A. No.

Q. Okay. Again focusing in on Exhibit 5. Let's say a person had gone into the voting booth and had selected the Republican party straight ticket and had done like we suggested earlier and gone down and pressed enter on each of the Republican nominees. Had gone to the review screen, made no changes and pressed cast ballot.

A. Uh-huh.

Q. Are you with me so far?

A. Uh-huh.

Q. Is that a "yes"? Just for her.

A. Yes.

Q. Okay. What would the voting record look like in that instance? In the form that's made Exhibit 5.

A. As I understand what you just described, there would be a straight-party selection made here, meaning they would have still done that because in your earlier description, that was -- that was not deselected. So you would have straight party and that choice and then no selection for every other candidate if -- and this is assuming that every candidate on -- or every race on this ballot had a candidate for that party.

Q. Let's -- okay. And let me just make sure I
understood what you said. Again using the form of Exhibit 5, using our example, the straight party would show Republican and then in each race, if there was a Republican nominee, it would show "No Selection." Did I get that right?

A. Okay. Maybe I misunderstood. You're referring to a paper ballot?

Q. No. We're still focused on the DRE.

A. Okay.

Q. And the example where somebody comes in, votes for the Republican party --

A. Right.

Q. -- and then goes down to each Republican nominee and presses the enter key.

A. Correct. And that's what I described, was then under that scenario, the straight-party race at the top of the ballot would say their choice, be it Republican or whatever party they chose. Now, assuming that every race on the ballot had a Republican candidate and the voter went and deselected every one of those, the result would be Republican under the candidate option and no selection for every other race.

Q. Just to -- just so that we are clear. I'm going to -- I'm going to mark over here what I think
you just told me this would look like.

   All right. Now, again assuming that
3 there is a Republican nominee in every one of the
4 races shown on Exhibit 5 and the "N/S" means no
5 selection, have I marked the ballot right using -- or
6 have I marked the vote record printout accurately
7 using the example we've been discussing?
8     A. Yes. In the scenario you described, the
9 candidate option column would appear this way.
10     Q. Now, when that vote was loaded into the PC at
11 the -- at the central counting station, how would the
12 vote be counted? Who would receive votes, anyone?
13     A. As you see here, the straight-party race at
14 the top of the ballot would receive a vote for
15 Republican and no other candidate on the ballot would
16 receive a vote.
17     Q. All right. I'm not sure I understood that,
18 so let me come at it a different angle. Again, using
19 our example, the right-hand column I've handwritten in
20 here, would a vote be counted for United States
21 senator in this race, Kay Bailey Hutchison, the
22 Republican nominee?
23     A. No. As the column reflects, no selection has
24 been made, so no vote would be cast.
25     Q. Would a United States representative,
District 17, the Republican nominee in that race, receive a vote using our example?

A. No. Again, no selection, no -- no ballot cast --

Q. And that's true --

A. -- or vote cast.

Q. -- on down this list so long as there was a Republican nominee.

A. Correct.

Q. Now, returning to the sample ballot that we've marked as Exhibit 2. I'm going to lay this here next to it.

A. Okay.

Q. Assume with me that this ballot, paper ballot, Exhibit 2, somebody had come in and voted Republican party only and bubbled in the Republican party square. I'm going to mark out here next to it. Let's say the box is filled in like that (indicating).

A. Okay.

Q. And they did nothing else. This paper ballot that's Exhibit 2 that's been marked straight ticket Republican goes to the central polling location, true?

A. Correct.

Q. Okay. And at the central polling location it's run through an optical scan machine.
A. Correct.

Q. And the optical scan machine would record a vote using this example for every one of the Republican nominees for every one of the races on this ballot; is that right?

A. In form, yes.

Q. Okay. Although the format is different, the wording and the layout is different, Exhibit 2, as I've marked it with the Republican party, and Exhibit 5 as I've marked it using our example, appear the same, do they not, in terms of the choices made?

A. No.

Q. How are they different?

A. Exhibit 5, as laid out, shows that a voter chose the Republican party, straight party, and then stepped through and deselected every candidate for the Republican party, at least that. They may have voted or chosen somebody else and deselected them. I don't know. But I do know that they've gone through and deselected everyone here. Whereas, the voter on this ballot has simply marked a straight-party ballot and done nothing else.

Q. Are you familiar with the term "emphasis voter"?

A. I am -- I am familiar with the term, yes.
Q. Are you familiar with the term "make sure voter"?
A. No, sir.
Q. Okay. How would you describe an emphasis voter?
A. An emphasis voter, my understanding of it is a legacy of either punch card or optical scan ballots where on a straight-party ballot, and this is only on a straight-party ballot, a voter chooses the party of their choice and then for whatever reason the voter feels obliged to also mark the candidate of their choice as well. Not trusting the machine, or for whatever reason, but doing that. That, to me, is the description of an emphasis voter.
Q. Do you believe that that occurs in this state?
A. I have no reason not to believe it does.
Q. Are you aware of any data or statistics or research or analysis that Hart, or anyone else has done, concerning the prevalence of emphasis voters?
A. No.
Q. Are you familiar with the term "crossover voter"?
A. Yes, very familiar with crossover voting.
Q. What is a crossover voter?
A. Once a -- on a straight-party ballot, if a voter makes a party choice and then goes down the ballot to a specific race and chooses a candidate of another party, a different party from their straight-party choice, and makes that selection, that is a crossover vote.

Q. Returning to the eSlate screens, which we've marked as Exhibit 3.

A. Uh-huh.

Q. I want to now talk about a crossover voter.

A. Okay.

Q. Let's say a voter comes in and votes for the Republican party straight ticket. They get to the United States senator and they decide that they would like to vote for Barbara Radnofsky.

A. Correct.

Q. But they want to continue voting for the rest of the Republicans on the ballot.

A. Okay.

Q. This is the only race they want to vote --

A. I understand that.

Q. How do they go about doing it?

A. They would highlight candidate Radnofsky, hit enter. They would receive the same information screen notifying them that they are about to change their
Q. Exhibit 4.
A. Yes. And when they came back, if they had chosen the Republican party, Kay Bailey Hutchison would then be deselected. And when they came back Barbara would be selected. That would be the --
Q. And when you say "selected," the box next to Barbara Radnofsky would be colored in.
A. Correct. And the other candidates would be grayed out, as they were before they chose Barbara Radnofsky.
Q. Would any other votes on the ballot in the eSlate have changed?
A. No.
Q. So the rest of the Republicans would continue to be highlighted.
A. That is correct.
Q. Now, assume with me that same voter goes further down the ballot and they decide, "Well, I want to vote for the Democrat as attorney general." And so they select -- they highlight or go to David Van Os's name --
A. Okay.
Q. -- they press the enter key. What happens then?
A. To the best of my knowledge, they would
receive the choice again, saying they are changing
their straight-party choice, Exhibit --

Q. 4.

A. -- 4 and then the same reaction. When they
came off of that, they press any key to continue, and
they would come back and that choice would have gone
from Greg Abbott being highlighted and the box filled
in to David Van Os being highlighted and the box being
filled in next to him.

MS. WILSON: I just want to make
something -- to say something as a matter of
recordkeeping. We keep -- we keep -- I think it would
be helpful for the record if we would refer to these
screens in Exhibit 3 by their page number because we
keep referring to this as Exhibit 4. It was an
exhibit at one time, but -- which is going -- it's
going to make it hard to read the record as to -- I
think we need to refer to this as Exhibit 3 and then
to page numbers if that's -- it's just we are going to
have a nightmare trying to figure out what we said if
we don't do that. Is that acceptable?

MR. DUNN: That's fine.

Can you read back the last question?

(Requested portion was read)
Q. (BY MR. DUNN) Well, I'm not sure that helps, so I'm going to back up. All right?
A. Okay.
Q. A Republican person comes in and votes straight Republican party. As we were talking about earlier, they get to the United States senator and they decide to vote for the Democrat. They get to Barbara Radnofsky, the Democratic nominee, they press enter on the machine. They receive the warning screen. They come back to the ballot and Barbara Radnofsky is colored in for United States senator and none of the other options are. You with me at this point?
A. The same, and that is correct.
Q. Okay. The person continues down the same ballot to where they get to the attorney general.
A. Okay.
Q. And on the attorney general the options were Greg Abbott, the Republican party, David Van Os, the Democratic party, and this Republican voter decides in this race as well they would like to vote for the Democrat.
A. Okay.
Q. They go to David Van Os's name. They press the button. And if I understand your testimony right,
they are again taken to the warning screen. They
press any key to continue. They come back to the
ballot. David Van Os is colored in, the rest of the
attorney general candidates are not.

A. Yes. As I remember the functionality, the
second and subsequent times you still receive that
screen, if I remember correctly. But you are correct,
when they went to that race, the other candidate --
the Republican candidate's name would have been
highlighted and the box filled in next to it. When
they went down to the Democratic candidate who was
next on the ballot, hit enter while that was
highlighted, they would get the screen and then come
back and the result would be that the box next to the
Democratic candidate would be filled in.

Q. So to see if I can summarize this. Every
time a person makes an emphasis vote on the eSlate and
every time a person makes a crossover vote, they would
receive the warning screen that's Exhibit 4.

MR. KENNEDY: Object to the form.

A. Well, the problem I have right there is I
don't believe that emphasis vote pertains to the DRE.
The selections already -- the mark has already been
made for the voter, so I'm having trouble relating the
two. I understand it on an optical scan or a punch
card or other type ballot, but on an electronic ballot, where the mark is filled in for the voter automatically, I don't understand how you emphasize vote.

Q. (BY MR. DUNN) Let me try this angle. Every time a voter makes a selection of a candidate that has already been selected as a result of the straight-party choice, they receive the warning screen.

A. Yes. That is my recollection of the functionality.

Q. Every time a voter makes an individual candidate selection from a different party than their straight-party choice, they receive the warning screen.

A. Yes, that is my recollection of the functionality.

Q. And we are using warning screen and what we are talking about is Exhibit 4.

A. Correct, which is --

MS. WILSON: I'm sorry. Exhibit 3, Page 5?

MR. WOOD: Exhibit 4 page something.

MR. DUNN: Exhibit 4 is just one page.

MS. WILSON: I'm sorry. I don't have
copies of the exhibits. Okay. I'm sorry.

MR. KENNEDY: Yes. He's marked an 
internal page of Exhibit 3 Exhibit 4.

MS. WILSON: Okay. I apologize.

MR. DUNN: That's all right.

A. Yes. And to be clear, we would identify that 
as an information screen, yes.

Q. (BY MR. DUNN) Are there any other -- we've 
talked about two information screens I'm aware of 
today. One is Exhibit 4. The other one is one we 
don't have a copy of. That's the one shown when 
somebody is attempting to cast an empty ballot.

A. Blank ballot. That is correct.

Q. Are there any other information screens 
you're aware of?

A. Let me think about that for a moment. There 
is an information screen if you enter an improper or 
incorrectly enter your access code. Let's see, what 
else. There is an information screen if you select a 
straight-party selection and then hit cast ballot, 
there is an information screen that tells you you have 
to review each page of the ballot. You can't just 
jump to the end. You just can't hit cast ballot and 
be done. You have to review each page. What other 
information screens are there? I'm not aware of any
others at this time. I would have to, you know, go through and review them. Those are the ones that I remember.

Q. On the last information screen you've described --

A. Uh-huh.

Q. -- I want to make sure I understand it. If somebody placed a straight-party vote and then they press the cast ballot button --

A. Correct.

Q. -- a screen comes up that generally tells them you have to go through each page of the ballot before you are allowed to cast your vote.

A. That is correct.

Q. Why was that situation created? Why not just let the voter place -- cast their vote?

A. As I remember, and this was something we changed early on, but the challenge was because the voter may skip a race where there was no candidate for that party, they wouldn't know, and instead of trying to -- one of the approaches was -- I guess let me back up and say on a straight-party ballot, if you choose the Republican party, you don't know that down the ballot there are some races either with no Republican party or some nonpartisan issues, be it a bond
election, or whatever. The only way to be sure that
the voter is given an opportunity to review that
information is to force them to see each page of the
ballot and that is what our system does.

Q. Would it be possible to allow the person to
choose a party, they hit cast ballot and instead the
machine says, "Warning, you haven't voted in these
races," and then shows them only that portion of the
ballot that includes those races without a Democrat or
their Republican choice, whichever they went with?

A. Is it possible? Yes, I would imagine it
would be. Now, would it be clear to the voter or --
that I'm not prepared to answer. I don't know.

Q. Is there any reason that you know of, be it
law or regulation, and I know you're not a lawyer, I
assume?

A. No, I'm not.

Q. But is there anything you're aware of today
that would say you couldn't have a system that worked
that way?

A. Well, let's define exactly what it's going to
do. After you press the cast ballot, after making a
choice for a straight-party candidate, you want the
system then to just list the subset of what they saw
or what they haven't voted on?
Q. Just the races and issues, constitutional amendments, et cetera, they haven't placed a vote in because there was no nominee from their party or it wasn't a partisan election.

A. Not that I'm aware of. But, you know, I would have to defer to the Secretary of State's Office --

Q. Sure.

A. -- if that interferes with any of the current election law. I don't know.

MR. DUNN: I want to take a break now, if that's okay, with the two of you.

(Recess from 11:56 to 12:14)

Q. (BY MR. DUNN) We have been talking about Exhibits 1 through 5 today and then you've also produced some documents to us, which I think we established was Hart 0001 through 0139.

A. Correct.

Q. Okay. And before we talk about any of these documents anymore, is it your testimony that Exhibits 1 through 5 and those Bates number documents are true and correct copies of the original?

A. Yes. To the best of my knowledge they are, yes.

Q. And these are records that are kept by Hart
InterCivic in the normal course of business?

A. Yes.

MR. KENNEDY: I'm sorry. The ones we produced or --

MR. DUNN: Exhibits 1 through 5 and Bates number 0001 and 0139.

MR. KENNEDY: The ones you got from me.

A. Yeah. I mean, the ones that we produced, yes, not the ones like these that came from the county. We don't keep that or we don't have that information.

MR. KENNEDY: These are the ones you brought (indicating).

Q. (BY MR. DUNN) So let's be more precise. Exhibits 3 and 4 and then all of the documents you produced today, which are Hart 0001 through 0139.

A. Yes.

Q. There's not been any changes or alteration or anything of those copies as far as you're aware?

A. No, there has not been.

Q. And with regards to Exhibits 3 and 4, a person who went and operated an eSlate voting machine in use in Madison County in 2006, the screens printed out on Exhibits 3 and 4 are true and correct copies of the screens one would see on that machine.
A. Yes, they are.

Q. Before the break you mentioned that a voter who attempted to pass -- cast a blank ballot would receive an information screen.

A. Correct.

Q. And the information screen would warn them that they were casting a blank ballot.

A. That is correct.

Q. And I want to show you Exhibit 5 and it shows, does it not, in the typewritten portion --

A. Uh-huh.

Q. -- somebody casting a blank ballot.

A. It does.

Q. Okay. And --

A. And that voter would have received that screen.

Q. Okay. In the situation where a voter selects a straight party, okay, and let's say it's Republican, and then goes down and selects each Republican nominee. The effect of which is to deselect each one of those races. And then presses cast ballot. Would they receive an information screen saying, "Warning, you're casting an empty ballot"?

A. It is my understanding that, yes, they would.

Q. Is that something that you've looked at
recently and that you're certain of or that's your recollection?

A. No, that is my recollection. I have not looked at that in a long time. I did look recently at no -- you know, the blank ballot, but I -- having just the straight-party race left I think still does because as far as the system is concerned, you haven't chosen a candidate.

Q. As far as if somebody wanted to inspect an eSlate machine from 2006, let's say, for example, the Court wanted to inspect the ballot and an eSlate machine as it would have operated in Madison County in 2006, could that be accomplished?

A. Yes, it could. As far as -- I mean, recreating the ballot from Madison County, I'm assuming they still have their database, typically they do, that defined it. And, yes, the system five software that was used in that election is available, so they could do that.

Q. And so an eSlate voting machine could be brought into a conference room someplace. Would a JBC be necessary, also?

A. Yes, it would.

Q. And the Version 5 point whatever would be -- of software or firmware, as you call it, would be
loaded onto the system and then the ballot definitions
from the county would be loaded onto the system. Is
that the rudimentary process?
A. Yes, that could be accomplished.

Q. At the tallying station, when all the cast
record votes are loaded into the tallying computer,
again, looking at Exhibit 5, which of the options on
here does the tallying station keep a record of?
A. I'm not sure I follow.

Q. Fair enough. One of -- the first option is
straight party and then there's each race.
A. Correct.

Q. Does the central tally station keep track of
everybody that voted in the straight party?
A. Yes.

Q. Okay.
A. I mean, it treats it like a race, yes.

Q. So my question is a person who came in and
voted Republican straight ticket and went down and
selected each Republican nominee thereafter, the
effect of which was to deselect those Republican
nominees, and the final vote cast is summarized as the
handwritten portion of Exhibit 5, would the central
tally station still keep track that that voter had
initially voted Republican straight ticket?
A. What the tabulation software would interpret would be a -- would increment the Republican count under the straight-party race by one and put in undervote -- increment an undervote for each of the races thereafter for that ballot. Because of no selection, it would count it as an undervote.

Q. If there was a hundred votes cast in that county in that race and 10 of them had done as I described, voted Republican straight ticket and then had deselected each Republican nominee and cast -- and cast the ballot selecting no other candidates --

A. Okay.

Q. -- what you expect to see in the totals is a hundred votes cast, 10 Republicans straight tickets and nobody for each of the Republicans, assuming everybody else voted Democrats or didn't vote at all.

A. You would see 10 undervotes corresponding to those ballots read in. The other 90, I don't know, but that's what you would see.

Q. And when you say record undervote --

A. Yes. On the report you would see the candidates for each race, zero, and then there is an undervote and an overvote, although you can't overvote on a DRE, but you would see undervotes recorded as 10. Yeah.
Q. Would you also Republican straight party as 10?
A. Yes. Because under your scenario that had been -- or had been left selected. That was not changed, correct.
Q. Right.
A. Yes.
Q. Why does the system not record in that example 10 votes for each of the candidates that are Republicans?
A. Because in the description that you just gave me, those voters went and deselected the candidates that the straight-party choice made for them when they -- when they selected the straight party. The system automatically did select it. Now, if they had done nothing else, all of those would have been registered as votes for those candidates. But by deselecting each candidate under each race, they effectively decided not to make a selection for whatever reason.
Q. A voter who votes, then, Republican straight ticket and goes down with each Republican nominee and selects their name, the effect of which is to deselect the Republican nominee, the machine could, after all Republicans have been deselected, also deselect the
Republican straight-party choice, could it not?

A. The voter could deselect the straight-party race, yes.

Q. And the machine could also do it once it realized the voter had deselected every one of the Republican candidates, if it were so programmed.

A. You mean theoretically if that was a rule?

Yes, it could.

Q. And if the machine was so programmed, the cast record vote printout, the example which we are using as Exhibit 5, would appear like Exhibit 5 in the typewritten section, no select straight down, including straight party.

A. So if the machine were programmed to deselect a voter's choice for Republican straight party after they had deselected every candidate, yes, it would look like this.

Q. And, likewise, the review screen would look like Exhibit 5 in the sense that it had no select next to the Republican and no select on each race.

A. That is correct.

Q. Turning to this lawsuit, when is it that Hart first became aware of the suit?

A. Memory serves, sometime in the first quarter of this calendar year.
Q. When is the first time Hart became aware of the complaints made in this lawsuit?

A. In that same period of time, if I remember right. Yeah.

Q. So it was this lawsuit that brought to Hart's attention the concern that emphasis voters were losing their votes when they voted on the eSlate machine? I know you disagree with that concern, but the first time Hart learned that someone had that concern was this lawsuit.

A. That is not correct. Although I don't agree that there is an emphasis vote on a DRE, in I believe it was the 2002 general election in Harris County, and if memory serves, the Democratic party, the local chair sent out instructions to the registered Democrats in the county, without conferring with the county, the Secretary of State's Office or with Hart, about the functionality of the system, described the method of voting that was inconsistent with the system. Meaning it asked the voters -- and I don't have the documents. I looked for them in preparation for this. But it stated such that it told them to choose the party and then go down and select, or in the case of the DRE, deselect that candidate, which caused the problem in 2002.
Q. Okay. You said a lot there. I'm going to try to break that apart.

A. Sure.

Q. First you're aware of some letter or documentation going out by the Harris County Democratic party in regard to the 2002 general election that talks about straight-party votes and maybe crossover or emphasis voting.

A. As memory serves, I am aware, after it was received by the voters, and once voting had started, some voters did complain in Harris County and the county responded.

Q. You can't find any copies of those documents, if you ever had them.

A. That is correct. We never received -- to the best of my knowledge, we never received that mailing. I do remember reviewing it once in the county's offices, but that's five years ago.

Q. And the documentation that went out described how to avoid the problem alleged in this lawsuit or it described a method that it wanted its voters to use the DRE?

A. It described the method that would -- how would I say this? It would describe a method that you have described as to selecting a straight-party race