

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF GEORGIA  
3 ATLANTA DIVISION

4 ASSOCIATION OF COMMUNITY )  
5 ORGANIZATIONS FOR REFORM )  
6 NOW, et al., )  
7 Plaintiffs, ) CIVIL ACTION NO.  
8 vs. ) 1:06-CV-1891-JTC  
9 CATHY COX, et al., )  
10 Defendants. )

11 RULE 30(b)(6) DEPOSITION OF  
12 GEORGIA STATE ELECTION BOARD BY  
13 KATHY A. ROGERS

14  
15 September 1, 2006

16 1:13 p.m.

17  
18 40 Capitol Square, S.W.  
19 Room 332  
20 Atlanta, Georgia

21 Karla T. Pittman, RPR, GA CCR-B-1987  
22  
23  
24  
25

1 APPEARANCES OF COUNSEL

2

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4 Association of Community Organizations for  
5 Reform Now :

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23 Atlanta, Georgia 30334

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1 (Reporter disclosure made pursuant to  
2 Article 8.B. of the Rules and Regulations of the  
3 Board of Court Reporting of the Judicial Council  
4 of Georgia.)

5 MR. HEARD: Good afternoon. This will be  
6 the deposition of the State Election Board,  
7 pursuant to Federal Rule of Civil Procedure  
8 30(B)(6), and pursuant to notice and agreement  
9 of counsel as to the date and location. The  
10 designee for the State Election Board is Ms.  
11 Kathy Rogers. Good morning or good afternoon.

12 THE WITNESS: Good afternoon.

13 MR. HEARD: And at this time if the court  
14 reporter will swear in the witness.

15 KATHY A. ROGERS,  
16 having been first duly sworn, was examined and  
17 testified as follows:

18 MR. HEARD: And, Stefan, I assume Kathy  
19 Rogers will read and sign?

20 MR. RITTER: We will read and sign. And I  
21 understand you will be using it and will --

22 MR. HEARD: Right. We'll be using it for.

23 MR. RITTER: Well, if we have corrections,  
24 we'll let you know.

25 MR. HEARD: All right.

1 MR. RITTER: And are you going to expedite  
2 the completion of this transcript?

3 MR. HEARD: I will be expediting the  
4 completion of the transcript, and we had  
5 stipulated for the previous deposition that we  
6 would -- we would use all the depositions for  
7 the preliminary injunction hearing --

8 MR. RITTER: Right.

9 MR. HEARD: -- subject to each deponent's  
10 right to correct their deposition.

11 MR. RITTER: Right. We won't have  
12 originals to file with the Court, and I think we  
13 will probably have to just file copies. So --

14 MR. HEARD: I'm sorry?

15 MR. RITTER: We won't have originals to  
16 file with the clerk, so I think we're going to  
17 have to serve copies to the Court.

18 MR. HEARD: That's fine.

19 And I guess as you did yesterday, we'll  
20 reserve the right to recall this witness.

21 MR. RITTER: Of course. Well, that's  
22 fine. This is a preliminary injunction  
23 deposition and we haven't even answered yet,  
24 so. . .

25 MR. HEARD: Okay.

1                   (Plaintiff's Exhibit 1 was marked for  
2                   identification.)

3           Q.       (By Mr. Heard) Just for the record, I  
4           have interacted with Ms. Rogers on several occasions  
5           at this point, and we do know each other, so I may  
6           slip back and forth between Kathy and Ms. Rogers, if  
7           that's all right with you?

8           A.       That's all right. Kathy is fine.

9           Q.       All right. Kathy, I'm handing you what's  
10          been marked as Plaintiff's Exhibit 1. If you would  
11          -- can you confirm that that is the 30(B)(6) notice  
12          for the State Election Board's deposition?

13          A.       It is.

14          Q.       All right. And have you read and reviewed  
15          that 30(B)(6) notice?

16          A.       Yes, I have.

17          Q.       Okay. And you're able today to testify  
18          competently and fully as to the matters designated  
19          therein?

20          A.       Some of it was unclear to me exactly what  
21          you were asking, but I think with clarification, I  
22          will be able to do.

23          Q.       Okay. Fair enough. We will try to  
24          clarify as we move along.

25                    You're the director of the elections

1 division for the office of Secretary of State,  
2 correct?

3 A. That's correct.

4 Q. All right. And I believe you have some  
5 sort of certification, CERA?

6 A. Certified Elections Registration  
7 Administrator through Auburn University Election  
8 Center.

9 Q. And what is that certification?

10 A. It's a program that was developed through  
11 Auburn University for election administrators;  
12 everything from the history of elections, to  
13 budgeting, and modernization of elections. It's a  
14 program that takes a couple of years to complete.

15 Q. Okay. And have --

16 A. And I have completed that.

17 Q. And if I remember correctly, you're one of  
18 the few folks in Georgia who is so certified?

19 A. I was -- I was the first in Georgia. I  
20 think there are now about maybe four or five of us.

21 Q. Okay. Tell me about your professional  
22 experience in the area of elections administration.

23 A. Uh-huh. I first began elections as a poll  
24 worker back in the eighties. A long time ago.

25 Q. Indeed.

1           A.     And from there, I went on to work  
2 part-time in the elections office, staffing polls; I  
3 then became a clerk; and then became supervisor of  
4 elections for Chatham County in Savannah; installed  
5 the new voting systems; was supervisor of elections  
6 there for about five years; and then in 2002, I came  
7 to the State of Georgia as director of elections  
8 administration, spearheaded the implementation of the  
9 Georgia Statewide Uniform voting system; in 2005, I  
10 assumed the duties of director of elections.

11           Q.     Okay. And that director of elections is  
12 the official that's principally responsible for  
13 managing the Secretary of State duties in regards to  
14 elections; is that --

15           A.     Correct.

16           Q.     -- correct?

17                     Okay. Now, Kathy, you're familiar with  
18 the allegations of the ACORN versus Cox lawsuit that  
19 we're in now; is that correct?

20           A.     Uh-huh. Correct.

21           Q.     Describe your understanding of what the  
22 allegations are in the complaint.

23           A.     My understanding is that ACORN/Project  
24 Vote have concerns over requirements for sealing and  
25 the prohibition against copying voter registration

1 forms when those forms are collected by third-party  
2 entities.

3 Q. Okay. And that was -- those requirements  
4 were State Election Board regulations that were  
5 enacted back in September of '05, correct?

6 A. Correct.

7 Q. All right. Now, have you read the  
8 complaint in the case?

9 A. Yes.

10 Q. Okay. Have you read the other pleadings  
11 that have been filed thus far in the case?

12 A. I've read some of them. I can't tell you  
13 I've read them all, but I have read some of them.

14 Q. I understand. Now, in addition to the  
15 ACORN versus Cox lawsuit, you're also familiar with  
16 the Wesley Foundation versus Cox lawsuit, correct?

17 A. The Wesley 1, Wesley 2?

18 Q. Same case, different decisions, right?

19 A. Yeah.

20 Q. Well, the Wesley 1 filed in federal court.

21 A. Yes, I am.

22 Q. Okay. What was that lawsuit about?

23 A. That was the one regarding the acceptance  
24 of bundled applications from third-party entities.  
25 For -- prior to that ruling, the Secretary of State's

1 office, under -- under counsel, did not accept  
2 bundled applications. And after that ruling, we do  
3 accept bundled applications from third-party  
4 entities.

5 Q. And you also accept single applications  
6 from third-party entities?

7 A. Oh, yes. Uh-huh.

8 Q. All right. If you will give me just an  
9 overview of what the SEB does. What it is and what  
10 it does.

11 A. Let me -- let me give you a code book,  
12 Bradley, and enter it in, too.

13 The State Election Board and Secretary of  
14 State's office both have certain defined duties.  
15 Some of them are commingled, some of them are -- are  
16 fairly separate, but the State Election Board  
17 oversees investigations, they oversee matters that  
18 anyone who files a complaint related to the elections  
19 process in any county, we have an investigator who  
20 investigates that complaint. The findings are  
21 brought back to the State Election Board. The State  
22 Election Board reviews the findings, and then they  
23 decide whether to send the findings to an  
24 administrative law judge or, you know, whether to  
25 close the case.

1           And then the case comes back from the  
2 administrative law judge, and they at that time can  
3 issue a civil penalty. They have no criminal  
4 authority but they do have civil penalty authority.

5           Q.     Okay. And then the State Election Board  
6 obviously does rulemaking, correct?

7           A.     They have rulemaking authority, they have  
8 the authority for some voter education efforts under  
9 photo ID, they have the authority to promulgate  
10 rules. Without getting the code book out, I mean,  
11 there's a litany of --

12          Q.     No, that's fine. And I think you have hit  
13 on most the ones that at least I had on my checklist.

14                   And I believe you also said they do have  
15 the power to hold hearings and to subpoena witnesses  
16 and necessary people for those hearings, correct?

17          A.     (Witness nods head affirmatively.)

18          Q.     "Yes"?

19          A.     Yes.

20          Q.     Okay.

21          A.     Sorry.

22          Q.     All right. And am I correct in my  
23 understanding that the elections division, your  
24 office, is responsible for providing administrative  
25 support to the State Election Board?

1           A.     Well, we don't work for the State Election  
2 Board, but we do perform duties that the State  
3 Election Board requires in the performance of its  
4 duties.

5           Q.     Right.

6           A.     But our staff does not per se report  
7 directly to the State Election Board. They do not  
8 have an administrative staff. They're very quick to  
9 point out that we are not their staff; however, we do  
10 perform duties at the request of the State Election  
11 Board, such as pulling together the State Election  
12 Board meetings, investigations, presenting them the  
13 case files.

14          Q.     Uh-huh. And you do report to the  
15 Secretary of State?

16          A.     Correct.

17          Q.     Who is the chair of the State Election  
18 Board?

19          A.     I do.

20          Q.     Okay. And at least in the Secretary of  
21 State's regulations for the elections division, it at  
22 least says that you're supposed to provide  
23 administrative support to the State Election Board,  
24 is that your understanding?

25          A.     I don't know where that is defined at. I

1 really don't, by statute or code. It -- it occurs,  
2 but I do not know where it is defined.

3 Q. That's fine. That's fine.

4 And I think you have -- you were  
5 describing some of the things, you set up the  
6 meetings, you do other things that the board asks of  
7 you?

8 A. Uh-huh.

9 Q. And the board -- why don't you just tell  
10 us for the record how the board is comprised.

11 A. The board is comprised of an appointee of  
12 the House, an appointee of the Senate, one of the  
13 Democratic Party, one of the Republican Party, and  
14 then the Secretary of State serves as chair.

15 Q. By virtue of her office?

16 A. Yes.

17 Q. All right. And is it fair to say that the  
18 State Election Board relies, from time to time, on  
19 the professional advice of your office in election  
20 matters?

21 A. That's a fair statement.

22 Q. Okay. Do you have occasion, from time to  
23 time, to draft rules for the State Election Board's  
24 consideration?

25 A. We have. We generally use the I won't say

1 powers, we use Jeff Lanier in legislative counsel,  
2 because he is very good at drafting rules, he can  
3 make them consistent so that all the rules look the  
4 same rather than different people drafting them.

5 So typically, we will get guidance from  
6 the State Election Board, take an outline or draft to  
7 legislative counsel, they will prepare a draft of  
8 rules for the review of the State Election Board for  
9 our office.

10 Q. Jeff Lanier is a lawyer, correct?

11 A. Uh-huh. He is also former state election  
12 director.

13 Q. One of your predecessors, correct?

14 A. He has experience in this area.

15 Q. Absolutely.

16 Do you yourself do any drafting of rules  
17 for the election board?

18 A. No. I do not do any drafting of the  
19 rules. We -- we only have ever drafted, our office  
20 ourselves, one set, and that was the photo  
21 identification set of rules. We drafted those  
22 because legislative counsel was so busy earlier this  
23 year. In the end, we wound up taking them to  
24 legislative counsel because there was so much  
25 numbering in them that, you know, we went back to

1 them and they cleaned them up.

2           So we really don't draft the rules, we sit  
3 down with them, go over a list of what we think the  
4 State Election Board might be looking for, and we go  
5 from there. The same way almost with working with  
6 legislation drafting a bill. You know, we don't  
7 write our own legislation, we just might work with a  
8 legislator on what the ideas are, and then take it to  
9 legislative counsel.

10           Q. Now, tell me how legislative counsel is  
11 appointed.

12           A. I honestly do not know. I don't know how  
13 legislative counsel comes into play.

14           Q. Is it an office in the capitol or, I  
15 mean --

16           A. Uh-huh.

17           Q. Okay. Do you know who it reports to?

18           A. I really don't. Sewell Brumby is the head  
19 of legislative counsel, but I don't -- I don't know  
20 the hierarchy of legislative counsel in the  
21 government. I sure don't.

22           Q. And it just is happenstance that Jeff  
23 Lanier right now is in the office as -- they don't  
24 always have an election official?

25           A. Oh, no. No, when Jeff left from his

1 duties as state election director, he took other  
2 employment.

3 Q. Okay.

4 A. And it just so happened to be as  
5 legislative counsel.

6 Q. Okay. Cliff Tatum is the legal affairs  
7 assistant?

8 A. Assistant director of legal affairs,  
9 correct.

10 Q. And in the process when you interface with  
11 legislative counsel, is he one of the folks that does  
12 that?

13 A. Sometimes he's there with me, and  
14 sometimes he's not, sometimes it's just him. So it  
15 depends on our schedules and who's available.

16 Q. Okay.

17 A. Sometimes it's both of us.

18 Q. All right. I'm going to go through a  
19 series of documents and try to identify -- get them  
20 identified and ask you some questions about them.

21 A. (Witness nods head affirmatively.)

22 Q. And hopefully, that will be a relatively  
23 quick and painless process.

24 (Plaintiff's Exhibit 2 was marked for  
25 identification.)

1 Q. (By Mr. Heard) Ms. Rogers, I'm handing  
2 you what has been marked as Plaintiff's Exhibit 2.  
3 And if you'll review that and let me know what that  
4 is.

5 A. (Reviews document) This appears to be the  
6 submission to the Department of Justice regarding the  
7 emergency rules enacted by the State Election Board  
8 on -- I'm not sure of the date -- it's in September  
9 of '04.

10 MR. RITTER: Uh-huh.

11 Q. (By Mr. Heard) I think it says  
12 September 9th, if you flip over to that (indicating).

13 A. Okay.

14 Q. Sort of in the middle of that exhibit  
15 there.

16 A. (Reviews document.)

17 MR. RITTER: This is Exhibit 2?

18 MR. HEARD: Exhibit 2.

19 Q. (By Mr. Heard) And attached to this  
20 exhibit is a copy of that emergency rule 183-1-6-.06?

21 A. Uh-huh.

22 Q. And that deals with the copy prohibition  
23 and the sealing requirement as well, correct?

24 A. (Witness nods head affirmatively.)

25 Q. "Yes"?

1 A. Correct.

2 Q. Okay.

3 All right. So in that exhibit, this  
4 includes the State law department's preclearance  
5 submission as well as a copy of the rule, correct?

6 A. Correct.

7 Q. All right.

8 (Plaintiff's Exhibit 3 was marked for  
9 identification.)

10 Q. (By Mr. Heard) All right. I've handed  
11 you Exhibit 3, Plaintiff's Exhibit 3. If you'll --  
12 and this is -- this is an excerpted exhibit, but if  
13 you'll identify what this exhibit is.

14 MR. RITTER: What do you mean "it's an  
15 accepted exhibit"?

16 THE WITNESS: Excerpted.

17 MR. HEARD: Excerpted.

18 MR. RITTER: Yes. What did you mean by  
19 that?

20 MR. HEARD: I don't -- all of the  
21 attachments that aren't relevant to the lawsuit,  
22 attachment of former complaints and everything,  
23 is not there. The full text of the submission  
24 letter is there, along with exhibits that I'm  
25 going to go through with her.

1 MR. RITTER: Okay.

2 THE WITNESS: Okay. This document are the  
3 submission of request for preclearance on rules  
4 which were adopted by the State Election  
5 Board -- and I do not know the date of the  
6 meeting, -- of the rules adopted on  
7 September 14th, 2005.

8 Q. (By Mr. Heard) Okay. All right.

9 And among the rules that was adopted on  
10 September 14th, 2005, is the copying and sealing rule  
11 that's the subject of this lawsuit, correct?

12 A. Correct.

13 Q. Okay. And a copy of that rule is attached  
14 as Exhibit A-1 to this exhibit, correct?

15 A. Correct.

16 Q. All right. And then if you flip right  
17 past the Exhibit A-1 in this Exhibit 3, the next  
18 exhibit that you find is Exhibit E-1 to the  
19 preclearance submission. And those are the minutes  
20 of the State Election Board meeting on  
21 September 14th, correct?

22 A. That's correct.

23 Q. If you flip over to Page 4 of those  
24 minutes, under Roman numeral 5, with the heading  
25 "Adoption of SEB Rules."

1 A. Uh-huh. Yes.

2 Q. The first entry there states -- well, why  
3 don't you read it for the record.

4 A. "Chairperson Cox called for discussion,"  
5 is that the one you're talking about?

6 Q. Yes, ma'am.

7 A. -- "of SEB Rule 183-1-6-.03(3)(0). After  
8 discussion between the board, Mr. Evans made a motion  
9 to adopt said rule, Mr. McIver seconded, motion  
10 passed four to one with Mr. Worley casting the  
11 dissenting vote."

12 Q. And that is the entry with respect to the  
13 copying and sealing rule that we're talking about in  
14 the lawsuit, correct?

15 A. Correct.

16 Q. All right.

17 MS. ESTELLE ROGERS: Let the record  
18 reflect that it's three-oh and not three-zero.

19 MR. HEARD: Thank you.

20 MS. ESTELLE ROGERS: Thank you.

21 Q. (By Mr. Heard) Now, if you flip over to  
22 Page 9 of that same exhibit, are these the minutes of  
23 the July 27th SEB meeting?

24 A. They are.

25 Q. All right. And if you flip to Page 11 of

1 that, toward the bottom under Roman numeral 6, topic  
2 number 3 is another entry that states -- I'll read it  
3 this time -- "Chairperson Cox called for discussion  
4 of SEB rule 183-1-6-.03(3)(o)," and it says, "Mr.  
5 McIver made a motion of intent to adopt SEB rule" --  
6 the same rule we just referenced -- "as presented.  
7 Mr. Worley seconded; motion passed unanimously. The  
8 rule will be posted for 30 days prior to adoption."

9 This is the entry that reflects the  
10 posting of the rule that was passed on  
11 September 14th, correct?

12 A. Correct.

13 Q. All right. Oh, I know why my notes are  
14 incorrect, I forgot to do an exhibit. Okay.

15 (Plaintiff's Exhibit 4 was marked for  
16 identification.)

17 Q. (By Mr. Heard) Okay. You've been handed  
18 Exhibit 4, and if you will just confirm that these  
19 are the minutes of the specially-called State  
20 Election Board meeting via telephone conference on  
21 September 9th, 2004, where the emergency rule related  
22 to copying and sealing that we just discussed were  
23 adopted, correct?

24 A. Correct.

25 Q. All right. And on the first and second

1 page, beginning toward the bottom of the first page  
2 and then the full second page almost, are the minutes  
3 related to the passage of that rule, correct?

4 A. Correct.

5 Q. Now, the emergency rules, were they --  
6 were they posted for public comment at all?

7 A. If required by law, they were, Bradley,  
8 but I -- I can't remember what the requirements are  
9 regarding emergency rules and the 30-day requirement.  
10 I would have to go back and -- and look at that.

11 Q. I don't know either --

12 A. I don't know. So I know we would have --  
13 I know we would have followed the statute, you know,  
14 as far as under APA, but I -- I don't recall what  
15 that time period was for emergency rules.

16 Q. Well, I would imagine with emergency  
17 rules, I don't know if you have to post them for 30  
18 days, but I'm just wondering whether they were posted  
19 for any period of time prior to their adoption?

20 A. I'm sure they were.

21 Q. Okay.

22 A. I would have to go back and confirm the  
23 time they were posted, but I feel very confident that  
24 they were posted.

25 Q. And do you know or recall how far in

1 advance this September 9th special-called meeting of  
2 the State Election Board by conference call was  
3 posted for the public?

4 A. I do not recall the amount of time. I  
5 do -- I can tell you that it was a sufficient amount  
6 of time. I know that you can enact special rules to  
7 call an emergency meeting of the board, but it was  
8 not -- I do not recall this as being an emergency  
9 meeting. I recall it adopting emergency rules, but I  
10 do not recall there being a shortened time frame for  
11 posting the notice. We generally give 24 hours at  
12 least.

13 Q. At least 24 hours?

14 A. Uh-huh.

15 Q. All right. If you look on Exhibit 4, it  
16 does say "special conference call," I mean, does  
17 special equate with emergency or --

18 A. Well, no. Anytime we do a meeting that's  
19 other than a regularly called -- the SEB schedules  
20 four regular meetings a year.

21 Q. I see.

22 A. Any meeting outside of those four would be  
23 called a special meeting.

24 Q. Okay. And do you recall whether in the  
25 notice that went out for this meeting there was

1 anything specific as to the nature of the rules that  
2 were going to be discussed at the meeting?

3 A. I do not recall what the notice stated.

4 Q. Okay. I couldn't find it online, so --

5 A. It's probably not there anymore.

6 Q. Okay.

7 All right. With respect to the emergency  
8 rule, now that I've gone back here, were there any  
9 other documents, records or other things that would  
10 constitute the administrative record with respect to  
11 that rule?

12 A. Not that I am aware of.

13 Q. Okay. The meeting wasn't transcribed or  
14 videotaped or otherwise recorded, was it?

15 A. I don't believe so. We're currently  
16 recording meetings; I can't remember the date that we  
17 began recording meetings, but I can recall where this  
18 meeting occurred, and I do not remember there being  
19 audio equipment in the room at that time.

20 Q. Okay. This meeting occurred over in the  
21 Capitol, Room 110?

22 A. A conference room in the Capitol.

23 Q. Okay. And how are the meetings recorded  
24 at this time?

25 A. Currently they're recorded, we bought new

1 audio recording equipment that records it onto a CD.

2 Q. Okay. Now, you said you don't recall  
3 when?

4 A. I do not recall when we began recording  
5 the meetings. We've had, today's meeting I think is  
6 like the 18th SEB meeting in the last year.

7 Q. Okay.

8 A. So honestly --

9 Q. It's been quite a few.

10 A. -- they -- they have become a blur.

11 Q. I understand. All right.

12 And other than the summary provided in the  
13 minutes, you're not aware of any other official  
14 summaries of board action on this rule?

15 A. No, I am not.

16 Q. All right. Now, if you'll go back to  
17 Exhibit 3, I just wanted to identify a couple of more  
18 things in that exhibit.

19 Exhibit E-2 of the preclearance  
20 submission --

21 A. Where are you at? Oh, E-2, it's on the  
22 bottom.

23 Q. Towards the back at the --

24 A. Sorry.

25 Q. Yeah.

1 A. (Reviews document) Uh-huh.

2 Q. All right. What is this document?

3 A. It appears to be a document that was sent  
4 by John Sullivan, who is the Fulton County registrar,  
5 to Pam Fowler, who's an administrative assistant --

6 Q. Why don't you go back to John Sullivan. I  
7 think it's a different John Sullivan.

8 MS. ESTELLE ROGERS: Yeah.

9 THE WITNESS: Oh, I'm sorry.

10 You're right. I just automatically  
11 thought it was John Sullivan over in Fulton. I  
12 apologize.

13 MR. HEARD: That's all right.

14 MS. ESTELLE ROGERS: And it's Washington  
15 John Sullivan.

16 THE WITNESS: Yeah.

17 Okay. It's from John Sullivan, SEIU, and  
18 he forwarded a document to Pam Fowler, who is  
19 administrative assistant in the Secretary of  
20 State elections division, regarding comments on  
21 the proposed amended rule.

22 Q. (By Mr. Heard) The copying and sealing  
23 rule that was adopted on the 14th?

24 A. Correct.

25 Q. Okay.

1 All right. And the following exhibit in  
2 the last part of Exhibit 3, which is Exhibit E-3 to  
3 the preclearance submission, can you identify that  
4 document?

5 I hope so or somebody is going to be very  
6 mad.

7 A. Yes. I will read this one correctly this  
8 time. Don't assume that it's somebody else. I  
9 apologize. I get so many e-mails from John Sullivan  
10 in Fulton, I just was sure that was him.

11 This one is from Estelle Rogers with  
12 Advancement Project, and it was sent to Pam Fowler,  
13 administrative assistant, on Monday, September 12th,  
14 and it concerned comments from Advancement Project  
15 regarding the proposed rules.

16 Q. And these are comments both from  
17 Advancement Project and Project Vote; is that  
18 correct?

19 A. Correct.

20 Q. Okay. In opposition to the copying and  
21 sealing rule?

22 A. Correct.

23 Q. Okay. Now, other than letters or other  
24 comments that may have generated from my office, did  
25 you receive any other written comments in regard to

1 this rule?

2 A. I -- I do not recall any.

3 Q. All right. And that permanent rule that  
4 was passed on September 14th of '05 was indeed  
5 precleared in January of '06, and effective on the  
6 17th of January of '06?

7 A. Yes.

8 Q. I think you testified you didn't receive  
9 any other written comments, but let me just clarify.  
10 Did you receive any comments in support of that rule,  
11 the copying and the sealing rule, any public  
12 comments?

13 A. I would have to go back, we -- and review  
14 minutes. Well, we've got the minutes. I don't  
15 recall if we had a tape of that meeting or not, but  
16 frequently there are election officials who are at  
17 the meetings. They're generally quite vocal, and  
18 would have provided comments, if the public comment  
19 period was available. But I -- I don't recall  
20 whether they did or not.

21 I can't say no one did because I don't  
22 recall if they did.

23 Q. All right. Well, you have the minutes  
24 from that meeting with you?

25 A. Uh-huh.

1 Q. I mean, they're not reflected in the  
2 minutes of those meetings?

3 A. It may be that there were no election  
4 officials there that day who spoke.

5 Q. Okay. All right.

6 Now, did the board or your office make any  
7 response to -- let me back up and have you identify a  
8 document and then ask you that question. Have you  
9 identify two documents, actually.

10 (Plaintiff's Exhibit 5 was marked for  
11 identification.)

12 Q. (By Mr. Heard) All right, Kathy, I'm  
13 handing you what's been marked as Plaintiff's  
14 Exhibit 5. If you will review that document and  
15 identify that for me, please.

16 A. (Reviews document) Is there something  
17 missing here?

18 Q. Yeah. Okay.

19 MR. HEARD: Off the record for a second.

20 (Off the record.)

21 MR. HEARD: We are back on the record.

22 Q. (By Mr. Heard) I think we have now gotten  
23 the correct exhibit identified as Exhibit 5. If you  
24 will go ahead and identify what that document is,  
25 please.

1           A.     This is a letter from Bradley Heard, to  
2     the Secretary of State.  It's in regard to notice of  
3     violation under the NVRA and request for correction  
4     dated September 14, 2005.  And it relates to the  
5     acceptance of voter registration applications by  
6     private entities.

7           Q.     Okay.  And you're cc'd on this, correct?

8           A.     That's correct.

9           Q.     Do you recall seeing this document at  
10    around the time?

11          A.     I recall seeing many documents similar to  
12    this.  This one in particular, no, but I do recall  
13    seeing many on this subject.

14          Q.     Yes, ma'am.  Fair enough.  There was quite  
15    a flurry of correspondence --

16          A.     Yes.

17          Q.     -- around that time.  All right.

18                 MR. HEARD:  Now, I'll mark another  
19    document for you here.

20                         (Plaintiff's Exhibit 6 was marked for  
21    identification.)

22          Q.     (By Mr. Heard)  Okay.  If you will take a  
23    look at what's been marked as Plaintiff's Exhibit 6,  
24    and identify that document for me.

25          A.     This is a response to Mr. John Sullivan

1 with SEIU, in regard to his concerns about the  
2 proposed State Election Board rule, and it is my  
3 response to Mr. Sullivan on that subject.

4 Q. All right. And do you recall whether any  
5 response was made to the public comments submitted by  
6 Advancement Project and Project Vote?

7 A. I know that I had conversations with Brian  
8 Miller of Project Vote; I don't recall having  
9 conversations with the Advancement Project. I -- I  
10 would have to check correspondence files to see if  
11 there was written communication.

12 I also believe I had written communication  
13 with Brian Miller of Project Vote somewhere in the  
14 last couple of years, but, there again, I -- I would  
15 have to check the files to know.

16 Q. All right. That same question that I  
17 asked you with regard to the emergency rule; other  
18 than the exhibits we've just been talking about, are  
19 you aware of any other written documents or things  
20 that would comprise the administrative record with  
21 respect to the passage of that rule, of the  
22 September 14th copying and sealing rule?

23 A. Nothing immediately comes to mind, no.

24 Q. And you don't recall whether you were  
25 taping or recording the meetings at that point?

1 A. I do not. I do not.

2 Q. Okay. And other than the minutes of the  
3 meeting, you don't recall any other official written  
4 summaries of that meeting?

5 A. Correct.

6 Q. Okay.

7 (Plaintiff's Exhibit 7 was marked for  
8 identification.)

9 Q. (By Mr. Heard) All right. Kathy, I'm  
10 handing you what's been marked as Plaintiff's  
11 Exhibit 7. If you'll review that document and let me  
12 know what that is.

13 A. (Reviews document) This is a -- a  
14 proposed change to the rules of the State Election  
15 Board related to private entities, which was provided  
16 by Bradley Heard to the State Election Board for  
17 consideration during their March 8th, 2006 State  
18 Election Board meeting.

19 Q. Okay. And you were cc'd on that one as  
20 well, correct?

21 A. Correct.

22 Q. Okay. And do you recall what, if  
23 anything, that your office did in response to this  
24 petition?

25 MR. RITTER: You mean her office, the

1 State Election Board, or her office, Secretary  
2 of State's office?

3 Q. (By Mr. Heard) Why don't you answer for  
4 both.

5 A. Okay. My recollection is that the State  
6 Election Board moved to adopt these rules in part,  
7 and then they also moved to have the state  
8 election -- to have the elections division review  
9 these proposed rules in concert with our voter  
10 registration and elections unofficial group of task  
11 force members, and to invite yourself and Project  
12 Vote to that meeting.

13 And then these rules were subsequently  
14 discussed the next month with that group of election  
15 officials and yourself and Brian Miller from Project  
16 Vote.

17 Q. Okay.

18 (Plaintiff's Exhibit 8 was marked for  
19 identification.)

20 Q. (By Mr. Heard) All right. I am handing  
21 you now Plaintiff's Exhibit 8, and if you will just  
22 confirm for me that these are the -- oh, the wrong  
23 minutes.

24 MS. ESTELLE ROGERS: Oh, do we already  
25 have that one?

1 MR. HEARD: Yes. We'll strike that.

2 Yeah. We've already got these.

3 MS. ESTELLE ROGERS: Well, you have them  
4 as attached to something, you didn't have them  
5 freestanding.

6 MR. RITTER: Right. They're attached to  
7 the submissions.

8 MS. ESTELLE ROGERS: To the preclearance.

9 MR. HEARD: Yes. We don't need to  
10 introduce those again, then.

11 MS. ESTELLE ROGERS: No.

12 (Plaintiff's Exhibit 8 was withdrawn.)

13 Q. (By Mr. Heard) I think I had it as an  
14 exhibit but I don't appear to have it here with me  
15 today. But you do recall that -- I believe you  
16 testified that the petition in Exhibit 7 was adopted  
17 in part, rejected in part by the State Election Board  
18 at its March 8th, 2006 meeting?

19 A. I can't say "rejected in part." They did  
20 not consider -- I mean, they didn't -- they didn't  
21 understand portions of it. They -- so they asked the  
22 task force and the elections division to meet and  
23 review those rules and come back.

24 I do recall that they asked you some  
25 specific questions regarding voter registration by

1 private entities at places where criminal activity  
2 took place or where alcohol was sold. There were  
3 some portions of those proposed rules that -- that  
4 led them to believe that it was possibly allowing  
5 voter registration at those locations. And I seem to  
6 recall they gave you the opportunity to also explain  
7 your thoughts on those rules at that time.

8 Q. Well, what I'm -- what I mean by "adopt in  
9 part and reject in part" is that they did not accept  
10 the petition --

11 A. In whole.

12 Q. -- in whole?

13 A. At that time, they did not.

14 Q. Okay.

15 A. At that time, they agreed to put forward  
16 the change from 72 hours to 10 days. I -- as I said,  
17 I cannot say they rejected the rest of it. I do not  
18 believe that they had fully digested it all at that  
19 time, either.

20 Q. Okay. In any event, the minutes should  
21 reflect what the board action was from that meeting,  
22 correct?

23 A. Correct. Yeah. The board will, at a  
24 future meeting, be reviewing proposed rules for  
25 private entities based upon the outcome of the

1 meeting that we had with the task force.

2 Q. The task force after the March 8th  
3 meeting?

4 A. Uh-huh.

5 Q. Okay. All right.

6 (Plaintiff's Exhibit 8 was marked for  
7 identification.)

8 MR. RITTER: This one we are just marking  
9 as 8?

10 MR. HEARD: 8, right.

11 Q. (By Mr. Heard) Kathy, if you will take a  
12 look at the real Exhibit 8, are these the minutes --  
13 is this a summary of the -- of the meeting from  
14 May 24th, 2006?

15 A. Correct. And it's a summary of an SEB  
16 meeting conducted in Savannah on May 24th of 2006.  
17 The minutes have not yet been adopted.

18 Q. All right. And way down there on number  
19 22, I believe, of that list of actions, is it says,  
20 "Mr. McIver made a motion to adopt SEB rule  
21 183-1-6-.03 as posted." Those would be the March 8th  
22 revisions that they adopted; is that correct?

23 A. That would be the ten-day, moving from --  
24 yes, that's correct. The ones that they approved and  
25 posted for notice based upon the proposed rules that

1 you gave them on March 8th. That is, changing the  
2 72 hours to 10 days.

3 Q. Correct. Okay.

4 A. Don't you like our LISTSERV that gives you  
5 all this automatically?

6 Q. Love it. Actually, I got this off line.

7 A. Okay.

8 (Plaintiff's Exhibit 9 was marked for  
9 identification.)

10 Q. (By Mr. Heard) All right. Take a look at  
11 Exhibit 9, and are these the amendments that were  
12 adopted by the State Election Board on the -- on  
13 March 8th that were then posted and adopted at the  
14 May 24th, 2006 meeting?

15 A. (Reviews document) That is correct.  
16 These are the changes to the rules which were adopted  
17 by the State Election Board.

18 Q. Okay. All right.

19 Now, I'm -- wait. Oh, one more thing with  
20 regard to these rules.

21 (Plaintiff's Exhibit 10 was marked for  
22 identification.)

23 Q. (By Mr. Heard) Take a look at Exhibit 10,  
24 which is a letter from me to Mr. Ritter in regard to  
25 those rules that we've just been discussing. And let

1 me know if you're familiar with that letter.

2 A. (Reviews document) Yes. I am familiar  
3 with this letter.

4 Q. And directing your attention to the second  
5 paragraph of that letter, we are -- I say "we," me on  
6 behalf of a prior client of the Wesley Foundation --

7 A. Uh-huh.

8 Q. -- were requesting written explanations  
9 from the board as to why they did not at that time  
10 adopt -- or repeal, I should say, the copying and  
11 sealing restrictions; is that correct?

12 MR. RITTER: Let me object to the extent I  
13 think the letter speaks for itself as to what  
14 it's seeking. Ms. Rogers can tell you what her  
15 understanding is, I think, in response.

16 THE WITNESS: Without -- I mean, that  
17 paragraph, I would assume that's what you're  
18 saying here, but --

19 Q. (By Mr. Heard) It does speak for itself,  
20 and I'll -- let me ask you, did the State Election  
21 Board provide any other written response to the  
22 Wesley Foundation, or any other entity, other than  
23 what's been noted in the summary of the minutes, as  
24 to the reasons for adopting or rejecting portions of  
25 that petition for rulemaking?

1           A.     No.  I mean, they stated that day at the  
2 meeting that they were fully supportive of moving the  
3 72 hours to 10 days.  And I'd also like to point out  
4 that during the emergency rule, when the emergency  
5 rule was adopted back in September of '04, one of the  
6 provisions there that made it 72 hours -- it had been  
7 24 hours -- and at that time, it was changed from 24  
8 to 72.  So they had been increasingly moving toward a  
9 greater expansion of time, since back in September.

10                 But as I said previously, I do not recall  
11 them rejecting the remainder of your proposed  
12 revisions to the rules, merely that they would like  
13 for someone who dealt with this every day in an  
14 administrative fashion to review them with you and go  
15 over them and see what worked for election officials  
16 and get some feedback from the folks who actually did  
17 registration.  So I -- there again, I don't think  
18 they rejected them but merely deferred them for  
19 discussion at a later point.

20           Q.     All right.  Now, do you recall whether the  
21 board meetings were being recorded at that time?

22           A.     That was March of this year?

23           Q.     Of this year.

24           A.     I believe so.  I -- I feel fairly  
25 confident they were.

1 Q. All right. Okay.

2 Now, I'm going to get back to my confusion  
3 I alluded to a minute ago. The rules that are in  
4 Exhibit 9 -- yes, Exhibit 9 -- is it your  
5 understanding that those rules have been submitted  
6 for preclearance?

7 A. Yes.

8 Q. Okay. Do you know when that happened?

9 A. These were transmitted from our office to  
10 the Attorney General's office sometime after the  
11 conclusion of the meeting. It would have been one of  
12 the action items from the meeting.

13 Q. Uh-huh.

14 A. And the Attorney General's office would at  
15 that time submit it to the Department of Justice for  
16 preclearance. We have not yet received preclearance  
17 notice back.

18 Q. You have not received the preclearance?

19 A. (Witness shakes head negatively.)

20 Q. Okay. All right.

21 (Plaintiff's Exhibit 11 was marked for  
22 identification.)

23 Q. (By Mr. Heard) Now, Exhibit 11 might give  
24 you the reason for my confusion there. If you'll  
25 look at this exhibit, this appears to be the -- I can

1 represent to you that it's a rule I pulled off the  
2 Web site.

3 A. Off the APA, correct.

4 Q. From --

5 A. It would have gone into effect 20 days  
6 after adoption, under the APA rules.

7 Q. Okay.

8 A. However, let me explain to you what we  
9 typically do, because of DOJ preclearance on all of  
10 these rules and procedures.

11 Q. All right.

12 A. It's very similar to legislation.  
13 Legislation is adopted, legislation is signed by the  
14 governor and it's enacted, and it may even be printed  
15 into, you know, the new Lexis book, of which the  
16 election officials will obtain. But until it's  
17 actually been precleared, it's not considered to be,  
18 you know, 100 percent in effect.

19 Now, the same thing with these rules.  
20 Under the APA, the rules are adopted within 20 days  
21 after they are finalized, after the posting and the  
22 final adoption by the SEB. And at that time, the  
23 rules may still be waiting on preclearance.

24 We mail them out to the election officials  
25 during the comment period for their comment.

1 Whenever rules are posted, they go out to all of the  
2 elections and registration officials. Then, once the  
3 rule is adopted, we mail it out again, we tell them  
4 it is adopt -- we mail notice that the board has  
5 adopted it. We don't send the rule again.

6 Q. Okay.

7 A. And then when it is finally approved by  
8 DOJ, I send another memo with the rule again and say,  
9 "Here it is in its final form. It's now received DOJ  
10 preclearance and is in full effect."

11 Q. Okay.

12 MR. RITTER: Brad, can I add something to  
13 this that might be helpful to you? If you don't  
14 want me to --

15 MR. HEARD: You can, yeah. Yeah.

16 MR. RITTER: I'll be happy to offer a  
17 comment to you.

18 MR. HEARD: Right.

19 MR. RITTER: The rules in this specific  
20 case, and we're talking about an edition of  
21 (1)(b), and then we're changing 72 hours to 10  
22 days, our expansive rules rather than  
23 restrictive rules probably have no racial or  
24 voter impact at all other than broadening  
25 powers, and, frankly, I think that B -- (1)(b)

1 just states what was already understood.  
2 Because of that, I think it's questionable  
3 whether they even needed justice department  
4 approval in this case. But we would certainly  
5 treat these rules, when they were adopted and  
6 the way that they are, as in effect. We're not  
7 claiming that these rules somehow would not go  
8 into effect until we get justice department  
9 approval.

10 And when we get that back, we would just  
11 consider that to be retroactive in this case, to  
12 the extent it has any legal effect at all.

13 THE WITNESS: And that -- that's correct.  
14 If an election official called me today and  
15 asked, you know, "Has that ten-day rule been  
16 precleared yet?" We would say, While it's not  
17 been precleared, it's pretty much like when they  
18 have to move a polling place" --

19 MR. RITTER: Right.

20 THE WITNESS: -- and they go ahead and  
21 move the polling place and hold the election and  
22 preclearance comes 60 days later afterwards.

23 Q. (By Mr. Heard) All right.

24 A. And --

25 MR. RITTER: And just so that it's crystal

1 clear, you know, what we're telling you is that  
2 we're treating these rules as if they are  
3 legally in effect. You know, I don't mean to  
4 slight the niceties, but that, so that you know  
5 -- it's not testimony but I'll tell you from the  
6 SEB and Secretary of State's side, that is the  
7 fact.

8 MR. HEARD: All right. Well, that -- that  
9 clears up the confusion. I don't know that -- I  
10 don't know --

11 MR. RITTER: Sure.

12 MR. HEARD: -- positively or negative  
13 whether Justice would agree with that, but --

14 THE WITNESS: DOJ agree --

15 MR. HEARD: -- you know, but, yeah.

16 MR. RITTER: Well, they might or might not  
17 but I can tell you how we'll treat them, and  
18 that's the fact.

19 MR. HEARD: But I understand that that's  
20 how you'll treat them. I appreciate that.

21 THE WITNESS: It takes time sometimes  
22 to --

23 MR. HEARD: Okay. All right. That clears  
24 that up.

25 Q. (By Mr. Heard) And I guess I'll ask the

1 same question, just for completeness sake: Other  
2 than these exhibits, are you aware of any other  
3 written documents that comprise the record related to  
4 that petition for rulemaking that is the subject of  
5 these March 8th, 2006 rule amendments?

6 A. I am not. I am not aware of any other  
7 documents at this time.

8 Q. Okay. And the meeting may -- is probably  
9 recorded. Other than that recording, that would be  
10 it?

11 A. Uh-huh.

12 Q. Okay. All right.

13 Now, with regard to the emergency rule in  
14 '04, or the September 14th, '05 rule that's the  
15 subject of the lawsuit, the copying and sealing  
16 provisions, what, if any, role did your office have  
17 in drafting those rules? "Your office" meaning the  
18 election division of the office of Secretary of  
19 State.

20 A. And you're talking about the emergency  
21 rule and the subsequent?

22 Q. If you -- I mean, you can answer them  
23 separately if you --

24 A. Well, they -- they would be the same.

25 Q. Okay.

1           A.     Our office, at the direction of the State  
2     Election Board, worked with legislative counsel to  
3     provide a draft for the review of the State Election  
4     Board.

5           Q.     Okay. And do you recall who specifically  
6     on the State Election Board requested these rules?

7           A.     No, I do not.

8           Q.     Okay. How is that request typically made?

9           A.     Frequently during conversations, one State  
10    Election Board an example would be at a recent State  
11    Election Board, the board was discussing photo  
12    identification and travel IDs, and how the -- the  
13    statute was unclear as to what constituted a travel  
14    ID. So they asked us to bring them back some rules  
15    that they could use to help clarify that.

16                   And generally, it's, you know, the board  
17    as a -- as a group, may wish for clarification.

18           Q.     They sort of mention it at the meeting and  
19    you --

20           A.     Uh-huh. The same thing when they want an  
21    opinion from the Attorney General's office, they'll  
22    mention that, "We wonder about so and so," and  
23    Stefan's got another letter.

24                   MR. RITTER: That's right.

25           Q.     (By Mr. Heard) So it's not -- it's not

1 anything that would necessarily come in a written  
2 document? I mean, it might just be a pronouncement  
3 from the meeting and --

4 A. That's correct. It generally is not a  
5 written document.

6 Q. All right. Okay.

7 And what in your estimation or -- I mean,  
8 not in your estimation, what from your knowledge is  
9 the -- was the purpose of them requesting the rule --  
10 the copying and sealing rules?

11 A. The purpose of the copying and sealing  
12 rule was that they were extremely concerned about the  
13 privacy of an applicant's personal information. And  
14 these rules were their attempt to narrowly tailor the  
15 provisions under which someone could collect and  
16 retain an applicant's private personal identifying  
17 information.

18 Q. Okay. Anything else that you recall?

19 A. We had had circumstances of receiving a  
20 number of applications which appeared to be  
21 fraudulent. And at that time, we were receiving a  
22 number of calls, as we frequently do during heavy  
23 election cycles, as is in 2004. Voters who were very  
24 concerned about their information on their voter  
25 registration applications, and the information on

1 their absentee ballot as well on the back of the  
2 absentee ballot envelope.

3 Voters, this is the number one concern  
4 during presidential election years from voters.

5 Q. What's the number one concern, I'm sorry?

6 A. Their information, their private  
7 information, if someone can obtain it. I have voters  
8 who are scared sometimes to send their voter  
9 registration application through the mail, because  
10 they think that you can bend -- if you notice, I  
11 don't know if you have one in here? I don't have  
12 one. But when you seal it and you put that sealing  
13 strip on the end, it folds it up, but you can bend it  
14 like this, and you can see inside of it (indicating).

15 MS. ESTELLE ROGERS: So it's got open  
16 sides?

17 THE WITNESS: It can have open sides.

18 MR. HEARD: Yeah.

19 THE WITNESS: It doesn't, unless you fold  
20 it to see them, but I get a lot of phone calls  
21 from voters, especially elderly voters, who are  
22 very worried that someone may be looking  
23 inside --

24 Q. (By Mr. Heard) Peeking in?

25 A. -- of there to obtain their personal

1 information.

2 Q. Okay. And is it a fair statement to say  
3 that the rule was motivated in part by the injunction  
4 that came down in the Wesley case?

5 A. Yes. That's -- that's noted within the  
6 minutes of the meeting.

7 Q. Okay. And anything else that you can  
8 recall as to the motivation for the rule?

9 A. Well, I -- I solely recall that the  
10 motivation was concern over privacy of -- especially  
11 Social Security numbers, we are -- even though we  
12 have technically lost the ability to collect Social  
13 Security under the Schwier lawsuit. And until  
14 January, until we put a new vehicle into place, we  
15 still do voluntarily collect Social Security numbers.  
16 It's the number one thing that's provided by voters  
17 is their Social Security number.

18 And so it was just simply the intent of  
19 the State Election Board to protect that voter's  
20 personal information.

21 Q. When you say "the number one thing  
22 provided by voters" --

23 A. Uh-huh.

24 Q. -- what do you mean by that?

25 A. Well, every voter has to provide

1 identifying information. In Georgia, it's always  
2 been the Social Security number. We were one of  
3 seven states who were allowed to collect Social  
4 Security numbers grandfathered in under the privacy  
5 act.

6 As you know, this year we are no longer  
7 able to collect the -- use the full Social Security  
8 number. For almost a year now, we've been working  
9 under an order that says that we can -- a voter can  
10 voluntarily give it, but they do not have to provide  
11 the Social Security number. Come January, we'll have  
12 a whole new problem in place that will mirror the  
13 Help America Vote Act.

14 Voters will provide -- if they have a  
15 driver's license, they have to provide a full DL  
16 number; if they don't have a driver's license, then  
17 they have to provide the last four digits of their  
18 social; and if they don't have either, then they are  
19 provided a unique identifier. But that's only if  
20 they don't have either.

21 This a order even goes so far as to say  
22 that we can still voluntarily -- a voter can still  
23 voluntarily provide the full social if they wish to,  
24 but it's not required.

25 Q. Okay. All right.

1 I'm going to take a break in a second, but  
2 I think -- let me get this one question out.

3 Okay, in terms of the drafting of rules --  
4 and, again, you can take them separately with the  
5 emergency rule and the permanent rule if you want  
6 to -- but are they typically -- you say you work with  
7 legislative counsel --

8 A. (Witness nods head affirmatively.)

9 Q. -- to get the draft drafted?

10 A. (Witness nods head affirmatively.)

11 Q. And then does it go to the board members  
12 for comment?

13 A. Generally it comes back --

14 Q. How does that work?

15 A. -- to myself or Cliff Tatum first. And we  
16 just --

17 Q. Uh-huh.

18 A. -- we review it to see if it's in line  
19 with what we believe the wishes of the board are. We  
20 review it for grammatical content, and then we'll --  
21 if we have any changes, we'll send them back to  
22 legislative counsel. Other than that, it -- it goes  
23 straight on to the board. And typically legislative  
24 counsel will be at the meeting to openly hear what  
25 the board has to say so that if there are revisions,

1 he can just make them directly from the board at that  
2 time.

3 Q. And typically that's Jeff Lanier you're  
4 talking about?

5 A. Uh-huh.

6 Q. Okay. All right.

7 Let me take a short recess and we'll be  
8 back.

9 A. Okay.

10 (Recess from 2:15 p.m. to 2:20 p.m.)

11 MR. HEARD: We are back on the record.

12 Q. (By Mr. Heard) Ms. Rogers, tell me  
13 whether there was any formal hearing or any --  
14 anything of that nature conducted with respect to  
15 these copying and sealing rules? Again, either in  
16 connection with the emergency rule or the permanent  
17 rule?

18 A. There's always a public hearing notice  
19 when the rules are sent out for notice of adoption.  
20 Then we -- on the agenda, it would be listed as a  
21 public hearing at the time that they are adopted, and  
22 we present written comments that are received and we  
23 also take oral comments at that time.

24 Q. And that was done in connection with  
25 these -- the emergency and the permanent rule?

1 A. Correct.

2 Q. And the comments from SEIU and Advancement  
3 Project were --

4 A. Yeah.

5 Q. -- those types of comments, public  
6 comments?

7 A. And whichever one of these it was -- I  
8 forget -- that has a letter --

9 Q. Let me see if I can help you here.

10 A. -- from Estelle and Mr. Sullivan.

11 MS. ESTELLE ROGERS: Uh-huh.

12 THE WITNESS: I noticed --

13 Q. (By Mr. Heard) I think that's Exhibit 3.

14 A. Is that Exhibit 3. One of those actually  
15 was received on the same day of the meeting, the one  
16 from John Sullivan was received on September 14th,  
17 2005 at 1:56, so --

18 MS. ESTELLE ROGERS: And we were really  
19 early on the 12th.

20 THE WITNESS: Yeah. So I can't tell you  
21 that this one that was received at 1:56, you  
22 know, that comment was provided to them. And  
23 the one from SEIU --

24 Q. (By Mr. Heard) That's the same one.

25 A. Oh, I'm sorry. The other one, yeah.

1           This one would have been provided to the  
2 State Election Board, if we received in advance.

3           Q.     Okay.

4           A.     The other one I'm -- I don't know that  
5 they got it prior to the meeting.

6           Q.     All right. I was at that meeting, I have  
7 my own recollection, but I'm going to ask you what  
8 your recollection is as to whether there were any  
9 oral comments received at -- at that meeting?

10          A.     I recall you made comments, I remember --  
11 I recall comments by the State Election Board, I  
12 recall there were comments regarding comments that  
13 were received, I want to say by Project Vote, but I  
14 can't tell you that without looking back at notes.

15          Q.     The minutes wouldn't necessarily reflect  
16 all of the public comments?

17          A.     No. It would just, a lot of times say  
18 "public comment, you know, was receive." Our -- our  
19 State Election Board meetings can last up to eight  
20 hours, so we typically --

21          Q.     Don't I know.

22          A.     We typically do not put everything in  
23 there, but we do try to say there were public  
24 comments. And we always note the people who were in  
25 attendance if they signed in.

1 Q. Okay. And you also have, now at least,  
2 the recording --

3 A. The audio tape.

4 Q. Yeah.

5 All right. And -- and when I use "formal  
6 hearing," by the way, I'm talking in addition? I  
7 mean, you didn't take testimony or anything from  
8 anything --

9 A. No.

10 Q. -- in connection with these rules?

11 A. APA merely requires a public hearing,  
12 notice of a public hearing, not -- now, that's -- in  
13 my book, it's a formal hearing.

14 Q. Sure.

15 A. A formal hearing held at the time of. We  
16 always at -- at such meetings we'll ask, "Is there  
17 anyone here who wishes to speak, you know, in pro or  
18 con to the rules prior to the adoption of the rule."

19 Q. It's not necessarily an evidentiary  
20 hearing, though?

21 A. Correct.

22 Q. Do you ever have those?

23 A. I do not recall those in my time with the  
24 State Election Board.

25 Q. All right. And do you know if any formal,

1 or even informal, research studies were done to  
2 substantiate any of the concerns related to voter  
3 registration fraud or identity theft?

4 A. I -- I did personally do some research  
5 among my peers in other states to ascertain what they  
6 did regarding the privacy of voter registration  
7 applications, and shared that data -- I believe I  
8 shared it with Stefan and my own staff.

9 Q. Okay.

10 A. I don't believe -- I cannot recall whether  
11 I shared it with the State Election Board or not.

12 Q. Okay. Without telling me what you told  
13 Stefan, can you tell me what it is that you learned  
14 from your peers?

15 A. I learned that a number of states do  
16 have -- do have laws on the books regarding  
17 confidentiality of -- of their applications. At that  
18 time, one of the questions I asked was how many also  
19 allowed private entities to collect applications. I  
20 was curious as to how many had two layers. You know,  
21 how many had deputy registrars and had private  
22 entities. And I asked about transmittal time, and I  
23 asked about the privacy of the form.

24 Q. And what do you recall regarding  
25 confidentiality of applications? What did you learn?

1           A.     Some states did not have confidentiality  
2 requirements, a number of states do have  
3 confidentiality requirements, that the forms were not  
4 allowed to be photocopied or information to be  
5 obtained without the permission of the applicant.

6           Q.     Do you recall what any of those states  
7 were?

8           A.     No. I -- honestly I do not.

9           Q.     Did you make notes or anything?

10          A.     I'll have to go back and look. Some --  
11 some -- you know, I'm vice president of -- of the  
12 National Association of State Election Directors, and  
13 frequently they're conversations I have, you know,  
14 with other states. Maybe the executive board in  
15 executive board meetings, and that type of things.  
16 And some information I have written, some of it is  
17 just knowledge that I obtained verbally.

18          Q.     And you may or may not have shared that  
19 with the State Election Board of that?

20          A.     I don't recall sharing -- well, broadly,  
21 yes. Broadly I think I have shared, you know, what  
22 other states did or did not do. I don't believe I've  
23 given them anything in writing to that effect, but I  
24 have shared with the board at times my experience  
25 with other states and conversations with them.

1 Q. The board is the board in a public meeting  
2 or the board just individual board members?

3 A. Both.

4 Q. Both, okay.

5 All right. Actually, I have -- I did have  
6 three exhibits but two were voter registration forms,  
7 so let me just do that.

8 (Plaintiff's Exhibits 12 and 13 were  
9 marked for identification.)

10 Q. (By Mr. Heard) All right. Let me -- I'm  
11 handing you Exhibits 12 and 13. Can you confirm for  
12 me that Exhibit 12 is the current State of Georgia  
13 voter registration mail-in application, and that  
14 it --

15 A. Yes, it is.

16 Q. Yes, it is, okay.

17 And Exhibit 13 is the federal mail-in  
18 voter registration application?

19 A. That's correct.

20 Q. Okay. All right.

21 And let's just knock out the last exhibit  
22 while I'm here.

23 (Plaintiff's Exhibit 14 was marked for  
24 identification.)

25 Q. (By Mr. Heard) I'm handing you

1 Exhibit 14, which is another excerpt exhibit from the  
2 Election Assistance Commissions biannual report to  
3 Congress on the impact of the NVRA. And what I've  
4 attached is Table 2 from that annual report that  
5 discusses applications received. And what I wanted  
6 to ask you is, looking at that table, if you go down  
7 to, I guess, the code line that says 13 is Georgia.  
8 And it's very small, I know, but that's --

9 A. Uh-huh.

10 Q. That's all that I have.

11 MS. ESTELLE ROGERS: Do you want my  
12 glasses?

13 THE WITNESS: Okay.

14 Q. (By Mr. Heard) It indicates that Georgia  
15 received, you know, 1.75 million total voter  
16 registration applications between 2002 and 2004?

17 A. Uh-huh.

18 Q. You would agree with me with that?

19 A. Correct.

20 Q. Is this information supplied by the  
21 Secretary of State to the Election Assistance  
22 Commission?

23 A. Correct.

24 Q. Okay.

25 A. It -- it -- it's collected in an

1 assortment of ways. Voter registration applications  
2 are coded, they get a number of one to seven,  
3 according to where they come from; whether they're by  
4 mail, whether they're deputy registrars, whether  
5 they're a WIC office, or one of the mandated voter  
6 registration sites. And then the coding of those  
7 applications, that is collected, and then we submit  
8 all of that information based upon category.

9           Some of that comes directly from our  
10 office, if we receive applications into our office.  
11 Some of it we rely on the counties to give us the  
12 data, because obviously, if they get an application  
13 directly in their office, we don't know what that  
14 number is. So it's a little bit of both.

15           Q.     Okay. So the reports come from the  
16 counties up to you?

17           A.     (Witness nods head affirmatively.)

18           Q.     You include the things that came  
19 indirectly to you?

20           A.     Right.

21           Q.     You send all of that information up to the  
22 Election Assistance Commission?

23           A.     We complete a report. We have to do an  
24 NVRA report every two years, and this is part of that  
25 report.

1 Q. And the information reflected in Georgia  
2 is the information that you would have supplied in  
3 connection --

4 A. Correct.

5 Q. -- with that report?

6 Now, you said that they were coded one  
7 through seven.

8 A. Uh-huh.

9 Q. And I notice that there are seven  
10 categories --

11 A. Uh-huh.

12 Q. -- listed here. Do your codes correspond  
13 to those categories?

14 A. Correct.

15 Q. Okay.

16 A. Maybe not going across there, but, yeah, I  
17 think they correspond to those categories.

18 Q. Well, that's what I mean, there's seven  
19 going -- I mean, if you ignore the first two columns,  
20 which are just the totals.

21 A. Right. Yes, I know that by mail is a  
22 number two, and it's listed first on this  
23 application.

24 Q. Oh, I see what you're saying.

25 A. That's why I'm saying it.

1 Q. Okay.

2 A. They don't necessarily go in order here.

3 Q. Oh, okay. But those would be the seven  
4 categories of things that you're coding for in one  
5 through seven, starting mail registration being  
6 one -- not number one, but one of the categories;  
7 in-person registration is being another; motor  
8 vehicle offices being a third; public assistance  
9 offices being a fourth; disability service offices  
10 being a fifth; armed forces recruitment offices being  
11 a sixth; and other state agencies being a seven?

12 A. I know that we code them according to  
13 where they come from. I'm not -- without the codes  
14 in front of me --

15 Q. Sure.

16 A. -- because I'm not the one that codes  
17 these every day, I'd have to look back at them to  
18 tell you for certain --

19 Q. Okay.

20 A. -- that these are the exact categories,  
21 but I believe they are.

22 Q. Okay. Let me ask you with regard to mail  
23 registration applications --

24 A. Uh-huh.

25 Q. -- does the -- and I assume the Secretary

1 of State's office and not the State Election Board  
2 would do this, but -- well, does either of those  
3 offices further categorize mail registrations to  
4 determine whether they come from third parties or  
5 whether they come from people mailing them in  
6 themselves or. . .

7 A. No. And this only really surfaced after  
8 the Wesley 1 injunction. And --

9 Q. For Georgia?

10 A. Correct. Up until that time it was  
11 everything by mail was by mail. And then when  
12 Georgia began accepting applications from third  
13 parties and collect -- and third parties could  
14 collect them back and take them to the registration  
15 office, they coded those by mail. They get a number  
16 two as well.

17 Even though they're not physically by  
18 mail, that then requires that person to be considered  
19 not to have presented themselves in front of a  
20 mandated site or in front of a registration office,  
21 thereby making them not necessarily by mail, it's  
22 just the number two means that you're a first time  
23 registrant by mail who has to show ID --

24 Q. Got you.

25 A. -- before being allowed to vote, under the

1 federal requirements.

2 Q. So prior to the Wesley case in Georgia,  
3 your mail registration would have reflected --

4 A. Really by mail. I mean, that means they  
5 came --

6 Q. -- just people who submitted them by mail?

7 A. That means they came from the mail, yes.

8 Q. All right. Now, when you say they came  
9 from the mail, they could have come from people --

10 A. Who did a drive and put them in the mail,  
11 right.

12 Q. Correct. Okay. That's what I was getting  
13 at.

14 A. Right.

15 Q. All right. The in-person registration  
16 category would include, for lack of a better word,  
17 official deputy registrar drives; is that correct?

18 A. That would be correct.

19 Q. Or would they be coded as a mail  
20 application?

21 A. No. An official drive that had been  
22 advertised and conducted by someone who had been  
23 deputized would be an in-person application.

24 Q. And that would be coded with the in-person  
25 registrations?

1 A. Correct.

2 Q. Okay. So even if it was the League of  
3 Women Voters, if they did a drive under the deputy  
4 registrar provisions, that would have been an  
5 in-person registration?

6 A. Correct. If they -- if it was under the  
7 deputy registrar provisions.

8 Q. Okay. All right.

9 A. And that -- if I can expand?

10 Q. Sure.

11 A. And that occurs even now with our voter  
12 education coordinators. If they are deputized within  
13 a county, then that application, if they conduct a  
14 drive somewhere, that would be considered in-person.  
15 If they're not deputized in that particular county,  
16 even our voter education coordinators, that is then  
17 coded as a number two.

18 Q. As a number two mail-in?

19 A. Uh-huh. Uh-huh.

20 Q. All right. So have you done -- has your  
21 office, either the office of the Secretary of State  
22 or the State Election Board, have there been any  
23 comparisons done as to the accuracy of applications  
24 that are collected and submitted by private groups,  
25 third-party groups, as opposed to those that come in

1 from deputy registrars?

2 A. No. There hasn't been a formal study to  
3 that regard. There have been general observations.

4 Q. Okay.

5 A. But not a formal study.

6 Q. Do you want to comment on the general  
7 observations?

8 A. General observations are, I mean, our --  
9 our registrars are quite vocal in that they -- they  
10 prefer for people to be deputized because then they  
11 receive instruction on how to properly have someone  
12 complete a form through their office, and they feel  
13 like they see a greater success if someone has been  
14 deputized than an outside entity who may assist with  
15 the form.

16 We did -- and then this is, you know, part  
17 of the record, we did see a number of applications  
18 submitted in 2004 that appeared on the face of them  
19 to be fraudulent. There appeared to be thousands of  
20 applications which had bogus Social Security numbers  
21 and bogus addresses, and names placed upon those  
22 applications.

23 Q. Okay.

24 A. And those were -- they were delivered to  
25 our office by a third party.

1 Q. Okay. Tell me how they were delivered to  
2 your office.

3 A. There was a -- this particular group came  
4 in many, many boxes, from an organization who was  
5 conducting voter education, voter registration  
6 drives, and the woman who was in charge of a number  
7 of the people dropped off a -- off many boxes one  
8 afternoon.

9 Q. Okay. When you opened the boxes, were the  
10 applications sealed or unsealed?

11 A. They were not sealed, they were just in  
12 boxes.

13 Q. They were just in boxes? I mean, the  
14 applications themselves were not?

15 A. No, the applications themselves were not  
16 sealed.

17 Q. They were just plain open --

18 A. Uh-huh.

19 Q. -- and sealed on the --

20 A. Just stacked in boxes.

21 Q. Okay. Were they Georgia applications or  
22 federal?

23 A. They were Georgia.

24 Q. Okay. And whoever brought them, brought  
25 them in person to you, to your office?

1           A.     They were delivered to us.  Not by the  
2 person who collected them, but by the person who was  
3 in charge of the people who collected them.

4           Q.     By the organizer?

5           A.     Right, or part of the organization.

6           Q.     So were you able to identify who brought  
7 them in?

8           A.     Yes.

9           Q.     Okay.  And what did you do in response to  
10 those applications?

11          A.     Well, because we are not the registrar,  
12 we're not the entity, the Secretary of State doesn't  
13 have the authority to register voters.  And as I  
14 explained to you earlier, the State Election Board  
15 has investigative powers, but that's when a complaint  
16 has been made to our office.  And what we did is we  
17 notified the counties, we separated those  
18 applications by county, and then we notified the  
19 counties that were recipients of those applications  
20 that there appeared to be many discrepancies and  
21 possibly fraudulent Social Security numbers on those  
22 documents, and we encouraged them to very carefully  
23 review them during the registration process, and that  
24 if they thought any were fraudulent, that they should  
25 contact their local district attorney's office and

1 also notify us as well.

2 Q. And did you -- as you said, the board has  
3 investigative powers?

4 A. Uh-huh.

5 Q. You would have -- would you have been able  
6 to make your own report to the State Election Board?

7 A. We could have reported to them. I think  
8 we would need -- in order to have a case, that the  
9 entity who actually reviews the voter registration  
10 form, and that -- and that would be the county, the  
11 person whose job it is to register a voter, and that  
12 is the person who has the authority to call anybody's  
13 voter registration into question or to have a hearing  
14 is the county themselves. So the first line of  
15 defense would lie with the county on that issue.

16 MS. ESTELLE ROGERS: Ms. Rogers, as to  
17 your -- your conclusion that -- that there was  
18 suspected fraudulent applications in that big  
19 box, or that series of boxes, on what basis did  
20 you conclude that? I mean, were there the wrong  
21 number of digits in the Social Security number?

22 THE WITNESS: Well, it was a couple of  
23 things. The lady who dropped them off, she said  
24 to us, "I'm not sure about some of those  
25 applications."

1 MS. ESTELLE ROGERS: Awe.

2 THE WITNESS: She called them to our  
3 attention, and noted that she just wasn't sure  
4 about some of them.

5 MS. ESTELLE ROGERS: (Nods head  
6 affirmatively.)

7 THE WITNESS: And then we did pick them up  
8 and began to flip through them. There were  
9 examples of apartment buildings, perhaps, and  
10 addresses, and it would be 101-A, 101-B, 101-C,  
11 101-D, then there were Social Security numbers  
12 that might be 229-06-3877, the next one would be  
13 3879, the next one would be 3800. I mean, they  
14 were very, very --

15 MS. ESTELLE ROGERS: So they were  
16 suspiciously alike?

17 THE WITNESS: Yes. There were some there  
18 that were very evident that it looked like maybe  
19 somebody took a phone book or -- and just went  
20 down and started filling in the blanks.

21 MS. ESTELLE ROGERS: Okay. Thank you.

22 Q. (By Mr. Heard) All right. And you said  
23 that the individual that brought them in alerted you  
24 to that effect?

25 A. She -- she made a comment to the fact

1 that -- and I can't remember exact words, but her  
2 comment led us to go over and open the boxes and flip  
3 through them, because she made a comment to the  
4 effect that she was unsure about some of them.

5 Q. Okay. She had looked through them and --

6 A. She didn't --

7 Q. You don't know how she came up with that?

8 A. I don't know.

9 Q. Okay. Do you remember who that was?

10 A. I remember the lady, I don't recall her  
11 name right now. I mean, we have her name in the  
12 office, but I don't recall her name --

13 Q. Okay.

14 A. -- off the top of my head.

15 Q. Okay. Are you aware whether any of the  
16 counties made complaints to the State Election Board  
17 in regard to that issue?

18 A. Some of the counties, we also heard from  
19 Fulton County that they believed that they had  
20 received a number of bundled applications themselves  
21 that I do not know whether the applications came  
22 through us or whether they came into their office,  
23 but they had received a number that they also  
24 believed were fraudulent.

25 Q. No, what I was asking you is --

1 A. I'm sorry.

2 Q. -- is whether you remember if any of those  
3 resulted in State Election Board investigations?

4 A. Not a State Election Board action. I do  
5 know that a number of these counties did contact  
6 their local district attorney's offices. I -- I  
7 don't know where that has gone to date. We've got a  
8 number of State Election Board case files that we  
9 open. If there's litigation or some type of legal  
10 investigation ongoing, we will monitor that case  
11 through its completion.

12 Then at the end of that case, if there's  
13 anything that has not been followed through that we  
14 believe the State Election Board, it goes to their  
15 attention, we'll provide it to them. I believe we do  
16 have a monitoring case, but I -- I would have to go  
17 back and look that up in one of these files.

18 Q. That's fair.

19 Do you have a sense or has any count been  
20 done as to the number of allegedly fraudulent voter  
21 registration applications that have been received?

22 A. I can tell you that in testimony to the  
23 SLGO, State and Local Government Operations  
24 Committee, members of the board of elections of  
25 Fulton County used those applications on many

1 occasions to justify photo identification. The  
2 passage of photo identification.

3 They claimed that of that number of  
4 applications that they received, many of the precinct  
5 cards were returned to them as undeliverable, and  
6 they believe that noted that a number of them may not  
7 have been correct addresses or actually were  
8 legitimate people.

9 Q. Okay. And is it your contention that any  
10 of these allegedly fraudulent applications had some  
11 affect on the -- the actual integrity of any  
12 election?

13 A. Well, I think anytime someone from any  
14 board of elections gives testimony to a committee of  
15 the General Assembly in regard to a number of bogus  
16 or fraudulent applications, and then that testimony  
17 is used to craft laws, then I think it -- there's  
18 definitely an effect. And I'm sorry, I forgot what  
19 your --

20 Q. Let me give -- let me, I guess, ask a more  
21 directed question. Do you think that there was a  
22 substantial number of voter fraud that arose out of  
23 any of these allegedly fraudulent applications?

24 A. To be perfectly honest, I don't know that  
25 these were real voters themselves. I think -- I

1 personally think they were the people who were  
2 conducting the registration drives. I think they  
3 were paid for --

4 Q. Per application?

5 A. In Georgia, you know, you shouldn't be  
6 paid per application. I don't know how they were  
7 being paid, I just know that you should not be paid  
8 per application. But I still believe that there were  
9 a number that were just being completed for payment.

10 Q. You're not --

11 A. I don't know that it was a voter who was  
12 attempting to go vote for somebody else.

13 Q. Okay. You're not suggesting that you  
14 shouldn't be paid at all for voter --

15 A. No, I'm not suggesting that at all. It --  
16 it is our understanding, through advice of the  
17 Attorney General's offices, that you cannot offer  
18 payment per piece. But, yes, payment is -- is not  
19 prohibited.

20 Q. And I guess more to the point, were any of  
21 these alleged voter registration fraud issues, did  
22 they have any impact on the enactment of these  
23 copying and sealing rules?

24 A. This -- I don't know anything about  
25 timing. I can't -- this was in September, it would

1 have been -- I can't remember the dates of when those  
2 applications came in, Bradley.

3 Q. I understand.

4 If you go -- let's go back to Exhibit 2  
5 for a second. If you will hop over to the minutes  
6 from that emergency rule meeting. That's where I'm  
7 trying to get you to.

8 A. (Reviews document.)

9 Q. Is that Exhibit 2? No, it might be a  
10 different -- no, I'm sorry, that's Exhibit 4.

11 A. Okay.

12 MS. ESTELLE ROGERS: Special conference  
13 call.

14 Q. (By Mr. Heard) Special conference call,  
15 right.

16 And also, if you want to thumb over --

17 A. It's spelled wrong --

18 THE REPORTER: I'm sorry?

19 THE WITNESS: I said, conference is  
20 spelled wrong on paper now that I look at it.

21 Q. (By Mr. Heard) And on Exhibit 3, if you  
22 want to flip over to Page 5 of Exhibit 3. I'm going  
23 to just sort of kind of go back and forth between  
24 those two, so if you just want to pull those out.

25 MS. ESTELLE ROGERS: Page 5 of the letter

1 to Mr. Tanner?

2 Q. (By Mr. Heard) Right, Page 5 of the  
3 letter to Mr. Tanner.

4 So we are looking at Exhibits 3 and 4.  
5 Just let me know when you get there.

6 A. Okay. All right.

7 Q. All right, you're there. Okay.

8 On Page 2 -- well, let's go back to Page 1  
9 of Exhibit 4. Again, toward the bottom where it  
10 starts about the review and discussion of these  
11 proposed emergency rules, it talks about Secretary  
12 Cox explaining Judge O'Kelley's order in the Wesley  
13 case, the injunction that was received. Then you  
14 flip over to Page 2, and it says, "The Board  
15 identified the need for confidentiality of certain  
16 information contained within the voter registration  
17 applications and agreed that requiring applications  
18 to be sealed before being collected supported a  
19 legitimate State interest."

20 Okay. What was the certain information  
21 that you contended needed to be confidential? That  
22 the board contended to be confidential?

23 A. Well, definitely Social Security numbers.  
24 The Code already states, it's law, that the place  
25 that someone registered and their Social Security

1 number will be kept confidential. Voter registrars  
2 cannot allow someone to obtain a copy of a person's  
3 voter registration application by statute now. The  
4 only way they can do so would be with court order.

5 You can obviously obtain a list of voters  
6 who are registered to vote in the State of Georgia,  
7 but that list would not include the location of their  
8 registration where they registered to vote, nor would  
9 it include their Social Security number.

10 Q. Okay. All right.

11 And the location of where they registered  
12 would not be on the mail registration application  
13 anyway, correct?

14 You can look back at it if you need to,  
15 the exhibit.

16 A. No, it's not on the actual form itself, I  
17 don't think. Maybe --

18 Q. 12 and 13 would be the voter registration  
19 application exhibits.

20 A. But we do stamp them in, and that number,  
21 as I told you, identifies where it is that that  
22 stamp, and that stamp is on the application itself.  
23 So the code identifies.

24 Q. The code would just identify that it's a  
25 mail registration application, right?

1 A. Or a WIC office.

2 Q. Or a WIC office?

3 A. Uh-huh.

4 Q. But I'm talking about specifically --  
5 because this rule relates to mail registrations,  
6 correct?

7 A. The sealing.

8 Q. The copying and sealing.

9 A. Correct.

10 Q. Okay.

11 A. That relates to applications by private  
12 entities.

13 Q. By third -- by private entities, third  
14 parties who would be using mail registration  
15 applications, right?

16 A. Correct.

17 Q. So the place of registration would not be  
18 included on the mail registration applications?

19 A. Well, it would be coded with a number 2.

20 Q. Which would indicate it's a mail  
21 application?

22 A. Right.

23 Q. But not, "I registered at the Kroger" --

24 A. Right.

25 Q. -- or "I registered at the MARTA station,"

1 it wouldn't say that?

2 A. No.

3 Q. Okay. The Social Security number, you  
4 indicated as a result of the Schwier case, the State  
5 is no longer requiring, correct?

6 A. We have not for the last year, due to the  
7 injunction -- I guess it was an injunction -- and now  
8 the final order, but there are 5 million  
9 registrations in the State of Georgia. Out of 5  
10 million, there are only 30,000 that do not have a  
11 Social Security number on them.

12 Q. But this rule would apply, would it not,  
13 to new registration applications collected by third  
14 parties?

15 A. Sealing and copying?

16 Q. Yes.

17 A. Correct, it applies to that.

18 Q. All right. And as to those applications  
19 that are being collected, it's no longer required  
20 that the Social Security number be on the voter  
21 registration application, correct?

22 A. The application says that -- well, the --  
23 the language on the application has not changed.

24 Q. I understand.

25 A. The -- the language is currently there,

1 but --

2 Q. On the State form, on 12, Exhibit 12?

3 A. That's correct.

4 Q. Right.

5 A. However, a voter does not have to provide  
6 their Social Security number if they do not wish to  
7 right now.

8 Q. Okay. The language may not have changed  
9 but it -- but it is no longer required, correct?

10 A. Correct.

11 Q. All right. And on 13, the federal form,  
12 it doesn't necessarily say Social -- well, it does  
13 not say Social Security number?

14 A. It -- it would be in the information, the  
15 instructions. There's instruction pages that go with  
16 the federal form.

17 Q. Okay.

18 A. And under the Georgia instructions, it  
19 would tell you what identifying information to put.  
20 And while we currently do not require the Social  
21 Security number, that is the number that is given by  
22 most people. And come January, they'll be providing  
23 their full driver's license number, or the last four  
24 digits of the Social, which would also be considered  
25 to be private and confidential information.

1 Q. Okay. After the Schwier case --

2 A. Uh-huh.

3 Q. -- did you all ever send updates to the  
4 EAC about what the identity number requirements were?

5 A. We did. We sent updates to both the  
6 Federal Voting Assistance Project for their FVAP,  
7 federal -- no, no. The FBCA. Okay, I'll get all my  
8 acronyms right.

9 Q. I mean, who -- okay.

10 A. We -- we put into the language for their  
11 online forms to say that Social Security number is  
12 requested but not required. And I'm pretty sure  
13 that FVAP made the update, I'm not sure that the EAC  
14 actually made the update, but once a year they  
15 collect information from us on what language should  
16 be on the instructions for individual states.

17 Q. Okay.

18 A. And we have provided to both of them that  
19 it is requested but not required.

20 Q. Okay. So you have -- you have updated  
21 those with --

22 A. Uh-huh.

23 Q. Okay.

24 A. And we'll update them again in the next  
25 two months.

1 Q. Okay. Any changes with regard to ID  
2 numbers or anything?

3 A. It will -- per the consent order, it will  
4 be you will collect -- we will collect the full  
5 Social Security number or the full DL or the last  
6 four digits of the Social.

7 Q. But as to the requirement for a Social  
8 Security, that's not --

9 A. That's strictly voluntarily, unless you  
10 want to give the last four digits of your Social.  
11 Now, understand that there are only 10,000 possible  
12 combinations with the last four digits of a Social  
13 and the date of birth and name.

14 Q. All right.

15 MS. ESTELLE ROGERS: Why do you request  
16 the full Social at this point, since it's no  
17 longer required?

18 THE WITNESS: Well, because we don't have  
19 anything in place in order to have a way to keep  
20 the legitimacy of the voter's identity. And  
21 since we don't have anything in place to collect  
22 the full driver's license number, the court  
23 allowed us to maintain the collection of the  
24 full Social Security number by voluntary  
25 distribution until we could put our new system

1 into place.

2 MS. ESTELLE ROGERS: And that will be by  
3 January 1st, 2007?

4 THE WITNESS: Yeah. We've got to make  
5 revisions to our voter -- our statewide voter  
6 registration system, and then we're going to  
7 have to match our system to SSA and AMVA, and  
8 all of that is going to take a little time to --  
9 it's under works now. I mean, it -- it's all  
10 being done as we speak.

11 MS. ESTELLE ROGERS: But at that point  
12 there won't even be a request for the full  
13 Social Security number, will there?

14 THE WITNESS: Well, the court order says  
15 that we can request the full Social Security  
16 number if the voter wishes to provide signature  
17 voluntarily. The court order and Schwier does  
18 allow us the ability to get the full Social. If  
19 they want to give it. And most people, believe  
20 it or not, they do.

21 Q. (By Mr. Heard) All right. Moving down,  
22 if you go back to 4, Exhibit 4. That's -- no, keep  
23 that open.

24 A. Okay.

25 Q. But I'm going to try to work Exhibit 4,

1 first.

2 A. I have a whole filing cabinet with your  
3 name on it. Okay.

4 Q. I don't know if I like that.

5 A. We'll have another one today.

6 Q. Okay. Let's see. The paragraph that  
7 begins, "When reviewing the proposed rules, the Board  
8 took into consideration and discussed the State's  
9 interest as well as the injunctive order issued by  
10 the U.S. District Court." I guess that's in the  
11 Wesley case?

12 A. Uh-huh.

13 Q. "The Board identified the following as  
14 compelling governmental interests for adopting the  
15 rules: Number one, protecting the public from  
16 nefarious motives of unspecified community groups."  
17 What did the board mean by that?

18 A. Ensuring that an applicant was protected  
19 from any type of illegal use of their personal  
20 information.

21 Q. All right. Now, illegal use, like  
22 identity theft?

23 A. Correct.

24 Q. Okay. And identity theft is a crime in  
25 Georgia currently, correct?

1 A. Correct.

2 Q. All right. What other nefarious motives  
3 would -- if any?

4 A. I think the board's concern was over the  
5 collection -- possible collection of not only  
6 someone's Social Security number, but in conjunction  
7 with their Social Security number that you would have  
8 their name, their date of birth, and their address.

9 Q. Now, their name, date of birth, address,  
10 in addition to race and telephone number --

11 A. If provided.

12 Q. -- can all -- if provided, can all be  
13 gotten from the Secretary of State currently,  
14 correct?

15 A. No.

16 Q. On the voter list?

17 A. I -- what things did you just name? I  
18 don't --

19 Q. Name, address, telephone number?

20 A. We don't collect the telephone number.  
21 Not -- we don't collect it within the system.

22 Q. How in the world do I get all those calls  
23 from --

24 A. They don't come from us.

25 Q. All right. So you don't collect the

1 telephone phone number, then?

2 A. No. It's not on a file. If a candidate  
3 bought a file, there's no telephone number there.

4 Q. Okay. But the name and address is on  
5 there?

6 A. Uh-huh.

7 Q. Is the date of birth on there?

8 A. You know, I'm not sure.

9 Q. Okay.

10 A. I -- I would have to check. I really. . .

11 Q. Okay.

12 A. I might have known at 8:00 o'clock this  
13 morning, but I don't know now.

14 Q. It's been a long day for everyone.

15 All right. But the Social is not  
16 obviously provided --

17 A. Never.

18 Q. -- on the voter list?

19 All right. But in terms of nefarious  
20 motives, it was largely a concern about identity  
21 theft?

22 A. Absolutely.

23 Q. Okay. I know you testified earlier that  
24 you had gotten calls from concerned voters that  
25 people might be misusing their Social Security

1 number.

2 A. Uh-huh.

3 Q. Do you remember that testimony?

4 A. Yes.

5 Q. Have you gotten any calls that people  
6 actually have been? That third-party voter  
7 registration groups had been misusing their Social  
8 Security number?

9 A. No. It's my understanding that most  
10 people, when their identity is stolen, they don't  
11 generally know where it was stolen from, so. . .

12 Q. Were the calls you were getting from  
13 people whose identity had been stolen or from people  
14 who were just expressing a concern?

15 A. Expressed concerns.

16 Q. Okay. Did you receive a call from anyone  
17 whose identity had actually been stolen?

18 A. I've had many conversations with voters  
19 who relate personal stories of they themselves or  
20 family members who had been the victims of identity  
21 theft, and because they had been victims of identity  
22 theft, they were especially sensitive to items such  
23 as being able to obtain information off the voter  
24 registration form. So while they --

25 Q. And I --

1           A.     -- they did not specifically say, "I think  
2 my information was stolen from my voter registration  
3 application," a lot of these people had been or had  
4 family members who had been victims of identity  
5 theft, and as such, they understood the seriousness  
6 of it.

7           Q.     Right. And I understand that. I  
8 understand the whole concept of being concerned about  
9 identity theft, either because you had been a victim  
10 of identity theft or because you knew people who had  
11 been. But what I'm trying to get at is, had anybody  
12 called you and said, "I'm a victim of identity theft"  
13 -- and by "you," I mean the State Election Board or  
14 the office of Secretary of State.

15          A.     And I know where it came from and I think  
16 it came off my voter registration?

17          Q.     (Nods head affirmatively.)

18          A.     No, I haven't had that specific call --

19          Q.     Oh, okay.

20          A.     -- that I think it came off my voter  
21 registration application.

22          Q.     All right. I mean, and was there a  
23 concern on the State Election Board's part that there  
24 was a large amount of voter registration -- I mean,  
25 of identity theft in connection with third-party

1 voter registration efforts? Was that a concern of  
2 the State Election Board?

3 A. I think they were proactively seeking to  
4 protect the voters' confidential information.

5 Q. I understand that --

6 A. Rather than -- rather than doing it in  
7 reaction to the loss of a person's information or  
8 loss of their identity, it was their intent to  
9 protect the voter registration process going in.

10 Q. On the front end?

11 A. Right.

12 Q. Okay.

13 MS. ESTELLE ROGERS: Could I ask one other  
14 question about the minutes of the election board  
15 meeting on Page 2, that part that we were just  
16 discussing?

17 THE WITNESS: Uh-huh.

18 MS. ESTELLE ROGERS: What the board took  
19 into consideration.

20 If one, which I quote, is "protecting the  
21 public from nefarious motives of unspecified  
22 community groups," unquote, is basically a fear  
23 of or a concern about identity theft, what's the  
24 difference between one and two? Two being,  
25 "Preventing the potential misuse of confidential

1 information contained within the application."

2 THE WITNESS: I seem to recall that some  
3 of this language was provided by one of our  
4 board members, who's an esteemed attorney, and  
5 it looks like some lawyer language to me, but  
6 obviously --

7 MS. ESTELLE ROGERS: You mean repetitive  
8 lawyer language?

9 THE WITNESS: Yeah. This definitely came  
10 from a member who was an attorney.

11 MR. HEARD: I betcha I know which one.

12 MS. ESTELLE ROGERS: Okay. Thank you.

13 THE WITNESS: If I word it, it's a lot  
14 simpler to understand.

15 Q. (By Mr. Heard) And that relates --  
16 now I'm going to have you switch just for a second.  
17 Keep that page open.

18 MR. RITTER: Brad, how much more have you  
19 got?

20 MR. HEARD: I'm trying to work through it  
21 as quick as I can, Stefan. I really am.

22 MR. RITTER: Okay. Well, you're over what  
23 you told me in your e-mail and I've got a brief  
24 due, so I --

25 MR. HEARD: I said -- yeah, I said it

1 would take a couple of hours, and, yeah, I'm a  
2 little over that.

3 MR. RITTER: Yeah. So please wrap it up.

4 MR. HEARD: I'm trying. But I'm trying  
5 not to have to call her back, you know.

6 MR. RITTER: Well, you've had plenty of  
7 time, so please wrap it up.

8 Q. (By Mr. Heard) I lost my train of  
9 thought. Okay. If you go back to Exhibit 3.

10 A. Okay.

11 Q. And this kind of -- I'm trying to --  
12 Exhibit 3 is the information related -- the  
13 preclearance stuff related to the permanent rule, and  
14 I'm sort of trying to jive together the emergency  
15 rule justifications and the permanent rule  
16 justifications.

17 A. Okay.

18 Q. All right. And in the preclearance  
19 submission on Page 5 down there under (o) --

20 A. Uh-huh.

21 Q. -- if you look at the third paragraph  
22 under that.

23 A. Uh-huh.

24 Q. "Given that the District Court" --

25 A. Uh-huh.

1 Q. -- and it says, "The State Election Board  
2 adopted the rule in question to help secure that  
3 information and to prevent its misuse for purposes  
4 other than voter registration."

5 A. Uh-huh.

6 Q. Okay. Now, is it your contention that the  
7 only permissible use of the information contained on  
8 that voter registration application that's collected  
9 by a third party is for voter registration purposes?

10 A. Well, I certainly believe that third  
11 parties are not prohibited from collecting and  
12 maintaining the data, whether it is from a, "I give  
13 you permission to have a copy of my application," or  
14 whether you want to collect it on a separate form for  
15 the purpose of following up with the voter. I know  
16 that's what many of the groups do is follow-up with  
17 voters after registration drives.

18 So to that extent, much like our voter  
19 registration information is available to candidates,  
20 media, people who make phone calls from -- from  
21 candidates, I mean, those are also things that are  
22 done with the information. So the intent of the  
23 voter registration application is to register the  
24 voter, but if a private entity who is conducting that  
25 voter registration drive would like to collect

1 information that is voluntarily given by the voter  
2 for purposes of -- for their organization, with the  
3 voter's permission, then that's permissible.

4 Q. Okay. So there's nothing wrong with  
5 collecting information, say if you wanted to  
6 follow-up for a candidate forum or "For Get Out the  
7 Vote"?

8 A. Correct. You can voluntarily give  
9 someone -- I could voluntarily give you all the  
10 information that I put on that form. The form  
11 itself, its purpose is to register me to vote, but if  
12 you wish to collect information for other purposes,  
13 and I'm willing to give you that information, that's  
14 perfectly permissible.

15 MS. ESTELLE ROGERS: What about if I were  
16 registering with Project Vote and voluntarily  
17 gave them permission to copy my registration  
18 form?

19 THE WITNESS: I would think that's  
20 permissible. I -- if you are giving permission  
21 to them, you give them direct permission to do  
22 so, with their knowledge.

23 MR. RITTER: Yeah. We'll stipulate that,  
24 as a matter of fact. And we've said that  
25 several times.

1 MR. HEARD: So the board -- the board is  
2 construing its application to accept --

3 MR. RITTER: Allow voluntary copying?

4 MR. HEARD: To allow, yeah.

5 MR. RITTER: Yeah, if it's voluntary and  
6 knowing. You know, if the person whose  
7 application it is wants to give them a copy. I  
8 think I mentioned that in court -- open court  
9 the other day.

10 THE WITNESS: I mean, once that  
11 application is on file in the voter registrar's  
12 office, they're -- they're prohibited by law,  
13 you know, by statute from giving anyone a copy.

14 Q. (By Mr. Heard) I understand that.

15 A. I don't even know that I could walk in and  
16 get my own copy from Chatham County. But up until  
17 that point, you know, it's submitted, I would think I  
18 could go over and copy it and hand it to you, if --  
19 if that's what I wanted to do.

20 Q. Okay. What is the sealing doing? I mean,  
21 what does the board --

22 A. Well, one of --

23 Q. -- think the sealing of the application is  
24 doing?

25 A. One of the things we find is that chain of

1 custody on these forms, it also goes through many  
2 different groups of people. I mentioned the forms  
3 that came in by this particular woman who brought in  
4 forms, she had a number of assistants to help her  
5 bring those boxes in. She had been collecting them  
6 from people who had been collecting them from people.

7 Q. Uh-huh.

8 A. And by sealing the information when you  
9 give it to -- when I finish my form and I seal it,  
10 you can -- you can help me fill it out, you can help  
11 me determine if it's accurate and I have everything I  
12 need on it, but before you take possession of it, I  
13 should seal that form before giving it to you. That  
14 ensures that, you know, wherever the form goes, from  
15 the time I put it in your hands until it goes to the  
16 preaddressed address on the form, that my information  
17 is protected from wherever you may want to leave it.  
18 Whether you decide to put them in the trunk of your  
19 car or whether you decide to leave them in your dorm  
20 room, college folks who are out doing these, or, you  
21 know, wherever you put it, at least it is sealed from  
22 public view.

23 Q. Now, how would one, in the board's  
24 estimation, you know, obtain this consent from a  
25 registrant to copy their application, and would that

1 be possible if the application is sealed?

2 A. Well, you would obviously copy a form  
3 before it was sealed if the applicant gave you  
4 permission to copy a form prior to sealing. That  
5 would be done --

6 Q. Okay.

7 A. -- before that time, and then the  
8 application would be sealed.

9 If I was the person doing the registering,  
10 I would probably have someone sign that, yes, I have  
11 affirmatively given you permission to copy my form,  
12 but that's not a requirement. There's nothing that  
13 says that, you know, that has to be done.

14 Q. All right.

15 A. I mean, I myself could take my voter  
16 registration form and make 50 copies of it before I  
17 submitted it and give them to whoever I wanted to,  
18 but. . .

19 Q. You would agree with me that if somebody  
20 is stopping at a MARTA station and gives their voter  
21 registration application to Project Vote, or ACORN or  
22 The People's Agenda, they don't have to do that to  
23 register to vote, correct?

24 A. They don't have to do what?

25 Q. To give their form to those -- to the

1 third party, to the --

2 A. The person -- person could take it with  
3 them.

4 Q. The person could take the application with  
5 them?

6 A. Right. Right. You're talking about, I'm  
7 at a voter registration drive, you give me one, do I  
8 have to give it back to you?

9 Q. Correct.

10 A. No. You could take it with you if you  
11 wanted to mail it yourself.

12 Q. And the voter could also just not go to  
13 the registration drive at all and could ask you for a  
14 copy of the voter registration application, correct?

15 A. They can download one off the Web site, or  
16 get one from the library or a town hall, or numerous  
17 places.

18 Q. Okay. So the voter is choosing to leave  
19 it with the third-party voter registration organizer,  
20 correct?

21 A. If that's what they desire to do. Some  
22 people take them with them and --

23 Q. Those that want to take them with them  
24 take them with them?

25 A. Uh-huh.

1 Q. "Yes"?

2 A. I would agree.

3 Q. Okay.

4 A. But some -- some people don't understand a  
5 voter registration drive, they don't understand that  
6 they can take it with them and drop it in the mail.

7 Q. Okay. As to these applications that came  
8 in that the lady brought in that she said, "I don't  
9 know about these," and that looked a little  
10 suspicious.

11 A. Uh-huh.

12 Q. Is it the board's contention that these  
13 copying and sealing restrictions would have prevented  
14 that activity, those allegedly fraudulent  
15 submissions?

16 A. I think it's their contention that by  
17 requiring that they're sealed and that they're not  
18 copied without permission lends toward a more secure  
19 environment. I am not going to say it prohibits  
20 that, but it certainly provides a -- a potential  
21 barrier to someone obtaining someone else's  
22 information without permission.

23 Q. Okay.

24 MR. HEARD: We can go off the record for a  
25 second.

1 (Off the record.)

2 MR. HEARD: Okay. Go back on the record.

3 MS. ESTELLE ROGERS: Is it your  
4 understanding, Ms. Rogers, that if an applicant  
5 handed a voter registration worker a finished  
6 application, that it wouldn't have to be sealed  
7 at that point?

8 What is your understanding of the sealing  
9 requirement, with specificity?

10 THE WITNESS: My understanding of the  
11 sealing requirement is that I'm the applicant,  
12 you're the third party. If I hand you my  
13 application before I walk away from you, that  
14 application should be sealed, before I leave it  
15 in your possession.

16 MS. ESTELLE ROGERS: Right.

17 THE WITNESS: Okay.

18 MS. ESTELLE ROGERS: So given that, how  
19 possibly could it be copied?

20 THE WITNESS: Well, prior to. I mean, if  
21 say the registration drive -- frequently they're  
22 at schools -- there are copying machines that  
23 are available. I -- I have known people who do  
24 drives to have mailboxes out there. I'm sure  
25 they could have copiers, too, if they wished. I

1 mean, or -- or they can, the voter can  
2 voluntarily give you information and it can be  
3 written down.

4 It could happen a couple of ways, and I  
5 know it does. There are groups who do it. I  
6 think in one of the affidavits it stated that  
7 Helen Butler, that they currently collect  
8 information. You can have the voter collect on  
9 a predefined form certain information, you can  
10 let them write it down, you can have somebody  
11 else who writes it down, or you yourself could  
12 write down that information on that form.

13 You can also assist the voter in assuring  
14 that it's properly completed, that every line is  
15 filled out, every box is checked, go over their  
16 form with them and the requirements, make sure  
17 everybody is in agreement, prior to it being  
18 sealed. It doesn't have to be finished by the  
19 voter and sealed by the voter and given to you  
20 without you having any input and ensuring it's  
21 correct.

22 MS. ESTELLE ROGERS: Thank you.

23 Q. (By Mr. Heard) All right. In the -- in  
24 the emergency rule minutes, it -- I guess I should  
25 look back at it. Exhibit 4, here it is.

1           In the emergency rule minutes, it  
2 indicates that the board considered issues of narrow  
3 tailoring of these rules -- let me back up. And we  
4 talked about one and two on those September 9th, 2004  
5 minutes. The three, the preventing the loss or  
6 misplacement of voter registration applications as a  
7 result of bundling, is that basically the rationale  
8 for the time deadline, the submission deadline?

9           A. Yes. At that time we had just recently  
10 prior to the adoption of these emergency rules,  
11 received a number of applications in bundles from  
12 organizations with no name on them, and they came  
13 after the deadline for voter registration.

14           Q. Okay.

15           A. And they -- the date on the form itself  
16 showed that they were collected well before the  
17 deadline for voter registration, but the forms were  
18 not submitted in a time -- the voter simply did not  
19 get registered.

20           Q. So that number three was related to the  
21 time submission --

22           A. Uh-huh.

23           Q. -- not to the copying and sealing, as far  
24 as you're aware of?

25           A. That's correct.

1 Q. Okay.

2 A. That's my recollection.

3 Q. Okay. Now, in terms of narrow tailoring,  
4 what other options, if any, did the board consider  
5 other than these copying and sealing rules?

6 A. Hmm. I don't remember the exact  
7 discussion. As in all things, I'm sure that it was a  
8 broad discussion, and I'm sure there were probably  
9 other possibilities which were mentioned, but I only  
10 remember the outcome, which was copying and sealing.

11 Q. Okay. And it looks like from the minutes  
12 they were there about a half hour, correct?

13 A. If that's what it states, yes.

14 Q. Okay. Do you recall whether there was any  
15 discussion at the meeting -- and, again, you don't  
16 remember whether they were being taped at this point  
17 or not?

18 A. (Witness shakes head negatively.)

19 Q. "No"?

20 A. I don't recall.

21 Q. Okay. Do you recall whether there was any  
22 discussion about how or whether the existing criminal  
23 laws in Georgia provided a deterrent to this type  
24 of --

25 A. I don't recall.

1 Q. Okay. Do you recall whether there was a  
2 discussion about whether eliminating the Social  
3 Security number off of the application might have  
4 been an option?

5 A. No. I don't -- I don't recall there being  
6 discussion to that regard.

7 Q. You recall that there was not discussion  
8 about that?

9 A. I don't recall there being any discussion  
10 about removing that from the application to -- I  
11 don't recall any discussion. I don't believe that  
12 was considered as an option.

13 Q. Okay. Was there a discussion about  
14 possibly establishing additional ID requirements for  
15 first-time registrants?

16 A. That occurred in 2003, with the Help  
17 America Vote Act. That's already in the legislation.

18 Q. So that was -- that, obviously, was before  
19 these regulations.

20 A. Uh-huh.

21 Q. But any additional ID requirements  
22 requiring mail registrants to come in and vote in  
23 person the first time, for instance?

24 A. No. I don't recall those discussions.

25 Q. Okay. Was there any discussion about how

1 the board could perhaps implement training programs  
2 for third-party registration groups?

3 A. Not at this time. We have since been  
4 having those discussions, and they are part of  
5 discussions we have with the task force and with your  
6 group, and that is going to be part of the proposed  
7 new rules, is there will be training for third  
8 parties for private entities.

9 Q. Okay. Any discussion about how the board  
10 might give any other type of public information?  
11 That's part of the board's authority is to inform the  
12 public about voting and voter registration issues,  
13 correct?

14 A. Correct.

15 Q. Was there any discussion, that you  
16 remember, about whether to help this potential fraud  
17 problem or confidentiality problem there could be any  
18 public service announcements or anything of that  
19 nature that the board could do? Sort of how to  
20 ensure --

21 A. I don't --

22 Q. -- your security?

23 A. I do not recall. There -- there would  
24 have had to have been funding for such a project, and  
25 I don't recall there being any discussion of that.

1 During that time, our voter education funds were  
2 being cut, tremendously.

3 Q. I understand. I mean, I'm thinking  
4 of, you know, the public service commercials, I can't  
5 remember --

6 A. On the voting equipment?

7 Q. The Secretary of State did them for voting  
8 equipment or for --

9 A. Well, that --

10 Q. -- for another division, I can't remember?

11 A. The voting equipment was funded with four  
12 and a half million dollars of general assembly fee,  
13 and investor education protection commercials were  
14 funded --

15 Q. That's the one.

16 A. -- from the lawsuit where a number of  
17 agent -- private companies had to give money to  
18 states for that purpose. So there was money that  
19 funded those commercials directly, as funded the ones  
20 on electronic voting.

21 Q. Okay. And understanding that everything  
22 of that nature always -- public education things  
23 require funding, what I'm asking you is was it even a  
24 topic of discussion at the board?

25 A. I do not recall that being a topic of

1 discussion.

2 Q. Okay. And do you know whether the -- and  
3 I'm going to ask you this as a two-part question:  
4 Has the State Election Board or the Secretary of  
5 State's office made any recommendations to the  
6 Election Assistance Commission about additional rules  
7 or protections that need to -- that you think should  
8 be made in this regard with respect to the mail-in  
9 registration forms?

10 A. We -- we've had discussions with elected  
11 officials and the Election Assistance Commission  
12 about what we believe is the -- is the need to  
13 maintain the use of the Social Security number to  
14 ensure applications and -- that were correct, but,  
15 no, I have not had conversations outside of that.

16 Q. Right. Yeah, I'm talking now specifically  
17 regarding this whole third-party registration issue,  
18 whether there are any changes that need to be made  
19 to --

20 A. I don't recall having any conversations of  
21 that sort.

22 Q. And you sit on some of these boards, like  
23 the election board or whatever?

24 A. Uh-huh.

25 Q. What is it called, the group where you got

1 your certification from?

2 A. Yeah.

3 Q. The Election Assembly?

4 A. The National Association of State Election  
5 Directors, and I am on the professional election  
6 board of the Election Center.

7 Q. And does this topic come up there or have  
8 you had -- at that group?

9 A. Since 2004, this topic has come up a great  
10 deal, but mainly the discussions have been how states  
11 are reacting to voter registration activity that  
12 occurred in 2004.

13 Q. Okay. Any election -- I mean, any  
14 recommendations or final conclusions?

15 A. (Witness shakes head negatively.)

16 Q. Have any been made from those groups?

17 A. No. Not officially from NASED that I'm  
18 aware of. I don't know of any official  
19 recommendation.

20 MR. HEARD: Anything else?

21 MS. ESTELLE ROGERS: Nothing further,  
22 thank you.

23 MR. HEARD: I think we are done. Thank  
24 you, I appreciate your time.

25 (Deposition concluded at 3:24 p.m.)

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(Pursuant to Rule 30(e) of the Federal Rules of Civil Procedure and/or O.C.G.A. 9-11-30(e), the deponent and/or a party having requested the right to review the deposition, making corrections and/or changes and signing, for that purpose the errata pages have been annexed hereto.)

## 1 INDEX TO EXHIBITS

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Plaintiff's  
Exhibit

Description

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1 Notice of Rule 30(B)(6) Deposition  
Of Georgia State Election Board

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2 September 13, 2004 Letter

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3 December 7, 2005 Letter

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4 September 9, 2004 State Election  
Board Special Conference Call  
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5 September 14, 2005 Letter

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9 Synopsis of Proposed Amendments  
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10 March 8, 2006 Letter

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11 183-1-6-.03 Rules and Regulations  
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12 State of Georgia Application for  
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13 Voter Registration Application

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14 The Impact of the National Voter  
Registration Act of 1993 on the  
Administration of Elections for  
Federal Office 2003-2004

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(Original Exhibits 1 through 14 have been  
attached to the original transcript.)

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C E R T I F I C A T E

STATE OF GEORGIA:

COUNTY OF FULTON:

I hereby certify that the foregoing transcript was taken down, as stated in the caption, and the questions and answers thereto were reduced to typewriting under my direction; that the foregoing pages 1 through 107 represent a true, complete, and correct transcript of the evidence given upon said hearing, and I further certify that I am not of kin or counsel to the parties in the case; am not in the regular employ of counsel for any of said parties; nor am I in anywise interested in the result of said case.

This, the 4th day of September, 2006.

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COURT REPORTER DISCLOSURE

Pursuant to Article 8.B. of the Rules and Regulations of the Board of Court Reporting of the Judicial Council of Georgia which states: "Each court reporter shall tender a disclosure form at the time of the taking of the deposition stating the arrangements made for the reporting services of the certified court reporter, by the certified court reporter, the court employer, or the referral source for the deposition, with any party to the litigation, counsel to the parties or other entity. Such form shall be attached to the deposition transcript," I make the following disclosure:

I am a Georgia Certified Court Reporter. I am here as a representative of Brown Reporting, Inc. Brown Reporting was contacted to provide court reporting services for the deposition. Brown Reporting will not be taking this deposition under any contract that is prohibited by 15-14-37(a) and (b).

Brown Reporting has no contract/agreement to provide reporting services with any party to the case, any counsel in the case, or any reporter or reporting agency from whom a referral might have been made to cover this deposition. Brown Reporting will charge its usual and customary rates to all parties in the case, and a financial discount will not be given to any party to this litigation.

KARLA T. PITTMAN, CCR B-1987

1 DEPOSITION OF KATHY A. ROGERS/KTP

2 I do hereby certify that I have read all  
3 questions propounded to me and all answers given by  
4 me on the 1st day of September, 2006, taken before  
5 Karla T. Pittman, and that:

- 6 1) There are no changes noted.
- 7 2) The following changes are noted:

8 Pursuant to Rule 30(e) of the Federal Rules of  
9 Civil Procedure and/or the Official Code of Georgia  
10 Annotated 9-11-30(e), both of which read in part:  
11 Any changes in form or substance which you desire to  
12 make shall be entered upon the deposition...with a  
13 statement of the reasons given...for making them.  
14 Accordingly, to assist you in effecting corrections,  
15 please use the form below:

11 Page No. Line No. should read:

12 Page No. Line No. should read:

14 Page No. Line No. should read:

15 Page No. Line No. should read:

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1 DEPOSITION OF KATHY A. ROGERS/KTP

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12 Page No. Line No. should read:  
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14  
15 If supplemental or additional pages are necessary,  
16 please furnish same in typewriting annexed to this  
17 deposition.

18 KATHY A. ROGERS

19 Sworn to and subscribed before me,  
20 This the day of , 20 .

21 Notary Public  
22 My commission expires:  
23  
24  
25