 12 stipulation.
 13 Q. Do you know what the number of days Westmoreland County
 14 is open?
 15 A. I don't know that off the top of my head, no.
 16 MS. HICKOK: Your Honor, it's not the number
 17 of days, it's actually the number of centers in Westmoreland
 18 County. There's one open two days a week and one open five
 19 days a week, and that's reflected in the documents that are
 20 attached to the stipulation.
 21 BY MS. CLARKE:
 22 Q. Now, Mr. Myers, when the Department of State card was
 23 implemented in August, last August, when it was first rolled
 24 out --
 25 A. Yes.

1 Q. -- the way that it worked is the PennDOT customer
 2 representative, faced with a person who wanted a Department of
 3 State ID, had to pick up the phone and call the Department of
 4 State in order to determine whether that person was registered
 5 to vote; is that right?
 6 A. That's correct.
 7 Q. That didn't change once the new procedures were
 8 implemented on September 25th?
 9 A. That's correct. That's what we still do today.
 10 Q. And that's what you still do today?
 11 A. Yes.
 12 Q. Now, you've mentioned in your direct that you had some
 13 idea that you would upgrade the system to do it
 14 electronically, but you haven't done that, have you?
 15 A. No, we have not.
 16 Q. It hasn't happened?
 17 A. That's correct, we have not.
 18 Q. And it's been put on hold?
 19 A. Essentially, yes. It is something that has to be
 20 coordinated between the Department of State and ourselves.
 21 There have been some conversations about it, but there's been
 22 no movement on that from the standpoint of moving forward.
 23 Q. Okay. So, it's on hold right now?
 24 A. Yes.
 25 Q. With a manual system there's more opportunity for human

1 error, isn't there?
 2 A. Depends upon how well the software is designed from a
 3 technology standpoint. You can have a lot of errors from
 4 technology as well. So, I wouldn't necessarily equate that
 5 there's more chance of human error.
 6 The fact of the matter is you are talking to an
 7 individual, you are giving them information over the phone,
 8 can numbers be transposed, things of that nature. Certainly,
 9 that did happen, but that can also happen with data entry.
 10 Q. Okay. But you wanted to upgrade the system to make it
 11 electronic because you thought it would be more efficient;
 12 isn't that right?
 13 A. Well, we think from the standpoint right now, the
 14 Department of State has to staff their help desk during our
 15 hours of operation, which means six days a week, and as I
 16 noted earlier in my testimony, there's one location that stays
 17 open I believe until 8:00 on a Wednesday evening, so they have
 18 to staff during that period of time.
 19 So, the ability for us to be able to access the
 20 information electronically would be a benefit both to the
 21 Department of State, and certainly from our standpoint being
 22 able to access it electronically would be helpful as well.
 23 Q. Okay. It would be -- it would let -- tend to be more
 24 accurate, wouldn't it?
 25 A. I wouldn't agree that it would tend to be more accurate.

1 I would simply say that it would add to the efficiency from
 2 the standpoint of the time involved.
 3 Q. Okay. Now, when a PennDOT customer comes in and isn't
 4 registered to vote, the PennDOT employee is supposed to offer
 5 the person the opportunity to register to vote, right?
 6 A. Correct.
 7 Q. I think you talked about that a little with Mr. Keating.
 8 A. To fill out the application to register. I think it's
 9 important, that's what we do, we take an application to
 10 register. It gets sent to the Department of State whether
 11 electronically through our renewal process and/or through
 12 paper, and then the Department of State could take it from
 13 there, but I believe that they send it on then to the county
 14 for that person to be able to actually become registered.
 15 Q. Right. So, if somebody wants a PennDOT product, that is
 16 a PennDOT secure ID or a driver's license, it can -- the
 17 registration information can be transmitted electronically;
 18 isn't that right?
 19 A. Correct, yes.
 20 Q. But if somebody comes in and wants a Department of State
 21 ID and that person is not registered to vote, that form is not
 22 transmitted electronically, is it?
 23 A. That is correct. We can only take it through the paper.
 24 There's not built into the software for the Department of
 25 State.

1 Q. Right. And you could -- I mean, there's no reason why
 2 you couldn't -- one couldn't develop the software, is it?
 3 A. Oh, no. We certainly could develop it. It wasn't a
 4 requirement that the Department of State asked us to build
 5 into the software.
 6 Q. Right. So, basically the Department of State could have
 7 created that software, but chose not to; is that right?
 8 A. They didn't ask us to add it into the software; that's
 9 correct.
 10 Q. PennDOT hasn't spent any money to advertise the PennDOT
 11 ID for voting, hasn't it?
 12 A. That's correct. We have depended upon the Department of
 13 State for advertising.
 14 Q. In the summer when the Department of State ID was being
 15 planned, PennDOT didn't have any plans to roll out a public
 16 information campaign, did it?
 17 A. No. We were relying on the Department of State.
 18 Q. And if fact, PennDOT didn't ever roll out a public
 19 information campaign about the Department of State ID, did it?
 20 A. No. We felt that was the responsibility of the
 21 Department of State.
 22 Q. After the Supreme Court's decision enjoining the
 23 implementation of the Act, PennDOT didn't spend any money to
 24 advertise the new Department of State ID?
 25 A. No, we did not.

1 it?
 2 A. It is in actuality our largest center as far as
 3 customers.
 4 Q. Right. And if we look at the spreadsheet, Exhibit 1460,
 5 by July of 2012 only 37.30% of the customers were served
 6 within 30 minutes; is that right?
 7 A. That's correct.
 8 Q. Take a look -- if you could scroll down, Kelby to
 9 Columbus Boulevard.
 10 By July on Columbus Boulevard, July of 2012, only 44% of
 11 the customers were served within 30 minutes; is that right?
 12 A. That's correct.
 13 Q. Now, in response to that you extended the hours of the
 14 five Philadelphia centers; is that right?
 15 A. That is correct, yes. For a period of time.
 16 Q. Right. You added four hours on Thursday nights to those
 17 centers; is that right?
 18 A. I believe so, yes. I think it was until 8:00.
 19 Q. During the September, 2012, hearing, you acknowledged
 20 that the wait times had increased in those two centers, didn't
 21 you?
 22 A. I think not what I acknowledged. You seem to be drawing
 23 a connection between your question as to that voter ID has
 24 somehow increased the wait times in those locations. I didn't
 25 say that in my testimony.

1 Q. And at no time has PennDOT taken any steps to
 2 disseminate information to the public about the Department of
 3 State identification card, except maybe a few posters in your
 4 driver's license centers; is that right?
 5 A. There would be some incidentals, correct, yes. But no,
 6 the responsibility for the program was the responsibility of
 7 the Department of State.
 8 Q. And PennDOT has no 2013 budget for public education
 9 about the Department of State ID, does it?
 10 A. We have a budget. The 2013 budget I believe is
 11 \$896,000, but that budget is not specifically advertising or
 12 education from the standpoint of the public. It's more for
 13 any systems development, and also for the issuance of the free
 14 IDs.
 15 Q. But there's no budget for education; that's my point?
 16 A. No.
 17 Q. Now, you were shown during your direct the spreadsheet
 18 which is Exhibit 1460, Petitioner's Exhibit 1460. Actually,
 19 what you were shown was Respondents' 2072, but I'm going to
 20 show you 1460.
 21 A. All right.
 22 Q. Now, I want to specifically focus on Arch Street. Can
 23 you just explain where Arch Street is?
 24 A. Sure. It's Center City, Philadelphia.
 25 Q. And that takes a very large volume of customers, doesn't

1 Q. Okay. I'm just asking about wait times. I'm not saying
 2 anything about voter ID. I'm just asking you if wait times
 3 have increased in those two centers; isn't that right?
 4 A. Well, again, the wait times in those locations are our
 5 busier centers, and as I noted before, August is historically
 6 our busiest month.
 7 As we go into the fall, it begins to drop off, and then
 8 at that point in time, the wait times improve from the
 9 standpoint of time -- from the standpoint of time people are
 10 served.
 11 From the standpoint of those locations, again, those are
 12 our biggest locations. August, again, is one of our busier
 13 periods of time, especially when the college students come in
 14 from Philadelphia in particular. Especially with students
 15 coming in from out of the country because one of the things
 16 that they want right away is a form of ID or in some cases the
 17 driver's license.
 18 Q. Right. Now, if you look at the 2011 figure for Columbus
 19 Boulevard, that's 55.14% of the people -- only 55.14% of
 20 people were served within 30 minutes; do you see that?
 21 A. I'm trying to find it here. What month?
 22 Q. Columbus in July.
 23 A. In July. 54.86, is that the number that you are
 24 referring to back in 2010?
 25 Q. I'm actually looking at 2011.



1 A. 2011. 2011 Columbus Boulevard.
 2 Q. Yes.
 3 A. I read 85.14 in July.
 4 Q. Yes. Excuse me. Will you agree with me that wait times
 5 increased month over month in 2012 at Columbus Boulevard?
 6 A. When you say increased month over month, again, if you
 7 -- you have to be in perspective here from the standpoint of a
 8 12-month period of time.
 9 As I said, our summer months are busier months. The
 10 Philadelphia locations are busier locations. The numbers do
 11 drop off from the standpoint of those individuals who are
 12 served in 30 minutes or less, but if you go out to December of
 13 that year, you will see it's starting back up again, it's back
 14 up to 85%.
 15 Q. Mr. Myers, will you agree with me that the 44% in July
 16 of 2012 is significantly less than the 85% in 2011; will you
 17 agree with me on that?
 18 A. Well, certainly, yes.
 19 Q. Now, in the hearing before this Court on September 25th,
 20 you were asked about these wait times, and you said, "We'll
 21 fix that;" do you recall that?
 22 A. I don't recall specifically that statement, but if you
 23 have it, I'll be happy to respond to it.
 24 Q. Now, you said, we'll -- that PennDOT has been responsive
 25 and it would continue to be responsive; do you recall that

1 didn't it?
 2 A. It did get worse, yes.
 3 Q. Significantly worse?
 4 A. It went down, and then it went back up to 71.93% in
 5 November.
 6 Q. It remained less in July, in October, 34.45%; do you see
 7 that?
 8 A. Yes, I do.
 9 Q. So, if you go back down to Columbus Avenue, that number
 10 got worse after July, too, didn't it?
 11 A. For which year?
 12 Q. 2012.
 13 A. Yes. It went down.
 14 Q. Okay.
 15 A. Then it went back up.
 16 Q. It went down significantly, so by September we are at
 17 22.10%; isn't that right?
 18 A. And by December it was back up to 85.
 19 Q. And those extra Thursday night hours that you did to try
 20 to address this problem, they ended up after Election Day,
 21 didn't they?
 22 A. They did, and we kept them in place because we felt it
 23 was important to do so because we had committed to do it. And
 24 so, we kept those hours in place. I can tell you, though,
 25 that, quite frankly, there were not a lot of customers that

1 testimony?
 2 A. Well, I think that's what resulted in the fact that we
 3 added hours in Philadelphia during the months of September and
 4 October, and even after, including after the election. We
 5 kept those hours on even though the court ruling came in that
 6 it wouldn't apply for the general election.
 7 Q. Right. But the numbers got worse, didn't they, at Arch
 8 Street?
 9 A. Well, again, this is the busy period of time for us, and
 10 the fact of the matter is that by your questions, you're
 11 equating that getting worse because of issuing the voter IDs.
 12 That's not the case.
 13 We have already testified to the fact that we have
 14 issued approximately 13,000 voter IDs, PennDOT IDs, over the
 15 past year.
 16 Q. Okay.
 17 A. And 4,000 voter IDs, DOS IDs. That has not overwhelmed
 18 our locations.
 19 Q. Mr. Myers, I didn't ask you about overwhelming. I'm
 20 just asking you about numbers.
 21 In July of 2012, it was 37.30% of the people who were
 22 being served within your goal, but by September, it was 13.5%;
 23 do you see that?
 24 A. Yes, I do.
 25 Q. And that, whatever the cause, that percentage got worse,

1 came in as the day went on after our normal closing hours, you
 2 know, so there was not a huge volume of people coming in.
 3 Q. So, your testimony was that the extended hours at the
 4 five Philadelphia centers were still in effect?
 5 A. No, no. It ended the Thursday after the general
 6 election in 2012.
 7 Q. Okay. Now, have you heard of mobile licensing centers?
 8 A. Certainly.
 9 Q. And they're used in some states to take licensing
 10 services out to the voters?
 11 A. Well, they're used in some states to take driver
 12 licensing and identification card services out to the citizens
 13 of their particular states.
 14 Q. And before Act 18 PennDOT didn't use mobile licensing
 15 centers to get driver's licenses or non-driver identifications
 16 to people, did it?
 17 A. We had a mobile unit, yes, we did, up until November of
 18 2008 when the last administration decided to terminate the
 19 program because of the --
 20 Q. Right.
 21 A. -- because of the expense and the fact that there were
 22 very few people who actually used the service.
 23 Q. But immediately before Act 18, PennDOT didn't use mobile
 24 licensing centers, did it?
 25 A. No. As I said, we ended our mobile service in November

1 2008.
 2 Q. After Act 18 PennDOT hasn't added mobile licensing
 3 center, has it?
 4 A. No. We haven't considered it.
 5 Q. Now, we talked a little bit, Mr. Keating, asked you
 6 about the fact that PennDOT charges some people for non-photo
 7 IDs, right? \$13.50. Do you recall that testimony?
 8 A. Correct, yes.
 9 Q. But under Act 18 people are supposed to get the
 10 non-photo ID for free, if they sign a declaration that they
 11 don't possess proof of identification and they require proof
 12 of identification for voting; that's correct, isn't it?
 13 A. It's an affirmation, yes.
 14 Q. All right. Now, if a person comes in to a PennDOT
 15 center and wants ID, and they have the documentation for a
 16 PennDOT non-driver's license card, does PennDOT give them an
 17 ID for free?
 18 A. I'm sorry. I'm not sure I understand the question. Do
 19 they -- do we give them a free ID for -- could you repeat the
 20 question.
 21 Q. Sure. If a person comes in, comes -- gets themselves
 22 down to PennDOT, waits in line, however long the line is, and
 23 they have the documentation that they need for a non-driver's
 24 license card, does PennDOT give them a card for free?
 25 A. If they sign the affirmation.

1 that person says, "I want an ID. I stood in line. I want a
 2 free ID." Does PennDOT -- PennDOT doesn't give that person a
 3 free ID right away, does it?
 4 MR. KEATING: Objection, Your Honor. Is the
 5 question I want an ID, or I want a free ID?
 6 THE COURT: I believe the question is I want a
 7 free ID.
 8 MR. KEATING: Okay.
 9 THE WITNESS: We're going to ask them what
 10 kind of ID they want and what they want it for because that's
 11 going to drive the type of ID that we issue. And then of
 12 course, we're going to talk about the affirmation and whether
 13 or not they can sign it or not, because again, that drives
 14 whether the product is free or not.
 15 BY MS. CLARKE:
 16 Q. Now, let's say that the person wants the ID for lots of
 17 different reasons. They want it for bank accounts. They want
 18 it for access to a building. They want it to get on an
 19 airplane. Does PennDOT give them a free ID for voting?
 20 A. Well, they're going to need -- they're going to need at
 21 that point in time a PennDOT ID, if they wanted to use it for
 22 all of those reasons.
 23 So, they're going to need a PennDOT ID for that purpose,
 24 and they would get it for free, if they can sign the
 25 affirmation.

1 Q. Okay. And no questions asked?
 2 A. Correct. That's the process, yes.
 3 Q. So, imagine a person comes in, they don't say anything.
 4 They just need it to -- they want it for driving. They want
 5 it for all kinds of purposes. They get a free ID?
 6 A. If they can sign the affirmation.
 7 Q. Okay. No questions asked?
 8 A. If it's an ID they're asking for, they can get it, if
 9 they sign the affirmation.
 10 Q. Okay. Now, did you give a deposition in this case?
 11 A. Excuse me.
 12 Q. Well, let me just ask you this question: Are you sure
 13 that PennDOT customer service representatives aren't
 14 instructed to ask the reason that the person wants the ID?
 15 A. Well, certainly.
 16 Q. Are you sure that's not part of the process?
 17 A. Well, certainly, yes. They do ask, and I testified to
 18 that earlier today, actually, and said that they do ask and if
 19 somebody says they want a voter ID, then we go the route of a
 20 DOS ID. If they say they want it for more reasons than just
 21 voting, then we go the other ID.
 22 But the denominator as to whether or not someone gets an
 23 ID for free is if they sign the affirmation or can sign the
 24 affirmation.
 25 Q. But the process for the person walking in the door and

1 Q. Now, but PennDOT does not ask the person if they want it
 2 for voting, does it?
 3 A. Our instructions to our personnel is to ask them why
 4 they want the ID, because that will help us determine which ID
 5 is the appropriate one for them to get.
 6 Q. Right. But if the person doesn't say, "I want it for
 7 voting," PennDOT charges the person for that ID, doesn't it?
 8 A. If they don't sign the affirmation. But I think it's
 9 important here to mention the shared responsibility that every
 10 customer has when they come to one of our sites.
 11 You know, it's our -- our people are trained on what to
 12 do and what questions to ask, but there's a shared part of
 13 responsibility on the customer coming in to us to know what
 14 product they want and why they want it and also to have the
 15 appropriate documentation.
 16 I think that's a reasonable expectation on the part of
 17 the customer coming to one of our centers.
 18 Q. But just to be clear, if the person doesn't use the
 19 voting word, PennDOT will not give them a free ID for voting,
 20 will it?
 21 A. If they do not sign the affirmation, we will not give
 22 them a product.
 23 Now, having said that, I would never suggest to you or
 24 to anyone else that we're perfect. We make mistakes, and as I
 25 said earlier, we see over 2.5 million customers face-to-face

1 every year. I have testified in the past that there have been
 2 individuals that have at a later date come in and said, you
 3 know, I could have signed that affirmation. I didn't realize
 4 it at the time, but I do now. I'd like to sign it. And in
 5 those cases we have given those individuals refunds.
 6 Q. All right. Now, I just want to get back to my question,
 7 and that is the customer service representative, PennDOT
 8 customer service representative, is not instructed to ask the
 9 voter specifically if they want the ID for voting, are they?
 10 A. They're asked to ask the individual what they want the
 11 ID for, and then that determines -- so, if the individual
 12 says, I only want it for voting, they're going to take them
 13 down the DOS route. If they say they want it for a multitude
 14 of different reasons, including voting, then they're going to
 15 take them to the PennDOT ID. And if they sign the
 16 affirmation, they can get it for free.
 17 Q. Right, but I'm still not being clear. I'm sorry. The
 18 PennDOT customer service representative is not instructed to
 19 ask if the person wants the ID for voting, are they?
 20 MR. KEATING: Your Honor, that question has
 21 been asked and answered about five times now.
 22 THE COURT: One more time.
 23 MR. KEATING: Okay. Thank you.
 24 THE WITNESS: Okay. I'll try again.
 25 The individual, when they come in and they ask

1 receive that product, and in return, my responsibility -- my
 2 staff is responsible for insuring that we drill down, find out
 3 what it is the customer wants, and then work with them to get
 4 them that product.
 5 As I have said before, we're in the business of issuing
 6 IDs, not denying them.
 7 Q. So, Mr. Myers, it's true, though, if the person doesn't
 8 mention voting in their answer, PennDOT will not offer them
 9 the affirmation to sign; isn't that the case?
 10 A. If there is absolutely no conversation in reference to
 11 the word voting, where somebody comes in and says, I need an
 12 ID because I don't have one, and I need it for banking and so
 13 forth and so on, we're going to issue them the PennDOT ID.
 14 Q. And it's true, Mr. Meyers, that if the person doesn't
 15 mention voting, the customer service representative is not
 16 instructed to ask the person if they want it for voting?
 17 A. We're instructed to ask them what they want the ID for.
 18 Q. Right.
 19 A. And we're assuming that those -- again, that shared
 20 responsibility, the individual is going to say, I'm here
 21 because I want it for voting, and I understand that it's free
 22 or I understand it's available. Whatever the case may be.
 23 Q. Sure, but if they don't use the word voting, the
 24 customer service representative is not instructed to ask, is
 25 this for voting; that's true, isn't it?

1 for an ID, the question is raised by our staff as to what they
 2 want the ID for. All right. Part of the process includes the
 3 affirmation because they're going to go through that process
 4 for the DOS ID, and they're going to ask -- well, they're
 5 going to need to sign the affirmation in the case of the DOS
 6 ID to be able to get the DOS ID for free.
 7 BY MS. CLARKE:
 8 Q. All right. Now, when the person comes in and says, "I
 9 want an ID," how do they get to the affirmation process?
 10 A. Well, again, this gets back to the shared
 11 responsibility. And it is the responsibility of the
 12 individual as well as my staff to know the various aspects of
 13 the transaction.
 14 That's why we have a website that has all of the
 15 information on it that you need, including locations, times of
 16 operation, what product you can get at that center. That's
 17 why we also have information at our call center, both in our
 18 IVR and also the ability to talk to our customer service
 19 representatives who will be able to walk you through the
 20 various requirements.
 21 But there does need to be some effort on the part of the
 22 customers, and that's that shared responsibility.
 23 Q. So --
 24 A. It's important that they come in understanding that
 25 there are various things that they need to do to be able to

1 A. I don't know specifically what they would or would not
 2 ask from the standpoint in a circumstance like that. I'm
 3 assuming that many of our individuals would ask -- our staff
 4 would ask, are you here for to get it for voting purposes?
 5 Q. Mr. Myers, when you -- you have been deposed many times
 6 in this action?
 7 A. Yes.
 8 Q. And a number of them from me?
 9 A. Yes.
 10 Q. And each of those times, you swore to tell the truth and
 11 you told the truth?
 12 A. Absolutely.
 13 Q. And you did tell the truth?
 14 A. Thank you.
 15 Q. I'm asking you.
 16 A. Yes.
 17 Q. And the most recent time you were deposed was June 4,
 18 2013?
 19 A. I believe that was the time, yes.
 20 Q. And you told the truth?
 21 A. Yes.
 22 Q. And during that deposition, did you ask the following
 23 question and did you give the following answer. "Question:
 24 Are your personnel specifically trained to ask the customer if
 25 they are getting an ID for voting purposes? Answer: The



1 answer to that is no. They're not specifically asking that
 2 question."
 3 Were you asked that question, and did you give that
 4 answer?
 5 A. If it is in the deposition, then, yes, I did.
 6 Q. And is that answer remain -- is that the accurate?
 7 A. From the standpoint of the information, again, as I
 8 said, I think the important thing to understand here is that
 9 when a customer comes through the door, we're trying to find
 10 out what information they have and also what product that they
 11 want.
 12 If -- from the standpoint of a correct answer to that,
 13 again, as I said, I don't believe that they are trained to
 14 say, "Are you sure you don't want a voter ID?" We're going
 15 based upon the information that they're giving us.
 16 Q. Right, and Mr. Meyers, I had a simple question, and that
 17 was that the deposition testimony that you gave in June was
 18 true?
 19 A. Yes. Absolutely.
 20 Q. Now, the reason that you don't ask the -- that your
 21 employees are not asked -- I'm sorry.
 22 The reason your employees are not instructed to ask the
 23 customer whether they want it for voting, I think you've
 24 described it a little bit, but they might say yes. If you
 25 say, do you want a free ID for voting, and they haven't

1 already said the V-word, they might say yes, and that's the
 2 reason that you would -- don't instruct your customer service
 3 representatives to ask?
 4 A. No, that's not the reason.
 5 Q. Because once they -- once they say yes, then you have to
 6 give it to them for free; isn't that true?
 7 A. Which is fine. Again, as I said earlier, we're in the
 8 business of issuing IDs, not denying them.
 9 Q. And I would put it to you that other than the fact that
 10 they would get it for free, there's no reason not to ask a
 11 customer whether they want a free ID for voting, is there?
 12 A. I think that's an assumption on your part, which I would
 13 reject. The fact of the matter is is that PennDOT has a
 14 budget out of the General Fund to reimburse us in the Motor
 15 License Fund for the monies that we spend associated with
 16 giving out free IDs.
 17 There is no cost to PennDOT in doing this. We have no
 18 motivation other than to issue individuals IDs. We want to
 19 make sure they get the right ID, which is what my staff is
 20 trying to do. They're trying to do the right thing, which is
 21 to insure that they get an ID that they can use for the
 22 purposes that they want.
 23 It's -- you know, to suggest that there is some
 24 underlying motivation from my staff not to issue free IDs is
 25 just totally off-base.

1 Q. Well, then there's no reason. There's no reason at all
 2 that your staff should not be instructed to ask people when
 3 they come in, "Do you want this for voting?" There's no
 4 reason at all, is there?
 5 A. Again, what we're asking them is, what reason do you
 6 want the ID for, and then that takes us down the route.
 7 I think we're saying the same thing. It's just that you
 8 have worded it differently. We're asking the customer why do
 9 you want the ID.
 10 Q. And there's no reason at all that your customer service
 11 representatives couldn't say, do you want this for voting? No
 12 reason.
 13 A. There is absolutely no reason at all on why that can't
 14 be done, and if it will help, I'll put an edict out tomorrow
 15 to make that happen.
 16 Q. Now, I want to just clarify something. If you want to
 17 get an ID from PennDOT, either a free ID or a driver's license
 18 or a Department of State ID, you have to go to PennDOT; isn't
 19 that true?
 20 A. It would depend upon the circumstances. I would say
 21 that 99.9% of individuals go through the normal process which
 22 would be to come to PennDOT for the initial issuance.
 23 Q. Right. Now, there is a process for renewing a driver's
 24 license online, right?
 25 A. There is, that's correct.

1 Q. And you have to pay for that, right?
 2 A. If you -- the customer does, yes.
 3 Q. Right. They have to use a credit card. And you can't
 4 use -- you can't renew your photo ID online if your driver's
 5 license is expired for more than six months, is that right?
 6 A. I believe that's correct, yes.
 7 Q. And there's also a process for renewing a driver's
 8 license by mail; is that right?
 9 A. That's correct, yes.
 10 Q. Basically, what happens is you get a computer generated
 11 renewal application in the mail; is that right?
 12 A. It's a renewal notice, yes.
 13 Q. And that's supposed to happen before your identification
 14 is going to expire?
 15 A. That's correct. We send it out about two-and-a-half
 16 months in advance of when it expires.
 17 Q. Then you complete the application, and then you get a
 18 camera card; is that right?
 19 A. That's correct, yes.
 20 Q. Then you have to go down to PennDOT to get your picture
 21 taken?
 22 A. That's correct. One of the photo centers can do that
 23 transaction.
 24 Q. Okay. Now, PennDOT doesn't say anywhere that there's
 25 some different process to get your photo ID for voting, does

1 it?
 2 A. Some different.
 3 Q. Your free PennDOT ID; there's no different process for
 4 free photo IDs?
 5 A. Well, that would be the initial issuance, which is
 6 different than a renewal process.
 7 Q. I'm not talking about the Department of State ID right
 8 now. I'm just talking about the PennDOT ID.
 9 A. Right.
 10 Q. If you want to renew it, it doesn't matter when it's an
 11 identification for voting or an identification not for voting?
 12 A. That would be correct.
 13 Q. You have to go down to PennDOT to get your picture
 14 taken.
 15 A. You have to come down and get your picture taken, yes.
 16 Q. And there's also a surrender process?
 17 A. You're referring to the medical surrender program?
 18 Q. Yes.
 19 A. Yes.
 20 Q. And you can -- and that's set up by a different statute
 21 under the Pennsylvania law?
 22 A. I forget the specific statute that it's in. It's in the
 23 Vehicle Code. I forget the section number of it, but, yes, it
 24 says if you voluntarily surrender your driver's license,
 25 PennDOT will replace it with a free ID card.

1 centers.
 2 There are photo centers in every one of the 71 driver's
 3 license centers, and then there is an additional 28 or 29
 4 stand-alone photo centers.
 5 Q. Okay. You can't apply to a photo license center to get
 6 a PennDOT ID, can you?
 7 A. That's correct. No, you cannot.
 8 Q. And you can only get -- you can only go to a driver's
 9 license center to get a PennDOT ID; is that right?
 10 A. On initial issuance, yes.
 11 Q. Now, voters have been confused about that, haven't they?
 12 A. You know, I think as I said earlier, that the process
 13 has certainly evolved over time. There have been a number of
 14 changes, and in the early stages, I do believe that there was
 15 clearly some confusion on the part of not only customers, but
 16 others as to the difference between a driver's licensing
 17 center and a photo center. And I think there were certainly
 18 some misinformation that was sent out based upon that.
 19 As time has gone by, the defining between the two, I
 20 think, has improved dramatically.
 21 Q. You heard -- I'm sorry.
 22 A. Go ahead. I'm sorry.
 23 Q. I interrupted. Were you finished.
 24 A. Are you done.
 25 Q. You were in the courtroom when Miss O'Donnell testified?

1 Q. Right. And if you do that, your driver's license can't
 2 already be expired, right?
 3 A. I'm sorry. Can you just ask the question again?
 4 Q. If you want to surrender your license because for
 5 medical reasons, you can't -- your driver's license cannot be
 6 already expired?
 7 A. I believe that it can, yes.
 8 Q. If it's expired, you have to pay?
 9 A. No, if it's expired and you surrender your driver's
 10 license, under that program for medical reasons, you can get a
 11 free ID.
 12 Q. And for medical reasons, you have to show that there's
 13 some medical reason that you no longer can drive?
 14 A. I forget what the specific questions are on the form,
 15 whether or not there's anything specific. I think it's just a
 16 general representation that you're surrendering it for that
 17 reason, and then we replace it for free. But it could be a
 18 product that is expired, I believe.
 19 Q. Now, PennDOT has some facilities called driver's license
 20 centers; is that right?
 21 A. Yes.
 22 Q. It also has something called driver's license photo
 23 centers; is that right?
 24 A. Not exactly. We have the driver's license center which
 25 are the 71 that I referred to before, and then we have photo

1 A. Not for all of it, I was here for part of it.
 2 Q. She is still confused; did you hear that?
 3 A. That was at the end, from the two. Yes, she clearly did
 4 not understand the difference between the two.
 5 Q. In fact, five months after the law was enacted, the
 6 Department of State was sending people to the wrong places,
 7 wasn't it?
 8 A. I'm not aware specifically of that, or I don't recall
 9 it. I'm not suggesting it didn't happen. I just don't recall
 10 it.
 11 Q. Okay. Let me show you Respondents Exhibit 20.
 12 A. Thank you.
 13 Q. Do you recognize Respondents Exhibit 20, Mr. Myers?
 14 A. No. This is not an email that I have seen before.
 15 Q. Were you aware that the Department of State had been
 16 contacted by the Department of Transportation, and told that
 17 they were sending people to the wrong place?
 18 A. Again, I know that there were times when -- especially
 19 in the early stages where people did go and give bad
 20 information as to, you know, where they should be going to get
 21 ID.
 22 I don't know who here reached out -- I'm assuming it
 23 might have been Scott who reached out to the Department of
 24 State to say, we have people coming in who are saying they
 25 want a free ID, but they're coming to a photo center, and

1 that's what generated this outreach to help correct that.
 2 Q. It's understandable why --
 3 MR. KEATING: Your Honor --
 4 Q. -- people would be --
 5 MR. KEATING: -- as a point of clarification,
 6 you are asking questions about this email that he doesn't
 7 recognize and know about, or are you just asking general
 8 questions? You are keeping the exhibit up on the screen as
 9 though you are asking questions about this email that he has
 10 testified he doesn't know anything about. And I'm objecting,
 11 if you are asking questions generally, but you're suggesting
 12 it has to do with it.
 13 THE COURT: I'm going to be contrarian,
 14 Mr. Keating. I'm going to let the photo stay up and let her
 15 ask questions.
 16 BY MS. CLARKE:
 17 Q. Mr. Myers, it's entirely understandable that voters
 18 would be confused about the difference between a photo
 19 licensing center and a driver's licensing center, isn't it?
 20 A. Is it totally understandable? Again, I think it gets
 21 back to the idea of a shared responsibility.
 22 Certainly -- certainly there shouldn't be misinformation
 23 that's being put out by state agencies. This was clearly a
 24 case where we were trying to get something corrected.
 25 My comments earlier were to the general fact that it's a

1 fact that there were times when misinformation went out as
 2 this process evolved, and it was corrected.
 3 But I wouldn't necessarily go with the premise that it's
 4 understandable that a voter wouldn't understand the difference
 5 between a driver licensing center and a photo center.
 6 Again, there are 9.8 million people in this state that
 7 have either an ID or a driver's license. They figured it out
 8 over the years of where they go to get their photo taken for
 9 an initial issuance, and where they go to get the renewal
 10 done.
 11 Q. So, is it your view -- you mentioned this word shared
 12 responsibility a number of times. Is it your view that if
 13 people can't figure this out, it's their fault?
 14 A. No, not at all. Not at all. I'm simply saying is that
 15 we all have a responsibility in life to take responsibility
 16 for what we want done and what we need and so forth and so on.
 17 All I'm simply saying is that there is an effort in
 18 everything we do in life, even if it's going to the grocery
 19 store for goodness sakes. There's an effort in life.
 20 I'm simply saying that there's an effort that you need
 21 to know what it is that you need when you come to a driver
 22 licensing center. I have made it clear that that's why we put
 23 that information out on our website, that's why that
 24 information is available at our call center.
 25 I do not like the idea that there's -- when there's

1 information that goes out that's incorrect. I totally agree
 2 that that's an issue. And it needs to be sure that as we go
 3 forward that those types of things are corrected, if they
 4 haven't already been corrected.
 5 That's why I say, even if the issue that you brought up
 6 earlier, okay, there is no reason why -- from the standpoint
 7 of our staff, that they don't ask, do you want this for
 8 voting? So, I'll make the change tomorrow. I'll send a
 9 message out to all of my staff tomorrow and make sure that
 10 that is a question that is added.
 11 Just as we have made a number of changes that the
 12 plaintiffs have brought to our attention over the last year to
 13 improve the process. We'll continue to do that.
 14 Q. Mr. Myers, let's just go back to that for a minute.
 15 A. Sure.
 16 Q. You were asked the same series of questions in September
 17 of 2012; do you recall that?
 18 A. I don't recall the specifics of that; was it at a
 19 deposition, was it at hearing or --
 20 Q. Do you recall that during the September 25th hearing in
 21 this case, you were also asked and you also testified that the
 22 voter was not asked whether they wanted the -- or the staff
 23 was not instructed to ask the voters if they wanted ID for
 24 voting; do you recall that testimony?
 25 A. I don't recall the specifics of it, but I will say

1 again, I think we are going at this in two directions, but the
 2 results are the same.
 3 My staff is asking people why they want ant ID. You've
 4 now said, we don't specifically say, "Do you want an ID for
 5 voting?" And what I have said is, if that will help address a
 6 concern that people are paying for an ID that they perhaps
 7 would qualify for free, I will happily make that change at my
 8 driver licensing centers to make sure that that -- that there
 9 is no confusion whatsoever.
 10 Q. Mr. Myers, I had a simpler question, and that is, you
 11 were asked the same question last year in September, weren't
 12 you?
 13 A. I don't recall the specific question. I'm sorry.
 14 Q. The question is in the record. But you did not go back
 15 at that point and change the instructions to your staff, did
 16 you?
 17 A. Not at that point in time. No, I didn't.
 18 MS. CLARKE: Your Honor, we are not closing
 19 our cross-examination because we are moving for discovery of
 20 all of the documents that Mr. Myers testified about, and we're
 21 also asking for a deposition of Mr. Shenk and others who
 22 participated in the creation of the spreadsheet.
 23 So, we are doing two things: We're asking for
 24 discovery so that we can see what we have heard about today.
 25 MS. HICKOK: Your Honor, we would object to

1 their having to -- to PennDOT's having to produce anything
 2 that it produced to its counsel.
 3 THE testimony today was clear that when the
 4 spreadsheets were produced, they were produced to PennDOT's
 5 counsel. That's clearly attorney/client privileged
 6 information, and the form that it then takes is a different
 7 issue. You understand our objection.
 8 THE COURT: Well, I'm guilty because I tried
 9 to get the parties to agree on the mysterious 144. So, I'm
 10 denying discovery.
 11 MS. CLARKE: Your Honor, we move to strike
 12 Mr. Myers' testimony to the extent that it was based on
 13 documents and information that have not been produced to us
 14 that should have been produced to us, and so this is really
 15 litigation by surprise. So, we move to strike that portion of
 16 the testimony.
 17 THE COURT: How was it litigation by surprise?
 18 As I understand from your cross-examination, you have deposed
 19 him on more than one occasion?
 20 MS. CLARKE: In fact, Your Honor, when we
 21 asked Mr. Myers at his June 2013 deposition about the
 22 spreadsheet and the exceptions spreadsheet that Mr. Marks
 23 testified about, Mr. Myers said I don't know anything about
 24 it. You know, that's then.
 25 He just testified today that they didn't

1 really start working on this project until about three weeks
 2 ago which was after the deposition. So, yes, we have had many
 3 depositions, but we have not had any depositions about this
 4 work.
 5 THE COURT: Okay. Mr. Keating.
 6 MR. KEATING: We object to the motion to
 7 strike, Your Honor. You can give it the weight you think it
 8 deserves.
 9 THE COURT: I'll deny the motion to strike.
 10 MS. CLARKE: I'm not sure about the motion for
 11 further discovery.
 12 THE COURT: And that's denied.
 13 MS. CLARKE: Okay. We would like to keep this
 14 cross-examination open until we have had a chance to review
 15 the information that we have.
 16 MR. KEATING: We would object to that, Your
 17 Honor. Petitioners indicated once they are done
 18 cross-examining Mr. Myers, they would rest their case. We
 19 don't have any further direct. We would ask this Court to
 20 have them rest their case, as the Court said.
 21 MS. CLARKE: Your Honor, in addition to the
 22 issues that remain open with Mr. Myers, this information we
 23 just got, and we may have additional -- we may have additional
 24 testimony as we mentioned before. We have had our folks
 25 looking at this information, too, trying to figure it out.


1 So, there remain issues for all of us about
 2 what the meaning of this latest information is that we got
 3 last night.
 4 THE COURT: Mr. Myers, you're around town,
 5 aren't you?
 6 THE WITNESS: Yes, Your Honor.
 7 THE COURT: So, we'll keep you on the alert.
 8 THE WITNESS: Very well.
 9 MR. KEATING: Your Honor, is that meaning that
 10 they have the right to call him up in rebuttal in their case,
 11 if they so wish?
 12 THE COURT: Yes.
 13 MR. KEATING: Okay. So, does that mean that
 14 -- I am not going to recross Mr. Myers. Does that mean that
 15 they have rested their case?
 16 MS. CLARKE: Your Honor.
 17 THE COURT: We're going to give them a day or
 18 two.
 19 MR. KEATING: A day or two. Okay.
 20 THE COURT: Well, we're not in session
 21 tomorrow, and there's the weekend, and then on Monday, I'm on
 22 another panel. So, when we start on Tuesday, they should have
 23 enough time to do what they want to do, I expect to have more
 24 motions about it.
 25 MR. KEATING: Okay.

1 MS. HICKOK: Your Honor, did you say we're not
 2 in session tomorrow?
 3 THE COURT: Or Friday. I've lost track.
 4 MS. HICKOK: Believe me, I understand.
 5 THE COURT: Do we have anything further we can
 6 put on this afternoon?
 7 MR. KEATING: Not within the short amount of
 8 time that we have, Your Honor.
 9 MR. HUTCHISON: Your Honor, we did not intend
 10 any other witnesses after Mr. Myers. We are prepared to start
 11 with Mr. Marks at 9:00 a.m. tomorrow morning.
 12 MR. RUBIN: Your Honor, there's one issue with
 13 that. I understand from the Court that we will be ending
 14 tomorrow at 3:00. Mr. Marks will likely take a fair bit of
 15 time. To have Dr. Wecker after that currently on the schedule
 16 starting at 1:00, and I understand -- it's unclear whether we
 17 would have enough time from 1:00 to 3:00 to do direct and to
 18 cross, and I'm not sure if Dr. Wecker is available to come
 19 back on Tuesday to continue the cross, but I just wanted to
 20 alert the Court to that issue.
 21 MS. HICKOK: Your Honor, he flew across the
 22 country for this testimony.
 23 THE COURT: Well --
 24 MR. RUBIN: That's why I'm raising this.
 25 THE COURT: I'd like to accommodate a man

1 that's flown across the country to give us testimony, so is it
 2 possible we can put Dr. Wecker on at 9:00 tomorrow?
 3 MS. HICKOK: Your Honor, I think that
 4 Dr. Wecker's testimony builds upon Mr. Marks' testimony. If
 5 it would be better for the Court, we can put Dr. Wecker on at
 6 9:00.
 7 THE COURT: It's just better for Dr. Wecker,
 8 I'm going to be here anyhow. So, if you want to do that, you
 9 can do that, that's going to help things along, but I'll find
 10 out at 9:00. You can surprise me at 9:00 tomorrow.
 11 MS. HICKOK: I'll consult with my client, Your
 12 Honor. Thank you.
 13 MS. CLARKE: Your Honor, I have one more
 14 housekeeping matter.
 15 I wanted to move into evidence the exhibits
 16 that were shown that Mr. Myers, Petitioners' Exhibits 2072 and
 17 1460, and Respondents' Exhibit 20.
 18 MR. HUTCHISON: Your Honor, we would move in
 19 Respondents Exhibits 74, 75, 76. They were introduced during
 20 the direct of Mr. Myers.
 21 THE COURT: Okay. They'll all be accepted.
 22 MR. RUBIN: Your Honor, just on one
 23 housekeeping matter. There have been some exhibits that have
 24 been moved in with no objection, but I don't think we had a
 25 verbal that these would be accepted. Can we assume without

1 objection that any exhibit that's been moved in is accepted?
 2 THE COURT: I think since I accepted them,
 3 they're moved in.
 4 MR. RUBIN: Thank you, Your Honor.
 5 THE COURT: Okay.
 6 MR. KEATING: You don't have any more
 7 housekeeping matters for this Court today, Your Honor, I
 8 swear.
 9 THE COURT: Well, if the Court Reporter says
 10 she has had enough, then we'll recess. Enough? We're
 11 adjourned.
 12 MS. HICKOK: Thank you, Your Honor.
 13 (THE PROCEEDINGS WERE RECESSED AT 3:56 p.m.)
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REPORTER'S CERTIFICATE

1
 2
 3 I, Marjorie Peters, a Registered Merit Reporter,
 4 Certified Realtime Reporter, and Notary Public in and for the
 5 State of Pennsylvania, that the foregoing record was taken at
 6 the time and place stated herein and was recorded
 7 stenographically by me and then reduced to typewriting under
 8 my direction, and constitutes a true record to the best of my
 9 skill and ability.
 10 I certify that I am not a relative or employee of
 11 either counsel, and that I am in no way interested, directly
 12 or indirectly, in this action.
 13 IN WITNESS WHEREOF, I have hereunto set my hand and
 14 affixed my seal of office this day of 2013.
 15
 16
 17
 18 Marjorie Peters, RMR, CRR
 19 My commission expires March 13, 2016
 20
 21 Original certification on file at Miller Verbano Reporting.
 22
 23
 24 Adam N. Miller, Custodian 
 25