

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

STATE OF FLORIDA,

Plaintiff,

v.

UNITED STATES OF AMERICA and
ERIC H. HOLDER, JR., in his official capacity
as Attorney General,

Defendants, and

KENNETH SULLIVAN, *et al.*,

Defendant-Intervenors.

No. 1:11-cv-1428-CKK-MG-ESH

**DEFENDANT-INTERVENORS' JOINT MOTION AND
MEMORANDUM OF LAW TO COMPEL THE DEPOSITION OF
FLORIDA SECRETARY OF STATE KURT BROWNING**

The Defendant-Intervenors respectfully request that the Court compel the deposition of Florida Secretary of State Kurt Browning, a party in this case.

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**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT-INTERVENORS' JOINT
MOTION TO COMPEL THE DEPOSITION OF FLORIDA SECRETARY OF STATE
KURT BROWNING**

This Motion is made necessary by the refusal of the Plaintiff in this action to agree to schedule and make available for deposition the one individual identified by the State of Florida as acting in this action on its behalf. The State of Florida appears in this action “by and through its Secretary of State Kurt S. Browning” (*see* Dkt. No. 54 at 1) and, as such, it is axiomatic both that he subjects himself to the jurisdiction of this Court and that he must make himself available for deposition by opposing parties upon proper notice. Fed. R. Civ. P. 26 and 37(a)(2).

Documents produced by Florida and depositions already concluded establish that Secretary Browning was personally involved with and has unique knowledge concerning the subject voting law changes. In addition, he made public statements and took discretionary actions that demonstrate his personal knowledge and experience with election matters in Florida as well as supporting the view of the State of Florida in this declaratory judgment action. Secretary Browning’s involvement in this case is more than formalism.

The Defendant-Intervenors would have preferred to wait to bring this issue to the Court’s attention until after completion of the remaining Florida Department of State employee depositions. Unfortunately, given the accelerated discovery schedule that Florida requested and received in this case, such delay is not feasible. In addition, it has become clear that Secretary Browning is likely the only available source of certain relevant information relating to the four sets of voting changes. Finally, the fast-approaching discovery cut-off also places Defendant-Intervenors in the unusual position of seeking the Court’s involvement first rather than waiting for Florida to file a motion for protective order and then responding.

Defendant-Intervenors recognize that Florida does not intend to call Secretary Browning as a witness to meet its burden under Section 5 of the Voting Rights Act, but this should not

preclude Defendant-Intervenors' access to an individual closely involved in the passage and implementation of HB 1355.¹

PROCEDURAL HISTORY

Discovery is scheduled to close in just over two weeks, on February 29, 2012. Document discovery is largely, but not entirely, complete and depositions are well underway. The Defendant-Intervenors and the United States have noticed and taken seven depositions, including one member of the staff of the Florida Department of State. This week, the Defendant-Intervenors will be taking, pursuant to notice, the depositions of additional members of the Department of State staff and additional depositions are planned by the Defendant-Intervenors and the United States before the discovery cut-off.

When Defendant-Intervenors first sought, nearly a month ago, to schedule the deposition of Secretary Browning, counsel for Florida stated that "Florida will oppose any attempt to depose Florida's Secretary of State" and cited as its sole authority the "Apex doctrine." *See* Exhibit A (emails between D. O'Connor and D. Nordby dated Jan. 21-22, 2012). Florida's counsel subsequently explained, in response to Defendant-Intervenors' request for authority supporting this position, that "Florida's opposition to Defendant-Intervenors' attempt to depose Secretary of State Browning is the *Morgan* doctrine, *United States v. Morgan*, 313 U.S. 409 (1941)." *See* Exhibit B (email from A. Davis dated Jan. 23, 2012). The *Morgan* (or "Apex") doctrine, however, cannot shield Secretary Browning's testimony in this case as Florida

¹ Similarly, the State of Florida opposed Defendant-Intervenors' effort (which was supported by the United States) to take depositions of four Florida state legislators and two Florida state legislative staffers concerning the four sets of voting changes at issue in this case. In that case, as we have previously informed this Court, the Northern District of Florida denied the Defendant-Intervenors' motion to compel such depositions. (Dkt. Nos. 69 & 70.)

suggests. Secretary Browning possesses personal, relevant knowledge that cannot be obtained elsewhere. Moreover, a deposition of Secretary Browning will cause either no or only minimal inconvenience, as Secretary Browning has announced his intention to resign this Friday, February 17, 2012. *See* Exhibit C.

Accordingly, on February 9, 2012, pursuant to Local Civil Rule 26.2 and the Court's November 3, 2011 Scheduling and Procedures Order (Dkt. No. 61), counsel for the Defendant-Intervenors requested a meet-and-confer conference call with all counsel concerning, among other things, Secretary Browning's deposition. That call took place at 11:00 am on February 10, 2012. During that conference call, Florida refused to provide any dates for Defendant-Intervenors to conduct Secretary Browning's deposition, and restated its position that it would oppose any attempt to take Secretary Browning's deposition.² The parties then jointly contacted the Chambers of Judge Kollar-Kotelly and briefly described the issue. In response to a request from Chambers, counsel for the Defendant-Intervenors submitted an email summary of the issue. The Court then issued a Minute Order directing the parties to submit expedited briefing on the issue. (Minute Order dated Feb. 10, 2012.)

JURISDICTION

This Court, as the United States District Court in which the action is pending, has undeniable jurisdiction and authority to rule on a motion to compel discovery from parties to this action. Federal Rule of Civil Procedure 37(a)(2) specifies that: "A motion for an order to a party [compelling discovery] must be made in the court where the action is pending." Secretary

² Pursuant to Federal Rule of Civil Procedure 37(a)(1), the Defendant-Intervenors certify that they in good faith conferred with Florida in an effort to schedule Secretary Browning's deposition without Court action.

Browning is the only individual identified by the State of Florida as the person acting on its behalf. *See* Florida’s Second Amended Complaint, Dkt. No. 54 at 1 (“The State of Florida, by and through its Secretary of State Kurt S. Browning, seeks a declaratory judgment . . .”).

Accordingly, having filed suit in this Court and asked for affirmative relief, this Court has jurisdiction over, and the power to order discovery from, both the State of Florida and Secretary Browning. *Alexander v. F.B.I.*, 186 F.R.D. 200, 202 (D.D.C. 1999) (“*Alexander II*”) (“Thus, according to the plain language of [Rule 37], the critical issue is a determination of whom the court would be ordering were plaintiffs granted relief.”); *see also Societe Internationale Pour Participations Industrielles Et Commerciales, S. A. v. Rogers*, 357 U.S. 197, 206-07 (1958). Secretary Browning’s announced resignation on Friday, February 17, 2012, has no bearing on this Court’s authority under Rule 37(a)(2) to issue an order directed to Florida or Secretary Browning prior to that date.³ *See* Exhibit C.

ARGUMENT

I. FLORIDA BEARS THE BURDEN TO PREVENT SECRETARY BROWNING’S DEPOSITION.

Consistent with the principle that “the public . . . has a right to every man’s evidence,” *Trammel v. U.S.*, 445 U.S. 40, 50 (1980) (ellipsis in original; citation omitted), the District of

³ Defendant-Intervenors, in an effort to accommodate Secretary Browning’s schedule, are willing to postpone his deposition until a mutually-agreeable date after his announced resignation (but before the discovery cut-off). To the extent that the Court has any concern regarding its authority to compel Secretary Browning’s deposition after his resignation, the Defendant-Intervenors are willing to take the deposition on February 17, 2012, prior to his resignation. Alternatively, the Defendant-Intervenors see no impediment to taking Secretary Browning’s deposition after his resignation if Florida and Secretary Browning will commit to the Court to appear for deposition at a mutually-agreeable time after his resignation but before the close of discovery without the need for a subpoena.

Columbia District Court has held that, “[g]enerally speaking, ‘[a] party is entitled to depose a witness on all relevant issues to which the witness has knowledge.’” *Alexander v. FBI*, 186 F.R.D. 1, 3 (D.D.C. 1998) (“*Alexander I*”) (Lamberth, C.J.) (citing *CBS, Inc. v. Ahern*, 102 F.R.D. 820, 822 (S.D.N.Y. 1984)); *see also* Fed. R. Civ. P. 30(a)(1).

Accordingly, Florida “bears the burden of making the showing of good cause contemplated by [Federal Rule of Civil Procedure 26(c)]” if it seeks to prohibit Secretary Browning’s deposition. *Alexander I*, 186 F.R.D. at 3; *see also* Fed. R. Civ. P. 26(c) (“[T]he court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.”). To carry this burden, the party seeking to prevent discovery “must make a specific demonstration of facts to support [its] request for the protective order and may not rely on conclusory or speculative statements concerning the need for a protective order.” *Alexander I*, 186 F.R.D. at 3. Moreover, this showing “must be sufficient to overcome [litigants’] legitimate and important interests in trial preparation.” *Id.* (citing *Farnsworth v. Procter & Gamble Co.*, 758 F.2d 1545, 1547 (11th Cir. 1985) (“[T]rial preparation and defense . . . are important interests, and great care must be taken to avoid their unnecessary infringement.”)). Finally, “protective orders that completely prohibit a deposition should be granted only as an ‘extraordinary measure which should be resorted to only in rare occasions.’” *Byrd v. District of Columbia*, 259 F.R.D. 1, 7 (D.D.C. 2009).

II. FLORIDA’S ATTEMPT TO INVOKE THE *MORGAN* DOCTRINE MUST FAIL.

A. The *Morgan* Doctrine Provides Protection Only To High-Ranking Officials Who Do Not Possess Personal, Relevant Information.

The *Morgan* doctrine provides a limited and qualified protection from deposition for high-ranking government officials who do not possess personal, relevant information or whose information can be obtained from other sources. *See Simplex Time Recorder Co. v. Sec’y of*

Labor, 766 F.2d 575, 586 (D.C. Cir. 1985) (noting “the rule enunciated by the Supreme Court in *United States v. Morgan*, 313 U.S. 409, 422 (1941), that top executive department officials should not, absent extraordinary circumstances, be called to testify regarding their reasons for taking official actions”).⁴ For example, in *Simplex*, the United States Court of Appeals for the D.C. Circuit concluded that an administrative law judge did not err in denying a request to question certain officials where the requesting party failed to demonstrate any “urgent or proper need to question these officials” or even “suggest[] any information in the possession of these officials . . . that it could not obtain from published reports and available agency documents.” *Id.*

The concern underlying the *Morgan* doctrine is the “likelihood that depositions would significantly interfere with [high-ranking government officials’] ability to perform their governmental duties.” *Alexander I*, 186 F.R.D. at 4. Accordingly, “given that the concerns associated with deposing high-ranking officials have to do with the potential for interruption of current duties, it is the current position, and not any former position, that is evaluated.” *Byrd*, 259 F.R.D. at 8 (citing *Alexander I*, 186 F.R.D. at 5).

Consistent with these principles and the limited nature of the *Morgan* doctrine, this Court has held that “high-ranking government officials are generally not subject to depositions unless they have *some* personal knowledge about the matter and the party seeking the deposition makes a showing that the information cannot be obtained elsewhere.” *Alexander I*, 186 F.R.D. at 4 (italics in original; underlining added). Stated differently, “[u]nless the movant can show that the

⁴ For present purposes only, the Defendant-Intervenors assume, *arguendo*, that Secretary Browning is currently a “high-ranking government official” under the *Morgan* doctrine. The Defendant-Intervenors expressly reserve the right to contest this subsequently. *See Byrd*, 259 F.R.D. at 7 (noting that “no standard has been established for determining if an official is high-ranking”).

need for the protective order is ‘sufficient to overcome [litigants’] legitimate and important interests in trial preparation,’ high-ranking officials are subject to deposition.” *Byrd*, 259 F.R.D. at 7 (quoting *Alexander I*, 186 F.R.D. at 1) (emphasis added). This is consistent with the First Circuit authority relied upon by Florida’s counsel (*see* Exhibit B) holding that “[d]epositions of high ranking officials may be permitted where the official has first-hand knowledge related to the claim being litigated . . . [and] where it is shown that other persons cannot provide the necessary information.” *Bogan v. City of Boston*, 489 F.3d 417, 423 (1st Cir. 2007).

B. Secretary Browning Possesses Personal, Relevant Information That Is Likely Unavailable From Other Sources.

Secretary Browning’s testimony is relevant, material, and likely very probative to the issues before the Court. Secretary Browning is a principal source of certain information relevant to the passage and implementation of HB 1355 and, indeed, may be the only available source for that information. This sets the instant case apart from the typical *Morgan* doctrine case regarding an uninvolved agency head who has no unique, personal knowledge of relevant information. Accordingly, the Defendant-Intervenors should have an opportunity to take his deposition.

Evidence uncovered to date demonstrates Secretary Browning was personally involved in the legislative process that led up the enactment of the four sets of voting changes at issue, the subsequent implementation of the four sets of voting changes, and the public defense of the four sets of voting changes. First, Florida listed Secretary Browning as the first of only five individuals within the Florida Department of State who were involved in the drafting, proposing, or developing of any of the four sets of voting changes, or who advocated for or against such changes before Florida state legislators or executive branch officials. *See* Exhibit D, Florida Response to Defendant-Intervenors’ Interrogatory No. 1. Florida’s interrogatory response

demonstrates that it cannot carry its burden of showing that Secretary Browning does not have personal, relevant information.

Second, during the deposition of Florida Department of State Assistant General Counsel Maria Matthews, which occurred on Thursday, February 2, 2012, Ms. Matthews testified that Secretary Browning had direct input regarding the legislation that enacted the voting changes at issue (Florida House Bill 1355 (2011) and its companion Senate Bill 2086 (2011) (collectively “HB 1355”), solicited legal advice from Ms. Matthews concerning the changes to early voting contained in HB 1355, and suggested improvements to those changes to the Florida Legislature. *See* Exhibit E, at 48-52 (selected rough draft of Ms. Matthews’ Deposition Transcript);⁵ *see also* Exhibit F (Email dated April 29, 2011, from Florida Department of State Communications Director Chris Cate stating that “Secretary Browning has been offering his knowledge and experience with early voting to help answer any questions Senators may have about the issue”).

Third, Secretary Browning participated in a number of discussions with Florida Department of State staff concerning the four sets of voting changes prior to passage of HB 1355 and personally directed the immediate implementation of HB 1355 in Florida’s 62 counties that are not covered by Section 5 of the Voting Rights Act.⁶ *See* Exhibit E, at 53-60 & 87-105.

⁵ A final transcript was not available at the time of filing. Defendant-Intervenors did not order expedited transcripts at the time of Ms. Matthews’ deposition. However, Defendant-Intervenors are in the process of ordering an expedited transcript in light of this Court’s expedited briefing schedule.

⁶ Immediate implementation of election law changes in non-covered counties, prior to preclearance, appears to deviate from prior state policy and practice that election law changes should not be implemented anywhere in the state until they receive Section 5 preclearance and thus can be implemented everywhere in the state. *See* Exhibit G (December 24, 2007 Memorandum from Ms. Matthews directing all Florida Supervisors of Elections not to implement certain voting changes until after those changes were precleared for implementation

Finally, Secretary Browning made numerous post-enactment public statements in support of HB 1355 that demonstrate Secretary Browning's personal knowledge of relevant information, including the following:

1. Secretary Browning's statement at a May 19, 2011 press conference that HB 1355 "doesn't negatively impact Florida voters, and where the impact is, I believe it's justified."
2. Secretary Browning's execution and issuance on May 19, 2011, of a directive to supervisors of elections "for the purpose of ensuring that specific new changes [occasioned by HB 1355] are uniformly interpreted and implemented . . ."
3. Secretary Browning's interview with WFLA Radio (Tallahassee) on May 20, 2011, concerning HB 1355, in which he said:
 - o "As a former supervisor [of elections] for 26 years in Pasco County, I want to make sure that the laws that we have can be implemented, [so] they don't cost the counties a lot of money."
 - o "There is no harm, no foul when it comes to changes [occasioned by HB 1355] to early voting."
 - o "This change [regarding inter-county movers being required to vote a provisional ballot] I think is a good change. Although at first when I was looking at it, I was thinking, boy, this doesn't make sense . . ."⁷
4. Secretary Browning's editorial published on August 14, 2011, in the Tallahassee Democrat, in which he stated:
 - o "I personally made the decision to have the federal district court in Washington, D.C., conduct the review for these provisions . . ."
 - o "I stand by my initial opinion that the new elections law improves the accountability and integrity of elections, and given my significant experience in elections, my opinion is a well-informed one."

Florida cannot refute the fact that Secretary Browning possesses certain key information for which there likely is no other source. For example, Ms. Matthews specifically testified that

in Florida's five covered counties). This deviation from past practice is relevant to the Court's inquiry into whether the voting changes were enacted with a discriminatory purpose. *See Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 267 (1977).

⁷ Secretary Browning is the only appropriate witness that can explain any basis he had for changing his position on the change of address provisions.

she has no knowledge of the conversations that Secretary Browning had with legislators or legislative staff members concerning HB 1355. *See* Exhibit E, at 47. She also testified that she does not know why Secretary Browning came out publicly in favor of the four sets of voting changes following passage of HB 1355, and she indicated that the Defendant-Intervenors would have to ask Secretary Browning. *See* Exhibit E, at 158-59. Ms. Matthews similarly did not know if Secretary Browning's decision to deviate from past practice and direct immediate implementation of HB 1355 in the non-covered counties was affected by outside influences. *See* Exhibit E, at 104. Given Judge Hinkle's ruling denying the Defendant-Intervenors' motion to compel legislator and legislative staffer testimony, the inability of Ms. Matthews to provide a full accounting concerning the Secretary's communications with legislators and legislative staff regarding HB 1355 makes Secretary Browning's testimony all the more critical and unique.⁸

Finally, whatever disruption the State of Florida and Secretary Browning may fear, as expressed by the *Morgan* doctrine, can be eliminated merely by scheduling his deposition after Secretary Browning resigns as Florida Secretary of State on February 17, 2012. *See* Exhibit C. Accordingly, after February 17, 2012, there is no "potential interruption of current duties" that can support application of the *Morgan* doctrine. *Byrd*, 259 F.R.D. at 8.⁹

⁸ Judge Hinkle's decision prohibiting depositions of Florida state legislators and staff does not preclude in any way the deposition of Secretary Browning; if anything, it makes it even more important that the deposition occur. Judge Hinkle's ruling only underscores the unusual nature of the efforts by the State of Florida to meet its burden under Section 5, considering other contested Section 5 cases in which testimony by state legislators has regularly played a central role. *See, e.g., Georgia v. Ashcroft*, 195 F. Supp. 2d 25, 36 (D.D.C. 2002); *Busbee v. Smith*, 549 F. Supp. 494, 507 (D.D.C. 1982); *see also Brooks v. Miller*, 158 F.3d 1230, 1236 (11th Cir. 1998) (Section 2 case).

⁹ As explained above, Secretary Browning is currently a party to this litigation and, therefore, subject to this Court's jurisdiction under Rule 37(a)(2).

III. ANY DELIBERATIVE-PROCESS PRIVILEGE FLORIDA SEEKS TO INVOKE IS INAPPLICABLE TO THIS CASE.

To the extent that Florida is attempting to use the *Morgan* doctrine as a surrogate for the deliberative process privilege, any such protection is limited, narrowly construed, and can be overcome upon a balancing of the competing interests in this case. Three principles are applicable to any assertion of deliberative process protection. First, the proponent of a privilege bears the burden of establishing that it exists, it applies, and that it has not been waived or otherwise abrogated. See *In re Subpoena Duces Tecum*, 439 F.3d 740, 750 (D.C. Cir. 2006); *In re Grand Jury Investigation*, 842 F.2d 1223, 1225 (11th Cir. 1987). Second, privileges, including the deliberative process protection, should not be “lightly created nor expansively construed for they are in derogation of the search for truth.” *U.S. v. Nixon*, 418 U.S. 683, 710 (1974); see also *In re Sealed Case*, 121 F.3d 729, 737 n.4, 749 (D.C. Cir. 1997) (citing *Morgan* and noting that “privileges should be narrowly construed”). Third, the deliberative process protection is qualified and yields in the face of a sufficient showing of need. “[E]ach time [the deliberative process protection] is asserted the district court must undertake a fresh balancing of the competing interests,” taking into account “the relevance of the evidence,” “the availability of other evidence,” “the seriousness of the litigation,” “the role of the government,” and the “possibility of future timidity by government employees.” *In re Sealed Case*, 121 F.3d at 737-38 (citation omitted).

Even should the deliberative process protection apply, the protection yields where – as here – the relevance of the requested evidence is clear, the evidence is not otherwise available, and the litigation involves the most serious and fundamental of rights: the right to voting free of racial discrimination. As explained above, Secretary Browning is likely the only available source of certain relevant information.

Additionally, the role of the government and governmental intent is precisely at issue in this case, and any potential chilling effect in future cases of refusing to apply the deliberative process privilege is limited by the infrequency of Section 5 cases. Here, it is Florida that must demonstrate that each of the four sets of voting changes “neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color, or [membership in a language minority group].” *See* 42 U.S.C. § 1973c. Secretary Browning’s testimony regarding the legislative process that resulted in HB 1355, the implementation of HB 1355, as well as how that implementation deviates from prior practice, is probative of discriminatory purpose. *See Hunt v. Cromartie*, 526 U.S. 541, 546 n.2 (1999) (citing *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252 (1977) (concluding that procedural and substantive deviations from normal decision-making practices are probative of discriminatory purpose)). The State of Florida cannot both seek affirmative relief from this Court and, simultaneously, shield from the Court the testimony of one of its officials most directly and personally involved in the underlying action for which the State seeks relief.

CONCLUSION

For all these reasons, Defendant-Intervenors’ respectfully request that the Court order Florida and Secretary Browning to appear for deposition at a mutually-agreeable time and location prior to the discovery cut-off in this case.

Dated: February 13, 2012

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EXHIBIT A

O'Connor, Dan

From: O'Connor, Dan
Sent: Sunday, January 22, 2012 4:33 PM
To: Nordby, Daniel E.; Davis, Ashley; WConsovoy@wileyrein.com; mconnolly@wileyrein.com
Cc: elise.shore@usdoj.gov; john.russ@usdoj.gov; ernest.a.mcfarland@usdoj.gov; catherine.meza@usdoj.gov; art@aclu-nca.org; Barlow, Ian; bkengle@lawyerscommittee.org; DHo@NAACPLDF.ORG; diana.kasdan@nyu.edu; erogers@projectvote.org; Farr, Alec W.; jebenstein@aclufl.org; jonathan.brater@nyu.edu; lee.rowland@nyu.edu; LMcDonald@aclu.org; Mammen, Jennifer Kies; mposner@lawyerscommittee.org; mrupp@projectvote.org; Murphy, Jim; NKorgaonkar@NAACPLDF.ORG; RHAYGOOD@NAACPLDF.ORG; RMarshall@aclufl.org; Schwartz, Daniel; Sloey, Nick; wendy.weiser@nyu.edu
Subject: RE: Florida v. U.S. - Outstanding Discovery Issues

Dan:

Thank you for your letter. We will review it and respond separately.

With regard to Secretary Browning, can you please confirm that, as you stated on Tuesday, the basis for Florida's opposition to our taking his deposition is the Apex doctrine? Given the short time remaining in the current discovery period, and the likelihood that Florida's position will force us to seek relief from the Court, please provide such confirmation by noon tomorrow. Please also provide us with any authorities that you contend support Florida's position.

Best,

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Subject: RE: Florida v. U.S. - Outstanding Discovery Issues

Dan:

Florida's response to your email below, and to your letter of December 27, 2011, is attached. A revised privilege log is also attached.

None of the Florida Department of State employees you identified will be available for depositions on January 30 through February 1, 2012, due to ongoing responsibilities related to

2/10/2012

Florida's January 31 presidential preference primary. Florida can make some DOS employees available on Thursday, February 2, or Friday, February 3. Please advise me at your earliest convenience regarding your proposed schedule so that I can assure the attendance of particular individuals at specific times.

As I mentioned to you last Tuesday, Florida will oppose any attempt to depose Florida's Secretary of State.

Please do not hesitate to call or email should you have any questions.

Best regards,

Daniel E. Nordby
General Counsel
Florida Department of State
500 South Bronough Street, Suite 100
Tallahassee, Florida 32399
850-245-6536
daniel.nordby@dos.myflorida.com

From: O'Connor, Dan [mailto:Dan.OConnor@bryancave.com]

Sent: Saturday, January 21, 2012 12:58 AM

To: Nordby, Daniel E.; Davis, Ashley; WConsovoy@wileyrein.com; mconnolly@wileyrein.com

Cc: elise.shore@usdoj.gov; john.russ@usdoj.gov; ernest.a.mcfarland@usdoj.gov;

catherine.meza@usdoj.gov; art@aclu-nca.org; Barlow, Ian; bkengle@lawyerscommittee.org;

DHo@NAACPLDF.ORG; diana.kasdan@nyu.edu; erogers@projectvote.org; Farr, Alec W.;

jebenstein@aclufl.org; jonathan.brater@nyu.edu; lee.rowland@nyu.edu; LMcDonald@aclu.org; Mammen,

Jennifer Kies; mposner@lawyerscommittee.org; mrupp@projectvote.org; Murphy, Jim;

NKorgaonkar@NAACPLDF.ORG; RHAYGOOD@NAACPLDF.ORG; RMarshall@aclufl.org; Schwartz, Daniel;

Sloey, Nick; wendy.weiser@nyu.edu

Subject: RE: Florida v. U.S. - Outstanding Discovery Issues

Dan:

Unfortunately, and contrary to your representations below and on Tuesday, we still have not received any supplemental discovery responses from Florida. This is despite the fact that we served our interrogatories and requests for production more than 60 days ago (on November 15, 2011), Florida served its deficient initial discovery responses more than 30 days ago (on December 16, 2011), and you agreed to provide supplemental discovery responses more than 3 weeks ago (on December 28, 2011).

Given this unreasonable delay, please be advised that if we do not receive Florida's long-overdue supplemental interrogatory responses and document production by 10:00 am on Monday, January 23, 2012, we will contact Judge Kollar-Kotelly's chambers to request a time for a teleconference with the Court to discuss this issue, as well as the need to extend the current discovery schedule.

Regards,

Dan O'Connor
Bryan Cave LLP
1155 F St. NW, Suite 700
Washington, DC 20004
Tel: (202) 508-6042
Fax: (202) 220-7342
dan.oconnor@bryancave.com

From: Nordby, Daniel E. [mailto:Daniel.Nordby@DOS.MyFlorida.com]

Sent: Friday, January 20, 2012 9:42 AM

To: O'Connor, Dan; Davis, Ashley; WConsovoy@wileyrein.com; mconnolly@wileyrein.com

Cc: elise.shore@usdoj.gov; john.russ@usdoj.gov; ernest.a.mcfarland@usdoj.gov; catherine.meza@usdoj.gov; art@aclu-nca.org; Barlow, Ian; bkengle@lawyerscommittee.org; DHo@NAACPLDF.ORG; diana.kasdan@nyu.edu; erogers@projectvote.org; Farr, Alec W.; jebenstein@aclufl.org; jonathan.brater@nyu.edu; lee.rowland@nyu.edu; LMcDonald@aclu.org; Mammen, Jennifer Kies; mposner@lawyerscommittee.org; mrupp@projectvote.org; Murphy, Jim; NKorgaonkar@NAACPLDF.ORG; RHAYGOOD@NAACPLDF.ORG; RMarshall@aclufl.org; Schwartz, Daniel; Sloey, Nick; wendy.weiser@nyu.edu

Subject: RE: Florida v. U.S. - Outstanding Discovery Issues

Dan:

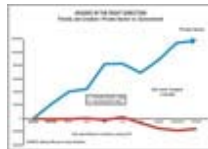
You'll have a response from Florida today.

Best regards,

Daniel E. Nordby
 General Counsel
 Florida Department of State
 500 S. Bronough Street
 Tallahassee, Florida 32399
 850-245-6536
 850-294-8018 (cell)
Daniel.Nordby@dos.myflorida.com

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From: O'Connor, Dan [mailto:Dan.OConnor@bryancave.com]

Sent: Thursday, January 19, 2012 11:56 PM

To: Nordby, Daniel E.; Davis, Ashley; WConsovoy@wileyrein.com; mconnolly@wileyrein.com

Cc: 'elise.shore@usdoj.gov'; 'john.russ@usdoj.gov'; 'ernest.a.mcfarland@usdoj.gov'; 'catherine.meza@usdoj.gov'; art@aclu-nca.org; Barlow, Ian; bkengle@lawyerscommittee.org; DHo@NAACPLDF.ORG; diana.kasdan@nyu.edu; erogers@projectvote.org; Farr, Alec W.; jebenstein@aclufl.org; jonathan.brater@nyu.edu; lee.rowland@nyu.edu; LMcDonald@aclu.org; Mammen, Jennifer Kies; mposner@lawyerscommittee.org; mrupp@projectvote.org; Murphy, Jim; NKorgaonkar@NAACPLDF.ORG; RHAYGOOD@NAACPLDF.ORG; RMarshall@aclufl.org; Schwartz, Daniel; Sloey, Nick; wendy.weiser@nyu.edu

Subject: Florida v. U.S. - Outstanding Discovery Issues

Importance: High

Florida Counsel:

This past Tuesday morning (before the Miami-Dade SOE deposition) Dan Nordby and I discussed the following two outstanding discovery issues, which I wanted to follow up on:

1. Florida's long overdue supplemental interrogatory and RFP responses

- o As you know, Florida agreed to supplement its December 16, 2011 interrogatory and RFP responses during the parties' December 28, 2011 meet-and-confer teleconference. In reliance on that commitment, the Defendant-Intervenors have not moved to compel or sought other relief from the Court. Unfortunately, however, Florida has not yet provided any supplementation. When Dan and I discussed this on Tuesday morning Dan stated that we would receive Florida's supplemental interrogatory and RFP responses by the end of this week.
 - o Can you please confirm that we will receive such responses tomorrow?
2. Availability of selected Florida Department of State ("DOS") personnel for deposition during the week of January 30, 2012
- o During our conversation on Tuesday I informed Dan that we presently anticipate taking depositions of: Secretary of State Kurt Browning, DOS Assistant General Counsel Gary Holland, DOS Division of Elections Director Gisela Salas, DOS Legislative Liaison Pierce Schuessler, and DOS Communications Director Chris Cate. Dan agreed to check on these individuals' availability for deposition during the week of January 30, 2012.
 - o Can you please advise us of these individuals' availability?

Florida's delay in providing this information has made it even more difficult to complete discovery during the truncated discovery period requested by Florida. Accordingly, please be advised that any further delay will only increase the need to seek an extension of the discovery period from the Court.

Regards,

Dan O'Connor
Bryan Cave LLP
1155 F St. NW, Suite 700
Washington, DC 20004
Tel: (202) 508-6042
Fax: (202) 220-7342
dan.oconnor@bryancave.com

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bcllp2011

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bcllp2012

EXHIBIT B

O'Connor, Dan

From: Davis, Ashley [ADavis@dos.state.fl.us]

Sent: Monday, January 23, 2012 12:55 PM

To: O'Connor, Dan

Cc: elise.shore@usdoj.gov; john.russ@usdoj.gov; ernest.a.mcfarland@usdoj.gov; catherine.meza@usdoj.gov; art@aclu-nca.org; Barlow, Ian; bkengle@lawyerscommittee.org; DHo@NAACPLDF.ORG; diana.kasdan@nyu.edu; erogers@projectvote.org; Farr, Alec W.; jebenstein@aclufl.org; jonathan.brater@nyu.edu; lee.rowland@nyu.edu; LMcDonald@aclu.org; Mammen, Jennifer Kies; mposner@lawyerscommittee.org; mrupp@projectvote.org; Murphy, Jim; NKorgaonkar@NAACPLDF.ORG; RHAYGOOD@NAACPLDF.ORG; RMarshall@aclufl.org; Schwartz, Daniel; Sloey, Nick; wendy.weiser@nyu.edu; Nordby, Daniel E.; WConsovoy@wileyrein.com

Subject: Florida v. U.S. - Outstanding Discovery Issues

Florida's opposition to Defendant-Intervenors' attempt to depose Secretary of State Browning is the [Morgan doctrine](#), [United States v. Morgan](#), 313 U.S. 409 (1941). As recently summarized in [United States v. Sensient Colors, Inc.](#), 649 F.Supp.2d 309, 316 (D. N.J. 2009):

"There is wide agreement among the Circuits that current high-ranking government officials should not be subject to the taking of depositions absent extraordinary circumstances. [See Bogan v. City of Boston](#), 489 F.3d 417, 423 (1st Cir. 2007) (citing [Simplex Time Recorder Co. v. Sec'y of Labor](#), 766 F.2d 575, 586 (D.C.Cir. 1985); [In re United States \(Holder\)](#), 197 F.3d 310, 313 (8th Cir. 1999); [In re FDIC](#), 58 F.3d 1055, 1060 (5th Cir. 1995); [In re United States](#), 985 F.2d 510, 512 (11th Cir. 1993)); [see also Kyle Engineering Co. v. Kleppe](#), 600 F.2d 226, 231 (9th Cir. 1979) ("Heads of government agencies are not normally subject to deposition.")"

[See also United States v. Wal-Mart Stores](#), 2002 WL 562301 at *1 (D. Md. March 29, 2002) (noting that the [Morgan](#) doctrine protects high-ranking government officials who would otherwise be "inundated with discovery obligations" leaving their "time remaining for government service significantly diluted or completely consumed"). [Morgan](#) has "come to stand for the notion that as for high-ranking government officials, their thought processes and discretionary acts will not be subject to later inspection under the spotlight of deposition. Decision-makers enjoy a mental process privilege." [Wal-Mart Stores](#), 2002 WL 562301 at *1

As noted above, the Supreme Court's [Morgan](#) doctrine has been acknowledged by the D.C. Circuit. [See, e.g., Simplex Time Recorder Co. v. Secretary of Labor](#), 766 F.2d 575 (D.C. Cir. 1985).

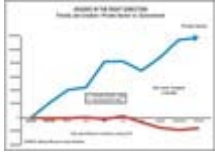
Florida has expressed its willingness to produce other employees of the Florida Department of State, who have personal knowledge of the Department's legislative involvement, for depositions by Defendant-Intervenors. Given the substantial weight of authority on this issue (only some of which is outlined above), we hope that Defendant-Intervenors will reconsider their attempt to undertake a needless and intrusive deposition of Florida's Secretary of State.

Ashley Davis
Assistant General Counsel
Florida Department of State
R.A. Gray Building
500 South Bronough Street
Tallahassee, FL 32399-0250
Phone: (850) 245-6536

Fax: (850) 245-6127

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EXHIBIT C



FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KURT S. BROWNING
Secretary of State

January 11, 2012

The Honorable Rick Scott
Governor
The Capitol, PL 05
Tallahassee, FL 32399-0001

Dear Governor Scott:

After a great deal of thought over the recent holidays, I have decided that it is in the best interest of my family that I return to Pasco County. Therefore, I am submitting my resignation to you effective February 17, 2012 or at your pleasure.

It is my hope that I can remain in the Department of State to help guide us through the upcoming January 31, 2012, Presidential Preference Primary.

It has been an honor to serve the State of Florida again as Secretary of State. I have often said that it is rare that you "get a second bite at this apple," and for that, I am grateful. As you know, I love the Department of State, its mission and its people. The team at the Department of State is an incredibly talented, dedicated and passionate group of people that continue to serve this State well. I am confident that they will continue to be a high performing team through 2012 and beyond!

Thank you again for the opportunity to serve.

Sincerely,

A handwritten signature in black ink, appearing to read "Kurt Browning".

Kurt S. Browning
Florida Secretary of State



EXHIBIT D

In addition to these objections, Florida further objects to Defendant-Intervenors' interrogatories as indicated below.

RESPONSES TO INTERROGATORIES

Interrogatory No. 1

Identify each person who is not a member of the Florida House of Representatives, a member of the Florida Senate, an employee of the Florida House of Representatives, or an employee of the Florida Senate that was involved in any way in the drafting, proposing, or development of the Third-Party Voter Registration Changes, the Constitutional Initiative Changes, the Change of Residence Provisions, and/or the Early Voting Changes, or who advocated either in favor of or in opposition to these changes before any Legislator or Executive Official, and describe each such person's involvement in this regard.

Response

Florida objects to this interrogatory to the extent it requests Florida to identify persons who are neither employed by nor acting under the control of the Department of State but who testified at public committee hearings on the grounds that it is overbroad, unduly burdensome, and requests information equally accessible to Defendant-Intervenors. Florida further objects to the term "advocated" on the grounds that it is vague. Expressly reserving and without waiving the general objections or these specific objections, Florida states as follows:

The following employees of the Florida Department of State spoke with legislators, legislative staff, or executive branch officials or staff employed outside the Department of State regarding one or more of the changes sought to be precleared in this action:

Secretary of State Kurt Browning

Assistant Secretary of State Jennifer Kennedy

Director of Legislative Affairs Pierce Schuessler

Assistant General Counsel Gary Holland

Assistant General Counsel Maria Matthews

Interrogatory No. 2

Identify and describe all information, facts, Documents, and witnesses that Florida contends support its allegations in ¶¶ 50-51 of the Complaint that the Third-Party Voter Registration Changes do not have the purpose, nor will have the effect, of denying or abridging the right to vote on account of race, color, or membership in a language minority.

Response

Florida objects to this interrogatory to the extent that it requests “all information, facts, Documents, and witnesses” that support Florida’s allegations regarding the Third-Party Voter Registration Changes on the grounds that the request is overbroad and unduly burdensome. Florida further objects to this interrogatory on the grounds that discovery and data analysis are ongoing. Florida will comply with any orders issued by the Court regarding identification of proposed witnesses. Florida will respond to this interrogatory to the best of its present ability but reserves the right to supplement, revise, correct, or clarify any of this response, if necessary or appropriate. Expressly reserving and without waiving the general objections or these specific objections, Florida states as follows:

The Third-Party Voter Registration Changes were enacted to address Florida’s legitimate interests in: 1) ensuring that all electors are timely registered to vote by ensuring that all voter registration applications are properly and timely submitted; 2) holding third-party voter registration organizations accountable for the applications they collect; and 3) preventing

EXHIBIT E

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE DISTRICT OF COLUMBIA
 3
 4 CASE NO. 1:11-cv-1428-CKK-MG-ESH
 5
 6 STATE OF FLORIDA,
 7 Plaintiff,
 8 v.
 9 UNITED STATES OF AMERICA and
 10 ERIC H. HOLDER, JR., in his
 11 official capacity as Attorney
 12 General,
 13 Defendants,
 14 FLORIDA STATE CONFERENCE OF
 15 THE NAACP, et al.,
 16 Defendant-Intervenors,
 17 KENNETH SULLIVAN, et al.,
 18 Defendant-Intervenors,
 19 NATIONAL COUNCIL OF LA RAZA
 20 and LEAGUE OF WOMEN VOTERS
 21 OF FLORIDA,
 22 Defendant-Intervenors.

18 _____/
 19 ROUGH DRAFT ONLY
 20 DEPOSITION OF MARIA MATTHEWS

21 Taken in the above-styled cause, pursuant to
 22 Notice, at the Office of the United States Attorney, 111
 23 North Adams Street, Fourth Floor, Tallahassee, Florida,
 24 on the 2nd day of February, 2012, commencing at
 25 approximately 9:00 a.m., reported by Mary Clarke
 Corkery, Court Reporter and Notary Public.

MARY CLARKE CORKERY, COURT REPORTER

1 DEPOSITION

2 Whereupon,
 3 MARIA MATTHEWS
 4 was called as a witness, having first been duly sworn to
 5 speak the truth, the whole truth, and nothing but the
 6 truth, was examined and testified as follows:
 7 EXAMINATION BY MR. FARR:
 8 Q. Good morning.
 9 A. Good morning.
 10 Q. Could you state and spell your full name for the
 11 record, please?
 12 A. Maria Isabel Matthews, M-A-R-I-A I-S-A-B-E-L
 13 M-A-T-T-H-E-W-S.
 14 Q. Thank you.
 15 Ms. Matthews, I introduced myself off the record.
 16 I'll introduce myself again on the record. My name is
 17 Alec Farr and I represent two of the entities that are
 18 defendant-intervenors in this case, the League of Women
 19 Voters of Florida and NCLR. There are also -- to my
 20 right is Dan O'Connor who represents the same entities
 21 and I'd ask that at this point if any of the other
 22 attorneys could please introduce themselves for the
 23 record.

24 MS. SHORT: Elise Shore, Department of
 25 Justice.

MARY CLARKE CORKERY, COURT REPORTER

1 APPEARANCES

2 FOR PLAINTIFFS:

4 FOR DEFENDANT:

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8 WITNESS: PAGE:

9 MARIA MATTHEWS

| | |
|------------------------------------|-----|
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17 CERTIFICATE OF NOTARY 278

18 09:03:42
 19 09:03:42

20
 21
 22
 23
 24
 25 MARY CLARKE CORKERY, COURT REPORTER

1 MS. MESA: Catherine Meza, Department of
 2 Justice.
 3 MR. NORDBY: Daniel Nordby from the Florida
 4 Department of State representing the State of
 5 Florida and Secretary of State Kurt Browning.
 6 MR. FARR: Mr. Nordby, just for the record,
 7 do you represent the witness?
 8 MR. NORDBY: I do.
 9 MR. FARR: Thank you.
 10 BY MR. FARR:
 11 Q. Ms. Matthews, have you ever been deposed before?
 12 A. No.
 13 Q. Okay. You're an attorney; correct?
 14 A. Yes.
 15 Q. All right. Well, for the record, I will state a
 16 few of the ground rules for the process going forward.
 17 I'll be asking you a series of questions to which
 18 you have to give answers under oath. Everything we say
 19 is being taken down by the court reporter sitting to
 20 your right.
 21 Do you understand that?
 22 A. Yes.
 23 Q. If at any time one of my questions is unclear,
 24 please let me know and I'll attempt to accommodate you.
 25 Otherwise, if you don't let me know that, I will assume

MARY CLARKE CORKERY, COURT REPORTER

10:00:10 **1 A. This is a summary report prepared by OPOGA and**
 10:00:14 **2 the division is frequently delegated responsibility and**
 10:00:18 **3 maybe in that context is why they said the Division of**
 10:00:22 **4 Elections.**
 10:00:22 **5 Q. Okay. Speaking of the Secretary of State, what**
 10:00:28 **6 is the name for the record of the current Secretary of**
 10:00:30 **7 State?**
 10:00:30 **8 A. Kurt S. Browning.**
 10:00:32 **9 Q. And how long has he been Secretary of State?**
 10:00:36 **10 A. He has -- I can't recall because he did leave for**
 10:00:42 **11 a period of time and then returned.**
 10:00:46 **12 Q. Has Secretary Browning, to your knowledge, been**
 10:00:50 **13 involved directly with election law issues?**
 10:00:54 **14 A. Yes.**
 10:00:56 **15 Q. Could you describe what kind of involvement he's**
 10:00:58 **16 typically had in election law issues?**
 10:01:00 **17 A. Well, he may direct us to prepare legislation to**
 10:01:08 **18 put forward as the Department's package, election law**
 10:01:12 **19 package.**
 10:01:14 **20 Q. Did Secretary Browning direct you to create the**
 10:01:18 **21 package that was a proposal for legislation prior to HB**
 10:01:24 **22 1355 coming to pass that was then not fully used as you**
 10:01:30 **23 testified earlier?**
 10:01:30 **24 A. I don't know that it was him specifically.**
 10:01:34 **25 Q. Was it someone on his behalf?**
MARY CLARKE CORKERY, COURT REPORTER

10:02:54 **1 A. It would be more through the Legislative Affairs'**
 10:02:56 **2 director probably.**
 10:02:58 **3 Q. Okay. Who is the Legislative Affairs' director?**
 10:03:00 **4 A. Pierce Schussler.**
 10:03:02 **5 Q. Going back to Secretary Browning, to your**
 10:03:04 **6 knowledge, was he involved in any discussions with**
 10:03:08 **7 legislators about HB 1355?**
 10:03:10 **8 A. I don't recall.**
 10:03:12 **9 Q. He may have been, you just don't know?**
 10:03:14 **10 A. Yes.**
 10:03:14 **11 Q. Would Secretary Browning in the past have been**
 10:03:18 **12 involved in communication with legislators about**
 10:03:22 **13 election laws?**
 10:03:22 **14 A. Yes.**
 10:03:24 **15 Q. It's a pretty typical occurrence? It's not**
 10:03:30 **16 unusual anyway?**
 10:03:30 **17 A. Yes.**
 10:03:32 **18 Q. No, it's not unusual? I'm sorry. That's my**
 10:03:34 **19 fault. I asked you a negative question.**
 10:03:36 **20 A. No.**
 10:03:36 **21 Q. It happens. No, it's not unusual. Thank you**
 10:03:40 **22 very much.**
 10:03:40 **23 Would Secretary Browning also typically with**
 10:03:44 **24 respect to election laws discuss legislation with**
 10:03:48 **25 members of legislative staff as well as legislators?**
MARY CLARKE CORKERY, COURT REPORTER

10:01:36 **1 A. Yes.**
 10:01:36 **2 Q. Who was that person?**
 10:01:38 **3 A. The Assistant Secretary of State.**
 10:01:40 **4 Q. For the record, who is that?**
 10:01:42 **5 A. Jennifer Kennedy.**
 10:01:44 **6 Q. So, to your knowledge, the directive to prepare**
 10:01:46 **7 that package came from Jennifer Kennedy?**
 10:01:50 **8 A. That I can recall.**
 10:01:52 **9 Q. Was Secretary Browning involved in any way in the**
 10:01:58 **10 legislative process of what became HB 1355, to your**
 10:02:04 **11 knowledge?**
 10:02:06 **12 A. Yes.**
 10:02:06 **13 Q. How was he involved?**
 10:02:08 **14 A. As the agency head, I would imagine he is --**
 10:02:18 **15 would be the one responsible for putting forth the**
 10:02:22 **16 package and stating the reasons why we need the changes**
 10:02:30 **17 that we proposed.**
 10:02:32 **18 Q. And you believe that because that's standard**
 10:02:36 **19 procedure; is that right?**
 10:02:36 **20 A. Yes.**
 10:02:38 **21 Q. And, to your knowledge, he did that with respect**
 10:02:40 **22 to HB 1355?**
 10:02:42 **23 A. Well, I don't have a personal knowledge of him**
 10:02:48 **24 going forward with that.**
 10:02:52 **25 Q. But your testimony --**
MARY CLARKE CORKERY, COURT REPORTER

10:03:52 **1 A. No.**
 10:03:52 **2 Q. So mostly he just dealt with the legislators**
 10:03:54 **3 themselves?**
 10:03:54 **4 A. Yes.**
 10:03:58 **5 Q. Would Secretary Browning also deal with the other**
 10:04:04 **6 types of organizations that you testified earlier would**
 10:04:06 **7 give input on election legislation such as supervisors**
 10:04:10 **8 of elections, political action groups?**
 10:04:16 **9 A. Supervisors of elections, yes.**
 10:04:18 **10 Q. Have you ever witnessed Secretary Browning having**
 10:04:20 **11 a conversation with a member of a political action group**
 10:04:24 **12 about election law legislation?**
 10:04:34 **13 A. I vaguely remember one time us sitting around**
 10:04:40 **14 with League of Women Voters and some other activist**
 10:04:42 **15 groups in which the Secretary agreed to speak with them.**
 10:04:48 **16 That was many years ago.**
 10:04:56 **17 Q. To your knowledge, did Secretary Browning have**
 10:04:58 **18 direct input on the provision that ultimately became HB**
 10:05:14 **19 1355?**
 10:05:14 **20 A. I don't know.**
 10:05:14 **21 Q. You just don't know?**
 10:05:16 **22 A. Yes.**
 10:05:16 **23 Q. Okay. Would it have been typical in your**
 10:05:22 **24 experience for the Secretary to have some input on major**
 10:05:24 **25 election law legislation?**
MARY CLARKE CORKERY, COURT REPORTER

10:05:28 **1 A. It would not be unusual for the Legislature to**
 10:05:32 **2 ask an agency head about an election law package that**
 10:05:38 **3 was being put forth by a sponsor.**
 10:05:40 **4 Q.** You just don't know whether it occurred with
 10:05:44 **5** respect to HB 1355?
 10:05:44 **6 A. That's correct.**
 10:05:46 **7 Q.** Okay. And I'm sorry. Just to close the loop, do
 10:05:50 **8** you know whether he had any input on the four sets of
 10:05:52 **9** voting changes we discussed specifically?
 10:06:00 **10 A. I only recall the early voting.**
 10:06:02 **11 Q.** Secretary Browning had some input on early
 10:06:06 **12** voting?
 10:06:08 **13 A. What do you mean by input?**
 10:06:10 **14 Q.** Did he suggest language? Did he suggest what the
 10:06:14 **15** regime should look like? Did he have problems with what
 10:06:18 **16** the legislator was considering doing, that sort of
 10:06:22 **17** thing?
 10:06:22 **18 A. He had input.**
 10:06:22 **19 Q.** Can you describe his input?
 10:06:24 **20** MR. NORDBY: Object to the extent that any
 10:06:26 **21** of her answer might involve things that were
 10:06:28 **22** communicated to her in the course of an
 10:06:30 **23** attorney-client relationship which she has with
 10:06:34 **24** Secretary of State.
 10:06:34 **25** BY MR. FARR:
MARY CLARKE CORKERY, COURT REPORTER

10:07:52 **1** from you with respect to this change in the language?
 10:07:56 **2 A. Yes.**
 10:07:58 **3 Q.** Was the topic of the legal advice -- I mean, at a
 10:08:02 **4** high level? I don't want to know what exactly he asked
 10:08:06 **5** you, but what kind of legal advice was it?
 10:08:14 **6 A. I think, as I said earlier, how to improve the**
 10:08:20 **7 provision.**
 10:08:20 **8 Q.** Improve the provision, again, high level -- I
 10:08:24 **9** don't want to know what you said, but improve the
 10:08:26 **10** provision with respect to, for example, Federal Voting
 10:08:30 **11** Rights Act law, for example?
 10:08:32 **12 A. No.**
 10:08:34 **13 Q.** Was it to make the language sit better with
 10:08:38 **14** Florida law or the Florida Constitution or anything of
 10:08:40 **15** that nature?
 10:08:42 **16 A. No.**
 10:08:52 **17 Q.** How was it legal advice then?
 10:08:58 **18 A. Well, I guess, in that context it was.**
 10:09:14 **19 Q.** So since it wasn't legal advice --
 10:09:16 **20 A. No. No.**
 10:09:18 **21 Q.** Sorry?
 10:09:18 **22 A. No. It was, it was in the context of asking**
 10:09:24 **23 against other state law.**
 10:09:26 **24 Q.** Okay. So he was asking for your opinion on how
 10:09:30 **25** to improve the language so that it would conform to
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10:06:34 **1 Q.** Okay. Can you answer my question of what input
 10:06:38 **2** did he have? I'm just asking factually, not any advice
 10:06:42 **3** you gave him.
 10:06:48 **4 A. Improvement to the -- per the voting language.**
 10:06:52 **5 Q.** Do you recall specifically what language change
 10:06:56 **6** he suggested?
 10:06:58 **7 A. No.**
 10:07:00 **8 Q.** Do you recall any other input he had with respect
 10:07:02 **9** to the early voting change in 1355?
 10:07:08 **10 A. No.**
 10:07:10 **11 Q.** How are you aware of this input that he had? Did
 10:07:18 **12** it come up in a conversation you were privy to?
 10:07:20 **13 A. Because we have internal discussions.**
 10:07:24 **14 Q.** Okay. So you had an internal discussion with
 10:07:26 **15** him?
 10:07:26 **16 A. Uh-huh.**
 10:07:26 **17 Q.** He suggested a change to the language he wanted
 10:07:30 **18** to you; is that right?
 10:07:34 **19** MR. NORDBY: Well, objection again to the
 10:07:36 **20** extent you're asking her to, to answer a question
 10:07:40 **21** about advice that she may have provided to her
 10:07:44 **22** client or questions that he may have asked her
 10:07:48 **23** about.
 10:07:50 **24** BY MR. FARR:
 10:07:50 **25 Q.** Was Secretary Browning soliciting legal advice
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10:09:34 **1** other state law?
 10:09:34 **2 A. Yes.**
 10:09:36 **3 Q.** Just, again, at a high level, what state law was
 10:09:38 **4** he asking you about?
 10:09:40 **5 A. Just any other provision in the Florida Election**
 10:09:42 **6 Code.**
 10:09:46 **7 Q.** Was there a specific provision in the Florida
 10:09:48 **8** Election Code that he was concerned about?
 10:09:50 **9** MR. NORDBY: Object again.
 10:09:52 **10** MR. FARR: Okay.
 10:09:54 **11** MR. NORDBY: Direct the witness not to
 10:09:56 **12** answer.
 10:09:56 **13** MR. FARR: That's where the line is.
 10:09:58 **14** MR. NORDBY: Yes.
 10:09:58 **15** MR. FARR: Okay.
 10:09:58 **16** BY MR. FARR:
 10:09:58 **17 Q.** Okay. You understand I'm entitled to probe.
 10:10:00 **18** It's a difficult situation we kind of have here that we
 10:10:04 **19** have to struggle. You're an agency attorney. That's
 10:10:06 **20** why I was asking the questions about who you view as
 10:10:08 **21** your client. A lot of times our position is you're
 10:10:12 **22** acting sort of in an executive function and I think Mr.
 10:10:14 **23** Nordby agrees with me and that's not privileged. So
 10:10:16 **24** every conversation you've had with Mr. Nordby or indeed
 10:10:18 **25** with the Secretary in our view would not be privileged.
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10:10:20 **1** That's the only reason I'm asking those questions. I'm
 10:10:22 **2** not trying to trap you in any way. I'm just entitled to
 10:10:26 **3** probe the claim of privilege.
 10:10:28 **4** All right. Did you have any other conversations
 10:10:28 **5** with Secretary Browning concerning HB 1355's four sets
 10:10:36 **6** of voter changes? And just to time frame it, before the
 10:10:44 **7** bill passed.
 10:10:46 **8** **A. Yes.**
 10:10:46 **9** **Q.** Okay. How many other conversations did you have
 10:10:48 **10** with the Secretary before the bill passed?
 10:10:52 **11** **A. There were a number.**
 10:10:52 **12** **Q.** So he was in fairly consistent communication with
 10:10:56 **13** you about the bill as it made its way through the
 10:11:00 **14** Legislature?
 10:11:02 **15** **A. It was not unusual to be with other staff**
 10:11:06 **16** **discussing the progress of HB 1355.**
 10:11:12 **17** **Q.** And just generally, again, at a high level -- I
 10:11:16 **18** don't want to invade any privileges, but what sort of
 10:11:18 **19** things were you discussing with respect to the bill?
 10:11:28 **20** **A. Where the bill was. As you know, there's the**
 10:11:32 **21** **House bill and there's the Senate bill. So our election**
 10:11:36 **22** **package was in the Senate and it was how the bill was**
 10:11:50 **23** **progressing, what provisions were in it, and our**
 10:12:02 **24** **thoughts about the provisions.**
 10:12:04 **25** **Q.** Okay. Were these -- strike that.
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10:13:14 **1** voting. I'm asking now a different question. Did he
 10:13:16 **2** direct you or any other member of the staff to give
 10:13:20 **3** input to the Legislature concerning the provisions of HB
 10:13:28 **4** 1355 in these meetings you were testifying about?
 10:13:32 **5** **A. We generally -- if the House or the Senate calls**
 10:13:38 **6** **us about any questions, it doesn't have to be at the**
 10:13:42 **7** **direction of the Secretary to respond.**
 10:13:44 **8** **Q.** I understand.
 10:13:46 **9** So the House and the Senate typically calls your
 10:13:50 **10** office and they ask for direction and there's
 10:13:52 **11** interaction?
 10:13:52 **12** **A. Right.**
 10:13:54 **13** **Q.** It doesn't have to be at Secretary Browning's
 10:13:56 **14** direction?
 10:13:56 **15** **A. Yes.**
 10:13:56 **16** **Q.** Did, in fact, though, Secretary Browning ever
 10:14:00 **17** give direction? That's -- I understand it doesn't have
 10:14:02 **18** to be, but did that, in fact, happen?
 10:14:04 **19** **A. He may have.**
 10:14:06 **20** **Q.** Okay. You just don't recall the specifics, as
 10:14:06 **21** you sit here?
 10:14:08 **22** **A. Yes.**
 10:14:08 **23** **Q.** Who is Gisela Salas, for the record?
 10:14:12 **24** **A. Dr. Gisela Salas is the division director --**
 10:14:16 **25** **well, the director for the Division of Elections.**
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10:12:06 **1** How frequently did these conversations occur?
 10:12:12 **2** Were they routine? Were they at a set time?
 10:12:14 **3** **A. No, they were not at a set time.**
 10:12:16 **4** **Q.** It was just office communication about what was
 10:12:20 **5** going on; is that fair?
 10:12:22 **6** **A. It depended on the progress of the bill through**
 10:12:26 **7** **the legislative process. So if it was before a**
 10:12:30 **8** **committee, then we might have a meeting beforehand.**
 10:12:32 **9** **Q.** Would it be fair to say that Secretary Browning
 10:12:36 **10** was following the progress of this bill?
 10:12:38 **11** **A. Yes.**
 10:12:40 **12** **Q.** And Secretary Browning typically followed the
 10:12:44 **13** progress of election law bills during your tenure,
 10:12:46 **14** didn't he?
 10:12:46 **15** **A. Absolutely.**
 10:12:48 **16** **Q.** And he had some direct input, as you testified
 10:12:52 **17** before; correct?
 10:12:52 **18** **A. Yes.**
 10:12:52 **19** **Q.** Did he direct you or other members of the staff
 10:12:56 **20** to provide input to the Legislature concerning the
 10:13:00 **21** language of HB 1355?
 10:13:04 **22** **A. Ask the question again, please.**
 10:13:06 **23** **Q.** Sure.
 10:13:06 **24** Did he -- you testified before that the only
 10:13:10 **25** input you recalled him making directly concerned early
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10:14:18 **1** **Q.** Okay. And you testified earlier about a
 10:14:20 **2** gentleman named Gary Holland?
 10:14:22 **3** **A. Yes.**
 10:14:22 **4** **Q.** Who is -- what is Mr. Holland's position with the
 10:14:26 **5** Department?
 10:14:26 **6** **A. Mr. Holland is -- Gary Holland is an Assistant**
 10:14:30 **7** **General Counsel. He's my colleague. He was the one --**
 10:14:36 **8** **the other attorney to whom I referred as the other**
 10:14:40 **9** **assigned attorney to the Division of Elections.**
 10:14:42 **10** **Q.** And earlier you testified there's an individual
 10:14:44 **11** named Pierce Schussler; is that right?
 10:14:46 **12** **A. Yes.**
 10:14:48 **13** **Q.** What is his position?
 10:14:48 **14** **A. He is the Legislative Affairs' director for the**
 10:14:52 **15** **Department of State.**
 10:14:52 **16** **Q.** I believe I understand there's also a person that
 10:14:56 **17** works with you named Chris Cate?
 10:14:58 **18** **A. Yes.**
 10:14:58 **19** **Q.** What is his position?
 10:15:00 **20** **A. He's the Communications director for the**
 10:15:02 **21** **Department of State.**
 10:15:02 **22** **Q.** Now, in the meetings that you testified about
 10:15:06 **23** with Secretary Browning, who was present at those
 10:15:10 **24** meetings concerning HB 1355?
 10:15:20 **25** **A. Generally, it would be myself, Gary Holland,**
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10:15:26 **1 Pierce Schussler, Jennifer Kennedy, Dr. Salas.**
 10:15:40 **2 Sometimes it would be General Counsel Daniel Nordby.**
 10:15:50 **3 Q. Anyone else?**
 10:15:52 **4 A. Did I say Jennifer Kennedy?**
 10:15:54 **5 Q. You did.**
 10:15:54 **6 A. I did. And Pierce.**
 10:15:56 **7 Q. Uh-huh.**
 10:16:00 **8 A. Dr. Salas. And -- I don't think John Boynton had**
 10:16:14 **9 started yet by that point.**
 10:16:16 **10 Q. I'm sorry. You testified that John Boynton**
 10:16:18 **11 hadn't --**
 10:16:18 **12 A. No, he was not. I don't believe he was yet**
 10:16:22 **13 assigned as the Deputy Secretary. I can't recall.**
 10:16:24 **14 Q. Okay.**
 10:16:26 **15 A. So he might have sat in as well as the Secretary.**
 10:16:28 **16 Q. At these meetings, was the subject of the four**
 10:16:34 **17 sets of voting changes discussed?**
 10:16:38 **18 A. This meeting that you refer to --**
 10:16:42 **19 Q. You testified about a series of meetings that**
 10:16:46 **20 were happening in your office involving those**
 10:16:48 **21 individuals that involved the Secretary as HB 1355 made**
 10:16:54 **22 its way through the legislative process; correct?**
 10:16:56 **23 A. Right.**
 10:16:56 **24 Q. And so I'm asking, at the those meetings, did the**
 10:16:58 **25 subject of the four sets of voting changes come up?**
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10:18:52 **1 Q. Was the subject of where this 48-hour provision**
 10:18:56 **2 came from discussed? Do you know where it came from,**
 10:19:00 **3 whose suggestion it was?**
 10:19:00 **4 A. No, I don't.**
 10:19:02 **5 Q. Okay. Did the subject of the new time for early**
 10:19:10 **6 voting come up in these meetings that you had with your**
 10:19:12 **7 staff?**
 10:19:12 **8 A. It may have.**
 10:19:14 **9 Q. Do you recall specifically whether it did or not?**
 10:19:16 **10 A. No.**
 10:19:16 **11 Q. How about the change for the rules of movers and**
 10:19:20 **12 --**
 10:19:20 **13 A. Yes.**
 10:19:22 **14 Q. Did that come up?**
 10:19:22 **15 A. Yes.**
 10:19:24 **16 Q. Did the subject of the purpose of that change**
 10:19:26 **17 come up in these meetings with the Secretary?**
 10:19:30 **18 A. Yes.**
 10:19:32 **19 Q. And what was the purpose as you discussed it?**
 10:19:40 **20 A. That one was to ensure that voters weren't voting**
 10:19:50 **21 in a prior location and then coming to their new county**
 10:19:56 **22 and voting again.**
 10:20:02 **23 Q. Any other purpose behind that change that you**
 10:20:08 **24 discussed?**
 10:20:10 **25 A. Not that I can recall, no.**
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10:17:02 **1 A. That and whatever was in that bill.**
 10:17:06 **2 Q. Was the subject of the purpose of any of the four**
 10:17:12 **3 sets of voting changes discussed in those meetings?**
 10:17:18 **4 A. Yes.**
 10:17:18 **5 Q. All right. In those meetings, what do you recall**
 10:17:26 **6 being discussed about what the purpose was behind the**
 10:17:28 **7 change for third-party voter registration organizations?**
 10:17:40 **8 A. The primary purpose was to make sure that these**
 10:17:44 **9 applications were getting in on time.**
 10:17:54 **10 Q. Any other purpose behind the change?**
 10:18:00 **11 A. No. That's it.**
 10:18:02 **12 Q. And did the subject of the time deadline of**
 10:18:10 **13 48 hours from signing, was that discussed?**
 10:18:12 **14 A. Yes.**
 10:18:14 **15 Q. What was your reaction to the 48-hour time for**
 10:18:18 **16 signing? Do you feel it was strangely short, strangely**
 10:18:24 **17 long, anything like that?**
 10:18:26 **18 A. It was a change from ten days to 48 hours. Our**
 10:18:30 **19 main concern was implementation.**
 10:18:36 **20 Q. What was the concern with implementation?**
 10:18:38 **21 A. What does 48 hours mean.**
 10:18:40 **22 Q. What does 48 hours mean?**
 10:18:42 **23 A. Is it days or just straight hours, those kinds of**
 10:18:46 **24 things, because that's our main concern, is how, how**
 10:18:50 **25 we're going to implement these provisions.**
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10:20:10 **1 Q. Did you discuss in these meetings any concerns**
 10:20:14 **2 about how to implement that change?**
 10:20:16 **3 A. Yes.**
 10:20:16 **4 Q. What were the concerns?**
 10:20:18 **5 A. The main concerns were whether this would**
 10:20:28 **6 generate a lot more provisional ballot voters and**
 10:20:34 **7 ensuring that these provisional ballot voters' ballots**
 10:20:38 **8 were counted.**
 10:20:40 **9 Q. Any other concerns?**
 10:20:44 **10 A. The logistics of signing these during voter**
 10:20:48 **11 intake.**
 10:20:50 **12 Q. And why was the logistics of signing during the**
 10:20:54 **13 provisional ballots during voter intake a concern?**
 10:20:58 **14 A. Because the process has changed. A person now**
 10:21:02 **15 has to -- would not be able to just vote a regular**
 10:21:06 **16 ballot. They would have to vote a provisional ballot.**
 10:21:10 **17 So they'd have to fill out an affidavit and a voter**
 10:21:12 **18 registration application and a provisional ballot**
 10:21:14 **19 certificate and the concern that they, that they -- that**
 10:21:20 **20 it would be perceived that they had to bring additional**
 10:21:24 **21 information in to prove that they were now in their new**
 10:21:26 **22 county.**
 10:21:28 **23 Q. So it's a greater burden for the voter was the**
 10:21:30 **24 concern; right?**
 10:21:32 **25 A. It was a concern that we thought there might be**
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10:21:36 **1** there.

10:21:38 **2** **Q.** Was that concern dealt with at all in the

10:21:40 **3** legislation?

10:21:42 **4** **A. No. It was addressed in rule.**

10:21:44 **5** **Q.** How was it addressed in the rule?

10:21:48 **6** **A. The polling place procedure manual sets out what**

10:21:52 **7** **an individual has to do and they are able to just fill**

10:21:56 **8** **out the provisional ballot certificates. They don't**

10:22:00 **9** **have to fill out a separate affidavit or registration**

10:22:04 **10** **application. So really they're not filling out any,**

10:22:08 **11** **anymore information or any additional documentation than**

10:22:12 **12** **they would have if they had moved in from another county**

10:22:14 **13** **previously.**

10:22:16 **14** **Q.** But I believe you testified they are still --

10:22:18 **15** there was still concerns about the perception of having

10:22:20 **16** to fill out a provisional ballot as opposed to a regular

10:22:26 **17** ballot; correct?

10:22:26 **18** **A. Yes, there is perception.**

10:22:28 **19** **Q.** And there's a concern that that perception could

10:22:30 **20** lead to frustration on the part of the voter?

10:22:34 **21** **A. Any time there is in change in election**

10:22:36 **22** **legislation that results in the change in the procedure**

10:22:38 **23** **at the polling place, it is a responsibility of the**

10:22:40 **24** **supervisor to ensure they educate the voter about that**

10:22:46 **25** **process.**

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10:23:56 **1** number of provisional ballots that would be generated

10:23:58 **2** could lead to, you know, poor election results or a

10:24:02 **3** problem with the election results?

10:24:08 **4** **A. There was concern expressed that it would**

10:24:10 **5** **increase the number of provisional ballot voters.**

10:24:14 **6** **Q.** And why is the number of provisional ballot

10:24:16 **7** voters potentially a problem?

10:24:18 **8** **A. Because those ballots have to be looked at and**

10:24:22 **9** **determined whether the individual is eligible --**

10:24:28 **10** **registered and eligible to vote.**

10:24:30 **11** **Q.** Were the concerns that you expressed in your

10:24:32 **12** meeting, did you express those concerns to the

10:24:36 **13** legislators?

10:24:42 **14** **A. Yes.**

10:24:42 **15** **Q.** Who expressed those concerns?

10:24:46 **16** **A. Well, let me correct myself. When you say the**

10:24:50 **17** **legislators, I mean legislative staff.**

10:24:52 **18** **Q.** Okay. Concerns were expressed to legislative

10:24:56 **19** staff?

10:24:56 **20** **A. Yes.**

10:24:56 **21** **Q.** Which staff members did your team express those

10:24:58 **22** concerns to?

10:24:58 **23** **A. It would have been the House committee staff,**

10:25:02 **24** **either Judy McDonald or, I think, Heather Williamson as**

10:25:12 **25** **well. Those are two House staff that we dealt with.**

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10:22:46 **1** **Q.** All right. I understand that's what you do about

10:22:48 **2** it, but there's still a concern that it will lead to a

10:22:50 **3** perception problem and frustration on the part of the

10:22:54 **4** voter; correct?

10:22:56 **5** **A. Actually, we were more concerned about the poll**

10:22:58 **6** **worker.**

10:23:00 **7** **Q.** How were you concerned about the poll worker?

10:23:02 **8** Having to deal with that frustration?

10:23:02 **9** **A. Yes.**

10:23:04 **10** **Q.** So you were more concerned about the poll worker

10:23:06 **11** than the frustration on the part of the voter?

10:23:10 **12** **A. Poll worker following the procedure. They**

10:23:12 **13** **already have a lot on their plate.**

10:23:14 **14** **Q.** So this created added work for the poll voter

10:23:16 **15** (sic)? This change; right?

10:23:18 **16** **A. It really more just created a change and**

10:23:22 **17** **educating the poll worker is a concern in a short period**

10:23:26 **18** **of time.**

10:23:30 **19** **Q.** Were there concerns expressed in these meetings

10:23:34 **20** with the Secretary that the change with respect to

10:23:38 **21** moving voters could lead voters to get frustrated and

10:23:42 **22** leave the polling place and not vote?

10:23:44 **23** **A. He may have.**

10:23:46 **24** **Q.** Did you discuss concerns that the added burden of

10:23:52 **25** going through all these provisional ballots and the

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10:25:16 **1** **Q.** Did the House staff members, to your knowledge,

10:25:20 **2** convey your concerns to the legislators?

10:25:24 **3** **A. To my knowledge, they did.**

10:25:24 **4** **Q.** Did the legislation change at all in respond to

10:25:28 **5** your con -- to respond to your concerns? Excuse me.

10:25:36 **6** **A. I don't know if our comments had any direct**

10:25:38 **7** **impact on the changes. There were changes in the, in**

10:25:42 **8** **the provisions.**

10:25:44 **9** **Q.** Okay. What changes were made to the provisions,

10:25:46 **10** just for the record?

10:25:50 **11** **A. I can only recall with the out of county address**

10:25:54 **12** **change that that provision did away with any --**

10:25:58 **13** **initially did away with any changes, any changes at the**

10:26:00 **14** **polls. So I know that's not what we ended up with.**

10:26:04 **15** **Q.** Okay. So did you recommend your -- strike that.

10:26:08 **16** Did your team recommend just not making this

10:26:10 **17** change at all with respect to moving voters at any

10:26:14 **18** point?

10:26:20 **19** **A. Generally, we are not in the business of telling**

10:26:26 **20** **a legislator you can't do this. What we try to do is**

10:26:30 **21** **see what their goal is and how we can best effectuate**

10:26:34 **22** **that by suggesting new language that might improve it**

10:26:42 **23** **and -- improve it meaning that it's something that is**

10:26:44 **24** **possible to be able to implement.**

10:26:46 **25** **Q.** Okay. And did you recommend to the legislative

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10:26:52 **1** staff that in your view this change for movers was not
 10:26:58 **2** possible to implement or too difficult to implement and
 10:27:00 **3** that it should not be adopted as law?
 10:27:02 **4** **A. No, we did not say that to them.**
 10:27:06 **5** **Q.** Did you deal with any legislative staff on the
 10:27:08 **6** Senate side?
 10:27:10 **7** **A. Yes.**
 10:27:10 **8** **Q.** Who did you deal with on the Senate side?
 10:27:12 **9** **A. It would have been Senate Committee on E & E,**
 10:27:18 **10** **which is Ethics and Elections. Don Roberts is the staff**
 10:27:22 **11** **director and the only other staffer that I can recall is**
 10:27:28 **12** **Jonathan Fox.**
 10:27:34 **13** **Q.** Did you discuss in your meetings -- again, we're
 10:27:38 **14** still talking about these meetings you testified about
 10:27:40 **15** that involved the Secretary and your colleagues. Did
 10:27:42 **16** you discuss what the legislators' purpose was in
 10:27:46 **17** promoting this legislation?
 10:27:48 **18** **A. I'm sure we did.**
 10:27:48 **19** **Q.** Do you recall what was discussed in that regard?
 10:27:52 **20** **A. No.**
 10:27:58 **21** **Q.** And same question with respect to the four sets
 10:28:02 **22** of voting changes, did you discuss specifically what the
 10:28:04 **23** purpose was behind those on the part of the Legislature?
 10:28:14 **24** **A. I'm sure we did discuss that.**
 10:28:16 **25** **Q.** Do you remember specifically what was discussed?
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10:29:40 **1** **A. During the preclearance process.**
 10:29:42 **2** **Q.** Okay. And what caused you, during the
 10:29:46 **3** preclearance process, your group, to believe that the
 10:29:48 **4** four sets of voting changes might not achieve
 10:29:52 **5** preclearance?
 10:29:54 **6** **A. Because we had a conversation with the Department**
 10:29:56 **7** **of Justice staff about 50 plus days into the pre --**
 10:30:02 **8** **after the preclearance package had been submitted and**
 10:30:06 **9** **the areas that they focused on were those four areas,**
 10:30:12 **10** **four sections.**
 10:30:14 **11** **Q.** Prior to that discussion with the Department of
 10:30:16 **12** Justice, did your group have concerns that preclearance
 10:30:20 **13** might not be achieved for these four sets of voting
 10:30:24 **14** changes?
 10:30:24 **15** **A. We may have. I just don't have recollection.**
 10:30:32 **16** MR. FARR: We've been going for a while now.
 10:30:34 **17** Why don't we take a break.
 10:30:56 **18** (Whereupon, a short recess was taken.)
 10:42:06 **19** BY MR. FARR:
 10:42:06 **20** **Q.** Ms. Matthews, after the break, did it occur to
 10:42:08 **21** you that any of the testimony you've given up to now
 10:42:10 **22** needs to be altered or changed in any way?
 10:42:14 **23** **A. No.**
 10:42:14 **24** **Q.** Okay. Thank you.
 10:42:14 **25** I want to go back to the topic of the meetings
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10:28:16 **1** **A. No.**
 10:28:18 **2** **Q.** Okay. And then was the subject of whether any of
 10:28:22 **3** the four sets of voting changes would have the effect of
 10:28:26 **4** denying or bridging the right to vote on account of race
 10:28:30 **5** or membership of a language group discussed in your
 10:28:34 **6** meetings?
 10:28:34 **7** **A. I don't recall.**
 10:28:36 **8** **Q.** It may have been, you just don't know?
 10:28:40 **9** **A. Once again, election legislation is subject to**
 10:28:42 **10** **preclearance in five counties, so that would have been a**
 10:28:48 **11** **discussion.**
 10:28:50 **12** **Q.** So you discussed whether these four sets of
 10:28:52 **13** voting changes would get through preclearance or not?
 10:28:58 **14** **A. I'm sure we did.**
 10:29:00 **15** **Q.** Was there a concern expressed in your group that
 10:29:02 **16** it would not?
 10:29:08 **17** **A. At that juncture, no.**
 10:29:10 **18** **Q.** At any juncture, whether before or after HB 1355
 10:29:16 **19** was passed, did a concern arise amongst your group that
 10:29:20 **20** the four sets of voting changes might not be precleared?
 10:29:32 **21** **A. Yes.**
 10:29:32 **22** **Q.** When did that occur?
 10:29:34 **23** **A. After the legislation.**
 10:29:36 **24** **Q.** And why did it only arise after the legislation,
 10:29:40 **25** if you know?
MARY CLARKE CORKERY, COURT REPORTER

10:42:18 **1** that you had with your colleagues and I wanted to ask
 10:42:22 **2** you, as a result of those meetings, did you personally
 10:42:26 **3** give any input to the legislative staff concerning HB
 10:42:40 **4** 1355?
 10:42:40 **5** **A. Yes.**
 10:42:40 **6** **Q.** What input did you give?
 10:42:44 **7** **A. It would have been about the out-of-county**
 10:42:54 **8** **address changes.**
 10:42:58 **9** **Q.** Okay. And, specifically, what input did you give
 10:43:02 **10** on that subject?
 10:43:04 **11** **A. Was asked how it worked with NVRA.**
 10:43:12 **12** **Q.** What was the concern with the interaction of
 10:43:16 **13** NVRA? Can you describe that for me?
 10:43:20 **14** **A. As I said earlier, there was different versions**
 10:43:24 **15** **of the sections and I think at one time it removed**
 10:43:32 **16** **entirely the possibility of making any address change at**
 10:43:38 **17** **the polls whether you were in county or out of county,**
 10:43:42 **18** **and we were actually -- I was actually asked on that one**
 10:43:50 **19** **about the NVRA.**
 10:43:52 **20** **Q.** By a legislative staff member?
 10:43:54 **21** **A. Uh-huh.**
 10:43:54 **22** **Q.** And what did you tell them?
 10:43:56 **23** **A. I summarized what the NVRA provides, that it was**
 10:44:04 **24** **unlikely that they could do away entirely with in county**
 10:44:10 **25** **address changes at the polls because NVRA appears to**
MARY CLARKE CORKERY, COURT REPORTER

11:05:48 **1** question?

11:05:48 **2** **A. I'm not, I'm not quite sure I understand your**

11:05:52 **3** **question.**

11:05:52 **4** **Q.** Okay. My question is simply this. There is a

11:05:54 **5** statement in this document which is advice given by your

11:06:00 **6** department or the division that you advise, I'm sorry,

11:06:02 **7** by your department and the division that you advise,

11:06:06 **8** that the State of Florida cannot maintain a dual voting

11:06:08 **9** system. That's one of the reasons for the advice that

11:06:10 **10** they are giving. I'm simply asking you, is it your

11:06:14 **11** understanding that the State of Florida cannot validly

11:06:18 **12** maintain a dual voting system?

11:06:20 **13** **A. I guess my problem in responding is I really**

11:06:24 **14** **don't under -- don't know what is entailed by dual**

11:06:26 **15** **voting system.**

11:06:28 **16** **Q.** Well, those are pretty standard words. What does

11:06:30 **17** that mean to you?

11:06:32 **18** **A. I don't know if it refers to a machine, to a**

11:06:36 **19** **methodology of voting, to two separate sets of laws.**

11:06:44 **20** **Q.** Uh-huh.

11:06:46 **21** **A. I just can't answer it.**

11:06:48 **22** **Q.** Based on your understanding of the uniformity

11:06:54 **23** requirement under Florida law -- let's just stay with

11:06:56 **24** that -- how can a system that's in any way dual comply

11:07:00 **25** with that requirement? What does uniformity mean? If

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11:08:44 **1** does a verification become so great that you would agree

11:08:48 **2** that it is a dual system?

11:08:50 **3** **A. Once again, I go back to the fact that it really**

11:08:52 **4** **depends on the law.**

11:08:54 **5** **Q.** Okay. Can you give me some examples in your

11:08:58 **6** tenure at the Department in which the Department, like

11:09:04 **7** in this instance, viewed the fact that a change could

11:09:10 **8** not be applied in the non -- not -- in the covered

11:09:16 **9** counties as a reason to hold back implementation in the

11:09:20 **10** non-covered counties?

11:09:22 **11** **A. I don't recall that during my tenure.**

11:09:24 **12** **Q.** You don't recall that ever happening?

11:09:26 **13** **A. No.**

11:09:32 **14** **Q.** I'll show you what we'll mark as Exhibit Number

11:09:40 **15** 39.

11:09:48 **16** (Whereupon, DOS Deposition Exhibit Number 39

11:09:48 **17** was marked for identification.)

11:09:48 **18** BY MR. FARR:

11:09:48 **19** **Q.** Ms. Matthews, if you could take a look at

11:09:52 **20** Exhibit 39 and tell me if you've ever seen this document

11:09:54 **21** before.

11:09:56 **22** **A. Yes.**

11:09:56 **23** **Q.** What is it?

11:09:58 **24** **A. It is a memorandum from me to the Supervisors of**

11:10:04 **25** **Elections regarding pending DOJ preclearance.**

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11:07:04 **1** it's not that there's a dual system, there's a unified

11:07:08 **2** system, there's one system.

11:07:16 **3** **A. A uniform system may not necessarily mean that**

11:07:20 **4** **everything is the same in one county as in another**

11:07:24 **5** **county. As in, for example, early voting, the hours may**

11:07:28 **6** **be different in county A versus county B. That's not**

11:07:34 **7** **uniform, but it is still uniform in the sense of that**

11:07:42 **8** **everybody is entitled to go to the polls and vote early.**

11:07:46 **9** **So that's where I have my issue about it being**

11:07:54 **10** **interpreted as being exact in each county.**

11:07:58 **11** **Q.** Okay. Where is the line drawn between what can

11:08:02 **12** and can't be uniform and who draws it? What constitutes

11:08:06 **13** uniformity or changes within a unified system, as you

11:08:10 **14** just testified?

11:08:10 **15** **A. It goes back again to what I stated earlier about**

11:08:14 **16** **how -- it depends on what the law is, the nature of the**

11:08:18 **17** **law.**

11:08:18 **18** **Q.** So the nature of the law and its provisions, in

11:08:22 **19** your view, is what could lead to it being a dual system

11:08:26 **20** or a unified system with some tweaks here and there?

11:08:30 **21** **A. I personally don't like the term dual voting**

11:08:34 **22** **system. I think it means that there can be variation**

11:08:36 **23** **from county to county, but that does not mean that there**

11:08:40 **24** **isn't uniformity.**

11:08:40 **25** **Q.** Okay. I'm just struggling with -- at what level

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11:10:08 **1** **Q.** And it appears to be a memo about pending DOJ

11:10:12 **2** preclearance on Chapter law 2007-30; is that right?

11:10:16 **3** **A. Yes.**

11:10:18 **4** **Q.** What was that law?

11:10:20 **5** **A. Chapter law 2007-30 was the elections law during**

11:10:44 **6** **the 2007 Florida legislative session.**

11:10:48 **7** **Q.** Do you recall what the changes were that had to

11:10:52 **8** be precleared?

11:10:56 **9** **A. No. I'd have to read this memo.**

11:10:58 **10** **Q.** Okay. Maybe it would jog some memory if you

11:11:04 **11** looked at the last sentence of the first paragraph. It

11:11:06 **12** reads: *Therefore, the changes in those four sections*

11:11:08 **13** *relating to voter registration and voting cannot -- your*

11:11:12 **14** *emphasis -- be implemented in any county until DOJ*

11:11:16 **15** *preclears them.*

11:11:16 **16** Did I read that right?

11:11:20 **17** **A. You did.**

11:11:20 **18** **Q.** So you're advising the Supervisors of Elections

11:11:24 **19** in this document dated December 24th, 2007, that until

11:11:28 **20** DOJ precleared these changes, these changes could not be

11:11:32 **21** implemented in any county, not just the covered

11:11:34 **22** counties; is that right?

11:11:38 **23** **A. That appears to be what the memo says.**

11:11:40 **24** **Q.** Does this refresh your recollection that there

11:11:42 **25** have been instances in which you would advise

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11:11:46 **1** Supervisors of Elections that changes could not be
 11:11:50 **2** implemented immediately in non-covered counties until
 11:11:52 **3** DOJ precleared them for covered counties?
 11:11:56 **4** **A. Yes.**
 11:11:56 **5** **Q.** Okay. And if I could direct your attention to
 11:11:58 **6** number one, *Third-Party Voter Registration*
 11:12:02 **7** *Organizations*. There's some background that you provide
 11:12:04 **8** and then there's a section that says, *Action to be*
 11:12:08 **9** *taken*. It says: *The 2007 Third-Party Voter*
 11:12:10 **10** *Registration law cannot be implemented until DOJ*
 11:12:14 **11** *preclears this provision and the Department of State*
 11:12:16 **12** *gives notice of its intent to enforce the 2007*
 11:12:20 **13** *Third-Party Voter Registration law.*
 11:12:22 **14** Did I read that right?
 11:12:22 **15** **A. Yes.**
 11:12:24 **16** **Q.** And that was for all the counties; correct? Not
 11:12:26 **17** just the covered counties?
 11:12:26 **18** **A. Yes.**
 11:12:28 **19** **Q.** Do you recall the circumstances of these changes
 11:12:30 **20** and why it was you made the decision that they could not
 11:12:34 **21** be implemented anywhere in the state until DOJ
 11:12:38 **22** precleared them?
 11:12:40 **23** **A. No, because I didn't recall this memo.**
 11:12:42 **24** **Q.** Well, now having read it, does it refresh your
 11:12:44 **25** recollection about what this was about?

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11:14:08 **1** **Q.** And one of the six, I assume, is HB 1355, and the
 11:14:14 **2** advice is different there; correct? Because it's being
 11:14:18 **3** implemented immediately?
 11:14:18 **4** **A. Yes.**
 11:14:20 **5** **Q.** So that gets us to four.
 11:14:22 **6** Do you have any recollection about the other four
 11:14:22 **7** and whether they were implemented immediately throughout
 11:14:28 **8** the state prior to preclearance or not?
 11:14:30 **9** **A. No.**
 11:14:30 **10** **Q.** So, as you sit here now, you really can't
 11:14:34 **11** remember one way or the other?
 11:14:34 **12** **A. No.**
 11:14:36 **13** **Q.** Okay. Does this memorandum in any way refresh
 11:14:42 **14** your recollection about the analysis about whether this
 11:14:46 **15** set of changes, you know, met whatever threshold there
 11:14:52 **16** would be that would be a threat to the integrity of the
 11:14:56 **17** system or not sufficiently uniform that you made the
 11:14:58 **18** decision to advise the supervisors not to implement it
 11:15:02 **19** anywhere?
 11:15:02 **20** **A. Once again, I think it goes back to what I said**
 11:15:04 **21** **about how it may depend on what the provision -- the**
 11:15:08 **22** **nature of the provision and the specifics are in that**
 11:15:10 **23** **provision as to whether it was something that can be**
 11:15:14 **24** **uniformly applied throughout or if it has to be, as in**
 11:15:20 **25** **this particular case, not implemented in any of the**

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11:12:46 **1** **A. My recollection is based on reading this memo.**
 11:12:58 **2** **Q.** Okay. So it doesn't refresh your independent
 11:13:00 **3** recollection?
 11:13:00 **4** **A. (Nods negatively.)**
 11:13:02 **5** **Q.** Okay. Does seeing this memo refresh your
 11:13:04 **6** recollection that there may have been other instances in
 11:13:06 **7** which your department advised the SOEs to not implement
 11:13:10 **8** voting changes anywhere in the state until DOJ had
 11:13:18 **9** precleared them?
 11:13:18 **10** **A. No.**
 11:13:18 **11** **Q.** Okay. Do you recall how many election laws have
 11:13:26 **12** come up that you've dealt with during your tenure that
 11:13:30 **13** required DOJ preclearance?
 11:13:32 **14** **A. No.**
 11:13:34 **15** **Q.** Can you ball park the number for me? More than
 11:13:38 **16** five? Less than 100?
 11:13:40 **17** **A. Almost every year since 2004.**
 11:13:50 **18** **Q.** So would that be about seven maybe or six?
 11:13:54 **19** **A. Maybe more like six.**
 11:13:54 **20** **Q.** Six.
 11:13:56 **21** So, in your tenure, there's at least one of the
 11:14:00 **22** six in which the advice was that the changes could not
 11:14:04 **23** be made anywhere in the state until there was
 11:14:06 **24** preclearance; correct?
 11:14:06 **25** **A. Yes.**

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11:15:26 **1** **counties.**
 11:15:26 **2** **Q.** I can't help but notice one of them has to do
 11:15:30 **3** with third-party voter registration organizations as
 11:15:32 **4** does HB 1355; correct?
 11:15:36 **5** **A. Yes.**
 11:15:36 **6** **Q.** Do you recall at all the difference, what led to
 11:15:40 **7** the difference in approach with respect to that change?
 11:15:54 **8** **A. Well, based on my reading here, the prospective**
 11:15:58 **9** **enforcement of this law had been suspended by**
 11:16:02 **10** **stipulation of the parties. So that may have been the**
 11:16:04 **11** **reason why the decision was made there.**
 11:16:08 **12** **Q.** But you don't remember independently?
 11:16:12 **13** **A. No.**
 11:16:12 **14** **Q.** It's just based on the document.
 11:16:12 **15** Okay. With respect to the other four pieces of
 11:16:16 **16** legislation where you don't remember what the approach
 11:16:18 **17** was, did any of them have to do with third-party voter
 11:16:22 **18** registration organizations?
 11:16:24 **19** **A. Are you talking about the other three provisions?**
 11:16:26 **20** **Q.** The other four. I was talking about -- well, you
 11:16:28 **21** said that there was a law pretty much every year?
 11:16:30 **22** **A. Uh-huh.**
 11:16:32 **23** **Q.** And you said there had been about six.
 11:16:34 **24** **A. Oh.**
 11:16:34 **25** **Q.** And I was asking about the approach.

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11:16:36 **1** So we've got HB 1355 that involves third-party
 11:16:40 **2** voter registration organizations. We have this one.
 11:16:40 **3** That's two of the six. Did the other four involve
 11:16:44 **4** third-party voter registration organizations, to your
 11:16:48 **5** knowledge?
 11:16:48 **6** **A. I don't recall.**
 11:16:48 **7** **Q.** Okay.
 11:16:50 **8** All right. Let me ask you a question about
 11:17:06 **9** something other than third-party voter registration
 11:17:08 **10** organizations. With respect to voters who move and
 11:17:14 **11** attempt to change their address at the polling place, is
 11:17:20 **12** it not a difference in approach that, within the covered
 11:17:24 **13** counties, those persons -- well, strike that.
 11:17:30 **14** Is it not a difference in approach that in the
 11:17:32 **15** non-covered counties those persons have to vote a
 11:17:36 **16** provisional ballot and in the covered counties they
 11:17:40 **17** don't? Isn't that a difference?
 11:17:44 **18** **A. It is a difference when they voter intake, but,**
 11:17:50 **19** **ultimately, the provisional ballot is going to count**
 11:17:52 **20** **short of evidence of fraud or that they voted previously**
 11:17:58 **21** **somewhere else.**
 11:18:00 **22** **Q.** But it's a very different process, is it not?
 11:18:04 **23** One, you're voting a regular ballot, and, one, you're
 11:18:08 **24** voting a provisional ballot; correct?
 11:18:08 **25** **A. Yes.**
MARY CLARKE CORKERY, COURT REPORTER

11:19:52 **1** **Q.** But it doesn't -- it doesn't vary in terms of
 11:19:54 **2** whether a particular voter in the circumstance of trying
 11:19:56 **3** to change his address at the polling place has to vote a
 11:20:00 **4** provisional ballot or a regular ballot in that regard,
 11:20:04 **5** does it? Within the covered counties and outside the
 11:20:10 **6** covered counties, it's the same process; right?
 11:20:10 **7** **A. I think I lost your question.**
 11:20:12 **8** **Q.** Okay. But I understand your testimony and I --
 11:20:18 **9** but with respect to this issue of the moving voter,
 11:20:22 **10** within the covered counties, they get to vote a real
 11:20:26 **11** ballot; outside the covered counties, they have to vote
 11:20:28 **12** a provisional ballot. It's a very different system,
 11:20:34 **13** isn't it?
 11:20:34 **14** **A. Well, I object to the characterization that a**
 11:20:34 **15** **provisional ballot is not a real ballot.**
 11:20:36 **16** **Q.** Okay. A regular ballot; okay?
 11:20:36 **17** **A. (Nods affirmatively.)**
 11:20:38 **18** **Q.** That aside, that's a very different system, isn't
 11:20:42 **19** it?
 11:20:42 **20** **A. It's a different process.**
 11:20:42 **21** **Q.** So it's not a uniform process, is it?
 11:20:46 **22** **A. It's not the same process.**
 11:20:50 **23** **Q.** And something that's not the same is not uniform,
 11:20:54 **24** is it?
 11:20:54 **25** **A. I think that's where I beg to differ.**
MARY CLARKE CORKERY, COURT REPORTER

11:18:10 **1** **Q.** And you testified earlier that there was concern
 11:18:12 **2** amongst your group in which you were discussing this
 11:18:14 **3** prior to HB 1355 being passed that voters would become
 11:18:20 **4** frustrated with having a voter provisional ballot and it
 11:18:24 **5** could lead to problems; correct? That was your
 11:18:28 **6** testimony, was it not?
 11:18:28 **7** **A. Yes.**
 11:18:30 **8** **Q.** Okay. So that concern on the part of your group
 11:18:36 **9** exists and it creates a lack of uniformity, does it not,
 11:18:44 **10** for moving voters between the covered and non-covered
 11:18:46 **11** counties?
 11:19:00 **12** **A. Arguably, yes.**
 11:19:02 **13** **Q.** Okay. Do you have a concern that implementing
 11:19:06 **14** the moving voter provision in the manner that you have
 11:19:12 **15** violates Florida law?
 11:19:22 **16** **A. No.**
 11:19:24 **17** **Q.** Why not?
 11:19:24 **18** **A. Because ultimately, I think, the individuals are**
 11:19:28 **19** **-- still have the opportunity to vote and their ballot**
 11:19:32 **20** **is going to count.**
 11:19:32 **21** **Q.** But it's not a uniform process, is it?
 11:19:36 **22** **A. Once again, the process at voter intake and**
 11:19:40 **23** **polling places across the state vary subtly, they're not**
 11:19:46 **24** **all done the same exact way. That doesn't mean that the**
 11:19:48 **25** **voters aren't being treated uniformly.**
MARY CLARKE CORKERY, COURT REPORTER

11:20:56 **1** **Q.** Okay. So uniformity means something other than
 11:21:00 **2** same process with respect to something as simple as a
 11:21:04 **3** regular ballot or a provisional ballot?
 11:21:06 **4** **A. I keep coming back to the point that it really**
 11:21:10 **5** **depends on the law, the nature of the provision, whether**
 11:21:12 **6** **it can be uniformly implemented or -- which doesn't**
 11:21:18 **7** **necessarily mean it's the exact same thing happening in**
 11:21:22 **8** **one county versus another.**
 11:21:24 **9** **Q.** Okay. But you will agree with me that arguably
 11:21:26 **10** at least it's not uniform and may violate Federal law
 11:21:32 **11** the way it's being done now; correct?
 11:21:34 **12** **A. Say that again.**
 11:21:34 **13** MR. FARR: Can you read it back?
 11:21:34 **14** (Whereupon, the court reporter read back the
 11:21:34 **15** last question.)
 11:21:44 **16** THE WITNESS: All I can say is that it's
 11:21:46 **17** different. I cannot say that it's not uniform.
 11:21:50 **18** MR. FARR: Okay. I understand.
 11:22:22 **19** Mark this as Exhibit 40.
 11:22:30 **20** (Whereupon, DOS Deposition Exhibit Number 40
 11:22:32 **21** was marked for identification.)
 11:22:34 **22** BY MR. FARR:
 11:22:34 **23** **Q.** Ms. Matthews, I'm showing you what's been marked
 11:22:38 **24** as Exhibit 40. This appears to be an e-mail string from
 11:22:42 **25** a Nancy Bignell to you, cc'd Dan Nordby; is that
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11:22:52 **1** correct?

11:22:52 **2** **A. Hold on and let me read it.**

11:22:54 **3** **Q.** Please. Thank you.

11:23:26 **4** **A. (Witness reads document.)**

11:23:26 **5** **Okay.**

11:23:26 **6** **Q.** Okay. And is this, in fact -- do you recognize

11:23:28 **7** this as being an e-mail string between Nancy Bignell and

11:23:32 **8** yourself?

11:23:32 **9** **A. Yes.**

11:23:32 **10** **Q.** Who is Ms. Bignell?

11:23:34 **11** **A. She is a staff person with Manatee County.**

11:23:38 **12** **Q.** And who is Bob -- is it Sweet or Sweat?

11:23:42 **13** **A. He was the Supervisor of Elections at that time.**

11:23:46 **14** **I actually don't know if he still is or not.**

11:23:48 **15** **Q.** Okay. And, on July 27th, it appears that she

11:23:52 **16** wrote to you: *Good morning, Maria. Bob is preparing to*

11:23:54 **17** *take part in a panel discussion on the election law*

11:23:58 **18** *changes as a result of HB 1355. It will take place*

11:24:02 **19** *prior to the Justice Department's ruling. He would like*

11:24:04 **20** *to be ready for a question that he believes he will be*

11:24:06 **21** *asked and that is, if HB 1355 does not preclear will the*

11:24:12 **22** *other counties be bound by HB 1355? In researching*

11:24:16 **23** *recent events, the only opinions that I found were DE*

11:24:18 **24** *98-12 and DE 98-13.*

11:24:22 **25** Did I read that correctly?

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11:25:22 **1** Did you recognize the document?

11:25:22 **2** **A. Yes.**

11:25:24 **3** **Q.** Okay. So had you read it in connection with this

11:25:26 **4** e-mail?

11:25:26 **5** **A. Yes.**

11:25:28 **6** **Q.** Okay. Had you read it prior to the e-mail?

11:25:32 **7** **A. I'm pretty sure I did. Uh-huh.**

11:25:36 **8** **Q.** Did the subject of 98-12 and 98-13 come up in

11:25:40 **9** conversations within your department about how HB 1355

11:25:46 **10** and the fact that it was being immediately implemented

11:25:48 **11** in the non-covered counties would be viewed?

11:25:52 **12** MR. NORDBY: Object on that to the extent

11:25:54 **13** that your question is asking her about legal

11:25:58 **14** opinion that may have been sought from her or

11:26:00 **15** provided by her.

11:26:00 **16** MR. FARR: I'm just asking factually if it

11:26:02 **17** came up, not what the advice was.

11:26:04 **18** MR. NORDBY: I understand that. And I'm not

11:26:06 **19** directing her not to answer your question.

11:26:08 **20** MR. FARR: I understand.

21 BY MR. FARR:

11:26:10 **22** **Q.** Do you understand that you have to respond to my

11:26:10 **23** questions unless he says that invades the privy, I

11:26:14 **24** instruct you not to answer?

11:26:16 **25** **A. Yes.**

MARY CLARKE CORKERY, COURT REPORTER

11:24:22 **1** **A. Yes.**

11:24:22 **2** **Q.** And 98-13 is the exhibit I showed you before,

11:24:26 **3** Exhibit 38; correct?

11:24:26 **4** **A. Yes.**

11:24:28 **5** **Q.** And you responded to her, did you not?

11:24:28 **6** **A. Yes.**

11:24:30 **7** **Q.** And you said: *I would keep response to a*

11:24:32 **8** *minimum. It would merely be conjecture at this point to*

11:24:36 **9** *say what we think the Department of Justice is going to*

11:24:38 **10** *do and say, and what the Department of State or the*

11:24:40 **11** *individual preclearance county's options and course of*

11:24:44 **12** *actions would be in response to that. DE 98-12 and DE*

11:24:48 **13** *98-13 only serve as a historic footnote based on the*

11:24:52 **14** *facts and circumstances of the time. They are not*

11:24:54 **15** *necessarily an indicator or predictor of what we would*

11:24:58 **16** *do today.*

11:24:58 **17** Did I read that correctly?

11:24:58 **18** **A. Yes.**

11:24:58 **19** **Q.** My first question is: When I showed you

11:25:02 **20** Exhibit 38, you didn't recognize the document, yet here

11:25:04 **21** in this e-mail you tell Ms. Bignell about 98-13. Can

11:25:10 **22** you account for that?

11:25:10 **23** **A. Did I say I did not recognize this document or**

11:25:16 **24** **that I was not there during that time?**

11:25:18 **25** **Q.** I'm sorry. That may be right.

MARY CLARKE CORKERY, COURT REPORTER

11:26:16 **1** **Q.** Okay. Because, otherwise, Mr. Nordby would be

11:26:20 **2** coaching you, and I know that's not what he's doing. So

11:26:22 **3** you have to answer my question.

11:26:24 **4** Did the subject come up?

11:26:24 **5** **A. Yes.**

11:26:26 **6** **Q.** Okay. So someone within your group flagged the

11:26:32 **7** fact that 98-12 and 98-13 might be viewed as being

11:26:36 **8** inconsistent with your policy of applying HB 1355

11:26:40 **9** immediately in the non-covered counties?

11:26:44 **10** **A. Yes.**

11:26:44 **11** **Q.** Who is that person?

11:26:46 **12** **A. Gary Holland was the one that brought the opinion**

11:26:52 **13** **to -- reminded us of the opinion.**

11:26:54 **14** **Q.** Okay. And how did you decide to deal with that?

11:26:58 **15** **A. I think this response tells you how we dealt with**

11:27:06 **16** **it.**

11:27:06 **17** **Q.** Okay. Did you consider not applying the changes

11:27:10 **18** in HB 1355 to the non-covered counties consistent with

11:27:16 **19** 98-12 and 98-13?

11:27:18 **20** **A. In any discussion, all options would have been**

11:27:22 **21** **explored.**

11:27:24 **22** **Q.** Is that a yes?

11:27:24 **23** **A. Yes.**

11:27:24 **24** **Q.** Okay. And why did you decide to implement 1355

11:27:30 **25** immediately?

MARY CLARKE CORKERY, COURT REPORTER

11:27:32 **1 A. Because the law required it at the moment it**
 11:27:36 **2 became law in those non-preclearance counties.**
 11:27:40 **3 Q. But that was true with respect to the laws at**
 11:27:42 **4 issue in 98-12 and 98-13 and your 2007 memorandum,**
 11:27:48 **5 wasn't it?**
 11:27:48 **6 A. As stated here, we believe the facts and**
 11:27:52 **7 circumstances were different and not -- I kind of like**
 11:27:58 **8 my sentence here, that they are not necessarily an**
 11:28:00 **9 indicator or predictor of what we would say today to**
 11:28:06 **10 those same sets of facts and circumstances.**
 11:28:06 **11 Q. Okay. So what were the differences between HB**
 11:28:10 **12 1355 and the law at issue in 98-12 and 98-13? What were**
 11:28:14 **13 the differences?**
 11:28:20 **14 A. They were different provisions, but I don't think**
 11:28:24 **15 we would have opined in the same way.**
 11:28:30 **16 Q. I'm sorry. I don't follow you.**
 11:28:32 **17 You wouldn't have opined in the same way, meaning**
 11:28:36 **18 what? Why not? The issue is uniformity; right? And**
 11:28:40 **19 the issue is the things that were in 98-13 and whether**
 11:28:44 **20 it impinges on the integrity of the process, violates**
 11:28:48 **21 Federal and State law, etcetera. Why would you opine**
 11:28:50 **22 that your current posture with respect to HB 1355**
 11:28:54 **23 wouldn't do those things? What was the basis for that?**
 11:28:56 **24 A. Once again, it goes back to the nature of those**
 11:29:04 **25 provisions.**
MARY CLARKE CORKERY, COURT REPORTER

11:30:12 **1 Q. If I wanted to know that, I would have to ask**
 11:30:14 **2 him; right?**
 11:30:16 **3 A. Yes.**
 11:30:16 **4 Q. Can you tell me anything about -- and I'm sorry**
 11:30:20 **5 to keep going back to this. I'm not suggesting you're**
 11:30:24 **6 being evasive directly. I just want to know what the**
 11:30:28 **7 differences are between this law and 98-13 and HB 1355.**
 11:30:32 **8 And I understand you say it goes back to the purpose of**
 11:30:36 **9 the law, there's a way in which it can be different but**
 11:30:40 **10 still uniform enough. I mean, I get that, but can you**
 11:30:42 **11 tell me specifically what are the differences?**
 11:30:46 **12 A. No, not without looking at the specific**
 11:30:52 **13 provisions back in '98 and then looking at the ones we**
 11:30:56 **14 have today.**
 11:30:56 **15 Q. Wasn't that discussed, though, in connection with**
 11:31:00 **16 whether you were going to implement them immediately in**
 11:31:02 **17 HB 1355, how you were going to, if you will, harmonize**
 11:31:08 **18 what happened with 98-13 with now? Wasn't that**
 11:31:12 **19 discussed recently?**
 11:31:14 **20 A. We had discussions. I don't know that we felt we**
 11:31:16 **21 had to harmonize them.**
 11:31:18 **22 Q. Why not?**
 11:31:18 **23 A. Because once again, I think the facts and**
 11:31:22 **24 circumstances of that time and/or that we didn't exactly**
 11:31:26 **25 agree with the opinion back in '98.**
MARY CLARKE CORKERY, COURT REPORTER

11:29:04 **1 Q. Well, I understand, but what is the nature of the**
 11:29:06 **2 provisions of HB 1355 that have led to a different**
 11:29:10 **3 result?**
 11:29:12 **4 A. I can't recall how we reached that point.**
 11:29:14 **5 Q. Okay. But at some point you reached that point;**
 11:29:18 **6 right?**
 11:29:18 **7 A. Yeah.**
 11:29:18 **8 Q. Did the Secretary direct that that would be the**
 11:29:24 **9 outcome, that we're going to implement 1355 immediately**
 11:29:30 **10 in the non-covered counties?**
 11:29:32 **11 A. The Secretary of State is the one -- is the chief**
 11:29:36 **12 elections official. He would be the one to direct how**
 11:29:40 **13 these provisions would be implemented.**
 11:29:42 **14 Q. Okay. Is that a yes, he directed?**
 11:29:44 **15 A. Yes.**
 11:29:46 **16 Q. Do you know his purpose, his -- strike that.**
 11:29:46 **17 Do you know his basis for doing that, what his**
 11:29:50 **18 reasoning was?**
 11:29:50 **19 A. Based on advice of counsel and then ultimately he**
 11:29:56 **20 makes his decision.**
 11:29:56 **21 Q. Was it based on any other input, not just advice**
 11:30:00 **22 of counsel? Were there people outside your office that**
 11:30:06 **23 were pushing him, if you will, to implement it in that**
 11:30:10 **24 way? Was that coming from anywhere, to your knowledge?**
 11:30:12 **25 A. I can't speak to that.**
MARY CLARKE CORKERY, COURT REPORTER

11:31:28 **1 Q. What about with respect to 2007? I mean, I**
 11:31:30 **2 understand you don't remember this provision that well,**
 11:31:34 **3 but did the subject of this law for which implementation**
 11:31:38 **4 was not immediate in the non-covered counties, did that**
 11:31:42 **5 come up as well in connection with what you were going**
 11:31:46 **6 to do with HB 1355?**
 11:31:48 **7 A. I'm sure it did.**
 11:31:48 **8 Q. Do you remember those discussions?**
 11:31:50 **9 A. That's a long time ago. I mean, if you're**
 11:31:54 **10 referring to 2007.**
 11:31:56 **11 Q. No, no. I'm sorry. Maybe my question wasn't**
 11:31:58 **12 clear.**
 11:31:58 **13 When you were considering whether to immediately**
 11:32:02 **14 implement 1355 in the non-covered counties, did the**
 11:32:06 **15 subject of this 2007 legislation where you took a**
 11:32:08 **16 different approach, did that come up in those**
 11:32:12 **17 discussions?**
 11:32:12 **18 A. I don't have a personal recollection of it.**
 11:32:16 **19 Q. Okay. If you don't remember, you don't remember.**
 11:32:22 **20 But the subject of whether to apply 1355**
 11:32:28 **21 immediately in the non-covered counties did come up;**
 11:32:32 **22 correct?**
 11:32:32 **23 A. Yes.**
 11:32:32 **24 Q. So that was a decision point?**
 11:32:34 **25 A. Yes.**
MARY CLARKE CORKERY, COURT REPORTER

11:32:34 **1** Q. We've got this law, do we apply it in the
 11:32:36 **2** non-covered counties or not? We know we can't apply it
 11:32:40 **3** in the covered counties until we get preclearance, but
 11:32:42 **4** what do we do about the non-covered counties? That came
 11:32:44 **5** up; right?
 11:32:44 **6** **A. Yes.**
 11:32:44 **7** Q. And the decision was made to implement
 11:32:48 **8** immediately in the non-covered counties; correct?
 11:32:50 **9** **A. Yes.**
 11:32:50 **10** Q. Was that decision made solely by the Secretary?
 11:32:56 **11** **A. Ultimately, he's the one that makes the decision.**
 11:32:58 **12** Q. What did you think personally of that decision?
 11:33:02 **13** **A. I don't think my personal opinion matters.**
 11:33:04 **14** Q. Did you have one?
 11:33:06 **15** **A. I'm sure I do.**
 11:33:06 **16** Q. I think your opinion matters. Do you have one?
 11:33:10 **17** **A. You're not asking me as an expert?**
 11:33:12 **18** Q. No, I'm not.
 11:33:14 **19** **A. Then I don't, I don't think it matters.**
 11:33:16 **20** Q. You won't give me your opinion as to --
 11:33:18 **21** **A. No.**
 11:33:20 **22** Q. -- whether it was the appropriate course to take
 11:33:22 **23** given this precedent in your department?
 11:33:24 **24** **A. No.**
 11:33:30 **25** Q. Does it concern you at all that it was done?
MARY CLARKE CORKERY, COURT REPORTER

11:34:56 **1** **A. I can't answer.**
 11:34:58 **2** Q. Why not? You were there, weren't you?
 11:35:00 **3** **A. I was there, but I don't ultimately make all the**
 11:35:02 **4** **decisions. Other --**
 11:35:04 **5** Q. Can you tell me --
 11:35:04 **6** **A. There may be reasons I don't know about it.**
 11:35:08 **7** Q. Can you tell me what the supervisors -- sorry.
 11:35:10 **8** Can you tell me what the Secretary's reasons were as
 11:35:12 **9** they were expressed to you?
 11:35:18 **10** **A. His concern is ensuring that he follows his**
 11:35:22 **11** **responsibilities under the law and that the laws are**
 11:35:26 **12** **uniformly applied, and he felt that these could be**
 11:35:30 **13** **implemented without the other five counties.**
 11:35:34 **14** Q. Can you give me details of that analysis, why he
 11:35:36 **15** thought that --
 11:35:38 **16** **A. No.**
 11:35:38 **17** Q. -- as opposed to these other circumstances?
 11:35:42 **18** **A. I don't have specific recollections of how our**
 11:35:48 **19** **reasoning came to --**
 11:35:48 **20** Q. Okay. But, based on what you've read today, it's
 11:35:52 **21** clear, is it not, that in these other two circumstances,
 11:35:56 **22** 98-13 and your 2007 memo, there was an analysis made
 11:36:00 **23** then at the time and the decision was made that there
 11:36:04 **24** would not be immediate application in the non-covered
 11:36:06 **25** counties; correct?
MARY CLARKE CORKERY, COURT REPORTER

11:33:34 **1** **A. My job as an attorney in the Department is to**
 11:33:38 **2** **give legal counsel and, ultimately, it's not my**
 11:33:44 **3** **responsibility to make decisions and I am comfortable**
 11:33:50 **4** **with what I did in giving legal advice.**
 11:33:52 **5** Q. Well, I wasn't suggesting otherwise. I was just
 11:33:54 **6** asking what your view was. I'm sure you are quite
 11:33:56 **7** comfortable with it.
 11:33:58 **8** **A. View on what?**
 11:34:00 **9** Q. On whether it was appropriate or advisable,
 11:34:04 **10** either one, to apply HB 1355 immediately in the
 11:34:08 **11** non-covered counties.
 11:34:08 **12** **A. I think it was appropriate.**
 11:34:10 **13** Q. Why?
 11:34:10 **14** **A. Because there's nothing that says that those**
 11:34:14 **15** **should not be implemented immediately upon becoming law.**
 11:34:18 **16** Q. So Florida's requirement of uniformity in
 11:34:22 **17** applying election law is not an impediment to that?
 11:34:24 **18** **A. Once again, we considered the nature of those**
 11:34:28 **19** **provisions and we decided that was okay to do.**
 11:34:36 **20** Q. Okay. Why? You considered the provisions. So
 11:34:40 **21** you just got me to where I want to be. Specifically
 11:34:44 **22** why? Why were these provisions not such a change that
 11:34:46 **23** you decided to immediately implement them in the
 11:34:50 **24** non-covered counties contrary to what you did in these
 11:34:54 **25** other circumstances? That's all I'm trying to get at.
MARY CLARKE CORKERY, COURT REPORTER

11:36:06 **1** **A. That's correct.**
 11:36:08 **2** Q. Can you account for the difference in any way
 11:36:10 **3** specifically?
 11:36:12 **4** **A. Facts and circumstances were different then.**
 11:36:16 **5** **There are different people who are at play.**
 11:36:20 **6** Q. Uh-huh.
 11:36:24 **7** **A. It may not have been the same Secretary of State,**
 11:36:28 **8** **policy decisions, the advice that was given at that**
 11:36:32 **9** **time. All those factors can make for a different**
 11:36:36 **10** **output.**
 11:36:36 **11** Q. Okay. But you can't tell me what the analysis
 11:36:40 **12** was by any of those people?
 11:36:44 **13** **A. No.**
 11:36:48 **14** Q. Okay. Does the -- well, strike that.
 11:36:52 **15** Let me ask you something else. If it occurs in
 11:36:56 **16** this case that the four sets of voting changes are not
 11:37:00 **17** cleared as a result of this litigation, have you
 11:37:04 **18** discussed what you will do then with respect to the
 11:37:08 **19** non-covered counties?
 11:37:12 **20** **A. We've had general discussion.**
 11:37:16 **21** Q. Can you tell me what the substance of those
 11:37:20 **22** general discussions are?
 11:37:24 **23** **A. I think that's an attorney-client privilege.**
 11:37:28 **24** MR. NORDBY: Okay. Then if the question
 11:37:32 **25** would require you to say something privileged,
MARY CLARKE CORKERY, COURT REPORTER

13:56:28 **1** to do with the request of the Secretary of State .

13:56:30 **2** Are you familiar with that testimony?

13:56:32 **3** **A. It sounds familiar.**

13:56:34 **4** **Q.** Are those fair statements, that most of the

13:56:36 **5** provisions in the 140-page version of the bill were put

13:56:40 **6** in place at the request of Supervisors of Elections or

13:56:42 **7** at the request of the Secretary of State?

13:56:44 **8** **A. I don't know what version you're referring to.**

13:56:46 **9** **Q.** Well, it has 140 pages. Were there multiple

13:56:50 **10** versions that had 140 pages?

13:56:52 **11** **A. It's possible.**

13:56:54 **12** **Q.** Okay. But, again, to your knowledge, the four

13:56:58 **13** sets of changes didn't come from the Supervisors of

13:57:00 **14** Elections?

13:57:00 **15** **A. No.**

13:57:00 **16** **Q.** And the four sets of changes didn't come from

13:57:02 **17** your department?

13:57:04 **18** **A. No.**

13:57:04 **19** **Q.** Okay. What role, if any, did the Department play

13:57:08 **20** in encouraging the passage of either of the bills?

13:57:22 **21** **A. I'm not sure I can --**

13:57:24 **22** **Q.** I'll try, I'll try a different way.

13:57:26 **23** Did your department make any statements in favor

13:57:28 **24** of the bill before it was passed? Any public

13:57:32 **25** pronouncements?

MARY CLARKE CORKERY, COURT REPORTER

13:58:44 **1** **A. I presume. I don't know.**

13:58:48 **2** **Q.** But you're not really sure? I'd have to ask him

13:58:52 **3** again?

13:58:52 **4** **A. Yes.**

13:58:54 **5** **Q.** What role did the FSASE play in connection with

13:59:04 **6** HB 1355?

13:59:04 **7** **A. FSASE is the Florida State Association of**

13:59:08 **8** **Supervisors of Elections Association and they, they**

13:59:14 **9** **provide their input, too, to the legislative process**

13:59:20 **10** **regarding their, their issues with the provisions in the**

13:59:24 **11** **bill.**

13:59:24 **12** **Q.** And they had issues with this bill, did they not?

13:59:26 **13** **A. They did.**

13:59:28 **14** **Q.** In fact, they voiced concerns about several

13:59:32 **15** sections of the bill, including the four sets of voting

13:59:34 **16** changes; correct?

13:59:34 **17** **A. Yes.**

13:59:36 **18** **Q.** I'll show you what's -- excuse me. This is the

13:59:46 **19** first instance of a protocol that we have agreement on.

13:59:50 **20** I'm going to show you what's been marked already as

13:59:52 **21** Supervisor of Election Exhibit 1. It already has a

14:00:04 **22** sticker.

14:00:06 **23** Ms. Matthews, could you look at this document and

14:00:08 **24** tell me -- have you seen this before?

14:00:22 **25** **A. Yes.**

MARY CLARKE CORKERY, COURT REPORTER

13:57:36 **1** **A. I believe that there were statements made in**

13:57:40 **2** **support of the bill.**

13:57:42 **3** **Q.** Prior to its passage?

13:57:44 **4** **A. (Nods affirmatively.)**

13:57:46 **5** **Q.** Do you know who made them?

13:57:46 **6** That's a nodded head, for the record. It's

13:57:50 **7** getting late. Try not to do that.

13:57:52 **8** **A. No. I wasn't responding.**

13:57:54 **9** **Q.** Do you know who made them?

13:57:54 **10** **A. It would have been the Secretary of State or the**

13:57:58 **11** **communications office --**

13:57:58 **12** **Q.** Okay.

13:58:00 **13** **A. -- on his behalf.**

13:58:02 **14** **Q.** Do you know what was said that you're recalling

13:58:06 **15** prior to passage?

13:58:08 **16** **A. No.**

13:58:08 **17** **Q.** Okay. Were these many statements? One

13:58:10 **18** statement? Was there an active effort on the part of

13:58:14 **19** your department to get this bill passed?

13:58:18 **20** **A. I can't say whether there was an active effort to**

13:58:30 **21** **get it passed.**

13:58:32 **22** **Q.** But there was an effort to get it passed?

13:58:34 **23** **A. Yes.**

13:58:36 **24** **Q.** Was the impetus for that from the Secretary

13:58:40 **25** himself? Was that his decision?

MARY CLARKE CORKERY, COURT REPORTER

14:00:22 **1** **Q.** What is it?

14:00:22 **2** **A. It's a -- it's like a memo that is presented by**

14:00:30 **3** **the -- on behalf of the association describing changes**

14:00:38 **4** **to committee substitute -- for committee substitute for**

14:00:40 **5** **Senate Bill 2086.**

14:00:44 **6** **Q.** Okay. But it also expresses the FSASE's concerns

14:00:50 **7** with SB 2086 and, I guess, by implication, HB 1355;

14:00:56 **8** correct?

14:00:56 **9** **A. Yes.**

14:00:58 **10** **Q.** I just want to run through a couple of the things

14:01:00 **11** -- well, strike that.

14:01:00 **12** First, what is this organization? What's their

14:01:04 **13** mission?

14:01:04 **14** **A. They represent the now all but 60 of the**

14:01:14 **15** **Supervisors of Elections in the State of Florida. They**

14:01:18 **16** **serve a variety of functions, from educating, providing**

14:01:22 **17** **workshops and educating Supervisors of Elections,**

14:01:26 **18** **representing their interests, and also doing legislative**

14:01:36 **19** **lobbying.**

14:01:36 **20** **Q.** Okay. Would it be fair to say that, that this

14:01:42 **21** organization has significant expertise with respect to

14:01:46 **22** election law and election practice?

14:01:48 **23** **A. Yes.**

14:01:48 **24** **Q.** If they take a position with respect to election

14:01:52 **25** law, is it typically given strong consideration?

MARY CLARKE CORKERY, COURT REPORTER

EXHIBIT F

From: Cate, Chris
Sent: Friday, April 29, 2011 9:06 PM
To: 'dailymediacalls@eog.myflorida.com'
CC: PriorityGroup
Subject: DOS Daily Media Calls 4.29.2011

**Florida Department of State
Daily Media Calls**

Reporter's Name: William March
Media Outlet: Tampa Tribune
Reason for Call: Elections Bill
Agency's Response: The only proposals in the bill that the Secretary has actively advocated for are the proposals that came from our department.

Reporter's Name: Aaron Deslatte
Media Outlet: Orlando Sentinel
Reason for Call: The reporter wanted to know if the department has run any reports on the level of minority-group voting in early voting versus Election Day voting.
Agency's Response: No, we have not.

Reporter's Name: Travis Pillow
Media Outlet: Florida Independent
Reason for Call: Early Voting
Agency's Response: Changes to early voting was not a proposal by the department, but Secretary Browning has been offering his knowledge and experience with early voting to help answer any questions Senators may have about the issue.

Chris Cate
Communications Director
Florida Department of State
(850) 245-6527
www.dos.state.fl.us

FL00002809

DOS EX
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EXHIBIT G



Department of State Memorandum

Office of the General Counsel

TO: Supervisors of Elections
FROM: Maria Matthews, Assistant General Counsel
DATE: December 24, 2007
RE: Pending DOJ Pre-clearance/Court Action on Chapter law 2007-30

On October 26, 2007, the U.S. Department of Justice (DOJ) pre-cleared all but four sections of the 2007 Elections legislation (ch. 2007-30, Laws of Florida/DOJ File No. 3844). DOJ requested extensive supplemental information as to those four sections. Under federal law, that request triggered another 60-day review from the date the response was received (November 26, 2007). That means DOJ could take until January 25, 2008, to issue its determination. **Therefore, the changes in those four sections relating to voter registration and voting cannot be implemented in any county until DOJ pre-clears them.**

For the upcoming Presidential Preference Primary Election, please advise your staff and poll workers regarding the following appropriate action to take as to those four provisions. If you have any questions regarding compliance with state and federal law, please call us at 850-245-6536.

1. Third-Party Voter Registration Organizations. (s. 97.0575, Fla. Stat.)

Background: Chapter law 2007-30 revised the 2005 Third Party Voter Registration law (under court challenge) to reduce the personal liability of persons and fines associated with third-party voter registration groups and their activities. The 2005 law was never implemented due to a federal court injunction entered in League of Women Voters v. Browning which is still under appeal. Prospective enforcement of the 2007 Third Party Voter Registration law has likewise been suspended by stipulation of the parties pending notice by the Department of State.

Action to be taken: The 2007 Third-Party Voter Registration law cannot be implemented until DOJ pre-clears this provision and the Department of State gives notice of its intent to enforce the 2007 Third Party Voter Registration law.

2. Acceptance and Processing of Voter Registration Applications (s. 97.053(6), Fla. Stat.)

Background: Chapter 2007-30 codified the 'override' feature and process (first implemented in June 2006) that allowed voter registration officials to override the Florida Voter Registration System (FVRS) in certain cases. With the override feature, the supervisor of elections could make an applicant a registered voter if he or she brought in before an election evidence sufficient to authenticate his or her driver's license number, state identification number or social security number even though the number as provided on the completed application could not be verified

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by the Department of Highway Safety and Motor Vehicle or the Social Security Administration. This meant that the person would not have to vote a provisional ballot at the polls.

However, a federal court injunction issued on December 18, 2007, in the case of Florida NAACP v. Browning has changed the scope of this override as practiced and as codified. The injunction bars the verification process under section 97.053(6), Fla. Stat., from being applied in a way that keeps an applicant with a completed application from becoming a registered voter. The net result is that no voter registration applicant with a completed application may be kept from becoming a registered voter simply because his or her personal identifying number cannot be verified. The court has not yet ruled on the Department of State's Motion to Stay filed December 20, 2007.

Action to be taken: To comply with this preliminary court injunction, the FVRS voter registration process and local registration application entry procedures will be revised to register applicants with completed applications, whether or not their personal identifying number is verified. For specific details, see the Division of Elections' December 21, 2007 e-mailed Memo to the Supervisors of Elections, entitled "Procedures to Comply with NAACP Injunction." Regardless of DOJ preclearance, this process must be followed until the court rules otherwise and you are notified by the Florida Department of State. Note: The law still requires all fields on the application to be completed. Therefore, an applicant must still complete field #6 by providing a DL number, state ID number or SSN, or writing "none" if no number has been issued.

3. Identification at the polls (s. 101.043, Fla. Stat.):

Background: Chapter law 2007-30 eliminated two forms of photo identification that a voter could present at the polls: the employee's badge and the buyer's club card. A legislative oversight did not make the same change to a provision for certain first-time registrants.

Action to be taken: Until DOJ preclears this change, a voter may still present an employee badge or a buyer's club card as an acceptable form of photo identification at the polls.

4. Provisional Ballots (s. 101.048, Fla. Stat.)

Background: Chapter law 2007-30 revised the timeframe from 3 to 2 days after Election Day in which a provisional ballot voter can bring in evidence of eligibility in order for his or her provisional ballot to be counted. This change was made to accommodate and conform to a legislative change to another section in the law. Section 102.141, Fla. Stat., was amended to: 1) shorten the period for submitting first unofficial election results, and 2) count provisional ballots as part of the first unofficial election results for purposes of a potential recount.

Action to be taken: Until DOJ preclears this change, a provisional ballot voter will still have up to 3 days to submit evidence of eligibility in order for his or her provisional ballot to count. (Remember, persons who voted provisionally because they did not provide identification at the polls do not have to provide evidence of eligibility. All that is required is for the canvassing board to compare the signature on the voter certificate with the signature on the voter registration record. (see s. 101.048(2), Fla. Stat.)). This also means that the canvassing boards will have less than a half day to canvass provisional ballots before submitting the count as part of the first unofficial election results.