

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.)

1
2 (Pursuant to Rule 30(e) of the Federal
3 Rules of Civil Procedure and/or O.C.G.A.
4 9-11-30(e), the deponent and/or a party having
5 requested the right to review the deposition,
6 making corrections and/or changes and signing,
7 for that purpose the errata pages have been
8 annexed hereto.)
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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.

1st Karla Pittman
Karla T. Pittman, RPR, GA CCR-B-1987

1
2 **COURT REPORTER DISCLOSURE**

3
4 Pursuant to Article 8.B. of the Rules and
5 Regulations of the Board of Court Reporting of the
6 Judicial Council of Georgia which states: "Each court
7 reporter shall tender a disclosure form at the time
8 of the taking of the deposition stating the
9 arrangements made for the reporting services of the
10 certified court reporter, by the certified court
11 reporter, the court employer, or the referral source
12 for the deposition, with any party to the litigation,
13 counsel to the parties or other entity. Such form
14 shall be attached to the deposition transcript," I
15 make the following disclosure:

16
17 I am a Georgia Certified Court Reporter. I am
18 here as a representative of Brown Reporting, Inc.
19 Brown Reporting was contacted to provide court
20 reporting services for the deposition. Brown
21 Reporting will not be taking this deposition under
22 any contract that is prohibited by 15-14-37(a) and
23 (b).

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25 Brown Reporting has no contract/agreement to
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KARLA T. PITTMAN, CCR B-1987

DEPOSITION OF KATHY A. ROGERS/KTP

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

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

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

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DEPOSITION OF KATHY A. ROGERS/KTP

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If supplemental or additional pages are necessary, please furnish same in typewriting annexed to this deposition.

KATHY A. ROGERS

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

Notary Public
My commission expires: _____